

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Order Reserved On : 01.05.2015

Date of Decision : 08.05.2015

Appeal No. 391 of 2014

Factorial Master Fund
C/O 190 Elgin Avenue,
George Town,
Grand Cayman KYI-9005,
Cayman Islands.

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051.

...Respondent

Mr. Darius Khambata, Senior Advocate with Mr. Somasekhar Sundaresan, Advocate, Mr. Paras Parekh and Mr. Dhaval Kothari, Advocates i/b J. Sagar Associates for the Appellant.

Mr. Vikram Nankani, Senior Advocate with Mr. Yogesh Chande, Advocate i/b Economic Laws Practice for the Respondent.

CORAM: Justice J.P. Devadhar, Presiding Officer

Per: Justice J.P. Devadhar

1. Appellant is aggrieved by the confirmatory order passed by the Whole Time Member ('WTM' for short) of Securities and Exchange Board of India ('SEBI' for short) on October 16, 2014, whereby the ex-parte ad interim order passed by WTM of SEBI against the appellant on June 5, 2014 has been continued until further orders. As a result, the appellant continues to be restrained from dealing in securities in the Indian Securities Market (including through Offshore Derivative

Instruments) and/or accessing the Indian Securities market, directly or indirectly, in any manner whatsoever until further orders.

2. Counsel for SEBI on instruction states that the investigation in the present case involves cross border investigation and since Bloomberg terminal having its headquarter in New York City, USA has refused to share information required for the present case, SEBI has sought assistance of U.S. Securities and Exchange Commission (USA) in the matter. As a result, it is submitted that it would take at least 4 to 5 months for completing the investigation.

3. This appeal was substantially heard in March 2015 by a Bench consisting of the Presiding Officer and Member Shri. A. S. Lamba. However, before the hearing could be completed Member Shri. A. S. Lamba retired with effect from March 17, 2015. Thereafter, new Bench could not be constituted because, another Member Shri. Jog Singh has been on long leave due to ill health. In these circumstances, counsel for appellant submitted that the delay in disposing of the appeal on merits is causing serious prejudice to the appellant as the appellant continues to be restrained for accessing the securities market in India and the said order is adversely affecting the business of the appellant even outside India. Accordingly, counsel for the appellant submitted that pending hearing and final disposal of the appeal, prayer of the appellant for grant of interim reliefs may be considered. Hence, the plea of the appellant for grant of interim relief is heard by consent of both parties.

4. Appellant is a company incorporated in Cayman Island, and operates as a collective investment vehicle or a fund under the laws of Cayman Island. Appellant has been trading in securities around the world including the Indian Securities Market.

5. Dispute in the present case relates to the appellant making profits of about 20 crores by entering into 5309 derivative contracts in the Futures and Options segment (“F&O” segment) of the stock exchange on March 13, 2013 equivalent to selling 2,12,36,000 shares of L&T Finance Holding Limited (“LTFH” for short) at an average price of ₹ 80.94/- per share and taking reverse position on March 14, 2014 by purchasing 2,75,10,484 shares of LTFH at a price of ₹ 71.50/- per shares in the ‘Offer for Sale’ (“OFS” for short) offered by L&T Limited (“L&T” for short) which is the parent company of LTFH. According to SEBI appellant must have had Unpublished Price Sensitive Information (“UPSI” for short) on March 13, 2014 that L&T has fixed the floor price for selling the shares of LTFH through OFS on March 14, 2014 at ₹ 70/- per share and that is why on March 13, 2014 the appellant took aggressive short position in the F&O segment to sell shares of LTFH in the F&O segment at an exceptionally high average price of ₹ 80.94/- per share. According to SEBI above transactions are prima facie inimical to the interest of the participants in the securities market and therefore pending investigation on the question as to whether appellant was privy to UPSI relating to the floor price fixed by L&T, to safeguard the

interest of the securities market it is necessary to restrain the appellant from dealing in securities in the Indian Securities Market.

6. To consider the question, as to whether SEBI is justified in holding that the transactions carried out by the appellant on March 13, 2014 were prima facie inimical to the interests of the participants in the Indian Securities Market and to consider the question as to whether the appellant has made out a case for grant of interim relief, it would be appropriate to set out following relevant facts:-

- a) L&T as a parent company held more than 82% shares of LTFH which were listed on the Bombay Stock Exchange Limited ('BSE' for short) and National Stock Exchange ('NSE' for short) with effect from August 12, 2011. In order to comply with the minimum public shareholding requirement under the Securities Contracts (Regulation) Rules, 1957 ("SCRR" for short), L&T was required to reduce its stake in LTFH up to 75%.
- b) During the period from mid 2012 to March 2014, the earnings estimate memorandum from equity analysts covering LTFH had been very negative. As a part of fundamental research, Kotak Securities Limited on March 11, 2013 held a meeting at Hong Kong along with senior managerial staff of LTFH which was attended by the appellant. Since then, the appellant

had been fundamentally and technically negative on the stock price of LTFH.

- c) After obtaining SEBI approval on July 18, 2013, L&T disposed of 1% of its shareholding in LTFH during November-December 2013 through market sale and the last sale was at ₹ 68.98/- per share. Thereafter, to bring its shareholding in LTFH to 75%, L&T was required to offload more than 6% shares of LTFH after expiry of requisite 12 weeks cooling-off period from the previous sale that took place in November- December 2013.
- d) On March 10, 2014 L&T addressed a letter to SEBI stating therein that considering the market conditions and other relevant factors, L&T was contemplating to sell the shares of LTFH through OFS in the next 2 to 3 days. Since the cooling-off period from the last disposal of shares of LTFH through OFS had not expired, L&T, by the said letter requested SEBI to grant exemption from the cooling-off period and also the requirement of minimum gap between two OFS of 2 weeks.
- e) On March 10, 2014 Credit Suisse Securities (India) Private Limited (“CS” for short) as merchant banker of L&T conducted market gauging for LTFH scrip

with more than 70 institutional investors with a view to ascertain potential investors interest and the price at which the investors would be willing to subscribe to the shares of LTFH in the OFS. Appellant had also participated in the said market gauging exercise. In that market gauging exercise, negative sentiment in respect of the shares of LTFH were expressed, meaning thereby that the investors would seek deep discount to buy shares of LTFH from L&T.

- f) Shares of LTFH which were traded only in the cash segment were also permitted to be traded in the F&O segment of the stock exchanges with effect from March 13, 2014. On March 13, 2014 in the morning some reputed analysts had strongly recommended selling futures on March 13, 2014 which was the first day of listing the shares of LTFH in the F&O segment.
- g) On March 13, 2014 futures contract in LTFH opened at ₹ 87.80/- per share. The appellant entered into 5309 derivative contracts of LTFH on March 13, 2014 through five FIIs by way of P-Notes/Swaps which is equivalent to selling 2,12,36,000 shares of LTFH at an average price of ₹ 80.94/-.

- h) On March 13, 2014 at 9.22 P.M., L&T made two announcements to the stock exchanges (BSE & NSE). First announcement was that in order to comply with the minimum public shareholding norms as specified in SCRR, L&T will launch an OFS of 5,55,05,755 shares in LTFH on March 14, 2014 by appointing 'CS' as seller broker in the OFS. Second announcement was that the floor price for the shares offered in OFS has been fixed by L&T at ₹ 70/- per share.
- i) Accordingly, when 5,55,05,755 shares of LTFH were offered for sale through OFS on March 14, 2014, the appellant subscribed to 2,75,10,484 shares of LTFH in the OFS at an average price of ₹ 71.50/- per share. Thus as against an obligation to sell 2,12,36,000 shares of LTFH at an average price of ₹ 80.94/- per share under the derivative contracts entered into on March 13, 2014, the appellant on March 14, 2014, acquired 2,75,10,484 shares of LTFH in the OFS at an average price of ₹ 71.50/- per share, thereby locking in a profit of approximately ₹ 20 crore.
- j) In the first week of April 2014 SEBI approached an FII through whom appellant had traded in LTFH futures and sought trade rationale. Appellant

furnished the trade rationale on April 07, 2014 to the broker which was then forwarded to SEBI. Thereafter, as a follow-up action, SEBI sought various informations from the FIIs and the appellant responded to SEBI directly with its responses on the queries raised by SEBI and voluntarily offered to furnish any other information that is deemed necessary by SEBI. Indeed, from time to time, the appellant has furnished requisite information that were demanded by SEBI.

- k) On June 05, 2014 SEBI passed an ex-parte ad-interim order against the appellant thereby restraining the appellant from dealing in and/or accessing the Indian Securities Market directly or indirectly until further orders. In the said order it is stated that the preliminary investigation conducted by SEBI creates a strong suspicion that the appellant must have built the unusual and aggressive short position in the F&O segment ahead of the OFS on the basis of UPSI which it had received or had access to, regarding the likely floor price of the OFS. It is further stated that the source through which appellant might have got the information can be established only after detailed investigation and pending such investigation it is necessary to restrain the appellant

from dealing and/or accessing the Indian Securities Market.

- l) Appellant while furnishing the particulars sought by SEBI from time to time, filed its detailed reply to the aforesaid ex-parte ad-interim order of SEBI. In its reply, the appellant denied all allegations made in the ex-parte ad-interim order. During the course of personal hearing the appellant submitted that inspite of investigation there being no direct or indirect evidence to suggest that even remotely the appellant was in possession or had access to UPSI, it is improper to continue the restraint order which is causing serious prejudice to the appellant and therefore the restraint order be vacated forthwith.
- m) However, by the impugned order dated October 16, 2014 the ad interim ex-parte order has been confirmed and the restraint order passed against appellant has been continued until further directions.

7. Mr. Khambata, Learned Senior Advocate appearing on behalf of the appellant submitted that SEBI had been conducting investigation in the present case since April 2014. It is more than a year from the date of commencement of investigation and till date there is not an iota of evidence to suggest that the appellant was in possession or had access to

UPSI on March 13, 2014 relating to the floor price of LTFH shares to be offered by L&T through OFS on March 14, 2014. Therefore, in the absence of any evidence to suggest that the appellant was privy to UPSI relating to the floor price of LTFH shares to be offered for sale by L&T through, OFS it is wholly improper and illegal to continue the restraint order imposed against the appellant.

8. It is further submitted by counsel for appellant that since mid 2012 the shares of LTFH had negative sentiment in the market and the same is evident from the reports of various market analysts. In fact in November-December 2013, L&T had sold 1% shares of LTFH in the market at prices below the then prevailing prices. In the market gauging exercise for LTFH undertaken by 'CS' on March 10, 2014, more than 70 institutional investors including the appellant had opined that in view of the negative sentiment it would be just and proper for L&T to offer the shares of LTFH in OFS with deep discount.

9. Counsel for appellant further submitted that on March 13, 2013 in the morning, which was the first day of listing the shares of LTFH in the F&O segment, some reputed brokerages had strongly recommended selling futures in the F&O segment. On March 13, 2014, the futures contract in LTFH opened at ₹ 87.80/- per shares and closed at ₹ 74.55/- per share. In the cash segment the price of shares of LTFH opened at ₹ 86/- per share and closed at ₹ 79.20/- per share. During the course of the day on March 13, 2014, the appellant entered into 5309 derivative

contracts through 5 FIIs equivalent to selling 2,12,36,000 shares of LTFH at an average price of ₹ 80.94/- per share.

10. Counsel for appellant further submitted that it is only when L&T late in the evening on March 13, 2014, received exemption granted by SEBI from the 12 weeks cool-off period requirement under the OFS circular, L&T could take its decision to fix the floor price for selling the shares of LTFH through OFS. Accordingly, L&T fixed the floor price and thereafter at 9.22 P.M. on March 13, 2014 announced that L&T would be selling 5,50,05,755 equity shares of LTFH (face value of ₹ 10/- each) at ₹ 70/- per share as floor price on March 14, 2014 between 9:15 A.M. and 3:30 P.M. at BSE and NSE. Since appellant had entered into various derivative contracts on March 13, 2014 for selling 2,12,36,000 shares of LTFH at an average price of ₹ 80.94/- per share, the appellant as a prudent businessman purchased 2,75,10,484 shares of LTFH in the OFS at an average price of ₹ 71.50/- per share. It is submitted that entering into futures contract relating to the shares of LTFH on March 13, 2014 and taking reverse position on March 14, 2014 by purchasing shares of LTFH in the OFS was in the ordinary course of business and merely because the appellant made profits of about ₹ 20 crore in the above transactions, SEBI is not justified in restraining the appellant from entering into the Indian Securities Market merely on suspicion that the appellant must be privy to some UPSI prior to entering into the trades in question.

11. Counsel for appellant submitted that in the impugned order it is held that the trading pattern of the appellant in relation to the scrip of LTFH is highly suspicious for the following reasons:-

- a) Appellant took an aggressively short position that is equivalent to 84.15% of the total open interest in the scrip of LTFH on March 13, 2014.
- b) After taking such an unusually aggressive short position in the F&O segment, appellant took a reverse position of 2,75,10,484 shares in the cash market by subscribing to the OFS at a price of ₹ 71.50/- on March 14, 2014.
- c) By taking such positions, appellant locked in a profit of approximately ₹ 20 crore based on the difference between the average price at which the short position was created and the OFS subscription price of ₹ 71.50/- per share.
- d) Appellant did not have any prior exposure in the scrip of LTFH and the appellant used 5 different FIIs for its trades in the derivative contracts of LTFH.
- e) Appellant was involved as a potential investor in the market gauging exercise undertaken by 'CS' (prior to March 13, 2014) and during the said exercise the

appellant was contacted by the 'CS' team as a prospective investor.

For the aforesaid reasons, SEBI has assumed that the appellant must have been in possession of UPSI about the floor price of the OFS prior to entering into the derivative contracts on March 13, 2014 and accordingly, pending investigation, SEBI has debarred the appellant from entering the securities market until further order.

12. Counsel for appellant submitted that there is no inconsistency in the trading effected by the appellant on the F&O segment on March 13, 2014 and on the cash segment on March 14, 2014. Trades effected by the appellant on March 13, 2014 were based on analysis of fact that the price of the scrip of LTFH was overvalued. Appellant had arrived at the above conclusion based on various research reports which were all brought to the notice of the Adjudicating Officer. Moreover, in the market gauging exercise conducted by 'CS' on behalf of L&T, 70 institutional investors including the appellant had appraised negative sentiment in respect of the shares of LTFH meaning thereby that L&T should sell the shares of LTFH during OFS with deep discount. Anticipating that the shares of LTFH would be sold with deep discount, the appellant had taken calculated risk and accordingly entered into derivative contracts on March 13, 2014. Since L&T on March 14, 2014 offered to sell shares of LTFH in OFS at ₹ 70/- per share, the appellant as a prudent business measure took reverse position on March 14, 2014

by subscribing to the shares of LTFH offered by L&T at a lower price. The trades executed by the appellant on March 13, 2014 and March 14, 2014 were in the ordinary course of business and that the appellant was not privy to any UPSI as alleged or otherwise. Two employees of CS who were chatting through the Bloomberg terminal were neither known to the appellant nor the appellant had any access to that chat and hence it cannot be inferred on the basis of said chat that the appellant was privy to any UPSI.

13. Relying on decisions of this Tribunal in case of Rakhi Trading Pvt. Ltd. v/s SEBI (Appeal No. 70 of 2009 decided on 11/10/2010) and Indiabulls Securities Ltd v/s SEBI (Appeal No. 51 of 2009, decided on 26/10/2010) it is submitted by counsel for appellant that having entered into derivative contracts to sell shares of LTFH at a future date at the prices prevailing on March 13, 2014, it was legally permissible and open to the appellant to take reverse position if the shares of LTFH were available in the market at a price lesser than the price at which the appellant had agreed to sell the shares of LTFH under the derivative contracts in the F&O segment. In the present case, merely because, L&T had offered to sell the LTFH shares under OFS on March 14, 2014 at a far lesser price, it cannot be presumed that on March 13, 2014 the appellant was privy to UPSI that on March 14, 2015 L&T was to sell the shares of LTFH at ₹ 70/- per share.

14. It is further submitted on behalf of the appellant that the intention of the appellant to make profits by selling the overvalued asset viz

shares of LTFH and buying back the shares of LTFH that were available at a lesser price was a bonafide intention and not motivated by any UPSI as alleged or otherwise. Fact that in the present case, appellant had made profits of about ₹ 20 crores, without being any prior exposure in the scrip of LTFH and the fact that the appellant has traded through five FIIs cannot be a ground to assume that the appellant was privy to UPSI prior to entering into derivative contracts on March 13, 2014.

15. It is submitted by the counsel for appellant that the WTM of SEBI committed an error in holding that the appellant on March 13, 2014 took an aggressively short position that is equivalent to 84.15% of the total open interest in the scrip of LTFH. In the reply filed by appellant it was specifically stated that as per Bloomberg, appellant's actual position in LTFH on March 13, 2014 was 34.4% of the futures volume and 21.8% of the total futures and stock volume and therefore the contention of SEBI to the contrary is totally unjustified. In the impugned order, these facts have neither been considered nor dealt with and hence the impugned order is liable to be quashed and set aside.

16. Lastly, counsel for appellant submitted that the impugned order passed by SEBI, has caused serious prejudice to the appellant and its reputation as a clean Asian Multi Asset Fund in every jurisdiction that it trades is tarnished. Fund management industry of which the appellant is a part, operates just like any other industry functions in an ecosystem. The ecosystem of a fund consists of its counterparties, banks, custodians, directors, administrators and investors. Even though the

impugned order pertains only to India, appellant is suffering badly as lot of such parties have suspended or stopped working with the appellant on account of continuation of the impugned restraint order. In fact all the 5 brokers through whom appellant traded in LTFH futures and even CS have stopped trading OTC in all markets (including outside India). In these circumstances, it is submitted that pending investigation the appellant be permitted to access the Indian Securities Market.

17. Mr. Nankani, Learned Senior Advocate appearing on behalf of SEBI on the other hand submitted that on March 13, 2014, the LTFH shares in the F&O segment opened at ₹ 87.80/-, whereas, in the cash segment, the same scrip opened at ₹ 86%, thus there was a premium of ₹ + 1.80 in the derivative segment. However, at the end of trading hours on March 13, 2014, the LTFH scrip in the F&O segment closed at ₹ 75.55/- whereas, in the cash segment, the LTFH scrip closed at ₹ 79.20/- that is at a discount of ₹ 3.35/-. Such a movement was an abnormal movement, because, the F&O price is normally higher than the underlying share and moves in tandem with the price of underlying shares. In fact, it was the highly aggressive trading done by the appellant in the derivative segment that caused distortion in the price of derivatives contract of LTFH.

18. Counsel for SEBI submitted that admittedly 70 potential investors as also the appellant were involved in the market gauging exercise conducted by CS and none of them barring the appellant took aggressive position of short selling 2,12,36,000 shares of LTFH in the F&O

segment and keep the position open as on March 13, 2014. Examination of trading of those potential investors and other top entities trading in the scrip of LTFH ahead of the announcement of floor price by L&T was done holistically as part of examination process and pending further investigation ad-interim ex-parte order was passed on June 05, 2014 thereby restraining the appellant from accessing the Indian Securities Market till further orders.

19. Counsel for SEBI submitted that in case of an OFS, the floor price is a price sensitive information. On March 13, 2014, L&T announced the floor price for OFS at 9:22 P.M. On the same day, 12 hours prior thereto that is at 9:21:24 A.M., two employees of CS in correspondence with each other (as is evident from the Bloomberg chat) had stated in relation to LTFH's share that they (L&T) are "likely to come at a steep discount about 70 types". The above piece of evidence coupled with aggressive acts of the appellant which caused abnormal movement in the market, had led to the prima facie belief that the appellant had prior knowledge of the minimum floor price before the same was made public at 9:22 P.M. on March 13, 2014. The channel or source of UPSI for the appellant is the subject matter of a detailed investigation which is currently in progress. Therefore, pending detailed investigation SEBI being empowered under Section 11(4) of the SEBI Act is justified in restraining the appellant from accessing the securities market.

20. Counsel for SEBI further submitted that SEBI has the power to pass interim order when the interests of the investors is affected or there

is disruption of the market. The power under Section 11(4) read with Section 11B of SEBI Act is temporary in nature and can be exercised pending investigation and/or after investigation. As such, by its very nature, exercise of powers under Section 11(4) read with Section 11B do not require SEBI to prove the case beyond reasonable doubt. As a corollary, as long as there exists some material to take action under Section 11(4) and/or Section 11B of the SEBI Act, the adequacy or inadequacy of such evidence or material cannot be a ground for judicial review.

21. Counsel for SEBI submits that neither Section 11(4) nor Section 11B of SEBI Act prescribes any time limit for continuation of the orders passed therein. Therefore, SEBI is justified in continuing the ex-parte order for a reasonable period. In the present case, investigations are being conducted for the first time in relation to the trading done by Offshore Derivative Instrument Client through several FIIs in the F&O market. Since the investigation herein involves cross border investigation extending to places outside India which is beyond the jurisdiction of SEBI, it is taking little longer time in gathering information from entities not regulated by SEBI. The investigations are at a crucial stage and the conduct of the client is found to be suspicious and explanation for executing the trade is found to be non-existent. The investigation file is confidential and contains privileged communications and SEBI is ready to place the same for perusal of this Tribunal. SEBI shall endeavour to complete the investigation within a reasonable period and hence the impugned order need not be interfered with.

22. Counsel for SEBI further submitted that in para 14 of the impugned order dated October 16, 2014 the argument of appellant that the actual position in LTFH on March 13, 2014 was 34.4% of the future's volume has been considered and therefore, the appellant is not justified in contending that its argument has not been considered in the impugned order.

23. Counsel for SEBI further submitted that in para 25 of the affidavit in reply dated February 02, 2015 what is stated is that both in the ex-parte order and in the impugned order, SEBI has not concluded that the appellant has come in possession of the UPSI through CS. Such a conclusion can be arrived at only on completion of investigation.

24. Counsel for SEBI further submitted that there is no merit in the contention that action was taken against the appellant because of significant profit made by the appellant from the transactions in question. The interim action was taken against the appellant after thorough examination and analysis of trading of all top clients and on the basis of circumstantial evidence gathered. Even if the appellant had not made any profit, in the interest of maintaining market integrity, action would still have been taken against the appellant.

25. Counsel for SEBI further submitted that waiver of the cooling off period by SEBI had no bearing on the trading of the appellant or its outcome. If relaxation was not granted, the scrip price could have gone down on March 14, 2014 and in that event there could be two

possibilities viz, either the floor price had to be lowered or the OFS had to be postponed. If the floor price was lowered, appellant would have bought shares through OFS at further lower price and if OFS was postponed, the appellant would have simply closed the open short position by entering into market transactions. Similarly, if the price of the scrip were to go up on March 14, 2014, the same would not have changed the floor price as is evident from the chat transcript. Thus in all the scenarios, the series of events from the appellants side would not have changed the trading outcome at all. By entering into derivative contracts, the appellant had agreed to sell the contract on expiry day, that is, on March 27, 2014 and therefore price movement in one way or the other in between one or two days after March 13, 2014 would have had no impact on the appellant's trading decision. Accordingly, it is submitted that no interference is called for at this stage and the appeal deserves to be dismissed.

26. I have carefully considered the rival submissions.

27. In the present case, pending investigation, which commenced in April 2014, SEBI by its ex-parte order dated June 05, 2014 has restrained the appellant from accessing the Indian Securities Market and by the impugned order dated October 16, 2014, the ex-parte restraint order has been continued until further orders. Entire case of SEBI is based on the prima facie belief that on March 13, 2014 the appellant must be privy to the UPSI that L&T would be selling shares of LTFH on March 14, 2014 with floor price fixed at ₹ 70/- per share. According to

SEBI, the appellant, being privy to the above UPSI, took aggressive short position in the F&O segment on March 13, 2014 by entering into 5309 derivative contracts which is equivalent to selling 2,12,36,000 shares of LTFH on the expiry day, that is, on March 27, 2014 at an average price of ₹ 80.94/- per share and on March 14, 2014, took reverse position by subscribing to 2,75,10,484 shares of LTFH in the OFS (offered by L&T) at a price of ₹ 71.50/- per share and thereby locked in a profit of ₹ 20 crore (approximately) based on the difference between the average price at which the short position was created and the OFS subscription price of ₹ 71.50/- per share.

28. Prima facie view of SEBI that on March 13, 2014, the appellant was privy to the UPSI that on March 14, 2014 L&T was to sell shares of LTFH in OFS with floor price fixed at ₹ 70/- per share, is based on two factors. Firstly, according to SEBI, on March 13, 2014 there was abnormal movement in the F&O segment and cash segment on account of appellant taking aggressive short position in the shares of LTFH which led to market disruption. Secondly, on March 13, 2014 at 9:21:24 A.M. two employees of CS in correspondence with each other as per the Bloomberg chat had stated that in respect of LTFH's share that they (L&T) are 'likely to come at a steep discount about 70 types'.

29. SEBI considers that on March 13, 2014 there was abnormal movement/ market disruption in the F&O segment, because, the LTFH scrip in the F&O segment opened at ₹ 87.80/- whereas in the cash segment the same scrip opened at ₹ 86/-. Thus, there was a premium of

₹ +1.80/- in the derivative segment. On the same day that is after the trading hours on March 13, 2014 the LTFH scrip in the F&O segment closed at ₹ 75.55/- and in the cash segment, the LTFH scrip closed at ₹ 79.20/- that is at a discount of ₹ 3.65/-. According to SEBI the above market movement was abnormal, because the F&O price is normally higher than the underlying share and moves in tandem with the price of underlying shares. Admittedly, March 13, 2014, was the first day of trading in LTFH shares in the F&O segment and in fact on that day, the LTFH shares in the F&O segment opened at a price higher than the price of LTFH share in the cash segment. During the course of the day on March 13, 2014 in all 13,664 derivative contracts equivalent to selling 5,46,56,000 shares of LTFH were traded in the F&O segment. Out of 13,664 derivative contracts, 5309 derivative contracts equivalent to selling 2,12,36,000 shares of LTFH were entered into by the appellant through five FIIs. Thus, on March 13, 2014, 8355 ($13664 - 5309 = 8355$) derivative contracts equivalent to selling 3,34,20,000 shares of LTFH were entered into by various traders other than the appellant. It is a matter of record that at the end of trading hours on March 13, 2014, appellant had kept all the 5309 derivative contracts open, whereas, 7471 derivative contracts out of 8355 derivative contracts entered into by third parties other than the appellant were squared up during the course of the day thereby leaving only 884 derivative contracts open. According to SEBI, selling securities in the F&O segment at a price higher than the price of the underlying in the cash segment is the natural phenomena. If that be so, then, no fault can be found with the appellant

in entering into 5309 derivative contracts equivalent to selling 2,12,36,000 shares of LTFH at a price higher than the price of LTFH shares in the cash segment. In fact counsel for SEBI fairly stated that the abnormal movement of the trading in the F&O segment on March 13, 2014 was not due to the appellant taking aggressive short position simpliciter but due to the fact that the appellant took aggressive short position and left it open, while others deemed it fit to square off the derivative contracts.

30. Explanation given by the appellant for keeping the short position open on March 13, 2014, is that firstly, the shares of LTFH were overvalued and in view of the negative sentiment it would be safe to keep the short position open on March 13, 2014. Secondly, since L&T was appraised through CS about the negative feeling in respect of LTFH shares and since there was a demand for deep discount, the appellant had every reason to believe that L&T would sell shares of LTFH at a price lesser than the price prevailing in the cash segment. There is no material on record to rebut the above explanation of the appellant. In such case, fact that many traders who had entered into derivative contracts to sell shares of LTFH had squared off the deals on March 13, 2014 itself cannot be a ground to presume that the appellant did not square off the deals, because the appellant was privy to UPSI that L&T had fixed the floor price of ₹ 70/- per share. It is possible that the appellant took calculated risk in waiting for L&T to sell shares of LTFH at discount, whereas, others opted to book profits by squaring off the deals by

entering into transactions in the cash segment. Since, the appellant is the only person who has taken such aggressive short position and kept it open on March 13, 2014, SEBI is justified in investigating the matter. However, during the pendency of such investigation to restrain the appellant from accessing the Indian Securities Market solely based on the fact that the appellant took aggressive short position on March 13, 2014 and took reserve position on March 14, 2014 by subscribing to the shares of LTFH from L&T through OFS, would be wholly unjustified especially when the explanation given by the appellant to keep the short position open on March 13, 2014 is a reasonable and possible view that could be taken in the matter.

31. Question then to be considered is, whether there is any merit in the prima facie view of SEBI that at the time of entering into derivative contracts on March 13, 2014 the appellant was privy to UPSI that L&T was to sell shares of LTFH with a floor price of ₹ 70/- per share and that is why the appellant took aggressive short position on March 13, 2014 and kept it open.

32. It is relevant to note that as per SEBI circular dated July 18, 2012, the floor price for the OFS could be declared by L&T only after the close of trading hours and before the close of business hours of the exchanges on T-1 day. Thus, as per the above SEBI circular, L&T could disclose the floor price after the trading hours on March 13, 2014 only if the shares of LTFH were to be sold by L&T through OFS on March 14, 2014. As rightly contended by the counsel for the appellant, in view of

the cooling off period L&T could sell shares of LTFH only on March 17, 2014, unless exempted by SEBI. Admittedly, exemption from the cooling off period granted by SEBI was communicated to L&T by e-mail at 6:57 P.M. on March 13, 2014. It is not the case of SEBI that either the L&T or CS or the appellant had any information in the morning of March 13, 2014 that SEBI had taken a decision to grant exemption from the cooling off period and that decision would be communicated to L&T late in the evening on March 13, 2014. In such a case, question to be considered is, whether, SEBI is justified in presuming that in the morning of March 13, 2014 or prior thereto L&T had fixed the floor price for selling the shares of LTFH in OFS at ₹ 70/- per share and that the appellant was privy to such UPSI.

33. L&T could fix the floor price for selling the shares of LTFH through OFS on March 13, 2014, only if the shares were to be sold through OFS on March 14, 2014 and disclose the same only after the trading hours on March 13, 2014. It is inconceivable that without having any knowledge that SEBI has granted exemption from the cooling off period and on the basis of which shares of LTFH could be sold through OFS on March 14, 2014, L&T would determine the floor price on March 13, 2014 for selling the shares of LTFH through OFS. This is because, if the shares of LTFH were to be sold on March 14, 2014, then only depending upon the price of LTFH shares at the end of the trading hours on March 13, 2014, L&T could fix the floor price for selling the shares of LTFH through OFS on March 14, 2014. To illustrate, if at the end of the trading hours on March 13, 2014 the shares of LTFH had

closed at ₹ 65/- per share, then fixing the floor price at ₹ 70/- per share, even before the close of trading hours on March 13, 2014 would be futile as no one would buy shares of LTFH at ₹ 70/- per share when shares are available in the market at ₹ 65/- per share. Floor price for OFS cannot be fixed in advance and has to be fixed with reference to the price prevailing at the end of trading hours on the day previous to the date on which shares are to be sold through OFS. Therefore, the presumption drawn by SEBI that L&T had fixed the floor price on March 13, 2014 even before the close of trading hours that too without having any knowing that pursuant to the exemption granted by SEBI shares of LTFH could be sold through OFS on March 14, 2014 is without any basis and hence unsustainable.

34. Entire case of SEBI in presuming that L&T must have fixed the floor price for sale of LTFH shares at ₹ 70/- per share is that from the Bloomberg chat transcripts provided by CS, it is noticed by SEBI 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 was noticed by SEBI that the above message from one CS employee to another in the Equity team was sent at 9:21:24 hours on March 13, 2014, whereas, the formal announcement of OFS and the floor price fixed by L&T were made at 21:22:00 hours on the same day. According to SEBI above information gathered from CS leads to strong presumption that prior to the appellant entering into derivative contracts

on March 13, 2014 the floor price was fixed at ₹ 70/- per share and the appellant was privy to such UPSI.

35. Plain reading of the chat transcript between two CS employees viz ___ ‘likely to come in at a steep discount about 70 types’ would simply mean that there is a possibility of L&T fixing the floor price for sale of shares of LTFH through OFS at ₹ 70/- per share. From the said chat transcript it can neither inferred that CS had recommended nor L&T had finalized the floor price to sell the shares of LTFH at ₹ 70/- per share before the trades of the appellant were executed on March 13, 2014. Apart from the above, there is nothing on record to suggest, even prima facie, as to how the appellant had access to such chat between the two employees of CS.

36. Assuming that L&T had fixed the floor price at ₹ 70/- per share, appellant could be said to be privy to such UPSI or have access to such UPSI only through L&T or CS. It is not even the prima facie belief of SEBI that L&T or CS or any of their employees have furnished UPSI to the appellant. Counsel for SEBI in answer to a query fairly stated that according to CS, complete Bloomberg chat transcripts have been furnished by CS to SEBI. If SEBI accepts the contention of CS that complete chat transcripts are provided by CS, then there is no question of SEBI approaching Bloomberg seeking further chat transcripts. It is only if, SEBI suspects that CS might not have disclosed complete chat transcripts or considers that there is some more Bloomberg chat which

may not be in possession of CS, SEBI would be justified in approaching Bloomberg seeking further chat transcription. There is nothing on record to suggest that Bloomberg is in possession of any information which is vital to the investigation carried out by SEBI. In spite of investigating the matter for more than a year, SEBI is not in a position to arrive at a conclusion as to whether L&T had fixed the floor price for OFS before the appellant traded in the F&O segment on March 13, 2014. In these circumstances, the prima facie view formed by SEBI on the basis of Bloomberg chat provided by CS that the appellant was privy to the UPSI that L&T has fixed the floor price at ₹ 70/- per share before entering into the trades on March 13, 2014 is purely hypothetical and there is no rational basis for such presumption drawn by SEBI.

37. It is contended on behalf of SEBI that due to the non-co-operation on part of Bloomberg terminal in furnishing the requisite information, the investigation has hit the road block and that is why there is delay in completing the investigation. As noted above, the prima facie view of SEBI that on March 13, 2014 L&T had fixed the floor price at ₹ 70/- per share and prima facie view of SEBI that the appellant was privy to such UPSI is based on mere presumption and hence devoid of any merit. Admittedly, after investigating the matter, for more than one year the investigation has now hit the road block. Fact that the appellant was involved in the market gauging exercise cannot be a ground to presume that the appellant was privy to the UPSI that floor price is fixed at ₹ 70/- per share, because, admittedly, 70 institutional investors were also

involved in the market gauging exercise and if those institutional investors are considered to be privy to UPSI, then there is no reason to presume that the appellant was privy to UPSI on account of involvement in the market gauging exercise. Similarly fact that the appellant without having any existing exposure in the shares or derivatives of LTFH had taken aggressive short position in the F&O segment on March 13, 2014 at an average price of ₹ 80.94/- cannot be said to be the basis to presume that the appellant was privy to UPSI especially when the market sentiment gathered in the market gauging conducted by CS on March 10, 2014 clearly indicated that the investors were seeking deep discount to buy shares of LTFH from L&T through OFS. Moreover on March 13, 2014 a number of market analysts had recommended selling shares of LTFH in the F&O segment. In such a case, entering into derivative contracts on March 13, 2014 and taking reverse position on March 13, 2014 by subscribing to the shares of LTFH through OFS cannot be said to be on account of appellant being privy to UPSI that L&T has fixed floor price for OFS at ₹ 70/- per share, merely because two employees were chatting that L&T is likely to fix the floor price at ₹ 70/- per share.

38. Fact that the appellant locked in a profit of approximately ₹ 20 crore by entering in to 5309 derivative contracts on March 13, 2014 through five different and independent FIIs and on March 14, 2014 covered nearly same number of shares in cash segment by subscribing to the OFS at a price of ₹ 71.50/- per share, cannot be a ground to presume that the appellant was privy to UPSI and thereby restrain the appellant

from accessing the securities market pending investigation, especially when there is not even one good reason to discard the explanation given by the appellant for keeping the short position open at the end of trading hours on March 13, 2014.

39. There can be no dispute that the appellant has suffered serious prejudice on account of restraint order which is operation for nearly one year. No doubt that under Section 11(4)/11B of SEBI Act, SEBI is empowered to restrain a person from entering the securities market, pending investigation, provided, there is a prima facie evidence to suggest that such person has violated any of the provisions of SEBI Act or the Rules/Regulations made thereunder. 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 ₹ 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.

40. In view of the above interim order nothing survives in the appeal. Hence the appeal is also disposed of in the above terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer