

ADJUDICATION ORDER NO- AO/BS/03/2009

ORDER UNDER RULE 5(1) OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY THE ADJUDICATING OFFICER) RULES, 1995 IN THE MATTER OF ADJUDICATION PROCEEDINGS AGAINST SHRI. DILIP PENDSE, SMT ANURADHA PENDSE AND NALINI PROPERTIES LIMITED.

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') has initiated adjudication proceedings against Shri. Dilip Pendse, his wife Smt. Anuradha Pendse and Nalini Properties Limited (hereinafter commonly referred to as the 'noticees') for the alleged violation of the provisions of SEBI (Insider Trading) Regulations, 1992 (hereinafter referred to as the 'Insider Trading Regulations') in respect of their dealings in the shares of Tata Finance Ltd (hereinafter referred as 'TFL'). Shri. S V Krishnamohan was appointed as the Adjudicating Officer to conduct the adjudication proceedings. Subsequently, I was appointed as the Adjudicating Officer to conduct the inquiry in the matter.
2. The Hon'ble Securities Appellate Tribunal vide order dated September 9, 2008 allowed the Appeal No 1 to 3 of 2007 filed by the noticees against the order dated September 27, 2006 and remanded the case back for fresh adjudication in the matter.

SHOW CAUSE NOTICE

3. Accordingly, A fresh show cause notice dated February 06, 2009 was issued to the noticees under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by the Adjudicating Officer) Rules, 1995 alleging that, Smt. Anuradha Pendse and Nalini Properties (P) Ltd. had sold shares of TFL on 28th March 2001 on the basis of a unpublished price sensitive information relating to the financial position of TFL which was not in public domain. The unpublished price sensitive information was alleged to have been provided to them by Shri. Dilip Pendse who at the relevant point of time, was the Managing Director of TFL. The relevant extract of the report of the

investigation conducted by SEBI was also forwarded to the noticees alongwith the said show cause notice.

4. As stated before, the allegation is that the notices indulged in insider trading in the shares of TFL on the basis of unpublished price sensitive information. The price sensitive information was pertaining to the loss of Rs.79.37 crores suffered by Nishkalp Investment and Trading Co Ltd, (hereinafter referred to as “Nishkalp”) a wholly owned subsidiary of TFL. This information was made public only on 30th April 2001. Shri Dilip Pendse, besides being MD of TFL was also the Director of Nishkap at the relevant time. It is alleged that Shri. Pendse was aware of the poor financial position of TFL on account of the losses incurred by Nishkap before the information was made public on 30.04.2001. It is further alleged that on the basis of the said unpublished price sensitive information provided by Shri. Dilip Pendse, 40,000 shares of TFL were sold by Smt. Anuradha Pendse and Nalini Properties on March 28, 2001 and March 30, 2001. It is alleged that on account of the sale, unjust profit accrued to the entites. The details of shares sold by the Smt. Anuradha Pendse and Nalini Properties Limited are as under:

Name of sellers	Relationship with Shri Dilip Pendse	No. of shares sold	Receipt of money for the sale	Dmat transfer of shares to the buyer
Smt.. Anuradha Pendse	Wife	10,000	26.04.2001	28.03.01
Nalini Properties (P) Ltd.	Wife and father of Shri Dilip Pendse are the Directors	30,000		30.03.2001
	Total	40,000		

5. On account of the above dealings, the noticees are alleged to have violated the provisions of Regulation 3 of the Insider Trading Regulations.

REPLY

6. The representatives of the noticees M/s Bhave & Company, Advocates, vide their letter dated February 12, 2009 sought inspection of certain documents. The said request was acceded to and the noticees were granted an opportunity to inspect the documents on February 20, 2009. Subsequently, Bhave & Company, Advocates, vide letter dated February 19, 2009 requested for postponing the date of inspection as its client, Pendse Family is busy with a family function. Allowing the request made on behalf of the noticees, noticees were advised to inspect the documents on March 04, 2009. Shri Pendse inspected the documents on behalf of all the noticees on March 04, 2009.
7. Subsequently, Bhave & Company, advocates, vide letter dated March 20, 2009 forwarded written submissions of the noticees (on similar lines), in response to the show cause notice dated February 06, 2009. It was *inter alia* contended by the noticees that the transaction was completed in September, 2000 and in this regard they relied upon the following documents viz.
 - i) Intimation to Bombay Stock Exchange Limited (hereinafter referred to as BSE) by the broker Malini Sanghavi Stock Broker Pvt. Ltd. (hereinafter referred as 'MSSPL') of the sale of shares by letter dated 16th September, 2000. enclosing therewith 5 contract notes Nos. GBO1/1, GBO1/2, GBO1/3, GBO1/4 and GBO1/5. executed in Form "B" (Exhibit "C" to the reply).
 - ii) Letter of BSE dated 26th November, 2002 addressed to India Emerging Companies Investments Ltd (IECIL) (Exhibit "D" to the reply).
 - iii) The Minutes of the Meeting of Disciplinary Action Committee of BSE held on 12th March, 2003 (Exhibit "F" to the reply). and
 - iv) Letter No. INSP/SD/DAC/2003/73 dated 3rd May, 2003 of BSE addressed to Senior Inspector of Police, E.O.W.. C.B.C.I.D, Mumbai Police. (Exhibit "E" to reply).
8. Noticees in their replies stated that basic premises on which the case is sought to be made against the noticees i.e. the sale transaction was not

reported to the Exchanges itself is incorrect and wrong. As BSE was informed of the transaction as far as back on 19th September, 2000, this fact itself answers the case made against the noticees. The noticees stated that Smt. Anuradha Pendse and Nalini Properties (P) Ltd. sold 10,000 and 30,000 shares of TFL respectively to 'MSSPL' on principal to principal basis on September 11, 2000. In this regard, contract note in Form B was issued for the said transaction and the Ledger account of Smt Anuradha Pendse and Nalini Properties (P) Ltd were respectively credited with the said amounts on September 16, 2000. The noticees denied that deliveries and/or payments in respect of the transactions stated hereinabove took place during March 28, 2001 to March 31, 2001. They have also denied the allegation that the payments for the purchases made by MSSPL were made only on March 30, 2001 and March 31, 2001.

9. Smt Anuradha Pendse and Nalini Properties (P) Ltd further stated that they are not 'insiders' in respect of TFL. The noticees added that a 'spot delivery contract' and Form B contract i.e. principal to principal contract are not one and the same and that they are two different types of contracts/transactions which can be entered into by the parties. The noticees denied the allegations that being an "insider" Shri Pendse had communicated unpublished price sensitive information and caused the associates and purchasers to act upon the said unpublished price sensitive information to their benefit and to the detriment of other investors. Further, the noticees denied that there had been any antedating of transactions and stated that contemporaneous records would establish that the allegations of ante-dating of contract note was incorrect. The noticees denied the allegation that the sale of shares by Smt Anuradha Pendse and/or Nalini Properties (P) Ltd was on the basis of information disseminated by Shri Pendse.
10. Thereafter, vide letter dated March 26, 2009 the noticees were advised to attend the hearing scheduled on March 30, 2009. Subsequently, Bhave & Company, Advocates, vide letter dated March 28, 2009 on behalf of the

noticees requested to reschedule the date of hearing as Shri Pendse was travelling abroad from 29th March to 5th April, 2009. Considering the request made on behalf of the noticees, they were advised to appear for the hearing scheduled on March 09, 2009.

11. Advocate Vicky Mohan Singh as instructed by the Bhave & Company attended the personal hearing granted on April 09, 2009 and submitted *inter alia* the following.

- The Hon'ble Securities Appellate Tribunal vide order dated order dated September 9, 2008 directed that whether transaction took place in September 2000 or March 2001 have to be inquired into.
- The sale of shares was completed on or about September 11, 2000 and moneys were credited into their respective running accounts on or about September 16, 2000.
- It is denied that the sale of shares of TFL was executed in March 2001 at Rs.39/ - Rs.43/ share, while contract notes were antedated to September 2000 at Rs.90/- share.
- MSSPL itself had informed the BSE of the impugned transactions, vide letter dated September 16, 2000.
- The Disciplinary Action Committee of BSE in its meeting held on March 12, 2003 exonerated MSSPL (stock broker) and that the minutes of the said meeting reflected that the transactions were reported to the exchange by MSSPL (stock broker).
- BSE, vide letter bearing No.ISC/PG/RD/10 dated November 26, 2002 addressed to IECIL have recognized the fact that, MSSPL had vide letter dated September 16, 2000 submitted to BSE, the copies of the contract notes in respect of the principal to principal transactions executed in the shares of the TFL.
- Shri Pendse has not communicated any unpublished price sensitive information to the entities who sold the shares of TFL nor has he '*counselled*' nor '*procured*' any one of the entities to purchase shares or sell shares at any particular time.

CONSIDERATION OF EVIDENCE AND FINDINGS

12. I have considered the facts and circumstances of the case, the oral as well as written submissions made on behalf of the noticees and other materials available on record. The case of the noticees is that the transactions of Smt Anuradha Pendse and Nalini Properties (P) Ltd with the stock brokers (as mentioned above) in the shares of TFL were executed in September 2000 on a principal to principal basis and that the same was reported to BSE in the same month. In this regard while remanding the matter for fresh adjudication, the Hon'ble Securities Appellate Tribunal had observed that whether the transaction took place in September, 2000 as contended by the noticees or in March 2001 have to be inquired into. In view of the same, the following issues arise for consideration:

- i) Whether Shri Dilip Pendse and other noticees are insiders within the meaning of the Insider Trading Regulations.?
 - ii) Whether the trades of Smt Anuradha Pendse and Nalini Properties (P) Ltd in the shares of TFL were executed in the month of September 2000 or in March 2001 as contended by the noticees.? and
 - iii) Whether the trades were on the basis of unpublished price sensitive information received from Shri Pendse.?
13. The price sensitive information regarding the loss suffered by NISHKAP was made public on 30th April 2001 to the shareholders of TFL as additional information in the Prospectus of rights issue. The above factual details are not disputed.
14. In view of his connection with the company, whether Shri. Dilip Pendse can be regarded as an insider within the meaning of regulation 2(e) of the Insider Trading Regulations is the first issue to be considered. In this regard the said regulation provided for the following:

“2. In these regulations, unless the context otherwise requires :—

(e) *“insider” means any person who, is or was connected with the company or is deemed to have been connected with the company, and who is reasonably expected to have access by virtue of such connection to unpublished price sensitive information in respect of securities of the company, or who has received or has had access to such unpublished price sensitive information;”*

Further, Regulation 2(c) reads as under :

Connected person means “any person who

i) is a director , as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act; or

ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company and who may reasonable be expected to have access to unpublished price sensitive information in relation to that company.

15.As stated before, Smt.Anuradha Pendse is the wife of Shri. Dilip Pendse and Smt. Anuradha Pendse and father of Shri Dilip Pendse were the directors of Nalini Properties Ltd. The said fact has not been disputed by the noticees. In this regard, it has to be determined whether they were in receipt of any unpublished price sensitive information and dealt with the shares of TFL on the basis of the unpublished price sensitive information. As per the above definition of insider, any person who had received the information or had access to unpublished price sensitive information is also regarded as an insider.

16. Shri Pendse was the Managing Director of TFL and a director of Niskalp (a subsidiary of TFL). This fact has not been disputed. By virtue of his official position he is a connected person in terms of Regulation 2 (c) of the Insider Trading Regulations and thus, he had access to unpublished price sensitive information. Further by virtue of his official connection, Shri Pendse was in a position to have access to and/or know about the financial position of TFL and Niskalp during the relevant period. He was in a key position and is expected

to have access and knowledge of the affairs of TFL and its subsidiaries as regards both published and unpublished information, either price sensitive or not.

17. Unpublished price sensitive information is defined as in Regulation 2(k) which was substituted by the SEBI (Insider Trading) (Amendment) Regulations, 2002, w.e.f. 20-2-2002. Prior to its substitution, clause (k) read as under :

‘(k) “unpublished price sensitive information” means any information which relates to the following matters or is of concern, directly or indirectly, to a company, and is not generally known or published by such company for general information, but which if published or known, is likely to materially affect the price of securities of that company in the market—

- (i) financial results (both half-yearly and annual) of the company;*
- (ii) intended declaration of dividends (both interim/final);*
- (iii) issue of shares by way of public rights, bonus, etc.;*
- (iv) any major expansion plans or execution of new projects;*
- (v) amalgamation, mergers and takeovers;*
- (vi) disposal of the whole or substantially the whole of the undertaking;*
- vii) such other information as may affect the earnings of the company;*
- (viii) any changes in policies, plans or operations of the company*

18. As mentioned before, Nishkap is stated to be an wholly owned subsidiary of Tata Finance Ltd. Nishkap had suffered provisional loss of Rs.79.37 crores for the year ended 31st March 2001. Shri Dilip S Pendse was the MD of TFL and also the director of Nishkap at the relevant time. The NAV of the investments of Nishkap was made available to Shri Pendse on a daily basis and estimated Profit & loss Statement of TFL for the quarter ended 31.3.2001 was put up to him on 6.1.2001 .Further, in the Board meeting of NISHKAP its loss was estimated at Rs.17.10 crores for the nine months

ended 30th June 2001 as against the profit of Rs.11.46 crores for the 6 months period ended on 30th September 2000. The estimated erosion of NAV of the portfolio of Nishkap for the year ended March 31, 2001 was stated to be around Rs.146 crores. There was substantial erosion in the value of investments of Nishkap and its subsidiaries.

19. The *'financial results'* of a company, has specifically been categorized as *"price sensitive information"*. Shri Pendse by virtue of his being the Managing Director of TFL and a Director and member of investment committee of Niskalp had access to this information. In this regard it is pertinent to note that, Shri Pendse was aware about the estimated financial results of TFL for the quarter ending March 2001 and that these were discussed with him by the officials of Finance Department of TFL in the second/third week of March 2001. Further, Shri Pendse was also aware of the erosion in value of investment portfolio of Niskalp and its subsidiaries. Shri Pendse was also getting copy of the Net Asset Value statement of Niskalp which was prepared daily and circulated to him. The information about erosion of the finances of TFL & Niskalp was not public information. The erosion of the portfolio value of Niskalp between September 30, 2000 and March 20, 2001 was not disclosed in the Rights Issue Offer Documents of TFL. The provisional losses of Niskalp as on March 31, 2001 were Rs.79.37 crores was disclosed to shareholders only April 30, 2001. Thus, it was 'unpublished' 'price sensitive information' in March, 2001. Any information which is of concern, directly or indirectly, to a company, which is not generally known or published by such company for general information but which after publishing is likely to materially affect the price of its securities in the market is considered as unpublished price sensitive information. Therefore, Shri Pendse is an insider within the ambit of Regulation 2(e) of the Insider Trading Regulations. In this regard it is pertinent to mention that the Hon'ble Securities Appellate Tribunal in Appeal No.148 of 2005 held that Shri Pendse is an insider as he was the managing director of TFL of which Nishkap was a wholly owned subsidiary and, therefore, by virtue

of this connection he had access to the unpublished price sensitive information in respect of the securities of TFL.

20. Smt Anuradha Pendse and Nalini Properties (P) Ltd had denied that they were insiders at the relevant point in time. In this regard, though they were not associated with company in any official capacity, they are insiders within the ambit of Regulations 2(e), 2(h) and 2(i) of the Insider Trading Regulations read with Section 6 of the Companies Act, 1956, as Smt Anuradha Pendse is the wife of Shri Pendse and one of the directors in Nalini Properties (P) Ltd along with the father of Shri Pendse.

21. In respect of the Second issue for the consideration in this adjudication proceedings, the noticees have contended that the trades of Smt Anuradha Pendse and Nalini Properties (P) Ltd in the shares of TFL had taken place in the month of September 2000. In this regard the noticees stated that MSSPL reported the impugned transactions to BSE in September 2000. In support of their contention the noticees relied upon the letter of MSSPL (stock broker) dated September 16, 2000 submitted to BSE, enclosing 5 contract notes executed by the broker in Form B, bearing nos. GBO1/1, GBO1/2, GBO1/3, GBO1/4 and GBO1/5.

22. It is noted that the copy of the said letter (Exhibit "C") bears the stamp of BSE and the same appears to have been acknowledged on September 19, 2000. On perusal of the contract notes which were submitted alongwith the such letters, it is noted that the same mentions '*Securities SOLD To you for*' in respect of the noticees Smt Anuradha Pendse and Nalini Properties (P) Ltd. The noticees contended that MSSPL purchased the shares of TFL from them. However, the contract notes indicate that the noticees were the buyers instead of the sellers as contended by them. This appears to be grave irregularity and raises doubts as to the genuineness of the said documents.

23. The second document relied upon by the noticee is the minutes of Disciplinary Committee of BSE. It is noted from the Minutes of the Meeting of

Disciplinary Action Committee of BSE held on 12th March, 2003 (Exhibit "F") that the transaction pertains to the financial year 2000-2001, whereas the minutes are of the meeting held March 12, 2003. The minutes of meetings does not specify the exact period of delay by MSSPL in reporting the trades to the BSE. Further, no explanation is recorded for the reasons for the delay in reporting. Further the fact that irrespective of transactions which is alleged to have taken place in September 2000 the matter was considered by the Disciplinary Committee in 2003. This also raises doubts as to whether the transactions were reported in September 2000 as contended by the noticees.

24. With regard to the third document, i.e. letter dated 26.11.2002 addressed by BSE to IECIL, it is pertinent to note that BSE makes reference to a letter dated May 8, 2002 received from member. It is on the basis of the said letter BSE stated that the transactions were reported. The contents of the letter is stated below:

"in this regard please note that it appear from the documents submitted by the member vide letter dated 8th may 2002 (copy enclosed), that the member vide letter 16th September 2000 had submitted to the Exchange, copies of contract for principal to principal transaction executed by them, which included contract No. GB01/3 for transaction in question"

It is pertinent to note from the said letter that it is on the basis of the letter dated 8th May, 2002 received from the member that BSE acknowledges the receipt of the letters. This raises serious doubts as to the genuineness of the letter dated September 16, 2000 which noticees are relying upon in support of their contentions.

25. As stated above, the documents put forwarded by the noticees in support of their contention that the transaction took place in September 200, reflects discrepancies in them.

26. In view of the same, it is pertinent to analyse as to when the delivery and payment in respect of the transactions had taken place. In this regard when queried as to the reason for the sale of TFL shares, it is pertinent to note the following statements given by Smt Anuradha Pendse, in her statement to SEBI on August 26, 2002

“Q.14 Why did you decide to sell the shares of TFL in second week of September 2000.

A.14 I was in need of funds and Nalini Properties (P) Ltd was also in need of funds and hence I decided to sell shares of TFL in second week of September 2000.

Q.16 Whether you or Nalini Properties (P) Ltd received any actual payment against these sale transactions in September 2000.

A.16 In my account, I received the payment in March 2001. Nalini Properties (P) Ltd was a running account with the broker and it got adjusted with the broker.”

27. In the said statements of Smt Anuradha Pendse, she was in need of money when she decided to sell the shares of TFL belonging to her and Nalini Properties (P) Ltd. It is noted from the records that money in respect of the sale was received in March 2001.

28. In the present case, it is seen that the payments and deliveries in respect of the transactions of Smt Anuradha Pendse and Nalini Properties (P) Ltd were effected only in the month of March 2001 and thereafter. Smt Anuradha Pendse also admitted that she received the payment in April 2001. If the transactions had happened in the month of September 2000, as contended by the noticees, the delivery /payment would have been made in the month of September 2000. However no evidence has been submitted by the noticees in support of their contentions that payment and delivery of shares effected in September 2000. On the contrary, it is pertinent to note that evidence available matter indicates that payment and delivery of shares concluded only in March 2001.

29. The above facts pertaining to delivery of shares and payment thereof clearly indicate that the broker was merely making credit entry without actually receiving the shares or making payment for the same. In this regard, it is pertinent to note that the noticees have not produced any documentary proof disputing / rebutting the dates of delivery of shares and payment thereof.
30. With regard to the contentions of the noticees that the said transactions were reported to the stock exchange, it appears that such reporting was done without ensuring that the norms of delivery and payment were adhered to. In this context, no plausible explanation has been provided in respect of the delay in delivery of shares and delay in making payment in respect of the same. Though it is contended that the transactions have taken place in September 2000, the evidence available on record show that the impugned transactions took place only in March 2001 after a gap of six months. Further, no reasonable explanation has been provided for effecting delivery of shares and payment few days prior to the date on which the price sensitive information became public. These facts clearly indicate that the impugned transactions took place in March 2001 and not in September 2000 as contended by the noticees. The said inferences are further strengthened by the fact that delivery and payment of consideration in March 2001 coincide with the loss suffered by Niskalp and resultant loss to TFL.
31. With regard to the issue as to whether the transactions were on the basis of unpublished price sensitive information communicated by Shri Dilip Pendse as mentioned earlier, the unpublished price sensitive information leading to the erosion in the value of the shares of TFL was available to Shri. Dilip Pendse. The noticees have denied communication of the said information by Shri Dilip Pende to his wife and associates. However no plausible explanation has been provided by the noticees in respect of the payment and delivery of shares in March 2001. As stated before, the unpublished price sensitive information was made available to the public on April 30, 2001. Selling of shares through off market deals few days prior to the date on which the price

sensitive information made public strongly indicate that the shares were sold on the basis of the unpublished price sensitive information communicated by Shri Dilip Pendse to Smt Anuradha Pendse and Nalini Properties (P) Ltd. As held by the Honourable Securities Appellate Tribunal in Appeal No. : 50/2003 DSQ Holdings Limited Vs. SEBI, the persons who receive unpublished price sensitive information is clearly in an advantageous position ahead of other investors. The preponderance of probabilities and the fact that the impugned transactions were executed few days prior to the date on which the unpublished price sensitive information was made available to public clearly indicate that noticees indulged in insider trading.

32. During the course of hearing, the learned counsel for the noticees sought the cross examination of Mr V. Ramanujam (Senior Vice President TFL) and Shri Ajit Sanghavi (Director of Malini Saghavi Securities Pvt. Ltd) and stated that if the cross examination is not allowed then the statements of the said persons may not be relied upon. Considering the request of the noticees, they were informed that the statements of the said persons shall not be relied upon in this inquiry.

33. The standard of proof required in a proceeding of this nature is not necessarily that of the strict standard of proof required in criminal cases. It is sufficient if the preponderance of probabilities suggests towards the involvement of the delinquent in the misconduct. The strict rules of standard of proof to the exclusion of all reasonable doubt required in a criminal case may not be applicable to a proceeding of this nature.

34. In this regard it is pertinent to note the following observation of the Hon'ble Securities Appellate Tribunal, in Appeal No. 50 of 2007 (Rajiv B. Gandhi & Ors. Vs SEBI),

"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.”

The said observation of the Hon'ble Securities Appellate Tribunal are relied upon in this inquiry.

35. The closing price of the shares of TFL on 30th April 2001 when the adverse financial statement was made public was Rs.30.10 whereas the noticees sold 40,000 shares when this information was not in public domain on 28.3.2001. Considering the said facts and circumstances of the case and evidence available in record it is concluded that noticees sold the shares in March 2001 on the basis of the unpublished price sensitive information provided by Shri Dilip Pendse.

36. Regulation 3 of the Insider Trading Regulations as existing on the date of the impugned transactions provided the following

No insider shall-

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

(ii) communicate, 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:

37. In view of the above provision, as it is proved that Smt. Anuradha Pendse and Nalini Properties dealt in the shares of TFL on the basis of the unpublished price sensitive information communicated by Shri. Dilip Pendse, it is concluded that Shri. Dilip Pendse, Smt. Anuradha Pendse and Nalini

Properties Ltd had violated Regulation 3 of Insider Trading Regulations and are guilty of insider trading. In view of the above actions, Shri. Dilip Pendse, Smt. Anuradha Pendse and Nalini Properties are liable to the penalty prescribed under Section 15G of the SEBI Act.

38. In this regard, the provisions of Section 15G of the SEBI Act, 1992 on the date of the violation read as under

“Penalty for insider trading.

15G. *If any insider who,—*

- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or*
- (ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or*
- (iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,*

shall be liable to a penalty not exceeding five lakh rupees”

The said penalty was substituted by SEBI (Amendment) Act, 2002 with effect from 29.10.2002 whereby a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher, has been provided.

39. It is pertinent to refer to the order of the Hon’ble Securities Appellate Tribunal in Appeal No.151/2004 in the matter of Rameshchandra Mansukhani NRI vs SEBI wherein the Honourable Tribunal held that the penalty existing on the date of commission of the violation should be imposed and not enhanced

penalty which came into being by way of subsequent amendment. The order passed by the Honourable Tribunal is relied upon in this case.

40. The provisions of Section 15J of the SEBI Act, 1992 and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely:

1. The amount of disproportionate gain or unfair advantage wherever quantifiable, made as a result of default
2. The amount of loss caused to an investor or group of investors as a result of the default
3. The repetitive nature of default

41. With regard to the above factors to be considered while determining the quantum of penalty in the present adjudication proceedings, the amount of disproportionate gain or unfair advantage made as a result of the default, appears to be Rs.23,56,000/-. With regard to the loss caused to the investors, no quantifiable figures are available to assess the exact loss caused to the investors.

ORDER

42. Having regard to the nature and gravity of the violation committed by the noticees, the factors contained in Section 15 J of SEBI Act, 1992 and considering the penalty provided under the provisions of Section 15 G of the SEBI Act at the time the violation was committed, I impose a penalty of Rs.5,00,000/- (Rupees Five Lakhs) each on Shri. Dilip Pendse, Smt Anuradha Pendse and Nalini Properties (P) Limited.

43. Penalties shall be paid by the noticees by way of demand drafts drawn in favour of "SEBI – Penalties Remittable to Government of India" payable at

Mumbai within 45 days of receipt of this order. Demand drafts shall be forwarded to the Chief General Manager, Investigation Department – ID5, Securities and Exchange Board of India, 'SEBI Bhavan', Plot No.C4-A, 'G' Block, Bandra Kurla Complex, Bandra (East), Mumbai 400051.

44. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiries and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this order are sent to the noticees and to the Securities and Exchange Board of India.

Date : April 16 , 2009

Biju. S

Place : Mumbai

Adjudicating Officer