

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ ADJUDICATION ORDER NO. EAD-2/DSR/ VVK/176/2014 ]**

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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**

**In respect of  
DILIP YEWALE  
( PAN AAMPY5403F )**

**Background :**

Mahindra & Mahindra Limited ( hereinafter referred to as "**M&M / Company**" ), whose shares are listed at the National Stock Exchange of India Limited ( hereinafter referred to as "**NSE**" ) and The Bombay Stock Exchange Limited ( hereinafter referred to as "**BSE**" ). M&M vide its letter dated 27th December, 2013 reported to the Securities and Exchange Board of India ( hereinafter referred to as "**SEBI**") that the designated employee of the Company, *inter alia*, Mr. Dilip Yewale ( hereinafter referred to as "**Noticee**" ) has dealt in the shares of the Company on 24th October, 2014 i.e. during the closure of trading window from October 01, 2013 to November 14, 2013 (hereinafter referred to as "**Period of Examination / PoE**" ) on account of the announcement of Unaudited Financial Results of the Company for the second quarter and half year ended September 30, 2013. The results were announced on November 13, 2013.

2. Thereafter, SEBI examined the possibility of trading on the basis of unpublished price sensitive information in violation of SEBI ( Prohibition of Insider Trading )

Regulations,1992 ( hereinafter referred to as the "**PIT Regulations,1992**" ), if any, in the matter.

3. It was observed that that the Noticee had traded in the shares of the company on 24th October,2014 (i.e. during closure of trading window from October 1, 2013 to November 14,2013) by selling 644 shares of the Company on the NSE platform for a total amount of Rs.5,70,380/-. As a result of this sale transaction, the noticee was required to make disclosures under Regulation 13(4) read with Regulation 13(5) of the PIT Regulations,1992 to the company and the stock exchange viz. NSE within the specified two days which the noticee allegedly failed to comply with. The noticee's sale transaction is given as below:

Date	Exchg	Gr Buy Vol	Gr Sell Vol	Net Trd Vol	Gr Trd Vol	Gr Buy Value	Gr Sell Value	Vol% - Gr Trd Vol/Mkt	Vol% - Net Trd Vol/ Mkt Net
<b>DILIP YEWALE (AAMPY 5403F)</b>									
24/10/2013	NSE	0	644	-644	644	0	570380	0.02	0.09

#### **Appointment of Adjudicating Officer :**

4. I have been appointed as the Adjudicating Officer 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 'Rules') vide order dated 6th May, 2014 to inquire into and adjudge under Section 15A(b) of the Securities and Exchange Board of India Act,1992 ( hereinafter referred to as the "**SEBI Act, 1992** "), the alleged violation of Regulation 13(4) read with Regulation 13(5) of the PIT Regulations, 1992 committed by the Noticee.

## Notice, Reply & Personal Hearing:

5. Accordingly, the Show Cause Notice dated 28th May, 2014 (hereinafter referred to as the 'SCN') was issued to the Noticee in terms of Rule 4 of the Rules requiring it to show cause as to why an inquiry should not be held for the alleged violations. The Noticee vide his reply dated the 6th June, 2014 made submissions, which are, *inter alia*, reproduced as below : --

- "\* *At the beginning itself, I accept and sincerely apologize for the error committed by me.*
- \* *I had to make some initial payments hence sold M&M shares.*
- \* *Details of M&M shares sold : 644 nos., on 24.10.2013 and the transaction note details are NSEN 2013203 / 02021669.*
- \* *I work in M7M Vehicle Manufacturing Plant in Nasik as a General Manager, Plant Quality. And have no access or aware of the financial details of the company due to my job role. I am aware that that in specific period every quarter sale or purchase is not to be done and have always been adhering that in the past.*
- \* *I was not aware that I had sold in the 'No transaction period' until informed by my company. I have explained and apologized to them for my error and they are not at fault in any way. It has happened due to a mix up by me on the closure period and there is no other intention for sale except to pay for the house. I carry the learnings from here and will ensure it never repeats. I am the only source of income for my family.*
- \* *I sincerely request you to be considerate and waiver the penal action, inquiry as it was an error happened unknowingly and with no hidden intention.*

5. In the interest of natural justice and in order to conduct an inquiry as per Rule 4(3) of the Adjudication Rules, an opportunity of personal hearing was granted to the Noticee on 6th August, 2014. The noticee attended the hearing and reiterated the contents of his reply dated 6th June, 2014 .

### **Consideration of Issues, Evidence and Findings**

6. I have carefully perused the charges against the Noticee , reply of the Noticee, and the other material available on record.

The issues that arise for consideration in the present case are :-

***(a) Whether the Noticee has violated the provisions of Regulation 13(4) read with Regulation 13(5) of the PIT Regulations,1992?***

***(b) Does the violation, if any, on the part of the Noticee attract any penalty under Sections 15A(b) of the SEBI Act,1992?***

***(c) If yes, what should be the quantum of penalty?***

7. Before moving forward, it will be appropriate to refer to the relevant provisions of PIT Regulations,1992 which read as under :-

### **Disclosure of interest or holding in listed companies by certain persons - Continual Disclosure**

#### **13.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.

(4A) .....

**(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."

8. I observe that the Noticee had sold 644 shares of M&M on 24th October, 2013 for a total amount of 5,70,380/-. As a result of the sale of shares by the noticee, there was a change in shareholding of the noticee exceeding Rs.5 lakh which required disclosures to be made to the Company and the stock exchange within the specified two days under regulation 13(4) read with regulation 13(5) of the PIT Regulations, 1992. However, it is observed that the noticee admittedly failed to make the necessary disclosures in this regard. **I do not find merit in the submissions made by the noticee.** In view of this, I conclude that the Noticee has violated the provisions of Regulation 13(4) read with Regulation 13(5) of the PIT Regulations, 1992, thus, warranting monetary penalty under Section 15A(b) of the SEBI Act, 1992.

11. Section 15A(b) of the SEBI Act, 1992 reads as under :-

**" 15A. Penalty for failure to furnish information, return, etc.** If any person who is required under this Act or any rules or regulations made there under:-

(a).....

**(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. "*

12. The Hon'ble Supreme Court of India in the matter of SEBI vs. Shriram Mutual Funds [2006] 68 SCL (216) SC held that " *once a violation of statutory regulation is established, imposition of penalty becomes sine qua non of violation and the intention of the parties committing such violation becomes totally irrelevant. Once the contravention is established then penalty is to follow*".

The Hon'ble Securities Appellate Tribunal in the matter of Milan Mahindra Securities Private Limited vs SEBI ( in Appeal No. 66 of 2003) observed that " the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."

13. While determining the quantum of penalty under Section 15A(b) of the SEBI Act,1992, it is important to consider the factors stipulated in Section 15-J of the SEBI Act,1992 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.*

14. It is difficult, as per the material available on record, to quantify any gain or unfair advantage accrued to the Noticee & the extent of loss suffered by the investors as a result of the default of the Noticee. The disclosures made under Regulation 13(4) read

with regulation 13(5) of the PIT Regulations,1992 are made public only through the Stock Exchange. It is with this end in view that the regulations require the making of disclosures so that investing public is not deprived of any vital information. The disclosures made to the stock exchange are the means to attain such end and, therefore, dissemination of true and complete information is required.

### **ORDER**

16. 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, 1992 read with Rule 5 of the said Rules, I hereby impose a penalty of ₹ 2,00,000/- (Rupees two lakh only ) on Mr.Dilip Yewale under Section 15A(b) of the SEBI Act,1992. In my view, the penalty is commensurate with the default committed by the Noticee.

17. The penalty amount shall be paid by the Noticee through a Demand Draft drawn in favour of “SEBI – Penalties Remittable to Government of India” and payable at Mumbai, within 45 (forty five) days of receipt of this order. The said Demand Draft should be forwarded to the Division Chief, Integrated Surveillance Department (ISD), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 -A, ‘G’ Block, Bandra-Kurla Complex, Bandra (E), Mumbai – 400 051.

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

**Date : August 12, 2014**  
**Place: Mumbai**

**D.SURA REDDY**  
**ADJUDICATING OFFICER**