BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO-57/2014]

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

Mr. Swaminathan Srinivasan (PAN No. AAZPS2338A**)**

In the matter of

M/s. Tech Mahindra Ltd. (formerly M/s. Mahindra Satyam Ltd. (M/s. Satyam Computers Services Ltd.))

FACTS OF THE CASE

1. SEBI received a reference from M/s. Tech Mahindra Ltd. (formerly M/s. Mahindra Satyam Ltd. (M/s. Satyam Computers Services Ltd.)) (hereinafter referred to as **"The Company**") that one of its designated associate viz. Mr. Swaminathan Srinivasan (hereinafter referred to as **"The Noticee**") had sold 1,000 shares of the company without the pre-clearance in excess of the threshold limit of 5,000 shares.

2. In view of the same, SEBI examined the trading activities of the Noticee in the scrip of the company from February 04, 2013 to February 08, 2013. It was observed that the Noticee, who was the employee in the company, had sold 6,000 shares between February 04, 2013 to February 08, 2013, resulting in the Noticee's change in shareholding exceeding Rs. 5 lakh in value since the last disclosure. The shares of the company were listed at MCX Stock Exchange Limited (MCX-SX), Bombay Stock Exchange Ltd. (hereinafter referred to as the BSE), National Stock Exchange of India Ltd. (hereinafter referred to as the NSE) and the New York Stock Exchange (NYSE).

3. Investigation observed that the Noticee was under an obligation to make disclosures under Regulation 13(4) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **'PIT Regulations'**). However allegedly no such disclosure was made by the Noticee under Regulation 13(4) read with 13(5) of PIT Regulations. It was, therefore, alleged that through the aforesaid act, the Noticee has violated Regulation 13(4) read with 13(5) of PIT Regulations. Consequently, the Noticee was liable for penalty under Section 15 A(b) of SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

4. The Undersigned was appointed as Adjudicating Officer on August 28, 2013 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 **'SEBI Rules'**) to inquire into and adjudge under Section 15 A(b) of the SEBI Act for the alleged violation of PIT Regulations committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice (hereinafter referred to as "**SCN**") Ref. No. EAD/AK/VRP/24074/2013 dated September 20, 2013 was issued to the Noticee under rule 4(1) of SEBI Rules communicating the alleged violation of PIT Regulations as detailed below:

Date	Buy Vol.	Sell Vol.	Gross sell Value (Rs.)
04.02.2013	0	2000	2,31,436.75
05.02.2013	0	2000	2,24,278.35
08.02.2013	0	2000	2,39,300.90
Total			6,95,016.00

6. From the above, it becomes apparent that the Noticee had violated Regulation 13(4) read with 13(5) of the PIT Regulations as the change in shareholding exceeded Rs. 5 lakh in value. The Noticee was called upon to show cause as to why an inquiry should not be

initiated against it and penalty be not imposed under Section 15 A(b) of the SEBI Act for the alleged violations.

7. The Noticee vide letter dated September 27, 2013, while admitting that he had sold three tranches of shares of Satyam Computers 2000 on February 04, 05, and 08 of 2013, has *inter alia* submitted as follows:

a) That he had misunderstood the limit of 5,000 shares and Rs 5 lakh, and, had presumed that since each of the transaction did not individually violate the rule of 5,000 shares or Rs. 5 lakh, they were within the prescribed norms of trading for senior associates of the company;

b) That he had misunderstood this rule and only later realized that he had made a mistake and should have taken preclearance for the transaction;

c) That further in his role as Delivery Manager at Mahindra Satyam, he was purely in an operational role, and, had absolutely no price sensitive information or insider information at the time of selling these shares;

d) That he had only sold the shares to raise some cash to fund a couple of things - one was to unlock some stock options that were coming up for vesting and another was to pay insurance premiums of almost Rs. 4.5 lakh that was coming up in March 2013;

e) That almost the entire proceeds of this stock sale went into these personal commitments from his side;

f) Further that at that point he had to unlock some of his stock options since he had decided to move out of the company for better career prospects by March 12, 2013 and he had to vest the options before leaving the company;

g) That these transactions were relatively small and were done within the trading window and the transgression in this case was purely an oversight only on the number of shares. The issue was only that preclearance was not taken and exceeded the limit by 1000 shares;

h) That in the past he had complied with all trading rules and this was the first time that such an error had occurred from his side, which was purely un-intentional and an oversight from his side.

8. In the interest of natural justice and in terms of rule 4(3) of the SEBI Rules, the Noticee was granted an opportunity of hearing on December 13, 2013 vide notice dated November 18, 2013 and the said notice was duly acknowledged by the Noticee. The Noticee vide email dated December 12, 2013, however, informed that he had returned from an overseas trip just the day before and requested to reschedule the personal hearing between December 23, 2013 and January 08, 2014. The same was acceded to. Another opportunity of hearing was accordingly granted on January 6, 2014 vide notice dated December 13, 2013. The Noticee appeared in person on January 6, 2014 and reiterated the submissions made vide reply dated September 27, 2013. During the course of the hearing the Noticee also submitted a copy of ICICI Bank account statement to support his argument that he had sold the shares to unlock some stock options that were coming up for vesting and to pay the insurance premium. The Noticee further added that he had informed Mahindra Satyam about the sale of shares around February 20, 2013. The Noticee, during the course of the hearing, further stated that he was a Delivery Manager of Mahindra Satyam handling projects delivery, and, not a Director or a Promoter of the company. Since it was noted that the Noticee had claimed in his reply that he had to unlock the stock options since he had decided to move out of the company, the Noticee was advised to submit a copy of the resignation given by him to the company and the acceptance of his resignation by the company. The Noticee vide letter dated January 08, 2014 submitted a copy of the Acceptance of Resignation Letter dated March 07, 2013 provided by the company to him indicating that he would be relieved from the services of the company effective from March 12, 2013. Besides, vide the said letter dated January 08, 2014, Noticee provided a copy of disclosure dated February 21, 2013 made by him to the company in Form D with regards to the change in his shareholding. The said document, however, does not reveal acknowledgement by the

company. The Noticee vide the same letter further informed that he was going ahead with the consent process. However, thereafter the Noticee vide letter dated March 08, 2014 informed that his consent application was not accepted by SEBI and he had decided not to proceed with the consent process, since he was currently living overseas for a work assignment and unable to follow on documentation and correspondence.

CONSIDERATION OF ISSUES

9. I have carefully perused the written submissions of the Noticee and the documents available on record. It is observed that the allegation against the Noticee is that he has failed to make the relevant disclosure under the provisions of Regulation 13(4) read with 13(5) of the PIT Regulations.

10. The issues that, therefore, arises for consideration in the present case are:
    a. Whether the Noticee was required to make the relevant disclosures under the provisions of Regulation 13(4) read with 13(5) of the PIT Regulations in respect of sale of 6,000 shares between February 4, 2013 to February 8, 2013, and, if so, whether the Noticee has violated the said provision of PIT Regulations?
    b. Does the violation, if any, attract monetary penalty under Section 15 A(b) of SEBI Act?
    c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

FINDINGS

11. Before moving forward, it is pertinent to refer to the provisions of Regulation 13(4) read with 13(5) of the PIT Regulations, which reads as under:

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.

Regulation

13. (1)……

(2)……

Continual disclosure.

(3).....

(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 Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(5) The disclosure mentioned in sub-regulations (3) and (4) 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.

12. The issue for consideration is whether the Noticee was required to make the relevant disclosures under the provisions of Regulation 13(4) read with 13(5) of the PIT Regulations in respect of the sale of 6,000 shares between February 4, 2013 to February 8, 2013, and, if so, whether the Noticee has violated the said provisions of PIT Regulations. As per Regulation 13(4) of PIT Regulations, I find that any person who is a director or officer of a listed company is required to disclose to the company and the stock exchange where the securities are listed, within two working days, if change in holdings of such person from the last disclosure exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower. I find from the company's letter dated February 21, 2013 addressed to SEBI that the Noticee was one of the designated associate of the company during the relevant point of time. Vide

letter dated September 27, 2013 and at the time of personal hearing, the Noticee submitted that he was a Delivery Manager of the company. Thus, I note that the Noticee was an officer of the company. Further, I find from Noticee's letter dated September 27, 2013 that Noticee has admitted to have sold three tranches of shares of Satyam Computers 2000 on February 04, 05, and 08 of 2013. From the SCN, I note that the gross sale value of 6,000 shares was Rs. 6,95,016/-, thus, I note that the change in the Noticee's holding exceeded Rs. 5 lakh in value from the last disclosure. The Noticee has further *inter alia* submitted that he had misunderstood the limit of 5,000 shares and Rs 5 lakh, and, had presumed that since each of the transaction did not individually violate the rule of 5,000 shares or Rs. 5 lakh, they were within the prescribed norms of trading for senior associates of the company, and, only later realized that he had made a mistake and should have taken preclearance for the transaction. Further I note that the Noticee has submitted a copy of disclosure in Form D made by him to the company on February 21, 2013, however, the said copy does not have any acknowledgement of the company. Besides, I note that the disclosures under Regulation 13(4) read with 13(5) of the PIT Regulations are also required to be made to the Exchange, however, I find that the Noticee has failed to make the necessary disclosure to the exchanges. Thus, from all of the above, it is established without doubt that the Noticee has violated the provisions of Regulation 13(4) read with 13(5) of the PIT Regulations.

13. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".

14. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act, which reads as under:

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 therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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.

15. While determining the quantum of monetary penalty under Section 15 A(b), I have considered the factors stipulated in Section 15-J 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."

16. In view of the charges as established, the facts and circumstances of the case and the judgment referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. The main objective of the PIT Regulation in respect of the disclosure norms is to bring about the transparency in the market and aim at preventing information asymmetry that may preclude any investor from equal treatment and opportunity with respect to the aforesaid information. Correct and timely disclosures are an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decisions. Thus, the cornerstone of the PIT regulations is investor protection.

17. Continual disclosure under Regulation 13(4) read with 13(5) of the PIT Regulations aims to make insider trading transparent by facilitating exposure of any illegal trade, and, thereby, serving as a deterrent. Being in the position of an Officer of the company, the Noticee had an obligation to disclose his acquisitions, especially since the regulatory position required disclosure of such acquisitions within a stipulated time. I find that the Noticee had contravened the provisions of Regulation 13(4) read with 13 (5) of the PIT Regulations.

18. As per Section 15A(b) of the SEBI Act, the Noticee is liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Further, under Section 15-J of the SEBI Act, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticee. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee. I do not find any material on record to show that sell of 6,000 shares by the Noticee was based on any confidential or price sensitive information obtained by the Noticee while performing his official duties. Vide his reply dated September 27, 2013, I further note that the Noticee has stated that in the past he had complied with all trading rules, and, this was the first time such an error had occurred from his side, which was purely un-intentional and an oversight from his side.

19. In addition to the aforesaid, I am also inclined to consider the following mitigating factors while adjudging the quantum of penalty: a) the paid-up capital/ market capitalization of the company at the relevant point of time; b) the trading volumes of the company's shares on BSE, NSE where the shares were listed during the relevant

period; c) the number of occasions in the instant proceeding that the Noticee has violated the relevant provisions of PIT Regulations.

20. I find that the market capitalization of the company during the said period was approx. Rs. 12,782 crore. I further note from the BSE website that there were about 1,23,316 shareholders in public shareholding category holding approx. 6,70,91,187 shares representing about 52.49% of total paid-up capital of the Company as on December 31, 2012. Further, I note that during the relevant period viz. February 04, 05 and 08, 2013 when the Noticee had sold a total of 6,000 shares whereby the change in his shareholding had exceeded Rs. 5 lakh in value, the total traded volume on BSE during the said relevant period was 1,09,970 shares. Similarly, the total traded volume on NSE during the said relevant period was 9,87,599 shares. Presuming that the Noticee would have made continual disclosure under the PIT Regulations at the relevant point of time, I find that the Noticee would have been required to make disclosure on one (1) occasion as a result of sell of 6,000 shares during the relevant period, resulting in change in shareholding exceeding Rs. 5 lakh in value. However, I find that the Noticee has failed to make the relevant disclosure under PIT Regulations. This non-disclosure by the Noticee undermines the investor interest relating to the effectiveness of purpose of continuous disclosures.

21. I find that the Noticee has *inter alia* claimed that these transactions were relatively small and were done within the trading window and the transgression in this case was purely an oversight only on the number of shares. However, any transaction which requires compliance of the PIT Regulations, if not complied, is always a serious matter, and cannot be considered a mere "technical" violation, even if the transaction is otherwise in compliance, since the shareholders/ investors were deprived of the information.

ORDER

22. After taking into consideration all the facts and circumstances of the case, I impose a penalty of **Rs. 3,00,000/- (Rupees Three lakh only**) under Section 15 A(b) on the Noticee Mr. Swaminathan Srinivsan which will be commensurate with the violations committed by the Noticee.

23. 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 Integrated Surveillance Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

24. In terms of rule 6 of the Rules, copy of this order is sent to the Noticee, and also to the Securities and Exchange Board of India.

Date: 28.04.2014 **Anita Kenkare**

Place: Mumbai **Adjudicating Officer**