BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PG/ TT/ AO-06/2012]

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

S.D. Nailwal

(PAN. AAFPN6111N)

In the matter of

Jaiprakash Associates Ltd.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigation into the trading in the scrip of Jaiprakash Associates Ltd. (hereinafter referred to as "**JAL/Company**") during the period September 29, 2008 to October 27, 2008 (hereinafter referred to as "**investigation period**").

2. Shri S.D.Nailwal (**SDN / Noticee**) is Whole Time Director of JAL holding finance portfolio and the announcements like quarterly

financial results, rights issue and proposed interim dividend are all core functions of Finance Department. Further, JAL had vide its letter dated May 31, 2010 to SEBI had confirmed that the Noticee was involved in the consolidation of quarterly results at the company level. The Noticee was also involved in the preparation of agenda of proposed interim dividend and rights issue. Therefore, Noticee is a connected person with the company having access to Unpublished Price Sensitive Information (**"UPSI")** of the Company and hence an insider under the SEBI (Prohibition of Insider Trading) Regulations, 1992 (**"PIT Regulations"**). It was alleged that the Noticee while in possession of UPSI had traded in the scrip of JAL taking advantage of the UPSI. Further, it was alleged that Noticee had traded in the scrip of JAL during the period when trading window was closed.

3. The findings of the investigation led to the allegation that Noticee-had violated regulation 3(i) & 4 and regulation 12(1) read with Clause 3.2-2 & 3.2-5 of code of conduct as specified under Part A of Schedule I of the PIT Regulations and consequently was liable for monetary penalty under 15 G and 15HB of Securities and Exchange Board of India Act, 1992 (**"SEBI Act"**).

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer vide order dated January 17, 2011 under rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **'Rules'**) to inquire into and adjudge under Section 15G & 15 HB of SEBI Act, the alleged violation of the provisions of PIT Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notice dated March 22, 2011 ("**SCN**") was issued to Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be held against him and penalty be not imposed under section 15G and 15HB of SEBI Act for the alleged violations specified in the said SCN.

6. Noticee vide letter dated April 11, 2011 replied to the said SCN.

7. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, Noticee was granted an opportunity of personal hearing on April 26, 2011, vide hearing notice dated April 11, 2011. During the hearing, the Noticee reiterated the submissions made by him vide reply dated April 11, 2011 and further submitted as under:

"In addition to my submissions vide letter dated April 11, 2011, I further submit that the purchase of shares of JAL was not based on any price sensitive information which was not public domain nor there was any intention to avail any unlawful benefit by circumventing the regulations. The part purchase of only 1000 shares of the order placed about a week earlier to the Window Closure Period was clearly circumstantial and accidental. In case of any additional submissions, the same will be submitted in the next 10 days."

8. Noticee, vide letter dated May 9, 2011, made further submissions in the matter.

CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the present case are :

   a. Whether the Noticee had violated provisions of regulation 3(i) & 4 of PIT Regulations?
   b. Whether Noticee had violated regulation 12(1) read with Clause 3.2-2 & 3.2-5 of code of conduct as specified under Part A of Schedule I of the PIT Regulations?
   c. Does the non-compliance, if any, attract monetary penalty under section 15G and 15HB of SEBI Act?
   d. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

10. Before moving forward, it would be pertinent to refer to the provisions of regulations 3(i) & 4 of PIT Regulations and regulation 12(1) read with Clause 3.2-2 & 3.2-5 of code of conduct as specified under Part A of Schedule I of the PIT Regulations, which read as under:-

> ***INSIDER TRADING REGULATIONS***
>
> ***Prohibition on dealing, communicating or counselling on matters relating to insider trading.***
>
> ***"3.*** *No insider shall—*
>
> *(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information;*
>
> *(ii) ….."*
>
> ***"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."*

"Code of internal procedures and conduct for listed companies and other entities.

12. *(1) All listed companies and organisations associated with securities markets including:*

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;

(b) the self-regulatory organisations recognised or authorised by the Board;

(c) the recognised stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,

shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same."

SCHEDULE I

[Under regulation 12(1)]

"3.2.2 *When the trading window is closed, the employees/directors shall not trade in the company's securities in such period.*

3.2.3….

3.2.3A….

3.2-4….

3.2-5 *All directors/officers/designated employees of the company shall conduct all their dealings in the securities of the Company only in a valid trading window and shall not deal in any transaction*

involving the purchase or sale of the company's securities during the periods when trading window is closed, as referred to in para 3.2.3 or during any other period as may be specified by the Company from time to time."

Unpublished Price Sensitive Information (UPSI)

11. As per investigation report, the Company received the trial balances for the quarter ended September 30, 2008 from its various units in the 1st week of October 2008. Thereafter, the Company made an announcement on October 11, 2008 that in the Board Meeting scheduled to be held on 21st October 2008 the following matters will be considered/approved:

    i) Unaudited financial result for the quarter ended 30th September, 2008,
    ii) Interim dividend for the year 2008-09; and
    iii) Rights Issue.

12. As per investigation report, the consolidated trial balance of the Company for the quarter ended September 30, 2008 was available on October 12, 2008 and its Board approved the consolidated quarterly results on October 21, 2008 as well as declared interim dividend of 15 %. The Board also approved issuance of shares on rights basis. In view of the above, the period from October 11, 2008 to October 21, 2008 was considered as the period when the information about the financial results and interim dividend was unpublished price sensitive information (hereinafter referred to as "**UPSI**").

13. In this regard, the Noticee, vide his letter dated May 9, 2011 submitted that:

"Unaudited financial result for the quarter ended 30th September, 2008.

For the quarterly results of September 2008, the Company had 36 trial balances of Engineering and Construction Division and 24 trial balances of Cement Division. It is a fact that the trial balances were received by 10th October, 2008. However, mere receipt of trial balances, you will kindly appreciate, do not provide the operating results till the trial balances are scrutinized, inter/ intra-unit / Divisions transactions are reconciled. The process of scrutiny of trial balances at HO inter-alia involves the following:

1. *Income Accounting/ Revenue recognition/ Work in Progress / Contracts*
2. *Expenses / Provision for expenses / liabilities.*
3. *Accounting of Current Assets / Current Liabilities / Debtors / Creditors / Cash and Bank Balances/ FD's.*
4. *Fixed Assets Accounting/ Capital Work in Progress.*
5. *Stock Position and valuation.*
6. *Interest expenses and provisions.*
7. *Loan Repayments / Borrowings / Public Deposits.*
8. *Inter unit Reconciliation of Debit and Credit balances.*
9. *Related Party transactions.*
10. *Accounting of Foreign Exchange transactions.*
11. *Accounting for self consumption.*

The above activities, you will kindly appreciate, takes a lot of time and man hours which involves lot of reconciliation checks and cross-checks and validations before the reconciled trial balances are consolidated and Profit & Loss Account is drawn and this was taking place from October 10, 2008 to October 17, 2008. During this period the Auditors

are also associated for their limited review, which could be completed only on 17th October, 2008 and the results were taken to Executive Vice Chairman and Executive Chairman and thereafter handed over to Secretarial Deptt. for presenting the same to Audit Committee and thereafter to the Board.

In view of the above, it is wrong to conclude that the period from October 12, 2008 to October 21, 2008 is considered as the period when the information about the financial results was unpublished price sensitive information (UPSI). The results were circulated on October 17, 2008 to the Audit Committee. ***There was, thus, no unpublished price sensitive information (UPSI), Before October 17, 2008.****"*

Noticee has further submitted that *"… over the years I have been associated with the consolidation of quarterly/annual results at the company level, but I did not have any UPSI on October 12, 2008. After the consolidation and drawing of Profit & Loss Account on October 17, 2008, I had not made any purchases of shares of the Company at all…"*

14. I find that the Noticee in his reply had inter alia submitted that the consolidated trial balance was not available on October 12, 2008 and also that the same cannot be considered as UPSI as it had to be further worked upon before becoming a price sensitive information. The consolidated trial balance is the base document from which the financial results of a company would be derived and decision about dividend can be taken. The financial results and dividend declaration are both price sensitive information as per regulation 2(ha) of PIT Regulations. Further, I am of the view that it is very difficult for the adjudication officer or any external agency to determine when the information became UPSI as the same forms part of the internal working of the corporate. However, I find that JAL had closed its trading window from October 11, 2008 indicating

that there was UPSI as on that date. The fact that JAL closed its trading window on October 11, 2008 itself proves that a UPSI existed from that date and therefore, Noticee's submission that no UPSI existed on October 12, 2008 is not acceptable.

15. Another contention of the Noticee is that there was no UPSI as pursuant to announcement of Board Meeting, the public was already aware of news about forthcoming financial results and interim dividend. In support of this contention, Noticee in his letter dated May 09, 2011 has mentioned about the past dividends as under :-

"Interim Dividend for the year 2008-09

i) Regarding the announcement made on October 11, 2008, giving the date of the Board meeting, you may kindly note that, over the years since inception of the Company, we have experienced that once the trial balances are received, it takes about a week to generate the Profit & Loss account and formalities involving audit etc. This has been regular practice with us, that once the trial balances are received, the Board meeting date is announced. The Board meeting in this case was announced to e held on October 21, 2008. ***The announcement of Board meeting on October 11, 2008, does not lead to any generation UPSI in the company****. It is a normal process, that for every quarter, (4 quarters in a year) the company announces the Board meeting keeping of advance notice by the Stock Exchange on receipt of the trial balances from all the work sites/ project sites/ units. There was nothing exceptional or spectacular or extra-ordinary result during this quarter.*

<u>Interim dividend for the year 2008-09</u>

The Dividend Track Record of the Company for the last 10 years has been as under:

Sr. No	*Financial Year*	*Date of Board Meeting*	*Interim/Final*	*Rate of Dividend*
1.	*2001-02*	*21.01.2002* *27.09.2002*	*Interim* *Final*	*7%* *5%*
2	*2002-03*	*06.10.2003*	*Final*	*15%*
3	*2003-04*	*29.09.2004*	*Final*	*15%*
4	*2004-05*	*30.04.2005* *27.09.2005*	*Interim* *Final*	*24%* *6%*
5	*2005-06*	*03.03.2006* *27.10.2006*	*Interim* *Final*	*18%* *9%*
6	*2006-07*	*11.01.2007* *30.08.2007*	*Interim* *Final*	*20%* *16%*
7	*2007-08*	*14.07.2007* *12.01.2008* *27.08.2008*	*Interim* *Interim* *Final*	*15%* *15%* *20%*
8	*2008-09*	*21.10.2008* *27.04.2009* *29.09.2009*	*Interim* *Interim* *Final*	*15%* *15%* *20%*
9	*2009-10*	*21.10.2009* *21.09.2010*	*Interim* *Final*	*27%* *27%*
10	*2010-11*	*28.01.2011*	*Interim*	*20%*

Kindly note that, the Company has been paying interim dividend for the last 10 years and final dividend in later part of the year. In many years the company has paid two interim dividends. In the last 10 years, there have been 19 instances of dividend pay-out. Please note that when the Company has been regular in payment of dividend over 10 years, it is in public domain that the company pays dividend regularly and people expect the dividend based on the performance of the company. The percentage of dividend is decided by the Board based on results placed before it.

From the table above, it can be seen that in the years 2007-08, 2008-09, dividend has been paid in three quarters. As a good performing company, it is no secret that the dividend is declared by the Company regularly. Hence the announcement of dividend did not lead to any UPSI in the company on October 12, 2008.

The allegation would have been correct, had the company announced the dividend for the first time in its history. The company has been paying dividend over the last 10 years on 19 occasions, and hence no UPSI was in the company on account of payout of interim dividend.

ii) <u>Right Issue.</u>

The Board of Directors in their meeting held on 18th July, 2008 had approved inclusion of an item of Preferential allotment of 12 crore warrants convertible into shares to the Promoters, in the notice of Postal Ballot dated 9th September, 2008, which was duly approved by the shareholders on 18th October, 2008. During the Annual General Meeting of the Company held on 27th August, 2008, the shareholders had expressed their interest to participate in any capital raising of the Company in near future. The number of shareholders participated in the meeting were over 700. 17 Directors of the company were on the dais. The item of Rights Issue got included in the next Board Meeting held on 21st October, 2008, for which Notice was issued on 11th October, 2008. The Board considered and approved the item of Rights Issue in its Board Meeting held on 21st October, 2008, and the stock Exchanges were informed accordingly.

Thus, there was hardly any information which was not within the public domain."

16. Noticee has replied that the company has been declaring interim dividend for the last 10 years and final dividend in later part of the year. Further in many years JAL has paid two interim dividends and in last 10 years, there have been 19 instances of dividend payout. It has been further submitted that announcement of dividend did not lead to any UPSI on October 12, 2008 as this was not the first

instance of dividend declaration by the Company. Noticee's submissions themselves indicate the need to consider the information about dividend as UPSI. A probability, even though high, does not mean a certainty. While I agree that the Company has been paying dividends for the past many years, it is observed that the timing of declaration and the quantum thereof have not been consistent. As observed from the table above; in 2006-07, the company declared interim dividend on 11.01.2007 (20 %) and final dividend on 30.08.2007 (16 %). In 2007-08, 1st interim dividend was declared on 14.07.2007 (18 %), 2nd interim dividend on 12.01.2008 (15 %) and final dividend on 27.08.2008 (20 %). In 2008-09, 1st interim dividend was declared on 21.10.2008 (15 %), 2nd interim dividend on 27.04.2009 (15 %) and final dividend on 29.09.2009 (20 %). If the company was following the previous precedent, it would have declared 1st interim dividend while considering results for 1st quarter of 2008-09 but it did not do so and announced the interim dividend only while considering results for 2nd quarter. In other words, shareholders and other members of public who were expecting 1st interim dividend at the time of consideration of 1st quarter results would have been disappointed. Thus, the dividend till declared remained UPSI as there was no certainty regarding the timing or quantum thereof.

Similarly financial results, although could be estimated, but exact figures thereof would be known only on declaration and could then impact the share price.

Connected person

17. I find that Noticee is Whole Time Director of JAL holding finance portfolio and is a connected person as defined under regulation 2

(c) (i) of PIT Regulations and therefore an "insider" under regulation 2(e) of PIT Regulations.

Trading Details

18. The trading details of the Noticee during the investigation period are as under:

Trading Date	Buy Qty.	Avg. Buy Price (₹)	Buy Value (₹)
30-Sep-08	2000	108.688	217376
6-Oct-08	1000	103.310	103310
7-Oct-08	2000	104.489	208978
13-Oct-08	1000	81.640	81640
Total	**6,000**		**6,11,304**

19. It is observed from the above trading details that Noticee bought 6,000 shares through the broker M/s. RG Share Brokers Ltd. at the National Stock Exchange during the investigation period. Trades done by the Noticee between September 30, 2008 and October 7, 2008 have not been considered as they do not fall within the UPSI period and the trading window closed period. However, the Noticee also bought 1,000 shares of JAL @ ₹ 81.64 per share on October 13, 2008 i.e. during the period when the trading window was closed (from October 11, 2008 to October 22, 2008) and the Noticee was allegedly in possession of UPSI.

20. As regard the trading pattern, the Noticee, vide his letter dated May 9, 2011, submitted as under:

"I had requested my broker to buy 5000 shares of Jaiprakash Associates Ltd. on my behalf during the week starting from 6th October, 2008. Against the said order he bought 1000 shares on 6th October, 2008 and 2000 shares on 7th October 2008. Due to my pre occupation, I could not keep

track of the transactions. On 13th October 2008, when I was out of station on official tour, my secretary, when informed about the transaction of only 3000 shares by the Broker, enquired about the balance 2000 shares. The broker, not aware of the Window Closure applicable in my case, purchased 1000 shares on the same day. Immediately on becoming aware about the purchase of 1000 shares on 13th October, 2008, I asked the broker not to purchase the 1000 shares. Nonetheless, the aforesaid investment was a long term investment and I continue to hold the same".

21. As regard allegations of insider trading done by Noticee, I find that regulation 3(i) of PIT states that no insider shall "*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"*. The aforesaid regulation prohibits an insider to deal in securities of a listed company when in possession of any UPSI. While considering the facts of the said case with regard to the Noticee in the light of the aforesaid interpretation of the said regulation, I am of the view that Noticee had access to the UPSI due to the fact that he is a connected person as defined under regulation 2 (c) (i) of PIT Regulations. The company vide its letter dated May 31, 2010 has submitted that the Noticee was involved in finalisation of quarterly financial results, interim dividend and rights issue. The Noticee himself has submitted vide his reply dated May 9, 2011 that he was associated with consolidation of quarterly financial results. Thus, I am of the view that Noticee was in possession of the UPSI with regards to JAL. Further, Noticee had traded in the scrip of JAL while being in possession of the UPSI with regards to JAL. In view of the foregoing, I find that Noticee had indulged in insider trading and had therefore violated regulations 3(i) & 4 of PIT Regulations.

22. As regard allegation against the Noticee of trading in the scrip of JAL during the trading window closed period, Noticee has submitted that *"The part purchase of only 1000 shares of the order placed about a week earlier to the Window Closure Period was purely circumstantial and accidental. It is wrong to allege that I had neither taken any pre-clearance nor informed the company of such purchases. The Company vide its letter dated 30th April., 2010 has confirmed that pre-clearance / disclosure of trade for the trading on 13th October, 2008 was not required in view of the small quantity traded, which was well within the limits prescribed by the Company. The limits prescribed by the Company under SEBI (Prohibition Of Insider Trading) Regulations, 1992 are as under:*

"such change needs to be disclosed only when it exceeds:

(a) Rs.5 lacs in vale (as per market value of the shares) or

(b) 25,000 shares or

(c) 1% of total issued shares of the Company

Whichever is lower."

23. The Company vide its letter dated May 31, 2010 has clarified that as per the policy on Prohibition of Insider Trading laid down in JAL, preclearance was not required for trade done by the Noticee on October 13, 2008. However, the fact remains that the Noticee has actually traded during the period when the trading window was closed. As per Noticee's submission mentioned in para 20 above, this quantity was a part of a larger order placed with his broker on October 6, 2008 for execution over the next few days. However, this trade was executed during UPSI period when the trading window was closed. The trading window was closed for Directors, specific category of employees and all connected/deemed connected persons. Noticee should have complied with the same.

The Noticee being the Director, Finance of a large corporate like JAL should have been more vigilant about his dealings. He is also expected to be well aware of the sensitivities of his position and take due care to ensure that there is no infringement of the law in respect of his own dealings. The explanation given the Noticee is not acceptable. In view of the above, I find that the Noticee has violated regulation 12(1) read with Clause 3.2-2 & 3.2-5 of code of conduct as specified under Part A of Schedule I of the PIT Regulations.

24. The Noticee has vide his letter dated May 09, 2011 has inter alia submitted that the Company has already issued him a caution letter for trading during Trading Window Closed period. However, I am of the view that irrespective of the Company taking action, SEBI can also take action for violation of Code of Conduct for Prevention of Insider Trading for Listed Companies as specified under Part A of Schedule I of Regulation 12(1) of PIT Regulations. The same has been upheld by Hon'ble SAT it's order dated May 27, 2011 in the matter of Manmohan Shetty Vs. SEBI (Appeal No. 132 of 2010).

LEVY OF PENALTY

25. The aforesaid violations of PIT Regulations by the Noticee, make them liable for penalty under sections 15 G and 15HB of SEBI Act, 1992 which read as follows:

> ***"15G.Penalty for insider trading. -*** *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."

"15HB.Penalty for contravention where no separate penalty has been provided.-

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."

26. I find that unlike the charging provision of regulation 3 (i) of PIT Regulations which prohibits trading in a scrip 'while in possession' of UPSI regarding the same scrip, section 15 G of SEBI Act prohibits trading in a scrip "on the basis of" the UPSI. For interpretation of the words 'on the basis of' in section 15G of SEBI Act, I rely on the interpretation of the words "on the basis of" by the Hon'ble SAT in its order dated May 09, 2008 in the matter of Rajiv B Gandhi vs. SEBI (Appeal No.50 of 2007). In the said case the Hon'ble SAT has elaborated on the issue of whether the insider, though in possession of unpublished price sensitive information, had traded 'on the basis of' that information or not? In this regard the Hon'ble SAT made the following observation:

"On a plain reading of regulation 3 it appears to us that the prohibition contained therein shall apply only when an insider trades or deals in securities ***on the basis of*** *any unpublished price sensitive information and not otherwise. The words "****on the basis of****" are significant and mean that the trades executed should be motivated by the information in possession of the insider. To put it differently, the information in possession of the "insider" should be the factor or circumstance that should induce him to trade in the scrip of the company. It is then that he will be said to have dealt with or traded "****on the basis of****" that information. We are of the considered opinion that if an insider trades or deals in securities of a listed company, it would be presumed that he traded on the basis of the unpublished price sensitive information in his possession unless he establishes to the contrary. Facts necessary to establish the contrary being especially within the knowledge of the insider, the burden of proving those facts is upon him. The presumption that arises is rebuttable and the onus would be on the insider to show that he did not trade on the basis of the unpublished price sensitive information and that he traded on some other basis. He shall have to furnish some reasonable or plausible explanation of the basis on which he traded. If he can do that, the onus shall stand discharged or else the charge shall stand established. Let us illustrate to explain what we mean. If an insider who sold the shares were to plead that he wanted to raise funds to meet an emergency in his family say, marriage of his daughter or bypass surgery of a close relation and could establish that fact, it would be reasonable to hold that even though he was in possession of unpublished price sensitive information, the motive of the trade was to meet the emergency. He would not be guilty of the charge of insider trading."*

The explanation submitted by the Noticee is not adequate to establish that he traded during the above period on some other basis and not the UPSI.

27. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…"*

28. While determining the quantum of penalty under section 15G and 15HB, it is important to consider 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."

29. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticee or loss caused to the investors as a result of the aforesaid violations is not quantifiable. Noticee purchased 1000 shares of JAL during the UPSI period. Noticee should not have transacted in the shares of JAL during the UPSI period while in possession of the same. It is difficult to arrive at the gain made by the Noticee as he has not sold his shares. The Noticee was at an advantage due to possession of UPSI. Further, Noticee was negligent in purchasing 1000 share of JAL during the Trading Window Closed Period. The investing

public lost as they were not privy to the UPSI. The object of the PIT Regulations prohibiting insider trading is to give equal opportunity to all investing public and protect their interests. To translate this objective into reality, measures have been taken by SEBI to prohibit communication of information as well as trading by insiders while in possession of UPSI. I am of the view that insider trading is a serious offence in securities market which warrants a stringent penalty.

ORDER

30. After taking into consideration all the facts and circumstances of the case and the replies of the Noticee, I hereby impose a penalty of ₹10,00,000/- (Rupees Ten Lakhs only) under section 15G of SEBI Act for violation of regulations 3(i) & 4 of PIT Regulations and ₹10,00,000/- (Rupees Ten Lakhs only) under section 15HB of SEBI Act, {i.e. a total penalty of ₹20,00,000./- (Rupees Twenty Lakhs only) for violation of regulation 12(1) read with Clause 3.2-2 & 3.2-5 of code of conduct as specified under Part A of Schedule I of the PIT Regulations by the Noticee. In my opinion, the said penalty will be commensurate with the violation committed by him.

31. The Noticee 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. G. Ramar, General Manager, Investigations Department - 3, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

32. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: **January 5, 2012**	**Piyoosh Gupta**
Place: **Mumbai**	**Adjudicating Officer**