

SECURITIES AND EXCHANGE BOARD OF INDIA

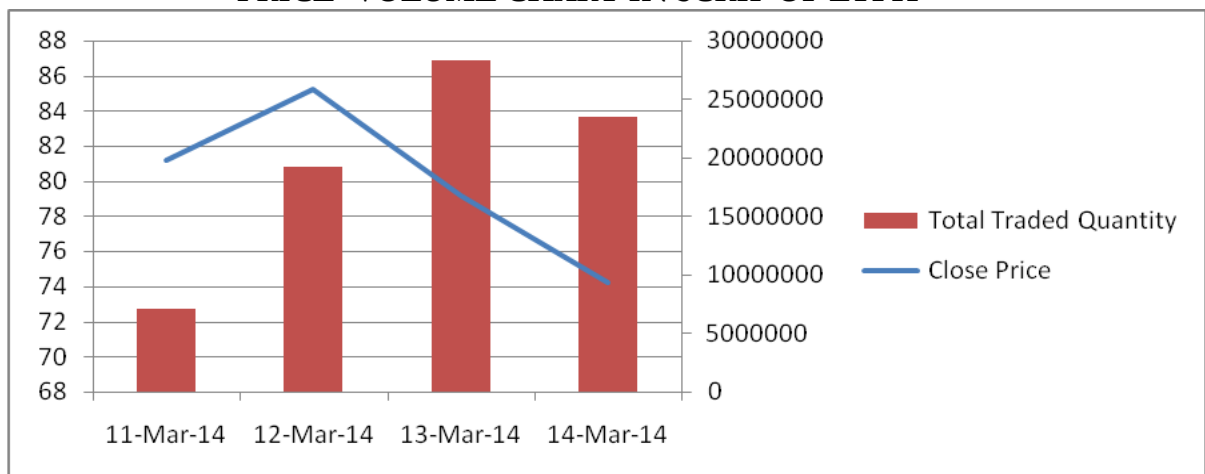
ORDER

Under sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 in respect of Factorial Master Fund.

In the matter of L&T Finance Holdings Limited.

1. Securities and Exchange Board of India (SEBI) observed abnormal movement in the price of shares of *L&T Finance Holdings Limited* (hereinafter referred to as 'LTFH') and, therefore, undertook preliminary examination in the matter. SEBI observed that on March 13, 2014, i.e. the day on which the shares of LTFH were included in the F&O segment, the price of the March expiry futures contract of LTFH in the F&O segment opened at ₹87.80, and dropped by more than 10% to close at ₹ 75.55 on the same day. In cash segment, the scrip had opened at ₹86, rose to ₹88 and then dropped by more than 10% to close at ₹79.20. The price volume movement in the scrip for the period March 11, 2014 to March 14, 2014 on NSE cash segment was observed as following :

PRICE- VOLUME CHART IN SCRIP OF LTFH



2. It was also observed that in the late evening on March 13, 2014, *L&T Limited* (LT), the promoter of LTFH made two announcements to the stock exchanges (NSE/BSE) stating *inter alia* that :
- (a) In order to comply with minimum public shareholding (MPS) norms as specified in Securities Contracts (Regulation) Rules, 1957(SCRR), LT will launch an Offer for Sale (OFS) of 5,55,05,755 shares (3.23%) in LTFH on March 14, 2014.

- (b) In addition to those shares, LT 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 ₹70/share.
3. It is relevant to mention that as per requirements of the SCRR, LT was obligated to reduce its shareholding in LTFH so as to bring it at the level of 75% by August 2014. It had disposed of 1% of its shareholding in LTFH on December 23, 2013 (through a market sale), pursuant to SEBI approval dated 18 July 2013 and it had to further offload a total of 6.46% shareholding in LTFH to bring its shareholding in LTFH down to 75% after expiry of requisite 12 weeks cooling - off period that was expiring on March 17, 2014. LT had sought exemption from the 12 week mandatory cooling-off period which was allowed by SEBI vide letter dated March 13, 2014.
4. During preliminary inquiry, LT submitted that on March 10, 2014, CS was mandated by LT to launch the OFS within the next 2-3 days based on the market conditions and potential investor interest for the proposed OFS. Vide an e-mail dated April 30, 2014, LT had further stated the following :
- "Inputs were received from the merchant banker (CS) on the investor interest in the stock. Over the four days from 10th March to 13th March, CS gave updates on the general pulse of the market, the trends and informed that investors would seek a good discount to buy shares."*
5. In response to SEBI's inquiry, CS submitted that in order to gauge market sentiment for the scrip, between March 10 to March 13, 2014, its team had made discussions with more than 70 institutional investors which included their direct clients and potential investors which typically invest in India through ODI route. CS had undertaken such exercise to get an understanding about the potential investor interest and the price at which they would be willing to subscribe to the OFS of LT.
6. Considering the abnormal movement in the price of the scrip on the day of its inclusion in the F&O segment ahead of announcement of the OFS at a deep discount (₹70 per share) to the opening price (₹86) of the scrip on March 13, 2014, dealings and trading pattern in the securities of LTFH was examined. On examination of order book and trade data for the scrip in cash and derivative segments, it was observed that on March 13, 2014, when the shares of LTFH were included in F&O segment, following four foreign institutional investors (FIIs) had taken substantial short positions which contributed around 86.83% of the market wide open interest (OI) on the short side:

Sl.	Client Name	PAN No	No. of Contracts	Short Qty	% of OI
1	Macquarie Bank Limited	AAECM2014P	1567	62,68,000	25.30%
2	Goldman Sachs Singapore Pte.	AAF CG0345N	1450	58,00,000	23.41%
3	Merrill Lynch Cm Espana Sa. Svb.	AACCM7105R	1400	52,00,000	20.99%
4	Nomura Singapore Limited	AADCN2750N	1061	42,44,000	17.13%
Total			5478	2,15,12,000	86.83%

7. It was observed that the above mentioned short positions were built on March 13, 2014 much before the formal announcement of OFS and floor price at 21:22:00 on the same day. Further, none of these FIIs had any offsetting position in cash segment or equivalent holding of shares of LTFH in their demat accounts. Thus, the position of these FIIs was a net short position on LTFH. On examination of information provided by these FIIs regarding their trading in the derivative contracts of LTFH, it was observed that these FIIs had executed the most of these trades (96.74%) on behalf of an Offshore Derivative Instrument (ODI) client Factorial Master Fund (“Factorial”) which is domiciled in Cayman Islands and operates as a hedge fund. In addition to these trades, Factorial created a short position of 10 derivative contracts through Citigroup Global Markets Mauritius Private Limited.
8. On examining the trading of the above FIIs on behalf of Factorial in derivative segment, it was noted that Factorial built a short position of 5,309 derivative contracts of LTFH 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. 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 ₹ 71.50 on March 14, 2014. By taking the said position, Factorial locked- in a profit of approximately ₹20 crores based on the difference between the average price at which the short position was created and the OFS subscription price of ₹71.50. The facts that it did not have any previous exposure in the securities of LTFH and that it used five different FIIs for its trades in derivatives contracts of LTFH, make its trades even more aberrant and suspicious. It is highly unlikely that one who does not have any exposure in the scrip will take such an aggressive short position - which is quite contrary to the market behaviour on that day as 84.15% was built by Factorial only- unless it had some definite information about fall in price of the scrip in near future.
9. In the facts and circumstances as discussed above, it may *prima facie*, be inferred that Factorial was in possession of the information about the likely floor price of the OFS

and such information was an '*unpublished price sensitive information*' as defined in regulation 2(ha) read with regulation 2(k) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (PIT Regulations). The fact that Factorial was involved as potential investor in the market gauging exercise undertaken by CS as Seller Broker of LT strengthens this inference. It may be mentioned in this regard that as per its submissions, investment banking team of CS had contacted Factorial in relation to the OFS of LT. On examination of Bloomberg chat transcripts provided by CS, it is observed that on March 13, 2014, information like, "*likely to come in at a steep discount about 70 types*" was being circulated amongst the members of Equity team of CS. It is noted that this message from one CS employee to another in the Equity team was sent at 09:21:24 much before the formal announcement of OFS and the floor price at 21:22:00 on the same day. At this stage, however the channel of communication of the '*unpublished price sensitive information*' is not ascertainable as various stakeholders such as seller, Seller Broker, their employees, potential investors, etc. are involved in the whole process. In my view, this aspect needs thorough investigation so as to come to a definite conclusion.

10. Be as it may, considering the facts and circumstances of the case, I am of the view that it is too much of a coincidence that :-
 - (a) Just before March 13 2013, Factorial was involved as potential investor in the market gauging exercise undertaken by CS;
 - (b) It built substantial short position (84.15% of the market wide OI) in the F&O segment on March 13, 2014 at average price of ₹80.94 ahead of announcement of the OFS of shares of LTFH at a floor price of ₹70 on the same day in the late evening;
 - (c) such an aggressive position is taken without any existing exposure in the shares or derivatives of LTFH;
 - (d) Five different and independent FIIs are used to build such position;
 - (e) Nearly the same number of shares are covered in cash segment next day by subscribing to the OFS at a price of ₹71.50, locking a profit of approximately ₹20 crores.

11. The above facts and circumstances create strong suspicion that Factorial built aforesaid unusual and aggressive short position in the F&O segment ahead of the OFS on the basis of the '*unpublished price sensitive information*', which it had received or had access to, regarding the likely floor price of the OFS. The source through which Factorial might have got the information can be established only after detailed investigation in the matter. In view of these facts as observed in the preliminary inquiry, it can be safely

inferred that Factorial is covered by the definition of "insider" under regulation 2(e) of the PIT Regulations which reads as under:-

Regulation 2(e)- "insider" means any person who,

- (i) is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of company, or*
- (ii) has received or has had access to such unpublished price sensitive information ; "*

12. I, therefore, prima facie find that Factorial had taken such unusual and aggressive short position in the F&O segment ahead of the OFS while in possession of and on the basis of *unpublished price sensitive information* regarding the likely floor price of the OFS and has thus *prima facie* violated the prohibition enshrined in section 12A (d) and (e) of the SEBI Act and regulation 3(i) of SEBI (Prohibition of Insider Trading) Regulations, 1992 which read as under:-

"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;"

SEBI (Prohibition of Insider Trading) Regulations, 1992

Prohibition on dealing, communicating or counseling 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; or*

....."

13. The unusually aggressive building of short position in F&O by Factorial in the securities of LTFH had also distorted the price equilibrium between cash and derivative segments. This is evident from the fact that the current month derivative contract on March 13, 2014 which started trading at a premium of ₹ 1.80 vis-a-vis underlying ended at a discount of ₹ 3.65 on account of aggressive short positions created by Factorial in F&O segment. Factorial had built unusually aggressive short position in the F&O segment i.e.

84.15% of the market wide position ahead of the impending OFS, taking a view which was quite contrary to the view of the most of other participants, understandably on the basis of the *unpublished price sensitive information* and took reverse position of nearly same number of shares in cash segment by subscribing to OFS on the very next day thus locking a profit for itself. In my view, the *modus operandi*, adopted by Factorial *prima facie* suggest a device or artifice to deceive the investors in securities market and make profit in a manner which was quite disruptive to the market equilibrium. I, therefore, *prima facie* find that the act of Factorial, apart from being in contravention of PIT Regulations, is also unfair and manipulative and disruptive to the market equilibrium thus endangering market integrity and is in contravention of the provisions of section 12A (a), (b) and (c) of the SEBI Act 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) which read as following:

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 –*

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made there under;"*

PFUTP Regulations

"Prohibition of certain dealings in securities.

3. *No person shall directly or indirectly—*

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any securities listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c)....."*

"4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities."

14. The dealings of the Factorial as described above are *prima facie* inimical to the interests of participants in the securities market. It is noted that Factorial still has open position of 62.08 lac shares in cash market and the same quantity in F&O segment on the short side in 1552 derivative contracts. In the facts and circumstances of this case, it is incumbent to intervene promptly in the interests of investors and to safeguard the market integrity. In the light of the aforesaid preliminary findings in this matter as mentioned above, I am of the view that this is a fit case where pending detailed investigation, effective action is required to be taken by way of an *ad interim ex – parte* order to prevent any further harm to investors and the securities market.
15. Considering the above, in order to protect the interest of the investors and the integrity of the securities market, I, in exercise of the powers conferred upon me in terms of section 19 read with section 11(1), 11 (4)(b) and 11B of SEBI Act, 1992, pending investigation in the matter, hereby restrain Factorial Master Fund from dealing in the securities in Indian securities market (including through Offshore Derivative Instruments) and/or accessing the Indian securities market, directly or indirectly, in any manner whatsoever till further order/s.
16. Factorial Master Fund may file their reply, if any, to SEBI within 21 days from the date of receipt of this order, if it so desires, avail an opportunity of personal hearing on a date, place and time fixed in that regard by Securities and Exchange Board of India.
17. The stock exchanges, the depositories and FIIs are directed to ensure that the above directions are strictly enforced.
18. This order shall come into force with immediate effect.

DATE : June 5th, 2014

PLACE : MUMBAI

RAJEEV KUMAR AGARWAL

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA