

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.EAD-5/SVKM/SPV/AO/13/2015]

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.

In respect of

**Shri A. R. Sankaranarayanan
(PAN: AQKPS1064J)**

In the matter of

Manappuram Finance Limited

BRIEF FACTS

1. Securities and Exchange Board of India (**hereinafter referred to as SEBI**) conducted investigation into the alleged irregularities in the trading in the shares of Manappuram Finance Limited (**hereinafter referred to as MFL/company**) on the background of RBI's press release dated February 06, 2012 restraining the company from accepting/renewing public deposits. On February 07, 2012, the price of the scrip of the company declined by 19.95% from its previous day closing price. Shri A R Sankaranarayanan (**hereinafter referred to as Noticee**) was a Director on the Board of MFL. It was noticed that Mrs. Sarada Sankaranarayanan, wife of the Noticee had traded in the shares of MFL on February 06 & 07, 2012 and the Noticee being a Director had not obtained pre-clearance of trades from MFL for the said trades as required under the provisions of Clause 3.3-1 of the code of conduct specified under Part A of Schedule I read with Regulation

12(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 **(hereinafter referred to as PIT Regulations)**. It is therefore alleged that the Noticee has violated the aforesaid provisions of PIT Regulations and is liable for monetary penalty under 15HB of the SEBI Act, 1992 **(hereinafter referred to as SEBI Act)**.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI vide order dated June 24, 2014 appointed Shri A. Sunilkumar as the Adjudicating Officer under section 15 I of SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 **(hereinafter referred to as Rules)** to inquire into and adjudge under section 15HB of SEBI Act the aforesaid alleged violations. Consequent to the transfer of Shri A. Sunil Kumar, the undersigned has been appointed as the Adjudicating Officer vide order dated June 22, 2015.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Show Cause Notice No. EAD-05/ADJ/ASK/SPV/OW/23153/2014 dated August 06, 2014 **(hereinafter referred to as SCN)** was issued to the Noticee under Rule 4(1) of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15HB of SEBI Act for the aforesaid alleged violations as detailed in the said SCN.
4. The Noticee vide letters/e-mails dated August 31, 2014, September 01, 2014, October 11, 2014 submitted his reply to the SCN. The Noticee also availed of the opportunity of personal hearing and appeared before the undersigned on July 22, 2015 through his counsel Shri Jai Chhabria, Advocate as instructed by Keystone Partners, Advocates & Solicitors. Written submissions dated July 27, 2015 were

also filed. Summary of submissions made on behalf of the Noticee are as under:

- that the Noticee is a retired distinguished civil servant who served on the Boards of many companies and held responsible positions without any blemish.
- that the shares in question were sold by the wife of the Noticee who is economically independent of the Noticee and hence pre-clearance was not required.
- that the breach if any, is technical in nature and did not result in any undue benefit to the Noticee and does not warrant any penalty as per the legal opinion of M/s AmarchandMangaldas& Co., Advocates, a copy of which is filed.
- that historically, the Noticee has no background of non-compliance with SEBI Regulations.
- that the permission for sale of shares was raised by the Noticee in the Board meeting of MFL held on February 02, 2012 and the Board had no objection for the same.
- that Form D was also filed by the Noticee in compliance with the Regulation 13 of PIT Regulations.
- that the issue of sale of shares was raised and replied by wife of the Noticee to SEBI vide letter dated January 28, 2014.
- that there was no allegation of insider trading by the Noticee or his wife in the SCN.
- that on October 25, 2014, the Noticee had written to the Board of MFL to confirm the oral permission taken by him regarding the sale of shares.
- that a letter dated 'NIL' from one Dr. Manoharan, another Director of MFL is filed to show that the Noticee had discussed his intention to sell the shares in the Board meeting of MFL held on February 02, 2012 and the Board of MFL had no objection for the same.

- that none of the factors under section 15J of SEBI Act are attracted to impose penalty in the present case.
- that the IT Returns and Bank Statements were filed to suggest that Mrs Sarada is an independent assessee.
- Bombay High Court Judgment in the matter of Cabot International Limited is relied to suggest that mere technical breach does not warrant any penalty.
- Lastly, it was submitted that the Noticee is a 90 year old person who has an unblemished track record and no penalty should be visited against him for the reasons stated above.

CONSIDERATION OF ISSUES AND FINDINGS

5. I have carefully perused the replies to the SCN, oral submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :

- a) Whether the Noticee has violated the provisions of Clause 3.3-1 of the code of conduct specified under Part A of Schedule I read with Regulation 12(1) of PIT Regulations when his wife has sold the shares of MFL without the Noticee obtaining prior clearance for such sale?
- 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 penalty?

6. The relevant provisions of PIT Regulations read as under:

3.3 Pre-clearance of trades

3.3.1 All directors/officers/designated employees of the company and their dependents as defined by the company who intend to deal in the securities of the company (above a minimum threshold limit to be decided by the company) should

pre-clear the transaction as per the pre-dealing procedure as described hereunder.

3.3.2 An application may be made in such form as the company may notify in this regard, to the Compliance Officer indicating the estimated number of securities that the designated employee/officer/director intends to deal in, the details as to the depository with which he has a security account, the details as to the securities in such depository mode and such other details as may be required by any rule made by the company in this behalf.

3.3.3 An undertaking shall be executed in favour of the company by such designated employee/director/officer incorporating, inter alia, the following clauses, as may be applicable:

- (a) That the employee/director/officer does not have any access or has not received "Price Sensitive Information" upto the time of signing the undertaking.*
- (b) That in case the employee/director/officer has access to or receives "Price Sensitive Information" after the signing of the undertaking but before the execution of the transaction he/she shall inform the Compliance Officer of the change in his position and that he/she would completely refrain from dealing in the securities of the company till the time such information becomes public.*
- (c) That he/she has not contravened the code of conduct for prevention of insider trading as notified by the company from time to time.*
- (d) That he/she has made a full and true disclosure in the matter.*

7. Admittedly, the Noticee was a Director of MFL at the relevant time when his wife had traded in the shares of MFL. The details of trades by the wife of the Noticee are as under:

Date	NSE				BSE			
	Buy Qty	Buy Value	Sell Qty	Sell Value Rs	Buy Qty	Buy Value	Sell Qty	Sell Value
06-Feb-2012	165	9603	500165	28884300	0	0	0	0
07-Feb-2012	0	0	723000	34912312	0	0	140000	6620979

8. The threshold limit for obtaining pre-clearance is the least of the following:

- (i) Rs. 25,00,000/- in value
- (ii) 25,000 shares or
- (iii) 1% of share capital of the company.

Wife of the Noticee has sold 1363165 shares for Rs. 70,417,591/-. Hence in the instant case, the number of shares transacted and also the value of transaction exceeded the threshold limit for obtaining pre-clearance of trades. It was alleged in the SCN that the transactions were done by the wife of the Noticee and consequently, the Noticee being a Director, was required to obtain pre-clearance of trades from the company.

9. On perusal of the submissions of the Noticee, it is noted that the Noticee has neither disputed the transactions nor the allegations of not obtaining pre-clearance from the company before executing into the said transactions. However, it is contended that the matter of sale of shares by his wife was raised by the Noticee in the Board Meeting of MFL held on February 02, 2012 and the Board had no objection for the same. The Noticee has also produced a letter dated NIL from one Dr. Manoharan, another Director of MFL who is stated to have attended the Board Meeting on February 02, 2012, in support of his claim that the matter was discussed in the Board and Board had no objection to it. Neither the agenda of the Board Meeting containing the above subject nor Minutes containing the decision of the Board is produced. This argument of the Noticee does not inspire confidence. There are well laid out procedures for Board Meetings under the Company law & Secretarial Practice. The agenda papers have to be circulated in advance. Decisions arrived at during the deliberations are recorded and Minutes of the Meeting are prepared and maintained.

10. The object of obtaining pre-clearance of trades by Directors, Officers and their dependents is to ensure that the trades in the shares of the company in which they are associated are not based on price sensitive information. The employee/Director who wishes to trade in the securities of the listed companies has to apply in advance in the prescribed format and also has to furnish an undertaking that he has not received any price sensitive information. He has to also furnish an undertaking that true and full disclosures have been made in terms of the code and that he has not contravened any of the provisions of the code of conduct for prevention of insider trading. Admittedly, no such application in the prescribed format was ever made by the Noticee to the Board of MFL nor did he submit the requisite undertaking regarding non-possession of price sensitive information. These transactions were undertaken immediately prior to and close on the heels of the press release dated February 06, 2012 of RBI restraining the company from accepting /renewing public deposits.

11. Another contention of the Noticee is that the wife of the Noticee who executed trades is economically independent of the Noticee and has filed independent IT returns. Therefore, pre-clearance was not required to be obtained. In support of this contention, the Noticee has produced the Income Tax Returns filed by Mrs Sarada Sankaranarayanan for the relevant year.

12. Provisions of the PIT Regulations regarding pre-clearance of trades states that “*All directors/officers/designated employees of the company and **their dependents as defined by the company**...*” has to pre-clear the transactions over and above a certain limit as prescribed by the company. In the instant case, the company has not defined the term “dependants” in its ‘Policy and Procedure on Insider Trading’ which was prevalent at the relevant time.

13. It may be pertinent to note that the wife of a Director of a company shall be a person deemed to be connected to the company in terms of Regulation 2(h) of PIT Regulations which defines 'deemed connected person'. Further, a Director, in his application for pre-clearance of trades has to categorically state that he/she does not possess price sensitive information. Price sensitive information can be passed by the Directors/officers or other insiders to any of their relatives and friends whomay trade on the basis of such price sensitive information. In the case of Rajiv B Gandhi Vs SEBI (Appeal No. 50 of 2007 decided on May 09, 2008), Securities Appellate Tribunal (SAT) has held that the wife and sister of the CFO of the company, who traded on the basis of the price sensitive information received by the CFO of the company, were held to be insiders. Even the legal opinion furnished by AmarchandMangaldas& Co., Advocates as submitted by the Noticee states that *"....it is clear that the seller, by virtue of her relationship to the Director will be an insider for the purposes of the Regulations and the Code"*. Economic dependency or otherwise of the spouse may not be of much relevance in the matter of pre-clearance of trades which is regulated, monitored and controlled by the company to ensure that no trading takes place based on price sensitive information and compliance with other provisions of PIT Regulations.

14. The purpose of Model Code for prevention of insider trading is to monitor and regulate the transactions of persons close to the management of the company and insiders to avoid unauthorised communication of price sensitive information. Merely because the company has not defined the term 'dependant' in terms of financial limits, it cannot be said that a spouse with independent income can trade without the other spouse who is on the Board obtaining pre-clearance. Since, both the Director and his/her spouse are covered under PIT Regulations, and having regard to the object of pre-clearance of trades which is to see that neither the Director nor their family members and deemed connected persons trade in securities of the

company based on price sensitive information, it is essential that pre-clearance of trades are obtained.

15. The meaning of the term “dependent” has to be seen from the overall scheme of PIT Regulations. If an interpretation of the term “dependent” as suggested by the Noticee is adopted, the entire purpose of obtaining pre-clearance of trades by persons connected or deemed to be connected to the company would be defeated. The basic object of pre-clearing of the transactions is to ensure that no insiders trade on the basis of price sensitive information. Therefore, an interpretation that would enhance the object of the Regulation should be adopted. The legal opinion furnished by the Advocate of the Noticee has also stated that the wife of the Noticee is an insider for the purposes of PIT Regulations and is governed by the Code.

16. In view of the foregoing, I am of the considered view that the Noticee, by not taking pre-clearance for the transactions of his wife in the shares of the listed company in which he was a director at the relevant time, has violated the provisions of Clause 3.3-1 of the code of conduct specified under Part A of the Scheduled I read with regulation 12(1) of PIT Regulations.

17. The Noticee has cited Bombay High Court Judgment in the matter of Cabot International Limited (SEBI vs Cabot International decided on March 03, 2004) to suggest that mere technical breach does not warrant any penalty. It cannot be said that the two transactions executed by the wife of the Noticee involving sale of 1363165 shares for a consideration of Rs. 70,417,591/- without the Noticee obtaining pre-clearance for such transactions as required under the Regulations is mere technical violation. The Hon’ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) has 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”.

18. Thus, the aforesaid violation by the Noticee make him liable for penalty u/s. 15HB of the SEBI Act which reads as under:

15HB. Penalty for contravention where no separate penalty has been provided.-

"Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees"

19. There is no allegation of insider trading. The reference for Adjudication is under section 15HB of the SEBI Act which is a residual provision for penalty and not under Section 15G dealing with insider trading. The limited question that is referred for Adjudication and therefore that arises for consideration is as to whether the Noticee, being a Director on the Board, had obtained pre-clearance of trades when his wife has executed transactions in the shares of the company in violation of the code of conduct and if so what is the penalty that can be levied under the facts and circumstances of the case. The reference is answered in the affirmative.

20. Due consideration has been given to the statement that the Noticee is a 90 year old retired civil servant with unblemished track record and served on the Boards of many companies without any regulatory infraction earlier. However, I note that the provisions for obtaining pre-clearance of trades above a threshold limit by the persons in the management of the company is incorporated in PIT Regulations with a view to regulate and monitor trades by such people and to avoid mis-use of the probable inside information to such people. Since the violation committed by the Noticee is not technical in nature, it has to

be visited with a monetary penalty. There are two transactions executed by the wife of the Noticee for which the Noticee had not obtained pre -clearance hence the violation committed by the Noticee is repetitive in nature.

ORDER

21. After taking into consideration the nature and gravity of the charges established, having regard to section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Rules, I hereby impose a penalty of ₹. 10,00,000/- (Rupees ten lakh only) on the Noticee in terms of Section 15HB of the SEBI Act.

22. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to "*The Division Chief, Enforcement Department-EFD-DRA-I, SEBI Bhavan, Plot No. C – 4 A, "G" Block, BandraKurla Complex, Bandra (E), Mumbai – 400 051*".

23. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

DATE: AUGUST 19, 2015	S V KRISHNAMOHAN
PLACE: Mumbai	ADJUDICATING OFFICER