

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
S. RAMAN, WHOLE TIME MEMBER
ORDER

Under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 in respect of trading activity of Factorial Master Fund in the scrip of L & T Finance Holdings Limited.

1. Securities and Exchange Board of India (“SEBI”) conducted an investigation into the trading and dealings in the scrip of L&T Finance Holdings Limited (hereinafter referred to as “LTFH”) for the period from March 10, 2014 to March 14, 2014 (hereinafter referred to as “investigation period”). SEBI observed abnormal price movement in the said scrip in BSE Ltd (“BSE”) and National Stock Exchange of India Ltd (“NSE”) on March 13, 2014, i.e., on the day of introduction of the scrip in the Futures & Options segment.
2. On an examination, it was observed that Factorial Master Fund (“Factorial”), a company incorporated in Cayman Islands, indulged in unusual and aggressive trading in the scrip of LTFH ahead of the announcement of Offer for Sale (“OFS”) of shares of LTFH on March 14, 2014 by the promoter Larsen & Toubro Limited (“L&T”). The details of the trades executed by Factorial in the scrip of LTFH are as under:
 - i. *Factorial built a short position of 5,309 derivative contracts of LTFH futures on March 13, 2014 which is equivalent to 2,12,36,000 shares i.e. 84.15% of market wide open interest built during the day in the scrip.*
 - ii. *After taking such an unusually aggressive short position in the F&O segment, Factorial took a reverse position of 2,75,10,484 share in the cash market by subscribing to the OFS at a price of Rs.71.50 on March 14, 2014.*
 - iii. *By taking the said position, Factorial locked- in a profit of approximately Rs.20 crores based on the difference between the average price at which the short position was created and the OFS subscription price of Rs.71.50.*
3. Considering the fact that Factorial had taken such an aggressive position without any existing exposure in the scrip of LTFH and also considering the fact that services of five independent

Foreign Institutional Investors (“**FIIs**”) were availed to take such a position and the proximity of events, it appeared possible that Factorial had access to the ‘*unpublished price sensitive information*’ regarding the likely floor price of OFS of shares of LTFH.

3.1 As the aforesaid trades mentioned at paragraph 2 of this order were *prima facie* in violation of Section 12A (d) and (e) of SEBI Act, 1992 read with Regulation 3(i) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (“**PIT Regulations**”) and regulation 3 (a), 3 (b), 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003 (“**PFUTP Regulations**”) SEBI passed an *ad interim ex-parte* order dated June 05, 2014 and restrained Factorial from dealing in the securities in Indian securities market (including through Offshore Derivative Instruments) and accessing the Indian securities market, directly or indirectly, in any manner whatsoever till further orders.

4. The interim directions against Factorial were confirmed vide order dated October 16, 2014. Factorial challenged the said confirmatory order before the Hon’ble Securities Appellate Tribunal (“**SAT**”). The Hon’ble SAT disposed of the Appeal vide an order dated May 08, 2015 with the following observations/directions:

“In the present case, the prima facie view taken by SEBI that before entering into trades on March 13, 2014, the appellant was privy to UPSI that L&T has fixed the floor price for selling the shares of LTFH at Rs.70/- per share is based on mere presumption and without any sustainable basis. In these circumstances, continuation of the restraint order is unjustified. However, since the restraint order passed against the appellant has already operated for nearly a year and since SEBI claims that the investigation is at a crucial stage, in the facts of present case, pending further investigation it would be just and proper to pass the following interim order:-

- a) SEBI shall complete the investigation within a period of two months from today.*
- b) If on completion of such investigation SEBI deems it fit to proceed further in the matter, then SEBI shall issue show cause notice and pass appropriate order thereon after giving an opportunity of hearing to the appellant, within a period of one month from the date of issuing show cause notice as stated in clause (a) above.*
- c) If SEBI fails to issue show cause notice to the appellant within two months from today and if issued, fails to pass an order as stated above within a period of one month from the date of issuing show*

cause notice, then and in that event the impugned confirmatory order dated October 16, 2014 continuing the restraint order passed under the ex-parte ad-interim order dated June 05, 2014 shall come to an end and the appellant would be entitled to access the Indian Securities Market.”

5. Thereafter, on July 08, 2015 SEBI sought appropriate direction from Hon'ble SAT regarding the timeline for issuance of Show Cause Notice to Factorial if any new facts adverse to Factorial come to knowledge of SEBI. Vide order dated July 08, 2015 Hon'ble SAT clarified that *"failure on part of SEBI to issue show-cause notice within the time stipulated in the order dated May 8, 2015, shall not come in the way of SEBI in issuing a show-cause notice if any new facts adverse to the Appellant come to the knowledge of SEBI"*.
6. Subsequent to completion of investigation, SEBI issued a Show Cause Notice (“**SCN**”) dated December 07, 2015 to Factorial Master Fund (“**the Noticee**”), calling upon the entity to show cause as to why appropriate directions for disgorgement of unlawful gains under Sections 11 (1) and 11B of the SEBI Act, 1992 should not be issued against them for the alleged violations of Regulation 3(i) of PIT Regulations, 1992 read with Regulation 12(2) of SEBI (PIT) Regulations, 2015 and Section 12A(d),(e) of SEBI Act, 1992.
7. Pursuant to the SCN, the Noticee vide letter dated February 03, 2016 sought inspection of several documents. Accordingly inspection of documents was conducted on February 16, 2016 wherein copies of all the relevant documents which have been relied on while issuing the SCN were provided to the Noticee. The Noticee, vide letter dated March 24, 2016 replied to the SCN. The main submissions of the Noticee are as under:

I. SCN is without jurisdiction being without any new adverse facts:

- i. *“At the very outset, it must be noted that the Hon’ble Securities Appellate Tribunal (“SAT”) had, by its order dated July 8, 2015 (“Second SAT Order”), directed (pursuant to SEBI’s own confirmation) that SEBI would issue a SCN only “...if any new facts adverse to the Appellant come to the knowledge of SEBI...”. This was because there was already a comprehensive ruling on the facts relied upon by SEBI until then by way of a full-fledged order of the SAT dated May 8, 2015 (“First SAT Order”).*
- ii. *This is very vital and important aspect of the matter as it is now an admitted position, confirmed by SEBI in the minutes of inspection and in its email dated February 29, 2016 (copy annexed in Annexure 3) that there is no new material other than the statement of Mr. Sumit Jalan recorded on June 24, 2015 that has been relied upon while issuing the SCN.*

- iii. *It is apparent therefore that the SCN has been issued on the basis of no new adverse facts. Therefore, the very issuance of the SCN is without jurisdiction. It is necessary to withdraw the SCN as it is not only violative of the Second SAT Order but also contrary to SEBI's own stand before the SAT.*
- iv. *The Second SAT Order ruled the following:*
 - "...It is further clarified that failure on part of SEBI to issue show-cause notice within the time stipulated in the order dated May 8, 2015, shall not come in the way of SEBI in issuing a show-cause notice if any new facts adverse to the Appellant come to the knowledge of SEBI."*
- v. *SEBI has confirmed in writing in the minutes of inspection and in its email dated February 29, 2016 that there is no material other than the statement of Mr. Sumit Jalan recorded on June 24, 2015 that has been relied upon while issuing the SCN. The SCN has been issued on the basis of no new adverse facts, and hence contrary to the Second SAT Order.*

II. SCN without merit on facts:

- vi. *The allegations in the SCN are entirely a mere repetition of what has been stated in the SEBI Orders and other pleadings filed by SEBI during the proceedings before SAT in Appeal No. 391 of 2014. It is submitted that the admitted position is that only in the event where there is new material discovered by SEBI to indicate wrong-doing by Factorial, proceedings would be initiated against it. However, in the event that no such material that would constitute new adverse facts was found, the ruling of the First SAT Order exonerating Factorial on each allegation, which is the final determination on the issue, would continue. It is submitted therefore that the issuance of the SCN is barred by res judicata and issue estoppel and also by the statement of SEBI in the Second SAT Order.*
- vii. *The allegations in the SCN have been dealt with, considered and decided in the First SAT Order is apparent from the table at Annexure 13 which contains a summary of the allegations in the SCN and the corresponding ruling of the First SAT Order on such allegations.*
- viii. *In fact, the material relied upon by SEBI while issuing the SCN further demonstrates the lack of wrong-doing by Factorial. There is absolutely no proof or indication of Factorial possessing UPSI while undertaking its trades. Mr. Jalan (Mr. Sumit Jalan of Credit Suisse) has also specifically stated in response to question 7 that "...The specific terms of the offering was entirely the management's prerogative and is finalised at the time of launching the OFS. The day to day discussions with L&T management were never disclosed to the investors including Barun Agarwal." (Mr. Barun Agarwal of the Noticee)*

- ix. *It is submitted that this is an issue that needs to be determined at the outset as ruled by the Hon'ble Supreme Court in various cases. The Hon'ble Supreme Court of India has, in the case of Arun Kumar & Ors. v. Union of India & Ors. (2007) 1 SCC 732 ruled that:*

“...A "jurisdictional fact" is a fact which must exist before a Court, Tribunal or an Authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a Court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess...” (Emphasis supplied).

- x. *The Supreme Court has in the case of Carona Ltd v. Parvathy Swaminathan & Sons (2007 (8) SCC 559) ruled that:*

“...It is thus clear that for assumption of jurisdiction by a Court or a Tribunal, existence of jurisdictional fact is a condition precedent. But once such jurisdictional fact is found to exist, the Court or Tribunal has power to decide adjudicatory facts or facts in issue...”

- xi. *The Supreme Court has in the recent case of Vodafone International Holdings B. V. v. Union of India and Another (2009) 221 CTR (SC) 617, ruled that the question of jurisdictional fact has to be established as a preliminary issue before adjudication of the 'merits' of the matter.*

III. Issue Estoppel:

- xii. *Since, SEBI is attempting to re-ignite the issues by the SCN that have been squarely considered by First SAT Order, it is important to analyse the principle of issue-estoppel in the present proceedings.*
- xiii. *The Supreme Court had observed the following in the case of Hope Plantation Ltd. vs Taluk Land Board ((1995) 5 SCC 590):*

“...26. It is settled law that principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstrated wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are 'cause of action estoppel' and 'issue estoppel'. These two terms are of common law origin. Again once an issue has

been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the CPC contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice...”

- xiv. *It is apparent from the above that there is nothing in the SCN that survives adjudication given that the same issues/allegations have already been pleaded by SEBI in the SEBI Orders and in its submissions before the SAT and have been struck down conclusively by the SAT. The Second SAT Order also records the understanding of the SEBI in this regard, which makes it essential that the SCN be disposed of with Factorial's full and final exoneration.*
- xv. *In this light we request you to bring an end to these proceedings by exonerating Factorial, which is the only deserved, fair and just outcome on the basis of the facts and the material on record.”*

8. Considering the reply filed by the Noticee, an opportunity of personal hearing was granted to the Noticee on April 29, 2016. The counsel for the Noticee requested to re-schedule the said personal hearing due to his unavailability. Accordingly, the personal hearing was re-scheduled to June 15, 2016. For the hearing Mr. Somasekhar Sundaresan and Dhaval Kothari, Advocates from J. Sagar Associates along with Mr. Barun Agarwal for the Noticee appeared before me. The Noticee was granted time upto June 22, 2016 to file written submissions, if any. Thereafter, vide email and letter dated June 24, 2016 the Noticee filed the following written submissions :

- a. *“Firstly, it is pertinent to highlight that futures were first introduced on this counter on that very same day (i.e. on March 13, 2014), allowing Factorial (and indeed anyone similarly minded) to execute its and the analyst community's long-held fundamental and technical negative view on the stock. So, Factorial's trades must be seen in the light of first day of futures introduction, rather than launch of OFS, to get the right rationale. In addition, proof of Factorial's research (including meeting with LTFH in March 2013) and the reliance on various consistent negative views of other research analysts and investment houses too have been presented earlier to demonstrate that its trades were based on research not UPSI.*

- b. *No new adverse fact has come to light after the Hon'ble Tribunal comprehensively ruled on merits on all the then prima facie findings of SEBI.*
- c. *The only document introduced was a statement of Mr Sumit Jalan, Credit Suisse representative, who too has clearly stated that he did not pass on any UPSI to Factorial.*
- d. *The launch of OFS by L&T on that day was conditional upon receiving an exemption from SEBI, which was received only post market hours. Since decision on the exemption after-market hours could have been known only to SEBI, there is no way Factorial could have traded with this information during market hours. There is no charge against any official of SEBI that any UPSI had been communicated to Factorial, L&T, LTFH or Credit Suisse.*
- e. *The size and scale of the LTFH trade was not abnormal or inconsistent with past practice.*
- f. *At the hearing, the representatives were asked to answer if any of the 70-odd investors with whom Credit Suisse had spoken during the market gauging exercise had traded in LTFH stock or futures between March 10 and March 13, 2014. As and when this is made known to the Learned WTM, the same should also be shared with us.*
- g. *We also take this opportunity to point out that our trade in LTFH followed our own internal processes for risk exposure. For trades in excess of USD 10 million (the threshold applicable in March 2014), Factorial had to seek pre-approval. For LTFH we took such an internal pre-approval. This was one of 36 such approvals taken in two years. The internal communication was also shared with the Securities and Finance Commission (SFC), the regulator in Hong Kong, in August 2014 when the SFC reviewed the situation because of SEBI's ex parte order. This will also show that Factorial was consistent in its position that it was fundamentally negative on the LTFH stock at the then prevailing prices. In this communication, it will be seen that approval for the trades in LTFH was sought on March 12, 2014 and for executing the trades for the period until the end of June 2014, which further proves that Factorial did not have any UPSI as to the timing of the OFS.*
- h. *We hope this would enable SEBI to see the fact that the merits of the case do not warrant any action at all. To summarize:-*
 - A) *The Hon'ble SAT has already ruled comprehensively in the order dated May 8, 2015 in our favour on every element of the merits of facts available with SEBI until then;*
 - B) *Nothing new and adverse to Factorial has at all emerged in the case to warrant the issuance of the show cause notice. The only new document that is now available is the statement dated June 24, 2015 from Mr. Sumit Jalan, which in fact corroborates Factorial's consistent submission*

all through these proceedings - that there was no communication of any UPSI from Credit Suisse to Factorial;

C) Indeed, there is no order or proceeding, ex parte or otherwise against Credit Suisse or any officials of SEBI in connection with communication of UPSI to Factorial or to any one at all; and

D) Regardless of all the foregoing, the trade by Factorial in LTFH was consistent with past practice in terms of scale, size, value and nature.”

Consideration of Issues and findings:

9. I have considered the material available on record such as Investigation Report, SCN issued to the Noticee alongwith the documents provided therein, reply to the SCN; submissions (written and oral) made by the Noticee during the personal hearing before me and all other relevant material available on record including the submissions made subsequent to the personal hearing. In the light of the same, I shall now proceed to deal with the charges levelled against the Noticee in the SCN.

10. The issues for determination in the instant proceeding are :

- i. Whether the information regarding the decision to come out with OFS and the decision on floor price of OFS was Unpublished Price Sensitive Information (“**UPSI**”)?*
- ii. Whether the Noticee comes under the definition of ‘insider’ as per Regulation 2(e)(i) of the PIT Regulations 1992?*
- iii. Whether the trades executed by the Noticee in the scrip of LTFH during the investigation period were done while in possession of UPSI i.e. decision to come out with OFS?*

11. Before I proceed to deal with the issues, the relevant legal provisions, the contravention of which have been alleged in this case may be reproduced hereunder:-

Securities and Exchange Board of India (Prohibition of Insider Trading) 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 when in possession of any unpublished price sensitive information;

Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015:

12. (1) *The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.*

(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;

Securities and Exchange Board of India 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;

Preliminary Objections by the Noticee:

11.1 Before dealing with the charges levelled against the Noticee, my findings as regards the preliminary objections raised by the Noticee are as under-

- i. The Noticee vide its reply dated March 24, 2016 contended “*The First SAT Order dated May 8, 2015, ruling on the facts available until then (and nothing new and adverse has come out since then), exonerated Factorial by stating inter alia that SEBI’s case is “without any basis”, “unsustainable” and “devoid of any merit”. The First SAT Order has attained finality. SEBI has not appealed the First SAT Order in exercise of its statutory right of appeal.*”

I do not agree with the contention of the Noticee that the SAT order dated May 08, 2015 had resulted in finality. This is clearly evident from the following observations of the Hon'ble SAT in the said order:

- d) *"...since the restraint order passed against the appellant has already operated for nearly a year and since SEBI claims that the investigation is at a crucial stage, in the facts of present case, pending further investigation it would be just and proper to pass the following interim order...I also note that as an interim measure Hon'ble SAT granted two months' time to SEBI to complete investigation and issue SCN and pass appropriate order within a month from the date of the SCN. Hon'ble SAT also observed "If SEBI fails to issue show cause notice to the appellant within two months from today and if issued, fails to pass an order as stated above within a period of one month from the date of issuing show cause notice, then and in that event the impugned confirmatory order dated October 16, 2014 continuing the restraint order passed under the ex-parte ad-interim order dated June 05, 2014 shall come to an end and the appellant would be entitled to access the Indian Securities Market."*

The scope and purport of the order passed by the Hon'ble SAT was with regard to the question whether SEBI was right in passing the impugned orders on the basis of evidence available at that point in time. It was brought to the notice of the Hon'ble SAT that investigation launched by SEBI in the matter was pending. In this context, the Hon'ble SAT was pleased to observe that there was no need to continue the restraint imposed on the Noticee vide SEBI's *ex-parte* interim order dated June 5, 2014 and confirmatory order dated October 16, 2014. Further, the Hon'ble SAT vide Order dated July 08, 2015 also mentioned that *"failure on part of SEBI to issue show-cause notice within the time stipulated in the order dated May 8, 2015, shall not come in the way of SEBI in issuing a show-cause notice if any new facts adverse to the Appellant come to the knowledge of SEBI"*.

Thereafter, SEBI completed the investigation and based on the new facts, SEBI issued SCN dated December 07, 2015.

In sum, my view is that the proceedings against the Noticee had not attained finality at the time of Hon'ble SAT's ruling of May 08, 2015 as contended by the Noticee and SEBI was completely within its rights to issue SCN in the present matter.

- ii. The Noticee further contented that there are no new facts against the Noticee in the SCN, hence, issuance of SCN in the present matter is barred by principles of res judicata and issue estoppel.

As regards this contention of the Noticee, I find that SEBI has issued the SCN with the following new facts *viz:-*

- a. UPSI i.e. as per the SCN, consists of two elements (i) the decision to come out with OFS (ii) the floor price of OFS.
- b. Statement of one Mr. Sumit Jalan, an employee of Credit Suisse. The SCN alleges that the said statement recorded on June 24, 2015 during the course of investigation leads to the fact that the Noticee had access to the UPSI of impending OFS of L&T.
 - The statement of Mr. Sumit Jalan was recorded on June 24, 2015 i.e. after issuing the interim order by SEBI.

It is pertinent to mention the decisions of Hon'ble Supreme Court in the matter of *Maharshi Dayanand University vs. Surjeet Kaur* (2010) 11 SCC PG.159, wherein the Hon'ble Supreme Court reiterated the established legal position that *there can be no estoppel/promissory estoppel against the legislature in exercise of the legislative function nor can the Government or a Public authority be debarred from changing its stand in a given situation. Thus, the question of estoppel has to be determined on the basis of facts in each case.*

Similarly, in the matter of *M.I. Builders P. Ltd. vs. Radhey Shyam Sabu and Others* (1999)6 SCC 464), the Hon'ble Supreme Court observed in paragraph 66 of the judgment that "*the Corporation is a continuing body and it may be estopped in a given case, but when it finds that an action was contrary to law, no estoppel would act as an impediment in the way of the Corporation to change its stand*". Applying the ratio of *M.I. Builders P. Ltd.* and *Maharshi Dayanand University(Supra)* Hon'ble SAT in the matter of *Pancard Clubs Vs. SEBI* (Appeal No. 254 of 2014) observed "*SEBI may not be bound by estoppel in a given case to change its stand due to changed circumstances or change in policy or law*".

In view of the discussions detailed in the preceding paragraphs, I find that principles of res judicata and issue estoppel are not applicable in the instant case.

Let me now discuss the charges levelled against the Noticee and the submissions in respect of the alleged violations:

11.2 Whether the information regarding the decision to come out with OFS and the floor price of OFS was UPSI?

- i. LTFH is a financial holding company offering a diverse range of financial products and services across the corporate, retail and infrastructure finance sectors. The company also offers mutual fund products and investment management services, through their direct and indirect wholly-owned subsidiaries. The company is promoted by Larsen & Toubro Ltd.
- ii. The shareholding pattern of LTFH as noted from the SCN is as under:

Particulars	Quarter ended Dec 2013		
	No. of shareholders	No. of shares	% of shareholding
Promoter and Promoter group	1	1399848242	81.50
Public	401283	317749619	18.50
Total share capital	401284	1717597861	100

- iii. As per the Securities Contracts (Regulation) Rules, 1957(SCRR), L&T the promoter was required to comply with the minimum public shareholding (MPS) norms and reduce its shareholding in LTFH to 75% by August 2014.
- iv. It is noted from the reply of L&T dated May 21, 2015 (Annexure 4 of the SCN) that in order to comply with the MPS, the Board of Directors of L&T at the meeting dated January 25, 2013 approved dilution of the company's stake in LTFH either by way of OFS or through such other modes and authorized the management to take necessary actions. L&T reduced its shareholding by June 2014 vide the following modes :
 - L&T disposed of 1% of its shareholding in LTFH on December 23, 2013 (by way of market sale), pursuant to SEBI approval dated 18 July, 2013.

- L&T had to further offload a total of 6.46% shareholding in LTFH to bring its shareholding down to 75% after expiry of the requisite 12 weeks cooling - off period that was expiring on March 17, 2014.
 - L&T had earlier sought exemption from 12 weeks mandatory cooling-off period which was allowed by SEBI vide letter dated March 13, 2014.
 - L&T reduced its shareholding to an extent of 4.89% vide sale of 8,32,58,633 shares by L&T through OFS to the public on March 14, 2014.
 - L&T further reduced its shareholding by a sale of 2,75,85,744 shares to Goldman Sachs (India) Securities Pvt. Ltd on June 11, 2014.
- v. As part of the OFS mode to reduce the shareholding, on March 13, 2014, L&T, the promoter of LTFH made the following corporate announcements to the stock exchanges (NSE/BSE).

“(a) In order to comply with minimum public shareholding (MPS) norms as specified in Securities Contracts (Regulation) Rules, 1957(SCRR), L&T submitted to BSE a Notice of Offer for Sale (OFS) of 5,55,05,755 shares (3.23%) in LTFH on March 14, 2014.

(b) In addition to those shares, L&T may sell upto 2,77,52,878 shares in the OFS i.e. with a higher ceiling of 4.845%. Credit Suisse Securities (India) Private Limited (hereinafter referred to as “CS”) was appointed as Seller Broker in the OFS.

(c) The floor price for the shares offered in OFS was fixed at Rs.70/ share.”

- vi. The impact of the aforesaid corporate announcement on the price and volume of scrip of LTFH is as follows:

S.No	Date and Time	Announcement/News	Price Impact/Shares Traded	Remarks												
1	Mar 13, 2014: 20:20	NSE received the Notice of Offer for Sale from L&T ("the Seller") the Promoter of LTFH (the "Company")	13/03/2014 <table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td></td><td></td><td></td><td></td></tr><tr><td>86.4</td><td>88.25</td><td>78.3</td><td>79.15</td></tr></table>	O	H	L	C					86.4	88.25	78.3	79.15	The scrip on March 14, 2014 closed below 6.19% of the previous day (13/03/2014) closing price.
	O	H	L	C												
	86.4	88.25	78.3	79.15												
Mar 13, 2014: 20:24	NSE received the OFS floor price for offer for sale information from L&T at 20:24.	14/03/2014 <table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>75</td><td>76.75</td><td>73.7</td><td>74.2</td></tr></table>	O	H	L	C	75	76.75	73.7	74.2						
O	H	L	C													
75	76.75	73.7	74.2													
Mar 13, 2014: 20:36	NSE published Notice of Offer for Sale by L&T															
Mar 13, 2014: 20:52	NSE broadcast the floor price															
2	Mar 13, 2014: 21:22	L&T ("the Seller") the Promoter of LTFH (the "Company") has submitted to BSE a Notice of Offer for Sale up to 5,55,05,755 equity shares of face value of Rs. 10 each, constituting 3.23% of the equity share capital of the Company (Sale Shares) on March 14, 2014 exclusively through the Seller's broker on the separate window provided by the BSE and NSE. In addition to the Sale Shares, the Seller may also sell up to 2,77,52,878 equity shares of face value Rs. 10 each of the Company in the Sale on March 14, 2014 (the Additional Shares, and together with the Sale Shares, [hereinafter referred to as “the Shares”]). The Sale shall take place at the separate window of the Stock Exchanges and shall commence on March 14, 2014 at 9.15 a.m. and shall close on the same day at 3.30 p.m. Indian Standard Time (the Trade Date).	13/03/2014 <table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>86.6</td><td>88.35</td><td>78.4</td><td>79.2</td></tr></table> No. of shares traded: 7191840	O	H	L	C	86.6	88.35	78.4	79.2					
			O	H	L	C										
			86.6	88.35	78.4	79.2										
	14/03/2014 <table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>75</td><td>76.8</td><td>73.75</td><td>74.3</td></tr></table> No. of shares traded: 6164342	O	H	L	C	75	76.8	73.75	74.3							
O	H	L	C													
75	76.8	73.75	74.3													
Mar 13, 2014: 21:37	BSE published the floor price of the offer for sale of LTFH as below: Rs. 70 per Equity Share of L&T Finance Holdings Ltd. (the "Floor Price").															

- vii. Price Volume Analysis in the scrip of LTFH on BSE during the investigation period as mentioned in the SCN is as follows:

Price Volume (BSE)

(Amount in Rs.)

Period	Dates		Opening Price (volume) on first day of the period(Rs)	Closing price (volume) on last day of the period (Rs.)	Low price(volume) during the period (Rs.)	High Price(volume) during the period (Rs.)	Avg. no. of (shares) traded daily during the period
Before Investigation period	(10/02/2014-09/03/2014)	Price	74.6	77.65	69.1	79.5	1098942
		Vol	1471218	1341041	438555	3645660	
Investigation Period	(10/03/2014-14/03/2014)	Price	77.4	74.3	73.75	88.35	4704110
		Vol	2937696	6164342	2157010	7191840	
After investigation period	(15/03/2014 – 14/04/2014)	Price	72.9	67.2	66	79	3356019
		Vol	7627377	1748026	998360	10080527	

- viii. The day-wise price volume data in the scrip of LTFH at BSE:

Date	Open Price	High Price	Low Price	Close Price	No. of Trades
10-Mar-14	77.40	81.80	77.00	80.50	22322
11-Mar-14	81.15	82.65	80.50	81.15	16608
12-Mar-14	83.00	86.35	82.90	85.20	39175
13-Mar-14	86.60	88.35	78.40	79.20	50976
14-Mar-14	75.00	76.80	73.75	74.30	37926

- ix. It is seen from the above table that price of the LTFH decreased from Rs.77.4 as on March 10, 2014 to Rs.74.30 as on March 14, 2014 during the investigation period. BSE Sensex decreased from an open of 21819.19 on March 10, 2014 to a close of 21809.8 on March 14, 2014.

- x. Similarly, the price volume analysis in the scrip of LTFH on NSE during the investigation period as mentioned in the SCN is as follows:

Price Volume (NSE)

(Amount in Rs.)

Period	Dates		Opening Price (volume) on first day of the period(Rs)	Closing price (volume) on last day of the period (Rs.)	Low price(volume) during the period (Rs.)	High Price(volume) during the period (Rs.)	Avg. no. of (shares) traded daily during the period
Before Investigation period	(10/02/2014- 09/03/2014)	Price	74.7	77.7	69	79.5	3228847
		Vol	4493737	4113965	950495	11788914	
Investigation Period	(10/03/2014- 14/03/2014)	Price	77.5	74.2	73.7	88.25	17281520
		Vol	8371780	23447711	7125035	28301491	
After investigation period	(15/03/2014 – 14/04/2014)	Price	73	67.2	65.85	78.7	14375031
		Vol	33974616	6198039	4010075	36831080	

- xi. Day-wise price volume Data in the scrip of LTFH at NSE:

Date	Previous Close	Open Price	High Price	Low Price	Close Price	No. of Trades
10-Mar-14	77.70	77.50	81.75	76.95	80.50	43751
11-Mar-14	80.50	81.00	82.70	80.60	81.20	38732
12-Mar-14	81.20	83.00	86.30	82.65	85.25	94212
13-Mar-14	85.25	86.40	88.25	78.30	79.15	125035
14-Mar-14	79.15	75.00	76.75	73.70	74.20	91407

- xii. From the above table, it is observed that price in the scrip decreased from Rs.77.5 as on March 10, 2014 to Rs.74.20 as on March 14, 2014 during the investigation period. CNX Nifty increased from an open of 6491.70 on March 10, 2014 to a close of 6504.20 on March 14, 2014.
- xiii. It is noted from the investigation that the price of LTFH scrip had declined sharply on March 13, 2014 on the day of introduction of scrip in the Futures segment and ahead of the announcement of OFS and its floor price. The price of the scrip opened on March 13, 2014 at Rs.86.6 and fell to close of Rs.79.2 at BSE. After announcement of OFS and

floor price, the scrip closed at Rs.74.3 on March 14, 2014 at BSE (Down 6.19% from previous day).

- xiv. It is noted that the announcement of sale of large stake by promoters affected the price of shares of LTFH in a negative way. In addition, the OFS at a significant discount to market price also impacted the price negatively.
- xv. As per Regulation 2(ha) of SEBI (Prohibition of Insider Trading) Regulations, 1992:

"Price sensitive information" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company."
- xvi. From the above stated chronology of events, it is clearly evident that the decision to come out with OFS and the floor price of OFS materially impacted the price of securities of LTFH, hence, such information is qualified as '*price sensitive information*' as defined above. This fact has not been disputed by the Noticee.
- xvii. In the light of the above discussion, I find that the information related to "decision to come out with OFS" and "the fixation of floor price of OFS" were indeed '*Price Sensitive Information*' as per Regulation 2(ha) of PIT Regulations, 1992.

Whether the PSI was unpublished?

- From the chronology of events tabulated in the SCN, I note that UPSI related to "decision on OFS" came into existence on March 10, 2014 i.e. day when L & T sought permission from SEBI seeking exemption from the cooling off period of 12 weeks to launch OFS. Further, the floor price was decided on March 13, 2014 after-market hours (i.e. between 4-7 PM).
- L&T submitted the notice to stock exchanges as regards OFS and the floor price on March 13, 2014 at 20:20 and 20:24 hrs. respectively after receipt of approval by SEBI. After NSE's internal due diligence, the floor price announcement was broadcast through the stock exchange's website at 20:52 hrs on the same day.

Announcement on March 13, 2014 on NSE website was as follows:

<i>Broadcast Date/Time</i>	<i>13-Mar-2014 20:52</i>
<i>Subject</i>	<i>Offer For Sale-Stock Exchange Mechanism</i>
<i>Announcement</i>	<i>L & T Limited has submitted to the Exchange a copy of announcement with respect to offer for sale through Stock Exchange Mechanism for sale of 5,55,05,755 equity shares of L&T Finance Holdings Limited by Larsen & Toubro Limited (Seller). The Floor Price for the Sale in terms of the OFS Circular shall be Rs. 70 (Rs Seventy) per equity share.</i>

In view of the above, it can be concluded that both the elements of UPSI i.e. OFS and its Floor price got published at 20:36 and 20:52 hrs. respectively on March 13, 2014 when NSE broadcast the floor price announcement on its website. Hence, I find that the L&T's decision to come out with OFS and its floor price was unpublished till March 13, 2014 (The UPSI period thus was from March 10, 2014 to March 13, 2014).

11.3 Whether the Noticee falls under the definition of 'insider' as per Regulation 2(e)(i) of the PIT Regulations 1992?

- i. As per Regulation 2(e) of SEBI (PIT) regulations "Insider" means *"any person who,*
 - (i) "is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or*
 - (ii) has received or has had access to such unpublished price sensitive information"*
- ii. In order to determine the issue as to whether the Noticee is an insider as mentioned above, the chronology of communication between L&T, Credit Suisse and the Noticee during the investigation period when UPSI was in existence is analyzed and my findings are as follows:
 - L&T vide its reply dated May 21, 2015 (Annexure 4 of SCN), submitted that *"The timing of OFS was a decision of the management. The decision was taken for the OFS to be held within the week of March 10, 2014 so as to avoid a transaction towards the close of the financial*

year or around the upcoming general elections. Accordingly, a request was made vide letter dated March 10, 2014 to SEBI for permission to launch an OFS transaction within the 12 week cooling-off period, i.e. before 17th March 2014. "

- During investigation it was revealed that on March 10, 2014 Ms. Vedika Bhandarkar and Mr. Sumit Jalan (Credit Suisse officials) had telephonic discussion with officials of L&T. Credit Suisse shared its views on market conditions and potential investor interest for the proposed OFS. Credit Suisse was verbally mandated for the OFS and it was discussed and agreed to launch the OFS within the next 2-3 days.
- Further, it is an admitted fact that Mr. Sumit Jalan, Director, Equity Capital Markets of Credit Suisse communicated with the Noticee to obtain investor feedback on the L&T stock during the market gauging exercise carried out by Credit Suisse. Credit Suisse's conversations with investors, including the Noticee were made for the purpose of assessing the market demand for the LTFH stock in the said period. Mr. Sumit Jalan, one of the officials of Credit Suisse had telephonic discussion with officials of L&T. Admittedly, Mr. Sumit Jalan was in constant communication with Mr. Barun Agarwal of the Noticee during the period March 10, 2014 to March 13, 2014.
- The relevant extracts of Mr. Sumit Jalan's Statement recorded on June 24, 2015 is reproduced hereunder:

"... Q.4 What kind of discussions generally take place with clients.

A4. We get legally approved script from internal legal team which pertains to the nature of conversation we can have with the investors. For example, in the case of OFS of LTFH, the script read along the lines " As per Indian regulations promoters of listed company must have a maximum ownership of 75%. Currently, Larsen & Toubro (the parent of LTFH IN) own 81.46% and as result would have to sell down 6.46% of their current stake to comply with regulations. In October 2013, Larsen & Toubro announced a sell down so that LTFH would meet the public float requirements. Would you have any indicative demand and if so, what price would you look at?.

Q.5 Can you please detail the date wise summary of discussions with Barun Agarwal of Factorial Master Fund from March 10-13, 2014 regarding the LTFH OFS?

*A5. First conversation was on Monday evening, **March 10, 2014**, where I had discussed along the lines of the aforementioned script, whether LTFH is something he likes. His prima facie response was that he will have some interest. He enquired about the daily volume of the stock and mentioned that his preference could be for 1-2 days of daily volume at 10% to 12% discount levels of the prevailing price and he will do more work and revert.*

*Second conversation was on **Wednesday, March 12, 2014**, during the course of our conversations I also discussed the overall Indian economic/business market environment with Barun Agarwal. Barun Agarwal mentioned that he was now more positive about the Indian market and the financial service sector for the next couple of months. I responded by stating that the financial services space is highly correlated to the macro recovery of the Indian economy and that LTFH could potentially benefit from that. Given that in this period, the LTFH stock was introduced in the F&O segment, this factual development was also discussed as a positive factor, making the stock more frontline and improving liquidity.”*

- I also note from the written submission of the Noticee that on March 12, 2014, Mr. Barun Agarwal sought internal approval for executing the trades in OFS of LTFH. The Noticee and Mr. Sumit Jalan stated that timing of OFS was not communicated.

Recently, the Hon’ble SAT had occasion to consider the compelling circumstantial evidence while upholding the charge of insider trading alleged by SEBI in the matter of Hasmukh Parekh & Ors Vs. SEBI (Appeal No. 120 of 2014 decided on November 30, 2016) in the scrip of Shelter Infra Projects Limited. In the said matter, considering the close association between the parties involved in the case and the resultant trading in the scrip for the first time during the prevalence of UPSI are all sufficient circumstantial evidence to prove that the UPSI was shared between the parties which resulted in trading in the scrip.

Considering the observations of the Hon’ble SAT in the matter referred above and bearing in mind the facts and circumstances of the present case including the proximity of the events as detailed above, the only reasonable inference that can be drawn in this case is that Noticee had access to the UPSI regarding announcement of OFS of L&T.

- iii. In the light of above discussions, I find that the Noticee is indeed covered under the definition of "Insider" in terms of Regulation 2(e) of PIT Regulations, 1992.

11.4 Whether the trades executed by the Noticee in the scrip of LTFH during the investigation period were done while in possession of UPSI i.e. decision to come out with OFS?

- i. As per the SCN, it has been alleged that on March 13, 2014, the Noticee had indulged in unusual and aggressive trading in the scrip of LTFH ahead of the OFS of share of LTFH on March 14, 2014. After taking such a huge short position in the F&O segment on March 13, 2014 at an average price of Rs.80.94, the Noticee took a reverse position of 2,75,10,484 shares on March 14, 2014 in the cash market by subscribing to the OFS at a price of Rs.71.50. By taking the said position, the Noticee locked- in a profit of approximately Rs.20 crores based on the difference between the average price of Rs.80.94 at which the short position was created and the OFS subscription price of Rs.71.50. Considering the proximity of facts and circumstances such as short sale and immediately buying the shares in the OFS at a lesser rate, it is alleged that the Noticee had traded in the scrip of LTFH on the basis of UPSI regarding impending OFS.
- ii. Vide reply dated March 24, 2016 and oral submissions made during the personal hearing on June 15, 2016 and written submissions dated June 24, 2016 made thereafter, the Noticee has submitted as under:
 - a. *"The trade by Factorial in LTFH was consistent with past practice in terms of scale, size, value and nature.*
 - b. The Noticee also contended that its trades were based on research and not UPSI. *"Firstly, it is pertinent to highlight that futures were first introduced on this counter on that very same day (i.e. on March 13, 2014), allowing Factorial (and indeed anyone similarly minded) to execute its and the analyst community's long-held fundamental and technical negative view on the stock. So, Factorial's trades must be seen in the light of first day of futures introduction, rather than launch of OFS, to get the right rationale. In addition, proof of Factorial's research (including meeting with LTFH in March 2013) and the reliance on various consistent negative views of other research analysts and investment houses too have been presented earlier to demonstrate that its trades were based on research not UPSP".*

- iii. The trading activity of the Noticee in the scrip of LTFH during the investigation period is as under:

Trading Details of the Noticee (Derivatives)

Type	Period	Buy Qty	Sell Qty	Net
Before UPSI	January 01, 2014 – March 09, 2014	0	0	0
During UPSI	March 10, 2014 – March 13, 2014	0	2,12,36,000	-2,12,36,000
Post UPSI	March 14, 2014	0	0	0

Trading Details of the Noticee (Cash Segment)

Type	Period	Buy Qty	Sell Qty	Net
Before UPSI	January 01, 2014 – March 09, 2014	0	0	0
During UPSI	March 10, 2014 – March 13, 2014	0	0	0
Post UPSI	March 14, 2014	2,75,10,484*	0	2,75,10,484*

* --- shares acquired through OFS on March 14, 2014

- a. On March 13, 2014, when the shares of LTFH were introduced in the F&O segment, following foreign institutional investors (FIIs) took substantial short positions on behalf of the Noticee which contributed around 85.73% (mentioned as 84.15% in the interim order) of the market wide Open Interest (“OI”) :

Sr. No.	Name of FII	PAN	Sale on behalf of Factorial (No. of Contracts)	Short Qty (Equivalent shares)	% of OI
1	Macquarie Bank Limited	AAECM2014P	1488	59,52,000	24.03%
2	Goldman Sachs Singapore Pte.	AAFCG0345N	1450	58,00,000	23.41%
3	Merrill Lynch Cm Espana Sa. Svb.	AACCM7105R	1300	52,00,000	20.99%
4	Nomura Singapore Limited	AADCN2750N	1061	42,44,000	17.13%
5	Citigroup Global	AAFCS3274C	10	40000	0.16%
Total			5309	2,12,36,000	85.73%

Total open interest on March 13, 2014 = 2,47,72,000

- b. It is noted from the trades executed during the investigation period that the Noticee built a short position of 5,309 derivative contracts of LTFH on March 13, 2014 which was equivalent to 2,12,36,000 shares i.e. 85.73% of the market wide open interest built during the day in the scrip.

- c. It is observed that the Noticee did not have any offsetting position cash segment or equivalent holding of shares of LTFH. Thus, the position of the Noticee was a net short position on LTFH on March 13, 2014.
- d. On March 14, 2014, L&T launched the OFS of 5,55,05,755 shares (amounting to 3.23% of the total share capital) and with an option to sell further 2,77,52,878 shares (total offer amounting to 4.845% of total share capital). Bidding for the said OFS was carried out on NSE and BSE and its details are mentioned as follows:

Exchange	Qty Bid	Shares Allotted	Allotment Price (Rs.)
NSE	5,74,80,541	4,17,90,383	71.50
BSE	5,09,85,757	4,14,68,250	71.50
Total	10,84,66,298	8,32,58,633	71.50

- e. Details of bidding by the Noticee through FIIs in the above OFS are mentioned below:

Name of FII	PAN	Exchange	Qty Bid	Bid price	Shares Allotted
Nomura Singapore Limited	AADCN2750N	NSE	56,00,000	74.20	55,41,682
Macquarie Bank Limited	AAECM2014P	BSE	78,00,000	73.65	77,18,768
Goldman Sachs Singapore Pte	AAFCG0345N	BSE	76,00,000	72.55	75,20,851
Merrill Lynch Capital Markets Espana S.A. S.V.	AACCM7105R	BSE	68,00,000	73.10	67,29,183
Total			2,78,00,000		2,75,10,484

- f. From the above tables, it is clear that the Noticee had bid for total 2,78,00,000 shares through four FII's in the price range of Rs.72.55 – Rs.74.20. Total shares allotted to the Noticee were 2,75,10,484 shares at Rs.71.5. By adopting a short position, the Noticee built an offsetting position in cash market on the very next day of taking a short position. By taking the said position and reversing it in the OFS, the Noticee gained a profit of approximately Rs.20 crores based on the difference between the average price Rs.80.94 at which the short position was created and the OFS subscription price of Rs. 71.50.

- iv. On analyzing the pattern of trades executed by the Noticee and also considering the other facts and statements detailed at paragraphs 11.1 and 11.2 above, my findings are as under:
- The Noticee had traded in the scrip of LTFH only during the Investigation Period i.e. from March 10, 2014 to March 14, 2014. The Noticee had no exposure in scrip of LTFH either prior or post Investigation Period.
 - The Noticee has not disputed the trades executed in the scrip of LTFH during the investigation period and also the profits gained through such trades. The transactions resulted in making a profit of approximately Rs.20 crores.
 - The Noticee executed the trades in the scrip of LTFH on March 13, 2014 i.e. during the period when the UPSI was in existence. The *price sensitive information* i.e. “OFS and its floor price” was disclosed to the Stock Exchanges (NSE and BSE) by L&T on March 13, 2014 at 20:20 and 20:24 hrs. respectively. NSE published the same on website at 20:52 hrs and BSE published the same at 21:37 hrs. Hence, it is clear that the Noticee executed the trades while the information was still UPSI.
 - Admittedly, the Noticee had participated in the market gauging exercise conducted by Credit Suisse and the negative sentiment towards LTFH shares were communicated to Credit Suisse. From the replies of Credit Suisse and the statement of Mr. Sumit Jalan, Director, Equity Capital Markets of Credit Suisse, it is apparent that Mr. Jalan had communicated to the Noticee the impending OFS of L&T in the scrip of LTFH. This information clearly proves that the Noticee was privy to the UPSI of impending OFS of L&T.
 - Though it was known that the promoters of LTFH were required to reduce their stake in it so that LTFH become compliant with the MPS norms, the decision as to the timing of OFS was available only with the top management. The fact that Mr. Barun Agarwal had met the senior management of LTFH on March 11, 2014 when the UPSI was in existence, clearly leads to the fact that the Noticee was privy to the UPSI. The confidence of the Noticee, their magnitude and pattern of trades i.e. short selling to the extent of 85% of the market wide OI in F&O segment clearly leads to

the only reasonable conclusion that the Noticee executed the trades while in possession of the UPSI.

- The Noticee vide its written submissions dated June 24, 2016 submitted examples of large percentage Open Interest/ Volume it had taken previously in other scrips. The same is tabulated alongwith the comparison of trades in the scrip of LTFH:

Sr. no.	Company Name	Futures Contract	Year+ Month	% of Open Interest
1	Sun TV Ltd	Jun-2013	2013/05	51
2	Power Grid Corp	Nov-2013	2013/10	46
3	Jaiprakash Hydro	Jul-2012	2012/06	32
4	LTFH	March 2014	2014/03	85.73

- It is observed from the above examples submitted by the Noticee itself that the highest position created by the Noticee was in the scrip of Sun TV Ltd i.e. 51 % of Open Interest whereas in the scrip of LTFH, Open Interest created by the Noticee was 85.73%. This clearly shows that Open Interest created by the Noticee in the scrip of LTFH was significantly higher than the Open Interest in other scrips shown in the above table. This clearly leads to the conclusion that the trades of the Noticee were influenced by the UPSI.
- In addition, the Bloomberg chat transcript between Nomura (FII) employee and Factorial's Barun Agarwal, (obtained during investigation) clearly establishes the aggressive short selling pursued by the Noticee. As per the said chat transcript the following are noted:
 - ✓ The Noticee reserved \$10mn. capacity for selling in LTFH futures with Nomura in the morning of March 13, 2014.
 - ✓ The selling in futures of LTFH was not supposed to be in discount to cash.
 - ✓ Within an hour of start of sell trade, the discount to cash was approved by the Noticee.

- ✓ Selling started at Rs.87.78 and continued even when stock tick downwards from Rs.80/-.
- ✓ During the sale, initial target of shorting 900 lots (1 lot = 1 contract = 4000 shares) was revised even higher to 1500 lots of LTFH. Finally, 1061 lots of LTFH were sold at average price of Rs.78.63.

The above facts also indicate that the Noticee was trading while in possession of UPSI related to the impending OFS.

- It is evident from the discussions in paragraph no. 11.3 above that the Noticee is an insider and had access to UPSI regarding impending OFS. The Hon'ble SAT vide Order dated 26.10.2006 in the matter of *Dr. Anjali Beke Vs. Adjudicating Officer, SEBI, SAT Appeal No.148 of 2005* held that the charge of insider trading is complete when it is established that an insider traded in the scrips of the company before the information is made public.

In this context, I also note the decision of Hon'ble SAT in the matter of *Rajiv B Gandhi & Ors. Vs. AO, SEBI* (Order dated May 9, 2008 in Appeal No. 50/2007) wherein the Hon'ble SAT dismissed the appeal and upheld the order of Adjudicating officer and observed that *"if an insider trades or deals in securities of a listed company, it would be presumed that he traded on the basis of the unpublished price sensitive information in his possession unless he establishes to the contrary"*. The said Order was also upheld by the Hon'ble Supreme Court vide order dated September 11, 2008 (*C. A. No. 5302 of 2008*).

The Noticee has contended that it traded on the basis of its own research as well as opinion expressed by various other research analysts. Upon perusal of the research reports, I note that some of the research reports projected negative view about the scrip of LTFH and recommended for 'sell or neutral or hold'. However, I do not find any specific research document/information which can be stated as the basis for their aggressive trading in the scrip of LTFH. The trading pattern of the Noticee clearly lead to the only reasonable conclusion that they traded on the basis of UPSI.

- The Noticee has also contended that SEBI has not initiated any action against Credit Suisse or SEBI Officials or any other entities who were privy to the UPSI. I do not find any merit in such contentions. It is an admitted fact that Credit Suisse contacted the Noticee as part of the market gauging exercise prior to launching of OFS. Hence, I find that the Credit Suisse's communication can be seen as falling under the proviso to Regulation 3 of the PIT Regulations which exempts actions taken in the ordinary course of business or employment. The provision reads as under:

“Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.”

- Further, I note that it is the Noticee who executed the trades in the scrip of LTFH to the extent of 85% of the market volume on the very same day of launching the scrip in the F&O segment. It is not a disputed fact that the Noticee executed the trades immediately prior to the publication of the price sensitive information (OFS and its floor price). The trading pattern and proximity of events clearly points to the fact that the Noticee traded in the scrip while in possession of the UPSI and booked unjust profits to the detriment of innocent investors.
- It is noteworthy that no other investors, many of whom had also been approached by Credit Suisse, made any significant dealings in the scrip of LTFH during the same (UPSI) period. It is only the Noticee - and only this Noticee - that chose to trade aggressively (85.73% of the market wide open interest) while in possession of UPSI.
 - a) In this regard, I note that during the hearing, the Noticee requested for the details such as *“if any of the 70-odd investors with whom Credit Suisse had spoken during the market gauging exercise had traded in LTFH stock or futures between March 10 and March 13, 2014”*.
 - b) As per SEBI's investigation, the top 10 net short sellers of LTFH futures on March 13, 2014 accounted for 98.74 of the total Open Interest. Further, out of the top 10 net short sellers, four were the FIIs who traded on behalf of the Noticee and they accounted for approximately 85% of the market wide open interest.

- c) In view of the above, I note that of the entities approached by Credit Suisse during the Market gauging exercise for the OFS, only the Noticee had done significant trading in the LTFH futures on March 13, 2014.
- Considering the above facts and circumstances, the proximity of events noted above and also the trading pattern of the Noticee clearly lead to the only reasonable conclusion that the Noticee indeed executed the trades on the basis of UPSI regarding the impending OFS of L&T in the scrip of LTFH. I also note the recent observations of the Hon'ble SAT in the matter of *Hasmukh Parekh and Ors. Vs. SEBI* (Appeal No. 120 of 2014) in the scrip of Shelter Infra Projects Limited (detailed at page no. 20 above). In view of the above, I have no hesitation to conclude that the Noticee had violated the provisions of Regulation 3(i) of PIT Regulations, 1992 read with Regulation 12(2) of SEBI (PIT) Regulations, 2015 and Section 12A(d),(e) of SEBI Act, 1992.
- v. In view of the discussions and analysis of the trades executed by the Noticee, I find that the charges against the Noticee are established on the basis of the material available on record.

11.5 Quantification of profits locked-in by the Noticee

- i. As per the SCN, the Noticee had earned unlawful gains of Rs.20,04,67,840/-. The calculation of profit made by the Noticee is as under:

Quantity sold in futures	2,12,36,000 shares
Average Selling Price (Rs.)	80.94
Quantity bought through OFS	2,75,10,484 shares
Purchase Price (Rs.)	71.5
Profit	(Sell Price - Buy Price)*Minimum of (Sell Quantity & Buy Quantity)
Profit (Rs.)	20,04,67,840/-

- ii. It is noted that the Noticee submitted vide its written submissions dated June 24, 2016 that the profits made in LTFH trades were consistent with their other large trades executed during its ordinary course of business. It is also stated that they suffered losses in some of their other trades. However, the Noticee has not disputed the fact of trades executed in the scrip of LTFH and the profits locked in through the said share

transactions. In view of this, I find that the Noticee made an amount of Rs.20,04,67,840/-as illegal profit as a result of the trades executed in the scrip of LTFH.

- iii. This is a classic case wherein the Noticee armed with UPSI (which was not available to the general public) made a huge profit by taking advantage of the inside information it possessed. Securities market always have to promote transparency and ensure dissemination of information to all the investors without discrimination. Hence, symmetry of information is a great pillar in ensuring transparency and fairness in the securities market.

Asymmetry of information as observed in the present case placed the Noticee in an advantageous position compared to other investors. None should be allowed to take benefit of such an asymmetry of information. Otherwise, the menace of insider trading cannot be curbed and in future, perpetrators of insider trading will escape legal sanction in the guise of and under the pretext of unique trading strategies. As a regulator of securities market SEBI cannot remain a mere spectator to such happenings in the securities market.

12. A basic premise that underlines the integrity of securities market is that persons connected with securities market conform to high standards of transparency, good governance and ethical behaviour prescribed in securities laws and do not resort to fraudulent and deceptive activities like insider trading. Such activities are detrimental to the interests of the investors as well as the securities market. No person can be allowed to enrich by way of wrongful or ill-gotten gains or avoidance of potential loss made on account of such activity. SEBI has been entrusted with the important mandate of protecting investors and safeguarding the integrity of the securities market. In this regard, necessary powers have been conferred upon it under the securities laws. SEBI Insider Trading Regulations have put in place a framework for prohibition of insider trading in securities. The prohibitions provided in the Regulations ensure a level-playing field in the securities market and safeguard the interest of investors and integrity of securities market. I am of the view that the object and spirit of the Insider Trading Regulations would get defeated if violators of the Insider Trading Regulations are not made to face the consequences.

13. Having regard to all the above mentioned discussion, I, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act read with Sections 11 and 11B of the SEBI Act read with PIT Regulations, 1992 and PIT Regulations, 2015, hereby direct the Noticee to disgorge the entire profit unlawfully gained by them as mentioned in paragraph 11.5 (i) above i.e. Rs.20,04,67,840/- (Rupees Twenty Crore Four lakh Sixty Seven Thousand Eight Hundred and Forty only) with simple interest @10% per annum from March 2014 till the date of payment.

13.1 They shall pay the said amounts within 45 days from the date of this Order either by way of demand draft drawn in favour of “Securities and Exchange Board of India”, payable at Mumbai or by e-payment * to SEBI account as detailed below:

Name of the Bank	Branch Name	RTGS Code	Beneficiary Name	Beneficiary Account No.
Bank of India	Bandra Kurla Branch	BKID 0000122	Securities and Exchange Board of India	012210210000008

**Noticees who are making e- payment are advised to forward the details and confirmation of the payments so made to the Enforcement department of SEBI for their records as per the format provided in Annexure A of Press Release No. 131/2016 dated August 09, 2016 which is reproduced as under:*

1. Case Name:	
2. Name of the payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details:	

14. This Order shall come into force with immediate effect.

Mumbai
December 08, 2016

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA