

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. Order/VV/JR/2019-20/7330]**

**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:  
**BNP Paribas Asset Management (I) P Ltd.  
(PAN: AAECA5153B)**

**In the matter of selective disclosure of unpublished price sensitive information by  
Mannapuram 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Board of India (hereinafter referred to as 'SEBI'), pursuant to investigation in the matter of selective disclosure of unpublished price sensitive information by Mannapuram Finance Ltd. (hereinafter referred to as "**MFL/ company**") observed that BNP Paribas Asset Management (I) P. Ltd. (hereinafter referred to as "**BNP/ Noticee**") had sold its shares while allegedly in possession of unpublished price sensitive information during March 1, 2013 to March 20, 2013 (hereinafter referred to as "**investigation period**") and allegedly violated section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 Noticees 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:

- *In the first week of March 2013, MFL, reviewed its loan portfolios and levels of recoveries. The information was discussed by the board of directors of MFL in its board meeting on March 13, 2013, wherein it was recorded that "... there was a probability that the company may have to report negative profit for the quarter ended March 31, 2013, contrary to the expectations of the stakeholders. The management said that it would seek professional advice as to what needed to be done in this regard towards making appropriate disclosures to all the stakeholders."*
- *On March 18, 2013, at 4.00 pm Mr. I. Unnikrishnan (Executive Director/ Deputy CEO, MFL) and Mr. Sachin Agarwal, members of the management of MFL ("MFL Management") met with research analysts at Ambit Capital Private Limited ("Ambit") on a (professional basis seeking market guidance about the 4<sup>th</sup> quarter ("Q4") results and future outlook..*

- *Subsequent to its meeting with the MFL Management, Ambit internally reviewed the meeting with the MFL Management and prepared a research report on MFL ("Research Report"). The Research Report included a research report on MFL and an impact on the rate cut on the BFSI sector and an analyst report. On March 19, 2013, at 8.30 am, Ambit, after intimating the MFL Management, circulated the Research Report to all its institutional/ non-institutional clients. The Research Report was circulated to approx 2,500 recipients. Further, Ambit also changed the MFL scrip rating to 'under review' from 'buy' and suggested that MFL Management should do a conference call with its investors.*
- *The Research Report had a specific disclaimer which expressly stated that "the recommendations, opinions and views contained in this Research Report reflect the views of the research analyst named in the Research Report and are based upon publicly available information and rates of taxation at the time of publication, which are subject to change from time to time without any prior notice".*
- *On March 19, 2013, throughout the day, CNBC TVI 8 had run several news reports on the change in RBI's policy on 'Loan to Value' norms for gold loans and its specific impact on market players including MFL. Further, specifically in relation to MFL it stated the following:*
  - (i) *At 9.22 am, it was mentioned on CNBC TV18 that "Manappuram stock is under a lot pressure today and is 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 could actually accelerate whole lot, much more than the management's guidance because of how gold prices have been falling. So keep an eye out on Manappuram, it is under pressure today."*
  - (ii) *At 2.16 pm, CNBC TV 18 referred to the Research Report and mentioned that "The Manappuram stock is now down 15-16%. Ambit has highlighted that due to the fall in gold prices in the preceding two months, the quantum of MFL's 'interest income reversal' could increase as opposed to the guidance which was given by the MFL management earlier. ,*
  - (iii) *At 3.04 pm, CNBC TV 18 specifically mentioned that the Management Call was taking place and that the MFL Management had disclosed that "... they will see an under recovery of INR 250 crores which will*

*impact Q4 results. Please remember that earlier in the morning there were lots of concerns with regard to the fall in gold price which would in effect have an impact on the interest reversal going forward for the company. The company said they will see an under recovery of INR 250 crores of interest going ahead but they do have adequate funding for the next 5-6 months in terms of growth and disbursements/or Q4 are expected on the similar lines as Q3 but they have stopped all kinds of rollover of loans at this point in time..." ("CNBC News"). It is pertinent to note that representatives of CNBC TV18 and NDTV Profit had also participated in the Management Call, and CNBC TV18 had provided immediate updates/disclosures in relation to the contents thereof.*

- (iv) At 3.06 pm, CNBC TV18 whilst making reference to the Management Call reported that "...The loss was confirmed particular as expected to be limited up to INR 50 crores for Manappuram but the stock nonetheless has reacted extremely violently so the stock is down around 20 odd percent..."*
- (v) Starting from 3.17 pm, CNBC TV18 flashed key contents of the Management Call and its impact on the price of the MFL scrip. These inter alia included statements such as that: (X) "Company has stopped all kinds of rollover ( of loans."; (Y) "Expect profits of INR 200 – 250 crore for FY 14 "; and (Z) "Losses for Q4 expected to be limited up to INR 50 crore."*
- (vi) Post the close of trading on March 19, 2013, there was considerable media coverage on the MFL scrip which also included references to both the Management Call and the Financial Information.*
- The Management Call took place from 2.30 pm – 3.40 pm on March 19, 2013. It is remarkable that neither MFL Management nor Spark Capital Advisors (India) Private Limited which had organised the Management Call made any statement at the inception of the Management Call to the effect that attendees of the Management Call would receive unpublished price sensitive information ("UPSI") and should accordingly refrain from sharing or trading whilst in the possession of such UPSI pending any official announcement of the same through the stock exchanges.*

- *The Noticee sold 10,00,000 shares of MFL at 3.08 pm, March 19, 2013. The price at which the trades were recorded for the Noticee's portfolios were recorded as lowest price of the day, i.e. INR 27.70.*
- *As mentioned in the SCN, on March 20, 2013, the Noticee also sold 3,45,000 shares of MFL on behalf of the BNP Paribas Mutual Fund. Fullhr BNP Paribas Asset Management India Private Limited – Portfolio Management Scheme managed by the Noticee also sold 16,08,557 shares on March 20, 2013. In its response to queries from SEBI, the Noticee on February 13, 2014, stated that the shares were sold on March 19, 2013 and March 20, 2013 were on the basis of likely losses in Q4 for FY ending March 31, 2013, to be incurred by MFL as mentioned on the Management Call. The trades made by the Noticee on March 20, 2013 were, on an average, 10% lower than the closing price on March 19, 2013.*
- *It is humbly submitted that the Financial Information was 'published' for the purposes of the PIT Regulations and therefore the information shared vide the Management Call cannot be considered as UPSI.*
- *It is further submitted that per Paragraph # 7, Schedule II, PIT Regulations, "Corporates may also facilitate disclosure through the use of their dedicated Internet website" and therefore the Management Call was considered as a means to disseminate public information i.e. by disclosing the Financial Information on the Management Call, the Company had, in fact, published the same. In the absence of any regulatory guidance on dissemination of information through conference calls, reliance may be placed on the (United States) Securities Exchange Commission's Regulation Fair Disclosure, pursuant to which corporates are allowed flexibility to determine the most appropriate disclosure means including by way of conference calls that interested members of the public may attend or listen to either in person, by telephonic transmission, or by other electronic transmission.*
- *It is submitted that MFL's intent was always to ensure that the Management Call was open to all investors/analysts. This is supported by the fact that the invite and the dial in for the Management Call was placed on MFL's website and also sent to various investors/analysts (approx. 1,000 persons) by way of an e-mail. Therefore, MFL itself published the Financial Information by way of the Management Call.*
- *It was MFL's submission that the Management Call was scheduled as there was a consistent drop in the stock price of MFL and the call was being considered as a means to alleviate investor concerns. It is further submitted that basis review of the*

- Attendee List and the Invitee List, it can be noted that even persons to whom an e-mail invite was not sent by MFL had also participated in such Management Call including members of the media (i.e. CNBC TV 18 and NDTV Profit) thereby ensuring that the Financial Information was disseminated to the public at large. This is corroborated by the fact that representatives of CNBC TV 18 and NDTV Profit attended the Management Call and CNBC TV 18 reported immediate updates in relation to the contents thereof. Given the above, by inviting the general public (including investors) through the advertisement of the Management Call details on its website and by disseminating specific information (i.e. the Financial Information) on the Management Call (including to media), such information had become 'published' i.e. ceased to be UPSI for the purposes of the PIT Regulations.*
- *It is humbly submitted that whilst the Noticee did trade in the MFL scrip on March 19, 2013 and March 20, 2013, the same was done post the Financial Information having been 'published' by MFL by way of the Management Call and therefore such trades were not done whilst in possession of UPSI.*
  - *The Sodhi Committee Report further provides that "a piece of research work that is available on a non-discriminatory basis but is based entirely on 'generally available information' would not change the character of the research work from being 'generally available' to being UPSI... Therefore, the regulation explicitly provides that conclusions, deductions and analyses of generally available information too would be regarded as generally available information."*
  - *It is humbly submitted that it was represented by Ambit (by "way or disclaimers in such Research Report) that the Research Report was prepared solely basis publicly available information and consequently there was no reason for the Noticee to believe that the contents or the Research Report constituted UPSI.*
  - *It is humbly submitted that the Financial Information shared vide the CNBC News was generally available information and the Noticee's trades in the MFL scrip was not based on UPSI.*
  - *It is humbly submitted that whilst the CNBC News was based on definitive information having been disclosed on the Management Call, even in the case of rumours (i.e. something has happened with respect to a company, which a person neither believes nor disbelieves) which widely float around in the*

*securities markets, the underlying information may constitute generally available information and cease to be UPSI.*

- *It is also pertinent to note that approx. 80% of the trades (i.e. around 3.69 crore out of a total 4.37 crore of traded quantity) in the MFL scrip that occurred on March 19, 2013, had already taken place prior to the commencement of the Management Call. Given the above, it is submitted that the public had already reacted to the various factors including the contents of the Research Report, news reports, market trends etc.*
- *Assuming but not conceding the Management Call/ Research Report did contain UPSI, then it is humbly submitted that in such a scenario Ambit/ MFL were obligated to disclose that UPSI was being shared with recipients and in the absence of the same any reliance placed by the Noticee on the Research Report/ Management Call cannot be considered as a violation of the PIT Regulations by the Noticee.*

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, vide email dated September 13, 2019 sought for an adjournment. Acceding to its request another opportunity of personal hearing was given to the Noticee on October 1, 2019. The Noticee appeared on the scheduled date and reiterated the submissions made vide letter dated June 27, 2019. The Noticee made further submissions vide letter dated October 27, 2019 stating, inter alia, the following:

- *The Noticee sold a total of 10,00,000 shares on March 19, 2013 and a total of 3,45,000 shares of MFL on behalf of the BNP Paribas Mutual Fund on March 20, 2013. Further BNP Paribas Asset Management India Private Limited – as a Portfolio Manager also sold 16,08,557 shares on March 20, 2013. The first order was placed at 15:08:37 on March 19, 2013 as evidenced by the contract note issued by Kotak Securities Ltd., member of BSE. The orders for other trades were placed and executed subsequently on March 19 and 20, 2013.*
- *The gist of key events is given at pages 3 to 6 of the compilation. It may be seen that the information about the research report referred in para 17.5 of the impugned notice (page 2) was revealed and discussed on a nationwide Business news TV channel (CNBC TV18) from 9.22 am on March 19, 2013. Ambit had circulated the research report to about 2500 of its clients and Bloomberg etc. simultaneously*

by email and the same was received by the Noticee also around 8.30 am on March 19, 2013. It may be noted that Bloomberg is also a new service and any news on Bloomberg is disseminated on its platform and can be picked up by any member of the public. At 9.22 am, CNBC TV 18 broadcast that "Manappuram stock is under a lot of pressure today and is 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 could actually accelerate whole lot, much more than the management's guidance because of how gold prices have been falling. So keep an eye out on Manappuram, it is under pressure today" (page 3). At 1.20 pm invite for the conference call for investor was sent out and received by the Noticee also. The same invite was disclosed on the website of MFL for public information so that any member of the public could dial in at the conference. At 2.16 pm the said channel discussed the research report and said "the Manappuram stock is now down 15-16 odd percent. Ambit has highlighted that because of gold prices which have fallen (in the last two months) they could see the quantum of their (MFL's) interest income reversal could increase as against the earlier guidance that was given by the (MFL) management." Thereafter from 3.04 pm onwards the said channel gave out the details of conference call held by the MFL management. The channel revealed to the public that the MFL management had disclosed that "they will see an under recovery of 250 crores which will impact Q-1. Remember the earlier in the morning there were lots of concerns with regard to the fall in gold price which would in effect have an impact on the interest reversal going forward for the company. The company said they will see an under recovery of 250 crores of interest going ahead but they do have adequate funding for the next 5-6 months in terms of growth and disbursements for Q4 are expected on the similar lines as Q3 but they have slopped all kinds of rollover of loans at this point in time..". The loss was confirmed particular as expected to be limited upto 50 crores for Manappuram but the stock nonetheless has reacted extremely violently so the stock is down around 20 odd percent'. At 15:08:37 hrs the first order was placed by the Noticee and the same was executed at a price of Rs. 27.70 which happened to be the lowest price for the day.

- The above facts reveal that the first order was placed by the Noticee after the nationwide business channel disclosed the research report and the details of the conference call and attributed the same to Ambit and MFL respectively. The facts also establish that contrary to the allegations in the impugned notice at para 17.5 and 17.6, the research report and the details of the conference call were available to the public through the nationwide business channel before the first sell order was placed by the Noticee.



- *Now the issue that arises is whether the disclosure/dissemination of the information to the public by the nationwide business news channel was adequate (since MFL itself had invited the public by posting the details of the call on the website and thereby, business channel representatives (CNBC TV18 and NDTV Profit) also participated in the same conference call).*
- *In this regard, we request you to refer to Schedule II to the PIT Regulations which prescribes the corporate disclosure policy. Clause 6 deals with "Disclosure / dissemination of Price Sensitive Information with special reference to Analysts, Institutional Investors. Clause 7 specifies the Medium of disclosure/dissemination. Sub clause (i) of clause 7 states "disclosure / dissemination of information may be done through various media so as to achieve maximum reach and quick dissemination". Sub clause (ii) then goes on to say that "corporates shall ensure that disclosure to stock exchange is made promptly"*
- *Therefore the PIT Regulations itself recognises that to achieve maximum reach and quick dissemination, any media can be used and this is precisely what MFL had done by inviting the public to the conference call, enabling the media to attend the conference call and thus ensuring quick dissemination of the information to public, even before the information was filed with the stock exchanges. As pointed out above, the listing agreement itself requires the company to disclose information to the public "immediately" and thus, this can be through any media.*
- *In this connection, we would like to rely upon the Order of SEBI (WTM/MPB/EFD/116/2018) in the matter of Insider Trading in the scrip of Multi Commodity Exchange of India Ltd. We draw your attention specifically to paras 25 to 27 of the order (pages 13 and 14) wherein in para 27, the WTM has held that "considering the above, I find that the price sensitive information, relating to the implication of the SCN dated April 27, 2012 became public from the time when the article relating to the SCN dated April 27, 2012 appeared in Economic Times on October 3, 2012 and as such ceased to be UPS/from that date".*
- *It is submitted that MFL had invited the business channels also, in addition to investors and the public investors (through posting on its website) to the conference call and thus it can be said that information was 'published by the company' when the dissemination happened on the news channel. Specifically it may be noted that the information disclosed in the conference call and disseminated through the news channel was the same as disclosed to the stock exchanges. Thus the information disclosed through the news channel was not 'speculative information'. Thus in terms of the definition of 'unpublished' as stated above, the information was not unpublished information as alleged at para 17.5 and 17.6, but was published information.*

- *It may also be noted that MFL organized dial-in numbers for various cities and for international participants (page 26). The fact that a conference call would be held was also informed to public through its website. The list of invitees was recommended by Spark capital, a SEBI registered intermediary (broker, merchant banker) (page 27). The list of invitees to the conference call is placed from pages 28 to 35 and the invitees number approx. 1,000 persons. Thus, it may be noted that neither the conference call nor the details disclosed thereat were a ‘hush hush’ affair and contrary to the allegations in the impugned notice that the details in the conference call were disclosed selectively, there was a broad, non-selective disclosure.*
- *The fund managers of the Noticee are constantly monitoring the investments made in various companies. As regards MFL, the revision in the RBI policy on LTV on gold loans and the consequent negative view on the sector was already on the radar of the fund manager; the research report of Ambit, details of which had gone public through the news channel at 9.22 am on March 19, 2013 caused a further sharp fall in the market price of the shares of MFL. These pieces of information when assembled together reveal the potential losses that could result by continuing to hold the positions and the decision to exit the stock cannot be said to be based on UPSI.*
- *It is also submitted that there is no prohibition on an investor who receives a research report (more so a report which specifically states that it is based on public information) or who participates in a conference call, from trading in the shares, until disclosures are made to stock exchange, as propounded in the impugned notice, for the reason that the investor attending the call or receiving the report may not even be aware that the information being communicated may be UPSI.*
- *We humbly submit that the detailed explanations provide above, conclusively establish that;*
  - a) the research report and the details in the conference call ceased to be UPSI when the national wide business news channel disseminated the information;*
  - b) the dissemination of the information in research report and the conference call constituted broad based and non-exclusive circulation to members of the public and hence there was no selective disclosure as alleged;*
  - c) there was no obligation cast on the Noticee to independently verify if MFL or Ambit or Spark capital complied with any of their obligations under the SEBI Act or the PIT Regulations or any other Regulations;*
  - d) the Noticee acted in its own judgement while dealing in the shares of MFL to protect the unit holders of its schemes and any benefit of doubt should go in favour of the Noticee.*

## 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
3.	March 18, 2013	04:00 p.m.	Discussions between Mr. Unnikrishnan, ED	1. Mr. I. Unnikrishnan 2. Mr. Sachin Agarwal

Sl. No.	Date	Time (approx.)	Nature of event	Persons involved from the company
			& Dy. CEO and Ambit (Analyst wing)	
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 onetime hit of ₹250 cr. during this quarter either by way of crystalized 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 onetime 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 4<sup>th</sup> 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.
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 13,97,524 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 onetime hit of ₹250 cr. during the quarter resulting in a Q4 loss up to Rs.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 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 indicating that there were some concerns about the income reversal issue in the third quarter and MFL is under pressure. I find merit in the submission of the Noticee that *"It is also pertinent to note that approx. 80% of the trades (i.e., around 3069 crore out of total 4.37 crore of traded quantity) in the MFL scrip that occurred on March 19, 2013 had already taken place prior to commencement of the Management Call. Given the above, it is submitted that the public had already reacted to the various factors including contents of the research report, news reports, market trends etc."* Further,

on March 19, 2013 at 1:20 pm, the invite for an investors conference call (scheduled at 2:30 pm) was placed on MFL's website. The invite for the conference call was also sent by MFL by email to approx. 1000 investors/analysts (as per record available in this regard). As per the attendees' list available on record, even well-known business media channels CNBC TV and NDTV Profit attended the call. The call took place from 2:30 pm to 3:40 pm. During the management presentation made between 2:30 pm to 2:50 pm during the call, Mr, Unnikrishnan (ED, MFL) inter alia stated that *"....there is going to be an under recovery of revenue to the extent of some INR 250 crores and as result this quarters numbers will be impacted to that extent. So this quarter we may end up reporting 0 to INR 50 crores of loss....."* I find merit in the submission of the Noticee that *"Management call was open to all investors/analysts. This is supported by the fact that the invite and the dial in for the Management Call was placed on MFL's website and also sent to various investors / analysts (approx.. 1000 persons) by way of an e-mail."* Further, at 3:04 pm on March 19, 2013, CNBC TV 18 specifically mentioned that the Management Call was taking place and that the MFL management had disclosed that *"....they will see an under recovery of INR 250 crores which will impact Q4 results....."* It is observed that the Noticee placed its first sell order at 15:08 hrs on March 19, 2013.

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 Manapuram 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 view of this, I am inclined to accept submission of Noticee pleading that there is no reason for the Noticee to believe that the Research Report contained any UPSI.

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 15:08 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 concur with the reliance of the Noticee placed upon the Order of SEBI (WTM/MPB/EFD/116/2018) in the matter of insider trading in the scrip of MCX Ltd. Paras 25 to 27 of the Order (pages 13 and 14), the WTM has held that "*considering*

*the above, I find that the price sensitive information relating to the implication of the SCN dated April 27, 2012 became public from the time when the article relating to the SCN dated April 27, 2012 appeared in Economic Times on October 3, 2012 and as such ceased to be UPSI from that date.”* 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 have become non-existing as ‘unpublished’ well before the time of placing first sell order (i.e., at 15:08 hrs on March 19, 2013), 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 October 27, 2019) that, the Noticee had acted to protect the interests of the investors and the dealings had been conducted in its own independent judgment.

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**