

THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER NO. 23/2017

PROCEEDINGS UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 (SEBI Act) READ WITH RULE 5(1) OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 (Adjudication Rules)

**IN RESPECT OF SHRI DILIP S. PENDSE
IN THE MATTER OF M/s TATA FINANCE LTD. (TFL)**

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1. This matter had arisen out of the investigations conducted by SEBI wherein it was observed that:-
- (a) M/s. Tata Finance Limited (hereinafter referred to as "TFL") is a company having its shares listed on The Stock Exchange, Mumbai (BSE) and the National Stock Exchange of India Ltd. (NSE). Niskalp Investment and Trading Company Limited (hereinafter referred to as "NITCL"), a wholly owned subsidiary of TFL, is an investment company incorporated under the Companies Act, 1956. Shri Dilip S. Pendse (hereinafter referred to as "noticee") was the Managing Director of TFL from 01.06.96 to 31.5.2001 and director NITCL during 19.06.1997 to 1.6.2001. Shri J. E. Talaulicar (hereinafter referred to as "Talaulicar") was a Director of TFL during January 3, 1995 – August 17, 2001 and the Director of NITCL from March 15, 1991 and its Chairman from May 1995 till September 21, 2001. During the period 6.2.2001 to 20.7.2001, A.L. Shilotri was the President and Chief Executive Officer of NITCL. Immediately, prior to this period, he was the Vice President (Investments) of TFL.
- (b) The rights issue of 9% cumulative convertible preference shares of TFL, which was approved at the meetings of the Board of Directors of TFL held on 04.01.2001 and 29.01.2001, opened on 30.03.2001 and closed on 30.04.2001. The final letter of offer in respect of said rights issue contained financial results of TFL and NITCL as on 31.12.2000 and 30.9.2000, respectively. It was disclosed that the Profit after Tax (PAT) for TFL and NITCL was ₹16.41 crores and ₹11.46 crores, respectively. For the financial year ended 30.6.2000, dividends from NITCL, which amounted to ₹10.81 crores, was largely responsible for the profits of TFL. Thus, any loss suffered by NITCL would adversely impact the profits of TFL, which would in turn affect the price of the shares of TFL.
- (c) Subsequently, in the light of complaints received by SEBI and TFL alleging non-disclosure of losses of NITCL in the letter of offer, TFL on 30.04.2001 disclosed to its shareholders that NITCL had suffered a provisional loss of ₹79.37 crore as on 31.03.01 which was mainly due

to erosion of value of investments held by it as against the reported profit of ₹11.46 crores as on 30.09.2000.

- (d) The material information pertaining to the substantial erosion in the value of stocks held by TFL and NITCL and that NITCL had incurred a provisional loss of ₹ 79.37 crores as on 31.03.2001 was not disclosed in the letter of offer in respect of the said rights issue. Thus, this price sensitive information was not available to the general public prior to 30.04.2001 and was therefore, unpublished price sensitive information. This price sensitive information was available to the 'insiders' such as Talaulicar, the noticee and Shilotri.
- (e) On 30th March, 2001 a sum of ₹70 lacs was paid by NITCL to a sub-broker JHP Securities Pvt. Ltd. (JHP), a member of BSE. The voucher bearing no. 12008 dated 30.03.01 in support of this payment showed that the amount was paid as ad hoc margin.
- (f) Talaulicar along with his family members received ₹69 lacs from JIP Investments (JIP), a sub-broker of JHP, by way of following 5 cheques all dated 30.03.01.:-

Name	Amount (₹)
J. E. Talaulicar	24,15,000/-
Aparna Talaulicar	15,52,000/-
Sandeep Talaulicar	6,90,000/-
Anant Talaulicar	6,90,000/-
Usha Talaulicar	15,52,000/-
Total	69,00,000/-

- (g) The aforesaid voucher in respect of the aforesaid payment of ₹70 lacs made by NITCL on 30.03.01 to JHP was signed by Shri P.B. Karyekar, Ex- Company Secretary and Accountant of NITCL, Shri Shilotri and the noticee. It has been alleged that this was obviously to enable the broker to pay the amount of consideration of ₹69 lacs to Shri Talaulicar and his family members. Thus, this amount of ₹69 lacs was the consideration for the sale of 1,00,000 shares of TFL held by Shri Talaulicar and his family members at the rate of ₹69 per share. The said consideration paid out of money paid by by NITCL to JHP on 30.03.2001 and the same was transferred to JIP on the next day, which in turn was paid to Talaulicar and his family members on 31.03.2001.
- (h) The monies were debited from the bank account of JIP on 04.04.2001 and 07.04.2001. Talaulicar in return handed over 1, 00,000 shares of TFL to JIP on April 04. 2001. According to the submission made by Talaulicar, no sale contract / bills for the sale of 1,00,000 shares TFL were received by him. However, delivery instructions were given by Talaulicar to the

depository for transfer of 1, 00,000 shares of TFL to JIP's account and on 4.4.2001, the shares were transferred to JIP's account with another depository.

- (i) Subsequently, during May 18, 2001 to May 29, 2001, the said shares were sold at the rate of around ₹34/ per share in the market by JIP through JHP and Shri Prashant J. Patel, member of NSE on behalf of Shri Talaulicar and his family members. The excess money was refunded by Talaulicar and his family to JIP.
- (j) The off-market sale of said 1 lac shares of TFL by Talaulicar and his family was arranged by the noticee. Talaulicar had admitted that the noticee while handing over the 5 cheques informed Talaulicar that the shares of TFL held by him and his family had been sold to a close friend of the noticee. Talaulicar being a director of TFL at that time was aware of the prevailing market price of TFL shares. This appeared to be an unusual transaction as somebody who could purchase the liquid shares of TFL traded on a premier stock exchange at a rate of ₹40/ per share in the market, bought the said shares at the rate of ₹69/ per share for some unexplained reasons.
- (k) Copies of bills date 06.09.2000 issued by JIP in favour of Talaulicar and his family members for sale of 1,00,000 shares of TFL confirm the understanding reached between Talaulicar, the noticee, JIP and JHP for arranging the sale of shares of Talaulicar and his family members and transferring the funds to them. As the then market price of TFL shares was about ₹40/per share i.e. well below the agreed consideration, Talaulicar with the help of the noticee arranged through JIP to backdate the contract to suitably match with the consideration of ₹69/ per share.
- (l) In early May 2001, Talaulicar was informed by the noticee and Shilotri that the shares had not been sold in March 2000 as agreed and that the sale was going to take place during May at the prevailing market price of about ₹34 per share only. Shri Talaulicar was told to refund the difference between the price paid to him and the market price of the shares. Consequently, the noticee with the help of Shilotri gave orders to one Bharat J. Patel who is an associate of JHP and Prashant J. Patel, member of NSE for the sale of these 1lac TFL shares from May 18 to May 29, 2001 in the market at the market price at the rate of around ₹34 per share.
- (m) Noticee had contacted Bharat Patel around 27.03.01 to undertake two back dated sale and purchase transaction in TFL shares at a price around ₹69 / 70 per share, indicating that he would indicate the names of the seller and purchaser subsequently. Again the noticee instructed Patel to execute the sale transaction in the name of Talaulicar and his family members. In the month of May 2001, Shilotri had called Patel repeatedly to stress that in the

light of developments Talaulicar was disturbed about the transaction and Shilotri requested that the shares be sold in the market. Accordingly, the shares were sold by JIP, excess amount was refunded by Talaulicar and fresh contract notes were issued in the names of Talaulicar and his family members.

- (n) The disclosure of the above price sensitive information to the general public by TFL on 30.04.2001 had alerted the noticee and Shilotri to regularize the payments made by NITCL to Talaulicar and sale of the shares by Talaulicar and his family members. This prompted the noticee and Shilotri to advise to sell the shares in the market at the prevailing market rate of around ₹34 per share and refund the balance amount to NITCL through JIP and JHP.
- (o) In his letter dated 30.11.2001 to the investigating authority Talaulicar had submitted the following-
 - i. He intended to settle in Goa after retirement from Tata Group of Companies. Noticee was aware that he was desirous of purchasing a residential accommodation in Goa and advised that rather than selling the shares of TFL he should take loan from Tata Home Finance Ltd. (THL). Noticee had advised him not to take loan from any other financial institution as it would reflect badly on the Tata name if a senior Tata executive like Talaulicar were to take loan from an outside institution. Noticee arranged the application in this regard under section 295 of the Companies Act and pursued the same.
 - ii. As non-executive director of TFL he was not involved in preparation of proposal which lead to the rights issue. His role with respect to said rights issued was restricted to the decision taken at the Board meeting held on 04.01.2001 when the rights issue was decided on the strength of recommendation of the noticee.
 - iii. In March 2001, the noticee orally informed him that the approval of the Central Government under section 295 of the Companies Act was not likely to come. He spoke with noticee and Shilotri of his desire to sell the shares of TFL in view of the fact that he was unable to get the loan from THFL and they offered to organize the sale of his shares. While entrusting the sale of his shares in TFL to the noticee, he had implicit trust and faith in the noticee who was a trusted Tata employee and whom he considered as a friend.
 - iv. That on 31.03.2001 noticee had given him the cheques aggregating to ₹69 lacs towards his and his family's shares. Noticee while handing over the said cheques orally informed him that they represented the sale consideration of 1 lakh shares of TFL held by Talaulicar and his family members and the sale was to a close friend of noticee. Noticee had requested him to issue necessary instructions to his depository viz., HSBC for the transfer

- of 1 lakh shares to an un-named transferee. He had no reason to doubt the explanations offered by the noticee. Since he was not a regular trader he believed the words of noticee.
- v. That when he contacted noticee and Shilotri in May 2001, they represented to him that shares had not been sold and that they now organize the sale and that he would have to refund the difference between the price paid to him and the prevailing market price. He had trusted the noticee and he had no cause to doubt that he was acting for his benefit.
 - vi. That none of the executive directors of TFL including himself was aware of any erosion in TFL's fortunes. Only at the Board meeting of TFL held on 25.05.2001, he and other non-executive directors were informed of the various illegal and unauthorized actions of the noticee and his team.

2. Based on the findings of investigations it was alleged that noticee had aided Talaulicar by way of counselling and organized the transfer on his behalf and thereby noticee was guilty of *insider trading*, SEBI had initiated proceedings *inter alia* by way of adjudication and monetary penalty against noticee. In the appeal filed by the noticee against the order of the Adjudicating Officer imposing a monetary penalty of ₹1, 50,000/- upon the noticee under section 15I of the SEBI Act read with rule 3 and 4 of Adjudication Rules for the contravention of regulations 3 and 4 of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT Regulations") and section 15G of the SEBI Act, Hon'ble SAT, vide its order dated November 20, 2008 had set aside the order passed by the Adjudicating Officer for the findings and reasons *inter alia* that:-

- (a) Noticee has been charged that he aided Talaulicar by way of counselling and organized the transfer on his behalf and thereby the noticee was guilty of *insider trading*. This charge is solely on the basis of statement of Talaulicar, who was the primary wrongdoer. When Talaulicar was specifically asked as to why he transferred his family shares in TFL to JIP on April 4, 2001 his reply was as under:

"As already set out in my written representation dated 30th November, 2001 I required funds for the purchase of a retiral residence at Goa. At the instance and recommendation of Mr. Pendse I applied for a loan from Tata Home Finance Ltd. (THFL). Section 295 of the Companies Act, 1956 permission was required for this loan. I made a loan application to THFL on 25.09.2000. THFL, in turn, pursued the Section 295 sanction from the appropriate authority from September 2000 onwards. The Section 295 sanction was overseen by Mr. Pendse. In March 2001 Mr. Pendse informed me that the Section 295 sanction was unlikely to come through. As the THFL loan application which was for ₹75.00 lacs was

unlikely to go through and as I required funds for my Goa residence from my investments, I requested Mr. Pendse to sell my family's 1.00 lacs shares. In consideration for my shares he handed over cheques of the aggregate consideration of ₹69.00 lacs and I executed delivery instructions to my Depository namely HSBC. Mr. Pendse had told me that the sale of the said shares was to a friend of his. I did not know to whom the shares were sold or when exactly they were sold/transferred. This is borne out by my letter August 30, 2001 addressed to HSBC requesting information with regard to the exact date of transfer, no. of shares transferred and to the account to which the shares were transferred. I only learnt on 27.10.2001 that the shares had been transferred to JIP's Demat Account with Mafatlal Securities on April 04, 2001. ”

He was also asked as to whether he insisted for the contract notes to be issued for the sale transactions and he replied as under:

“Yes. I repeatedly followed up the matter with Mr. Pendse and Mr. Shilotri for the sale contracts and they informed that the shares were purchased by a friend of theirs and that they would give the contract notes soon. When I contacted Mr. Pendse and Mr. Shilotri in May, 2001, they represented to me that the shares in fact had not been sold and that they would organize the sale now.”

- (b) The allegations are that Talaucar and his family members sold on 30.3.2001, one lac shares of TFL at a negotiated price of ₹.69 per share to JIP which is a sub-broker of JHP. This was an off market transaction and the shares were purchased by JIP in its proprietary account. On the following day (31.3.2001), JIP issued five cheques totaling ₹69 lacs to Talaucar. These cheques were encashed between 4.4.2001 and 7.4.2001 and Talaucar issued delivery instructions on 4.4.2001 transferring the shares in the name of JIP. The Board has also found that on 30.3.2001 JIP received ₹.69 lacs from JHP and JHP had received ₹70 lacs from NITCL. This is one part of the story. It is also the case of the Board that JIP then sold one lac shares on behalf of Talaucar through the exchange through JHP and one Bharat Patel (brokers) at the then prevailing market price. These shares were sold between 18th and 29th May, 2001 at an average price of ₹35 per share and JIP received in all ₹34.21 lacs. This amount is far less than the amount which JIP paid to Talaucar when the latter sold the shares on 30.3.2001. Talaucar then paid a sum of ₹34.79 lacs (the difference between the price at which Talaucar sold the shares to JIP and the price at which the JIP sold the shares in the market). JIP paid this amount to JHP which in turn paid to NITCL. Noticee did not figure anywhere in the transactions both with regard to the transfer of shares and receipt of money by different entities.

- (c) There is absolutely no evidence whatsoever for the conclusion that it was the noticee who handed over cheques for ₹69 lacs to Talaulicar as consideration for the supposed sale of one lac TFL shares.
- (d) Bharat Patel was a broker through whom Talaulicar's shares were sold in May 2001 and there is no confirmation of this in his statement recorded during the course of investigations. In fact, in his statement dated 17.4.2002, Bharat Patel has categorically denied that anybody ever approached him for arranging any finance for Talaulicar and/or his family.
- (e) Apart from the statement made by Talaulicar, there is not an iota of evidence to corroborate the findings against the noticee.
- (f) Talaulicar himself was an *insider* and did not require any counselling or aiding. In whatever manner one analyses the case, ultimately noticee's culpability has been inferred essentially on the basis of Talaulicar's statement.
- (g) The statement of Talaulicar has been strongly refuted and the latter contends that he played no role whatsoever in the sale of shares of TFL by Talaulicar. This is a case where the word of Talaulicar was used against the noticee and in the absence of any corroboration, the only way out was to allow the noticee to cross examine Talaulicar. In this view of the matter, the charge of insider trading cannot be said to have been established against the noticee.
- (h) The entire case of insider trading on the part of the noticee as made out by the Board suffers from lack of credibility. Talaulicar was a senior professional manager in the investment market heading NITCL, an investment and trading company, as its chairman. Noticee, who was the managing director of TFL, was also similarly placed on the professional front. As far as TFL and NITCL were concerned, both the noticee and Talaulicar were admittedly insiders. If Talaulicar wanted to sell a large number of his shares in TFL, he would know how to sell, when to sell and who would be the likely purchasers. There should not have been any occasion for him to seek the noticee's assistance and if such a conclusion is drawn, as has been done, there has to be clear evidence to support such a conclusion which is conspicuous by its absence in this case.
- (i) A part of the allegation levelled by the Board is that before Talaulicar received ₹.69 lacs from the broker as the purported sale price for 1 lac shares of TFL, this amount had actually come out of the sum of ₹.70 lacs paid by NITCL to the broker JHP. Assuming that the funds really flowed in this manner from NITCL to JHP and then to Talaulicar via JIP, then rather than hold the noticee responsible for utilizing funds from NITCL for the

purpose, should Talaulicar, who was the chairman of NITCL at that point of time, not be held responsible? Similarly, in his statement during investigations, Talaulicar has stated that it was the noticee who handed over cheques for the aggregate value of ₹.69 lacs to him for the sale of his family's shares. There is absolutely no corroboration in support of such a statement and a serious allegation like insider trading cannot be established on the basis of such uncorroborated evidence. Talaulicar was not an inexperienced person who would need his hands to be held when he decided to offload his TFL shares in the market. That the noticee counselled and aided Talaulicar in marketing the latter's TFL shares cannot be concluded on the basis of indirect and circumstantial evidence based on uncorroborated statements of persons like Talaulicar who might be trying to disown or dilute his own responsibility by shifting the blame to the noticee for insider trading.

3. In the appeal against aforesaid order of Hon'ble SAT, Hon'ble Supreme Court remitted the matter to the Adjudicating Officer with direction to give an opportunity to the noticee to cross-examine Talaulicar and decide the matter *de novo* in terms of the following direction:-

"In this case, the respondent has been charged for insider trading on the basis of the statement made by Shri Talaulicar. We are of the view that an opportunity ought to have been granted to the respondent herein to cross-examine Shri Talaulicar who has implicated the respondent herein. Opportunity have been denied to the respondent herein. In the circumstances, we set aside the orders of the Appellate Tribunal and the Adjudicating Authority, accordingly we remit the matter to the Adjudicating Authority. The Adjudicating authority shall give an opportunity to the respondent herein to cross-examine Shri Talaulicar and de novo decide the matter in accordance with law."

4. Accordingly, the proceedings were started *de novo* by issuing a fresh Show Cause Notice and a supplementary SCN dated December 22, 2009 (SCNs) to the noticee. The noticee filed reply to SCNs and availed the opportunity to cross-examine Talaulicar. Shri V.M. Singh, advocate for the noticee conducted the cross-examination of Talaulicar on several dates such as 08.02.2010, 23.02.10 and 18.03.2010. The Presenting Officer appointed by SEBI represented it in the cross-examination but waived the opportunity of re-examination of Talaulicar. Thereafter, opportunities of personal hearings were given to the noticee and the hearing was finally concluded on March 17, 2017. Noticee also filed additional written submissions vide letter dated April 04, 2017. The submissions on behalf of the noticee are summarized as follows-

- (a) The mandatory requirement of giving a reasonable notice to the insider prior to undertaking an investigation under the provisions of regulation 6(1) read with regulation 5 of the PIT Regulations, 1992 has not been followed in this case. The order of the Board dispensing with such notice has also not been provided to the noticee. It is a settled position that when a statute provides that something must be done in a particular manner, it must be done in that manner or not at all. In this matter, the mandatory requirement of notice prior to the investigation has not been complied with and all proceedings pursuant to such investigation are flawed and must fail. In support of this argument, noticee has relied upon the judgement of the Hon'ble Supreme Court in the matter of *Shiv Kumar Chadha s. Municipal Corporation of Delhi* [(1993)3SCC 16].
- (b) The allegations mentioned in the show cause notices are denied. There is no wrongdoing on the part of the noticee and in fact the noticee had dissuaded Talaulicar from selling TFL shares held by Talaulicar and his family members.
- (c) Talaulicar, in his letter dated 30 November, 2001 which has been relied upon by SEBI in support of the charge, has stated that-

"6. Mr. D S Pendse was aware that I was desirous of purchasing a residential accommodation in Goa. He advised that rather than I sell my TFL shares, I should take a loan from Tata Home finance Limited (THFL) for a loan of ₹75 lakhs to finance the purchase of my Goa residence. I was advised by Mr. Pendse not to take a loan from another financial institution as it would reflect badly on the TATA name if a senior TATA executive like myself, were to take a housing loan from an outside institution when the same was available with THFL. Accordingly I made an application to THFL on 25.9.2000."

"10. In March 2001, Mr. Pendse orally informed me that the Section 295 approval for my loan was not likely to come through. In the meanwhile, the loan application pending with the Central Government for sanction was formally abandoned at my instance by Tata finance Lts by its letter dated 10.4.2001, a copy of which is annexed hereto as annexure 6. Hence, in view of the fact that I had liked and approved the Goa Flat at Mira-Mar, I decided to sell the shares held by me personally and by the members of family in TFL. The shares held in TFL constituted a very large part of my savings and retirement benefit. Y family's shares in TFL constituted about 60% of my savings. However, in view of the fact that I was unable to get a loan from THFL, I had no option but to sell my shares. I spoke with Pendse and Mr. Shilotri of my desire to sell the shares and their offered to organize the sale of my shares for me".

"24. It is not correct to say that unpublished sensitive information reached me or was the basis of any investment or disinvestment. The reasons for my disinvestment have been set out hereinabove. I requested Mr. Pendse that the share were sold on 4/4/2001".

“26. ...”So far as I was concerned, I needed to sell my TFL shares because I needed to purchase my Goa House”

“40. That in September 2000, when I consulted Pendse as to how I should raise finance required by me for residential accommodation in Goa, it was Pendse who advised that rather than do so by sale of my TFL shares, I should take a loan for the same from THFL rather than any other outside institution”.

- (d) In his statement dated June 18, 2002, recorded by SEBI during investigation, Talaulicar had stated that :-

‘At the instance and recommendation of Mr. Pendse I applied for a loan from Tata Home Finance Ltd. (THFL). Section 295 of the Companies Act, 1956 permission was required for this loan. I made a loan application to THFL on 25.09.2000. THFL, in turn, pursued the Section 295 sanction from the appropriate authority from September 2000 onwards. The Section 295 sanction was overseen by Mr. Pendse. In March 2001 Mr. Pendse informed me that the Section 295 sanction was unlikely to come through. As the THFL loan application which was for ₹75.00 lacs was unlikely to go through and as I required funds for my Goa residence from my investments, I requested Mr. Pendse to sell my family’s 1.00 lacs shares.’

- (e) During the course of his cross -examination also Talaulicar has stated as follows:-

“Q. What was your position in Nishkalp during the period 2000-2001?

A. I was non-executive director and the chairman.

Q. On how many occasions has your statement been recorded by SEBI in relation to investigations proceedings?

A. I don’t have any recollection I suffered from a brain stroke in May 2003 and in December 2003 I underwent bypass surgery. My memory is weak.

Q. Is it not correct that in your written representation dated you have stated that the sale of 1 lac shares of Tata Finance was commissioned because you were desirous of purchasing a residential flat at Goa?

A. Yes, the sale of Tata Finance shares was for the purpose of finance for purchase a residential flat at Goa.

Q. Is it not correct that on 25.09.2000 you made a loan application to Tata Home Finance Ltd. (THFL)?

A. I did for the same purpose.

Q. At whose instance and recommendation did you make this home loan application

A. At the instance and advice of Mr. Pendse.

Q. What happened to your loan application made to THFL?

A. Mr. Pendse told me there are some problems with respect to the approval from the central government and it will not go through.

Q. At what point and time did you decide to sell your TFL shares?

A. When I was told that the loan application will not come through I decided.

Q. So the decision to sell the shares was entirely based on your failure to obtain a loan from THFL

A. Yes.

Q. Is it correct that if the loan from THFL had gone through you would not have sold the shares held by you and your family members in TFL?

A. Yes.

Q. Who introduced you to JIP investments?

A. I was not formally introduced to JIP Investments at all. I sold the shares through Mr. Pendse and Mr. Shilotri.

(Shown statement recorded by SEBI of Mr. Jignesh Patil, proprietor of M/s JIP investments recorded on 1.03.02)

Q. Are there any factual inaccuracies, according to you, in the said statement?

A. Since I am seeing the statement for the first time I think it is more or less correct.

Q. Is it correct that Mr. Pendse is not even named in the statement of M/s JP Investment?

A. Yes he has not been mentioned. Only Mr. Shilotri has been mentioned.

Q. Is it correct that in the said statement it is reflected that you were introduced to M/s. JIP by Mr. A.L Shilotri only?

A. Tis statement names only Mr. Shilotri.

Q. Who was the person who decided whether to purchase or sell securities on your behalf?

A. In my family, it was always my decision.

Q. Is it correct that in all transactions the decision to purchase or sell was always yours and no one else?

A. Yes, in my family the decision is mine.

Q. In the present case of sale of 1 lac shares of TFL held by you and your family, the final decision to sell the shares was yours and yours alone?

A. Yes, the decision was mine."

- (f) Thus, it can be seen that the noticee had dissuaded Talaucar from selling the said 1 lac shares and can not be charged to counsel Talaucar who himself was an insider to sell TFL shares held by him and his family , on the basis of any unpublished price sensitive information. It is inconceivable how someone who has counseled against a trade can be accused of *insider trading*.

- (g) Talaulicar was Chairman of NITCL and a Director of TFL at the relevant time and was aware and in the know of the financial condition of NITCL and impact of the same on the profits of TFL. Talaulicar was aware of the financial condition of NITCL as he was receiving a daily NAV statement of investment portfolio of NITCL, which indicated the diminution or appreciation in the value of the shares of TFL and was also aware of the market price of the shares of TFL.
- (h) According to the noticee the amount of ₹70/- lac was paid as ad- hoc margin by NITCL to JHP on March 30, 2001. However, he not aware of and had no knowledge of transaction between JHP and JIP and between JIP and Talaulicar and his family. It is denied that that the noticee was having any knowledge as to timing of the arrangement of the sale of shares by Talaulicar. The noticee was not aware of and had no knowledge of the alleged transaction of sale of 1 lac TFL shares of Talaulicar and his family at the rate of ₹69/- per share and payment of ₹69/- lac to JHP by NITCL on March 30, 2001 and transfer of the same to JIP on the same day and then by JIP to Talaulicar and his family on March 31, 2001.
- (i) The noticee was also not aware of and had no knowledge that Talaulicar had delivered 1 lac shares of TFL on 04.04.01 or any other date to JIP or debit of account of JIP on April 04 and April 07, 2001. It is denied that there was ever any understanding between noticee and Talaulicar, JHP and JIP for arranging sale of shares of Talaulicar and his family. The noticee had no role to play in the alleged transaction.
- (j) It is denied that Talaulicar requested the noticee to sell the 1 lac TFL shares held by him and his family. He was also not aware of and had no knowledge that the transaction of sale of shares of TFL was by way of an off-market sale. It is also denied that the noticee had informed Talaulicar that the shares held by him and his family had been sold to a friend of the noticee. Since the sale of shares had not been arranged by the noticee, the question of the said shares being sold to a close friend of the noticee does not even arise.
- (k) The noticee was not aware of and had no knowledge of alleged backdated contract and bills issued by JIP.
- (l) It is denied that the noticee had ordered JHP and JIP to sell the said shares from May 18th to 29th, 2001 or at any time. It is also denied that the noticee had contacted Mr. Bharat Patel and asked him to undertake two backdated sale transactions in TFL shares. The noticee had further denied that he informed Talaulicar that the said shares had not been sold in March 2001 and that the sale would take place in early May 2001. The noticee has also denied having told Talaulicar to refund the difference between the price paid to him

and the ruling market price of the shares. The noticee had no knowledge and was not aware of any refund of ₹34.79 lac or any other amount to JIP by Talaulicar.

- (m) The SCN is entirely based on the letter of Talaulicar dated November 30, 2011 and his statement recorded by SEBI on June 18, 2002. In these statements, Talaulicar has clearly admitted that it was his decision to sell the shares held by him and his family. He has conceded that the noticee had dissuaded him from selling shares of TFL. The evidence relied upon in the matter *ex facie* establishes that there is no wrongdoing on the part of the noticee. There is absolutely no evidence on record or adduced in the matter that suggests, much less, establishes contravention on the part of the noticee. Not a single document relied upon in the matter even mentions the noticee by name or even indirectly refers to him.
- (n) The allegation that the noticee contravened the regulation 3 is incorrect. Regulation 3(i) of the PIT Regulations as they existed at the material time has no application to the noticee. Talaulicar had himself decided to sell his shares and he had actually sold the shares. The noticee did not sell or otherwise deal in the shares of TFL. Regulation 4 provides that (i) the violation must be by an 'insider' and (ii) the 'insider' must deal in securities, or (iii) the 'insider' must communicate any information, or (iv) the 'insider' must counsel, any person dealing in securities in contravention of the provisions of regulation 3, to be guilty of 'insider trading'. The first condition must be fulfilled along with either of the three conditions. Even assuming that the noticee was an 'insider' in terms of regulation 2 (e), none of the other conditions have been fulfilled so as to constitute a violation of regulation 4.
- (o) The noticee has at no stage counselled, organized or otherwise aided Talaulicar in the sale of shares and the other alleged transactions.
- (p) To have committed the violation of regulation 3 (iii) of the PIT Regulations the 'insider' should have 'counseled' or 'procured' any other person to deal in securities of any company *on the basis of unpublished price sensitive information (UPSI)*. It would be absurd to suggest that the noticee had aided Talaulicar, an 'insider', for dealing in securities of a company in which Talaulicar was not only an 'insider' but was also admittedly aware of and in the know and knowledge of the alleged *UPSI*.
- (q) NITCL became a subsidiary of TFL, effective January 1996, but operative only in April 1997. The Investment Division of NITCL was activated some time in 1997-98. Talaulicar was the Chairman of NITCL as well as the Investment Committee of NITCL. He was actively involved in day to day management of NITCL and used to actively monitor the

investment made by NITCL. All the investment decisions were taken either by the Board on NITCL and/or Investment Committee of NITCL, both chaired by Talaulicar. It has been held in the investigation findings that Talaulicar was an insider, who was in the knowledge of the financial condition of NITCL as well as TFL, who was in receipt of daily NAV statement of NITCL and who was also aware of the market price of the shares of TFL.

- (r) Learned advocate for the noticee further contended that even if it is assumed that the noticee was an *insider* having possession of *UPSI*, this itself would not constitute the contravention of provisions of regulation 3 and 4 other conditions i.e. counselling or procuring another person on the basis of *UPSI* must be proved. The noticee had never counseled Talaulicar to deal in TFL shares on the basis of *UPSI*. Assuming without conceding that the statements of Talaulicar are gospel truth, in the said statement he has admitted that it was his own decision to sell the shares and other statements that implicate with regard to transactions of shares and receipt of monies by different entities as described in the SCN are not reliable as the other material such as the statements recorded by SEBI of Jignesh Patel of JIP, Pankaj Patel of JHP and Bharat Patel and the documents on record clearly establish that the noticee was neither involved nor did he aid either through his counselling and/or organizing dealings in the shares of TFL and/or related transactions. These statements recorded by SEBI completely exonerate the noticee. There is no mention of the noticee in any of the statements recorded by SEBI. Even if it is assumed without admitting, that the noticee had assisted Talaulicar in transfer of his shares as alleged it would not amount to counselling or procuring Talaulicar to sell his shares on the basis of *UPSI* as provided in regulation 3(iii) and section 15G.
- (s) There is no role attributable to the noticee. The intention/motive of the noticee has not even been raised or attempted to be dealt with. In proceedings of this nature, it is incumbent for the motive to be established but in the present case, not only is the motive not established, it is not even attempted to be established. There was no motive and no motive could be attributable to noticee. There was no benefit, financial or otherwise, to the noticee and the profits/benefits if any, was only to Talaulicar. The SCNs even do not allege benefit or gain/profit to the noticee. There was no motive and no motive could ever be attributed to noticee. The entire case has been made on the basis that a financial benefit accrued to Talaulicar but at no stage has a financial benefit or any kind of benefit been attempted to be attributed to the noticee.

- (t) The allegation of counselling/or procuring the sale of shares is unwarranted and is contrary to the material on record. It is admitted position that the noticee dissuaded Talaulicar from selling his shares. Talaulicar has produced receipts of payment at the relevant time with regard to purchase of residential flat in Goa. For a person to be liable under 3(iii) of the PIT regulations, the counselling or procuring any other person to deal in securities must be on the basis of the unpublished price sensitive information. In this instant case, Talaulicar was himself an *insider* having in his possession the *UPSI*, there was no counselling or procuring him to deal in shares on the basis of the *UPSI*. The alleged *UPSI* was available with Talaulicar and it cannot be the basis on which the noticee can be alleged to have counseled the sale of shares by Talaulicar.
- (u) The allegations of Talaulicar ought not to be relied upon against the noticee. The proposed penalty is contrary to the weight of the material on record and merely on the says of primary wrongdoer.
- (v) In view of the above, the allegations against the noticee are not correct and the proceedings are liable to be dropped against the noticee.

5. I have carefully considered the charges leveled in the show cause notice, the replies and submissions on behalf of the noticee and other materials available on record. It is noted that a technical objection has been raised on behalf of the noticee with respect to requirement of notice under regulation 6(1) and/or an order under regulation 6(2) before undertaking investigation. Before dealing with merits of the case, I proceed to deal with this technical objection. It is pertinent to refer to provisions of then existing regulation 6 of PIT Regulations which reads as under:

“Procedure for investigation.

6. (1) Before undertaking any investigation under regulation 5, the Board shall give a reasonable notice to insider for that purpose.

(2) Notwithstanding anything contained in sub-regulation (1), where the Board is satisfied that in the interest of investors or in public interest no such notice should be given, it may by an order in writing direct that the investigation be taken up without such notice.

(3) On being empowered by the Board, the investigation authority shall undertake the investigation and inspection of books of account and the insider against whom an investigation is being carried out shall be bound to discharge his obligations as provided in regulation 7.”

6. The argument advanced by the learned advocate of the noticee is that in the present case the mandatory requirement of giving a reasonable notice to the noticee as required under regulation 6(1) has not been followed in this case. Since the noticee has not been provided with copy of an order passed if any, under regulation 6(2) though asked for it is assumed that no such order has been passed and therefore, all proceedings pursuant to such investigation are flawed and must fail. During the hearing, the learned advocate called upon the presenting officer to produce the formal order which has not been produced. The material on record do not show any notice as required under regulation 6(1) or an order under regulation 6(2). As held in the judgment of the Hon'ble Supreme Court in the matter of *Shiv Kumar Chadha s. Municipal Corporation of Delhi [(1993)3SCC 16]* relied upon by the noticee when a statute provides that something must be done in a particular manner, it must be done in that manner. In the present case, admittedly, the procedure prescribed in regulation 6 was not followed for undertaking investigation under regulation 5. In this regard, I find merit in submissions of the noticee to the extent that this mandatory requirement should have been followed. However, in this regard, it is also notable that the present proceedings are being conducted pursuant to order passed by the Hon'ble Supreme Court in terms of which these proceedings are commenced *de novo* after giving an opportunity to the noticee to cross-examine Talaulicar. As noted by Hon'ble SAT and Hon'ble Supreme Court the charges against noticee are solely on the basis of statement of Talaulicar. The noticee himself was an *insider* at relevant time and he was given opportunity to make statement during investigation. Pursuant to the order of Hon'ble Supreme Court referred to hereinabove, the noticee had been given ample opportunities to cross- examine Talaulicar, inspect the documents relied upon in these proceedings and make oral and written submissions. All charges and allegation have been explained to the noticee in the course of these proceedings in terms of the Rules. I am of the view that in the facts and circumstances of this case, no prejudice has been caused if notice or order under regulation 6 was not issued in this case and the matter has to be disposed of in terms of aforesaid order of Hon'ble Supreme Court.
7. It has been reported in media that the noticee has expired. If it were so, the proceedings against the noticee being personal in nature would abate as *actio personalis moritur cum persona*. However, since no material has been brought on record in this regard, I proceed to deal with the submission made on behalf of the noticee. It is noted that the charge against the noticee is that the noticee aided Talaulicar by way of counselling and organizing the transfer of TFL shares on his behalf and thereby he was guilty of *insider trading* and, thus, he has contravened

the provisions of then existing regulations 3 and 4 of the PIT Regulations and the said contravention attracts monetary penalty under section 15G of the SEBI Act. Provisions of said regulations 3 and 4 and section 15G as they applied at the relevant read as follows:

“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 on the basis of any unpublished price sensitive information; or*
- (ii) communicate 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) counsel or procure any other person to deal in securities of any company on the basis of unpublished price sensitive information.”*

“4. Violation of provisions relating to insider trading.

Any insider who deals in securities or communicates any information or counsels any person dealing in securities in contravention of the provisions of regulation 3 shall be guilty of insider trading.”

“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 informationshall be liable to a penalty not exceeding five lakh rupees.”*

8. As can be seen from the above referred provisions, regulation 3 prohibits an *insider*, from (i) ‘*dealing in securities either on his own behalf or on behalf of any other person on the basis of UPSI*’; (ii) ‘*communicating UPSI to any person*’ and (iii) ‘*counseling or procuring any other person to deal in securities of any company on the basis of UPSI*’. Regulation 4 provides that any ‘*insider*’ who *deals or communicates or counsels* in contravention of the provisions of regulation 3 shall be guilty of *insider trading*. Admittedly, the charge against the noticee is that he aided Talaulicar by way of counselling and organized the transfer of TFL shares on his behalf. Thus, the instant proceedings are concerned with the applicability of clause (iii) of regulation 3. From the above referred provision of regulation 3 and section 15G it is very clear that in order to bring home this charge, it must be established that an ‘*insider*’ counsels or procures ‘*any other person*’ to deal in

securities of any company on the basis of *UPSI*. Thus, what needs to be determined in relation to the charge in this case is whether in respect of the transaction in question, the noticee was an '*insider*' and he '*counseled or procured*' Talaulicar to deal in shares of TFL on the basis of any *UPSI*.

9. As per regulation 2 (e) of the PIT Regulations a person to be considered as '*insider*' should be one who is or was actually connected with the company or deemed to have been connected with the company and by virtue of such connection the person is reasonably expected to have access to *UPSI* or has received or has had access to such *UPSI*. In terms of regulation 2(c) it is sufficient for a person to be treated as *connected person* with a company if he is a director on the Board of that company. It is admitted fact that the noticee was the managing director of TFL and also a director of NITCL during the period of the transaction in question. Thus, he was a *connected person* as defined in regulation 2(c) and in turn an *insider* as defined in regulation 2(e). Further, it is undisputed fact that, in this case, the material information that NITCL had incurred a provisional loss of ₹ 79.37 crores as on 31.03.2001 was not disclosed in the letter of offer in respect of the rights issue of TFL and the same was not available to the public prior to 30.04.2001. This loss of NITCL would have adversely affected the price of TFL. As on 31.3.2001, this information was available to the insiders such as Talaulicar, the noticee and Shilotri and it came to be known to the public only 30.04.2001 and thus, it remained *UPSI* till 30.04.2001. As per the minutes of NITCL's Board meeting held on February 2, 2001, the estimated profit and loss account of NITCL for the period ended January 31, 2001 itself showed a loss of ₹17.10 crores. Noticee was privy to the information that NITCL was in fact incurring loss, which would impact the profit of TFL and the value of its equity shares. Thus, as on the date of transaction in question the said price sensitive information was *UPSI* as defined in regulation 2 (k) the PIT Regulations. The Board of Directors of TFL in its meetings held on 04.01.2001 and on 29.01.2001 approved the rights issue of TFL. By virtue of his position in NITCL and TFL, it can be easily concluded that the noticee had access to the price sensitive information relating to the financial position of NITCL which was likely to have adverse impact on the price of equity shares of TFL. Therefore, is covered in the definition of as '*insider*' under regulation 2(e) for this reason also. The disclosure about the above price sensitive information was not available to public except the *insiders* including the noticee till 30.04.01 when TFL disclosed to its shareholders the said price sensitive information and gave an option to subscribers in the rights issue to withdraw their applications. However, I find merit in submissions that merely an *insider* having possession of

UPSI is not contravention of provisions of regulation 3 and 4 and the other applicable ingredients of regulation 3(iii) must be established.

10. I note that it is admitted fact that Talaulicar himself was an *insider* and he had dealt in TFL shares held by him and his family as described in the SCN. It is also admitted position that Talaulicar was in possession of the *UPSI* while he dealt in those shares. I also note that with regard to transaction in question, separate and independent proceedings initiated under sections 11 (4) (b) and 11 of the SEBI Act and regulation 11 of the PIT Regulations against Talaulicar have attained finality in appeals and it has been established that being *insider* he was in possession of the *UPSI* and he had dealt in TFL share held by him and his family on the basis of the *UPSI*. In this case, the charge against the noticee, as alleged by the investigation, is that he had active role in assisting, guiding Talaulicar in sale of his and his family's shares and had aided Talaulicar by way of counselling and organized the transfer on his behalf and thereby he is guilty of *insider trading*.
11. It is noted that Hon'ble SAT as well as Hon'ble Supreme Court have confirmed that the entire charge has been made on the basis of circumstantial evidence on the basis of the statement of Talaulicar and the aforesaid transactions by which shares were transferred by Talaulicar to JIP and subsequent transfers and payment of monies. It has also been confirmed that except for the statement of Talaulicar there is not an iota of evidence to corroborate the charge. In the above regard, it must be kept in mind that the charge of *insider trading* must be sustained by a higher degree of proof than that required in any other civil default. There must be convincing preponderance of probability. In this regard, following observations of Hon'ble SAT in the case of *Mr. Manoj Gaur Vs. SEBI (Appeal No. 64 of 2012) decided on October 03, 2012*, Hon'ble SAT are relevant to rely upon:

"12. Referring to the order of this Tribunal in the case of Dilip S. Pendse vs. Securities and Exchange Board of India [Appeal no. 80 of 2009 decided on November 19, 2009] it has been rightly pointed out by learned senior counsel for the appellant that the charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing higher must be the preponderance of probabilities in establishing the same. This is what the Tribunal has observed in the said order.

"The charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of probabilities in establishing the same. In Mousam Singha Roy v. State of West Bengal 13 (2003)

12 SCC 377, the learned judges of the Supreme Court in the context of the administration of criminal justice observed that, “It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused.” This principle applies to civil cases as well where the charge is to be established not beyond reasonable doubt but on the preponderance of probabilities. The measure of proof in civil or criminal cases is not an absolute standard and within each standard there are degrees of probability. In *Hornal v. Neuberger Products Ltd.* (1956) 3 All E.R.970 Hodson, L.J. observed as under:

“Just as in civil cases the balance of probability may be more readily tilted in one case than in another, so in criminal cases proof beyond reasonable doubt may more readily be attained in some cases than in others.”

We are also tempted to refer to what Denning, L.J. observed in *Bater v. Bater* (1950) 2 All E.R. 458 wherein he was resolving the difference of opinion between two Lord Justices regarding the standard of proof required in a matrimonial case. This is what he said:

“It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear. So also in civil cases. The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion.”

12. In the instant case, the charge has been leveled on the basis of circumstantial evidence i.e. statement of Talaulicar to the effect that -
 - a. In view of the fact that Talaulicar was unable to get a loan from THFL, he had no option but to sell his shares. He spoke with the noticee and Mr. Shilotri of his desire to sell the shares and they offered to organize the sale of his shares for him.
 - b. On 31st March 2001, the noticee gave him 5 cheques of the aggregate consideration of ₹69 lacs towards the sale of his and his family's shares. The cheques were issued by JIP, a sub-brokerage of Mr. Bharat Patel through whom the noticee was carrying out

- transactions worth several crores on behalf of TFL and ITCL. Neither he nor his family members dealt with JIP or JHP or Bharat Patel nor they do not even know these entities.
- c. The noticee while handing over the aforesaid 5 cheques to Talaulicar, orally informed him that the said cheques represented the sale consideration of one lakh TFL shares held by him and his family and that the sale was to a close friend of noticee.
 - d. The noticee requested Talaulicar to issue the necessary instructions bearing the name and transferee blank, to my depository HSBC for transfer of the said 1 lakh shares of TFL. He had no reason to doubt the noticee and he believed the noticee.
 - e. He encashed the cheques given by the noticee honestly believing that they were for sale consideration for the sale of shares and the monies were credited to his bank account on 04.04.2001. Thereafter, he repeatedly followed up the matter with noticee and Mr. Shilotri for the sale contracts and they informed him that shares were purchased by a close friend of theirs and that they would him the contract notes soon. When he contacted the noticee and Mr. Shilotri in May 2001, they represented to him the shares had in fact been sold and they would organize the sale now. They also informed him that he would have to refund the difference between the price paid the ruling market price. Once again believing them to be true, he refunded an amount of ₹34.79 lac during May 2001.
13. On the basis of other material such as vouchers, cheques, bills, statements of Mr. Jignesh Patel of JIP , Mr. Pankaj Patel of JHP and Mr. Bharat J Patel and copies of books of accounts of JHP and JIP etc. it has been alleged that :-
- (a) On 30.3.2001, JIP received ₹69 lacs from JHP and JHP had received ₹70 lacs from NITCL. The voucher in respect of the aforesaid payment of ₹70 lacs made by NITCL on 30.03.01 to JHP was signed by Shri P.B. Karyekar, Ex- Company Secretary and Accountant of NITCL, Shri Shilotri and the noticee. It has been alleged that this payment was obviously to enable the broker to pay the amount of consideration of ₹69 lacs to Shri Talaulicar and his family members.
 - (b) On the following day (i.e. 31.3.2001), JIP issued five cheques totalling ₹69 lacs to Talaulicar. These cheques were encashed between 4.4.2001 and 7.4.2001 and Talaulicar issued delivery instructions on 4.4.2001 transferring the shares in the name of JIP.
 - (c) It is also the case of the investigation that JIP then sold one lac shares on behalf of Talaulicar on the exchange through JHP and one Bharat Patel (brokers) at the then prevailing market price. These shares were sold between 18th and 29th May, 2001 at an average price of ₹35 per share and JIP received in all ₹34.21 lacs. This amount is far less

than the amount which JIP paid to Talaulicar when the latter sold the shares on 30.3.2001. Talaulicar then paid a sum of ₹34.79 lacs (the difference between the price at which Talaulicar sold the shares to JIP and the price at which the JIP sold the shares in the market). JIP paid this amount to JHP which in turn paid to NITCL.

(d) The bills dated 06.09.2000 were arranged to back date the contract to suitably match with the consideration of ₹69/ per share.

14. During the course of his cross –examination, Talaulicar had accepted that the sale of shares by him were for the purpose of residential flat in Goa. He had made the loan application to THFL at the instance and advice of the noticee. He also admitted that when the noticee told him that the loan application will not come through, he decided to sell his and his family's TFL shares and the decision to sell the shares was entirely based on the failure to obtain loan from THFL. In response to certain questions in the cross-examination, the noticee answered as follows:-

“Q. For your personal transactions, who were the brokers that you would deal with?”

A. I had no brokers.

Q. So, how was it you would purchase and sell share on the stock market?

A. I don't think I have purchased shares on the stock market. I had sold certain Tata finance shares with the help of Mr. Pendse.

Q. Is it not correct that your dealing on the stock market were done through Tata Securities Ltd?

A. That's possible it being a Tata group company.

Q. Is it not correct that Tata Securities Ltd was acting as a broker on the stock exchanges?

A. I have no idea of Tata Securities being a broker except I have sold shares through them.

Q. Did you receive contract notes from Tata Securities for the transactions that were done by them on your behalf?

A. I have been dealing with Mr. Pendse and not with Tata Securities Ltd.

Q. When you say that you were dealing with Mr. Pendse and not with Tata Securities Ltd, what do you mean by that statement?

A. I meant that I requested Mr. Pendse to sell my shares and not Tata Securities.”

15. However, in response to following questions, Mr. Talaulicar changed his stand-

“Q. When did Mr. Pendse inform you that the loan application with THFL would not go through?”

A. I don't remember the dates but at the same time he told me that other option would be to sell the shares.

Q. Is it correct that you instructed Pendse to sell your family's 1 lac shares held in TFL?

A. Yes as already said when the loan application was not coming through Mr. Pendse advised me to sell the shares.”

16. On further cross -examination, however, he again confirmed that he himself had decided to sell the shares in response to the following questions and as cited on behalf of the noticee hereinabove: -

“Q. At what point of time you decide to sell TFL shares?

A. When I was told that loan application will not come through I decided”.

Q. So the decision to sell the shares was entirely based on you failure to obtain a loan from THFL?

A. Yes,

Q. Is it correct that if the loan from THFL had gone through you would not have sold the shares held by you and your family members in TFL?

A. Yes.”

17. When further cross examined by showing statement recorded by SEBI of Mr. Jignesh Patel of JIP on March 15, 2002, Talaulicar stated as follows:-

“Q. Is it correct that Mr. Pendse is not even named in the statement of M/s JIP Investments?

A. Yes he has not been mentioned. Only Mr. Shilotri has been mentioned.

Q. Is it correct that in the statement it is reflected that you were introduced to JIP by Mr. Shilotri only?

A. This statement names only Mr. Shilotri.

Q. Is it correct that cheques given to Talaulicar family at the relevant time were drawn on JIP Investments for the loan amount of ₹69 lacs?

A. I received cheques totaling ₹69 lacs, but I don't remember who gave the cheques and who issued the cheques.

Q. It appears that you and your family gave some cheques to M/s JIP Investments during the period 25.05.01 to 06.06.01. Why did you do so, if according to you the transaction was of sale of share in March 2001?

A. I had given Mr. Pendse and Mr. Shilotri to sell the shares. Some time may be in March they said they have sold the shares and gave me cheques for ₹69 lacs. Subsequently, I was told by Mr. Pendse and Mr. Shilotri both that the shares were not sold. I have not met the broker and I was requested to refund 34 and odd lac rupees.

Q. Would it be correct that immediately upon being informed that the shares had not been sold by M/s JIP, you and your family members issued cheques for the balance amount due to M/s JIP Investments?

A. Initially, I was given cheques for ₹69 lacs subsequently when I was told by my friends Mr. Pendse and Mr. Shilotri that the shares had not been sold. I have to refund some amount to the person to whom the shares were to be sold. I was asked to keep some amount towards sale consideration”.

18. When cross- examined after showing his statement dated June 18, 2002, Mr. Talaulicar answered as under-

Q. Is it correct that all your transactions i.e. sale and purchase of various securities was done through Tata Securities Ltd at the relevant time?

A. I hardly dealt in sale and purchase of shares except in the sale of Tata Finance Ltd. For a long time I had not purchased or sold shares. All the shares of Tata Finance was through Tata Securities Limited.

Q. For all transactions done through Tata Securities who was the person/persons that you approached.

A. Mr. Pendse and Mr. Shilotri.

Q. Who was the person who decided whether to purchase or sell certain securities on your behalf?

A. In my family, it was always my decision.

Q. Is it correct that in all transactions, the decision to purchase or sell was always yours and no one else?

A. Yes, in my family the decision is mine.

Q. In the present case of sale of 1 lac shares of TFL held by you and your family, the final decision to sell the shares was yours and yours alone?

A. Yes the decision was mine.

Q. Is it correct that you directed Mr. Pendse to purchase and sell certain other securities since he was the Chairman of Tata Securities Ltd and you did all your transactions, however few, through Tata Securities Ltd?

A. At that time, all transactions were most probably done through Tata Securities Ltd. I had hardly any significant value shares other than Tata Finance shares.

19. It is noted that the charge of counselling Talaulicar to deal in shares of TFL on the basis of UPSI has been alleged solely on the basis of circumstantial evidence i.e. the statement of Talaulicar. Talaulicar has also admitted that the noticee had advised him to avail a loan from THFL rather than sell his shares for acquiring a flat in Goa. He has also admitted that since he had liked the flat, he decided to sell shares held by him and his family in TFL. Talaulicar has also stated since he was unable to get a loan from THFL, he had no option but to sell his shares. In his statement dated June 18, 2002 also, Talaulicar had admitted that at the instance and recommendation of the noticee, he applied for a loan from THFL and the noticee was overseeing the sanction of loan application under section 295 of the Companies Act, 1956. In March 2001, noticee had informed him that section 295 permission was unlikely to come

through and as he required the funds for his Goa flat, he had requested the noticee to sell his family's 1 lakh shares. In his letter/statement Talaulicar has admitted that he 'desired to sell' the shares, since *'he decided to sell the shares'*, he spoke to the noticee of *'his desire to sell the shares'* and he *'requested noticee to sell his shares'* in March 2001. He had, however, stated that he as helped and assisted by the noticee in sale transactions as stated hereinabove. It is noted that these statements of Talaulicar on their own do not show that the noticee counselled Talaulicar to sell 1 lac shares of TFL on the basis of the *UPSI*.

20. During his cross-examination, Talaulicar accepted that the sale of his TFL shares were for the purpose of residential flat in Goa. He had made the loan application to THFL at the instance and advice of the noticee and that when the noticee told him that the loan application will not come through, he decided to sell his and his family's TFL shares and the decision to sell the shares was entirely based on the failure to obtain loan from THFL. He admitted that it was his own decision to sell the shares and he had decided and sold them with the help of the noticee.
21. It is noted that in response to certain questions during cross- examination, Talaulicar contradicted his statement when he stated that when the noticee informed him that the loan application would not go through, the noticee had told Talaulicar that the other option would be to sell the shares and that the noticee had advised him to sell the shares. His contradictory statements show faultiness in the memory and lack of consistency. In fact, when his statement was shown later during cross- examination, he accepted his statement already made that in the instant case of the sale of 1 lakh TFL shares, the decision was entirely his own. It has been established that Talaulicar was an *insider* and was in possession of the *UPSI* at the relevant time and he traded in the shares on the basis of the *UPSI*. There is no evidence to show that Talaulicar traded in the shares of TFL on the basis of *UPSI* after he was counselled by the noticee. The fact of Talaulicar, an *insider*, making judgment and decision on his own to sell the shares while in possession of the *UPSI* in this case, further negates the proposition that the noticee counselled Talaulicar to trade in shares of TFL on the basis of *UPSI* in this case.
22. During cross-examination, Talaulicar has however, maintained his stand that he sold the shares with the help of/through the noticee and Mr. Shilotri. In this regard, he further admitted that Mr. Jignesh Patel of JIP, in his statement recorded by SEBI on March 15, 2002, has named only Mr. Shilotri and the noticee did not figure anywhere in the said statement.

Further, Mr. Bharat Patel in his statement dated April 17, 2002 had specifically denied that anybody ever approached him for arranging any finance for Talaulicar and/or his family. Therefore, such evidence and statements do not corroborate the allegation that the noticee organized Talaulicar to deal in TFL shares on the basis of *UPSI*. However, there is no denying that the noticee was co-signatory of the voucher bearing no. 12008 dated 30.03.01 in support of the payment of ₹70 lacs made by NITCL on 30.03.01 to JHP. The evidence shows that the monies were debited from the bank account of JIP on 04.04.2001 and 07.04.2001. The contract was backdated to suitably match with the consideration of ₹69/ per share. It is noted that the said voucher, however, does not shift the preponderance of probability against the noticee for the purpose of regulation 3(iii) and section 15G, in view of the fact that when such fund transfer happened Talaulicar was Chairman of NITCL and at the same time he had decided to sell shares in TFL. The statement of Talaulicar that the noticee handed over 5 cheques to him is not corroborated by any other credible evidence. The available evidence could show probability of some role in helping/assisting Talaulicar in sale of the shares after his decision to sell *while he was in possession of the UPSI* but such role/involvement cannot be termed as '*organizing Talaulicar to deal in securities on the basis of UPSI*' as required under regulation 3(iii) of the PIT Regulations and section 15G of the SEBI Act. It is noted that with regard to such role/ involvement, the noticee has already been penalized by way of directions under sections 11 (4) (b) and 11 of the SEBI Act and regulation 11 of the PIT Regulations wherein he had been directed to disassociate himself from the securities market and not to deal in securities for the period specified in the order and the noticee has already suffered such restraint.

23. In view of the above, the penalty under section 15G of the SEBI Act is not imposable in the facts and circumstances of this case and the proceedings are accordingly disposed of.
24. A copy of this order is being sent to the noticee and also to the Securities and Exchange Board of India, Mumbai.

Dated: July 28 , 2017
Ahmedabad

SANTOSH SHUKLA
ADJUDICATING OFFICER