

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. EAD/PM-AA/AO/7/2018-19]**

**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 Pradeep Kumar Mishra**  
**(PAN: AKPPM0956Q)**

In the matter of  
**Multi Commodity Exchange of India Limited**

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**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India (**SEBI**) conducted investigation in the scrip of Multi Commodity Exchange of India Limited (hereinafter referred to as "**Company/MCX**") for the period of April 27, 2012 to July 31, 2013. It was observed in investigation that National Spot Exchange Limited ("**NSEL**") is a wholly owned subsidiary of Financial Technologies (India) Ltd. ("**FTIL**") which also holds 26% of the shareholding in MCX. Further, all three companies, i.e. NSEL, FTIL and MCX, are under a common management with common directors and employees.
2. A Show Cause Notice dated April 27, 2012 was issued by the Department of Consumer Affairs ("**DCA SCN**") to NSEL. As per the Investigating Authority, the Unpublished Price Sensitive Information ("**UPSI**") in respect of the shares of MCX was the implication of the DCA SCN dated April 27, 2012, issued to NSEL i.e. suspension of short selling by its Members, pairing of contracts and settlement of contracts beyond 11

days and impending payment defaults by the members of NSEL and loss of reputation of Promoters and Management of MCX. It was observed that any news impacting business of NSEL will automatically impact share price of its holding company (i.e. FTIL) and associate companies (i.e. MCX) and any news impacting credentials of Promoters and Management of FTIL, NSEL and MCX will also impact the share price of MCX, therefore suspension of trading by NSEL was a negative news. As per the Investigating Authority, the UPSI came into existence on April 27, 2012, upon the issuance of the SCN to NSEL by the DCA and it ceased to exist when NSEL suspended trading in all contracts (except e-series contracts) and deferred settlement of all pending contracts on July 31, 2013.

3. It was observed in the investigation conducted by SEBI that Shri Pradeep Kumar Mishra ("**Noticee**") was a senior employee of NSEL during UPSI period and he worked as an Assistant Vice President- Product Development and Collateral Financing of NSEL from August 25, 2007 to March 31, 2014. Being senior employee of NSEL, Noticee was well aware of all the developments in NSEL, right from issuance of SCN by DCA to NSEL till suspension of trading by NSEL. In that capacity, Noticee was reasonably expected of having access to the UPSI which emanated from NSEL and, thus, an insider under SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations, 1992**").
4. It was alleged that the Noticee, being an insider, before the outbreak of NSEL irregularities avoided losses by selling 1095 shares of MCX between March 08, 2013 and June 25, 2013 when in possession of UPSI and thereby violated provisions of Regulation 3(i) of PIT Regulations,

1992 read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as “**PIT Regulations, 2015**”).

#### **APPOINTMENT OF ADJUDICATING OFFICER**

5. The undersigned was appointed as Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the ‘**Adjudication Rules**’) to inquire into and adjudge under section 15G of the SEBI Act the alleged violations of provisions of Regulation 3(i) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015 by the Noticee.

#### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

6. A Show Cause Notice no. EAD/AO-PM/AA/OW/315961/2017 dated December 14, 2017 (hereinafter referred to as “**SCN**”) was issued to the Noticee under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15G of the SEBI Act, 1992 for the alleged violations specified in the SCN.
7. Vide letter dated December 28, 2017, Noticee submitted its reply to the SCN and the summary of his submissions is as follows:
- *I acquired MCX scrips through exercise of ESOPs right given by MCX in 2006. The shares were allotted in three tranches in 2007, 2008 and 2009 upon payment of the money. MCX shares were listed in Stock Exchange after successful IPO on 9<sup>th</sup> March 2012*
  - *MCX share was listed on the stock exchange on 9<sup>th</sup> March 2012. At the time of MCX listing in Stock exchange, demat shares held by me was placed in lock in period of one year. This lock in period was over*

*on 8<sup>th</sup> March 2013 after that I became eligible to sell into the market as per regulation.*

- My action of selling of MCX shares was carried out after completion of regulatory restrictions on selling of the ESOPs stock and to meet my personal financial requirements. My intent of selling MCX shares were to realize the value of the investment which was acquired through legal manner and to meet the financial obligations & necessary household expenses*
- The business, functioning and management of MCX and NSEL were separate though FTIL being common promoter. Apart from above, I was not one of the KMPs in NSEL*
- During this alleged "investigation period", that is April 2012 to July 2013, I was working in NSEL and had no direct or indirect relation with MCX. Hence, I am not an "insider" with respect to MCX under the provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992.*
- SCN issued to NSEL was not the verdict from DCA and hence, it did not have any predictable implications even after if it came in public knowledge on 3<sup>rd</sup> October 2017. Hence, it does not qualify to be a Price Sensitive Information, neither in letter nor in spirit nor in terms of Regulation 2 (ha) of the SEBI PIT Regulations, 1992. Had it been price sensitive information, the prices of MCX scrips should have reacted negatively on this report. But in reality it did not happen like that.*
- NSEL had published and disseminated information relating to show cause notice issued by DCA, its reply to the same and also the current status of the matter on 3<sup>rd</sup> October, 2012. Hence, post 3<sup>rd</sup> October, 2012, by no stretch of imagination, information pertaining to show cause notice issued to NSEL can be construed as "unpublished information" within the meaning of Regulation 2 (k) of the Regulations.*
- In the instant case, I am neither an "insider" within the meaning of SEBI (Prohibition of Insider Trading) Regulations 1992, nor was I in possession of any unpublished price sensitive information pertaining to MCX. Hence, I have not violated any provision relating to Regulation 3 (1).*

8. I note that an Order dated January 05, 2018 (**WTM order**) has been passed by the WTM of SEBI under sections 11(1), 11(4)(b) and 11B of SEBI Act in the scrip of MCX and the said order is arisen from the same set of facts as in the instant adjudication proceeding. Considering the facts and circumstances of the case, reply of Noticee and the WTM Order dated January 05, 2018, the undersigned is of the opinion that the present matter can be decided on the basis of facts/materials available on record without personally hearing the Noticee.

### **CONSIDERATION OF ISSUES AND FINDINGS**

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

- I. Whether Noticee avoided losses by selling 1095 shares of MCX between March 08, 2013 and June 25, 2013 when in possession of UPSI and thereby violated provisions of Regulation 3(i) of PIT Regulations, 1992? and
- II. Does the violation, if any, attract monetary penalty under section 15G of SEBI Act?

10. Before moving forward, it is pertinent to refer to the relevant provisions of PIT Regulations, 1992 which reads as under:-

***“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; or”***

11. I have perused the written submissions of the Noticee, documents available on record and the WTM order dated January 05, 2018 in the same matter in different proceedings. Having considered the same, I record my findings hereunder.

12.I find that Noticee was a senior employee of NSEL i.e. Assistant Vice President- Product Development and Collateral Financing of NSEL during UPSI period and in that capacity, he was reasonably expected of having access to the UPSI which emanated from NSEL. Further, the transactions in question i.e. sale of 1095 shares of MCX between March 08, 2013 and June 25, 2013 as specified in the SCN is also a matter of record.

13.I note that WTM of SEBI vide Order dated January 05, 2018 under sections 11(1), 11(4)(b) and 11B of SEBI Act, on the same set of facts and allegations, had exonerated certain individuals in a separate proceedings against them in the scrip of MCX and the period of UPSI was the same as in the SCN in the instant adjudication proceedings. In the said WTM order, there was a specific finding with regard to the periodicity of the UPSI which is as under:

*“25. Having answered the first issue in the affirmative, the next issue for consideration is whether the “price sensitive information” was unpublished during the period of investigation. In this regard, it is noted that on October 3, 2012 an article appeared in the Economic Times, a widely distributed financial newspaper, which contained information relating to the issuance of SCN dated April 27, 2012 to NSEL, majority of the contents of the SCN, allegations against NSEL with regard to violation of conditions of DCA notification dated June 5, 2007 and the gist of NSEL’s reply to the SCN. The article also covered the possible action that could be taken by DCA against NSEL i.e. withdrawal of exemption granted to NSEL vide the notification dated June 5, 2007.*

*26. On a careful perusal of the newspaper article dated October 3, 2012, I find that the publication of the said article made the following information public:*

- DCA had issued a show cause notice dated April 27, 2012 to NSEL hereby it had found fault with certain types of contracts which were being traded on NSEL.*

- *There were allegations against NSEL that it was permitting short selling on its platform. It was also alleged that NSEL did not have a stock check facility for validating a member's position.*
- *SCN also alleged that all contracts traded on NSEL with a settlement period exceeding 11 days were in violation of the provisions of FCRA.*
- *The conduct of NSEL was allegedly in violation of the conditions stipulated in the DCA notification dated June 5, 2007.*
- *NSEL had filed its reply to the SCN issued by DCA.*
- *In the event of NSEL failing to file a satisfactory explanation, DCA would withdraw the exemption granted vide notification dated June 5, 2007 without any further communication.*

*27. In my view, a reader of the newspaper article dated October 3, 2012 (containing the information noted above) could have deduced the implications of the SCN dated April 27, 2012 to a lesser or greater extent depending on his/her exposure to the subject matter covered in the newspaper article. In my view, the newspaper article was not speculative in nature as it published precise facts relating to the issuance of SCN and also brought out specific contents of the SCN summarizing the allegations levelled against NSEL and the possible consequences thereof. The article categorically mentioned that failure on part of NSEL to provide a satisfactory explanation to the allegations levelled in the SCN would result in withdrawal of exemption granted to NSEL vide notification dated June 5, 2007. The said withdrawal of exemption in turn would have had a cascading effect on the contracts being traded on NSEL, payment defaults in relation thereto and the eventual loss to the reputation of the promoters / management of NSEL. Considering the above, I find that the price sensitive information, relating to the implication of the SCN dated April 27, 2012 became public from the time when the article relating to the SCN dated April 27, 2012 appeared in Economic Times on October 3, 2012, and as such ceased to be UPSI from that date. Accordingly, the period during which the period the UPSI existed was from the issuance of the SCN to its publication i.e. from April 27, 2012 to October 3, 2012.”*

14. I note that in the said order, WTM, inter alia, held that since those individuals did not trade in the shares of MCX when in possession of UPSI, the violation of regulation 3(i) of the PIT Regulations, 1992 cannot be established against them. I have also gone through the charges leveled against the Noticee in the SCN which have arisen out of the same set of facts identical to that of in the WTM Order and I do not find any reason to disagree with the view taken by the WTM about the periodicity of UPSI i.e. from April 27, 2012 to October 3, 2012. Since there was no UPSI in existence at the time of sale of 1095 shares of MCX between March 08, 2013 and June 25, 2013 by the Noticee, therefore, I am inclined to conclude that violation of Regulation 3(i) of the PIT Regulations, 1992 by the Noticee as alleged in the SCN dated December 14, 2017 do not stand established. Since the alleged violation is not established against the Noticee, Issue No. 2 requires no consideration.

#### **ORDER**

15. For the aforesaid reasons, Show Cause Notice EAD/AO-PM/AA/OW/31596/2017 dated December 14, 2017 alleging violations of provisions of Regulation 3(i) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015 by the Noticee i.e. Shri Pradeep Kumar Mishra, is disposed of without imposition of any penalty.

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

**Date: April 27, 2018**  
**Place: Mumbai**

**Prasanta Mahapatra**  
**Adjudicating Officer**