

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. EAD/PM-AB/AO/52/2018-19]**

**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 Joseph Massey**  
**(PAN: AALPM7937P)**

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 and it was observed that Shri Joseph Massey ("**The Noticee**") had sold shares of MCX and had failed to make necessary disclosures under the SEBI(Prevention of Insider Trading) Regulations, 1992 ("**PIT Regulations**").

**APPOINTMENT OF ADJUDICATING OFFICER**

2. 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 and 15A(b) of the SEBI Act the alleged

violations of provisions of Regulation 3(i) and Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 of read with Regulation 12(2) of PIT Regulations, 2015 by the Noticee.

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

3. A Show Cause Notice 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 15A(b) of the SEBI Act, 1992 for the alleged violations specified in the SCN.
4. After considering the reply of the Noticee, the allegations regarding violation of Regulation 3(i), an order was passed by me on February 1, 2018 and while disposing off the SCN partly, it was decided that the allegation regarding failure to make necessary disclosure will be decided separately after hearing the Noticee.
5. The Noticee submitted a reply on January 12, 2018 and his major submissions as regards delay in making disclosures under Reg. 13(4)r/w 13(5) of PIT Regulations, 1992 is as under:
  - (a) The disclosures made by me have been published on website and the delay occurred due to internal procedural issues and operational daily challenges.
  - (b) The delay in making disclosure is an inadvertent and venial lapse and has not affected any person. Further, there is no impact on price and volume of shares of MCX due to the said sale.
6. An opportunity of personal hearing was granted to the Noticee on August 21, 2018 in accordance with Rule 4(3) of the AO Rules. The Noticee and his authorized representative appeared on the said date and made oral

submissions. The Noticee also sought three days time to file written submissions. The written submissions have been sent by the Noticee vide letter dated August 27, 2018. The summary of relevant written submissions and submissions made during the course of hearing is as follows:

- a. The Noticee has suffered irreparable loss due to the ex-parte order of SEBI.
- b. The Noticee was allotted 31,240 shares of MCX and he intended to sell 10,000 shares which was also disclosed by MCX in its prospectus dated February 28, 2012. The sale of shares was in accordance with the said disclosures and the delay was inadvertent.
- c. The disclosures pertain to sale of shares which were insignificant as compared to the share capital.

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

- 7. I have carefully perused the reply to the SCN and oral 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 failed to make any disclosure as envisaged in Reg. 13(4) of the PIT Regulations? and
  - (b) Does the violation, if any, attract monetary penalty under section 15A(b) of SEBI Act?
- 8. Before moving forward, it is pertinent to refer to the relevant provisions of PIT Regulations which reads as under:-

#### ***PIT REGULATIONS***

**Continual 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 Rs. 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.

**FINDINGS:**

9. It is seen from the Investigation Report (hereinafter referred to as "IR") and the relevant documents that the Noticee has sold a total of 11,250 shares of MCX during the investigation period on 7 dates viz. April 24, 2012, May 4, 2012, June 1, 2012, November 6, 2012, November 7, 2012, February 25, 2013 and June 28, 2013. As per the SCN, delayed disclosures under Reg. 13(4) have been made for sale of shares done on May 5, 2012 and February 25, 2013.
10. The Noticee was a director of MCX and hence was obligated to make a disclosure on sale of shares. The delay in disclosure by the Noticee is as follows:

Date of Transaction	No. of shares sold	Amount (In ₹ )	Date when disclosure should have made to MCX as well as exchange as per Reg. 13(4)	Actual date of Disclosure to MCX	Actual date of Disclosure to BSE	Delay in disclosure to MCX	Delay in disclosure to BSE
04.05.2012	1000	10,20,000	08.05.2012	11.05.2012	17.05.2012	3 days	9 days
25.02.2013	2000	23,30,000	27.02.2013	01.03.2013	01.03.2013	2 days	2 days

11. In the given facts and circumstances, it is clear that the Noticee failed on 2 counts to make disclosures in stipulated time which warrant imposition of monetary penalty.

12. In view of the above, the next issue for consideration is as to what would be the monetary penalty that can be imposed on the Noticee for the violation of Sec. 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, —*

*(a)...*

*(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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;*

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

**Section 15J** - *Factors to be taken into account by the adjudicating officer While adjudging quantum of penalty under section 15, 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. In this matter, it is noted that the Noticee had made his intent clear regarding the sale of shares of MCX in the prospectus itself and hence, no ulterior motive or disproportionate gain for delayed disclosure can be attributed to the Noticee. Further, as the quantity of shares is not significant no quantifiable loss seem to have been caused to the investors. However, it can be seen that the Noticee has twice made delayed disclosures both to the Company as well as to the exchange and thus, there is a repetition in the violation of the Noticee.

#### **ORDER**

15. 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 Adjudication Rules, I hereby impose monetary penalty of **Rs. 2,00,000/- (Rupees Two Lakhs only)** on the Noticee.
16. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department (EFD), Division of Regulatory Action - III [ **EFD-DRA-3** ] SEBI Bhavan, Plot No.C4-A, 'G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 ) through e-payment facility into Bank Account, the details whereof are given as below :-

**Account No. for remittance of penalty(ies) levied by Adjudication Officer**

<b>Bank Name</b>	State Bank of India
<b>Branch</b>	Bandra-Kurla Complex
<b>RTGS Code</b>	SBIN0004380
<b>Beneficiary Name</b>	SEBI – Penalties Remittable To Government of India
<b>Beneficiary A/c No.</b>	31465271959

17.The Noticee shall forward the said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief of the aforesaid Enforcement Department (EFD) of SEBI.

18.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 Entity	
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	
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19. 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: December 18, 2018**  
**Place: Mumbai**

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