

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER

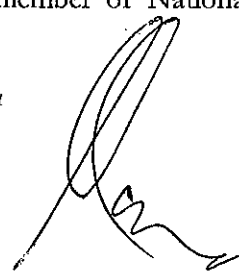
ORDER

Under Sections 11, 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 read with Regulation 11(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, in the matter of Himachal Futuristic Communications Limited, TATA Engineering and Locomotive Company Limited, Infosys Technologies Limited and Software Solutions India Limited, against Shri Dilip S. Pendse (PAN: AACPP9719M).

1. The Hon'ble Securities Appellate Tribunal ("SAT") vide Order dated April 16, 2014, passed in Appeal No. 41 of 2013, which was filed by Shri Dilip S. Pendse ("Pendse") to challenge the SEBI Order dated December 24, 2012, directed as under –
6. *"Accordingly, impugned order dated December 24, 2012, is quashed and set aside and the matter is restored to the file of respondent. Respondent is directed to pass fresh order on merits and in accordance with law as expeditiously as possible and in any event within a period of six months from today. All contentions on both sides are kept open."*

Background –

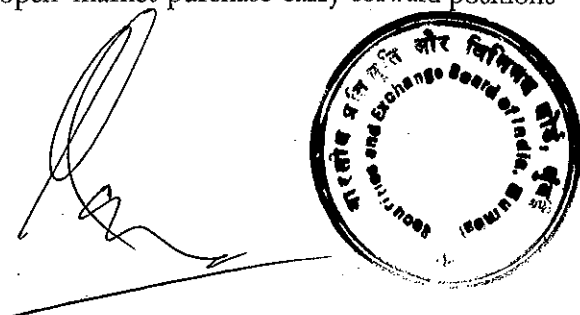
- 2.1 Securities and Exchange Board of India ("SEBI") received a complaint dated October 16, 2002, from TATA Finance Limited ("TFL") against Pendse *inter alia* alleging –
 - i. Illegal carry forward transactions in the scrips of Himachal Futuristic Communications Limited ("HFCL"), TATA Engineering and Locomotive Company Limited (presently known as "TATA Motors"), Infosys Technologies Limited ("Infosys") and Software Solutions India Limited ("Software Solutions");
 - ii. The illegal carry forward transactions were allegedly executed by Pendse in complicity with 2 brokers, viz. Jhunjhunwala Stockbrokers Pvt. Limited ("Jhunjhunwala") and Pratik Stock Vision Pvt. Limited ("Pratik"). While Jhunjhunwala was a member of Bombay Stock Exchange Limited ("BSE"), Pratik was a member of National Stock Exchange of India Limited ("NSE");



- iii. The illegal carry forward transactions were allegedly executed by Pendse on behalf of Inshaallah Investments Pvt. Limited ("**Inshaallah**"), in which Niskalp Investment and Trading Company Limited ("**Niskalp**"), a subsidiary of TFL, had a vital financial interest.
- iv. After executing the illegal carry forward transactions, Jhunjhunwala and Pratik continued to forward bills for claiming margin money/carry forward charges, for which Pendse accepted liability on behalf of Inshaallah, despite there being no such transactions on a *Principal – to – Principal* Contract. As a result, such transactions were closed causing wrongful loss due to carry forward charges and loss on sale to Inshaallah.
- v. As per the complaint, Pendse was stated to be a Director in both Niskalp and Inshaallah during the period when the aforesaid illegal carry forward transactions were executed.

2.2 Subsequent to receipt of complaint, SEBI conducted an Investigation in the matter and upon completion of said Investigation, issued a Show Cause Notice ("**SCN**") dated April 27, 2009, under Sections 11, 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") read with Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 ("**PFUTP Regulations, 2003**"), to Pendse. From the SCN, it is observed that –

- i. Inshaallah purchased shares of various scrips like HFCL, TELCO, Infosys and SSI on a *Principal – to – Principal* basis. For the said transactions, Contract Notes were issued in *Form – B* by Jhunjhunwala and Pratik, and later these transactions were carried forward.
- ii. During the month of February, 2001, Inshaallah issued letters to Jhunjhunwala and Pratik, wherein it agreed to buy specific quantity of shares in the abovementioned scrips at a stated price on *Principal – to – Principal* basis. On the days when the said transactions were being undertaken, Anjudi Property and Investments Pvt. Limited ("**Anjudi Property**"), an entity allegedly related to Pendse wrote letters to Jhunjhunwala and Pratik, unconditionally agreeing to sell the same quantity of shares at a specific price on *Principal – to – Principal* basis.
- iii. Pendse undertook illegal carry forward transactions in the abovementioned scrips on behalf of Inshaallah in complicity with Jhunjhunwala and Pratik in order to transfer losses from the account of Anjudi Property arising out of the open-market purchase carry forward positions



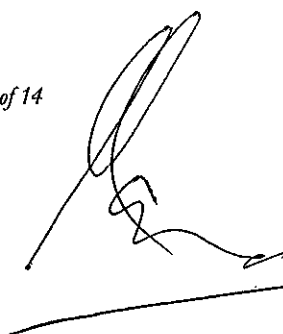
to the account of Inshaallah through off-market transactions, when the prices of the aforementioned scrips were going down. Such transactions never resulted in the delivery of shares or in the payment of consideration and were mere book entries to transfer the losses from the account of Anjudi Property to Inshaallah.

- iv. In view of the above, Pendse was alleged to have violated Section 16 of the SCR Act, Regulations 3, 6(a) and 6(d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 1995 ("**PFUTP Regulations, 1995**") as applicable during the relevant period read with Regulations 13(2), 13(3), 3(a) and 4(1) of the PFUTP Regulations, 2003.
- v. Accordingly, Pendse was directed to show cause as to why action under Section 23 of the Securities Contracts (Regulation) Act, 1956 ("**SCR Act**") and Section 11, 11B and 11(4) of the SEBI Act read with Regulation 11 of PFUTP Regulations, 2003, should not be issued against him for the abovementioned violations.

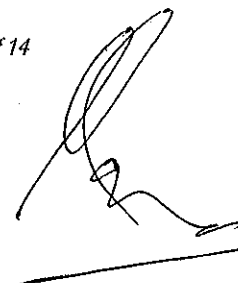
2.3 Subsequent to issuance of SCN dated April 27, 2009, Pendse submitted a reply dated March 17, 2011. Thereafter, an opportunity of personal hearing was also granted to him on June 27, 2011 and July 19, 2011. Pursuant to consideration of the material available on record alongwith the submissions made by Pendse during the aforesaid hearings, SEBI passed an Order dated December 24, 2012, which was subsequently challenged in Appeal No. 41 of 2013, before the Hon'ble SAT (as referred to at paragraph 1).

2.4 In compliance with the abovementioned Order of the Hon'ble SAT dated April 16, 2014 (as referred to at paragraph 1), an opportunity of personal hearing was granted to Pendse on June 11, 2014. However, a request was made for a subsequent date of hearing due to the unavailability of the authorised representative i.e. Advocate, Shri V. M. Singh, on that date. Thereafter, another opportunity of personal hearing was granted to Pendse on July 22, 2014.

2.5 A further opportunity of personal hearing was granted to Pendse on August 11, 2014, for disposing of the instant proceedings arising out of the SCN dated April 27, 2009. During the hearing on that date, Pendse was represented by his authorised representative i.e. Advocate, Shri V. M. Singh. The authorised representative adopted the earlier reply filed by Pendse to the SCN i.e. vide letter dated March 17, 2011, and also made submissions during the aforesaid hearing. The submissions/contentions raised by Pendse are summarized below --



- a. SCN was issued after more than six years. Therefore, the inordinate delay has led to a breach of the principles of natural justice.
- b. SCN was issued with a view to override/overcome the Order of Hon'ble SAT dated November 20, 2008, wherein proceedings in respect of SCN of SEBI dated March 12, 2003, were set aside.
- c. Though, SCNs were issued to the stock brokers i.e. Jhunjhunwala and Pratik, the violation alleged therein *inter alia* was breach of Section 13 of the SCR Act despite the allegation against Pendse that he acted '*in complicity*' with the brokers for violating Section 16 of SCR Act.
- d. Pendse was singled out since the SCN was only issued to him.
- e. Pendse denied permitting the transactions to be illegally carried forward. Carry over/carry forward transactions were permitted in the case of '*Principal – to – Principal*' transactions and were covered by the Bye Laws of BSE Rules and Regulations at the relevant time. Further, the transactions executed by Inshaallah fell under the categories permitted by Government Notification dated June 17, 1969.
- f. Bills submitted by Jhunjhunwala to Inshaallah showed that purchase transactions were carried over alongwith other purchase transactions till their squaring off/delivery through the BSE carry over/badla mechanism at the making-up prices fixed by BSE at the end of every settlement together with payment of margin on each scrip fixed by the BSE. Further, the transactions in the said scrips were on '*Principal – to – Principal*' basis and therefore, these would not be reflected in the trade log details of the concerned stock exchange.
- g. Transactions were relating to the transfer of a carry-over position and no physical delivery of shares was required. On the sale of carry-over position, the margin money was refunded subject to deduction of loss or along with a profit as the case may be. Inshaallah accounted for the said transactions on the basis of contract notes and bills issued by Jhunjhunwala and made on account payments to it from time to time during the period under consideration.
- h. There was a transfer of carry-over position between Anjudi Property and the brokers i.e. Jhunjhunwala and Pratik, on the one hand and the brokers and Inshaallah on the other hand. The price consideration was paid since margin monies had been paid by the brokers to the



BSE/ NSE for the respective carry-over positions as fixed by the aforesaid stock exchanges at the end of each settlement and mark to market difference and other charges were paid by all the parties as per the then prevailing practice and BSE/NSE Rules, Bye Laws and regulations.

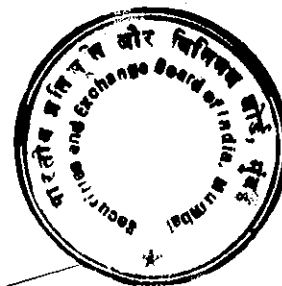
- i. Pendse was not an associate of Dr. Anjali Beke and Mr. Dilip Beke and was not aware of the transactions undertaken by Anjudi Property.

Consideration of Issues and Findings --

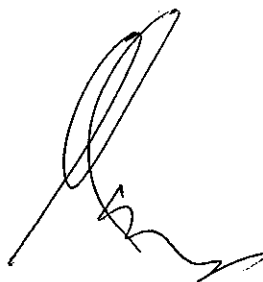
3. Delay in issuing SCN.

- 3.1 Pendse contended that since the SCN was issued after a period of more than 6 years, the same resulted in a breach of the principles of natural justice. In this regard, I note that --

- i. During the course of the Investigation, SEBI had to deal with complex facts and records. Further, during investigation, brokers i.e. Jhunjhunwala and Pratik, were asked to furnish copies of contract notes, bills, ledgers, bank statements showing margin payment, counter parties in off market transaction, dates when trades were informed to exchange along with details of proprietary trades. However, both brokers expressed their inability to submit the desired details as their documents and hard discs had been seized by Delhi Police during seizure proceedings carried on December 12-13, 2003 and November 10, 2006. Therefore, as vital trading details/counter party links for off market transactions were not received from the concerned brokers, BSE and NSE were requested to provide details regarding broker-wise trading in the said scrips, off market trades, dates on which informed to exchanges, settlement wise carry forward positions and client masters. However, the exchanges could only provide the broker wise scrip wise trading details along with settlement wise carry forward positions of the brokers.
- ii. I find that while the SCN was indeed issued after a period of more than 6 years from the date of receipt of complaint, however, in light of the abovementioned facts, I find that there existed sufficient reasons for the SCN to be issued after such period and further, where delay has occurred, the same cannot itself be a ground for exoneration.



4. SCN was issued to overcome the Order of the Hon'ble SAT dated November 28, 2008.
- 4.1 Pendse contended that SCN dated April 27, 2009, was issued with a view to override/overcome the Order of Hon'ble SAT dated November 20, 2008, wherein proceedings in respect of SCN of SEBI dated March 12, 2003, were set aside.
- 4.2 I note that the SCN dated March 12, 2003, was issued against Pendse in respect of violations alleged therein, which arose out of transactions attributed to him in the scrip of Global Telesystems Limited ("GTL"). I note that the SCN dated April 27, 2009, was issued to Pendse in respect of alleged illegal transactions in the scrips of HFCL, TELCO, Infosys and SSI.
- 4.3 I find that the SCN dated April 27, 2009, resulted in the instant proceedings, which are independent and separate proceedings. I, therefore, find no merit in the contention raised by Pendse that SCN dated April 27, 2009, was issued with a view to override/overcome the Order of Hon'ble SAT dated November 20, 2008.
- 4.4 In addition to the above, I note that Pendse has also contended that it was the violation of Section 13 of SCR Act which was alleged as against the stock brokers (and was disposed of by a Consent Order) and not Section 16 of the SCR Act despite the allegation against Pendse that he acted '*in complicity*' with the stock brokers for violating Section 16 of SCR Act. In this context, I find that a reference to a provision of law in the SCN issued to the stock brokers, even assuming such provision to be a mistake, cannot by any stretch of imagination absolve such entities of the charges leveled against them. Further, I find that the contention raised by Pendse is not in respect of the stock brokers having been let off on account of being charged for violation of a different provision of law for the same set of transaction.
- 4.5 As regards the contention that Pendse was singled out since the SCN was only issued to him, I find that while SEBI initiated appropriate proceedings against the stock brokers i.e. Jhunjhunwala and Pratik, no proceedings were initiated against Anjudi Property as the Hon'ble Bombay High Court had, vide its Order dated April 21, 2005, appointed a liquidator for that company. In view of the aforesaid facts, I find no merit in Pendse's contention that he was singled out in the instant proceedings.



5. Transactions executed by Pendse through Inshaallah in the scrips of HFCL, TELCO, Infosys and SSI were not illegal.

5.1 Pendse contended that carry over/carry forward transactions were permitted in the case of 'Principal – to – Principal' transactions and were covered by the Bye Laws of BSE Rules and Regulations at the relevant time. Further, the transactions executed by Inshaallah fell under the categories permitted by Government Notification dated June 17, 1969. In this regard, I note that –

- i. From the SCN, it is observed that the following transactions were executed by Pendse through Inshaallah in the following scrips –

A. Transactions by Pendse through Inshaallah with Jhunjhunwala (Broker at BSE) –

Scrip (Broker)	Purchase transactions	Sale transactions	Settlement
HFCL	Vide letter dated February 21, 2001, Inshaallah agreed to buy 3,000 shares on Principal to Principal basis at a price of ₹850.	Vide letter dated February 21, 2001, Anjudi Property agreed to sell 3,000 shares on Principal to Principal basis at a price of ₹845.	On April 10, 2001, Inshaallah sold 499 shares at a price of ₹100.64 and rest 2,501 shares were sold at a price of ₹100.69.
TELCO	Vide letter dated February 28, 2001, Inshaallah agreed to buy 30,000 shares on Principal to Principal basis at a price of ₹106.	Vide letter dated February 28, 2001, Anjudi Property agreed to sell 30,000 shares on Principal to Principal basis at a price of ₹105.50.	On April 02, 2001, Inshaallah sold 30,000 shares in the price range of ₹60.90 to ₹62.
Infosys	Vide letter dated February 28, 2001, Inshaallah agreed to buy 500 shares on Principal to Principal basis at a price of ₹6,310.	Vide letter dated February 28, 2001, Anjudi Property agreed to sell 500 shares on Principal to Principal basis at a price of ₹6300.	On April 02, 2001, Inshaallah sold 500 shares at a price of ₹3846.15.
SSI	Vide letter dated February 28, 2001, Inshaallah agreed to buy 20,000 shares on Principal to Principal basis at a price of ₹1,285.	Vide letter dated February 28, 2001, Anjudi Property agreed to sell 20,000 shares on Principal to Principal basis at a price of ₹1,280.	On April 02, 2001, Inshaallah sold 10,000 shares in the price range of ₹601 to ₹618.10. The rest 10,000 shares were taken delivery on April 07, 2011 at a price of ₹599.50.

Observation recorded in the SCN – The analysis of the Anjudi Property's demat account statement for the period of January 01, 2001 to April 30, 2001, the bank account transactions of ₹1 Lakh and above for the period of April 04, 2000 to June 30, 2001 and the details of delivery based share transaction for the period



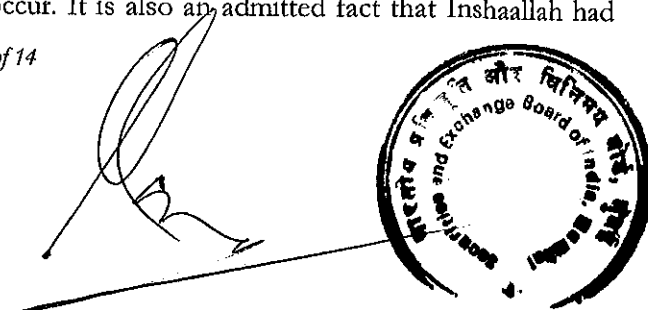
of April 04, 2000 to June 30, 2001, did not reveal any demat transfer of HFCL, TELCO, Infosys and SSI shares by Anjudi Property nor did it show any money received from Jhunjhunwala in the relevant period.

B. Transactions executed by Pendse through Inshaallah with Pratik (Broker at NSE) –

Scrip (Broker)	Purchase transactions	Sale transactions	Settlement
HFCL	Vide letter dated February 21, 2001, Inshaallah agreed to buy 10,000 shares on Principal to Principal basis at a price of ₹850.	Vide letter dated February 21, 2001, Anjudi Property agreed to sell 10,000 shares on Principal to Principal basis at a price of ₹845.	On April 10, 2001, Inshaallah sold 500 shares at a price of ₹100.20.

Observation recorded in the SCN – The analysis of the Anjudi Property's demat account statement for the period of January 01, 2001 to April 30, 2001, the bank account transactions of ₹1 Lakh and above for the period of April 04, 2000 to June 30, 2001 and the details of delivery based share transaction for the period of April 04, 2000 to June 30, 2001, did not reveal any demat transfer of HFCL shares by Anjudi Property nor did it show any money received from Pratik in the relevant period.

- ii. Pendse was admittedly a Director of Inshaallah during the period of investigation. Pendse had not denied that off-market transactions were executed by Jhunjhunwala and Pratik on behalf of Inshaallah in the scrips of HFCL, TELCO, Infosys and SSI. From the letters issued by Inshaallah to Jhunjhunwala and Pratik, it is observed that the company agreed to buy a specific quantity of shares in the aforementioned scrips on 'Principal – to – Principal' basis (vide Contract Note 'Form B' i.e. Contract Note issued by Members dealing with constituents as principals) at specified prices, on various dates. On those same dates, letters were also forwarded by Anjudi Property to its brokers i.e. Jhunjhunwala and Pratik, with instructions to sell similar quantity of shares in the scrips of HFCL, TELCO, Infosys and SSI, at a specified price, which was very close to the price offered by Inshaallah (the difference in prices offered for purchase and sale of shares by Anjudi Property and Inshaallah ranged between 50 paise and ₹10). It may be pertinent to note in all cases where transactions were executed between Anjudi Property and Inshaallah, the brokers i.e. Jhunjhunwala and Pratik, issued Contract Note – 'Form B' as opposed to Contract Note - 'Form A' i.e. Contract Note issued where Member is acting for constituents as brokers/agents.
- iii. As has been stated in the SCN, transfer of shares of HFCL, TELCO, Infosys and SSI, from the demat account of Anjudi Property, where transactions were executed by Jhunjhunwala and Pratik through sale of the same, did not occur. It is also an admitted fact that Inshaallah had

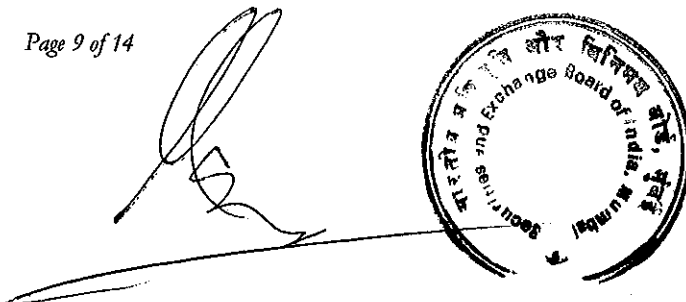


not taken delivery of shares of the aforesaid companies, where transactions were executed by Jhunjhunwala and Pratik through purchase of the same. Further, Anjudi Property did not receive consideration for the aforesaid sale of shares since no fund movements were observed in its bank account. As per the SCN, Anjudi Property had an outstanding purchase carry forward position in the scrips of TELCO, Infosys and SSI on the market as on February 16, 2001. Thus, it is clear that shares of TELCO, Infosys and SSI were not available in the demat account of Anjudi Property when it wrote letters to its brokers i.e. Jhunjhunwala and Pratik. It is observed that instead of settling these carry forward positions on the market, the shares were sold by Anjudi Property to the brokers on 'Principal – to – Principal' basis. Such transactions cannot be said to be valid, as under the normal circumstances, the brokers should not have purchased the shares which were not in the possession of Anjudi Property. Further, I note that the brokers also should not have sold similar quantities of shares to Inshaallah as they were not in the possession of such number of shares. It is further observed that the concerned stock exchanges were not informed of the aforementioned transactions in the scrips of HFCL, TELCO, Infosys and SSI by either Jhunjhunwala and Pratik. It is also seen from the SCN that no purchase carry forward position was created on BSE through Jhunjhunwala on behalf of Inshaallah.

- iv. I note that the alleged transactions of Inshaallah was not executed on the exchange provided platform therefore BSE Bye Laws are not applicable in respect of the same. The aforesaid transactions being done on 'Principal-to –Principal' basis, the same should have been completed as per the norm applicable for a spot delivery contract (*a contract which provides for inter alia actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality*).
- v. The following may also be noted –
- a. Section 16 of the SCR Act states:

"Power to prohibit contracts in certain cases.

16. (1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save



with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.

(2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of notification issued thereunder shall be illegal."

- b. Further, vide Notification bearing number S.O. 2561 dated June 27, 1969, issued under the Section 16(1) of the SCR Act, the Government of India has placed certain restrictions, which is reproduced as under –

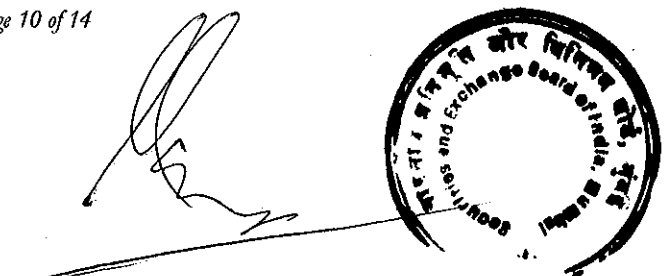
"In exercise of the powers conferred by sub-section (1) of Section 16 of the Securities Contract (Regulation) Act, 1956 (42 of 1956), the Central Government, being of opinion that it is necessary to prevent undesirable speculation in securities in the whole of India, hereby declares that no person, in the territory to which the said Act extends, shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery in any securities as is permissible under the said Act and the rules, bye-laws and regulations of a recognised stock exchange:

....." [Emphasis Supplied]

- c. SEBI had also issued certain directions under Section 16 of SCR Act, vide another notification bearing number S.O. 184(E) dated March 1, 2000. The relevant portion of the same is reproduced below:

"no person in the territory to which the said Act extends, shall, save with the permission of the board (i.e. SEBI), enter into any contract for sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under the said Act."

- d. In terms of the Notification dated June 27, 1969, any contract for sale or purchase of securities which is not a spot delivery contract, as permitted under the SCRA, the Rules, Bye-Laws and Regulations of a recognized stock exchange is considered to be undesirable transaction in securities. Further, vide the SEBI Notification dated March 1, 2000, any contract for sale or purchase of securities, which is not a spot delivery contract, could be entered into only with the permission of SEBI. The aforesaid provisions when considered in light of the facts in the instant proceedings make it clear that if a broker enters into a transaction on stock exchange and carries forward the settlement of the transaction, the



same can be considered as a regular transaction whereas in cases where, such broker does not enter into a transaction on the stock exchange and makes only entries in his books of account and then carries forward the settlement of such transactions, then such transactions cannot be termed as legal. In light of the same, I find that the transactions entered into for Inshaallah and Anjudi Property by the stock brokers as detailed at paragraph 5.1.(i), were prohibited by the Notification dated June 27, 1969. Further, there is nothing on record to show that the such contracting parties approached SEBI and obtained permission, as required in terms of Notification dated March 1, 2000, for entering into the alleged transactions.

- vi. I note that Pendse relied upon the bills of Jhunjhunwala to Inshaallah to show that the purchase transactions were carried forward at the '*making up*' prices fixed by the BSE for time-to-time at the end of every settlement. However, I note that for such transactions to be considered as '*carry forward*', respective positions ought to have been created by the concerned parties on the exchanges. Such illegal transactions will not become legal by issuing bills *simpliciter* by stock brokers.

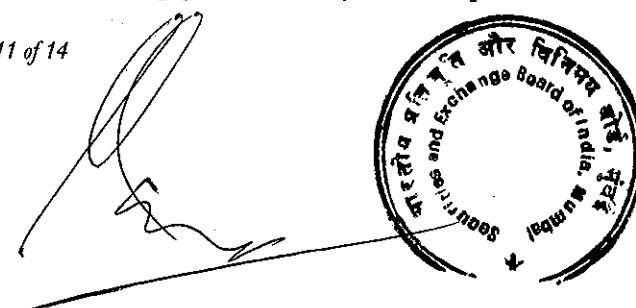
- 5.2 Upon a consideration of the above, I find that transactions executed by Pendse through Inshaallah in the scrips of HFCL, TELCO, Infosys and SSI were illegal and in violation of Section 16 of the SCR Act read with Notifications dated June 27, 1969 and March 1, 2000.

6. Transactions executed by Pendse in the scrips of HFCL, TELCO, Infosys and SSI were not for the purpose of transferring the losses of Anjudi Property to Inshaallah.

- 6.1 I note that Pendse contended that he was not an associate of Dr. Anjali Beke and Mr. Dilip Beke and was not aware of the transactions undertaken by Anjudi Property.

- 6.2 For determining that transactions executed by Pendse in the scrips of HFCL, TELCO, Infosys and SSI were for the purpose of transferring the losses of Anjudi Property to Inshaallah, it is necessary to ascertain whether Pendse and Anjudi Property were connected to each other. In this regard, I note that –

- i. From the SCN, it is observed that the price of the scrips of HFCL, TELCO, Infosys and SSI, were declining sharply during the period from February–April, 2001. As stated in the preceding paragraph 5.1(iii), Anjudi Property had an outstanding purchase carry forward position in the



scrips of TELCO, Infosys and SSI on the market. The sequence of the facts in the case indicate that there were significant losses in the purchase carry forward position of Anjudi Property and 'Principal-to-Principal' carry forward sell transactions were undertaken to cover its possible losses. Further, the impugned illegal carry forward transactions did transfer the possible losses to Inshaallah.

- ii. As per the SCN, it is observed that Pendse was stated to be a family friend of Dr. Anjali Beke, a Director of Anjudi Property at the relevant point of time. However, Pendse denied association with Dr. Anjali Beke alongwith any involvement in the operations of Anjudi Property. In this regard, reference is drawn to in the order of Hon'ble SAT dated October 26, 2006, which reads as under:

"It is an admitted fact that Dr. Anjali Beke was well known to Shri Dilip Pendse for more than ten years and it is her own case that he carried on business in her name. Their closeness cannot, therefore, be in doubt."

- iii. The abovementioned observation of the Hon'ble SAT when viewed in the context of bank statements of Anjudi Property, which *inter alia* revealed movement of funds amongst Anjudi Property and Pendse clearly indicate that there was indeed a connection between Anjudi Property and Pendse, and by extension, Inshaallah.

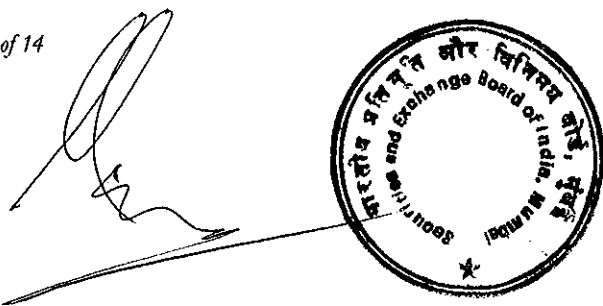
- 6.3 The fact that Anjudi Property and Inshaallah wrote letters to Jhunjhunwala and Pratik on the same dates where coincidentally, the quantity of the shares requested for sale and buy respectively were the same and which were further carried forward illegally. These facts cannot be said to be mere coincidence and definitely these point to the meeting of minds of these concerned entities before issuing such letters to the brokers. Pendse, who was the Managing Director of TFL and the Director of Inshaallah at the relevant point of time issued letters for the purchase of shares of the said scrips by Inshaallah from the aforesaid brokers. On the other side, the related entity of Pendse i.e. Anjudi Property, issued letters to the same brokers for the sale of shares of the said scrips. These positions were then illegally carried forward in order to give a picture that the losses in the trading of the said scrips were incurred by Inshaallah. Thus, I find the aforesaid acts of Pendse are in clear of violation of the provisions of Regulation 3 and 6(a) of the PFUTP Regulations, 1995 read with Regulations 13(2), 13(3) and 3(a) of the PFUTP Regulations, 2003.



- 6.4 As per the SCN, Pendse is also alleged to have violated Regulation 6(d) of the PFUTP Regulations, 1995 read with Regulation 4(1) of the PFUTP Regulations, 2003. As regards this charge i.e. falsification of books of accounts and records, I am inclined to give Pendse the benefit of doubt.
7. It may also be worthwhile to refer to the following observations made by the Hon'ble Supreme Court in its judgment dated April 26, 2013, in *N. Narayanan v. Adjudicating Officer SEBI (Civil Appeal Nos.4112-4113 of 2013)* held that "*Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto.*"
8. Given the vital functions of protecting investors and safeguarding the integrity of the securities market vested in SEBI and the commensurate powers given to it under the securities laws, it is necessary that SEBI exercise these powers firmly and effectively to insulate the market and its investors from the fraudulent actions of the participants in the securities market, thereby fulfilling its legal mandate. The development of a strong, transparent and credible securities market is an important pre-requisite for the economic development of our country. A basic premise that underlies the integrity of securities market is that persons connected with securities market conform to standards of transparency, good governance and ethical behaviour prescribed in securities laws and do not resort to fraudulent activities.
9. In this case, I find that Pendse by executing illegal transactions through Inshaallah, in the scrips of HFCL, TELCO, Infosys and SSI, has violated the provisions of Section 16 of the SCR Act, Regulations 3 and 6(a) of the PFUTP Regulations, 1995, as applicable during the relevant period read with Regulations 13(2), 13(3) and 3(a) of the PFUTP Regulations, 2003.

Order –

10. In view of the foregoing, I, therefore, in exercise of the powers conferred upon me by virtue of Section 19 read with Sections 11, 11(4) and 11B of the SEBI Act and Regulation 11(1) of the PFUTP Regulations, 2003, hereby prohibit Shri Dilip S Pendse (PAN: AACPP9719M) from accessing the capital market directly or indirectly, for the period of **two years** from the date of this



Order. The period of prohibition already undergone by Shri Dilip S Pendse (imposed vide SEBI Order dated December 24, 2012) shall be taken into account while implementing this Order.

11. This Order shall come into force with immediate effect.

Place: Mumbai
Date: October 13, 2014



S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA