

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD/PM-AB/AO/39/2018-19]

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 Dipak D Shah
(PAN: ACIPS7063H)

In the matter of
Multi Commodity Exchange of India Limited

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 Dipak Shah ("**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 of the SEBI Act the alleged violations of

provisions of Regulation 13(4) r/w 13(5) of PIT Regulations 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. Vide letter dated January 5, 2018, the Noticee replied to the SCN. The summary of submissions is as follows:
 - a. Regulation 13(4) is about condition precedent wherein only on fulfillment of the specified condition, the disclosure is to be made.
 - b. None of the trades of the Noticee are above the threshold limits prescribed under Reg. 13(4) and hence he was not liable to make disclosures under Reg. 13(4).
5. 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 did not appear on the said date.

CONSIDERATION OF ISSUES AND FINDINGS

6. I have carefully perused the reply to the SCN and the documents available on record. The issues that arise for consideration in the present case are :

- I. Whether the Noticee was covered under the ambit of “Officer” as specified in Reg. 13(4) of the PIT Regulations?
 - II. Whether the Noticee failed to make any disclosure as envisaged in Reg. 13(4) of the PIT Regulations? and
 - III. Does the violation, if any, attract monetary penalty under section 15A(b) of SEBI Act?
7. 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 subregulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

FINDINGS:

8. It is seen from the Investigation Report (hereinafter referred to as “IR”) and the relevant documents that the Noticee sold a total of 450 shares of MCX during the investigation period on 3 dates viz. on May 7, 2012, October 19, 2012 and October 22, 2012. The cumulative amount for sale of shares on these 3 days was Rs. 5,91,563. As per the SCN, no disclosure under Reg. 13(4) has been made for said sale of shares.

9. The contention of the Noticee is not acceptable as the wording of Reg. 13(4) makes it very clear that the disclosure has to be made when the cumulative value of transaction is more than the threshold. The trading may not be done on one day but even if the trading is spread across various days, the Noticee is liable to make disclosures whenever the threshold is arrived at.
10. It is observed from the IR that the Noticee was an “officer” as mentioned by the Code of Conduct of MCX. On perusal of the Code of Conduct it is observed that the definition of the term Officer had been modified on 2 occasions – November 3, 2012 and January 3, 2013. As per the material available on record the Noticee was employed as Director – Market Operations April 1, 2010 to October 30, 2013 with MCX. As per the definition of “Officer” in the Code of Conduct the designation of Head - Finance & Accounts was included for the first time after the amendment on November 3, 2012.
11. It can thus be concluded from the amendments to the Code of Conduct and the letter dated November 3, 2012 that the Noticee became the “Officer” as per code of conduct only on November 3, 2012 and was not covered under the ambit of Reg. 13(4) prior to the said date.
12. It is seen from the transactions alleged in the SCN that they are all executed prior to November 3, 2012 and hence are not covered under Reg. 13(4).
13. Since the Noticee was not covered under Reg. 13(4), there is no need to consider issue No. 2 and 3.

ORDER

14. For the aforesaid reasons, the allegations levelled in the Show Cause Notice EAD/AO-PM/AA/OW/31633/2017 dated December 14, 2017 alleging violations of provisions of Regulation 13(4) r/w 13(5) of PIT Regulations, 1992 by the Noticee i.e. Shri Dipak D. Shah cannot be sustained and the SCN is disposed of.

15. 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: September 28, 2018
Place: Mumbai

Prasanta Mahapatra
Adjudicating Officer