BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PB/AO/117-120/2010]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of

Name of the Noticees	Permanent Account No.	Order Number
Shri. A.K. Jagatramka	AEIPJ1528E	PB/AO/117/2010
Shri. G.L. Jagatramka	AEIPJ1473J	PB/AO/118/2010
M/s Matangi Traders & Investments Pvt. Ltd.	AADCM4949C	PB/AO/119/2010
M/s Marley Foods Pvt. Ltd.	AADCM3261F	PB/AO/120/2010

In the Matter of FCGL Industries Limited

(Presently Gujarat NRE Coke Limited)

FACTS OF THE CASE IN BRIEF

1. The shares of M/s FCGL Industries Limited (hereinafter referred to as **"FCGL/company"**) were listed on Bombay Stock Exchange (hereinafter referred to as **"BSE"**) and Calcutta Stock Exchange (hereinafter referred to as **"CSE"**). The scrip of FCGL was traded only in BSE during the investigation period. SEBI conducted an investigation into the affairs relating to buying and selling and dealing

in the shares of FCGL. The investigation covered the period from September 05, 2005 to September 21, 2005 (hereinafter referred as 'Investigation Period').

2. The findings of the investigation allege that Matangi Traders & Investors Limited (hereinafter referred as '**Matangi'**) and Marley Foods Private Limited (hereinafter referred as **'Marley'**) are persons acting in concert (hereinafter referred as **'PAC'**) with promoters and directors of FCGL. They have bought the shares of FCGL on the basis of unpublished price sensitive information.

3. Gujarat NRE Coke Ltd (hereinafter referred as '**GNCL'**) vide its letter dated October 04, 2007 has informed that FCGL has merged with GNCL vide Hon'ble Calcutta High Court order dated April 19, 2006.

4. FCGL was a core investment company having more than 90% of its assets as investment in associate or group companies. FCGL was holding 1,67,09,824 (17.716%) shares of GNCL as on June 30, 2005. FCGL had disposed 84,79,709 shares of GNCL between July 18, 2005 to September 29, 2005. This decision to sell the shares of GNCL by FCGL was taken in the FCGL's Board Meeting dated July 04, 2005 and the same was attended by members of Board including Shri. G.L. Jagatramka (hereinafter referred to as **"GLJ"**) Shri A.K. Jagatramka (hereinafter referred to as **"AKJ"**). The corporate announcement of FCGL dated July 04, 2005 informed to BSE only about the agreement to acquire the coal mining leases in Australia and that the acquisition & development of the mine will cost about 80 million AUD. The corporate announcement was silent on the decision to dispose of the investment in GNCL by FCGL. This disposal of investment resulted into substantial increase in the net profit of FCGL to ₹ 1063.16 million in September 2005 quarter from ₹ 75.7 million in June 2005 quarter. The

total income has increased from ₹ 76.29 million for quarter ending June 30, 2005 to ₹ 1185.65 million for the quarter ending September 30, 2005. On the basis of information about disposal of investment, two PACs, namely, Marley had purchased 3,00,000 shares of FCGL and Matangi had purchased 50,000 shares of FCGL, in the quarter ending September 2005.

5. Thus this led to the allegation that Matangi and Marley had violated regulations 3 (i), 3 (ii), 3 (A) read with regulation 4 of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **"PIT Regulations"**) and AKJ and GLJ had violated regulations 3 (i), 3 (ii) read with regulation 4 of PIT Regulations and provision of clause 2.1 of Code of Corporate Disclosure practices for prevention of Insider Trading as prescribed under regulation 12(2) of PIT Regulations and consequently, liable for monetary penalty under sections 15G & 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'). The four Noticees namely, Matangi, Marley, AKJ and GLJ are hereinafter collectively referred to as **"Noticees"**.

APPOINTMENT OF ADJUDICATING OFFICER

6. The undersigned was appointed as Adjudicating Officer vide order dated March 09, 2009 under section 15 I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the **'Rules'**) to inquire into and adjudge under section 15 G and 15 HB of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

7. Show Cause Notice/s dated July 01, 2009 (hereinafter referred to as "**SCN**") was issued to the Noticees under Rule 4 of the Rules to show cause as to why an inquiry should not be initiated against them and penalty be not imposed under sections 15 G & 15 HB of SEBI Act for the violation of aforementioned provisions of regulations of PIT Regulations.

8. The Noticees vide their letter dated July 09, 2009 requested the copies of the documents on which SEBI relied on and which SEBI has taken into consideration while issuing the SCNs. It was also mentioned in the letter that the said reply may be treated as given by all the four Noticees. The said letter was signed by AKJ on behalf GLJ, Matangi and Marley. Considering the request of the Noticees and to meet the ends of natural justice, copies of the following documents were provided to the Noticees:

    - BSE snap investigation report dated October 07, 2005
    - Letters dated October 04, 2007, February 08, 2008 and March 18, 2008 from GNCL
    - Letter dated July 25, 2008 from Matangi
    - Letter dated July 25, 2008 from Marley
    - Letter dated July 25, 2008 from Dimensional Securities Private Limited
    - BSE trade log in the scrip of FCGL for the period September 05, 2005 to September 21, 2005

9. The Noticees vide letter dated September 10, 2009 requested for 7 days till September 17, 2009 to file the reply to the SCNs.

10. Dave & Girish & Co., Advocates, vide their letter dated September 23, 2009 filed the reply on behalf of the Noticees stating, inter-alia, details of transactions done by the Noticees and denied the allegations.

11. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, Noticees were granted an opportunity of personal hearing on February 19, 2010 vide letter dated January 11, 2010 at SEBI, Eastern Regional Office, Kolkata. The Noticees requested for change of venue of hearing to Mumbai instead of Kolkata vide letter reference No. nil dated February 10, 2010 received through an email from Mr. Manoj Shah, Company Secretary, GNCL dated February 15, 2010. Acceding to the request of the Noticees, another opportunity of hearing was granted at SEBI, Mumbai on February 25, 2010 vide letter dated February 16, 2010. Ms. Mona Bhide, Partner of M/s Dave & Girish & co. Advocates, the authorized representative of the Noticees (hereinafter referred to as **'AR'**), appeared on behalf of the Noticees. During the hearing, the AR reiterated the submissions made vide letter dated September 23, 2009 and denied the allegations. During the hearing, Noticees were advised to furnish certain other specific information for which the Noticee requested 7 days time to submit the reply. The request of the Noticees was acceded to. The Noticees vide letter dated March 04, 2010 requested for extension of time by another week to submit the information. The request of the Noticees was acceded to. The Noticees vide letter dated March 11, 2010 and March 12, 2010 respectively, submitted the information.

12. The Noticees through their AR vide letter dated March 17, 2010 requested for another personal hearing. The same was acceded to. The Noticees were granted an opportunity of second personal hearing on March 23, 2010 vide notice dated March 17, 2010. Ms. Mona Bhide, Partner of M/s. Dave & Girish & Co. Advocates and her associate Mr.

Sapan Siddharth and Mr. Manoj Shah, Company Secretary, GNCL appeared on behalf of the Noticees and submitted written submissions dated March 22, 2010 and stated inter-alia as under:

"The *submissions made vide letter dated September 23, 2009, March 11, 2010 and March 22, 2010 are reiterated. The charges levelled against the Noticees in the SCNs are denied.*

It is also pleaded that –

a) It was not that Marley had purchased shares of FCGL only in the month of July 2005. There was purchase of shares of FCGL by Marley in the previous quarters also. Prior to July 2005, Marley had bought shares of FCGL during the period Jan - March 05 totalling 4,00,000 shares and the period April – June 2005 totalling 2,00,000 shares. The said transactions were done to consolidate their position and there was no malafide intention.

b) The investigation period is from September 05, 2005 to September 21, 2005. The purchases of the shares of FCGL made by Marley and Matangi during the investigation period are supported by public disclosure made by FCGL on August 09, 2005 and August 19, 2005.

The Noticees also pleaded that there was no malafide intention on their part and requested the AO to take the lenient view in the matter."

Subsequent to the hearing, information connected with details of shareholding of the Noticees, etc. was sought from the Noticees vide e-mail dated May 24, 2010, July 07, 2010 and July 23, 2010. The Noticees sought extension of one week time or two week time for the submission of the information which was granted to the Noticees. The Noticees vide their e-mail dated June 07, 2010, July 12, 2010 and August 05, 2010 submitted the information to the aforesaid e-mails respectively.

CONSIDERATION OF ISSUES AND FINDINGS

13. I have carefully perused the written and oral submissions of the Noticees and the documents available on record. The issues that arise for consideration in the present case are :

a. Whether Noticees are insiders in terms of regulation 2(e) of PIT Regulations?
b. Whether the disposal of investment in GNCL by FCGL is unpublished price sensitive information or not?
c. Whether GLJ and AKJ had violated regulations 3 (i), 3 (ii) read with regulation 4 of PIT Regulations and whether Marley and Matangi had violated regulations 3 (i), 3 (ii), 3(A) read with regulation 4 of PIT Regulations?
d. Whether AKJ and GLJ had violated provision of clause 2.1 of Code of Corporate Disclosure practices for prevention of Insider Trading as prescribed under regulation 12(2) of PIT Regulations?
e. Do the above mentioned violations, if any, attracts monetary penalty under sections 15 G & 15 HB of SEBI Act?
f. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

14. Before proceeding with the case, firstly I would like to deal with the issue raised by AKJ and GLJ that SCN issued to them was in their individual capacity and not as a Director of FCGL or as a promoter Director of GNCL and hence it is presumed that the alleged insider trading as per SEBI is carried out by the Noticee in his individual capacity.

15. I think it will be appropriate to highlight some of the contextual facts of this case. I am of the view that it is not the name by which a person is called but the position he occupies and the functions and duties he discharges. I find that GLJ was Chairman of FCGL and AKJ was Director in FCGL. Moreover, paragraph 19 of the SCN specifically mentions the designations of both GLJ and AKJ. If the contents of the

SCN are tested with the aforesaid indisputable fact, it would follow that the SCN is meant for in the capacity of the Chairman and Director respectively. Thus, raising this objection of ambiguity is an afterthought.

16. As regards the issue of whether Noticees are insiders, the same is to be tested as per the definition provided in the PIT Regulations. The relevant regulation in the PIT Regulations reads as:

Regulation 2 (e)

"insider" means any person who, 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 who has received or has had access to such unpublished price sensitive information;

Regulation 2(c)

"connected person" means any person who— (i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act or (ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company

Explanation :—For the purpose of clause (c), the words "connected person" shall mean any person who is a connected person six months prior to an act of insider trading"

Regulation 2(h)(i)

"person is deemed to be a connected person", if such person—

(i) is a company under the same management or group, or any subsidiary company thereof within the meaning of sub-section (1B) of section 370, or sub-section (11) of section 372, of the Companies Act, 1956 (1 of 1956) or sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as the case may be; or

17. The term insider is defined as any person who is or was or is deemed to be connected with the company and who is reasonably expected to have or has received or has had access to such unpublished price sensitive information in respect of securities of a company. The word "person" is a generic term and it may take in its ambit, when construed in common parlance, not only individuals but also firms, associations or bodies corporate. Section 3(42) of the General Clauses Act, 1987 gives an inclusive definition of this word, according to which, "person" shall include any company or association or body of individuals, whether incorporated or not". The definition of insider under regulation 2(e) of PIT Regulations has three elements: (i) the person should be a natural person or legal entity; (ii) he should be connected person or a deemed connected person and (iii) acquisition of the unpublished price sensitive information should be by virtue of such connection.

18. The term "connected person" has been defined in regulation 2(c) and includes any person who is a "director" of a company, as defined in clause (13) of section 2 of the Companies Act, 1956 or is an officer or employee of the company or holds position involving a professional or business relationship between himself and the company and who has reasonable access to the unpublished price sensitive information of the company. As per section 2(13) of the Companies Act 1956, a "Director" includes any person occupying the position of director, by whatever

name called. As per section 307(10) of Companies Act, 1956, any person in accordance with whose directions or instructions the Board of Directors of a company is accustomed to act, shall be deemed to be a director of the company and a director of a company shall be deemed to hold or to have an interest or a right in or over them, and either- (i) that body corporate or its Board of Directors is accustomed to act in accordance with his directions or instructions or (ii) he is entitled to exercise at any general meeting of that body corporate.

19. In the matter of ***DSQ Holdings Ltd. V SEBI in appeal no. 50 of 2003 decided on October 15, 2004***, the Hon'ble SAT held that *"A person is deemed to be connected person" if such person is a company under the same management or group or any subsidiary company thereof within the meaning of section 372(11) of Companies Act, 1956, of section 2(g) of MRTP Act, 1969 as the case may be."* Under section 370(1B), two bodies corporate shall be deemed to be under the same management (i) if the managing director or manager of the one body, is managing director or manager of other body or (ii) if a majority of the directors of the one body constituted, a majority of the directors of the other body or (iii) if not less than one third of the total voting power with respect to and matter relating to each of two bodies corporate is exercised or controlled by the same individual or body corporate or (iv) if the holding company of the one body corporate is under the same management as the other body corporate within the meaning of clause (i), or clause (ii) or clause (iii) or (v) if one or more directors of one body corporate while holding, whether by themselves or together with their relatives, the majority of shares in that body corporate also hold, whether by themselves or together with their relatives, the majority of shares in the other body corporate.

20. Upon perusal of letter of GNCL dated February 08, 2008, it is observed that GNCL has informed that Marley and Matangi are group/associate entities and persons acting in concert. It was also informed by GNCL that GLJ and AKJ being directors of Marley and Matangi are related to erstwhile FGCL. I find from the records that GLJ was the Chairman and AKJ was a Director of FCGL respectively and therefore, in terms of regulation 2(c) of PIT Regulations, GLJ and AKJ are connected persons. Marley and Matangi where GLJ and AKJ are directors are deemed to be connected persons in terms of regulation 2(h) (i) of PIT Regulations. On account of the said connection, GLJ, AKJ, Marley and Matangi are concluded as "Insiders" in terms of Regulation 2(e) of PIT Regulations. I find from the submissions of the Noticees that the same fact has not been denied by Noticees.

21. The second question which arises is whether the disposal of investment in GNCL by FCGL is unpublished price sensitive information?

22. Before proceeding with the issue, let us consider the definition of price sensitive information. Regulation 2 (ha) read with 2(k) of PIT Regulations defines unpublished price sensitive information which reads as under:

Regulation 2 (ha)

"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.

Explanation.—The following shall be deemed to be price sensitive information :—

(i)……..

(ii)……..

(iii) ……..

(iv) ……..

(v)…….;

(vi) disposal of the whole or substantial part of the undertaking; and

(vii) ……..

Regulation 2(k)

"unpublished means information which is not published by the company or its agents and is not specific in nature

Explanation – Speculative reports in print or electronic media shall not be considered as published information.

23. Thus, 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. The information relating to periodical financial results, intended declaration of dividend, issuance and buy-back of securities, major expansion plan or execution of new project, amalgamation, merger and takeovers, disposal of whole and substantial part of undertaking or any significant change in policies, plans or operations of the company is generally considered as "price sensitive information" till the time the same is made public. These factors directly affect the market price of the share. Further, the list given in the explanation is an inclusive list and not an exhaustive one. So any other information, which has a material implication on the price of the scrip, is price sensitive information.

24. Pursuant to the decision of the SEBI at its meeting held on March 27, 1998, regarding the implementation of the recommendations of the Committee on improving the continuing disclosure standards by corporate and timely dissemination of price sensitive information by the companies to the public, SEBI had advised all the stock exchanges vide circular No. SMD/POLICY/CIR-12/98 dated April 07, 1998 that all listed companies are in addition to publishing the unaudited financial results on a quarterly basis, required to inform immediately to the stock exchanges of all events having bearing on the operation/performance

of the company as well as price sensitive information which includes but not restricted to the following:

i. Issue of any class of securities
ii. Acquisition, merger, demerger, amalgamation, restructuring, scheme of arrangement, spin off of setting divisions of the company, etc.
iii. Change in market lot of the companies's shares, sub-division of equity shares of company
iv. Voluntary delisting by the company from the stock exchanges
v. Forfeiture of shares
vi. Any action which will result alteration in the terms regarding redemption/cancellation/retirement in whole or in part of any securities issued by the company.
vii. Information regarding opening, closing of status of ADR, GDR or any other class of securities to be issued abroad
viii. Cancellation of dividend/rights/bonus, etc.

25. Information can be regarded as price sensitive information, if the following conditions are fulfilled:

i. It relates to the company in whose securities insider trading has been allegedly indulged in.
ii. It is not generally known or published by the company for general information.
iii. It is, if published or known, likely to affect materially the price of securities of the company.

26. "Unpublished" means information which is not published by the company or its agents or which is not made public in print or electronic media and is not specific in nature. The information published by a

company or its agent in any newspaper or any print or electronic media as prescribed which is specific in nature with an objective to make it known to the investing public, would be a published information or otherwise “unpublished”.

27. I have noted the following submission of Noticee:

“FCGL had not made any public disclosure between the periods July 04, 2005 to August 08, 2005 regarding its decision to dispose of the investment in GNCL. The same was done with the bonafide intention and belief that it would not constitute price sensitive information as defined under Regulation 2 (ha) of PIT regulations and source of funds through which any acquisition is going to be made does not fall under the category of price sensitive information. It may be also noted that it is an established practice that the companies while making corporate announcements relating to acquisitions, do not generally disclose their decisions relating to the source of funds that they propose to adopt for funding the acquisition. We are submitting few copies of corporate announcements by way of illustration. The explanation to the definition of Price Sensitive Information in regulation 2(ha) of PIT Regulations does not put the source of funds through which any acquisition is going to be made as “Price Sensitive Information”.

28. In this regard, I find that FCGL had its Board meeting on July 04, 2005 for consideration of acquisition of colliery by M/s Gujarat NRE FCGL PTY Ltd., a joint venture of FCGL and GNCL and sourcing of funds for such acquisition. The extracts of the minutes of the meeting inter-alia are as under:

“Mr. A.K. Jagatramka informed that the Company’s Australian Joint venture M/s Gujarat NRE FCGL PTY Ltd. has entered into an agreement to acquire the coal mining leases comprising the whole of old Avondale

colliery and part of Huntley Colliery in the Southern Coalfields of New South Wales, Australia.

The mining leases being transferred comprise of –

- *Approximately 5,500 ha within the lllawara Coal measures of the Sydney basin*
- *Wrongwilli and Tangarra seams both of which have mined previously in the adjoining leases, producing high fluidity low phos good quality hard coking coal.*
- *Indicated recoverable reserves totaling approximately 96 million tones.*

The work has commenced on preparation of the development application so that it can proceed to mining in the shortest possible time frame. The ion and development of the mine will cost about 80 million Australian Dollars.

He also informed that the company needs to take steps to arrange funds to finance the aforesaid mine and considering that substantial funds could be arranged from sale of investment made in shares of Gujarat NRE Coke Ltd. it is proposed that the said investment may be disposed.

Board discussed the matter including other options to raise funds in this regard and it was decided to dispose of the investment in Gujarat NRE Coke Limited at suitable time(s) in order to arrange the requisite funds well in advance and the funds so raised may be parked in short term avenues, if so required."

29. I find that FCGL on July 04, 2005 informed BSE that Gujarat NRE FCGL Pty. Ltd., their Australian joint venture company, formed with

GNCL, has entered into an agreement to acquire coal mining leases. The details of the said announcement inter-alia are as under:

"GUJARAT NRE COKE ACQUIRES 2ND COKING COAL MINE IN AUSTRALIA

Gujarat NRE Coke Limited ("GNCL") is pleased to announce that their Australian joint venture company, Gujarat NRE PTY Ltd. has entered into an agreement to acquire the coal mining leases comprising the whole of old Avondale Colliery and part of Hunjtley Colliery in the Southern Coalfields of New South Wales, Australia. FCGL Industries Ltd. is also having substantial stake in the Australian Joint venture.

The acquisition subject to ministerial approval also porposes to re-name the colliery, NRE No 2 Colliery.

The mining leases being transferred comprise of:

- *Approximately 5,500 ha within the IIIawarra Coal Measures of the Sydney Basin;*
- *Wongawilli and Tongarra seams both of which have been mined previously in the adjoin leases, producing high fluidity low phos good quality hard coking coal;*
- *Indicated recoverabkle reserves totaling approximately 96 million tones*

In December 2004,Gujarat NRE Coke completed the acquisition of NRE No.1 Colliery which is located in close proximity to the proposed NRE No. 2 colliery.

The vice Chairman & Managing Director of Gujarat NRE Coke, Mr. Arun Jagatramaka said "this strategic investment further strengthens the position of our company in the Southern Coafields of New South Wales. The Southern Coafields is renowed for producing high quality hard coking

coal and the investment makes sense given its vicinity to our NRE No.1 colliery and the potential benefits of ownership in two nearby collieries."

The Company has commenced work on preparation of the development application so that it can proceed to mining in the shortest possible timeframe. The acquisition and development of the mine will cost about 80 million AUD.

Gujarat NRE Coke was advised by Ernst & Young Mergers & Acqusitions Division as lead corporate finance advisors and Corrs Chambers Westgarth as legal advisors."

30. Upon perusal of the aforesaid Minutes of the Board meeting of FCGL held on July 04, 2005 and corporate announcement of FCGL dated July 04, 2005, I find that in the Board meeting the decision to dispose of the investment in GNCL was taken however, the same was not disclosed in the corporate announcement to BSE. I also find that the Board meeting was attended by AKJ and GLJ. Thus, in the said Board meeting two important decisions were taken which could materially impact the price of the scrip of FCGL. First, investment in the coalfields which has been disclosed and second, the sale of substantial part of FGCL's holding in GNCL which has not been disclosed.

31. The financial results analysis of FCGL are as follows:

Un-audited Quarterly Results (₹ Million)

Description	April to June 2005	July to September 2005	October to December 2005
Total Income	76.29	1185.65	899.65
Operating Expenses	(0.55)	(119.20)	(0.78)
Profit After Tax	75.70	1063.16	897.07
Net Profit	75.70	1063.16	897.07
EPS	3.66	51.40	43.37

32. I find from the aforesaid un-audited financial results of FCGL that the net profits has registered a jump from ₹75.7 million in the quarter ending June 30, 2005 to ₹1063.16 million for the quarter ending September 30, 2005. The result of quarter ending September 30, 2005 was declared on October 14, 2005. The total income has increased from ₹76.29 million for quarter ending June 30, 2005 to ₹1185.65 million for the quarter ending September 30, 2005. The reason behind the sharp rise in income and profits is that FCGL has sold 84,79,708 shares of GNCL out of its investments. In the subsequent period the total income was ₹899.65 million and net profit was ₹897.07 million during quarter ending December 31, 2005. I also find from the notes to the unaudited quarterly results for the quarter ending September 30, 2005 as submitted to BSE clearly states that the rise in the profit after tax was on account of the sale of investments in GNCL by FCGL. The EPS has also risen to ₹51.40 per share (September 2005 quarter) from ₹3.66 per share (June 2005 quarter).

33. With regard to the submissions of the Noticee mentioned in aforesaid paragraph no. 27, I am of the view that in terms of regulation 2(ha) of PIT Regulations the information relating to the matters stated therein (which covers disposal of the whole or substantial part of the undertaking) to not to be considered as unpublished price sensitive information, it should be shown that it was generally known or published by such company for general information. It is on record that in the Board meeting of FCGL held on July 04, 2005 the decision to dispose of the investment in GNCL was taken however, information was disclosed only about the agreement to acquire the coal mining leases in Australia and that the acquisition and developments of the mine will cost about 80 million AUD but disposal of the investment in GNCL was not disclosed in the corporate announcement of FCGL dated July 04, 2005 to BSE. There is nothing on record to show that

FCGL had published the information for general consumption at any time. It is to be noted that the nature of agreement for the acquisition of coal mining leases, the extent of the involvement and sources of funds to finance the coal mining leases etc. are of considerable importance from the point of view of other investors. The Noticees did not produce any press cutting or reports which would give any specific indication about disclosure of the source of funds for the execution of the acquisition of coal mining leases.

34. I have also noted the submission of the Noticees that it is a general corporate practice that the companies do not disclose the details of source of funds while disclosing about the investment decisions. The Noticees have also submitted certain corporate disclosures in support of their contention. I agree that in instances cited by the Noticees the mode of funding has not been disclosed, but I am of the view that this is not the complete picture. A company can use various methods to fund an acquisition or investment and this may include internal accrual, fresh issue of capital, raising debt, etc. In majority of the cases such funding may not directly and materially impact the balance sheet and the results of the company. However, in the present case FCGL was holding a very liquid asset in the form of shares of a listed company and FCGL was aware of the implications of selling substantial part of its shareholding in GNCL. It is pretty evident and as has been discussed in preceding paragraphs that the sale of shares of GNCL had tremendous impact on the profit and balance sheet of FCGL. Thus, although the method of funding per se may not be price sensitive information, but in the present case, the method of funding has doubled up as sale of substantial stake and this has materially impacted the profit of FCGL. Thus, the undisclosed information of FCGL Board's decision to dispose of the investment in GNCL to arrange the requisite funds to acquire the coal mining leases in

Australia was unpublished price sensitive information under regulation 2(ha) read with 2(k) of PIT Regulations and the Noticee's contention to the contrary cannot be and ought not to be accepted.

35. The third question which then arises is whether GLJ and AKJ had violated regulations 3 (i), 3 (ii) read with regulation 4 of PIT Regulations and whether Marley and Matangi had violated regulations 3 (i), 3 (ii), 3(A) read with regulation 4 of PIT Regulations?

36. Before proceeding with the issue, let us consider the provisions of regulation 3 (i), 3 (ii), 3(A) read with regulation 4 of PIT Regulations, which reads as under:

Prohibition on dealing, communicating or counseling on matters relating to Insider trading(Regulation 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

(ii) communicate counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities :

***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.*

Regulation 3(A)

No company shall deal in the securities of another company or associate of that other company while in possession of any unpublished price sensitive information.

Violation of provisions relating to insider trading.

***4.** Any insider who deals in securities in contravention of the provisions of regulation 3 [or 3A] shall be guilty of insider trading.*

37. An insider, being in possession of any unpublished price sensitive information, shall not deal in the securities of a company listed on any stock exchange, either on his own behalf or on behalf of any person. Further, an insider shall not communicate, counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities. An insider being in possession of unpublished price sensitive information is prohibited with respect to: (i) dealing; (ii) communicating; (iii) counseling; and (iv) procuring, in or about securities of such a company, directly or indirectly. Similarly, under clause (ii) of regulation 3, a person to whom the unpublished price sensitive information is communicated, is prohibited to deal in securities. Communication may be written or verbal and communication of information by an insider to any other person even without the latter asking for it would be sufficient to bring the insider within this prohibition. In such case, the other person to whom the information is conveyed becomes an insider if he uses the information to deal in company's securities provided he is one of the "connected persons" or a person who is "deemed to be connected" with the company within the scope of definitions of those phrases. The word "directly or indirectly" denotes that communication, counseling or procuring of such information may be done directly by the insider himself or through any other person or mode. "Counsel" means advice or consultation and "procure" means obtain, acquire or bring about. An insider who counsels or procures someone else to deal in securities will be guilty of contravention of this prohibition if the latter deals in securities. In nut shell, insider trading is indulged in by an insider by passing on to any other person unpublished price sensitive information in his possession enabling such person to deal in securities. Regulation 3A provides that, a company, if it is in possession of any unpublished price sensitive information, is prohibited to deal in shares

of any other company and its associate company too. Regulation 4 provides that any person, being "insider" i.e. who while in possession of unpublished price sensitive information deals in securities of the company in violation of the provisions of regulations 3 and 3A aforesaid, shall be guilty of an act of insider trading and liable for action under these regulations.

38. I have noted the following submissions of the Noticees:

"

a) *The acquisition of shares of FCGL by Marley or Matangi was a commercial decision which was taken after the sale of shares of GNCL by FCGL and the information about the sale of shares of GNCL was disclosed by FCGL to CSE, BSE, NSE i.e. bourses on which GNCL shares was listed at the relevant time. Also, the decision by Matangi and Marley to acquire shares was after the public announcement by GNCL & FCGL regarding acquisition of Australian Colliery on 4th July, 2005. Four notices of disclosure were sent, the details of which are as below:*

Date of Notice of Disclosure	***No. of shares sold***
August 09, 2005	*26,90,142*
August 19, 2005	*19,68,782*
September 16, 2005	*38,88,370*
October 01, 2005	*6,32,445*

b) *Marley and Matangi had acted on the basis of the information about the sale of shares disclosed by FCGL to stock exchanges on August 09, 2005 and August 19, 2005 and upon the public announcement made and such information as disclosed to the stock exchanges does not come within the purview of unpublished price sensitive information as provided in the PIT regulations.*

c) *Out of 3,00,000 acquired shares acquired by Marley of FCGL, majority of shares were bought before the shares of GNCL were sold by FCGL. Sale of shares of GNCL by FCGL and acquisition of shares of FCGL by Marley were carried out in the normal course of business and without any malafide intention.*

d) *Matangi acquired only 50,000 shares of FCGL on September 19, 2005.*

e) *Moreover, the volume of shares of FCGL acquired by Marley and Matangi during the period under investigation are 1,50,000 in number which when compared to the total volume of shares traded during the period under investigation, which was 27,11,941 in number, aggregates to a negligible of less than 1/10 of the total volume of shares traded during that period.*

f) *Marley was acquiring the shares of FCGL before the alleged undisclosed price sensitive information came into existence i.e. Marley was purchasing shares in January – March and April to June quarters and thus the acquiring of FCGL shares by Marley was not in any manner related to connected with the undisclosed price sensitive information.*

g) *Marley sold shares of FCGL at lower rates in the year 2004 and it purchased shares at higher rates in 2005, hence it did not make any profits on such transactions. Further, after acquisition of the shares as stated above Marley did not sell FCGL shares thereafter and therefore, it did not make any speculative gains or profits from such transactions.*

h) *FCGL was holding 1,65,09,824 equity shares of GNCL as on June 30, 2005 and this disclosure was in the public domain(Shareholding pattern of GNCL filed with Stock Exchanges) and therefore, the hidden profit in the books of accounts of FCGL was very much in the public domain (since GNCL is a quoted share). The sale of shares did not inflate/increase the asset value of FCGL but the assets which were in the form of shares were*

converted to cash. Hence, the sale could not have led to increase in valuation of the Company. In any event, since the notice of acquisition was already made, investors are deemed to have understood that the acquisition would be funded out of the assets available with FCGL."

39. The details of 84,79,709 shares of GNCL sold by FCGL during the period from July 18, 2005 to September 29, 2005 as submitted by the Noticees are as under:

FCGL INDUSTRIES LTD.		
List of shares sold during quarter ended September 30, 2005		
Date of Sale	**Name of Company**	**No. of shares**
July 18, 2005	GNCL	200000
July 19, 2005	GNCL	155000
July 22, 2005	GNCL	45142
July 25, 2005	GNCL	100000
July 26, 2005	GNCL	90000
August 02, 2005	GNCL	222524
August 03, 2005	GNCL	200000
August 04, 2005	GNCL	107476
August 05, 2005	GNCL	326437
August 08, 2005	GNCL	543563
August 10, 2005	GNCL	661493
August 11, 2005	GNCL	200000
August 12, 2005	GNCL	500000
August 18, 2005	GNCL	607259
August 19, 2005	GNCL	100000
August 23, 2005	GNCL	200000
August 26, 2005	GNCL	598370
August 29, 2005	GNCL	100000
August 30, 2005	GNCL	100000

August 31, 2005	GNCL	200000
September 13, 2005	GNCL	2000000
September 14, 2005	GNCL	31000
September 15, 2005	GNCL	69000
September 16, 2005	GNCL	490000
September 19, 2005	GNCL	100000
September 20, 2005	GNCL	27000
September 26, 2005	GNCL	300000
September 29, 2005	GNCL	205445
TOTAL		**84,79,709**

40. The details of 3,50,000 shares of FCGL purchased by Marley and Matangi submitted by the Noticees are as under:

Date of Acquisition	**Name of Acquirer**	**Number of shares acquired**
July 01, 2005	Marley	1,00,000
July 26, 2005	Marley	50,000
August 02, 2005	Marley	50,000
September 15, 2005	Marley	1,00,000
September 15, 2005	Matangi	50,000

41. Upon perusal of the contract notes submitted by the Noticees, I find from contract note no. MO8705/CC/24423 submitted by the Noticee that the date of acquisition of 50,000 shares i.e. August 02, 2005 by Marley has been wrongly put instead of July 28, 2005. Moreover, I find from the contract note no. M11905/CC/39878 submitted by Marley that

apart from purchased of 1,00,000 shares on September 15, 2005, it has also purchased 7425 shares of FCGL on September 15, 2005.

42. The argument of the Noticee that the purchase has been carried out on the basis of disclosures made by FCGL to the stock exchange is untenable. The disclosure claimed by the Noticees only give information about a certain quantity of shares of GNCL being sold by FCGL. These disclosures do not give the general public the full details i.e. there would be further sale of shares and also the fact that FCGL would be disposing of its substantial stake in GNCL to fund acquisition of coal mines in Australia. It is seen from the trading details of the Noticees that they have traded mostly on the days preceding various corporate announcements by FCGL. For e.g. Marley had purchased 1,00,000 shares on July 01, 2005 days ahead of FCGL's disclosure of investment in the new coalfields on July 04, 2005. As already discussed the Noticees were well connected with FCGL and knew about the agenda and probable decision of the Board meeting. Considering the relationship of the Noticees with FCGL, it would not be inappropriate to term such buy as a transaction based on insider information. Further, on examination of other transactions, it is seen that Marley and Matangi purchased 1,57,425 shares on September 15, 2005 and FCGL announced the sale of biggest chunk (38,88,370 shares) of GNCL's shares on September 16, 2005. As per the extant regulations, the requirement to disclose information about dealings in shares is within two working days of such dealings. In this case, the announcement of 38,88,370 shares of GNCL was made on September 16, 2005. Therefore, obviously, the actual sale of these shares were done about two days prior to September 16, 2005. However, the disclosure was made on September 16, 2005 and thus it can be said that it came in the public domain only on September 16, 2005. The purchase of the shares of FCGL by the Noticees only one

day prior to such disclosure would be difficult to be termed as some co-incidence.

43. On the contrary, if the price-volume data is seen for September 15-21, it is seen that on September 15 the total traded quantity in the scrip of FCGL was 2,35,998 shares. The Noticees had purchased 1,57,425 shares out of the 2,35,998 shares which is more than 65% of the total traded volume on that day. Further, the price of FCGL moved from ₹69.00 on September 15 to a high of ₹104.50 on September 21, 2005 i.e. within 3 trading sessions after the disclosure by FCGL. This price rise of nearly 66% also cannot be pure coincidence and the timing of the Noticees of purchasing the shares just before the price rise thus can be said to be based on insider information.

44. The Noticees have also contended that they have been purchasing shares of FCGL even prior to investigation period. From the records given by the Noticees, I agree that the Noticees had bought shares even prior to the investigation period and the investment decision of acquisition and development of coal mines in Australia taken by FCGL. However, this contention is flawed to the extent that the Noticees have considered themselves equivalent to normal investors. In the present case, it has been very clearly established that the Noticees are the promotes/directors/PACs of FCGL and Marley and Matangi are companies of the same management. If the constitution of the Board of Directors is examined, it is very clear that Marley, Matangi, FCGL and GNCL had common promoters and directors. Thus, all these entities are connected to each other. In such a situation the Noticees cannot plead that they were regular investors and had been making prior investments in FCGL. Once it is clear that the Noticees are connected to FCGL, then it cannot be denied that the information relating to operations and decisions of FCGL would be known to the Noticees and

the decision to buy shares in FCGL could be based on such information. However, as discussed above the trading pattern of the Noticees makes it abundantly clear that the trading could not have been a coincidence and is necessarily based on the insider information about FCGL. Further, it has been submitted that Marley had only 4,582 shares of FCGL as on December 31, 2004. In order to increase its investment in the company, Marley had started purchasing shares of FCGL from January, 2005 and had purchased 6,00,000 shares before the investigation period. This argument is also suffering from inconsistency as on one hand the group company is selling its substantial assets to raise funding for investment in coalfield and on another hand another group company is investing through market to increase its stake. If the group companies wanted to increase their stake in FCGL, they could have ideally gone for a preferential issue. However, they chose to invest in FCGL through market mechanism, for reasons best known to the Noticees.

45. As the said decision to dispose of the investment in GNCL has been taken in the Board meeting of FCGL, as per the applicable law and from normal parlance, it can be reasonably presumed that the agenda of the Board meeting would have been circulated amongst the directors which included the Noticees. Thus, it can be concluded that the Noticees were in the possession of such information before hand and the trading done by the Noticees around the period of Board meeting and other disclosures was based on the unpublished price sensitive information.

46. Further, the argument taken by the Noticee that the sale did not affect the financial results materially as the assets were already shown in the balance sheet and after the sale merely the assets have been converted into cash is not acceptable. The price of the shares of the

GNCL which were held by FCGL was reflected at their acquisition/historical cost on the balance sheet and the market price of the same was not reflected in the balance sheet. If the argument of the Noticee that the assets have merely been converted into cash is accepted, then there would be no question of any profit. However, as per the accounting system prevalent in our country, only the acquisition cost is reflected and only when the shares are sold the actual profit would be ascertained. This conversion of assets into cash has resulted into hike in profit from ₹7.57 crore to ₹106.3 crore which is a rise of almost 14 times. This is an exceptional increase in profit and the normal investors in India cannot be expected to be aware of such actions of corporates. A retail investor on seeing EPS and profit rise of such nature would think that the company has performed exceptionally well and would like to buy shares of such company. However, the Noticees very well knew before hand that the profits would rise substantially because of sale of shares of GNCL and accordingly in order to avail the benefit of investor sentiment purchased the shares of FCGL on the basis of unpublished price sensitive information.

47. In view of the foregoing, the allegation of violation of provisions of regulations 3 (i), 3 (ii) read with regulation 4 of PIT Regulations against GLJ and AKJ and regulations 3 (i), 3 (ii), 3(A) read with regulation 4 of PIT Regulations against Marley and Matangi stands established.

48. In relation to the alleged violation of the provision of clause 2.1 of Code of Corporate Disclosure practices for prevention of Insider Trading as prescribed under regulation 12(2) of PIT Regulations, the said provision read as under:

Prompt disclosure of price sensitive information

2.1 *Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.*

49. Regulation 12 of PIT regulations directs all listed companies and organizations associated with securities market (including intermediaries under section 12 of the Act, asset-management company and trustees of mutual funds, self regulatory organizations authorized by the Board, recognized stock exchanges and clearing house or corporation, public financial institutions under section 4A of Companies Act, 1956, professional firms such as auditors, accountancy firms, analysts, consultants, etc. assisting or advising listed companies, shall frame a code of internal procedures and conduct as near thereto as the model code as per schedule I of the Regulations.

50. The entities mentioned in regulation 12 shall abide by the Code of Corporate Disclosure Practices, as per Schedule II of the Regulations. These entities need to follow guidelines on corporate disclosure policy, prompt disclosure of price sensitive information, overseeing and coordinating disclosure, responding to market rumours, timely reporting of shareholding/ownership and changes in ownership, disclosure/dissemination of price sensitive information with special reference to analysts and institutional investors, medium of disclosure/dissemination, dissemination by stock exchanges as per schedule II. All entities shall adopt appropriate mechanism and procedures to enforce Codes (as per schedule I and II).

51. In this regard, the extracts of allegation of para 12 of SCN dated July 01, 2009 inter-alia are as under:

"Since FCGL has not reported the price sensitive information in its corporate announcement dated July 04, 2005 and also delayed in adopting model code of conduct, Shri G.L.Jagatramka and Shri A.K.Jagatramka being the chairman and director respectively, of FCGL have violated provision of 2.1 of

Code of Corporate Disclosure practices for prevention of Insider Trading as prescribed under Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 1992".

52. The extracts of reply of the Noticees dated September 23, 2009 in paragraph 19 sub-paragraph 3 to the aforementioned allegation inter-alia state as under:

"Further, Clause 2.1 of the Model Code of Conduct of prevention of Insider trading provides that Price Sensitive Information has to be preserved and maintained. This is precisely what has been done. Further, no allegation/observation has been made against Mr. G.L. Jagatmarka and Mr. A.K. Jagatramka in the show cause notice stating that Mr. G.L. Jagatmarka and Mr. A.K. Jagatramka has communicated price sensitive information to any person other than on the "need to know" basis. In view of the above, it is surprising that the provisions of Clause 2.1 have been invoked when they are not applicable in the facts of the case".

53. Upon perusal of the aforesaid allegation mentioned in the SCN and reply given by the Noticees, I find that the allegation is specifically for the violation of provision of **2.1 of Code of Corporate Disclosure practices for prevention of Insider Trading as prescribed under regulation 12(2) of PIT Regulations**. On the contrary, the reply given by the Noticees is under **2.1 of Model Code of Conduct For Prevention of Insider Trading For Listed Companies under regulation 12(1) of PIT Regulations**.

54. The objective of the Code of Corporate Disclosure practices for prevention of Insider Trading as specified in Schedule II read with Regulation 12(2) of PIT Regulations is to disseminate information to

the investors and the general public. Disclosure to the Stock exchanges is only a mean to achieve this end objective. In terms of clause 2.1 of this code, listed companies are required to disclose price sensitive information to stock exchanges and disseminate on a continuous basis. I find that in the Board meeting dated July 04, 2005, the decision to dispose of the investment in GNCL was taken however, the same was not disclosed in the corporate announcement dated July 04, 2005 to BSE. In my opinion, healthy growth and development of securities market depends to a large extent on the quality and integrity of the market. Transparency in the transaction is very important. Such a market can alone inspire the confidence of investors. Factors on which this confidence depends include, among others, the assurance the market can afford to all investors, that they are placed on an equal footing and will be protected improper use of inside information. Further, if the information with regard to disposal of investment in GNCL by FCGL would have been disclosed to the stock exchanges then by this act, the end objective of the Code of Corporate Disclosure would have been achieved. However, FCGL did not disclose the said information to the stock exchanges.

55. Upon perusal of the material available on record, including Board meeting dated July 04, 2005 for the decision to dispose of the investment in GNCL, I observe that the said meeting was attended by GLJ and AKJ in the capacity of Chairman and Director respectively. Moreover, I find from the announcement dated July 04, 2005 made to BSE with regard to agreement to acquire coal mining leases in Australia the name of AKJ being given in the capacity of Vice Chairman and Managing Director for further information contact. Thus, I am of the view that GLJ and AKJ being the Chairman and Director of

the company were controlling the management of the company and were taking policy decisions on its behalf on a day-to-day basis.

In Technical Consultancy House Private Ltd. vs Kuldip Raj Narang and others (1989) 66 Company Cases 410 D.P. Wadhwa, J. (as he then was) stated the law in the following words:

" The board of directors of a company is to exercise such powers and to do all such acts and things as the company is authorized to exercise and do. The general management and conduct of the affairs of the company are vested in the board of directors. This board is collectively responsible for the management and conduct of the business of the company. Each and every act which a company is required to do under the provisions of the Act including the maintenance of books of account, minute books etc., is the collective responsibility of the board of directors as the general administration of the company vests in the board. .....

The board of directors is duty-bound in the management of the affairs of the company to ensure that statutory records and other records of the company are maintained in accordance with the provisions of law.……

It is the duty of each and every director to explain as to why he should not be held responsible for the loss, non-maintenance and non-availability of the minutes books in the facts and circumstances of each case. A director cannot escape liability merely by pleading that he was not directly responsible for the loss of the minutes books and other records.….."

In J.K. Industries Ltd. vs. Chief Inspector of Factories and Boilers and others (1997) 88 Company Cases 285, the question that arose for the consideration of the Supreme Court was whether in the case of a company which owns or runs a factory, it is only a director of the company who could be notified as the occupier of the factory within the meaning of proviso (ii) to Section 2(n) of the Factories Act or whether the company could nominate any other employee to be the occupier. While holding that it was only a director who could be nominated as the occupier, the learned Judges made the following observations which are relevant as follows:

"……The directors are not the employees or servants of the company. They manage, control and direct the business of the company as "owners" (section 291 of the Companies Act). The directors are often referred to as the 'alter ego" of the company. Where the company owns or runs a factory, it is the company which is in the ultimate control of the affairs of the factory through its directors…..…"

56. I find that GLJ and AKJ being the chairman and director respectively are holding responsible positions in FCGL. Therefore, they have to take responsibility for the failure on the part of FCGL to disclose the requisite information. In the light of the aforesaid observations and having regard to the fact that GLJ and AKJ being the Chairman and Director of the company were taking day-to-day decisions on its behalf, I have no doubt in my mind that the charge against GLJ and AKJ under clause 2.1 of Code of Corporate Disclosure practices for prevention of Insider Trading as prescribed under Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 1992 stands established.

57. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)* held that *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow".*

58. Thus, the aforesaid violations by the Noticees make them liable for penalty under Section 15G and Section 15HB of SEBI Act, 1992 which read as follows:

Penalty for insider trading.

15G. *If any insider who,—*

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or

(ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,

shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

59. While determining the quantum of monetary penalty under section 15G and 15HB , I have considered the factors stipulated in section 15J of SEBI Act, which reads as under:-

"15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default."

60. From the discussions and the reasoning provided above, it is clear that 3,50,000 shares of FCGL (Marley 3,00,000 shares and Matangi 50,000 shares) acquired by the Noticees were pursuant to unpublished price sensitive information. The Noticees have contended that the said

shares have not been sold and thus, there was no profit from this transaction. I am in complete disagreement with the submissions of the Noticees. Even though the Noticees might not have sold the said shares, they have benefited from the unpublished price sensitive information by acquiring the shares at a cheaper price. The fact that the Noticees were promoters/directors/PACs of FCGL makes the matter even more serious. The Noticees AKJ and GLJ were holding top position in a listed company and they are expected to be fair and transparent to the public at large. The principles of corporate governance viz. transparency and accountability have been blatantly ignored by the Noticees. Infact, they have used their position in FCGL to hide such an important piece of information from public. A very high standard of corporate governance is expected from a listed company and the people at the helm of affairs. The Noticees by hiding such information and using it for their own benefit have violated the law in letter and spirit. Such types of cases are to be viewed seriously and a stern action is required so that the principles of corporate governance can be properly inducted in our system. In the present case, from the material on record it is observed that the Noticees have purchased 3,50,000 shares at an average cost of ₹ 66.39. After the disclosure of information about sale of major chunk of shares of GNCL made by FCGL on September 16, 2005 the price of shares of FCGL touched a high of Rs. 104.50 in subsequent 3 trading sessions. Infact, after the disclosure was made on September 16, 2005 the scrip has hit the circuit filter of 10% on September 16, 19 and 20 before attaining a high of ₹104.50. Thus, the real price discovery could be said to be at ₹104.50. As the information was not disclosed on the announcement on July 4, 2005, its impact cannot be taken into consideration. FCGL sold maximum shares of GNCL in September and the corporate announcement made of September 16, 2005 had tremendous impact on the price of the scrip. If a notional profit is to be calculated based on

the impact of disclosure made on September 16, 2005 it would be ₹1,14,33,000 of Marley and ₹19,05,500 of Matangi and in total ₹1,33,38,500/-. This rate of ₹104.50 is considered for profit calculation as maximum shares were sold at that time and majority of the shares were purchased by the Noticees just prior to the disclosure. For the sake of uniformity and convenience, the average price has been taken into consideration and the price after the important disclosure of September 16, 2005 has been considered. The sole consideration while imposing penalty would not be the notional profit, and the designation and capacity of the Noticees also have to be seen. As stated above the Noticees were well connected with FCGL and such type of conduct cannot be tolerated and merits strenuous action. From the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticees. GLJ being Chairman of FCGL and AKJ being director in FCGL had more responsibility in ensuring the compliance of disclosure norms. The object of the PIT Regulations in mandating disclosure of price sensitive information and protecting the insider to act on it, in order to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. It would, however, be difficult to come to a firm conclusion as to how the general shareholders would have reacted on knowing the aforesaid price sensitive information. By virtue of the failure on the part of the Noticee to make the necessary disclosure on time, the fact remains that the shareholders/investors were deprived of the important information at the relevant point of time.

ORDER

61. After taking into consideration all the facts and circumstances of the case, I hereby imposed the following monetary penalty on the Noticees individually which will be commensurate with the violations committed by them:

NAME	PENALTY UNDER SECTION	AMOUNT OF PENALTY
Marley Foods Pvt. Ltd.	15 G(i) of SEBI Act	₹1,00,00,000 (Rupees One Crore Only)
Matangi Traders & Investors Pvt. Ltd.	15 G(i) of SEBI Act	₹20,00,000 (Rupees twenty lakh Only)
A.K. Jagatramka	15 G (i) and 15 G(ii) and 15 HB of SEBI Act	₹40,00,000 (Rupees Forty lakh Only)
G.L. Jagatramka	15 G (i) and 15 G(ii) and 15 HB of SEBI Act	₹40,00,000 (Rupees Forty lakh Only)

62. The Noticees shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Mr. Suresh Gupta, Chief General Manager, Investigations Department - 5, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

63. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **October 29, 2010** **PARAG BASU**

Place: **MUMBAI** **ADJUDICATING OFFICER**