

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. EAD-7/BD/BM/2019-20/4542**

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:

Factorial Master Fund

In the matter of L & T Finance Holdings Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigation into the irregularity in the trading in the shares of L & T Finance Holdings Limited (hereinafter referred to as LTFH) and into the possible violation of the provisions of the Securities and Exchange Board of India Act 1992 (hereinafter referred to as the 'SEBI Act') and various Rules and Regulations made there under for the period from March 10, 2014 onwards till March 14, 2014 by Factorial Master Fund (hereinafter referred to as Noticee/Factorial). The scrip of LTFH is listed on BSE and NSE.
2. Abnormal movement was observed in the price of shares of LTFH. On March 13, 2014, i.e. the day on which the shares of LTFH were included in the F&O segment, the price of the March expiry futures contract of LTFH in the F&O segment opened at ₹87.80, and dropped by more than 10% to close at ₹ 75.55 on the same day. In cash segment, the scrip had opened at ₹86, rose to ₹88 and then dropped by more than 10% to close at ₹79.20.
3. On examination of a sample extract of the Bloomberg chat transcript between Nomura (FII) employee and Factorial's Barun Agarwal, it was observed that there was

aggressive short selling being pursued by Factorial. Barun Agarwal was seen to have reserved \$ 10 mn selling in LTFH futures with Nomura in the morning of March 13, 2014.

4. It was observed that initially, the selling in futures of LTFH was not supposed to be in discount to cash. Within an hour of start of sell trade, the discount to cash was okayed by Barun Agarwal of Factorial. Selling started at Rs. 87.78 and continued even when stock continued to tick downwards from Rs. 80.
5. During the sale, initial target of shorting 900 lots (1 lot = 1 contract = 4000 shares) was revised even higher to 1500 lots of LTFH. Finally, 1061 lots of LTFH were sold at average price of Rs. 78.63.
6. It was observed that Factorial had traded while in possession of UPSI and allegedly made the profit as under:

Quantity sold in futures	2,12,36,000 shares
Average Selling Price (Rs.)	80.94
Quantity bought through OFS	2,75,10,484 shares
Purchase Price (Rs.)	71.5
Profit	(Sell Price - Buy Price) * Minimum of (Sell Quantity & Buy Quantity)
Profit (Rs.)	20,04,67,840

7. It was, therefore, alleged that the Noticee has violated Regulation 3(i) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the "PIT Regulations 1992") read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations 2015 (hereinafter referred to as the "PIT Regulations 2015") and 12A(d), (e) of SEBI Act, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

8. Based on the findings of the examination, SEBI has initiated adjudication proceedings and I have been appointed as the Adjudicating Officer vide order dated May 18, 2017 under section 15 I of SEBI Act, 1992 to inquire into and adjudge the alleged violation

of Regulation 3(i) of PIT Regulations 1992 read with Regulation 12(2) of PIT Regulations 2015 and 12A (d), (e) of SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLY AND HEARING

9. A Show Cause Notice (hereinafter referred to as "SCN") bearing ref. no. EAD/BJD/BKM/25948/2017 dated October 24, 2017 was issued to the Noticee under Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as Adjudication Rules) to show cause as to why an inquiry be not held against it in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15 G(i) of the SEBI Act for the violations of Regulation 3(i) of PIT Regulations 1992 read with Regulation 12(2) of PIT Regulations 2015 and 12A(d), (e) of SEBI Act, 1992.
10. The SCN had been served on the Noticee on November 06, 2011. However, no reply has been received from the Noticee till the date.
11. In the interest of natural justice and in terms of Rule 4 (3) of the Adjudication Rules, vide notice dated July 02, 2018 Noticee was granted an opportunity of personal hearing on July 24, 2018. However, the Noticee failed to attend the hearing.
12. I am of the view that the sufficient opportunity has been provided to the Noticee. Since the Noticee failed to file the reply to the SCN, the reply dated June 23, 2014 filed by Factorial to SEBI has been taken on record. I am proceeding further in the matter based on the material available on record, in the interest of justice.

CONSIDERATION OF ISSUES

13. On careful perusal of the material available on record, I note that the issues that arise for consideration in the present case are:
 - a) *Whether the Noticee has violated Regulation 3(i) of PIT Regulations 1992 read with Regulation 12(2) of PIT Regulations 2015 and 12A(d), (e) of SEBI Act, 1992?*

- b) *Does the violation, if any, attract monetary penalty under Sections 15 G(i) of SEBI Act?*
- c) *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

14. Before proceeding further, I would like to refer to the relevant allegedly violated provisions of the law which read as under:

PIT Regulations 1992

Prohibition on dealing, communicating or counselling on matters relating to insider trading.

3 (1) No insider shall – (i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or

Regulation 12(2) of PIT Regulations 2015

Repeal and Savings.

12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

(2) Notwithstanding such repeal, –

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations.

FINDINGS:

15. I note from the SCN that there was a common SCN issued against Noticee and Larsen & Toubro Ltd.(L&T), for the violation of Regulation 3(i) of PIT 1992 read with Regulation 12(2) PIT Regulations 2015 and 12A(d), (e) of SEBI Act by Noticee and Regulation 13(3) read with Regulation 13(5) of PIT Regulations 1992 read with Regulation 12(2) of PIT Regulations 2015 by L&T in the shares of LTFH. I find that there is no linkage or commonality in the allegations that have been made against the two different entities in the SCN. Accordingly the case can be adjudicated limited to facts and circumstances applicable to the Noticee only in the instant order.
16. I find from the SCN that the Factorial had allegedly indulged in unusual and aggressive trading in the scrip of LTFH on March 13, 2014 ahead of the announcement of 'Offer for Sale' ("OFS") of shares of LTFH on March 14, 2014 by the promoter, L&T and thereby locked a profit of Rs. 20.04 crore. Details regarding the activities of the Factorial are as under:
- (a) Factorial, incorporated in Cayman Islands, operates as a collective investment vehicle or as a fund under the laws of Cayman Islands. Factorial has been trading in securities, inter alia, in the Indian securities market.
 - (b) LTFH is a company whose shares are listed on various stock exchanges. LTFH is promoted by L&T.
 - (c) As per the Securities Contracts (Regulation) Rules 1957 (SCRR), L&T, holding more than 82% shares of LTFH, was required to comply with the Minimum Public Shareholding (MPS) norms by reducing its shareholding in LTFH to 75% by August 2014.
 - (d) Accordingly, the Board of Directors of L&T in the meeting held on January 25, 2013 approved dilution of the company's stake in LTFH either by way of OFS or through any other mode and authorized the management to take necessary action.

- (e) After obtaining SEBI approval on July 18, 2013, L&T disposed of 1% of its shareholding in LTFH during November-December 2013 through market sale and the last sale was at Rs. 68.98 per share. Further sale of LTFH shares to meet the MPS norms could be effected by L&T after the cooling off period of 12 weeks from the previous sale that took place in November-December 2013.
- (f) On March 10, 2013 L&T addressed a letter to SEBI seeking exemption from cooling off period of 12 weeks ending on March 17, 2014, because considering the market conditions and other relevant factors, L&T was contemplating to sell the shares of LTFH through OFS may be in the next 2-3 days.
- (g) On March 10, 2013 Credit Suisse Securities (India) Pvt. Ltd. ('CS') as merchant banker of L&T conducted market gauging for LTFH with more than 70 institutional investors with a view to ascertain potential investors interest and the price at which the investors would be willing to subscribe to the shares of LTFH in the OFS. It is not in dispute that Factorial had participated in the said market gauging exercise, wherein negative sentiments were expressed meaning thereby that the investors would seek deep discount to buy shares of LTFH from L&T.
- (h) On March 11, 2014 NSE issued a circular whereby listing of LTFH was allowed in the Futures and Options ('F&O') segment for the first time from March 13, 2014.
- (i) On March 12, 2014 the investment team of the Factorial got risk limit approval from its compliance officer situated at Hong Kong to participate in the scrip of LTFH to be offloaded by L&T upto the limit of USD 25 million.
- (j) On March 13, 2014 some reputed brokers strongly recommended selling LTFH scrip in the F&O segment which was the first day of its listing in the F&O segment.

- (k) On March 13, 2014 futures contract in LTFH opened at Rs. 87.80 per share and closed at Rs. 74.55 per share. In the cash segment the price of LTFH shares opened at 86 per share and closed at Rs. 79.20 per share.
- (l) On March 13, 2014 in all 13664 derivative contracts equivalent to 5,46,56,000 shares of LTFH were traded in the F&O segment and out of these 13664 derivative contracts 5309 derivative contracts equivalent to 2,12,36,000 shares of LTFH were entered into by Factorial through five FIIs and the remaining 8355 derivative contracts equivalent to 3,34,20,000 shares of LTFH were entered into by traders other than the Factorial. It is not in dispute that at the end of trading hours on March 13, 2014, Factorial had kept all the 5309 derivative contracts open, whereas, other traders, squared off 7471 derivative contracts out of 8355 derivative contracts and kept only 884 derivative contracts open. Thus, on 13.03.2014 Factorial sold futures of LTFH (about 1/3 of the volume traded) and kept its position open while others squared off their positions leading to the Factorial ending up with over 80% of open interest.
- (m) At 18:57 PM on March 13, 2014 SEBI informed L&T that it had granted exemption from the mandatory cooling off period.
- (n) At 20:20 PM on March 13, 2014 L&T informed NSE & BSE about the OFS on April 14, 2014 between 09:15 AM to 03:30 PM.
- (o) AT 20:24 PM on March 13, 2014 L&T informed NSE & BSE that the floor price of LTFH for the OFS has been fixed at Rs. 70 per share. At 20:36 PM NSE published the OFS and at 20:52 PM on March 13, 2014 NSE announced that the L&T has fixed the floor price at Rs. 70/- per share.
- (p) On March 14, 2014 Factorial participated in the OFS as an investor and purchased 2,75,10,484 shares of LTFH at a price of Rs. 71.50 per share in the OFS offered by L&T.

Chronology of events related to OFS

(q) Following is the chronology of events related to OFS announcement.

Date	Event
23/12/2013	LT completed 1% open market sale to bring down promoter shareholding
04/03/2014	L T requested approval for OFS to shareholders and L T employees not to be taken as further public offer
10/03/2014	L T requested approval from SEBI for exemption from cooling off period of 12 weeks before OFS from date of 1% sale in December 2013 and requirement of minimum gap between two OFS of 2 weeks
10/03/2014	Credit Suisse was verbally mandated as broker for the OFS by LT
10/3/2014 - 13/03/2014	Market gauging exercise by Credit Suisse (including Factorial)
11/03/2014	Same letter as letter date 10/03/2014 forwarded by LT to SEBI
11/03/2014	NSE circular regarding availability of LTFH shares in F & O segment from March 13, 2014
13/03/2014	Introduction of LTFH shares in F & O
13/03/2014	Short sale in Futures segment of LTFH by Factorial
13/03/2014, 6.57 pm	Relaxation granted by SEBI for 12 weeks cooling off period. (12 weeks from 23/12/2013).
13/03/2014, 4 pm - 7 pm	Internal discussion In LT regarding floor price
13/03/2014, 8.24 pm	OFS floor price announcement by L & T to exchanges
13/03/2014, 8.52 pm	Exchanges published the floor price announcement
14/03/2014	OFS bid opened and shares allotted

17. I find that on March 10, 2014 L&T had applied to SEBI seeking exemption from the cooling off period so as to offload the LTFH shares through OFS prior to March 17, 2014 (date on which cooling off period was to expire). I also find that SEBI was not obliged to grant exemption and it was open to SEBI to reject the application made by L&T seeking exemption. Therefore, it could not be considered as UPSI. In such a case, mere fact that L&T had made application to SEBI on March 10, 2014 seeking exemption from the cooling off period could not be a ground to hold that L&T was to sell shares of LTFH through OFS prior to March 17, 2014 by obtaining exemption from SEBI.

18. I find that L&T with a view to achieve MPS norms had sold 1% shares of LTFH through OFS in November- December 2013 and the balance shares of LTFH were to

be sold on expiry of the cooling off period of 12 weeks, that is, on or after March 17, 2014. In such a case, Factorial had every reason to believe that as in the past L&T would sell shares of LTFH through OFS on or after March 17, 2014 and accordingly enter into derivative contracts in the scrip of LTFH in the F&O segment and keep the position open and thereafter buy shares of LTFH in the OFS that was likely to be offered by L&T on or after March 17, 2014. Thus, irrespective of any knowledge that L&T had made an application on March 17, 2014 seeking exemption, it was open to Factorial to aggressively sell shares of LTFH in the F&O segment which commenced for the first time on March 13, 2014 and buy the shares of LTFH from L&T in the OFS which was likely to be offered on or after March 17, 2014.

19. I find that by participating in the market gauging exercise carried out by CS during the period from March 10, 2014 to March 12, 2014 Factorial became privy to the UPSI that L&T would sell LTFH shares immediately is without any merit, because, on the dates on which market gauging exercise was conducted by CS there was no decision taken by SEBI to grant exemption from cooling-off period. In fact SEBI decided to grant exemption on March 13, 2014 after the trading hours and communicated the same to L&T at 18:57 PM on March 13, 2014, whereas, Factorial had aggressively traded in the LTFH shares in the F&O segment on March 13, 2014 during the trading hours and kept the position open hoping to buy shares of LTFH from L&T in the OFS that was likely to be offered on or after March 17, 2014. Therefore, mere fact that Factorial had participated in the market gauging exercise conducted by CS could not be a ground to hold that Factorial was privy to the UPSI.
20. Similarly, fact that the representative of Factorial had conversation with Mr. Sumit Jalan, of CS during the period from March 10, 2014 to March 12, 2014, could not be a ground to presume that Factorial became privy to the UPSI that L&T would sell shares of LTFH through OFS even before March 17, 2014 because, as on those dates apart from the application made by L&T seeking exemption, there was no reason to believe that SEBI would grant exemption. It is not the case of SEBI that application made by L&T is invariably allowed by SEBI.

21. In fact Mr. Sumit Jalan of CS in his statement recorded by SEBI on June 24, 2015 had categorically stated that specific terms of the OFS were to be exclusively determined by the management of L&T at the time of launching of OFS. Mr. Sumit Jalan had further stated that the day to day discussions between CS and L&T management were never disclosed to the investors including the representative of Factorial.
22. In such a case, I don't find merit in the fact that on account of the conversation between the representative of Factorial and Mr. Sumit Jalan of CS between March 10, 2014 to March 12, 2014 Factorial became privy to the UPSI.
23. I find that the information received by Factorial from CS/ its officials was in the 'ordinary course of businesses covered under the proviso to regulation 3 of the PIT Regulations and hence there was no case for taking action against CS and its officials. Therefore, having held that neither CS nor its officials have passed on any UPSI to Factorial, I am of the view that Factorial have not received UPSI during the market gauging exercise or during the conversation with Mr. Sumit Jalan of CS.
24. In fact, immediate and proximate facts and circumstances surrounding the events on which the charge has been framed against Factorial clearly show that the Noticee aggressively traded in the scrip of LTFH in the F&O segment on March 13, 2014 not on the basis that L&T had made application on March 10, 2014 but on the presumption that L&T would sell the LTFH shares through OFS on or after March 17, 2014.
25. I find that L&T had sold 1% shares of LTFH in November- December 2013 through OFS and was entitled to sell the balance shares after the expiry of the 12 weeks cooling off period on March 17, 2014. Therefore, Factorial who had participated in the market gauging exercise on March 10, 2014 had every reason to believe that L&T would sell LTFH shares on or after March 17, 2014. It is not in dispute that during the market

gauging exercise, various investors including Factorial had expressed their views demanding deep discount in the shares of LTFH. Therefore, Factorial had every reason to believe that the shares of LTFH would be offered by L&T at a deep discount on or after March 17, 2014. In the absence of any bar on the investors who had participated in the market gauging exercise to trade in the scrip in which the market gauging exercise was conducted, in the facts of present case, I am of the view that Factorial had not traded in the scrip of LTFH in the F&O segment on March 13, 2014 on the basis of UPSI. In the fact of present case, I am of the opinion, this is a fit case to grant benefit of doubt, because, it is possible that the Factorial aggressively traded in the scrip of LTFH in the F&O segment on March 13, 2014 and kept the position open not on the basis of UPSI but on the basis of calculated risk that L&T which had commenced offloading of LTFH shares in November-December 2013 would sell the balance shares of LTFH after the expiry of cooling-off period, that is, on or after March 17, 2014.

26. Accordingly, in exercise of the powers conferred under Section 15-I of the SEBI Act and Rule 5 of said Adjudication Rules 1995, I conclude that the charges levelled against the Noticee, viz., Factorial Master Fund do not stand established and the matter is, accordingly, disposed of.

27. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: September 23, 2019

B J DILIP

Place: Mumbai

ADJUDICATING OFFICER