BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. RA/DPS/ 294 /2018]

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:

Ajit Lele
(PAN No. ABJPL2420M)
Building L, Flat No. L-11, Suyognagar Co-op,
Behind Shivaji Housing Society,
Pune, Maharashtra – 411016.

In the matter of Mahindra Ugine Steel Company Limited
(now known as Mahindra CIE Automotive Ltd)

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a reference from the Mahindra Ugine Steel Company Limited (MUSCO / Company / Scrip) (now known as Mahindra CIE Automotive Ltd) vide letter dated July 28, 2014 informing that a designated employee, Shri Ajit Lele, (hereinafter referred to as "**the Noticee / Ajit**") has dealt in shares of the company when trading window was closed from October 10, 2013 to October 30, 2013 and from April 10, 2014 to May 22, 2014 for declaration of Unaudited financial results of the company for the quarter ended September 30, 2013 and quarter ended March 31, 2014, respectively. In view of the said reference Mahindra Ugine Steel Company Ltd was shortlisted for examination by SEBI. The shares of the company are listed on the Exchanges, Bombay Stock Exchange (BSE) and National Stock Exchange of India Limited (NSE). During examination it was revealed that Noticee, being the Chief Executive Officer of the company, traded during trading window

closure period before quarterly and annual results in September 2013 and March 2014 respectively.

2. It was, therefore, alleged that the Noticee by indulging in trading in the scrip has resulted in change in shareholding of the Noticee which triggered disclosure requirements and it is also alleged that the Noticee has traded in the shares of the company during trading window closure period before quarterly and annual results in September 2013 and March 2014 respectively; and thereby, the Noticee had allegedly violated regulation 3(i) and regulation 13(4) read with 13(5) of SEBI(Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations'**).

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI has, therefore, initiated adjudication proceedings against the Noticee and I have been appointed as the Adjudicating Officer vide order dated August 17, 2015 under Section 15A(b) and 15G(i) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**), to inquire into the aforesaid alleged violations against the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. EAO/RA/DPS/29083/2015 dated October 14, 2015 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(b) and 15G(i) of the SEBI Act for the alleged violation of regulation 3(i) and regulation 13(4) read with 13(5) of PIT Regulations.

5. It was alleged in the SCN that Noticee, being the Chief Executive Officer (CEO) of the company, traded during trading window closure period before quarterly and annual

results in September 2013 and March 2014 respectively. In this regard, it is observed that the company has informed the information regarding impending declaration of quarterly results for period ending September 30, 2013 and March 31, 2014, were made with the Board of Directors and other Key Management Persons through dispatch of respective agenda dated October 22, 2013 (for quarterly results for the period ending September 30, 2013) and May 14, 2014 (for Audited financial results for quarter and year ending March 31, 2014). It is revealed that Noticee has traded in October 2013 and April 2014 just before announcement of financial results of the company in November 2013 and May 2014 and it is also revealed that Noticee traded even before the agenda for meeting was circulated to board. The details of trades done by the Noticee is given below:-

Date	Gross Buy Volume	Gross Sell Volume	Net Traded Volume	Gross Traded Volume	Gross Buy Value	Gross Sell Value
09/01/2013	5000	0	5000	5000	290000.00	0.00
28/02/2013	1800	0	1800	1800	96300.00	0.00
25/03/2013	1000	0	1000	1000	46300.00	0.00
26/03/2013	1000	0	1000	1000	45900.00	0.00
01/04/2013	13	0	13	13	625.30	0.00
18/10/2013	0	18	-18	18	0.00	1692.00
22/10/2013	0	900	-900	900	0.00	84600.00
31/10/2013	0	982	-982	982	0.00	109984.00
09/04/2014	0	1800	-1800	1800	0.00	444600.00
17/04/2014	0	1300	-1300	1300	0.00	371500.00
29/04/2014	0	400	-400	400	0.00	120400.00
23/06/2014	0	220	-220	220	0.00	79101.00
24/06/2014	0	220	-220	220	0.00	94919.00
03/11/2014	0	60	-60	60	0.00	33642.00

6. In view of above, it is alleged that the Noticee by indulging in trading in the scrip has resulted in change in shareholding of the Noticee which triggered disclosure requirements and it is also alleged that the Noticee has traded in the shares of the company during trading window closure period before quarterly and annual results in September 2013 and March 2014 respectively; and thereby, the Noticee had allegedly

violated regulation 3(i) and regulation 13(4) read with 13(5) of PIT Regulations. The aforesaid regulations are reproduced as under;

PIT Regulations

Prohibition on dealing, communicating or counselling on matters relating to insider trading.

3. *No insider shall—*

(i) *either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information;*

Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure.

13(4) *Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds ₹ 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

13(5) *The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of:*

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

7. In response to the SCN, the Noticee filed its reply dated October 23, 2015. In order to conduct an inquiry in terms of rule 4(3) of the Adjudication Rules, the Noticee was granted an opportunity of personal hearing on November 17, 2015 vide notice dated October 29, 2015. Noticee appeared for hearing on November 17, 2015 and reiterated the submissions as made in its reply dated October 23, 2015 by the Noticee. During the

course of hearing, *Noticee submitted that he joined Mahindra Ugine Steel Company Ltd as a CEO on April 1, 2012 of Musco Stampings Division and retired from the company on April 1, 2015 and submitted that he was the CEO of Musco Stampings Division and not CEO of the whole company. Noticee started buying from January 2013 in the scrip. Noticee confirmed that he was aware of the closure of trading window before quarterly and annual results in September 2013 and March 2014 respectively as it was informed to the Noticee by the Company Secretary through email and assured to provide certain additional documents as sought during the hearing within ten days from the date of this hearing. Further Noticee also confirmed during hearing that he was not aware of the financial results for the period ending September 30, 2013 and March 31, 2014 as he was the CEO of a particular division and not the CEO of the whole company. Accordingly hearing of the Noticee is concluded. There after the Noticee provided the additional submissions vide email dated November 25, 2015 along with the Annexures.*

8. The key submissions/ reply of the Noticee in its reply dated October 23, 2015 and November 16, 2015 towards the SCN and submissions made during the course of hearing, are being mentioned below;

   a. I the undersigned, worked as CEO of Mahindra Ugine Steel Co., now known as Mahindra-CIE; from 2012 to 2015 March.
   b. Mahindra-CIE had declared closure of trading window as below:
      - 2013 October 10th to 30th – to declare results of Quarter ending 30th September 2013.
      - 2014 April 10th to May 22nd – to declare results of Quarter ending 30th April 2014.
   c. It so happened that during the above mentioned periods, I was in financial need and had to sell Mahindra-CIE shares. Unfortunately, I did not keep track of these closure dates and I agree that this was a mistake on my part. The details are below:-

Event	Date	Company	Detail	No. of Shares	Amount
A	18-Oct-13	Musco	Sell	18	1,680.58

	22-Oct-13	Musco	Sell	900	84,028.13
				918	85,708.71

Event	Date	Company	Detail	No. of Shares	Amount
B	17-Apr-14	Musco	Sell	1,300	3,67,946.85
	29-Apr-14	Musco	Sell	400	1,19,249.01
				1,700	4,87,195.86

d. I would pray your good offices to take a lenient view of above mistake committed by me during the trading window closure dates. I would very humbly request for your pardon and request you not to impose any penalty or inquiry on undersigned, taking into the account following:-
   - This is the first time that I committed such mistake. It happened unknowingly, as I was in urgent need of funds and did not keep track of the closure dates. As you can see, there were no cross transactions like buying and selling;
   - There was no mal-intention to profit from these transactions. Actually, I made a loss as the share prices were higher in the period after I sold them;
   - As per company procedure, I was informing the company secretary the details every six months;
   - On both occasions, the sale amounts involved were small – less than ₹ 5 Lakh in each case;

e. Therefore once again, I pray for your reconsideration and request you not to impose any penalty or inquiry.

f. I hope you will accept my request and give it a lenient consideration and condone this first time mistake on my part.

9. During the period of instant proceeding, the Hon'ble Supreme Court of India vide judgment dated November 26, 2015 in the case of *SEBI vs. Roofit Industries Ltd*. held

that Adjudicating Officer has no discretion in deciding quantum of penalty under Chapter VI A (except in u/s 15F(a) and 15HB of the SEBI Act). The issue involved in *Roofit* case was differently interpreted in case of *Sidharth Chaturvedi* (decided on March 14, 2016) and accordingly, the legal issue / matter was pending for Larger Bench of Hon'ble Supreme Court of India. Meantime, as per "The Finance Act 2017" (Notified for Part VIII of Chapters VI came into effect from April 26, 2017) following has been *inter - alia* clarified in respect of adjudication under SEBI Act-

147. In section 15J of the principal Act, the following Explanation shall be inserted, namely:-

"Explanation- For the removal of the doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under section 15A to 15E and 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."

10. Consequent to the clarity brought into the Finance Act, 2017, an opportunity of hearing was provided to the Noticee on April 26, 2017 vide notice dated April 12, 2017. Hearing on April 26, 2017 was attended by the authorized representative (AR) of the Noticee. During hearing AR of the Noticee sought documents relied upon by SEBI for issuance of the SCN and accordingly as desired the details/documents were provided to the Noticee vide letter dated November 21, 2017. The details of which are given below:-
    a) Organizational chart depicting the position of Ajit Lele in the hierarchy structure of the company was provided as - **Annexure – A**.
    b) His position as Chief Executive Officer - CEO from Annual report of company / MUSCO for FY 2012-2013 and 2013-2014 was provided as - **Annexure –B**.
    c) Covering letters for dispatch of Agenda addressed to Ajit Lele dated 22nd October, 2013 and 14th May, 2014 was provided as – **Annexure – C**.
    d) List of names of the Board of Directors and other Key Managerial Persons submitted by the company vide email dated December 11, 2015 was provided as – **Annexure – C**.
    e) Email dated December 29, 2015 received from the company providing the following documents (was provided as **Annexure - D**):-

i) Notice of meetings of MUSCO dated September 24, 2013 and April 29, 2014 addressed to Ajit Lele.
ii) Minutes of Audit Committee meetings of MUSCO held on 29th October, 2013 and 21st May, 2014.
iii) Minutes of Board meetings of MUSCO held on 29th October, 2013 and 21st May, 2014
iv) List of names of the Board of Directors and other Key Managerial Persons who were present in the meetings the same is in the respective minutes.

f) Email dated September 25, 2017 and September 12, 2017 received from the company – sequence of events and information about the entities who were aware of the announcement of financial results for the quarter ending September 30, 2013 and quarter/year ending March 31, 2014 was provided as – **Annexure – E.**

11. In this regard, Noticee vide letter dated December 8, 2017, had requested for extension of three weeks for submitting detailed reply to the SCN.

12. Thereafter, taking into account the principle of natural justice at larger extent, a final opportunity of hearing was provide to the Noticee on January 18, 2018 vide hearing notice dated January 5, 2018. The hearing was attended by Authorized representative (AR) of the Noticee on January 18, 2018 and during the course of hearing AR agreed to submit additional reply if any within ten days from the date of this hearing. Noticee vide letter dated January 30, 2018 filled its additional reply.

13. The key additional submissions/ reply of the Noticee vide letter dated January 30, 2018 towards the SCN are being mentioned below;

a) We refer to the personal hearing granted in the matter of MUSCO on 18 January 2018, additional reply cum written submission is being filed by us pursuant to the liberty granted by you at the personal hearing held on 18 January 2018. This reply cum written submission may please be treated as supplemental to and in addition to all the earlier replies filed by in the captioned matter.
b) It is submitted that vide the SCN you have inter alia alleged that Our Client had indulged in trading in equity shares of MUSCO which triggered disclosure requirements and that he had traded during the trading window closure period and has therefore allegedly violated regulation 3(i} and

regulations 13(4} and 13(5) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as, "1992 PIT Regulations"}

c) At the outset, we deny that Our Client has committed any violation of regulation 3(i) and regulation 13(4) read with 13(5) of the 1992 PIT Regulations and that the charge in the SCN is incorrect and without any basis. It is submitted that charges against Our Client have been levied without appreciating the legal position with regard to the provisions invoked in the present matter and in such circumstances, the SCN deserves to be quashed and set aside on this ground alone.

d) Before proceeding ahead with our paragraph wise reply to the SCN, we would like to place before you our detailed submissions on the allegations levied in the SCN. The submissions can be divided into the following parts:

Disclosures under regulation 13(4) read with 13(5) of the 1992 PIT Regulations were duly made by Our Client

e) It is humbly submitted that vide its SCN, the allegations levied on Our Client are of violating regulation 13(4) read with 13(5) of the 1992 PIT Regulations. However, no facts or details have been provided about the manner in which Our Client has violated the said provisions as per SEBI. It is submitted that the SCN does not even specify if Our Client has been alleged of violating regulation 13(4) read with 13(5) of 1992 PIT Regulations by not making appropriate disclosures or for belatedly making them.

f) Without prejudice to anything stated hereinabove, we would like to submit that Our Client has duly made appropriate disclosures in respect of transactions entered into by him in the shares of MUSCO under regulation 13 of the 1992 PIT Regulations to the appropriate stock exchanges on 25 November 2015. A Copy of the e-mail sent by Our Client to the relevant stock exchanges is annexed hereto and marked as Annexure "A" to this reply.

g) Thus, in the facts of the present case, the charge of violating regulation 13(4) read with 13(5) of 1992 PIT Regulations does not survive against Our Client. At the maximum, the only allegation can be that of belatedly complying with regulation 13(4) read with 13(5) of the 1992 PIT Regulations. In such circumstances, we request you to kindly take a lenient view in the matter as appropriate and complete disclosures in respect of the transactions executed by Our Client have been duly made by him.

The transactions executed by Our Client do not amount to a violation of regulation 3(i) of the 1992 PIT Regulations.

h) It is submitted that vide the SCN, SEBI has inter alia alleged Our Client of violating regulation 3(i) of 1992 PIT Regulations by carrying out trades in the shares of MUSCO during the trading window closure period, i.e., from 10 October 2013 to 30 October 2013 and from 10April 2014 to 22 May 2014

i) At the outset, we respectfully deny that Our Client has violated regulation 3(i) of the 1992 PIT Regulations since the charge against him is of entering into transactions while the closure of trading window and not of trading while being in possession of any unpublished price sensitive information ("UPSI"). It is submitted that a person can be charged with violating regulation 3(i) of 1992 PIT Regulations only if he enters into a transaction while being in possession of any UPSI and the same can be gathered from a plain reading of the relevant provisions. The same is reproduced herein:

"3. No insider shall-

(i) either an his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information;"

j) It is submitted that in the present matter there is no charge whatsoever on Our Client of executing transactions in the shares of MUSCO while being in possession of any UPSI. Infact, even the other essential components of establishing a charge violating regulation 3(i) of the 1992 PIT Regulations are absent in the present matter, and a reference in this regard can be made to the following points:

a. The SCN does not even specify the UPSI based on which Our Client executed any transaction.
b. The SCN does not even specify the period during which any UPSI existed.
c. The SCN does not link any of the transactions undertaken by Our Client with any UPSI.

k) It is submitted that in such circumstances, in our humble submission the charge of violating regulation 3(i) of the 1992 PIT Regulations by Our Client does not survive at all and the SCN to that extent deserves to be quashed and set aside.

l) Further, without prejudice to anything stated hereinabove, it is submitted that restriction that a designated employee of a Company cannot trade in its shares during the closure of the trading window arises from regulation 12 of the 1992 PIT Regulations read with clause 3.2-5 of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies. Regulation 3 of the 1992 PIT Regulations interalia imposes a restriction on dealing in shares while being in possession of UPSI and does not have any role to play in such cases. The relevant provisions are reproduced herein for your reference:

"12. (1) All listed companies and organisations associated with securities markets including:

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;
(b) the self-regulatory organisations recognised or authorised by the Board;
(c) the recognised stock exchanges and clearing house or corporations
(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and
(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,

shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same."

"3. 2-5 All directors/officers/designated employees of the company shall conduct all their dealings in the securities of the Company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when trading window is closed, as referred to in para 3.2.3 or during any other period as may be specified by the Company from time to time"

m) In view of the above, we submit that Our Client cannot be charged with violating regulation 3(i) of the 1992 PIT Regulations for entering into transaction while closure of the trading window. The said legal position can also be ascertained by making reference to the various orders passed by the Adjudicating Officers of SEBI in various matters of Mahindra Group of Companies itself. A reference in this regard needs to be placed on the following Adjudicating Officers orders:

a. Shri Gopalan Murali,Order dated 7 August 2014

b. Shri Pavan Kumar Sodani,Order dated 7 August 2014
c. Shri Vijay Anant Dhongde, Order dated 18 October 2017

Copies of all the three order mentioned hereinabove are annexed hereto and marked as "**Annexure A-1,A-2** and **A-3**" to this reply.

n) It is submitted that the facts of the aforesaid orders are similar to the present matter and in all the aforesaid matters, the Adjudication proceedings were initiated against the designated employees of Mahindra Group on the basis of reference received from their respective Companies itself as its designated employees were carrying out trading while the trading window was closed.

o) Further, in all three orders mentioned hereinabove, SEBI only charged and held the Noticees therein guilty of violating the Code of Conduct prescribed under the 1992 PIT Regulations and not of violating regulation 3(i) of the 1992 PIT Regulations as has been alleged in the present matter.

p) At this juncture, we would also like to mention that by alleging Our Client of violating regulation 3(i) of the 1992 PIT Regulations instead of regulation 12 read with Code of Conduct of the 1992 PIT Regulation, SEBI has also taken away the right of Our Client to settle the matter amicably in terms of SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 ("Settlement Regulations") since alleged violations of regulation 3 of the 1992 PIT Regulations i.e., defaults involving insider trading and communication of unpublished price sensitive information cannot be settled in terms of regulation 5(2) of the Settlement Regulations.

q) On the contrary, violations of regulation 12 read with the Code of Conduct of 1992 PIT Regulations can be very much settled under the Settlement Regulations and a reference in this regard can be made to two settlement orders passed by SEBI in matters involving the designated employees of Mahindra Group. The details of the said settlement orders are as under

a. Mr Anandan, Order dated 23 September 2015
b. Mr Anil K. Agarwal, Order dated 18 September 2015

Copies of the settlement orders mentioned hereinabove are annexed hereto and marked as "**Annexure B-1**" and "**B-2**" to this reply.

r) Thus, in view of the aforesaid, we respectfully submit the charges of violating regulation 3{i) of the 1992 PIT Regulation do not survive in the facts of the present case and Our Client at the maximum can only be alleged of violating regulation 12 of 1992 PIT Regulations read with clause 3.2-5 of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies.

s) In view of the aforesaid, our paragraph wise reply to the SCN is as under:

i) With regard to paragraphs no. 1to 3 of the SCN, it is submitted that contents of these paragraphs are a matter of record and therefore we have no comments to offer on the same. However, it is humbly submitted that for the reasons stated in paragraph no. e to q hereinabove, Our Client cannot be charged with or held guilty of violating regulation 3(i) and regulation 13(4) read with 13(5) of the 1992 PIT Regulations.

ii) With regard to paragraph no. 4 of the SCN, it is submitted that the contents of the paragraph to the extent they specify and mention the trading carried out by Our Client in the shares of MUSCO, the details of the closure of the trading window and the circulation of the agenda for the quarterly results is a matter of record and hence the same warrants no comments.

iii) However, it is an admitted fact that Our Client had traded in the shares of MUSCO on a regular basis from 9 January 2013 to 3 November 2014 i.e. over a period of more than 22 months. During this period, he had carried out trading while closure of trading window only 4 days out of a total of 14 days on which he had carried out trading in the shares of MUSCO.

This clearly shows that the trading carried out by our Client in the shares of MUSCO was independent and was devoid of any malafide or wrong doing.

iv) We would further like to submit that even while trading during the window closure period, Our Client had only executed transactions worth a meagre Rs 5,78,192 (Rupees Five Lakh seventy-eight thousand one hundred ninety-two), which totally belies logic as any person being in possession of any UPSI would have traded in much larger quantities and would not have restricted himself to such a small amount. lnfact, the value of the transactions executed by Our Client pre and post the trading window closure period is much more, and the same clearly shows that Our Client's trading was not in any manner motivated or undertaken on the basis of any information pertaining to the circulation of the agenda for the financial results of MUSCO. The aforesaid facts and submissions clearly show that the Our Client has not in any manner violated regulation 3(i) of the 1992 PIT Regulations.

v) With regard to paragraph no. 5 of the SCN, we hereby deny the allegations made out in a paragraph and reiterate and adopt the submissions made by us in paragraph no. e to q hereinabove.

vi) With regard to paragraph no.6 of the SCN, it is submitted that the issue of levying of any penalty under section 15G(i) of the SEBI Act, 1992 does not arise at all in the present matter as the trading carried out by Our Client was neither "on the basis" of any USPI nor was it undertaken while "being in possession" of any UPSI. It is submitted that any penalty under section 15G(i) of the SEBI Act, 1992 can only be levied if the noticee in a given matter trades "on the basis of" any UPSI, which is not even SEBI's case in the present matter and hence no penalty whatsoever can be levied upon Our Client under section 15G{i) of the SEBI Act, 1992.

vii) Further, without prejudice to anything stated hereinabove, it is submitted that while deciding a matter initiated under section 151 of the SEBI Act, 1992 the Learned Adjudicating Officer has to take in to account factors specified in section 15J of the SEBI Act, 1992 .The wordings of section 15J of the SEBI Act, 1992 are as follows :

"15J: Factors to be taken into account by the adjudicating officer:
While adjudging the quantum of penalty under section 15-1, the adjudicating officer shall have due regard to the following factors, namely:-
{a) the amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default;
{b) the amount of loss caused toan investor or group of investors as a result of the default;
(c) the repetitive nature of the default."

viii) With regard to Clause (a):- "the amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default": it is submitted that the findings do not lead to the conclusion that there has been any disproportionate gain or unfair advantage to Our Client and all gains arising out of the transact ions were genuine, proportionate and fair gains which had arisen to Our Client in the normal course of events and on which Our Client has duly paid taxes to government. Hence, it is submitted that there is no amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default by Our Client. Further, the SCN also makes no finding of Our Client making any disproportionate gain or unfair advantage.

ix) With regard to Clause (b):- "the amount of loss caused to an investor or group of investors as a result of the default": it is submitted that there is no document on record to suggest that there are any investor complaints filed with any stock exchange or SEBI in respect of trading done by Our Client and therefore there is no possibility of loss being caused to any person. Further, the same has also not been alleged in the SCN.

x) With regard to Clause (c):- "the repetitive nature of the default." it is submitted that except for the matter under consideration, Our Client has till date not been alleged of any wrong doing by SEBI leave apart the issue having been adjudged guilty and thus there is no issue of their being repetitive default on the part of Our Client. The unproven and unsubstantiated allegations leveled in the SCN are isolated instances, and hence there is no question of repetitive nature of the default.

xi) Thus, in view of the aforesaid we humbly submit that charge of violating regulation 3(i) and regulation 13(4) read with 13(5) of the 1992 PIT Regulations does not stand established against Our Client and thus we humbly pray to you to quash the SCN and drop the charges levied upon Our Client.

CONSIDERATION OF ISSUES AND FINDINGS:-

14. I have carefully perused the written 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 is “insider” in terms of PIT Regulations, with respect to Mahindra Ugine Steel Company Limited and whether the trading was when in possession of “unpublished price sensitive information” (UPSI)?

b. In case the Noticee was an “insider” then whether such act of the Noticee is in violation of regulation 3(i) of PIT Regulations?

c. Whether the Noticee had failed to make the disclosures to exchanges (BSE and NSE) and the company in respect of buy / sell transactions as stated at Para 4 – 5 of the SCN?

d. If the disclosures were not made by the Noticee then, whether the Noticee is in violation of regulation 13(4) read with 13(5) of PIT Regulations?

e. If yes, then, does the violation, on the part of the Noticee attract monetary penalty under section 15A(b) and 15G(i) of SEBI Act?

f. If yes, then, what would be the monetary penalty that can be imposed upon the Noticee?

15. Taking into consideration and allegations and reply of the Noticee the case is being decided on merit hereunder.

16. I have persused the available records and replies of the Noticee in respect of the allegations alleged in the SCN. From the perusal of the SCN, it is observed that the Noticee was in possession of UPSI i.e. quarterly results for the period ending September 30, 2013 of the company in October 29, 2013 and Audited financial results for quarter and year ending March 31, 2014 of the company in May 22, 2014. It was alleged in the SCN that the Noticee, being the Chief Executive Officer and being an "*insider*" as stated in para 4 – 5 of SCN, has traded during trading window closure period and in October 2013 and April 2014 just before announcement of financial results of the company and it is also revealed that Noticee traded even before the agenda for meeting was circulated to board.

17. In order to establish a charge of insider trading under Regulation 3 of the PIT Regulations, it is necessary to prove that the Noticee was an 'insider' and he dealt in securities of the company when in possession of any unpublished price sensitive information. The text of said regulation is as follows:

"No insider shall-
(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or

Provided that nothing contained above shall be applicable to any communication required in the ordinary course business or profession or employment or under any law."

18. The term insider has been defined under regulation 2(e) of PIT Regulations as follows:

2 (e). *"insider" means any person who, is or was connected with the company or is deemed to have been connected with the company, and who is reasonably expected to have access to*

unpublished price sensitive information in respect of securities of a company, or has received or has had access to such unpublished price sensitive information;

As per regulation 2(e) of PIT Regulations to arrive at whether the Noticee is an "Insider", the following two criteria should be fulfilled:

- *The Noticee is or was connected with the company or are deemed to have been connected with the company.*
- *The Noticee is reasonably expected to have access, to unpublished price sensitive information in respect of securities of a company, or who has received or has had access to such unpublished price sensitive information.*

19. Therefore, the primary issue to be decided in the present matter is whether the Noticee is a "connected person" as per regulation 2(c)(ii) of PIT Regulations and therefore an "insider" as per regulation 2(e) of PIT Regulations. Before moving forward it would be pertinent to refer to the definition of "connected person" as per the provisions of regulation 2(c)(ii) of the PIT Regulations:

"connected person" means any person who- (ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company":

[Explanation: - For the purpose of clause (c), the words "connected person" shall mean any person who is a connected person six months prior to an act of insider trading.]

20. Here I note that the Noticee in its reply had submitted that he worked as CEO of Mahindra Ugine Steel Company Limited and Further, as per Section 2(g) of the PIT Regulations, "officer of a company" is defined as under:-

"officer of a company" means any person as defined in clause (30) of section 2 of the Companies Act, 1956 (1 of 1956) including an auditor of the company;

21. As per clause (30) of section 2 of the Companies Act, 1956,

"officer" includes any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act.

22. Here I want to refer the Minutes of the 263rd Meeting Board of Directors of Mahindra Ugine Steel Company Limited held on May 21, 2014 and Noticee position as CEO as mentioned in Annual report of company for FY 2012-2013 and 2013-2014, which was provided to the Noticee vide letter dated November 21, 2017. In this 263rd meeting it was informed to the Board that the appointment of *the Noticee as the Chief Executive Officer (CEO) with effect from 1st April 2012 was confirmed by the Board at its meeting held on 27th March 2012. RESOLVED THAT pursuant to Section 203 of the Companies Act, 2013 and other applicable provisions read with the applicable Rules framed thereunder, the appointment of the Mr. Ajit Lele / the Noticee, who is the Chief Executive Officer of the Company be confirmed and formalized as per the provision of Companies Act 2013 and he shall be considered as a Key Managerial Personnel with effect from 21st May 2014 in accordance with the provisions of the Companies Act, 2013 and rules made thereunder. Further the Mahindra Uginge Steel Company Limited vide its email dated December 29, 2015 submitted that the Noticee was present in the meetings of Audit Committee and Board Meeting held on October 29, 2013 and May 21, 2014 in which the financial results for the period ending September 30, 2013 and March 31, 2014 were finalized and also submitted the minutes of the meeting showing Noticee was present in the said meetings,* which was also provided to the Noticee vide letter dated November 21, 2017.

23. Thus it is clear from the above paras that the Noticee is an insider. I do not agree with the submission of the Noticee that he *was not aware of the financial results for the period*

ending September 30, 2013 and March 31, 2014 as he is the *CEO of Musco Stampings division and not CEO of the whole company and his responsibility and access to Musco company issues were restricted to the affairs of Stamping Division only.*

24. Further, I note from SCN that Noticee being the CEO of the company, has traded in October 2013 and April 2014 just before announcement of financial results of the company in November 2013 and May 2014 and traded even before the agenda for meeting was circulated to board. As regards to Price sensitive Information (PSI) has been defined in Regulation 2(ha) of PIT Regulations, which reads as:

Reg. 2(ha) "price sensitive information" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.
Explanation — the following shall be deemed to be price sensitive information:—
(i) Periodical financial results of the company;

25. Therefore the plea of the Noticee vide its letter dated January 30, 2018, that the SCN does not specify the UPSI based on which it had executed any transaction, period during which any UPSI existed and doesnot link any of the transactions done with any UPSI and hence cannot be charged with violating regulation 3(i) of the 1992 PIT Regulations for entering into transaction while closure of the trading window and made reference to 1) Shri Gopalan Murali, Order dated August 7, 2014, 2) Shri Pavan Kumar Sodani, Order dated August 7, 2014 and 3) Shri Vijay Anant Dhongde, Order dated 18 October 2017 passed by Adjudicating Officers of SEBI and settlement orders passed in 1) Mr Anandan, Order dated September 23, 2015 and Mr Anil K. Agarwal, Order dated September 18, 2015 vide its submission dated January 30, 2018 is not at all acceptable as the Noticee was provided vide letter dated November 21, 2017 with all the documents which proved Noticee to be an insider and was aware of the quarterly and annual results of September 2013 and March 2014 respectively. Moreover, it is a fact the Noticee is the CEO of the company and has traded just before announcement of financial results of the company in November 2013 and May 2014.

26. I also note that company vide Email dated September 25, 2017 and September 12, 2017 submitted the sequence of events and information about the entities who were aware of the announcement of financial results for the quarter ending September 30, 2013 and quarter/year ending March 31, 2014, which was also provided to the Noticee vide letter dated November 21, 2017 for its comments, if any. The sequence of events and the date of intimation to Noticee are given below:-

Event Description	***For quarter ending September 30, 2013***	***For year ending March 31, 2014***
Notice to Designated Employees about Closure of trading window during *a) 10th October, 2013 to 30th October, 2013* *b) April 10, 2014 to May 22, 2014*	*September 27, 2013*	*April 04, 2014*
Notice to Stock exchanges about Board Meeting for approval to financial results for quarter / Year ended	*October 5, 2013*	*April 04, 2014*
Dispatch of notice of Board Meeting to the Board of Directors and other Key Managerial Persons	*September 24, 2013*	*April 29, 2014*
Dispatch of Agenda to the Board of Directors and other Key Managerial Persons	*October 22, 2013*	*May 14, 2014*
Date of Board Meeting & Announcement of results to the stock exchange	*October 29, 2013*	*May 21, 2014*

For quarter ending September 30, 2013				
Name	***Designation / association***	***Address***	***PAN***	***Date of intimation/ acquisition of information @***
Mr. Ajit Lele#	*C E O*	*Bldg. No. L, Flat No. 11, Suyognagar Co-op, Behind Shivaji Housing Society, Pune 411016*	*ABJPL2420M*	*22nd October, 2013*
For quarter ending March 31, 2014				
Name	***Designation / association***	***Address***	***PAN***	***Date of intimation/ acquisition of information @***
Mr. Ajit Lele#	*C E O*	*Bldg. No. L, Flat No. 11, Suyognagar Co-op, Behind Shivaji Housing Society, Pune 411016*	*ABJPL2420M*	*14th May, 2014*

#then KMPs of MUSCO.

27. Now the question comes whether the Noticee traded when he was in possession of "unpublished price sensitive information" (UPSI). The details of events are as under:-

UPSI	Trading window closure period	Agenda circulated to the Noticee on	Audit / Board Meeting held for finalization financial results in which Noticee was present.	Company made the announcement to the Exchanges	Date of sale / Quantity of trades by the Noticee	
					Date of Sale	No. of Shares
Quarterly results for the period ending September 30, 2013	October 10, 2013 to October 30, 2013	October 22, 2013	Audit Committee Meeting and Board Meetings held on October 29, 2013	October 29, 2013	October 18, 2013	18
					October 22, 2013	900
					October 31, 2013	982
Audited financial results for quarter and year ending March 31, 2014	April 10, 2014 to May 22, 2014	May 14, 2014	Audit Committee Meeting and Board Meetings held on May 21, 2014	May 22, 2014	April 9, 2014	1800
					April 17, 2014	1300
					April 29, 2014	400
					June 23, 2014	220
					June 24, 2014	220
					November 3, 2014	60

28. Since, it is established that the Noticee is an 'insider' within the meaning of PIT Regulations, therefore, whether its trading during the UPSI period, is in violation of Regulation 3(i) of the PIT Regulation is examined as under.

29. The SCN alleged two instance which were PSI in nature i.e. 1) quarterly results for the period ending September 30, 2013 and 2) audited financial results for quarter and year ending March 31, 2014.

(a) It has already been established that the Noticee was an 'insider'. In the first instance, it is established that quarterly results for the period ending September 30, 2013, which was PSI in nature and the said information was communicated to the Noticee on October 22, 2013 and ultimately such PSI was announced/disclosed to the Stock Exchange only on October 29, 2013. Since the said information / quarterly results was a PSI and such PSI remained

unpublished till October 29, 2013 and therefore, it became UPSI from 22nd – 29th October, 2013. Noticee came to know about such UPSI on October 22, 2013 (upon receipt of Board Meeting Agenda to be held on October 29, 2013 by way of letter dated October 22, 2013) and Noticee had traded / sold 900 shares of the company for Rs. 84,600/- on the same day (i.e. October 22, 2013). However it is not clear from the available records as to whether the Noticee had traded before he received the said letter dated October 22, 2013 or had traded after acknowledging the said letter (i.e. agenda for discussion of the quarterly financial results). As per records the trading done by the Noticee and the letter communicating agenda for discussion of quarterly financial results are of the same date. To establish the allegation against the Noticee it is necessary to have evidence on record, establishing that after knowledge of UPSI, the Noticee has traded in the scrip of the company. In case, it has been not so established, then it would be unsafe to merely assume that the Noticee had traded consequent to the knowledge of said UPSI. Such situation creates a doubt that Noticee has traded only after knowledge of said UPSI.

(b) In view of the above, I am inclined to give benefit of doubt that the Noticee had traded while in possession of UPSI (agenda for discussion of the quarterly financial results).

(c) For the second instance, it is established that Audited financial results for quarter and year ending March 31, 2014, which was PSI in nature and the said information was communicated to the Noticee on May 14, 2014 and such PSI was announced/disclosed to the Stock Exchange only on May 14, 2014. Since the said information / quarterly results was a PSI and such PSI remained unpublished till May 22, 2014 and therefore, it became UPSI from 14th – 22nd May, 2014. Noticee came to know about such UPSI on May 14, 2014 (upon receipt of Board Meeting Agenda to be held on May 22, 2014 by way of letter dated May 14, 2014). Since, the trades were executed by the Noticee before and after the UPSI period, therefore, for second instance, no fault can be found on the part of Noticee.

30. Thus from the above, the violation of regulation 3(i) of PIT Regulations against the Noticee does not stand established.

31. I also note that the Noticee has traded during the window closure period on four occasions i.e. October 18, 2013 (sold 18 shares), October 22, 2013 (sold 900 shares), April 17, 2014 (sold 1300 shares) and April 29, 2014 (sold 400 shares). In this regard the Noticee vide its reply submitted that he was in financial need and therefore he sold the shares and agrees that this was a mistake on his part as he did not kept track of these trading window closure dates.

32. It is apparent from the SCN that the Noticee has not disclosed about the change in its shareholding to exchanges as well as to the company, as the disposal / sale of shares exceeded *₹ 5 lakh in value on April 9, 2014 and on June 23, 2014*. The disclosure requirement under regulation 13(4) read with 13(5) of PIT Regulations arises when the change *exceeds ₹5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower*. Noticee during the course of hearing on November 17, 2015 has confirmed that it had only disclosed to the company and not to the stock exchange as per the *regulation 13(4) read with 13(5) of PIT regulations during the period January 2013 to November 3, 2014.* Noticee vide letter dated January 30, 2018 submitted that it had made the said disclosure to the stock exchanges vide its email dated November 25, 2015 and submitted a copy of the said email.

33. It is noted that the violation of aforesaid non disclosures had been resulted during the period April 9, 2014 and June 23, 2014 and as per records, Noticee had made the said disclosures only after hearing i.e. on November 25, 2015, despite the requirement of making the same within 2 working days. Therefore, there has been a delay of around 1 year 5 months in making the said disclosure to the stock exchanges.

34. I note that the Noticee has superannuated from the company in 2015. Hence, taking into account the delay, I am of the view that the violation committed by the Noticee, is a

fit case for imposing monetary penalty under section 15A(b) of SEBI Act; which read as follows:-

SEBI Act:

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*
(b) *to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;*

35. While determining the quantum of penalty under section 15A(b), it is important to consider the factors stipulated in section 15J of 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."*

36. The available records neither reveals specify disproportionate gains/ unfair advantage made by the Noticee, the specific loss suffered by the investors due to such violations; nor the violations as repetitive in nature. Thus before arriving to the quantum of penalty in the matter, it is necessary to refer the importance of such disclosures. The main objective of the SAST Regulations or PIT Regulations is to afford fair treatment to shareholders as regards their holdings in the company. The Regulation seeks to

achieve fair treatment by inter alia mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such selling / acquiring in the company. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well informed decision. I note that Noticee being the CEO of the company had made the said disclosures only after hearing i.e. on November 25, 2015, despite the requirement of making the same within 2 working days i.e. after a delay of around 1 year 5 months in making the said disclosure to the stock exchanges. Therefore, taking into consideration the facts / circumstance of the case and above factors, I am of the view that a justifiable penalty needs to be imposed upon the Noticee to meet the ends of justice.

ORDER

37. After taking into consideration all the aforesaid facts and circumstances of the case, and in exercise of the power conferred upon me under section 15 I of the SEBI Act and rule 5 of the Adjudication Rules, I, hereby impose a penalty of ₹2,00,000/-(Rupees Two Lakh only) on the Noticee / Ajit Lele, in terms of the provisions of Section 15A(b) of the SEBI Act. I am of the view, that the said penalty would commensurate with the violations committed by the Noticee.

38. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour 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;

Account No. for remittance of penalties levied by Adjudication Officer	
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

39. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the "Enforcement Department (DRA-I) of SEBI". The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID - tad@sebi.gov.in

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any	PAN	Amount (in Rs.)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually	Bank name and Account number from which payment is remitted	UTR No

40. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the SEBI.

DATE: FEBRUARY 14, 2018 **RACHNA ANAND**

PLACE: MUMBAI **ADJUDICATING OFFICER**