

ADJUDICATION ORDER NO. JS/DJ/12-16/2017

**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:

1. Tech Mahindra Ltd (PAN:Not available)
2. Shri Mahesh N (PAN: ACDPM7688P)
3. Shri Puneet Virender (PAN: AIYPK5681P)
4. Shri Syed Tanvir Hussain (PAN: AGTPS0690M)
5. Shri Sanjeev Parida (PAN: ACLPP44583C)

In the matter of Tech Mahindra Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received information from Compliance Officer of Tech Mahindra Limited vide letter dated September 23, 2013, stating that five designated employees sold shares in excess of the threshold prescribed by the company. It was also mentioned in the said letter that notices were issued to the said employees and reply was received from them. Based on review of the case by Disciplinary Committee of the Company and its recommendation in this regard, Managing Director & CEO issued a caution letter to the said employees advising them to ensure strict compliance to the prohibition of Insider Trading Policy of the company and if this recurs again, it will be viewed seriously and disciplinary action would be taken.
2. On receipt of the above information, SEBI examined the matter for possible violations of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations**"). Based on the said examination, following are the details of brief findings and alleged violations in respect of Tech Mahindra Ltd and four employees against which present adjudication proceedings are pending:

Name	Alleged findings and violations in brief
Shri Mahesh N	Sold total 2,000 shares (1,000 shares each at BSE and NSE) on August 23, 2013 for total consideration of Rs.26.98 lakh. On one occasion / day as stated above, there was a change in holding of shares of the officer which in terms of value of such shares exceeds Rs.5 lakh, and as an officer of the company, there was failure to make disclosure for the same.
Shri Puneet Virender Kumar	Sold 2,000 shares of the company at NSE on August 27, 2013 for consideration of Rs.28 lakh. On one occasion / day as stated above, there was a change in holding of shares of the officer which in terms of value of such shares exceeds Rs.5

Name	Alleged findings and violations in brief
	lakh, and as an officer of the company, there was failure to make disclosure for the same.
Shri Syed Tanvir Hussain	<p>Sold 1,000 shares of the company at NSE on August 23, 2013 for consideration of Rs.13.2 lakh.</p> <p>Sold 1,000 shares of the company at NSE on August 27, 2013 for consideration of Rs.13.6 lakh.</p> <p>Sold 1,000 shares of the company at NSE on August 29, 2013 for consideration of Rs.13.5 lakh.</p> <p>On three occasion / day as stated above, there was a change in holding of shares of the officer which in terms of value of such shares exceeds Rs.5 lakh, and as an officer of the company, there was failure to make disclosure for the same.</p>
Shri Sanjeev Parida	<p>Sold 2,729 shares of the company at NSE on August 29, 2013 for consideration of Rs.37.93 lakh.</p> <p>On one occasion / day as stated above, there was a change in holding of shares of the officer which in terms of value of such shares exceeds Rs.5 lakh, and as an officer of the company, there was failure to make disclosure for the same.</p>
Tech Mahindra Limited	Company received disclosures from the officers viz, Saneev Parida, Mahesh N and Syed Tanveer Hussain for their change in holding, however, company failed to make disclosure to the Stock Exchange under regulation 13(6) of PIT Regulations

3. Based on findings of the examination, it was alleged that Shri Mahesh N, Shri Puneet Virender Kumar, Shri Syed Tanvir Hussain and Shri Sanjeev Parida were the “officer” as provided under PIT Regulations since they carry an authority to give directions to the other employees and occupy a position of responsibility in the company, however, failed to make the necessary disclosure required under regulation 13(4) of PIT Regulations.
4. It was also alleged that Tech Mahindra Ltd despite having received disclosures from Shri Saneev Parida, Shri Mahesh N and Shri Syed Tanveer Hussain for their change in holding, it failed to make disclosure to the Stock Exchange under regulation 13(6) of PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

5. SEBI initiated the adjudication proceedings against Tech Mahindra Ltd, Shri Mahesh N, Shri Puneet Virender Kumar, Shri Syed Tanvir Hussain and Shri Sanjeev Parida (hereinafter, individually referred to by their names and collectively referred to as “**Noticees**”) to inquire and adjudge under section 15A(b) of SEBI Act, the alleged violations as mentioned above.

6. SEBI vide order dated March 30, 2016 appointed an Adjudicating Officer under section 19 of the SEBI Act, 1992 (hereinafter, referred to as “**SEBI Act**”), read with section 15-I(1) of the SEBI Act and Rule 3 of SEBI(Procedure for holding inquiry and imposing penalties by adjudicating officer) rules, 1995 (hereinafter, referred to as “**SEBI Adjudication Rules**”), to inquire and adjudge under section 15A(b) of the SEBI Act in respect of the Noticees. Subsequent to changes in Adjudicating Officers in the present matter, present Adjudicating Officer was appointed vide order / communique dated June 27, 2017.

SHOW CAUSE NOTICE, WRITTEN SUBMISSIONS, PERSONAL HEARING

7. Show Cause Notice No. SEBI/HO/EAD-8/JS/DJ/OW/P/16791/1/2017 dated July 19, 2017 (hereinafter referred to as “**SCN**”) was issued to the Noticees under Rule 4(1) of the SEBI Adjudication Rules detailing the allegations made against the Noticees, and to show cause as to why an inquiry should not be held and penalty be not imposed under section 15A(b) of the SEBI Act for the aforesaid alleged violation of PIT Regulations.
8. Tech Mahindra Ltd vide e-mail dated August 1, 2017 requested for inspection of document which was acceded to, and the same was availed on September 11, 2017 through authorised representatives. Subsequently, Tech Mahindra Ltd submitted its reply to the SCN vide letter dated September 22, 2017. Following are key submissions from the reply:

“It is the Company that had brought to the attention of SEBI that five of its employees had sold shares of the company in excess of the pre-clearance thresholds under the company’s Model Code of Conduct for prevention of Insider Trading, without seeking pre-clearance. Yet despite SCN alleges that Company didn’t report such sale transaction by the said employees to Stock Exchanges under Regulation 13(6).

Allegations against the Company are untenable, for the following reasons:

SCN proceeds on the erroneous premise that the Employees were required to report these trades to the Company under Regulation 13(4). The question of the company reporting these trades to the stock exchanges under Regulation 13(6) can arise only if the Employees were required to report the trades to the Company. If the Employees were either: (i) not required to report the trades or (ii) have not in fact reported the trades, the question of the company being required to report the trades, does not and cannot arise. It is the Company that found out that the Employees had sold without pre-clearance. Every Employee who was designated for pre-clearance obligations is not necessarily an “officer” whose trades have to be publicly reported. In the case of each of the Employees, therefore, no obligation arose, for the Company to report.

This unassailable position is clear from a reading of Regulation 13(4) and 13(6). Regulation 13(4) requires a “director or officer” to report trades in excess of the prescribed thresholds. The reporting obligation is therefore applicable to a select category of persons who are employees

of a listed company, and is not to every employee of the listed company. Had it been the intention of SEBI to require trades of all employees of a listed Company to be reported, it would have used the word “employee” instead of “officer”.

Going by the definition of “officer” under PIT Regulations read with Companies Act, it is clear that only persons who: (i) occupy an office which entail interaction with the Board of Directors; (ii) are in a position to issue instructions to the Board of directors or any one of the directors; or (iii) are responsible for the management and governance of the company, would qualify as “officers”. None of the Employees in the instant case would meet any of these conditions.

None of the Employees would meet the tests laid down in the ITC case, where AO “had noted from the hierarchy chart that the Noticee was low in the chain of management and will have no interaction with the Board of Directors or would be a person on whose direction or instruction the Board of Directors or any Directors were accustomed to act”. Hence, Employees in instant matter would not qualify as “officers” and consequently were not required to report the sale transaction under Regulation 13(4). Therefore, the question of the Company being required to report these trades under Regulation 13(6) cannot arise. Company’s secondary obligation to disclose arises only if primary obligation on the officer to disclose is discharged. Moreover, unless these trades were reported to the Company by the Employees in the prescribed form, the Company was under no obligation to report these trades (In support, quoted the AO order no. BM/AO – 123/2011 dated Sep 9, 2011 in the matter of MTZ Polyfilms).

It is very disquieting that when the Company has pro-actively and of its own accord as a matter of good governance monitored the change in shareholdings and disclosed to SEBI that the trades of the employee were undertaken without seeking pre-clearance, SEBI has chosen to proceed against the Company. Such actions of SEBI send the wrong signal to the market that companies which are pro-actively tracking the holding position and enforcing their Code of Conduct, place themselves at the risk of unwarranted regulatory proceedings.

There was no gain, unfair advantage or benefit which has occurred to the Company as a result of the alleged non-compliance. No loss has been occasioned to investors as a result of any alleged non-compliance by the company, and the same is not an allegation also.”

9. Shri Mahesh N. submitted his reply to the SCN vide letter dated August 3, 2017. Key submissions from the said reply are as follows:

“Acknowledge the sale of 2,000 shares on August 23, 2017 which lead to a realised value of Rs. 26.8 lakh against the monthly level limo of Rs. 25 lakh. Shares were received by me on account of ESOP vestation.

I was selected in March 2013, for a prestigious Fulbright programme to attend a leadership course in Tepper Business School, Carnegie Mellon University, Pittsburgh, USA (copy of selection and completion of course attached). Post completion of course, I returned to India on August 21, 2013. During this time I was not part of any company discussion or participated in any company meetings which would have led me to have access to any privileged information about the company. I resumed post sabbatical duty with the company on August 26, 2013. Since I was away from home for a long period of time, I had to sell the shares to fulfil some commitments. However, I didn’t realise that the amount would exceed Rs. 25 lakh. I came

to know about error on receipt of e-mail from the company dated September 6, 2013 stating that I have exceeded the monthly limit of Rs. 25 lakh and needed to file Form "E". Once pointed out, I promptly filed the captioned Form E with my extant employer (copy attached). Post this I was issued a warning letter from the company and this letter indicated closure of all requirement from my side and also mentions that the act has been pardoned since it was a first time default (copy attached).

Though there has been technical deviation, the above circumstances outline that the action was not intentional and I had no information about the Company in the capacity of an Officer during this period. There was no malafide intent and was not intended to cause any pecuniary gains on account of insider information. I pray to condone my procedural delay in filing the form E and seeking pre-clearance."

10. As per delivery confirmation from India Post, SCN was delivered at the stated address of Shri Syed Tanvir Hussain on July 25, 2017. On non-receipt of reply, scanned copy of SCN was sent to Shri Tanvir Hussain on September 27, 2017 to his e-mail ID obtained from Tech Mahindra Ltd, providing background of the adjudication proceedings against him and requesting to submit his reply in respect to the allegations against him mentioned in the SCN, and show cause why an enquiry should not be held and monetary penalty not imposed against him. Shri Tanvir Hussain vide his e-mail dated September 28, 2017 stated that *"I acknowledge receipt of the e-mail. Unfortunately as I am outside India currently, I didn't receive the SCN and wasn't aware of this, my apologies for this. I will fully co-operate on this matter and provide any information that you need"*. Vide e-mail dated September 28, 2017 to Shri Tanvir Hussain, he was once again informed about the background of adjudication proceedings against him and requested inter-alia to submit his reply in respect to the allegations against him mentioned in the SCN by October 5, 2017. Shri Tanvir Hussain, vide e-mail dated October 5, 2017 stated that *"I am still not clear on what to do about this. I am trying to get some legal advice on what to do but it is taking time due to the festive holidays"*. Till date, reply is not received from Shri Tanvir Hussain addressing the allegations against him mentioned in the SCN.
11. SCN was not delivered to Shri Puneet Virender Kumar at his stated address as per records. Hence, vide e-mail dated August 16, 2017, scanned copy of the SCN was sent to Shri Puneet Virender Kumar to his e-mail ID obtained from Tech Mahindra Ltd, requesting to submit reply to the SCN. Shri Puneet Virender Kumar, vide his e-mail dated August 29, 2017 acknowledged the receipt of SCN and also mentioned that *"I don't have all the details of what's required from me but more than happy to respond to what ever details necessary in this regard"*. Vide e-mail dated September 26, 2017 to Shri Puneet Virender Kumar, he was informed about the background of adjudication proceedings against him and requested to submit his reply in respect to the allegations against him mentioned in the SCN by October 5, 2017. Till date, reply is not received from Shri Puneet Virender Kumar addressing the allegations against him mentioned in the SCN.

12. SCN was not delivered to Shri Sanjeev Parida at the stated address as per records. Hence, vide letter dated August 16, 2017, copy of SCN was sent to another address obtained from Tech Mahindra Ltd, and as per the delivery confirmation from India Posts, the same was delivered on August 22, 2017. Till date, reply is not received from Shri Sanjeev Parida addressing the allegations against him mentioned in the SCN.
13. In terms of rule 4(3) of the SEBI Adjudication Rules, vide personal hearing notice dated September 26, 2017 sent through speed post AD and e-mail, an opportunity of personal hearing was provided to the Noticees to appear for personal hearing on October 12, 2017. The said personal hearing notice was delivered to the Noticees either through speed post or e-mail.
14. Authorised representatives of Tech Mahindra Ltd appeared for personal hearing on scheduled date and time i.e, October 12, 2017, 10:30 am, made oral submissions, and sought permission to file further written submissions in the matter which was acceded to. Tech Mahindra Ltd submitted its further written submissions vide letter dated October 13, 2017. Following are the key submission from the same:

“The core issue that falls for consideration is whether the three employees who filed disclosures with the company are “officers” for purposes of compliance with Regulation 13(4) of PIT Regulations. It is common ground that the three individuals viz, Sanjiv Parida, Mahesh N and Syed Tanveer Hussain are not directors of the Company.

Mr. Sanjiv Parida’s job title is SVP-Human resources and his work involves overseeing Employee relations in Telecom Business division of the company. He is of the rank E-3.

Mr. Mahesh’s job title is SVP R&D and BPM and his work involves overseeing the functions of Research & Development in Telecom and BPM. He is of the Rank of E-3.

Mr. Syed Tanveer Hussain’s job title is Service Delivery Head – Continental Europe and his work involves looking after delivery of services in the domain of Telecom in the territory of Continental Europe. He is of the rank of E-2.

None of the three persons, under whose instructions the Board of Directors is accustomed to act or are in a position to direct or influence the affairs of the Company. The treatment of their status under the PIT Regulations would be squarely covered by ruling both by SEBI and by the Hon’ble Securities Appellate Tribunal in the following cases, respectively

- *SEBI AO order dated February 26, 2015 in relation to Mr. AK Chowdhury, whereby an employee of ITC Ltd holding the position of Head-Operations was held to not be an “officer” within the meaning of the term in Regulation 13(4) of the PIT Regulations; and*
- *The Hon’ble SAT in an order dated December 22, 2011 in relation to Mr. Mahendra Pandey, dealing with whether an employee of Alka Securities Ltd, holding the position of compliance officer could be officer, held that an “officer” is one who can direct or influence the affairs of the company.*

Applying the same ratio, the three individuals in question in the instant case too do not fit within the scope of Regulation 13(4). They were covered by the Company of its own accord for purposes of the Internal Code of Conduct. They failed to meet the internal compliance obligations, which was picked up by an internal review by the company, which I, in line with its commitments, brought it to SEBI’s attention.

The obligation for disclosure, however, is not at all attracted for the reasons articulated above, and accepted in the cases mentioned above. The ratio in those cases apply to the instant case too, and since Regulation 13(4) was not attracted, there was no obligation to make disclosures under Regulation 13(6), and consequently, no penalty ought to be imposed in these proceedings.”

15. Shri Mahesh N. appeared for personal hearing on scheduled date and time i.e, October 12, 2017, 11:15 am and reiterated the submissions made in his reply to the SCN. He also sought permission to file further written submissions in the matter, which was acceded to. Shri Mahesh N submitted his further written submissions vide e-mail dated October 16, 2017. Following are the key submissions from the same:

“One, Would like to reiterate the fact that when I sold the share I was on sabbatical leave and was not privy to any company information. As mentioned, I was not even in the country. Hence, I would like to appeal to your kind consideration that I should not be considered as a designated officer of the Company for this period.

Request you to please consider the circumstances of the share sale as mentioned in the first point and my current personal situation in the second point while making your conclusion on the case.”

16. Though the SCN and Hearing Notice were delivered to Shri Puneet Virender Kumar, Shri Syed Tanvir Hussain and Sanjeev Parida through speed post / e-mail, however, they did not submit any reply with respect to the alleged violations by them mentioned in SCN. Further, they didn't appear for the personal hearing on scheduled date and time, nor did they seek any adjournment or further opportunity for the personal hearing. Given the above, the instant proceedings are now being continued further.

CONSIDERATION OF ISSUES AND FINDINGS

17. Having examined the SCN, the reply of the Noticees to SCN, if any, submissions made in the personal hearing, if any, the issues that arise for consideration in the present case are:
- a) Whether Shri Mahesh N, Shri Puneet Virender Kumar, Shri Syed Tanvir Hussain and Shri Sanjeev Parida were the “officer” as defined / prescribed under the PIT Regulations, and being so, failed to make necessary disclosure under Regulation 13(4) of PIT Regulations?
 - b) Whether Tech Mahindra Ltd failed to make disclosures under Regulation 13(6) of PIT Regulations?
 - c) If yes to either or to both a) and b), whether the violation, if any, attract monetary penalty under Section 15A(b) of the SEBI Act, and what quantum of monetary penalty should be imposed on the Noticees?

Issue a) - Whether Shri Mahesh N, Shri Puneet Virender Kumar, Shri Syed Tanvir Hussain and Shri Sanjeev Parida were the “officers” as defined / prescribed under the

PIT Regulations, and being so, failed to make necessary disclosure under Regulation 13(4) of PIT Regulations?

18. As per Regulation 2(g) of PIT Regulations read with clause (30) of the section 2 of Companies Act, 1956 *““officer” includes any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act”*. Hence, “Officer” has to be a person in accordance with whose directions or instructions the Board of Directors or any one or more Directors is or are accustomed to act.
19. As per submissions of Tech Mahindra Ltd, Shri Mahesh N, Shri Puneet Virender Kumar, Shri Syed Tanvir Hussain and Shri Sanjeev Parida were among the five designated employees which sold the shares in excess of the pre-clearance thresholds under its Model Code of Conduct for prevention of Insider Trading. None of the above employee would meet conditions viz, (i) occupy an office which entail interaction with the Board of Directors; (ii) are in a position to issue instructions to the Board of directors or any one of the directors; or (iii) are responsible for the management and governance of the company, hence would not qualify as “officer” as prescribed under PIT Regulations.
20. From the tabular representation submitted by Tech Mahindra Ltd depicting reporting structure of Shri Mahesh N, Shri Puneet Virender Kumar, Shri Syed Tanvir Hussain and Shri Sanjeev Parida in Tech Mahindra Ltd, it is noted that none of their immediate reporting managers were Director of Tech Mahindra Ltd.
21. Further, no credible information is available on record confirming that that under direction or instruction of Shri Mahesh N, Shri Puneet Virender Kumar, Shri Syed Tanvir Hussain and Shri Sanjeev Parida, the Board of Directors or any one or more Directors of Tech Mahindra Ltd were accustomed to act.
22. Given the above, it is determined that Shri Mahesh N, Shri Puneet Virender Kumar, Shri Syed Tanvir Hussain and Shri Sanjeev Parida were not the “officer” as alleged.

Issue b) - Whether Tech Mahindra Ltd failed to make disclosures under Regulation 13(6) of PIT Regulations?

23. As per regulation 13(6) of the PIT Regulations *“Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4)”*
24. On perusal of the disclosures filed by Shri Sanjeev Parida, Shri Mahesh N and Syed Tanveer Hussain with Tech Mahindra Ltd, following is noted:

- a) The disclosures were filed in Form E bearing caption "Continual Disclosure from Designated Employee(s) under Code for prevention of Insider Trading and SEBI (Prohibition of Insider Trading Regulations), 1992".
 - b) Details of change in shareholding
 - c) Notes on the bottom of the disclosure specify that "This disclosure is required to be given if there has been a change in holdings from the last disclosure made and such change exceeds: Rs.25 lakh in value or 5,000 shares or 1% of total shareholding, whichever is lower.
25. It is noted that the disclosures filed by Shri Sanjeev Parida, Shri Mahesh N and Syed Tanveer Hussain with Tech Mahindra Ltd, were filed under Code of Conduct for prevention of Insider Trading framed by Tech Mahindra Ltd under Regulation 12(1) of PIT Regulations. Hence, in scenario when Tech Mahindra Ltd did not receive disclosure under any of the Regulations viz, 13(1), 13(2), 13(3) and 13(4) of PIT Regulations, there is no liability on its part to disclose the same to Stock Exchange under Regulation 13(6) of PIT Regulations.
26. Since the alleged violations against the Noticees are not established, issue c) does not require any consideration.

ORDER

27. After considering all the facts and circumstances of the case and material made available on record, it is concluded that the alleged violation of Regulations 13(4) and Regulation 13(6) of the PIT Regulations could not be established against the Noticees.
28. Accordingly, the adjudication proceedings initiated against the Noticees stands disposed of without penalty.
29. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to the Noticees and also to the SEBI.

Date: November 8, 2017
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer