

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. PG/ TT / AO- 04- 05/2012]**

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**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**

**Harish K. Vaid**

**(PAN. AABP9638C)**

**and**

**Harish K. Vaid – HUF**

**(Karta- Harish K. Vaid)**

**(PAN.AACHH6131H)**

**In the matter of**

**Jaiprakash Associates Ltd.**

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**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

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*Adjudication order in respect of Harish K. Vaid and Harish K. Vaid-HUF in the matter of Jaiprakash Associates Ltd.*

“**JAL/Company**”) during the period September 29, 2008 to October 27, 2008 (hereinafter referred to as “**investigation period**”).

2. Shri Harish K. Vaid (**HKV / Noticee-1**), Senior President (Corporate Affairs) & Company Secretary of JAL, a connected person with the company had access to Unpublished Price Sensitive Information (“**UPSI**”) of the Company and hence an insider under the SEBI (Prohibition of Insider Trading) Regulations, 1992 (“**PIT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**”). Further, Noticee-1 is the Karta of Harish K Vaid-HUF (**HUF/ Noticee-2**). Noticee -1, his wife, son and daughter are the coparceners/members of the HUF with equal share of 25%. It was alleged that Noticee-1 and Noticee-2 were in possession of UPSI with regard to JAL and Noticee-2 traded in the scrip of JAL taking advantage of the UPSI.
3. The findings of the investigation led to the allegation that Noticee-1 had violated regulation 3(ii) & 4 of PIT Regulations, Noticee-2 had violated regulation 3(i), 3(ii) & 4 of PIT Regulations and consequently both were liable for monetary penalty under section 15 G 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 of SEBI Act, the alleged violation of the provisions of PIT Regulations.

## **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

5. Show Cause Notices dated March 22, 2011 ("**SCN**") were issued to Noticee -1 and Noticee 2 (collectively referred to as **Noticees**) under rule 4 of the Rules to show cause as to why an inquiry should not be held against them and penalty be not imposed under section 15G of SEBI Act for the alleged violations specified in the said SCN.
6. Noticee -1 and Noticee -2 vide letters dated April 22, 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, the Noticees were granted opportunity of personal hearing on April 26, 2011, vide hearing notices dated April 11, 2011. Noticee -1 appeared for the hearing on behalf of self and HUF. During the hearings, Noticee -1 reiterated the submission made by the Noticees vide their replies dated April 22, 2011 and sought time till May 15, 2011 to make further submissions in the matter.
8. Noticees vide letters dated May 14, 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 Noticee-1 had violated provisions of regulation 3(ii) & 4 of PIT Regulations?

- b. Whether Noticee-2 had violated regulations 3(i), 3(ii) & 4 of PIT Regulations?
  - c. Does the non-compliance, if any, attract monetary penalty under section 15G 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), 3(ii) & 4 of PIT Regulations, which read as under:-

***INSIDER TRADING REGULATIONS***

***“Prohibition on dealing, communicating or counseling on matters relating to insider trading.***

***3. No insider shall—***

*(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or*

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

*Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.*

***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.”***

### **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 21<sup>st</sup> October 2008 the following matters will be considered/approved:
- i) Unaudited financial result for the quarter ended 30<sup>th</sup> September, 2008,
  - ii) Interim dividend for the year 2008-09; and
  - iii) Rights Issue.
12. As per the 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 12, 2008 to October 21, 2008 is 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-1 submitted that *“It is denied that the Trial Balances for the quarter ended September 30, 2008 were received from various units of the Company “in the 1<sup>st</sup> week of October,2008” or that the “consolidated trial balance” of the company for the quarter ended*

*September 30,2008 was available on October 12, 2008 and that in view of the same the period from 12.10.2008 to 21.10.2008 is to be considered as the period when the information about the financial results and interim dividend was unpublished price sensitive information (UPSI), as alleged.*

*In this context it may be noted that there are over 50 locations of various projects /Plants/ work sites/ offices of the company. The respective office/sites/plants etc maintain their respective accounts, which are sent at the end of each quarter to the corporate office through the command office of the company consolidation. The details of the different locations are annexed as **Annexure 2**.*

*In fact, as stated in JAL's letter dated 15.2.2010 addressed to SEBI (copy enclosed at **Annexure 4**), the Trial balances started reaching the Accounts Deptt. at Corporate Office from various units in the 1<sup>st</sup> week of October, 2008 till 10<sup>th</sup> October, 2008.*

*You will kindly appreciate, receipt of the Trial Balances, which contain all transactions relating to assets, liabilities, incomes & expenditure of the concerned project/site/plant/office, is only an initial step towards making of Financial Results for the relevant quarter. As stated in JAL's letters dated 15.2.2010 & 31.5.2010 (copies enclosed at **Annexure – 3**), number of other activities are undertaken before the financial results can be prepared/made available by the persons/senior officers in Finance & Accounts Department of the Company. After receipt of Trial Balances from various units, i.e., after 10.10.2008 in this case, the same were scrutinised with specific reference to the following aspects in each Trial Balance:*

- Income Accounting/ Revenue recognition/ Work-in- Progress/ Contracts.*
- Expenses/ Provisions for expenses/liabilities*
- Accounting of Current Assets/ Current Liabilities/ Debtors/ Creditors/ Cash & Bank balances/Fixed Deposits*
- Fixed Assets Accounting/ Capital Work-in-Progress*

- *Stock Position and valuation*
- *Interest expenses & Provisions of accruals*
- *Loan Repayments/ Borrowings/ Public Deposits*
- *Inter unit reconciliation of Debit & Credit Balances*
- *Related party transactions*
- *Accounting of Foreign Exchange Transactions*
- *Accounting of Investments etc.*

*Even the first cut of consolidated Trial Balances was available only after 12<sup>th</sup> October, 2008. Differences in unit Trial Balances with Head Office books intra/inter division / unit is taken up with each Unit and got reconciled in respect of all the above items. This process took about 5days. The Sites after reconciliation and setting all the queries send their fresh Trial Balances which are then consolidated at HO. The Consolidations took about 2 days before the status of results for the quarter was known, i.e. only by 17<sup>th</sup> October, 2008. The quarterly results were thereafter drawn in the prescribed format and put up to the management on 17<sup>th</sup> October, 2008 (i.e., **much after 12<sup>th</sup> October, 2008, mentioned in your notice**) and were thereafter sent by the Accounts Deptt to the Secretarial Deptt in the evening of 17<sup>th</sup> October, 2008, on 'Need to Know' basis, for putting up the same to the Audit Committee in its meeting fixed for 18<sup>th</sup> October, 2008.*

*The details of persons involved in the process are given in JAL's letter dated 31<sup>st</sup> May, 2010 and I was provided with the financial results only on 17<sup>th</sup> October, 2008*

*From the aforesaid sequence of events it is clear that the quarterly results for the quarter ended September 30, 2008 were ready and finalized post consolidation, inter-unit reconciliation & finalization **only by 17<sup>th</sup> October, 2008** which were placed before the Audit Committee in its meeting held on 18<sup>th</sup> October, 2008."*

14. Further Noticee 2 submitted as under:
- “With regard to receipt of Trial balances for the Quarter ended September 30, 2008 by the Company from various units of the Company in the 1<sup>st</sup> week of October, 2008 or that the consolidated trial balance of the Company for the quarter ended September 30, 2008 was available on October 12, 2008 as alleged, it is submitted that we were not aware about the same and the same is of no concern to me. As stated hereinbefore, we had no access and were not aware of the internal affairs of the Company including the UPSI as alleged.”*
15. I find that Noticee -1 in his reply dated April 22, 2011 has 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 for it to become 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 an 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 a UPSI as on that date. The fact that JAL closed its trading window on October 11, 2008 itself proves that UPSI existed from that date and therefore, Noticee -1's submission that no UPSI existed on October 12, 2008 is not acceptable.
16. Another contention of Noticee-1 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 1 in his letter dated April 22, 2011 has mentioned about the past interim dividends as under:-

***“Interim Dividend for the year 2008-09***

*In view of the satisfactory performance of the Company, declaration of dividend, both interim & final, had been a regular feature, as is evident from the dividend history given below:-*

| <b><i>Sl. No.</i></b> | <b><i>Financial Year</i></b> | <b><i>Interim / Final</i></b> | <b><i>Rate of Dividend</i></b> | <b><i>Aggregate Dividend</i></b> |
|-----------------------|------------------------------|-------------------------------|--------------------------------|----------------------------------|
| 1.                    | 2001-02                      | <i>Interim</i>                | 7% (21/1/02)                   | 12%                              |
|                       |                              | <i>Final</i>                  | 5% (27/9/02)                   |                                  |
| 2.                    | 2002-03                      | <i>Final</i>                  | 15% (6/10/03)                  | 15%                              |
| 3.                    | 2003-04                      | <i>Final</i>                  | 15% (29/9/04)                  | 15%                              |
| 4.                    | 2004-05                      | <i>Interim</i>                | 18% (30/4/05)                  | 24%                              |
|                       |                              | <i>Final</i>                  | 6% (27/9/05)                   |                                  |
| 5.                    | 2005-06                      | <i>Interim</i>                | 18% (3/3/06)                   | 27%                              |
|                       |                              | <i>Final</i>                  | 9% (27/10/06)                  |                                  |
| 6.                    | 2006-07                      | <i>Interim</i>                | 20% (11/1/07)                  | 36%                              |
|                       |                              | <i>Final</i>                  | 16%(30/8/07)                   |                                  |
| 7.                    | 2007-08                      | <i>1<sup>st</sup> Interim</i> | 15% (14/7/07)                  | 50%                              |
|                       |                              | <i>2<sup>nd</sup> Interim</i> | 15% (12/1/08)                  |                                  |
|                       |                              | <i>Final</i>                  | 20% (27/8/08)                  |                                  |
| 8.                    | 2008-09                      | <i>1<sup>st</sup> Interim</i> | 15% (21/10/08)                 | 50%                              |
|                       |                              | <i>2<sup>nd</sup> Interim</i> | 15% (27/4/09)                  |                                  |
|                       |                              | <i>Final</i>                  | 20% (29/9/09)                  |                                  |
| 9.                    | 2009-10                      | <i>1<sup>st</sup> Interim</i> | 27% (21/10/09)                 | 54%                              |
|                       |                              | <i>Final</i>                  | 27% (21/9/10)                  |                                  |
| 10.                   | 2010-11                      | <i>1<sup>st</sup> Interim</i> | 20% (28/1/11)                  |                                  |

*It will be appreciated from the above that the company had been declaring 1 or 2 interim dividends, besides the Final Dividend, for quite some time in the past. Since for the 1<sup>st</sup> Quarter of 2008-09 no interim dividend was declared, it was very reasonable & wide expectation of the shareholders and investors at large that 1<sup>st</sup> Interim Dividend will come with the results of 2<sup>nd</sup> Quarter ended 30.09.2008.*

*Further, the announcement of the proposal was made on 11<sup>th</sup> October, 2008 with the notice to Stock Exchange thereby clearly bringing the information within the public domain. The quantum of dividend was not in the knowledge of any one of the same was decided by the Board in its meeting of 21<sup>st</sup> October, 2008, which decision was conveyed to the Stock Exchanges on 21<sup>st</sup> October, 2008, at the earliest possible, and the Trades in question, though highly insignificant in volume, were transacted much before that.”*

Noticee-1 has replied that the company had been declaring dividend, both interim and final regularly. It is also submitted that since no interim dividend was declared while declaring results for 1<sup>st</sup> quarter of 2008-09, it was reasonable to expect interim dividend while declaring results for the 2<sup>nd</sup> quarter of 2008-09.

Noticee-1's submissions themselves indicate the need to consider the information as UPSI. A probability, even though high, does not mean a certainty. 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, 1<sup>st</sup> interim dividend was declared on 14.07.2007 (15 %), 2<sup>nd</sup> interim dividend on 12.01.2008 (15 %) and final dividend on 27.08.2008 (20 %). In 2008-09, 1<sup>st</sup> interim dividend was declared on 21.10.2008 (15 %), 2<sup>nd</sup> 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 1<sup>st</sup> interim dividend while considering results for 1<sup>st</sup> quarter of 2008-09 but it did not do so and announced the interim dividend only while considering results for 2<sup>nd</sup> quarter. In other words, shareholders and other members of public who were expecting 1<sup>st</sup> interim dividend at the time of consideration of 1<sup>st</sup> 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/ deemed connected persons**

17. I find that Noticee -1 is Senior President (Corporate Affairs) & Company Secretary of JAL and therefore is a connected person as defined under regulation 2 (c) (ii) of PIT Regulations. He is also the Compliance Officer of JAL.
18. Noticee-1 is the Karta of Noticee -2/HUF and he, his wife, son and daughter are the coparceners /members of the HUF with equal share of 25% each. It was alleged that as HKV is a connected person to the Company as per regulation 2 (c) (ii) of PIT Regulations and is also the Karta of HUF/Noticee-2 where he holds more than 10% share, thus Noticee -2 is deemed to be a connected person by virtue of clause h (ix) of regulation 2 of PIT Regulations. In this regard Noticee-2 submitted that “... *it is denied that we are connected person or deemed to be connected person with the Company as alleged. It is further denied that we can be deemed to be connected person by virtue of Clause h(ix) of Regulation 2 of Insider Regulations. It may be*

*noted that the scope of Regulation 2(h)(ix) is limited to HUFs of 'Directors' of the Company, as the said clause 2(h)(ix) covers the HUF of the connected persons mentioned in sub clause (i) of clause (c) & not of the connected persons mentioned in sub clause (ii) of clause (c) of the regulations. Admittedly, Harish Vaid is not a director of the Company. Therefore, we are not deemed to be connected person by virtue of Regulations 2(h)(ix) of Insider Trading Regulations as alleged."* In this regard, I find that regulation 2 (h) (ix) of PIT Regulations also includes an HUF wherein any of the connected persons mentioned in sub –clause 2(h) (viii) [i.e. relatives of the connected person] are having more than 10 per cent of the holding or interest. Accordingly, as Noticee -1 is a connected person as defined under regulation 2(c) (ii) of PIT Regulations and his wife, son & daughter hold more than 10 per cent interest in the HUF, the said HUF i.e. Noticee-2 is deemed to be connected person as per regulation 2(h) of PIT Regulations. Therefore, in this case, regulations 2(c)(ii), 2(h)(viii) and 2(h)(ix) of PIT Regulations have to be read together.

### **Trading Details**

19. The trading details of Noticee -1 during the investigation period are as under:

| <b>Date</b>  | <b>Dealt through Broker</b> | <b>Client Id</b> | <b>Buy Qty</b> | <b>Buy Rate (₹)</b> | <b>Buy Value (₹)</b> |
|--------------|-----------------------------|------------------|----------------|---------------------|----------------------|
| 30-Sep-08    | Alankit Assignments Ltd.    | CH136            | 2000           | 107.65              | 215310               |
| 7-Oct-08     | Alankit Assignments Ltd.    | CH136            | 500            | 100.00              | 50000                |
| 13-Oct-08    | Alankit Assignments Ltd.    | CH136            | 1000           | 79.00               | 79000                |
| <b>Total</b> |                             |                  | <b>3,500</b>   |                     | <b>3,44,310</b>      |

20. From the above table, it was alleged that Noticee -1 had purchased shares of JAL during the period of investigation on September 30, 2008, October 07, 2008 and October 13, 2008. Out of these,

Noticee -1 had made a purchase of 1000 shares on October 13, 2008 when the trading window in the scrip of JAL was closed. I find that except for the purchase of 1000 shares by Noticee-1, the other transactions made in the aforesaid table were prior to the existence of the UPSI. Therefore, the same are not relevant with regard to the allegation of insider trading against Noticee-1. As regards the transaction made by the Noticee-1 on October 13, 2008, he has submitted that the said trade of 1000 shares did not relate to him as there was a punching error on the part of his broker. Upon perusal of the material available on record, I find merit in the submissions of the Noticee as his broker, Alankit Assignment Ltd has confirmed that the said trade was a punching error and the shares were reversed in the broker's own account. It has also been submitted that the above purchase of 1,000 shares is not credited to HKV's demat account. Therefore, I am of the view that the alleged purchase of 1000 shares on 13.10.2008 (UPSI period) cannot be attributed to Noticee -1.

21. The trading details of Noticee-2 during the investigation period are as under:

| Date         | Dealt through Broker | Client Id | Buy Qty    | Buy Rate (₹) | Buy Value (₹) | Sell Qty   | Sell Rate (₹) | Sell value (₹) |
|--------------|----------------------|-----------|------------|--------------|---------------|------------|---------------|----------------|
| 15-Oct-08    | Tulip Investments    | HAV       | 500        | 75.00        | 37500         |            |               |                |
| 16-Oct-08    | Tulip Investments    | HAV       |            |              |               | 500        | 80.00         | 40000          |
| <b>Total</b> |                      |           | <b>500</b> |              |               | <b>500</b> |               |                |

22. It was alleged that Noticee -2 had purchased 500 shares of JAL on October 15, 2008 and sold 500 shares on the next day i.e. October 16, 2008. Through the aforementioned trade, Noticee -2 gained an

amount of 2500/-. These transactions were executed between the two dates of corporate announcements made by the Company (i.e. October 11, 2008 and October 21, 2008, i.e. during the period when the trading window was closed).

23. As regard the trading pattern, Noticee 2, vide its letter dated May 14, 2011, has submitted as under:

*“a. We are financially independent and have employed our own funds for trading in the scrip of JAL. Orders for trades on behalf of Harish K Vaid, HUF were placed by the coparceners in ordinary course;*

*b. We have not sold the shares of the Company purchased by us during Oct 11, 2008 to October 21, 2008, immediately post October 21, 2008 when the alleged UPSI became public as it happens in the case of insider trading, but to the contrary we have sold the shares on 16<sup>th</sup> October, which was much prior to the date of the alleged UPSI becoming public;*

*c. We were holding 2,675 shares of JAL at the relevant time. The quantum of shares which are subject matter of the alleged insider trading based on the alleged UPSI, is mere 1000 shares (500 shares bought and 500 shares sold) which is exceedingly insignificant (constituting 0.00004% of the then paid up capital of HAL) vis-à-vis our networth;*

*d. The profits booked out of the alleged trade (which is admittedly much prior to the date of publication of the alleged UPSI) was insignificantly small i.e. Rs. 2,216.93;*

*e. We have impeccable track record in terms of compliance”*

24. Further, the Noticee submitted that *“Quantity of shares allegedly bought by us on the basis of UPSI is hugely insignificant, which is normally not the case in insider trading. Here, it may be appreciated that we are a regular Income Tax payer for the last several years having a*

*good net worth. At the relevant time we were holding 2,675 shares of the Company. The amount involved in purchase of shares was mere Rs.37500/- and the net gain earned on the said transaction was too meager an amount., i.e. Rs.2,216.93 to justify the inference of Insider Trading as sought to be drawn. If the intent had been to capitalize on the basis of UPSI communicated to us as alleged, definitely the quantum of purchase would not have been mere 500 shares, but would have been much more as money for buying the share was not an issue at all for us. Also, the sale of shares would not have been mere 500 shares (and that too prior to the alleged UPSI being made public). This itself destroys the theory of insider trading.”*

25. Noticee-2 has contended that the orders for trades done on October 15 and 16, 2008 were placed by coparceners of the HUF. However, there is no evidence in this regard. In any case, normally it is the Karta who acts on behalf of the HUF and he is the person legally responsible for all acts of HUF. Thus, HKV as Karta of HUF is responsible for the above trades.
26. As regards allegation against Noticee -1 of communicating UPSI to Noticee-2, I find that Noticee-1 is the Karta of the Noticee -2/HUF. In case of HUF, all activities are done by Karta. In this case, Karta of Noticee-2 is Noticee-1 himself; hence it is not necessary to prove communication of UPSI to Noticee-2. Therefore, Noticee -2 had access to UPSI through its connection with Noticee-1. The circumstances and the conduct of Noticee-2 establishes that Noticee -1 had communicated the UPSI to it and therefore, violated regulation 3(ii) & 4 of PIT Regulations.

27. As regard allegations of insider trading done by Noticee -2 , it is observed that the Noticee-2 has purchased and sold 500 shares each on October 15 and 16, 2008, thereby making a net profit of ₹ 2216.93. This trading was done during the period when UPSI was in existence. While the quantity traded and the profit made is not substantial, the fact remains that it was done when Noticee-2 was in possession of UPSI. Further, I find that regulation 3(i) of PIT Regulations 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 testing the facts of the said case with regard to Noticee 2 in the light of the aforesaid interpretation of the said regulation, I am of the view that Noticee 2 had access to the UPSI due to its association with Noticee-1, who is a connected person as defined under regulation 2 (c) (ii) of PIT Regulations. Therefore, by virtue of their connection, Noticee -2 falls within the ambit of “person deemed to be connected person” as per regulation 2(c)(ii), 2(h)(viii) and 2(h)(ix) of PIT Regulations read together. Thus, I am of the view that Noticee 2 was in possession of the UPSI with regards to JAL. Further, Noticee 2 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 2 had indulged in insider trading and had therefore violated regulations 3(i), 3(ii) & 4 of PIT Regulations.



## **LEVY OF PENALTY**

28. The aforesaid violations of PIT Regulations by the Noticees, make them liable for penalty under section 15 G 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.”*

29. 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 it traded during the above period on some other basis and not the UPSI.

30. Submissions of Noticee- 2 in defense of the allegations against it of insider trading have been given in para 23 and 24 above.
31. 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..."*
32. While determining the quantum of penalty under section 15G, 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."*

33. From the material available on record, I find that Noticee-2 purchased and sold 500 shares each during the UPSI period, thereby making a

net profit of ₹ 2216.93. The profit made by Noticee-2 is not large. Nevertheless, Noticee-2 should not have transacted in the shares of JAL during the UPSI period while in possession of the UPSI. The Noticees were at an advantage due to possession of UPSI. The investing public lost as they were not privy to the UPSI. Further, Noticee-2 has made only two transactions during the UPSI period. The said transactions by Noticee-2 during the UPSI period were done as Noticee-1 is a connected person to the Company as well as the Karta of Noticee-2. 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**

34. After taking into consideration all the facts and circumstances of the case and the replies of the Noticees, I hereby impose a penalty of ₹10,00,000/-(Rupees Ten Lakhs only) on Mr Harish K Vaid under section 15G of SEBI Act for violation of regulations 3(ii) & 4 of PIT Regulations by him. I also hereby impose a penalty of ₹10,00,000/-(Rupees Ten Lakhs only) on Harish K Vaid-HUF (Karta- Harish K Vaid) under section 15G of SEBI Act, for violation of regulations 3(i), 3(ii) & 4 of PIT Regulations. In my opinion, the aforesaid penalties will be commensurate with the violations committed by them.

35. The Noticees shall pay the said amount of penalty by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Mr. G. Ramar, General Manager, Investigations Department – ID3, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
36. In terms of rule 6 of the Rules, copies of this order are sent to the Noticees and also to SEBI.

|                              |                             |
|------------------------------|-----------------------------|
| Date: <b>January 5, 2012</b> | <b>Piyoosh Gupta</b>        |
| Place: <b>Mumbai</b>         | <b>Adjudicating Officer</b> |