

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. EAD/PM-AA/AO/29/2018-19]**

**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  
**Dr. Nilanjan Ghosh**  
**(PAN: AHIPG6700C)**

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 Dr. Nilanjan Ghosh ("**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 24, 2018, the Noticee replied to the SCN. The summary of submissions is as follows:
  - a. The Noticee was working as Senior Vice President – Research & Strategy and his role was more with policy and economic research, writing articles and advocacy.
  - b. At the time of sale of shares he was not informed that he was a designated “officer” who has to disclose trades of any magnitude.
  - c. As per the Code of Conduct for prevention of Insider Trading (“Code of Conduct”) formulated by MCX the definition of “Officer” was amended on January 3, 2013 wherein he was covered under the ambit of “officer”.
  - d. The Noticee was covered in the ambit of “Officer” after the amendment of definition on January 3, 2013 and not prior to that.
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 by an e-mail dated August 23, 2018 informed that he had received the

hearing notice only after the date of hearing and requested for another date of hearing. Subsequently, by an email dated August 27, 2018 the Noticee sent additional written submissions reiterating the submissions recorded above.

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

6. I have carefully perused the reply to the SCN and the additional submissions of the Noticee 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 1,181 shares of MCX during the investigation period on 2 dates viz. November 07, 2012 and November 30, 2012. As per the SCN, no disclosures under Reg. 13(4) have been made for sale of shares done on both the days.
9. 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 as submitted by the Noticee. Further, the Noticee has also relied on a letter dated January 3, 2013 addressed by MCX to the Bombay Stock Exchange Ltd. informing about the change in definition of the term “Officer”. On perusal of the said letter available in public domain as well as in replies of other notices in the matter, it is observed that the said letter lists the names of employees additionally covered under the definition of “Officer” after the amendment alongwith their shareholding on December 31, 2012. The name of the Noticee is also included in the said list.
10. It can thus be concluded from the amendments to the Code of Conduct and the letter dated January 3, 2013 that the Noticee became the “Officer” as per code of conduct only on January 3, 2013 and was not covered under the ambit of Reg. 13(4) prior to the said date. Thus, he was not liable to disclose his trades prior to January 3, 2013 under Reg. 13(4).
11. Since the Noticee was not covered under Reg. 13(4), there is no need to consider issue No. 2 and 3.

## **ORDER**

12. For the aforesaid reasons, the allegations levelled in the Show Cause Notice EAD/AO-PM/AA/OW/31625/2017 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. Dr. Nilanjan Ghosh cannot be sustained and the SCN is disposed of.

13. 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: August 31, 2018**  
**Place: Mumbai**

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