

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/VV/JR/2019-20/ 7331]**

**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:
**IDFC Asset Management Company Ltd.
(PAN: AACCA3262H)**

**In the matter of selective disclosure of unpublished price sensitive information by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Board of India (hereinafter referred to as 'SEBI'), pursuant to investigation in the matter of selective disclosure of unpublished price sensitive information by Manappuram Finance Ltd.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 IDFC Asset Management Company Ltd. (hereinafter referred to as "**IDFC/ Noticee**") had sold its shares while allegedly in possession of unpublished price sensitive information during March 1, 2013 to March 20, 2013 (hereinafter referred to as "**investigation period**") and allegedly violated section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 June 27, 2019 stating, inter alia, the following:

- *Manappuram Finance Limited ("MFL") is a company listed on BSE Ltd. and National Stock Exchange of India Limited. In terms of facts discussed under the SCN, the Noticee understands that certain officials of MFL held a meeting with certain research analysts of Ambit Capital Pvt. Ltd. ("Ambit") on March 18, 2013.*
- *Post its meeting with MFL, the analysts at Ambit published a research report wherein the rating of MFL's stock was changed from "Buy" to "Under Review" (hereinafter referred to as "**Research Report**"). As per the SCN, this was distributed to clients of Ambit on March 19, 2013 prior to the market trading hours. The Research Report contained certain key takeaways from Ambit's meeting with MFL, which are mentioned in Paragraph 16.6 of the SCN and concluded that "Given that interest revival/interest lost on the portfolio originated prior to Feb '12 is expected to be higher than earlier estimates, we put our earning estimates and valuation under review....".*
- *The SCN states that the information of negative profit of INR 50 crores in the quarterly results of the 4th quarter is deemed to be price sensitive information which was published by way of disclosures issued by MFL on March 20, 2013, after market hours. On this basis, the SCN alleges that MFL had passed on price sensitive information, which was unpublished, to Ambit during its meeting on March 18, 2013 (the unpublished price sensitive information is hereinafter referred to as*

"UPSI"). It is further alleged that the Research Report prepared by Ambit was on the basis of this UPSI and thereby Ambit had communicated UPSI to its clients. Further, MFL disclosed the 4th quarter 'negative profit' of around INR 50 crores to the investors on the Con Call, prior to disclosing it to the public through the stock exchanges. Therefore, it is alleged that the participants of the call received the UPSI.

- The Noticee was one of the recipients of the Research Report and a participant of the Con Call, and thereby it is alleged that the Noticee received UPSI. As the Noticee had traded in the stock of MFL on March 19 and 20, while in possession of the UPSI, the SCN alleges that the Noticee is guilty of insider trading.
- The Noticee received the Research Report by way of an email sent by Dharmen Shah of Ambit at 09:35AM on March 19, 2013. The Noticee is an asset management company and deals in securities on the stock exchanges in the interest of unitholders in their fiduciary capacity. As institutional investors and fiduciaries in the securities market, the Noticee trades in securities in an organized manner driven by internal processes as per their internal code of conduct and SEBI (Mutual Funds) Regulations, 1996. Further, the Noticee has a strict insider trading policy, which prohibits trading based on any suspicious and unpublished price sensitive information. As a fund house, the Noticee has strict compliances and internal policies to ensure that trading in securities is based upon information which has come from a structured channel or source, and not through market grapevine and least of all insider information. To that effect, the Noticee ensures that information in relation to their portfolio companies is received only by methods legally permitted by SEBI and other regulatory authorities.
- It is market practice, which is recognised and permitted by SEBI that allows for research analysts to meet officials of listed companies. However, there are guidelines prescribed by SEBI in relation to information which can be shared by officials of listed companies to such research analysts. Upon meeting with officials of listed companies, research analysts often publish research reports or organize conference call with investors to share their insights derived from their discussions with the officials of the company.
- Investors, especially institutional investors such as asset management companies who act as fiduciaries in the interest of its unitholders, rely upon such research reports and conference calls to form their investment decisions. In fact, it is legitimately expected of an asset management company to rely upon such information which has been communicated in a legally prescribed manner. It is strange for SEBI to frame such serious charges of insider trading on the Noticee, solely on account of basing its trading decisions on the Research Report issued by a SEBI registered intermediary and a Con Call initiated by officials of MFL, especially when the SCN fails to bring out any evidence that may lead to a presumption that the Noticee had the knowledge that the information shared with it contained any unpublished price sensitive information.
- Before we address the merits of the allegations contained in the SCN, we would like to submit that if asset management companies are not permitted to obtain/rely upon information provided by SEBI registered intermediaries and conference calls organized by company officials, it would neither be in the interest of the

ultimate investors, unitholders of the asset management company, nor would it lead to efficiency and transparency in the securities market.

- *In relation to the alleged dissemination of unpublished price sensitive information - (i) by Ambit through the dissemination of Research Report to hundreds of its clients; and (ii) by officials of company during the Con Call organized by MFL, it is submitted that the Noticee is an innocent recipient of the information. The Research Report was obtained without solicitation, and as an existing investor in MFL, the Noticee was invited to the Con Call.*
- *The Noticee had acted in a bona fide manner and in the ordinary course of business, and had no reason to believe that any of the information shared through the Research Report could be potentially unpublished price sensitive information. It is not the case that it would be expected from an asset management company or any investor, that an independent investigation be conducted by them to ascertain whether the information shared by a SEBI registered intermediary through research reports is based on published or unpublished information.*
- *It is submitted that it was reasonable for the Noticee to expect that reputed market intermediaries and companies would follow the prescribed process of law and the Noticee is not required to make an independent investigation of whether these agencies have committed lapses in their internal compliances. It is pertinent to note that all research reports are issued with the disclaimer, as was the case with the Research Report, that they are based solely of publicly available information. Therefore, it is submitted that a serious allegation of insider trading on an investor cannot be made when trades are executed by relying on the research reports issued by SEBI registered market intermediaries, especially when no specific facts have been brought to light which indicates that the Noticee was aware or was reasonably expected to be aware that the Research Report contained any UPSI.*
- *As stated hereinabove, the SCN clearly establishes the definition of UPSI. UPSI has been defined in the SCN as the 'negative profit' of MFL of about INR 50 crore in the 4th quarter of FY 2012-13. But throughout the Research Report, Ambit had not provided the quantum or any indication of the amount of losses expected in the 4th quarter.*
- *While SEBI correctly points out, as stated in the Research Report, that the Research Report was prepared pursuant to the meeting of Ambit with the management of MFL, it is submitted that SEBI has erred in arriving at the conclusion that the recipients, including the Noticee, were 'privy'/aware that the information in the Research Report is not publicly available information. SEBI has incorrectly attempted to impute knowledge of UPSI to the Noticee, where such an inference is not plausible.*
- *Ambit is a SEBI registered intermediary and an entity with a high reputation in the securities market. It had issued various research reports in the past, which*

were issued without flouting any of the extant laws. To the knowledge of the Noticee, SEBI had not penalised Ambit for communicating unpublished price sensitive information on any prior occasion and thereby, Noticee had no reason to suspect that the information in the Research Report may contain any UPSI. Further, the Noticee has acted in a bona fide manner with the reasonable belief and expectation that Ambit and MFL would follow the restrictions imposed by the PIT Regulations against communication of unpublished price sensitive information. It is submitted that the Noticee cannot be legitimately expected to trade on securities only upon conducting detailed investigation and ensuring that information received by it through research report does not contain any UPSI. If investors are proscribed from trading based on information received in research reports without an independent investigation, it would lead to market inefficiencies and would also not be in the interest of investors and securities market.

- Internationally, tippee's knowledge of the information being non-public has been given importance in matters involving suspected insider trading. In the United States, it had been held in various cases that the tippee can be held liable for insider trading only if he knew that the tipper had disclosed the material and sensitive information in breach of his obligation of confidentiality which he owes to the issuer.*
- Given that the Research Report has been sent to hundreds of people/entities on a non- discriminatory basis, it is submitted that the price-sensitive information in the Research Report, if any, has been published/made public.*
- It is pertinent to note that under the PIT Regulations 'unpublished' has been defined as "information which is not published by the company or its agents". Thereby, as a corollary, unpublished price sensitive information becomes public when a company publishes it. During the Con Call, MFL had clearly stated that it expects a 'negative profit' of INR 50 crore in the 4th quarter. This evidences the fact that UPSI was published during the Con Call. It is submitted that the regulatory requirement of disclosing the same on the website of MFL or to the stock exchanges is pursuant to the UPSI becoming public, and not otherwise. The mere fact that appropriate disclosures were not made by MFL does not impinge upon the already public nature of the price sensitive information, and transition it back to unpublished price sensitive information.*

4. In order to comply with the principles of natural justice an opportunity of personal hearing was given to the Noticee on September 19, 2019 vide notice dated September 3, 2019. The Noticee appeared on the scheduled date and reiterated the submissions made vide letter dated June 27, 2019.

CONSIDERATION OF ISSUES AND EVIDENCE

5. I have carefully perused the charges levelled against the Noticee in the SCN 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.

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 20/03/2013 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. Manomohanan 4. Mr. V.M. Manoharan 5. Mr. Shailesh J Mehta 6. Mr. Ramachandran V.R. 7. Mr. Rajiven V.R. 8. Mr. Gautam Saigal

Sl. No.	Date	Time (approx.)	Nature of event	Persons involved from the company
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 announced by MFL on its website	1. Mr. I. Unnikrishnan 2. Mr. Sachin Agarwal
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
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.

Time	Event
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 22,00,000 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 crystallised 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. indicating that there were some concerns about the income reversal issue in the third quarter and MFL is under pressure. Thereafter at 12:51:38, the Noticee placed its sell order.

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. In this connection, I am inclined to accept submissions of Noticee pleading that, it did not occur to them to suspect the research report as containing UPSI, particularly, when the report was issued with aforesaid disclaimer from a well-known SEBI registered intermediary having no known record of publishing price sensitive information on any prior occasion.

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. In this particular case, the fact that the research report was distributed to 2194 investors/ analysts/institutions, i.e. on March 19, 2013 at 8:30 a.m and the well-known TV channel CNBC TV 18 was covering the news of MFL since morning 9: 22 a.m on that day indicating that there were some concerns about the income reversal issue in the third quarter and MFL is under pressure, point out that the UPSI no longer remained ‘unpublished’, at least after 9:22 am on March 19, 2013. It is also noted that email address of many a recipients have the domain name as ‘bloomberg.net’ signifying the research report

might well would have been available for anyone in public to access from the well-known media platform of Bloomberg, disseminating news and information relating to securities market in addition to other areas. As mentioned in Para 21 above, the Noticee placed its first sell order at 12:51 hrs on March 19, 2013 which is well after 9:22 am in the morning of same day when CNTV 18 started covering the story of MFL. I observe that Noticee in its submission dated June 27, 2019 has cited that, in the matter of insider trading in the scrip of *63 Moons Technologies limited*, the Whole Time Member of SEBI held that a newspaper article in which there had been a 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 circumstance of the present case, I find the media coverage about MFL by well-known TV channel CNBC TV 18 and the timing of such coverage has not been taken into account by the Investigation. Such coverage cannot either be dismissed as speculative in nature as, it is observed that, 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 MFL can be said to become non-existing as 'unpublished' at the time of placing first sell order, by the Noticee.

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. 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 June 27, 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 : March 26, 2020
Place : Mumbai

VIJAYANT KUMAR VERMA
ADJUDICATING OFFICER