

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. EAD-2/DSR/RG/ 173 /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**  
**Shri Gopalan Murali [PAN: ABUPM3994N]**

**In the matter of**  
**Mahindra & Mahindra Limited**

**Background:**

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an examination into the irregularity in trading in the shares of Mahindra & Mahindra Limited (hereinafter referred to as 'MML'), a company listed on the Bombay Stock Exchange (BSE) for the period January 01, 2013 to February 09, 2013 and into the possible violation of the provisions of the SEBI Act, 1992 (herein after referred to as the Act) and various Rules and Regulations made there under.
2. SEBI received a letter dated April 12, 2013 from MML informing that few of the designated employees of the company had dealt in shares of MML when the trading window was closed for declaration of unaudited financial results of the company for the quarter ended on December 31, 2012.
3. The examination revealed that Shri Gopalan Murali (hereinafter referred to as the Noticee), one of the designated employees of the company, had traded in the scrip of MML for more than ₹ 5 lakh in value and had entered into opposite

transactions within six months following the prior transaction which was in violation of Clause 4.2 of the Model Code of Conduct specified in Part A of Schedule 1 read with Regulation 12(1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as PIT Regulations).

4. SEBI has, therefore, initiated adjudication proceedings under the Act to inquire into and adjudge the alleged violation of the abovementioned provisions of law by the Noticee.

**Appointment of Adjudicating Officer:**

5. The undersigned has been appointed as the Adjudicating Officer vide SEBI Order dated October 03, 2013 under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under Section 15HB of the Act the alleged violation of the provisions of law by the Noticee.

**Notice, Reply & Personal Hearing:**

6. Accordingly, a notice dated November 11, 2013 (hereinafter referred to as the 'SCN') was issued to the Noticee in terms of Rule 4 of the Adjudication Rules requiring him to show cause as to why an inquiry should not be held against him for the alleged violation. The Noticee, vide letter dated November 26, 2013 submitted his reply to the said SCN. 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 March 21, 2014. However, vide letter dated March 15, 2014, the Noticee requested for adjournment of the said hearing. Accordingly, the said hearing was adjourned and vide notice dated June 23, 2014 another date of personal hearing was granted to the Noticee on July 08, 2014. The Noticee attended the said hearing on the scheduled date and made oral submissions.

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

7. I have carefully perused the charges against the Noticee as per the SCN, written submissions and the materials & documents as available on record. The issues that arise for consideration in the present case are:

***a) Whether the Noticee has violated the provisions of Clause 4.2 of the Model Code of Conduct specified in Part A of Schedule 1 read with Regulation 12(1) of the PIT Regulations?***

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

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

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

### **Relevant provisions of PIT Regulations:**

#### ***Code of internal procedures and conduct for listed companies and other entities.***

***12(1)*** All listed companies and organizations 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 organizations recognized or authorised by the Board;*
- (c) the recognized 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.*

### **Schedule I:- (PART A)**

***4.2*** All directors/ officer/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction, i.e., sell or buy any number of shares during the next six months following the prior transaction. All directors / officers / designated employees shall also not take positions in derivative transactions in the shares of the company at any time.

9. I find from the SCN that MML is a company listed on BSE. The Noticee is the designated employee of MML. I further find that the Noticee had traded in the shares of MML when the trading window was closed for declaration of unaudited financial results of the company for the quarter ended on December 31, 2012. It was observed that the Noticee had traded in the scrip for more than ₹ 5 lakh in value and entered into opposite transactions within six months following the prior transaction. The summary of trades executed by the Noticee during the relevant period is as under:

Name of the Employee	PAN number	Trade dated	Buy quantity	Sell quantity	Buy Value	Sell value
Gopalan Murali	ABUPM3994N	08.01.2013	0	200	0	191600
		11.01.2013	200	0	187563.8	0
		16.01.2013	200	0	180900	0
		21.01.2013	85	0	75004	0
		28.01.2013	0	85	0	77333

10. From the above table, it is observed that on January 08, 2013, the Noticee sold 200 shares for ₹ 191600. Further, from January 11, 2013 & January 21, 2013 he bought a total of 485 shares of MML and on January 28, 2013 sold 85 shares for ₹ 77333. The Noticee being the designated employee of MML was not supposed to enter into opposite transactions within six months of the prior transaction. However, as the Noticee transacted in the shares of MML within six months of the prior transaction, he was alleged to have violated the provisions of Clause 4.2 of the Model Code of Conduct specified in Part A of Schedule 1 read with Regulation 12(1) of the PIT Regulations.
11. The Noticee vide letter dated November 26, 2013 submitted that he is a Mechanical Engineer with Technical background and working with Central Process Engineering for five Mahindra plants. He further submitted that the trading window of MML was closed during January 01, 2013 to February 09, 2013 and due to sheer oversight he traded during the window closure period. I note from the minutes of the personal hearing conducted on July 08, 2014 that the Noticee had stated that the said violation of the provisions of law was due to ignorance and was inadvertent.

12. From the material available on record and the submissions made by the Noticee, I find that the Noticee is the designated employee of MML. Vide letter dated April 12, 2013, MML had informed SEBI that few of its designated employees had dealt in shares of MML when the trading window was closed for declaration of unaudited financial results of the company for the quarter ended on December 31, 2012. I find that the Noticee being the designated employee of the company had transacted in the shares of MML during the window closure period and also had entered into opposite transaction within six months from the prior transaction which was in complete violation of Clause 4.2 of the Model Code of Conduct specified in Part A of Schedule 1 read with Regulation 12(1) of the PIT Regulations. The Noticee in his submissions has admitted that he had transacted during the relevant time and had entered into opposite transaction and that the same was done due to oversight/ ignorance and inadvertently.
13. Further, the Noticee has not disputed the fact that he is a designated employee of the company. It is a settled principle that ignorance of law is no excuse. In view of the same, I conclude that the Noticee has violated the abovementioned provision of law thus, making him liable for imposition monetary penalty under Section 15HB of the Act which reads as under:

***Penalty for contravention where no separate penalty has been provided.***

***15HB.*** *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board there under for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

14. The Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram 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.*"

15. While determining the quantum of penalty under Section 15HB of the SEBI Act, it is important to consider the factors stipulated in Section 15J of the 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. I observe that from the material available on record, it is difficult to quantify any gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default of the Noticee. Also, I find that the act of the Noticee was repetitive in nature in as much as he executed opposite transaction twice in a short period and the same cannot be ignored.

**ORDER**

17. 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 read with Rule 5 of the Adjudication Rules, I impose a penalty of ₹2,00,000 (Rupees Two Lakh Only) on Shri Gopalan Murali under Section 15HB of the SEBI Act in the matter. In my view, the penalty is commensurate with the default committed by the Noticee.
18. The penalty amount as mentioned above shall be paid by the Noticee through a duly crossed demand draft drawn in favour of “SEBI – Penalties Remittable to Government of India” and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to the Division Chief, ISD, Securities and Exchange Board of India, Sebi Bhavan, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

- 19.** In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to Noticee and also to Securities and Exchange Board of India.

**Date: August 7, 2014**

**Place: Mumbai**

**D. SURA REDDY  
ADJUDICATING OFFICER**