

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. Order/VV/JR/2020-21/ 7490]**

**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:  
**SBI Funds Management Private Limited  
(PAN: AAACS7339D)**

**In the matter of selective disclosure of unpublished price sensitive information by  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

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**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Board of India (hereinafter referred to as 'SEBI'), pursuant to investigation in the matter of selective disclosure of unpublished price sensitive information by Manappuram Finance Ltd.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 SBI Funds Management Private Limited (hereinafter referred to as "**SBI/ Noticee**") had sold its shares while allegedly in possession of unpublished price sensitive information during March 1, 2013 to March 20, 2013 (hereinafter referred to as "**investigation period**") and allegedly violated section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 August 7, 2019 stating, inter alia, the following:
  - *The SBI Magnum Midcap Fund ("Scheme ") was the scheme in which the equity shares of MFL were held by the Noticee. The Noticee had purchased 5 lac equity shares of MFL on January 04, 2013 at an average price of Rs. 43 per equity share. For various reasons as herein below stated, the fundamentals of the business of MFL were deteriorating, and therefore, it was decided to sell the said shares and on March 19, 2013, at 13:24:14, the Noticee's dealers placed a sale order and sold 5 lac equity shares of MFL at an average price of Rs. 29.85 per equity share.*
  - *The said decision to sell off the said shares despite the loss suffered, was made in view of, inter alia, the following factors:-*
    - a) *MFL was in the business of giving loans against gold. Obviously therefore, the said business was very sensitive to the market prices of gold. At the relevant time, the market prices of gold had been falling for over 2 months, as is stated even in*

*the SCN. Consequently, the fundamentals of the business of MFL were deteriorating in the wake of such falling gold prices, and with the fears of continued weakness in the gold prices, the risk of negative impact on the profits of MFL was an obvious outcome.*

- b) The financial results of MFL for the quarter ended on December 31, 2012 (third quarter of the financial year 2012-2013), which were disclosed by MFL on the BSE Limited ("BSE") website on February 06, 2013 were also disappointing. The profits of MFL had declined 22% quarter on quarter by the third quarter of the financial year 2012-2013.*
- c) In fact, in February 2013, the Noticee had also received a report from Emkay Global Financial Services Limited ("Emkay") ("Emkay Research Report"), which inter alia, portrayed a negative outlook of the MFL business prospects in view of the gold prices falling and other factors as set out therein in detail. It may be noted that many of the observations and opinions expressed in the Emkay Research Report, are clearly reflected in the impugned Ambit Research Report.*
- d) Further, the price of the scrip of MFL had deteriorated in February 2013. During January 2013, the prices were in the range of about Rs. 42 to Rs. 45, but by the end of February 2013, the same had fallen to about Rs. 34.60.*
- e) Consequently, while the Noticee was already concerned about the status and prospects of MFL, its business and consequently its share prices, on March 19, 2013, the said adverse Ambit Research Report was published by Ambit to over 2500 parties, some of whom in turn also onward published the same on their websites and TV news channels also carried the negative news as herein below more particularly stated. Probably as a consequence of this wide spread publication of the same, on March 19, 2013, the market prices started falling dramatically on huge sale volumes. Thus, while the closing price of MFL on March 18, 2013 was about Rs. 34.60 per share, the same fell to Rs. 27.70 by close of March 19, 2013 and the total volume of turnover on BSE and the National Stock Exchange of India Limited ("NSE") on March 19, 2013 was about **4.37 crore shares**, which was a huge increase over the previous average volumes as would be evident from the price/ volume.*
- f) It was in this background that the Noticee decided to sell the said 5 lac shares and on March 19, 2013, at 13:24:14, the requisite sell order was placed and the Noticee sold the said shares at an average price of about Rs. 29.85.*
- *In fact, a bare perusal of the Ambit Research Report discloses that the same states that:-*
  - a) MFL's net profit had declined 22% quarter-on-quarter in Q3 FY13;*
  - b) Such decline in profits was because of income reversal of Rs. 390 million since the realisable value of the pledged gold had diminished;*
  - c) Gold prices had fallen by 5% over the previous 2 months;*
  - d) Even during the previous quarter i.e., Q3, the MFL management had disclosed that the under recoveries could be about 400 to 500 million spread over Q4 FY13 and*

*QI FY14. However since gold prices had been falling further in the previous 2 months, the quantum of "interest income reversal could increase" and " the company seems likely to have to stop booking income during the current quarter... ". The said observations are prima facie the opinions of Ambit based on the disclosures made by MFL during and in respect of Q3 FY 13;*

- e) Since gold prices had not improved, " ... collateral value associated with these loans looks likely to be less... hitting the profitability of the company ...". This comment was also obviously the opinion of Ambit.*
- f) Over the previous year, MFL's loan book had been declining, and the decline in the gold prices would impact MFL;*
- g) Ambit had therefore, decided to review its opinions about MFL.*
- It is therefore submitted that the Ambit Research Report does not contain any UPSI at all. It merely narrates information which was already in the public domain, and states the opinions of Ambit. Therefore, the allegations in the SCN are incorrect and untenable.*
- In addition, the Ambit Research Report (under the heading "disclaimers") clearly stated that the recommendations, opinions and views contained in the report are based upon publicly available information and that Ambit has policies and procedures to control the flow and use of non-public, price sensitive information.*
- Without prejudice to anything else herein stated, it is submitted that in any event, the said alleged UPSI of the contents of the said Ambit Research Report was published extensively before the said impugned trades of the Noticee. Therefore, in any event, the same did not constitute 'unpublished' price sensitive information.*
- As aforesaid, it is SEBI's own case that Annexure K to the SCN is a list of approximately 2500 parties to whom the Ambit Research Report had been forwarded by Ambit long before markets opened on March 19, 2013. This alone amounts to an admission that there was an extensive publication of the said alleged UPSI even before the trades of the Noticee which were in the late afternoon of March 19, 2013.*
- The Ambit Research Report was also published by another entity, Panmure (Gordon & Co.) ("Panmure") which is an investment bank and institutional stock broker in the United Kingdom. The publication was made by Panmure vide Bloomberg's platform at 10:34 AM on March 19, 2013, which also was prior to the sale of shares by the Noticee.*
- Most pertinently, the information in relation to the publication of the said Ambit Research Report and the fall in price of the shares of MFL was also broadcast on a popular news channel 'CNBC-TV18' on March 19, 2013 at 9:22 AM, since the share prices in the market had already fallen drastically on that day after the markets opened at 9: 15AM. The anchor of the news channel, expressly mentioned, "... I just want to talk about Manappuram also because that stock is under a lot of pressure today, it's down 6%. I think there is a note out that's raised some concerns about this income reversal issue that they had in the third quarter and the fact that that could actually accelerate a whole lot, you know much more than the*

management's guidance because of how gold prices have been falling so keep an eye on it on Manappuram. It is under pressure today... ”.

- The said information in relation to the contents of the said Ambit Research Report was also broadcasted once again on 'CNBC-TV18' on March 19, 2013 between **10 AM and 11 AM**. Once again this was long before the said sale of shares by the Noticee. The anchor of the news channel, expressly mentioned, " ...Manappuram General Finance is down more than 10% in trade today. This morning, a note highlighted that due to gold prices falling further by 5% over the last two months, the quantum of interest income reversal could increase versus the earlier guidance given by the management. **Ambit points out** that moreover on some portions of the loan portfolio originated in the November to December period of 2011, the company seems likely to have stopped booking income during the current quarter as the collateral value associated with these loans would be less than the principal plus accrued interest. The stock is down 16% in trade today. "
- Therefore, without prejudice to anything else herein stated, it is submitted that it is obvious that it can never be contended that the alleged information was "unpublished". In fact, not only was the same extensively published, but obviously the same had even extensively affected the market prices, which is why the Noticee was also constrained to take action to stop further losses by selling off the said shares.
- It is submitted that even the SCN correctly records that as per Regulation 2 (ha) of the PIT Regulations (**ref:** paragraph 13 of the SCN), the periodical financial results are deemed to be price sensitive. However, this means the actual results and not rumours about the same or merely vague comments or opinions that MFL was likely to suffer losses because of the gold prices which had been steadily decreasing would be deemed to be price sensitive information.
- It is reiterated that at the highest, the UPSI can only be deemed to be the actual "periodical financial results" which showed the actual numbers that there would be "... a one-time hit of 250 cr during this quarter... resulting in a Q4 loss upto 50 cr...". It is reiterated that the Ambit Research Report in fact did not contain this information and therefore, it contained no UPSI at all.
- Further, as aforesaid, in any event, in view of the said extensive publication of the said Ambit Research Report to the extent of even being published to thousands of parties and hosted on websites and even being broadcast on TV news channels, it can never be alleged that the said information was UPSI. Such information ceased to be 'unpublished' since before trading hours on March 19, 2013 and long before the said sale of shares by the Noticee.
- Without prejudice to anything else herein stated, it is submitted that it is pertinent to note that institutional investors, mutual funds (like the Noticee), etc., all regularly receive research reports from numerous sources/ parties. The Noticee has 75 empaneled brokers, and routinely receives such research reports from them, including from Ambit, Aditya Birla Money Limited, Edelweiss Securities Limited, HDFC Securities Limited, Reliance Securities Limited, etc. The Noticee has never considered the contents of any

*such reports as being UPSI. Obviously such research reports often contain alleged information and data to portray that the opinions of the author therein are based on facts and data and are not mere imagination. To cast any obligation on all recipients thereof to verify whether such facts/ data is in the public domain before executing any trades, would place an impossible burden on all such parties. There is nothing surreptitious about the publication of the Ambit Research Report, and the same was admittedly sent to about 2500 parties, most of whom must have in turn further disseminated the same. Bloomberg, Panmure and 'CNBC-TV18' also published and disseminated the same. Further, even the said Ambit Research Report itself contains assurances that Ambit takes care to ensure that UPSI is not mis used. It is therefore inconceivable as to how any allegations are made against the Noticee and other institutional investors of insider trading, which is a very serious charge and causes great damage to the reputation and goodwill of institutions such as the Noticee. Such allegations should not be lightly made, and that too with inadequate investigations as to the extent of the publication of the alleged UPSI.*

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, vide letter dated September 17, 2019 sought for an adjournment. Another opportunity of personal hearing was given to the Noticee on November 14, 2019. The Noticee appeared on the scheduled date and reiterated the submissions made vide letter dated August 7, 2019 and made further submissions vide letter dated November 27, 2019 stating, inter alia, the following:

- *It is also most pertinent to note that the Ambit Report contained no UPSI, and the same is evident from the following: -*
- *It was public information that gold prices were falling and that the performance of MFL was deteriorating since Q3 itself and prior thereto. Even the disclosed Q3 results of MFL for the FY 2012 -13 showed a deteriorating performance, and obviously such information was not UPSI at all. Vague general opinions that MFL would suffer losses in Q4 can never be UPSI at all.*
- *The UPSI (if any) was not the fact that the performance of the company was going down but was the "... one time hit of 250 crores during Q4 ... resulting in a Q4 loss of upto 50 cr..." as correctly stated in the SCN at page 8 - paragraph 15.2. This information was not disclosed in the Ambit Report. It was only disclosed by MFL on March 20, 2013 i.e., after the Noticee sold its shares on March 19, 2013.*
- *In fact, in paragraph 16.5 of the SCN itself, it is alleged that even after the meeting between the representatives of Ambit and MFL, as referred to in the said Ambit Report, " Ambit analyst did not feel that they had as much clarity on the Q4 FY 13*

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 Q4 earnings was difficult to ascertain".

- Therefore, even as per the said SCN, Ambit also was not aware of the extent of the loss allegedly suffered by MFL, yet this was the actual UPSI as aforesaid.
- The said Emkay Report {Reply to SCN Exhibit Cat page 35} inter-alia stated that:-
  - a) MFL' s Q3 Results were much below expectation.
  - b) MFL had lost 7% of its customers despite adding 400 branches.
  - c) Since Q3 of FY12, MFL' s customer base declined by 1.10 Lakh customers.
  - d) MFL' s net Interest Income had declined by 35.6% year on year.
  - e) There was an under recovery on the auctioned loans resulting in interest reversal of Rs .39 cr.
  - f) MFL' s Assets under Management had declined by 2.4% quarter on quarter and Gold stock had fallen by 3.3 tons.
  - g) There was a 47% decline in profits year on year and key risks were becoming more prominent.
  - h) Margins would remain under pressure and income was falling.
  - i) That MFL would probably have to auction another about RS. 360 crores in Q4 of 2013.
  - j) Most pertinently, the said Emkay Report stated that it was likely that such poor performance would continue in Q4 of FY 13.
- Therefore, the fact that MFL' s results in Q4 were expected to be very poor was not at all UPSI.
- It may also be noted that on February 09, 2013, Emkay's said report was also published on the well known financial website Moneycontrol.com.

## 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	Board meeting	1. Mr. Jagdish Capoor 2. Mr. E.A. Kshirsagar 3. Mr. P. Manomohan 4. Mr. V.M. Manoharan

Sl. No.	Date	Time (approx.)	Nature of event	Persons involved from the company
		05:00 p.m.		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 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 4<sup>th</sup> 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
<b>March 18, 2013</b>	
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
<b>March 19, 2013</b>	
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.

Time	Event
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 4<sup>th</sup> 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 5,00,000 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 March 20, 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 4<sup>th</sup> 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 4<sup>th</sup> 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. Thereafter at 13:24:14 on March 19, 2013, the Noticee placed its first 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 submission of the Noticee that, it was not even remotely conceivable that an official research report disseminated by Ambit in usual course of business would or could contain any UPSI and Noticee was never aware that any part of the said Ambit Research Report contained any UPSI.

23. Moreover, in February 2013, the Noticee had received a report from Emkay which *inter alia*, portrayed a negative outlook of the MFL business prospects in view of the gold prices falling and other factors as set out therein in detail. On perusal of the report, I find that the contents of the Emkay report was very similar to that of Ambit. It is also noted that the Emkay Report was also published on Moneycontrol's platform on February 09, 2013.

24. 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.

25. 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.

26. 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 13:24 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, 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.

27. 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.

28. 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**

29. 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.

30. 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**