

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. Order/VV/JR/2020-21/ 7501]**

**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:  
**Kotak Mahindra Life Insurance Company Limited  
(PAN: AAACO3983B)**

**In the matter of selective disclosure of unpublished price sensitive information by  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Board of India (hereinafter referred to as 'SEBI'), pursuant to investigation in the matter of selective disclosure of unpublished price sensitive information by Manappuram Finance Ltd.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 Kotak Mahindra Life Insurance Company Limited (earlier known as Kotak Mahindra Old Mutual Life Insurance Limited) (hereinafter referred to as "**Kotak/ Noticee**") had sold its shares while allegedly in possession of unpublished price sensitive information during March 1, 2013 to March 20, 2013 (hereinafter referred to as "**investigation period**") and allegedly violated section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 vide letter dated June 10, 2019 sought for inspection of documents. Acceding to its request, an opportunity of personal hearing was given to the Noticee on June 21, 2019.
4. In order to comply with the principles of natural justice an opportunity of personal hearing was given to the Noticee on September 19, 2019 vide notice dated September 3, 2019. The Noticee appeared on the scheduled date and sought time for submission of reply. Another opportunity of personal hearing was given to the Noticee on October 22, 2019. The Noticee, vide email dated September 25, 2019 requested for rescheduling the personal hearing. Acceding to its request, the personal hearing was rescheduled to November 7, 2019.

5. The Noticee submitted its reply dated October 14, 2019 stating, inter alia, the following:

- *Our key submissions may be summarised below:*
  - (a) *Our decision to sell the subject shares was not motivated by any alleged UPSI in the Research Report as we had sold shares even prior to the Research Report;*
  - (b) *The UPSI ceased to be unpublished, at the time of the Noticee 's trades as the Research Report was flashed on Bloomberg at 8:48AM, before market hours;*
  - (c) *The trading pattern belies the allegation that UPSI motivated the trades;*
  - (d) *Even assuming the Research Report contained UPSI, the Noticee, at best, can be said to be an innocent recipient of UPSI and cannot be said to have committed violative insider trading, since the UPSI that it came to possess, did not motivate the decision to trade;*
  - (e) *It is not correct to allege that the recipient of the Research Report could reasonably be said to have been aware that it contained UPSI, merely because the report referred to the meeting with the management of MFL. The information in the Research Report was already available in the public domain;*
  - (f) *The Research Report was based on information in the public domain and consequently, we cannot be called " insiders" as we did not receive or have access to any alleged UPSI;*
- *We are not individual investors and all our investments and trades are carried out in the interest of our investors who are individuals holding life insurance policies issued by us. We are fiduciaries of our investors and hold investments in trust. We rely on our own research which is based on the inputs received from various sources and primary analysis of the scrip. Accordingly, our decision to sell the shares of MFL was based on our assessment of various factors & information available in public domain.*
- *It is first important to understand the reasons why we acquired shares of MFL to provide a contextual overview as to what informed our decision to sell our holdings. We decided to invest in MFL pursuant to the declaration of its results for the quarter ending September 30, 2012. During the conference call held on November 8, 2012, MFL had categorically set out that their risk profile had reduced considerably and that MFL was expecting an average growth of 20% during the next 6 months. However, the financial results for the quarter ended December 31, 2012, published by MFL in February 2013 conveyed a different position which was at variance with what was portrayed in November 2012.*
- *On February 6, 2013, MFL published its Unaudited Financial Statement for the quarter ending December 2012 wherein it was observed that MFL's profit quarter-*

*on-quarter (QoQ) had declined by 22%. Furthermore, during a conference call held on February 7, 2013, MFL informed that it is expecting losses to the tune of Rs. 35 to Rs. 40 Crores during the next quarter owing to the legacy high Loan to Value ("LTV") portfolio but expected no additional losses from quarter ended June 2014 onwards. The adverse financial results of MFL was attributed by it to "to the fall in yield following the realignment of the lending rates in line with lower LTV norms." in an earnings call conducted on February 7, 2013.*

- *As gold prices declined by 5%, which again was publicly available information and was widely reported by some brokerage houses, we started to monitor companies in gold loan business which included MFL. It is relevant to mention that during this period, the scrip of MFL fell from Rs. 42.50 to Rs. 37.75. Considering the same, we decided to keep a close watch on the scrip towards taking an appropriate decision. As we were watching the scrip closely, we had sold 12,463 shares on March 5, 2013. So, our decision to start exiting this security was already set in motion.*
- *On March 19, 2013, at 8.33 am, we received the Research Report from Ambit which provided their analysis of MFL. The recommendations in the Research Report was "Under Review" from its earlier recommendation of "Buy". While the Research Report contained a headline "key takeaways on the meeting", SEBI has not identified any particular information in the Research Report which constitutes UPSI.*
- *The Research Report was also flashed on Bloomberg portal at 8.48 am on March 19, 2013. Therefore, besides the fact that more than 2500 clients of Ambit had received the Research Report, there could be thousands of investors who could have reviewed the Report from Bloomberg and thus the said information was already in the public domain before we executed the impugned sales.*
- *It is pertinent to note that we sold the shares of MFL during the course of the day on March 19, 2013, with the order placed at 9.20 am and the last order placed at 1.01 pm with the first trade executed at 9.35 am and last trade executed at 3.18 pm. Had our decision to sell MFL shares was based merely on the Research Report, we would have sold the entire shareholding at one go in the morning hours of March 19, 2013 as soon as we received the Research Report. When we observed that, like us, large number of market participants were bearish on the scrip and were selling the shares, we decided to entirely divest from said scrip in a phased manner during the course of the day.*
- *A perusal of Research Report clearly shows there was no specific evidence that came to our notice which could lead us to form a view that the report had disseminated any UPSI. The title of the report "takeaway from meeting with management" followed by Ambit's comments on the MFL performance did not indicate what was the exact or specific information shared by the management of MFL to Ambit as the same was not mentioned in the Report. The Report stated that "the company seems likely to have to stop booking income ..." and "the portfolio originated between Aug '11 - Jan' 12 is a source of concern."*
- *It is not correct to allege that the recipient of the Research Report could have presumed the existence of UPSI merely because the report mentioned about the meeting with the management. A general presumption would be that the analysts would have done their analysis basis the market conditions and discussed the*

*same with the management, which is exactly what is mentioned in the Research Report. Hence, merely because the Research Report refers to takeaways from meeting with the management, without specifically mentioning what exact information the company provided to them, it would be unfair to conclude now in the hindsight that the Noticee should have presumed that MFL shared UPSI with Ambit.*

- *Moreover, even if SEBI were to come to the view that UPSI was indeed disseminated and thus recipients are insiders, it should be noted that we were innocent recipients of the information. The charge of violative insider trading is attracted when an insider knowingly trades when in possession of UPSI. Our decision to sell shares of MFL on March-1-9, 2013 cannot be said to have been motivated by the knowledge of i.e. by the possession of UPSI. Insider trading being akin to a fraud on the market, it would be incumbent on SEBI to establish that we had knowledge of the alleged UPSI in our possession and that the UPSI in question motivated our decision to trade. Absent these foundational ingredients, the charge of insider trading cannot stand.*

## **CONSIDERATION OF ISSUES AND EVIDENCE**

6. 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?

7. 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;

8. 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").
9. The sequence of events leading up to the official announcement on March 20, 2013 of the anticipated loss in Q4 of FY12-13, as submitted by MFL to SEBI is as under:-

Sl. No.	Date	Time (approx.)	Nature of event	Persons involved from the company
1.	First week of March, 2013	Not Applicable	Routine review of loan portfolios and the level of recoveries	1. Mr. Bindhu A.L. 2. Mr. Bikash Mishra 3. Mr. I. Unnikrishnan 4. Mr. V.P. Nandakumar 5. Mr. B.N. Raveendra Babu 6. Mr. Raju N. 7. Mr. Rajesh Kumar K.
2.	March 13, 2013	10:00 a.m. to 05:00 p.m.	Board meeting	1. Mr. Jagdish Capoor 2. Mr. E.A. Kshirsagar 3. Mr. P. 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 & 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'	

Sl. No.	Date	Time (approx.)	Nature of event	Persons involved from the company
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.

10. 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.

11. 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.

12. 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.

Time	Event
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.

13. 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).

14. 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.
15. 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.
16. 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."

17. 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.
18. During the period March 1, 2013 to March 20, 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 75,17,184 shares.
19. 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.

20. 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.

21. 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 May 15, 2013 to a closing price of ₹15.00 on May 16, 2013 (i.e. a decrease of 6.25%).
- ii) **When the UPSI was made public:** Before coming to a conclusion I would like to 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, the Research Report was flashed on Bloomberg portal at 8:48 a.m and 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"

22. 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. Bloomberg portal flashed the Research Report before market hours at 8:48 a.m on March 19, 2013 and 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. The Noticee placed its first sell order at 9:20 am on March 19, 2013.

23. Moreover, the Research Report that was circulated had a specific disclaimer which expressly stated that "*the recommendations, opinions and views contained in this Research report reflect the view of the research analyst named in the Research Report and are based upon publicly available information and rates of taxation at the time of the publication, which*

*are subject to change from time to time without any prior notice.” Further, there is no laid down requirement to make any independent verification, particularly when the report was circulated among more than 2000 recipients including business and finance news platform like Bloomberg. Mere reference in the title of the report viz. takeaways from the meeting with the management, i.e., “we met Mr. Unnikrishnan, ED of Manappuram finance etc....” is not sufficient to hold the Noticee responsible for not treating the report, as based on information which is not public. Meeting between analysts and management of listed companies is not unusual practice in the industry before preparation of research reports. It is primarily a company’s management duty to not divulge any unpublished price sensitive information during such meetings and legal obligation on research analyst not to publish research reports based on any unpublished price sensitive information. In this connection, I am inclined to accept submissions of Noticee pleading that, it did not occur to them to suspect the research report as containing UPSI, particularly, when the report was issued with aforesaid disclaimer from a prominent SEBI registered intermediary with various accolades, awards and recognition from the industry.*

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, the Research Report flashed on the Bloomberg portal at 8.48 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’. 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 22 above, the Noticee placed its first sell order at 09:20 hrs on March 19, 2013 in the morning of same day when CNTV 18 started covering the story of MFL. In this regard, I am inclined to agree with SEBI WTM Order dated 31 January, 2018 in the matter of 63 Moon Technologies Limited wherein 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 various news portal 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 research report, 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 at 9:20 am on March 19, 2013.

27. If we, for a moment, see the transactions of Noticee referred in the SCN purely from the point of view of the investors who are individuals holding life insurance policies issued by the Noticee, 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 policy 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 policy holders to act in their best interest. 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 14, 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 21, 2020**  
**Place : Mumbai**

**VIJAYANT KUMAR VERMA**  
**ADJUDICATING OFFICER**