

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/VV/JR/2020-21/ 7489]**

**UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT,
1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA
(PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES,
1995**

In respect of:
**Aditya Birla Sun Life AMC Limited
(PAN: AAACB6134D)**

**In the matter of selective disclosure of unpublished price sensitive information by
Manappuram Finance Ltd.**

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), pursuant to investigation in the matter of selective disclosure of unpublished price sensitive information by Manappuram Finance Ltd. (hereinafter referred to as "**MFL/ company**") observed that Aditya Birla Sun Life AMC Limited (hereinafter referred to as "**Birla Sun Life/ Noticee**") had sold its shares while allegedly in possession of unpublished price sensitive information during March 1, 2013 to March 20, 2013 (hereinafter referred to as "**investigation period**") and allegedly violated section 12A(d) and 12A(e) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with regulation 3(i), 3A and 4 of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations, 1992**") read with regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**PIT Regulations, 2015**").

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI vide order dated September 21, 2017 appointed Shri Jeevan Sonparote as the Adjudicating Officer under section 15 I of Securities Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**AO Rules**”) to inquire into and adjudge the aforesaid allegations under section 15G(i) of the SEBI Act. Pursuant to the transfer of the case, the undersigned was appointed as the Adjudicating Officer vide order dated August 13, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Based on the findings by SEBI, Show Cause Notice dated May 29, 2019 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4(1) of AO Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on them under Section 15G (i) of SEBI Act for the alleged violations. The Noticee replied to the SCN vide letter dated July 3, 2019 stating, inter alia, the following:

- *Pursuant to an arrangement entered with ING Investment Management (India) Private Limited ("IIM") and the Board of Trustees of ING Mutual Fund, Aditya Birla Sun Life Trustee Private Limited took over the Trusteeship of the Schemes of ING Mutual Fund from the Board of Trustees of ING Mutual Fund and Aditya Birla Sun Life AMC Limited took over the rights to manage the Schemes from IIM and become the Investment Manager of the Schemes of ING Mutual Fund with effect from October 11, 2014.*
- *During the first week of March, 2013, the MIS and the Accounts department of MFL in consultation with the senior management conducted the review of its loan portfolios and level of recoveries for the quarter ending March 2013, in which they anticipated the potential impact of such portfolios and recoveries on the financial result of MFL and contemplated potential under- recoveries during the said quarter.*
- *Pursuant to which in the Board Meeting of MFL held on 13th, March, 2013, the following was noted by the Board:*
 - "8. Presentation by the statutory auditors on certain loan port folios*

Further the meeting also discussed about the expected financial results for the year and observed that there was a probability that the company may have to report negative profit for the quarter pending 31st March, 2013 contrary to the expectation of the stake holders. Management said that it would seek professional advice as to what needs to be done in this regard towards making appropriate disclosures to all the stakeholders."

- *As per the captioned notice, MFL pursuant to such Board Meeting had gone to meet the Research Analyst wing of Ambit Capital Pvt. Ltd. with regards the aforesaid under performance of MFL during quarter ending March 2013 and other such issues as mentioned in the captioned Notice and its annexures.*
- *Thereafter on 19th March, 2013, ING Investment Management (India) Pvt. Ltd. received a research report on MFL from Ambit Capital Pvt. Ltd. at 09:35 a.m., however ING did not take any action on the basis of the said report and ING Mutual Fund continued to hold its portfolio even when the price of shares of MFL fell down by 20% on March 19, 2013.*
- *It is submitted that the said Research Report of Ambit Capital was forwarded by Ambit Capital to its clients (institutional and non-institutional). The said Report was forwarded to thousands of people by e-mail.*
- *On 19th March, 2013 itself, MFL also organized a conference call for its investors to explain the position/ decline in share price and answer the concerns of the investors. The said information regarding the conference call was published on the official website of MFL at 1:20 p.m. and the information about happening of the said call was available in public domain.*
- *The said conference call invitation was sent to hundreds of people, showcasing the wide publicity given by MFL to the information pertaining to the proposed call.*
- *Pursuant to the completion of the conference call, the announcement on the BSE website at 06:17 p.m. on March 19, 2013 was as under:*
"we expect an under recovery of revenue on certain gold loan portfolios due to connection in the gold price. This may result in reduction in profit numbers for the 4th quarter ending March 31, 2013."
- *The fund manager decided to sell the shares of MFL held by the four schemes of ING Mutual Fund and sold 6,34,200 shares of MFL on 20th March, 2013 at an average price of Rs 25.0449 per share.*
- *At this stage it is important to note that the price of the scrip of MFL had already fallen by 20% (circuit limit) at the end of trading hours on 19th March, 2013. Also, by the time when ING Mutual Fund sold the shares on 20th March, 2013 the price had further substantially fallen and the average price realized was Rs. 25.0449 per share i.e. further 10.60 % less than the previous day's closing price.*
- *From the above it is clear that ING Mutual Fund in the interest of its unitholders, towards whom it owed fiduciary obligations in accordance with the extant SEBI (Mutual Funds) Regulations, 1996 ("**SEBI Mutual Funds Regulations**") had sold the shares of MFL only after observing all the factors*

including the massive reduction in the share price of MFL on 19th March, 2013, attending the conference call organized by MFL for its investors and most importantly after the announcement was made by MFL on 19th March, 2013 at 06:17 p.m. about the likely under recovery of revenue on certain gold loan portfolios. The variation in market price was clear indicator that the information was known to the market and that the said fact had also been discounted in the pricing of shares of MFL. It is to be noted, that ING Mutual Fund did not sell a single share on March 19, 2013 and it was only post the information being disclosed by MFL itself on the stock exchange on evening of March 19, 2013 post a massive fall in the share price of MFL, that as a responsible mutual fund regulated by SEBI, ING Mutual Fund decided to cut short it's own public investor losses by selling the MFL shares next day in the market. Had it not sold the same, the increasing losses would have further jolted the interest of it's scheme investors which it was duty-bound to protect in terms of the regulatory framework prescribed under the SEBI Mutual Funds Regulations. The Clause 6 in the Fifth Schedule (Code of Conduct) of SEBI Mutual Funds Regulations clearly states that "the trustees and asset management companies of the mutual funds shall carry out the business and invest in accordance with the investment objectives stated in the offer documents **and take investment decision solely in the interest of unitholders**". Further, Regulation 25(6B) states that "the fund managers (whatever the designation may be) shall ensure that the funds of the schemes are invested to achieve the objectives of the scheme **and in the interest of the unit holders**".

- Under the PIT Regulations, the term 'unpublished' has been defined under Regulations 2(k) and has to be interpreted in a way as stated in the said regulations. It means any information which is not published by the Company or its agent and is not specific in nature. In the present case the crucial information was disclosed to the public at large on 19th March, 2013 through the BSE Website and therefore cannot be called to be unpublished.
- Therefore it is submitted that the shares sold by ING Mutual Fund on 20th March, 2013 could not be alleged to have been sold while in possession of any alleged UPSI as the Company on 19th March, 2013 itself had announced on the BSE Website that there was going to be some reduction in the recovery of loans and because of the price fall on gold there was a certainty of some losses to occur in the quarter ending March 2013. If at all there was any PSI, the same was disclosed to public at large on 19th March, 2013 at 06:17 p.m. Any genuine careful institutional investor like a SEBI regulated mutual fund which itself is managing third party retail public money, is duty-bound under SEBI regulatory framework itself to act in the interest of it's scheme investors. Any investor (and the responsibility only increases on an institutional investor like a mutual fund) is bound to act in accordance with the prevailing market conditions and accordingly take a decision to appropriately buy/sell the securities (and in the best interest of its retail public investors, in case of a mutual fund being the investor). It would be self-defeating to even remotely suggest that despite a free fall in the price of a security under it's portfolio followed by a confirming announcement on stock exchange by the company concerned validating the market fears, the said institutional investor

- professionally managed by fund managers shall still not off-load the securities on the next trading day when the share prices continue to fall.*
- *In the present matter ING Mutual Fund was in no manner reasonable expected to be in possession of the UPSI as also the information was already in public domain when the same was published by Ambit Capital, when MFL organized the conference call with the Investors and also when MFL had made the announcement on the BSE website.*
 - *In the present reply the crux of our submission is that when the shares of MFL were sold by ING Mutual Fund there existed no UPSI and therefore we cannot be held to have violated the alleged provisions of SEBI Act and PIT Regulations. Also to prove a charge of insider trading a higher degree of proof is required as it is a very serious charge and has to be established beyond doubt and not on preponderance of probabilities.*
 - *Without prejudice to the aforesaid submissions, it is submitted that when MFL had informed Ambit about the overview of the financial position of MFL and to seek professional guidance on a professional basis about disseminating the information about the 4th quarter results to the market and Ambit Capital in turn had prepared a Research Report on the shares of MFL and forwarded to thousands of people, at that stage the alleged UPSI had already been made public. Further, the fact that the conference call invitation was circulated to hundreds of people and was attended by several investors made it clear that the information was widely known. Finally, and most importantly, the fact that MFL itself did an announcement on stock exchange about the potential losses/under recovery of revenue on certain gold loan portfolio that too post a massive fall in share price of MFL, left no iota of doubt that there was no UPSI prevailing the next day when ING Mutual Fund sold the shares to cut short the losses of it's own public investors (an obligation casted under SEBI Mutual Funds Regulations itself).'*
 - *To summarize what is stated above, it is stated that first of all there existed no PSI under Regulation 2(ha) of PIT Regulations as alleged in the captioned notice and if at all there existed any PSI, ING Mutual Fund had sold the shares only after the information was made public by MFL on making an announcement about the same on 19th, March, 2013 on BSE Website at which time it ceased to be an UPSI as otherwise alleged in the captioned notice. ING Mutual Fund at best only met with it's fiduciary obligations towards it's own public investors, as also legally required under SEBI Mutual Funds Regulations.*
 - *Now dealing with the alleged violations of SEBI Act and PIT Regulations, the following may be noted:*
 - i. *With respect to Section 12A(d) of SEBI Act, 1992 - it is submitted that ING Mutual Fund had sold the shares of MFL post the alleged PSI was made public and therefore ING Mutual Fund (and therefore Noticee) had not engaged in any act of Insider Trading.*
 - ii. *With respect to Section 12A(e) of SEBI Act, 1992 - it is submitted that ING Mutual Fund (and therefore Noticee), had not dealt in securities of MFL while in possession of material or non-public information in a manner*

which is in contravention of the provisions of SEBI Act, 1992 or the rules or regulations made thereunder.

- iii. With respect to Regulations 3(i) and 3A of PIT Regulations - it is again reiterated that ING Mutual Fund (and therefore Noticee) had not dealt in shares of MFL while in possession of any alleged UPSI and had dealt in shares of MFL only after the information was already made public and available in public domain.*
- iv. With respect to Regulation 4 of PIT Regulations - it is submitted that ING Mutual Fund (and therefore Noticee) had not dealt in shares of MFL in contravention of the provisions of regulations 3 or 3A and therefore is not guilty of insider trading.*

4. In order to comply with the principles of natural justice an opportunity of personal hearing was given to the Noticee on September 20, 2019 vide notice dated September 3, 2019. The Noticee appeared on the scheduled date and reiterated the submissions made vide letter dated June 3, 2019.

CONSIDERATION OF ISSUES AND EVIDENCE

5. I have carefully perused the charges levelled against the Noticee in the SCN, its reply and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-

- (a) Whether the Noticee has violated the provisions of section 12A(d) and 12A(e) of SEBI Act read with regulation 3(i), 3A and 4 of PIT Regulations, 1992 read with regulation 12(2) of PIT Regulations, 2015.
- (b) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15G(i) of SEBI Act for the alleged violation?; and,
- (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

6. Before proceeding further, I would like to refer to the relevant provisions of SEBI Act, PIT Regulations, 1992 and PIT Regulations, 2015.

SEBI Act 1992

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder

PIT Regulations 1992

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

3. 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 19[when in possession of] any unpublished price sensitive information;

3A. No company shall deal in the securities of another company or associate of that other company while in possession of any unpublished price sensitive information.

4. Any insider who deals in securities in contravention of the provisions of regulation 3 or 3A shall be guilty of insider trading.

PIT Regulations, 2015

12. Repeal and Savings

(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;

7. I note from the documents on record that on March 19, 2013, the price of the scrip of MFL declined by 20% from ₹ 34.00 to ₹ 27.70 (lower circuit filter rate). Several newspapers on March 20, 2013 had alleged that on March 18, 2013 MFL had selectively given guidance pertaining to Q4 FY13 (Jan-Mar, 2013) results of the company to certain analysts of Ambit Capital P. Ltd. (hereinafter referred to as "Ambit").
8. The sequence of events leading up to the official announcement on March 20, 2013 of the anticipated loss in Q4 of FY12-13, as submitted by MFL to SEBI is as under:-

Sl. No.	Date	Time (approx.)	Nature of event	Persons involved from the company
1.	First week of March, 2013	Not Applicable	Routine review of loan portfolios and the level of recoveries	1. Mr. Bindhu A.L. 2. Mr. Bikash Mishra 3. Mr. I. Unnikrishnan 4. Mr. V.P. Nandakumar 5. Mr. B.N. Raveendra Babu 6. Mr. Raju N. 7. Mr. Rajesh Kumar K.
2.	March 13, 2013	10:00 a.m. to 05:00 p.m.	Board meeting	1. Mr. Jagdish Capoor 2. Mr. E.A. Kshirsagar 3. Mr. P. Manomohanam 4. Mr. V.M. Manoharan 5. Mr. Shailesh J Mehta 6. Mr. Ramachandran V.R. 7. Mr. Rajiven V.R. 8. Mr. Gautam Saigal
3.	March 18, 2013	04:00 p.m.	Discussions between Mr. Unnikrishnan, ED & Dy. CEO and Ambit (Analyst wing)	1. Mr. I. Unnikrishnan 2. Mr. Sachin Agarwal
4.	March 19, 2013	8:30 a.m.	Ambit releases the contents of the discussion with Mr. Unnikrishnan as 'Ambit Insights'	
5.	March 19, 2013	1:20 p.m.	Investors conference call	1. Mr. I. Unnikrishnan 2. Mr. Sachin Agarwal

Sl. No.	Date	Time (approx.)	Nature of event	Persons involved from the company
			announced by MFL on its website	
6.	March 19, 2013	2:30 p.m. to 3:45 p.m.	Conference call with investors	1. Mr. Unnikrishnan 2. Mr. Rajesh Kumar K. 3. Mr. Vipin G.S.
7.	March 20, 2013	3:30 p.m.	Official public announcement to the stock exchanges	1. Mr. Unnikrishnan 2. Mr. Rajesh Kumar K.
8.	March 20, 2013	6:00 p.m.	Clarification on official public announcement to the stock exchanges	1. Mr. Unnikrishnan 2. Mr. Rajesh Kumar K.

9. From the above sequence of events, it is observed that the company reviewed its loan portfolios and level of recoveries during the first week of March 2013. Therefore, price sensitive information came into existence on March 1, 2013. MFL on March 19, 2013 @18:17 informed BSE about the "*reduction in profit numbers for the 4th quarter ending March 31, 2013*". It was only on March 20, 2013 @15:36 through a clarification to the stock exchanges MFL informed that it "*expect a one-time hit of ₹250 cr. during this quarter either by way of crystalised income not being received or expected to be not received resulting in a Q4 loss up to ₹50 cr.*". Thus, the price sensitive information was published on March 20, 2013 after trading hours.

10. The corporate announcement dated March 20, 2013 (i.e. the clarification to the news article) made by MFL to BSE, is summarized as under:-

- a) The MFL has denied the allegations that it selectively shared some information with some investors.
- b) MFL met Ambit analysts at their office on March 18, 2013 around 4:00 p.m. The meeting was stated to be for seeking some guidance on a professional basis on guiding the market about the 4th quarter results and future outlook.

- c) Considering the scrip price fall on March 19, 2013, MFL decided to have an investor's conference call. The conference call was announced at about 1:20 p.m. on its website and the call started at 2:30 p.m. Mr. Unnikrishnan, Executive Director and Deputy CEO of MFL represented MFL and presented the facts and figures which was completed at about 2:50 p.m. and the conference call got over at around 3:45 p.m.
- d) During the conference call on March 19, 2013 between 2:30 p.m. and 3:40 p.m., Mr. Unnikrishnan informed the market participants that the company expects a one-time hit of ₹250 cr. during this quarter resulting in a Q4 loss up to ₹50 cr.
- e) On March 19, 2013 @ 18:17, MFL informed BSE that it expects an under recovery of revenue on certain gold loan portfolios due to correction in the gold price. This may result in reduction in profit numbers for the 4th quarter ending March 31, 2013.

11. SEBI also sought comments from Ambit regarding selective disclosure of UPSI by MFL to Ambit. Ambit informed that two representatives from Ambit namely Mr. Saurabh Mukherjea and Mr. Pankaj Agarwal had a meeting with Mr. Unnikrishnan and Mr. Sachin Agrawal, on March 18, 2013 at 4:00 p.m. Ambit, vide email dated March 22, 2013 and November 15, 2013 provided the following sequence of events on March 18 - 19, 2013 and other information:-

Time	Event
March 18, 2013	
Around 12:30 p.m.	Call from Mr. Unnikrishnan seeking appointment with Ambit's research analyst.
4:00 p.m. – 5:15 p.m.	Meeting with the management of MFL at Ambit's office
7:15 p.m. – 7:30 p.m.	Internal meeting by Ambit's team to review the meeting with the management of MFL.
7:30 p.m. – 9:00 p.m.	Preparation of research report and internal review

Time	Event
March 19, 2013	
Around 8:30 a.m. for about 5 minutes	Call by Ambit to MFL management intimating them of the publication of the research report. Since Ambit was putting the stock “under review” from “buy”, Ambit suggested MFL management to hold a call with investors.
8:30 a.m. onwards	Distribution of Ambit research report through email to all clients (institutional and non institutional). The report included research report on MFL and analyst report on the impact of rate cut in BFSI sector.
Around 10:00 a.m.	Email from Ambit to MFL management requesting them to hold a conference call with all market participants (analysts / investors etc.) and offering Ambit’s help in organizing the call.
Around 10:15 a.m.	Reply from MFL management saying that they are organizing a conference call through M/s Spark Capital.
Around 11:00 a.m.	Email and phone conversation between Ambit’s sales team member and Mr. Unnikrishnan reiterating that MFL to do an investor call through Ambit. Mr. Unnikrishnan informed that they have already agreed to an investor call with M/s Spark Capital but post that was willing to give some time for further discussions with investors.
2:30 p.m. to 3:40 p.m.	Participation in conference call organized by MFL along with other analysts / investors. During the conference call, Mr. Unnikrishnan told the call participants that instead of profit of ₹85-90 cr., there could be losses of ₹50 cr. during Q4FY13 due to under recoveries on a ₹1500 cr. portfolio.

12. Ambit’s analysts then focused on understanding the impact of this dynamic on the Q4 FY13 results. Since in the Q3 FY13 results the management had already highlighted “interest income reversals” (of around ₹35-₹40 cr. in Q4 FY13 and an insignificant amount in Q1 FY14) on some of its FY12 originated portfolios, Ambit sought clarification whether falling gold prices would change the Q4 FY13 guidance of ₹35-₹40 cr. MFL commented that clarity on this would emerge after Q4 FY13 ended (until the future impact of the change in gold prices by the end of March 2013 was known). Management also stated that there is no risk to the business model per se since none of the concerns stated above shall apply to the post Feb’12 originated portfolio (as

from Feb'12 onwards due to RBI strictures on gold finance NBFCs had to lower their LTVs).

13. During the post meeting internal review, Ambit analyst did not feel that they had as much clarity on the Q4 FY13 results as would be ideally required to publish forecasts. Whilst the Ambit analysts believed that falling gold prices was bad news for the gold loan lenders including MFL, the extent of the hit on Q4 earnings was difficult to ascertain. A decision was therefore taken to put Ambit's estimates and valuation "under review" under Ambit's standard operating procedures.
14. After the aforesaid meeting, on March 18, 2013 Ambit changed its rating of MFL stock from "Buy" to "Under Review" and published a research report based on its meeting with MFL which was distributed to its clients (broking as well as research) on March 19, 2013 before the market opening hours.
15. From the transcripts of the conference call held on March 19, 2013 provided by Spark Capital Advisors (P) Ltd, organizer of the conference call, it is observed that a particular market participant had specifically queried Mr. Unnikrishnan regarding alleged selective disclosure of information before the conference call on March 19, 2013. The relevant extracts of the question asked by the particular market participant and Mr. Unnikrishnan's reply is given below:-
- "Question of market participant:** Sir, my second question which is more about you are reporting. I think some more Sir we could not appreciate your selective disclosure to a particular analyst or over brokerage house because I think stock fell 16% and 17% and now you are doing the call rather than doing the call first before telling the analysts in general?
- Reply of Mr. Unnikrishnan:** Yes I take your point. I mean that is a valid lesson and in fact you know my intention was to sensitize the market so I had certain discussions in order to communicate this I thought I should ask somebody that is what has happened. So it was done with the good intention."
16. The company in its minutes of the Board meeting held on March 13, 2013, recorded at point no. 8 that- "*there was a probability that the company may have to report*

negative profit for the quarter ended 31st March 2013 contrary to the expectations of stakeholders. Management said that it would seek professional advice as to what needs to be done in this regard towards making appropriate disclosures to all the stakeholders.". Further, the corporate announcement made on March 20, 2013 at 15:36 hrs, they had stated that - *"... we have met M/s Ambit Capital analyst wing seeking some guidance on a professional basis on guiding the market about the 4th quarter results and future outlook."* Though, Ambit has not categorically admitted to have in receipt of information of potential losses of MFL for the 4th quarter of FY2012-13 but the meeting between them was to seek professional advice, which is on all probabilities on guiding the market about the quarterly results.

17. During the period 01/03/2013 to 20/03/2013 (i.e. the period when price sensitive information remained unpublished) entities have net sold 4,26,65,093 shares across NSE and BSE (i.e. 3,73,29,077 shares on NSE and 53,36,016 shares on BSE). The Noticee made a gross sale of 6,34,200 shares.

18. From the title of the research report viz. *"Takeaways from meeting with management"* and the contents of the report i.e. *"..... we met Mr. Unnikrishnan, ED of Manappuram Finance, to understand the impact of the gold price fall"* it is observed that the report was prepared on the basis of discussion Ambit had with Mr. Unnikrishnan, ED of MFL. Thus, the recipients of the research report were aware that the report was prepared on the basis of the meeting Ambit held with Mr. Unnikrishnan and were privy that the said information was not public.

19. Further, during the conference call market participants were informed by Mr. Unnikrishnan that the company expects a one-time hit of ₹250 cr during the quarter resulting in a Q4 loss up to ₹50 cr before the same was disclosed to the public through the stock exchanges on 20/03/2013. Thus, the market participants who attended the conference call were privy that the said information provided to them was not public.

20. Before proceeding further, it is essential that we discuss few points:

- i) **What was the UPSI:** In terms of Regulation 2 (ha), periodical financial results of the company shall be deemed to be price sensitive information and the information remain as UPSI till the information is not published by the company or its agents and is not specific in nature. MFL in its minutes of the Board meeting held on March 13, 2013 has recorded that "*there was a probability that the company may have to report negative profit for the quarter ended 31st March 2013 contrary to the expectations of stakeholders. Management said that it would seek professional advice as to what needs to be done in this regard towards making appropriate disclosures to all the stake holders.*" Therefore, the information of negative profit for the 4th quarter of FY2012-13 is deemed to be price sensitive information. Further, when the information was made public (in the stock exchanges), the price of the scrip declined by 14.25% on March 20, 2013. MFL announced its financial results for the quarter ended March 31, 2013 on May 15, 2013 at 17:45 hrs. On May 16, 2013 the price of the scrip on the BSE fell from a closing price of ₹16.00 on 15/05/2013 to a closing price of ₹15.00 on 16/05/2013 (i.e. a decrease of 6.25%).
- ii) **When the UPSI was made public:** Before coming to a conclusion I would like revisit the sequence of events. On March 18, 2013, Mr. Unnikrishnan met at Ambit's Office at 4:00 p.m. and a research report was prepared by Ambit at 7:30 p.m. to 9:00 p.m. After a consultation with MFL on March 19, 2013 around 8:30 a.m. for 5 minutes, the research report was distributed to all clients (institutional and non-institutional). Email was sent to 2194 email addresses. Thereafter a conference call was organized between 2:30 p.m. to 3:40 p.m. along with analysts/ investors where Mr. Unnikrishnan told the call participants that instead of profit of ₹85-90 crore, there could be losses of ₹50 crore during Q4FY13 due to under recoveries on a ₹ 1500 crore portfolio.
- iii) It is also observed that on March 19, 2013, CNBC TV 18 throughout the day had run several news reports on the change of RBI's policy on "Loan to Value' norms for gold loans and its specific impact on market players including MFL.

Further, reference was also made on the Research Report and the ongoing management call.

- iv) Finally on March 19, 2013 at 6:17 p.m. MFL informed BSE about the “reduction in profit numbers for the 4th quarter ending March 31, 2013”. It was only on March 20, 2013 at 3:36 p.m. through a clarification to the stock exchanges MFL informed that it “expect a one time hit of ₹ 250 crore during this quarter either by way of crystalised income not being received or expected to be not received resulting in Q4 loss upto ₹50 crore”

21. From the above sequence of events, I find that although the UPSI was disclosed to the stock exchanges after trading hours of March 20, 2013, the information was already in the public domain before that. As soon as the research report was distributed to 2194 email addresses on March 19, 2013, the information ceased to be unpublished. CNBC TV 18 was covering the news of MFL since morning 9: 22 a.m on March 19, 2013 indicating that there were some concerns about the income reversal issue in the third quarter and MFL is under pressure. .

22. Moreover, the Research Report that was circulated had a specific disclaimer which expressly stated that *“the recommendations, opinions and views contained in this Research report reflect the view of the research analyst named in the Research Report and are based upon publicly available information and rates of taxation at the time of the publication, which are subject to change from time to time without any prior notice.”* Further, there is no laid down requirement to make any independent verification, particularly when the report was circulated among more than 2000 recipients including business and finance news platform like Bloomberg. Mere reference in the title of the report viz. takeaways from the meeting with the management, i.e., “we met Mr. Unnikrishnan, ED of Manappuram finance etc....” is not sufficient to hold the Noticee responsible for not treating the report, as based on information which is not public. Meeting between analysts and management of listed companies is not unusual practice in the industry before preparation of research reports. It is primarily a company’s management duty to not divulge any unpublished price sensitive information during such meetings and legal

obligation on research analyst not to publish research reports based on any unpublished price sensitive information.

23. In this regard, I have come across with a reference (available in public domain) to the widespread public consultation on the Sodhi Committee Report before coming into being of (revised) PIT Regulations 2015 and views of SEBI on the same, with respect to, '**Unaware of Tipper's violation and innocent' recipient defense**'. The report (Para 55) suggests "*where a person trades on the basis of contents of a research report which later turns out to have contained UPSI illegally procured by the research analyst, the fact that a bona fide recipient of that report trade when in possession of that report should not be visited with the charge of insider trading.*" After considering the varied public comments, SEBI's proposal to the Board stated "*there is merit in the public comments. As insider trading by its very nature is difficult to detect and even after it is detected, the same is very difficult to prove.*" It was proposed not to bring such a defense into Regulations as it contains subjective criteria which may make a case impossible to establish. However, while proposing not to bring such a defense into the Regulations, the SEBI's Proposal also stated "*An insider may prove his innocence by demonstrating the inclusive list of circumstances provided in the regulations, in a case and it is up to the authority adjudicating to consider it.*" Hence, it is important to have full and holistic consideration to the peculiar facts and circumstances associated with the case as brought out by submissions of the Noticee, its examination vis a vis findings of the Investigation and related observations noted and relied upon by the AO, as relevant to the case, before arriving to the conclusion.

24. I find that the Noticee was not in a position to know that the information that was distributed in the research report or discussed in the conference call or being covered by media is UPSI. The PIT Regulations, 1992 specifies (Schedule II, clause 7) certain medium by which disclosure/dissemination of information can be made:

- Disclosure/dissemination of information may be done through various media so as to achieve maximum reach and quick dissemination.

- Corporates shall ensure that disclosure to stock exchanges is made promptly
- Corporates may also facilitate disclosure through the use of dedicated internet website
- Company websites may provide a means of giving investors a direct access to analyst briefing material, significant background information and question and answers
- The information filed by corporates with exchanges under continuous disclosure requirement may be made available on the company website.

25. Hence, I am of the view that disclosing the UPSI to the stock exchange is one of the many ways by which information can be disseminated. MFL had disclosed the price sensitive information to the stock exchange on March 19, 2013 at 6.17 p.m. The Noticee having evaluated the market condition and the massive fall in the share price of MFL, had sold 6,34,200 shares on March 20, 2013 which was after the information was already available on the website of BSE. In this regard, I am inclined to accept the reliance placed by the Noticee on the SEBI WTM Order dated 31 January, 2018 in the matter of 63 Moon Technologies Limited whereby the WTM held that a newspaper article in which there had been publication of the complete and precise details of the unpublished price sensitive information is not speculative in nature, and thereby, the UPSI cease to exist from the date of such publication. In view of facts and circumstances of the present case, I find the media coverage about MFL by well-known TV Channel CNBC TV18 and timing of such coverage has not been taken into account by the Investigation. Such coverage cannot be dismissed either as speculative in nature as, it is observed that, the information disclosed in the conference call and disseminated through the news channel was the same as disclosed to the stock exchanges. Hence, the UPSI wrt can be said to have become non-existent as “Unpublished” at the time the time of placing of first sell order, by the Noticee on March 20, 2013.

26. If we, for a moment, see the transactions of Noticee referred in the SCN purely from the point of view of the unit holders in the mutual fund, it is found that the act of selling

of the scrip of MFL during the said time was necessary to avoid significant loss to the unit holders in the scheme since the price of the scrip was rapidly falling after the research report was issued in the morning of March 19, 2013 and continued so, during and after the conference call held in the afternoon of March 19, 2013. It may be noted that the Noticee is bound by its fiduciary responsibility with the unit holders to act in their best interest in terms of the SEBI Mutual Funds Regulations. This is an important aspect of investor protection which cannot be ignored while adjudging the case for imposing monetary penalty on the Noticee for the violations alleged in the SCN. The Investigation has not brought out any instance of personal benefit occurring to fund manager or any other KMP or employee of the Noticee due to the said transactions. Besides, Investigation has also not brought any adverse observation attributing fall in the price of the scrip due to selling by the Noticee or any other institution/s. As such, I am inclined to accept the submission of the Noticee (dated July 3, 2019) that, the Noticee has acted in diligent manner as any other reasonable institutional investor would have acted in the given set of circumstances.

27. In view of the above, I do not find a reasonable and acceptable degree of probability towards proving beyond doubt or even, without existence of significant doubt that Noticee had traded in the scrip of MFL when in possession of UPSI and hence, the allegation of violation of section 12A(d) and 12A(e) of SEBI Act read with regulation 3(i), 3A and 4 of PIT Regulations, 1992 read with regulation 12(2) of PIT Regulations, 2015 does not stand established.

ORDER

28. In view of the above, after considering all the facts and circumstances of the case, the material available on record and the submission made by the Noticee, in exercise of the powers conferred upon me under section 15I of SEBI Act, I hereby dispose of the SCN in the matter without any penalty.

29. In terms of Rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date : April 13, 2020
Place : Mumbai

VIJAYANT KUMAR VERMA
ADJUDICATING OFFICER