

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. EAD-2/DSR/VS/805/2017]**

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**UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.**

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In respect of:

**Mr. Vijay Anant Dhongde (PAN No. ADBPD7401N)**

In the matter of

**Mahindra and Mahindra Limited**

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1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination into the irregularity in trading in the shares of Mahindra & Mahindra Limited (hereinafter referred to as '**MML/Company**'), a company listed on the Bombay Stock Exchange (**BSE**) for the period November 11, 2013 to December 31, 2013 and into the possible violation of the provisions of the Securities And Exchange Board of India Act, 1992 (hereinafter referred to as the '**SEBI Act, 1992**') and various Rules and Regulations made thereunder.
2. SEBI had received a letter dated August 26, 2014 from MML informing that few of the designated employees of the company had dealt in shares of MML when the trading window was closed for declaration of unaudited financial results of the company for the quarter ended on December 31, 2013. Further, another designated employee has entered into an opposite transaction on December 31, 2013.
3. The examination revealed that Mr. Vijay Anant Dhongde (hereinafter referred to as the '**Noticee**'), one of the designated employees of the company, had traded in the scrip of MML for more than ₹ 9 lakh in value and had entered into opposite transaction within six months following the prior transaction which was in violation of Clause 4.2 of the Model Code of Conduct specified in Part A of Schedule 1 of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**'). SEBI has, therefore, initiated adjudication proceedings under the Act to inquire into and adjudge the alleged violation of the provisions of law by the Noticee.

### **Appointment of Adjudicating Officer**

4. I have been appointed as the Adjudicating Officer (hereinafter referred to as '**AO**') vide Order dated January 25, 2017 under section 15 I of the Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Rules**') to inquire into and adjudge under section 15HB of the Act against the Noticee for the alleged violation of the provisions of law.

### **Show Cause Notice, Reply and Personal Hearing**

5. Show Cause Notice dated February 20, 2017 (hereinafter referred to as '**SCN**') was issued to the Noticee in terms of Rule 4 of the said Rules requiring him to show cause as to why an inquiry should not be held for the alleged violation of provisions of law. The SCN was duly delivered to Noticee, vide letter dated March 14, 2017. Noticee acknowledged the receipt of the SCN and replied to the said SCN. Therefore, in the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the Adjudication Rules, vide letter dated October 05, 2017 an opportunity of personal hearing was granted to Noticee on October 16, 2017. The Authorized Representative (hereinafter referred to as '**AR**') of Noticee attended the said hearing on the scheduled date and reiterated the submission made by Noticee in his reply dated March 14, 2017.

### **Consideration of Issues**

6. I have carefully perused the charges levelled against the Noticee as per the SCN, written submissions made by the Noticee and the material available on record. The issues that arise for consideration in present case are:
- a) Whether the Noticee has violated the provisions of Clause 4.2 of the Model Code of Conduct specified in Part A of Schedule 1 of the PIT Regulations?
  - b) Does the violation, if any, on the part of the Noticee attract any penalty under Section 15HB of the SEBI Act?
  - c) If yes, what should be the quantum of monetary penalty that can be imposed on the Noticee?

## Evidence and Findings

7. Before proceeding, it will be appropriate to refer to the relevant provisions of PIT Regulations which read as under:-

**Model Code of Conduct for Prevention of Insider Trading for Listed Companies:**

**Schedule I:- (PART A)**

**4.2** All directors/ officer/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction, i.e., sell or buy any number of shares during the next six months following the prior transaction. All directors / officers /designated employees shall also not take positions in derivative transactions in the shares of the company at any time.

8. I find from the SCN that MML is a company listed on BSE. The Noticee is one of the designated employees of MML. I further find that the Noticee had traded in the shares of MML when the trading window was closed for declaration of unaudited financial results of the company for the quarter ended on December 31, 2013. It was observed that the Noticee had traded in the scrip for more than ₹9 lakh and entered into opposite transaction within six months following the prior transaction. The summary of trades executed by the Noticee during the relevant period is as under:

Name of the Employee	PAN number	Trade dated	Buy quantity	Sell quantity	Buy Value (Rs.)	Sell value (Rs.)
Mr. Vijay Anant Dhongde	ADBPD7401N	20/11/2013	0	1000	0.00	9,51,013.10
		28/11/2013	0	1000	0.00	9,56,124.60
		09/12/2013	0	1000	0.00	9,65,000.00
		20/12/2013	0	1000	0.00	9,60,000.00
		30/12/2013	0	1000	0.00	9,70,000.00
		31/12/2013	1000	0	9,45,000.00	0.00

9. From the above table, it is observed that the Noticee sold 1000 shares each on November 20, 2013, November 28, 2013, December 09, 2013, December 20, 2013 and December 30, 2013 and took a reverse position on December 31, 2013 for 1000 shares a day after he had sold 1000 shares i.e. on December 30, 2013. The difference between the selling price on December 30, 2013 and purchase price on

December 31, 2013 which can be termed as Profit on this transaction is ₹25,000/- (Rupees Twenty Five Thousand only). The Noticee being the designated employee of MML was not supposed to enter into opposite transaction within six months of the prior transaction. However, as the Noticee transacted in the shares of MML within six months of the prior transaction, he was alleged to have violated the provisions of Clause 4.2 of the Model Code of Conduct specified in Part A of Schedule 1 of the PIT Regulations.

10. The Noticee vide his reply dated March 14, 2017 submitted that it is an inadvertent mistake. The Noticee further submitted that he had sold these shares for giving money to his daughter. While calculating the amount required by her, by mistake, he sold 5000 shares instead of 4000 shares. Since the amount equivalent to 1000 shares was pending with him, he bought 1000 shares immediately without realizing his mistake. He was not aware of the rule of entering into an opposite transaction within a six months period. The Noticee requested for a lenient view in the matter in that it was a genuine mistake of ignorance of law. I note that, during personal hearing before me, AR reiterated the submission made by Notice vide letter dated March 14, 2017 and submitted additional submissions vide letter dated October 14, 2017 along with copy of the bank statement and Income Tax returns in support of the same.

11. I find that the Noticee being the designated employee of the company had transacted in the shares of MML during the window closure period and also had entered into opposite transaction within six months from the prior transaction which was in complete violation of Clause 4.2 of the Model Code of Conduct specified in Part A of Schedule 1 of the PIT Regulations. I find from the submissions made by the Noticee that he has admitted the violation and the same was done due to oversight and ignorance of the provisions of Law. The said submission cannot be accepted in as much as ignorance of law cannot be an excuse. In view of the same, I conclude that the Noticee has violated Clause 4.2 of the Model Code of Conduct specified in Part A of Schedule 1 of the PIT Regulations and thus, is liable for imposition of penalty under Section 15HB of the Act which reads as under:

**Penalty for contravention where no separate penalty has been provided**

**15HB.** *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board there under for which no separate*

*penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

**12.** At this instant, it is important to quote the observations of the Hon'ble Supreme Court of India in the matter of *SEBI vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)*, wherein, the Hon'ble court, *inter alia*, held that: "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow.*"

**13.** While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act, which reads as under:-

***15J - Factors to be taken into account by the adjudicating officer***

*While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

***Explanation***

*For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*

**14.** I note that, from the table mentioned at para no. 9, the Noticee sold 1000 shares each on November 20, 2013, November 28, 2013, December 09, 2013, December 20, 2013 and December 30, 2013 and took a reverse position on December 31, 2013 for 1000 shares a day after he had sold 1000 shares i.e. on December 30, 2013. The difference between the selling price on December 30, 2013 and purchase price on December 31, 2013 which can be termed as Profit on this transaction is ₹. 25,000/- (Rupees Twenty Five Thousand only). I observe that, from the material available on record, it is difficult to quantify the extent of loss suffered by the investors as a result

of the default of the Noticee. The said default on the part of the Noticee is not repetitive in nature.

## ORDER

**15.** In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹1,00,000/- (Rupees One Lakh Only) on the Noticee viz. Mr. Vijay Anant Dhongde under Section 15HB of the SEBI Act.. In my view, the penalty is commensurate with the default committed by the Noticee.

**16.** The Noticee shall remit / pay the said amount of penalties within 45 days of receipt of this order either by way of Demand Draft in favor of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

**17.** The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-DRA1, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052."

1	Case Name	
2	Name of the Payee	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment	

	is made	
7	Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

**18.** In terms of Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee and also to SEBI.

**Date: October 18, 2017**  
**Place: Mumbai**

**D.SURA REDDY**  
**GENERAL MANAGER &**  
**ADJUDICATING OFFICER**