

## SECURITIES AND EXCHANGE BOARD OF INDIA

### ORDER

**In the matter of directions under section 11 read with section 11B of the Securities and Exchange Board of India Act, 1992 and SEBI (Prohibition of Insider Trading) Regulations, 1992 against Shri J E Talaulicar regarding insider trading in the shares of Tata Finance Limited**

WTMO/9/IVD/10/03

- 1.0 Shri Jaivant Esvonta Talaulicar (hereinafter referred to as "Talaulicar") was a Director of Tata Finance Limited (hereinafter referred to as "TFL") during January 3 1995 – August 17, 2001 and the Director of Niskalp Investment and Trading Co. Ltd. (hereinafter referred as "NITCL") from March 15, 1991 and became Chairman of NITCL from May 1995 and continued till September 21, 2001. TFL is a Non-Banking Finance Company, incorporated under the Companies Act, 1956 and a subsidiary of Tata Industries Ltd. NITCL is an investment company incorporated under the Companies Act, 1956 and was a subsidiary of TFL. The shares of TFL are listed on The Stock Exchange, Mumbai (hereinafter referred to as "BSE") and the National Stock Exchange of India Ltd. (hereinafter referred to as "NSE").
- 1.1 Pursuant to complaints alleging manipulation and insider trading in the shares of TFL by Talaulicar the Securities and Exchange Board of India (hereinafter referred to as "SEBI") ordered, on August 28, 2001, a preliminary investigation into the allegations.
- 1.2 The preliminary investigation revealed that Talaulicar along with his family members had received Rs.69 lakhs from JIP Investment (hereinafter referred to as "JIP"), a sub-broker of JHP Securities Pvt. Ltd. (hereinafter referred to as "JHP") a member of BSE on March 31,

2001 and that Talaulicar had delivered 1,00,000 shares of TFL on April 04, 2001 to JIP. The said sum of Rs.69 lakh was the consideration for sale of one lakh shares of TFL @ Rs.69. Subsequently, during 18<sup>th</sup> to 30<sup>th</sup> May 2001, the shares were sold in the market by JIP through JHP and Prashant J. Patel, a member of NSE on behalf of Talaulicar and his family at a price of about Rs.34/- per share. It was also observed that Talaulicar refunded Rs.34.79 lakhs being the difference in prices to the JIP.

- 1.3 It was observed that NITCL had paid a sum of Rs.70 lakhs to JHP on March 30, 2001 and that on the next day i.e. March 31, 2001 an amount of Rs.69 lakhs was transferred by JHP to its sub broker JIP, which, in turn, paid the said amount to Talaulicar and his family. Copies of bills dated September 6, 2000, purportedly issued by JIP in favour of Talaulicar and his family, for sale of 1 lakh shares of TFL at price of Rs.69/- per equity share was traced during investigation. The documents and the payments made by JIP to Talaulicar and family raised suspicion about insider trading. SEBI, therefore, ordered on November 8, 2001, a formal investigation into the dealings of Talaulicar and his family in the scrip of TFL to find whether Talaulicar had violated the then provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter called as Insider Trading Regulations).

## **2.0 Findings of the Investigation**

### **2.1 Rights Issue by TFL**

- 2.1.1 It was seen that, TFL, at its Board meeting on January 4, 2001 decided to come out with a rights issue of 9% Cumulative Convertible Preference Shares (CCPS). This was confirmed by a further resolution

in the board meeting on January 29, 2001. Talaulicar, as a Director, was present in both the meetings. The said issue opened on 30.3.2001 and closed on April 30, 2001.

2.1.2 Subsequently, in the light of complaints received by SEBI and TFL in April, 2001 alleging non-disclosure of losses of NITCL in the letter of offer, TFL vide letter dated April 30, 2001, disclosed to its shareholders that there was a substantial erosion in the value of the investments of NITCL and that NITCL had incurred a provisional loss of Rs.79.37 crores for the year ended March 31, 2001 as against a disclosed profit of Rs.11.46 crores for the six months period ended September 30, 2000, mainly on account of erosion of value of investments held by it. TFL also gave an option to the subscribers in the rights issue to withdraw their subscriptions.

## **2.2 Payments to Talaulicar and his dealing in the shares of TFL**

2.2.1 It was observed that on March 30, 2001 a sum of Rs.70 lakhs was paid by NITCL to JHP. The voucher in support of the payment showed that the amount was paid as "ad hoc margin". On March 31, 2001 an amount of Rs.69 lakhs was transferred by JHP to its sub broker JIP. The books of accounts of JIP showed a payment of Rs.69 lakh to Talaulicar and his family on March 30, 2001. The details are as follows:

| <b>Name</b>        | <b>Amount</b>         |
|--------------------|-----------------------|
| Anant Talaulicar   | Rs.6,90,000/-         |
| Sandeep Talaulicar | Rs.6,90,000/-         |
| J. E. Talaulicar   | Rs.24,15,000/-        |
| Aparna Talaulicar  | Rs.15,52,000.-        |
| Usha Talaulicar    | Rs.15,52,000/-        |
| <b>Total</b>       | <b>Rs.69,00,000/-</b> |

2.2.2 Five cheques for the above amount were received by Talaulicar and these were deposited to the credit of the respective bank accounts and JIP was debited on April 4, 2001 and April 7, 2001.

2.2.3 Delivery instruction was given by Talaulicar to the depository for transfer of 1 lakh shares to JIP's account and on April 4, 2001 the shares were transferred to JIP's account with the Depository.

## **2.3 Insider Trading by Talaulicar**

2.3.1 It was observed that the letter of offer in respect of the rights issue was approved by the Board of Directors of TFL on March 20, 2001. This final letter of offer contained financial results of TFL and NITCL as on December 31, 2000 and September 30, 2000 respectively. These showed that Profit After Tax (PAT) for TFL and NITCL was Rs.16.41 crores and 11.46 crores respectively. It was also noted that for the financial year ended June 30, 2000, dividends from NITCL which amounted to Rs.10.81 crores was largely responsible for the profits of TFL. Thus, any loss suffered by NITCL would adversely impact the profits of TFL, which would in turn affect the price of the shares of TFL. However, subsequent disclosures by TFL on April 30, 2001 disclosed that NITCL had suffered a provisional loss of Rs.79.37 crores as on March 31, 2001. Therefore, the information of the losses being suffered by NITCL was price sensitive information.

2.3.2 It was also noted that the information of the losses suffered by NITCL was not available to the public prior to April 30, 2001 and was, therefore, unpublished price sensitive information. It was further noted from the minutes of the Board meeting dated February 2, 2001 that the estimated Profit and Loss account for NITCL for the period April 1,

2000 to January 31, 2001, which was tabled at the said meeting, disclosed a loss of Rs.17.10 crores. It was also observed that Talaulicar was present at the said meeting and was therefore aware from February 2, 2001 of the fact that NITCL had suffered loss. Further, Talaulicar received daily statements regarding the Net Asset Value (NAV) of NITCL from September 2000, onwards. These statements indicated that the value of the shares comprising NITCL's investments showed a persistent downward trend. Therefore, it was alleged that Talaulicar was in possession of unpublished price sensitive information relating to the shares of TFL and that he had dealt in 1,00,000 shares of TFL on the basis of the unpublished price sensitive information regarding the losses suffered by NITCL.

### **3.0 Show cause notice and personal hearing**

3.1 Show Cause Notice dated August 8, 2002 was issued to Talaulicar communicating the findings of the investigation and also advising him to submit his explanations on the said findings. Talaulicar submitted his reply to the show cause notice through his advocates Nanu Hormasjee & Co. vide letter dated September 17, 2002. The written submissions in respect of the findings of investigation in brief were as follows:

3.1.1. *At the outset it is submitted that the findings contained in the said report do not disclose any violation of the regulations and the said findings are contrary to the mandate and scope of the said regulations. Regulation 3 of the said regulations lays down the following three fold test to be applied in order for a transaction to amount to insider trading:*

*a. Was I an insider?*

- b. Was I in possession of any unpublished price sensitive information in respect of Tata Finance (TFL)?*
- c. Did I deal in any securities on the basis of such unpublished price sensitive information of TFL?*

*3.1.2 The investigation report itself does not establish or prove that I was in possession of any unpublished price sensitive information of TFL. There is no conclusive finding in the Investigation Report that I have dealt in securities of TFL on the basis of any unpublished price sensitive information. At page 18 of the said report the investigating authority has purported to summarize the findings which are allegedly based on the evidence and material allegedly examined by the investigating authority. From a plain reading of the “so called findings” reached by the investigating authority, it is apparent that the investigating authority has without coming to the conclusion whether or not I was in possession of any “unpublished price sensitive information of TFL” and more particularly whether, I dealt with the shares on the basis of this information, has nevertheless concluded that the decision to sell the shares is allegedly in violation of the regulations. It is respectfully submitted that none of the findings reproduced at page 18 of the said report, either taken cumulatively or singly, could lead to the conclusion that the sale of the shares was “on the basis of any unpublished price sensitive information of TFL”. The fact that there could have been any other motive for the same or the fact that the sale of the said shares could have fetched a substantially higher price than that prevailing in the market, or the manner of the sale are wholly irrelevant, extraneous and non - germane consideration to the questions as to whether the sale of the shares was on the basis of unpublished price sensitive information of TFL. In fact, even if each of the findings at page 18 is accepted as true (which however is denied) cannot lead to any*

*conclusion that the sale was based on unpublished price sensitive information of TFL. It is therefore submitted that the findings of the investigating authority being based upon irrelevant extraneous and non – germane considerations or evidence are perverse, arbitrary and no action be taken on the said report.*

*3.1.3 What the investigating authority has failed to appreciate is the fact that the evidence and the material should lead any reasonable person to come to only one conclusion and no other conclusion viz:*

- a) That I was in possession of any “unpublished price sensitive information of TFL;*
- b) That I sold the shares in question on the basis of any “unpublished price sensitive information of TFL ”*

*3.1.4 It is submitted that none of these “observations” conclusively bring home the gravamen of charge, i.e. that I dealt in securities on the basis of “unpublished price sensitive information. Assuming without admitting the correctness of these observations, I submit that these observations at the highest, indicate that I sold the shares at a price higher than the prevailing market price by way of an off market trade. Assuming this to be true, no charge of insider trading is established on this basis. There is no conclusive finding that I have sold the shares on the basis of any unpublished price sensitive information. Without prejudice to my stand that I have not made any advantage from the sale of my shares, I submit that any alleged unfair advantage gained by me from the initial receipt of Rs.69 lacs for the shares, is totally irrelevant for proving the charge of insider trading against me.*

3.1.5 *On the other hand mid term loss in NITCL could never be considered to be price sensitive information of TFL. This position and fact is corroborated and confirmed by the letter dated 30.04.2001 of TFL to the shareholders, revealing a loss of Rs.79.37 crores as on 31.03.2001. However, if one looks at the price movement of TFL shares after 30.04.2001, when the loss of Rs.79.37 crores of NITCL was made public, it clearly shows that it has not impacted the price as such it can be concluded that the losses of NITCL were not price sensitive information as regards TFL shares.*

3.1.6 *There is no warrant except wisdom by hindsight, to reach a conclusion that NITCL's state of affairs on the date on which I required to sell the shares:*

- a) would subsequently continue to be same or decline further;*
- b) or that it would reasonably have been expected to cause a substantial decline in TFL's shares.*

3.1.7 *The conclusion that this information about the state of affairs of NITCL constituted "unpublished price sensitive information of TFL" is unwarranted, unjustified and an unsubstantiated finding. In fact it is based on conjunctures and surmises.*

3.1.8 *Even assuming whilst denying that the NITCL's state of affairs could constitute "unpublished price sensitive information of TFL" it is submitted that mere fact that a person is an insider does not mean, ipso facto, that he is guilty of "insider trading". In fact unless and until it can be established by cogent, incontrovertible, reliable and legal evidence that the alleged Insider has sold his shares on the basis of "unpublished price sensitive information" the regulation cannot be deemed to have been violated. In other words the regulation does*

*not prohibit the sales or dealings in shares by an insider. It does not also say, that every sale by an insider is deemed to be a violation of the regulations. The regulation does not shift the burden of proof upon the alleged insider. On the contrary the regulation requires that the authority to conclusively and beyond a reasonable doubt establish that the sale by an allegedly insider, amounts to 'Insider Trading' since the charge is fraught with criminal and penal consequences, the standard applicable is much higher than a mere question of balance of probability and should therefore be the criminal standard of proof, namely, beyond reasonable doubt. The report in question proceeds merely upon conjunctures and surmises and does not proceed on the basis of the required standard of proof.*

*3.1.9 Without prejudice to the above I submit that "unpublished price sensitive information" has been defined in Regulation 20(k) to mean information of and relating to the company in question, in this case TFL. Admittedly no such information of TFL is even alleged to have been with me.*

*3.1.10 The entire report is based on the remote allegation that I was aware of the loss in NITCL as :*

- a) NITCL had at its Board meeting held on 02.02.2001 estimated a loss of Rs. 17.10 crores for the period 01.04.2000 to 31.01.2001;*
- b) The daily NAV statements of NITCL showed diminution in value:*

*3.1.11 These allegation are not only legally unsustainable but are also factually incorrect. First and foremost as per the definition of 'unpublished price sensitive information' in regulation 2(k), only information TFL has to be considered, which admittedly there is none. Secondly NITCL is only one of the 8 subsidiaries/ divisions of TFL and*

*a mid term loss in it cannot be equated to affect the financial results of TFL. Further, NITCL at the time had purchased large quantities of information and technology stocks, which at the material time were extremely volatile. At the time, the stock market was experiencing tremendous volatility and share price, particularly of information/technology stock varied greatly on almost day to day basis. Hence, any mid term loss of NITCL was merely a notional loss, which could very easily have drastically reduced or turned into profit. An upward movement of the information and technology stocks would immediately reduce or wipe out the notional loss. Thirdly, for the earlier periods there was a similar mid term loss in NITCL while TFL reported year end profits. Fourthly it is a matter of record that Mr. Pendse who was in charge of the day to day operations and management of TFL and NITCL was repeatedly assuring the Board that TFL would earn a profit of atleast Rs.40 crores. Fifthly, it is an established fact that all the non executive directors only came to know of the losses in TFL for the first time at the board meeting held on 25.05.2001. This is borne out by letters dated 31.05.2001 and 14.08.2001 of Dr. F A Mehta, TFL official refusal dated 18.04.2001 to Shankar Sharma complaint, FIR dated 06.08.2001 and plaint filed by TFL in the Hon'ble Bombay High Court. Moreover, the letter dated 30.04.2001 sent by Mr. Pendse to all shareholders itself states that the losses of NITCL are of temporary nature and will not have any implications of the profit and loss of TFL. Sixthly, Tata Industries Ltd. had been persuaded to invest Rs. 55 crores in TFL, which also shows the trust and confidence Mr. Pendse enjoyed and that his projections and commitments of profits were believed in by the entire Tata Group. At the material time in late March 2001, when I signed and handed over the Demat delivery instructions in respect of the shares, it is an accepted position that none of the non executive directors*

*(including me) were aware of the losses in TFL which came to light for the first time at the Board meeting held on 25.05.2002.*

*3.1.12 In these circumstances to seek to equate a mid term loss in NITCL to being "unpublished price sensitive information of TFL " and to contend that I acted upon the same by selling my shares is a grave travesty of justice and its unsustainable. NITCL's mid term profits/ losses cannot be considered to be "unpublished price sensitive information" of TFL. As set out in the preceding paragraph, the mid term loss in NITCL was not a cause for concern at the relevant time to the entire Tata Group and we were expecting to close the year with sufficient profits as projected and assured by Mr. Pendse. It is submitted with respect that the whole investigation has been misdirected.*

*3.1.13 The third ingredient required to be proved in order to substantiate a charge of insider trading is that I dealt with my shares on the basis of such unpublished price sensitive information of TFL. The report fails to appreciate that as I admittedly did not have any unpublished price sensitive information of TFL. I first and foremost could not have and did not in fact deal with my shares on such basis. The correct and undisputed facts set out below clearly show the history and the basis of the transaction which establishes that the sale of my shares under no circumstances was on the basis of any unpublished price sensitive information.*

*3.1.14 The investigation report has illegally, wrongfully and in breach of the principles of natural justice relied upon the report dated 31.10.2001, to corroborate the findings of the investigation report. The patent illegalities, irregularities and blatant breaches of natural justice in the said report dated 31.10.2001 were placed on record inter alia vide my*

*letter dated 30.11.2001. The attention of the investigating officer was drawn to these facts by my legal counsel at the time when my statement was being recorded. At the time, the investigating officer gave an assurance that the said report dated 31.10.2001 was not going to be taken into account and hence no submission on the same be made. Despite this the investigation report records (after extracting portions of the said report dated 31.10.2001) that "the above findings of the internal independent committee corroborates the findings of our investigations".*

*3.1.15 In any view of the matter, the very credibility of Mr. Kale is grave doubt particularly in view of the recent developments including the withdrawal of main report prepared by Mr. Kale and the resignation of Mr. Kale from A F Ferguson & Co.*

*3.1.16 Pre dated bills dated 06.09.2000 – The investigation report proceeds on the basis that JIP issued bills back dated 06.09.2000. These bills are annexed at Annexure II to the investigation report. The investigation report proceeds on the bias that (see page 7 of the investigation report\_ "... The copies of the bills issued by JIP dated 06.09.2000 in favour of Shri Talaulicar and his family for the sale of 1,00,000 shares of TFL shares confirms the understanding reached between Shri Talualicar, Shri Pendse, JHP and JIP for arranging for the sale of shares of Shri Talualicar and family and transferring the funds to them. As the then market price of TFL shares was about Rs.40 only i.e. well below the agreed consideration, Shri Talaulicar with the help of Shri Pendse arranged through JIP to backdate the contract to suitably match with the consideration of Rs.69/- per share. Accordingly, JIP back dated the bills to 06.09.2000..." In this regard I submit as follows:*

- 3.1.17 *These bills have been produced for the first time as Annexure II to the investigation report. I have never seen these bills before. My advocates, vide their letter dated 16.08.2002 called upon the investigation officer to reveal the source of the said bills. No response has been obtained to this request.*
- 3.1.18 *Although the said back dated bills are purported to have been issued by JIP the statement dated 15.05.2002 of Jignesh Ptael (Proprietor of JIP Investment) inter alia states (see ans. No. 14) that the said confirmation notes dated 06.09.2000 were “not real copy of my documents and the signature as appearing in the document is not that of mine and appears to be forged. These documents were not generated by me”.*
- 3.1.19 *The statement dated 02.04.2002 of Pankaj Patel (Director of JIP Securities) inter alia states (see question/ answer no. 7) that : “we have not issued any such contract notes” i.e., the contract notes for the sale of 1,00,000 shares of TFL on 06.09.2000 on behalf of my family and me”.*
- 3.1.20 *The statement dated 17.04.2002 of Bharat Patel inter alia sets out that (see page 2 thereof) “ I have never dealt with Shri Talaulicar and/ or his family. Question of issuing any contract notes did not arise”. This was in response to the question “why did you issue back dated contract notes dated September 2000 for the sale of 1,00,000 shares of TFL on behalf of Shri Talaulicar and family? Further that “I have neither advised JIP Securities (P) Ltd. nor JIP Investments to issue any contract notes including the contract notes referred in the question. I would like to clarify that I am in no position to advise the above 2 entities and neither of the entities have any obligations to take advise from me”. I am not aware of any back dated contract*

*note issued by JIP Investment and hence the question of destroying the same does not arise.*

*3.1.21 The statement dated 24.04.2002 of Shri A L Shilotri inter alia sets out that (see page no. 5) 'you had in your possession copies of some backdated contract notes/ bills dated September 2000 issued by JIP Investments pertaining to the sale of 1,00,000 shares sometime in March 2001, belonging to Mr. Talaular and his family Did you submit the same to committee? If so why and in what context? Do you know such backdated contract notes/ bills were issued? The Committee referred to in the question was the Committee headed by Mr. Kale, which submitted the report dated 31.10.2001. the answer of Mr. Shilotri to this question was as follows.... I did hand over some copies of bills dated September pertaining to sale of the above mentioned shares as they were public knowledge by the time I appeared before the committee..... I have handed over a number of documents available with me to various investigating agencies at different point of time and since the committee was another investigating agency investigating into the affairs of Mr. Talaular. I have handed over the said documents to them to enable them to draw their own inference. .... These documents were handed over to the Committee as it pertained to the sale of shares of TFL and Mr. Talaular was a director of TFL.*

*3.1.22 From the above the following pictures emerges:*

- a) A L Shilotri (the right hand man of D S Pendse) and who was terminated from the services of the Tata Group by a letter signed by me, was in possession of the said forged back dated bills dated 06.09.2000. How A L Shilotri came into possession of these forged bills is not known. It is pertinent to note that the FIR lodged by*

*the Tata Group against A L Shilotri accuses AL Shilotri of forgery, making false document, cheating, criminal breach of trust and criminal conspiracy.*

- b) These forged and back dated bills were handed over to the Kale Committee (which prepared the Report dated 31.10.2001) by A L Shilotri behind my back and without my knowledge and without giving me an opportunity to see the same or to cross examine AL Shilotri. The manner in which the said documents were handed over to the Kale Committee has been set out in my said letter dated 30.11.2001.*
- c) The said Kale Committee relied upon these forged back dated documents in the said Report dated 31.10.2001.*
- d) It appears that these very same forged back dated documents have been obtained by the investigation officer, without intimation to me. The same forged document have been relied upon in the investigation report alongwith the said report dated 31.10.2001 (despite my stringent objections to the same and despite the investigation officer's assurance that the said report dated 31.10.2001 would not be relied upon). It is pertinent to note that despite the said report dated 31.10.2001 (and the documents relied upon therein) has been relied upon by the investigation report, my objections to the said report dated 31.10.2001 I have not even been referred to, let alone dealt with, the investigation report.*
- e) It is pertinent to note that the said Kale Report dated 31.10.2001 recorded the according to Bharat Patel he was asked by D S Pendse to "undertake two back dated sale and purchase*

*transactions in TFL shares at a price of around Rs.69/70 per shares....” Further that “the sale and purchase transactions were to be put through a closely related sub broker i.e. JIP...” Accordingly JIP prepared backdated contract notes dated September 2000” “ .... The original contract notes were returned to Mr. Patel who destroyed them as they were no longer relevant”. The committee pointed out to Bharat Patel “the exposure he had incurred by backdating etc. Mr. Patel explained he was obliged to so all this .....” This evidence is directly contrary to the statement dated 17.04.2002 issued by Bharat Patel. Despite this, the investigation report relies upon the said Kale Committee Report as corroborative evidence.*

*3.1.23 Rs.70 lac payment by NITCL to JHP – The investigation report proceeds on the basis that I arranged to receive this amount from NITCL through the sub broker JIP, for the sale of my 1,00,000 shares. In this regard I state and submit as follows:*

- a. This finding proceeds on the patently incorrect basis that the sale of my shares was organised by me through the broker/ sub brokers, JHP, JIP Jignest Patel, Pankaj Patel and Bharat Patel. In fact, this is not so. Each of these parties have categorically stated that they do not know me, have never met me and have never dealt with me. As repeatedly stated by me in various representations the sale of the shares was organised by D S Pendse.*
- b. Merely because Rs.70 lacs may have been paid by NITCL to JHP, during the course of numerous transactions entered into between them, does not and cannot indicate that the said Rs.70 lacs were paid to me for the sale of my shares.*

- 3.1.24 *Instead of proceeding as required under the regulations, the findings seek to record various alleged facts and documents which have nothing to do with the statutory requirement of the said regulations and have gone much beyond the test to be applied under the regulations and are ultra vires the regulations.*
- 3.1.25 *There is no iota of evidence of any unpublished price sensitive information of TFL in my possession. To get over this deficiency, reliance is sought to be placed on mid terms loss in NITCL (not TFL) of Rs. 17.10 crores as on 31.01.2001 which is clearly not permissible.*
- 3.1.26 *The position has to be examined as it existed on 31.03.2001, on which date the overwhelming evidence produced by me shows that the whole Tata Group was expecting profits from TFL.*
- 3.1.27 *Reliance on subsequent losses or subsequent documents referring to losses are entirely misplaced.*
- 3.1.28 *Even the letter dated 20.04.2001 of TFL relied upon by the investigating authority shows that NITCL losses as on 31.03.2001 of Rs.79.37 crores were considered to be temporary and not affecting the fiscals of TFL.*
- 3.1.29 *Blind reliance is placed on statements of Mr. Pendse/ Mr. Shilotri/ Mr. Bharat Patel who have been charged sheeted by the company and documents emanating from the, whose evidence to say the least is not admissible and/ or reliable.*

3.2 Shri Talaulicar was also granted, an opportunity of being heard in person. Shri Janak Dwarkadas, Senior Counsel, Mr Kivek Setawad, Counsel and Shri Nimish Kothari, Solicitor appeared before me on behalf of Shri Talaulicar on August 25, 2003, and made submissions. They have also filed written submissions. The submissions made on behalf of Shri Talaulicar are as follows:

3.2.1 *Mr. Talaulicar's alleged violation of Regulation 4 of the Regulations is on the basis that Mr. Talaulicar (and his family members), sold 100000 shares of TFL at a price of Rs.69/- per share, allegedly on the basis of unpublished price sensitive information. It was mandatory for the Investigation Report to conclusively establish, beyond reasonable doubt, that Mr. Talaulicar was in possession of unpublished information when he sold the said shares, and when he gave instructions for the said sale). Further, it was imperative for the Investigation Report to conclusively prove, beyond reasonable doubt, that Mr. Talaulicar sold the said shares on the basis of this price sensitive information. This is the sine qua non for invoking Regulation 4 of the Regulations. However, from a plain reading of the findings/observations' in the Investigation Report, it is clear that the Investigating Authority has, not come to the conclusion that Mr. Talaulicar was in possession of unpublished price sensitive information of TFL and more particularly that, Mr. Talaulicar had dealt with the said 100,000 TFL shares on the basis of this information. Despite the absence of any conclusive finding in this regard, the Investigation Report erroneously seeks to conclude that Mr. Talaulicar has violated the provisions of Regulation 4 of the Regulations.*

3.2.2 *Mr. Talaulicar has had a long, distinguished and un-blemished 46 year career with the TATA Group, which started in the year 1955. Mr. Talaulicar was elevated to the Board of TELCO in 1972, was*

*appointed as Vice Chairman and Managing Director of TELCO in 1983 and retired, from TELCO, in the year 1994. Thereafter, Mr. Talaulicar continued his association with the TATA Group as a non-executive director Of Tata sons Limited, Tata Industries Limited, TFL and Niskalp Investment and Trading Company Limited (NITCL). Mr. Talaulicar was at all times merely a non-executive Director on the board of both TFL and NITCL and was never involved in the day to day operations of either TFL or NITCL. Mr. Talaulicar's office was always at the TATA headquarters of Bombay House, whereas the offices of both TFL and NITCL were at Dubash Marg, Ballard Estate. Mr. Talaulicar did not attend the offices of either TFL or NITCL except for a formal participation in the Board meetings of TFL and NITCL. Mr. Talaulicar's participation with regard to TFL and NITCL was restricted to formally attending Board meetings of the said two companies. During the board meetings of TFL and NITCL, Mr. Talaulicar's participation was extremely restricted, as in the case of the other non-executive Directors.*

*3.2.3 The day to day operations and functioning of both TFL and NITCL were exclusively handled by Mr. D.S. Pendse, who at all material times was considered by the TATA Group of Companies, as a trusted TATA employee. Mr. Talaulicar was only the non-executive Chairman of NITCL. Mr. D.S. Pendse was implicitly trusted by the entire board of directors and also by Mr. Talaulicar, who considered Mr. D.S. Pendse to be his friend. Mr. D.S. Pendse, at the time, had a sterling reputation of being a first rate manager and was a trusted and respected employee of the TATA Group being associated with the Tatas since the past 20 years. Mr. Pendse was appointed as the Managing Director of TFL with effect from 1.6.1996 and was inducted on the Board of Directors of NITCL on 19.6.1997. Mr. D.S. Pendse was involved in and was in charge of the entire day to day operations of TFL and its subsidiaries.*

*Mr. A.L. Shilotri who initially was an Executive Director of NITCL was appointed as the President and CEO of NITCL on 29.1.01. Mr. Shilotri was Mr. Pendse's right-hand man and was appointed on the board of NITCL by Mr. Pendse. Mr. Shilotri assisted Mr. Pendse in the day to day operations and functioning of TFL and NITCL.*

*3.2.4 Mr. Talaular had been on the look out for a suitable residential accommodation in Goa. In order to fund the purchase of the Goa house, Mr. Talaular intended to sell the TFL shares held by himself and his family (which represented his one major investment/ saving which was sufficient to fund the purchase of the Goa house.) Thereafter Mr. Talaular approved a flat, measuring about 3,000 sq.ft., at Mira-Mar, Panaji, which was being developed by M/s. Chowgule Real Estate and Construction Company Pvt. Ltd. Mr. D.S. Pendse was aware that Mr. Talaular was desirous of purchasing a residential accommodation in Goa. Mr. D.S. Pendse advised that rather than sell his TFL shares Mr. Talaular should take a loan from Tata Home Finance Ltd. (THFL). Mr. D.S. Pendse suggested that Mr. Talaular apply to THFL for a loan of Rs.75 lacs and advised by Mr. D.S. Pendse not to take a loan from another financial institution as it would reflect badly on the TATA name if a senior TATA executive like Mr. Talaular, were to take a housing loan from an outside institution. Accordingly Mr. Talaular made an application to THFL on 25.9.2000. As Mr. Talaular was a Director of Tata Finance Ltd., an application was made for permission under the provisions of Section 295 of the Companies Act. Mr. D.S. Pendse arranged for the said application and also pursued the same.*

*3.2.5 NITCL was 1 out of TFL's 8 subsidiaries. NITCL was basically (as the name suggests) an investment Company. At the relevant time a substantial, if not the entire investments, of NITCL were in highly volatile TMT/ICE stocks. Based on the stock market quantities of these*

*investments, the NAV of Investments would vary from day-to-day, month to month and quarter to quarter. Based on sale and purchase of investments, short term and long term, NITCL would either earn profit or a loss. Shri Talaulicar also submitted a chronology of events.*

*3.2.6 The investigation report proceeds on the basis that JIP issued bills, allegedly backdated to 06.09.2000, for the sale of shares. Mr. Talaulicar had never seen these bills before. The source of the bills was not revealed despite requests by Mr. Talaulicar advocates. The bills are purported to have been issued by JIP, however, Jignesh Patel (the proprietor of JIP Investment), Pankaj Patel (Director of JHP Securities) and Bharat Patel have stated that the said bills are not genuine. The bills appear to have been handed over by Mr. Shilotri to the TFL appointed by Kale Committee (which prepared the report dated 31.10.2001). No information is forthcoming as to how Mr. Shilotri came into possession of these bills. The bills are relied upon despite TFL's FIR against Mr. Shilotri for forgery, making a false document, cheating, criminal breach of trust and criminal conspiracy. These bills were handed over to the Kale Committee behind the back of Mr. Talaulicar, by depriving him of his rights of inspection and cross examination. These same forged backdated documents have been obtained by the Investigation Officer without intimation to Mr. Talaulicar and have been relied upon in the Investigation Report along with the said Report dated 31.10.2001 (despite Mr. Talaulicar's stringent objections to the same and despite the Investigation Officer's assurance that the said Report dated 31.10.2001 would not be relied upon) Mr. Talaulicar's objections to the said report dated 31.10.2001 have been neither referred to nor dealt with in the investigation report. The investigation report relies upon the Kale Committee Report dated 31.10.2001 despite the evidence given by Mr. Bharat Patel before the*

*Kale Committee being contrary to the statement dated 17.04.2002 issued by Bharat Patel before the Investigating Authority.*

*3.2.7 The investigation report proceeds on the erroneous and unsubstantiated basis that Mr. Talaulicar allegedly arranged to receive an amount of Rs.70 lacs from NITCL through the sub broker JIP, for the sale of the said 1,00,000 TFL shares. This finding is given despite the brokers/ sub brokers JHP, JIP, Jignesh Patel, Mr. Pankaj Patel and Mr. Bharat Patel having categorically stated that they do not know Mr. Talaulicar, have never met him and have never dealt with him. Mr. D. S. Pendse had large dealings (running into several crores rupees) with the said brokers/ sub brokers. During the course of these dealings various back dated and circuitous transactions were entered into by Mr. D S Pendse with the said brokers. These facts are inter alia, borne out by the FIR filed by the TATA Group and the said Bombay High Court Suit No. 1844 of 2002. The Rs. 70 lac voucher appears to be one of the several documents which form part of numerous transactions running into crores of rupees entered into between D S Pendse and the said broker/ sub brokers. Merely because Rs.70 lacs may have been paid by NITCL to JHP, during the course of numerous transactions entered into between them, does not and cannot indicate that the said Rs.70 lacs were paid to Mr. Talaulicar for the shares. The statements of Mr. Pankaj Patel dated 02.04.2002, Mr. Shilotri dated 24.04.2002 and Bharat Patel dated 17.04.2002 clearly bear out that there was never any question of Mr. Talaulicar arranging to receive the said sum of Rs.70 lacs (or any other sum) from NITCL. The said voucher of Rs.70 lacs was surfaced for the first time by Mr. Kale under cover of his letter 25.09.2001, with a view to seek an explanation. Mr. Talaulicar requested further documentation and information to enable Mr. Talaulicar to effectively deal with the said voucher. No information was ever furnished.*

3.2.8 *The investigation report observes that it was allegedly clear that Mr. Talaular was in possession of information that was not only information which was material and non public but information that totally negated the state of affairs of NITCL and subsequent TFL, as presented to the public in TFL's Letter of Offer and could reasonably have been expected to cause a substantial decline in TFL's share price and hence constituted price sensitive information. In this regard, it is submitted that a mid term loss of NITCL could never be considered to be price sensitive information of TFL. This position and fact is corroborated and confirmed by the letter dated 30.04.2001 of TFL to the shareholders, which revealed a loss of Rs.79.37 crores as on 31.03.2001. The price movement of TFL's share after 30.04.2001, (when the loss of Rs.79.37 crores of NITCL was made public) shows that the loss did not impact demonstrating that the losses of NITCL were not price sensitive information as regards to TFL shares.*

3.2.9 *There is no warrant, except wisdom by hindsight, to reach the conclusion that NITCL's state of affairs on the date on which Mr. Talaular was required to sell the share would subsequently continue be the same or decline further or that it would reasonably have been expected to cause a substantial decline in TFL's shares. Even assuming whilst denying that the NITCL's state of affairs could constitute "unpublished price sensitive information of TFL" it is submitted that he is not guilty of "insider trading". In fact unless and until it can be established by cogent, inconvertible (sic), reliable and legal evidence that the alleged Insider 'has sold his shares on the basis of unpublished price sensitive information'. The regulation does not prohibit the sales or dealings in shares by an insider. Every sale by an insider is not deemed to be a violation of regulations. The regulation does not shift the burden of proof upon the alleged insider. The*

*regulation requires that the authority to conclusively and beyond a reasonable doubt establish that the sale by an allegedly insider, amounts to Insider Trading 'The charge is criminal and penal in nature and the standard applicable is much higher than a mere question of balance of probability and therefore be the criminal standard of proof i.e. beyond reasonable doubt.*

*3.2.10 The entire report is based on the remote allegation that Mr. Talaulicar was aware of the loss in NITCL as : NITCL had at its Board meeting held on 2.2.2001 estimated a loss of Rs.17.10 crores for the period 1.4.2000 to 31.1.2001; The daily NAV statements of NITCL showed diminution in value; NITCL losses would significantly impair TFL's profits. These allegations are not only legally unsustainable but are also factually incorrect. As per the definition of unpublished price sensitive information 'in regulation 2(k), only information of TFL has to be considered, which admittedly there is none. NITCL is only one of 8 subsidiaries/ divisions of TFL and a mid-term loss in it cannot be equated to affect the financial results of TFL. NITCL, at the time had purchased large quantities of information and technology stocks, which at the material time were extremely volatile. At the time, the stock market was experiencing tremendous volatility and share price, particularly of information/technology stocks, varied greatly on almost a day to day basis. Any mid-term loss of NITCL was merely a notional loss, which could very easily have drastically reduced or turned into profit. An upward movement of the information and technology stocks would immediately reduce or wipe out the notional loss. For the earlier periods there was a similar mid-term loss in NITCL while TFL reported year-end profits. Mr. Pendse repeatedly assuring the board that TFL would earn a profit of at least Rs.40 crores. All the non-executive directors only came to know of the losses in TFL for the first time at the board meeting held on 25.5.2001.*

3.2.11 *The Investigation Report has illegally, wrongfully and in breach of the principles of natural justice relied upon the Report dated 31.1.0.2001, to corroborate the findings of the Investigation Report. The patent illegalities, irregularities and blatant breaches of natural justice in the said Report dated 31.10.2001 were placed on record inter alia vide Mr. Talaulicar's letter dated 30.11.2001. At the time when the Investigating Officer recorded my statement 18.6.01, the Investigating Officer gave an assurance that the said Report dated 31.10.2001 was not going to be taken into account and hence no submissions on the same be made. Despite this the Investigation Report records (after extracting portions of the said Report dated 31.10.2001) that "the above findings of the internal independent committee clearly corroborates the findings of our investigations". It is further submitted that the statements of various persons, various documents and records have been relied upon in the report without giving Mr. Talaulicar an opportunity to cross-examine and/or controvert the same. The very credibility of Mr. Kale is in grave doubt particularly in view of the recent developments, including the withdrawal of the main report prepared by Mr. Kale and the forced resignation of Mr. Kale of A.F. Ferguson & Co.*

#### **4.0 Natural Justice**

I am satisfied that adequate opportunity has been given to Talaulicar and that the requirements of natural justice have been met. Therefore, I proceed further in the matter.

#### **5.0 Consideration of Issues**

5.1 I have carefully considered the facts of the matter, the written and oral submission of Talaulicar and other material on record. The issues that arise for consideration are :

- i) Whether Talaulicar was an “insider”
- ii) Whether Talaulicar violated the provisions of Insider Trading Regulations
- iii) Other incidental issues

5.2.1. The aforesaid issues are dealt with below:

**i) Whether Talaulicar was an “insider”**

5.2.2. In terms of clause (e) of Regulation 2 of the Insider Trading Regulations, an “insider” means any person who is or was

(a) connected with the company or

(b) is deemed to have been connected with the company

**AND**

(c) 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

(d) who has received or has had access to such unpublished price sensitive information.

5.2.3 The term “connected person” has been defined in Regulation 2(c) *ibid* as any person who is a “director” as defined in Clause (13) of section 2 of the Companies Act 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. According to clause (13) of Section 2 of the Companies Act 1956, “Director” includes any person occupying the position of director, by whatever name called.

5.2.4 I find that Talaulicar was a “director” on the Board of TFL and also the Chairman of NITCL during the period of impugned transaction.

The argument put forth by Taulicar that he was only a non Executive Director on the Board of TFL and NITCL and that his participation was restricted to formally attending board meetings 'is inconsequential. It is sufficient for a person to be treated as connected person with a company if he is a "director" on the Board of that company; in this case, Taulicar was not only a director on the Boards of TFL and NITCL, he was also Chairman of NITCL; besides, he was also the Chairman of Investment Committee of NITCL. I do not agree with the contention that the Chairman's role and participation would be restricted as in the case of any other non Executive Directors. A Chairman of a company, though non executive, is expected to conduct the Board Meeting, apply his mind on the items brought before the Board and in the light of the deliberations, he is expected to guide the decision of the Board. In any case, Chairman of the Board of a company cannot plead ignorance of developments in the company including the financial position discussed at the Board meeting. In view of above, Taulicar cannot escape from falling within the definition of "connected person" with the TFL.

5.2.5 The next question that arises is whether, as a person connected with TFL, Taulicar was expected to have access or he had received or he had access to any unpublished price sensitive information in respect of the equity shares of TFL.

5.2.6 The term "unpublished price sensitive information" has been defined in the Insider Trading regulations 1992, as under:-

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.

It is noted that the aforesaid eight specified matters relating to the company, as “price sensitive information” include any information which may affect the earnings of the company. Further, 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 shall be considered as unpublished price sensitive information. It is a known fact that it is not only the performance of the company per se that affects the value of its securities but the performance of any of its subsidiaries

which is expected to have significant impact on the earnings of the company would also be a matter of concern to the company as it might materially affect the price of the equity shares of the company.

5.2.7 NITCL was virtually a wholly owned subsidiary of TFL. Although it was one of the eight subsidiaries of TFL, it is observed from the past results of NITCL and TFL that NITCL's performance could impact the profit of TFL. More specifically, the amount of dividend income from the subsidiary would go to augment the earnings of TFL.

5.2.8 The financial performance of TFL and NITCL as available on record are given in the following tables.

**(Rs. In Crores)**

|                                 | <b>Year ended June 30</b> |             |             |             |             |
|---------------------------------|---------------------------|-------------|-------------|-------------|-------------|
| <b>Financial Performance</b>    | <b>2001</b>               | <b>2000</b> | <b>1999</b> | <b>1998</b> | <b>1997</b> |
| Equity Paid up                  | 45.48                     | 45.48       | 40.82       | 40.82       | 40.81       |
| Net worth                       | -76.62                    | 330.87      | 270.5       | 256.82      | 234.98      |
| Gross Block                     | 956.69                    | 841.62      | 617.79      | 522.22      | 447.47      |
| Sales                           | 500.07                    | 514.75      | 486.39      | 421.95      | 373.09      |
| PBIDT                           | 49.06                     | 496.54      | 464.17      | 398.95      | 354.24      |
| PAT                             | -395.56                   | 56.78       | 42.97       | 41.1        | 49.3        |
| Book Value (Unit Curr- Rs.)     | -16.85                    | 72.75       | 66.27       | 62.92       | 57.58       |
| Market Capitalisation           | 126.09                    | 292.47      | 125.21      | 137.87      | 144         |
| EPS(annualised) (Unit Curr-Rs.) | 0                         | 7.93        | 7.35        | 9.35        | 9.26        |
| Dividend (annualised %)         | 0                         | 45          | 40          | 40          | 40          |

The details of the financial position of NITCL as available from the letter of offer pertaining to the rights issue of TFL in March 2001 is as under:

**(Rs. In crores)**

| <b>Financial Performance</b> | <b>Year/period</b>              |                                  |                  |                                  |
|------------------------------|---------------------------------|----------------------------------|------------------|----------------------------------|
|                              | <b>30.9.2000<br/>(6 months)</b> | <b>31.3.2000<br/>(10 months)</b> | <b>31.5.1999</b> | <b>31.5.1998<br/>(14 months)</b> |
| Sales                        | 122.08                          | 330.58                           | 206.55           | 50.51                            |
| Other Income                 | 49.29                           | 41.53                            | 28.27            | 11.27                            |
| PAT                          | 11.46                           | 52.70                            | 5.52             | 8.98                             |
| Equity Share Capital         | 29.01                           | 29.01                            | 29.01            | 29.01                            |
| Networth                     | 47.28                           | 54.71                            | 43.99            | 42.61                            |
| EPS (Rs.)                    |                                 | 21.95                            | 2.30             | 3.74                             |
| Dividend (%)                 |                                 | 155                              | 13               | 21                               |

5.2.9 It is observed that for the 10 month period - ended March 31 2000, NITCL had earned profit after tax of Rs.52.70 crores on a share capital of Rs.29.01 crores and declared dividend of 155% i.e. amount to Rs.37.22 crores. It is also noted that for the year ended June 30, 2000 TFL had earned profit after tax of Rs.56.78 crores after taking into account dividend income of Rs.50.28 crores from the subsidiaries (including NITCL). The dividend income from NITCL alone was around Rs.37 crores. In other words, but for the dividend income from NITCL, the net profit of TFL would have been meagre. This fact was in the domain of public knowledge. Any set back in the performance of NITCL for the year 2000-01 could, therefore, be reasonably expected to have adverse impact on the bottom line of TFL as well as price of the scrip. A priori, any unpublished information about the likely deterioration in the performance of NITCL for the year ended March 31, 2001 should have been an

unpublished price sensitive information in respect of its holding company, TFL.

5.2.10 Reverting to the facts of the case, according to the final letter of offer in respect of rights issue of 9% CCPs of TFL as approved by its Board of Directors on January 4, 2001, the profit after tax of TFL and NITCL had been shown at Rs.16.41 crores and 11.46 crores for the period ended on December 31, 2000 and September 30, 2000 respectively. While computing the profit after tax of TFL, interim dividend of Rs.10.81 crore from NITCL had been reckoned. As per the subsequent disclosure made by TFL on April 30, 2001, NITCL, in fact, suffered provisional losses of Rs.79.37 crores for the year ended March 31, 2001. **According to the minutes of NITCL's Board meeting of February 2, 2001, the estimated profit and loss account of NITCL for the period ended January 31, 2001 itself showed a loss of Rs.17.10 crores. This Board meeting had been chaired by Talaulicar.**

5.2.11 Talaulicar was the Chairman of the Board of Directors of NITCL as well as investment committee of NITCL. He was in receipt of daily statements indicating the market value of the NITCL's investment portfolio. The NAV statements had indicated persistent downward trend in the value of the investments. As it turned out later, the diminution in the value of the investment portfolio of NITCL led to substantial loss for the year ended March 31, 2001. It was surprising that Talaulicar, as Chairman of NITCL, claimed ignorance of the deteriorating financial position of NITCL, which would have and- in fact, did have – impact on the value of TFL's earnings. Even granting, for the nonce, benefit of doubt that Talaulicar was not alert enough as Chairman of NITCL to gauge its deteriorating performance and its potential loss position from the study of daily NAV statements and that he relied upon Pendse's optimism as he claimed, it is observed that

there is enough documentary evidence that he was aware of the situation. The fact that NITCL was incurring losses and these losses would have adverse impact on the earnings of TFL for the year March 31, 2001 was a price sensitive information relating to the shares of TFL. This information was not made public. Talaulicar as Chairman of NITCL and also a director of TFL not only had access but also was in possession of this unpublished price sensitive information relating to the shares of TFL.

5.2.12 It is clear from the foregoing that Talaulicar was a director of TFL and thus connected with the company; as director of TFL and Chairman of the Board of investment committee of TFL's subsidiary NITCL, Talaulicar could reasonably be expected to have had access and in fact, he was in possession of unpublished price sensitive information about deteriorating financial position of NITCL which was likely to have adverse impact on the price of equity shares of TFL, during the period of impugned transaction. I, therefore, have no hesitation to come to the conclusion that Talaulicar was "insider" in terms of Insider Trading Regulations.

5.3.0 Having thus established that Talaulicar was an "insider" in terms of the Insider Trading Regulations, the next issue to be dealt with is

(ii) Whether Talaulicar violated provisions of insider trading regulation.

5.3.1 Regulation 3 of the Insider Trading Regulation provides that

"no insider" shall

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

or

- (ii) communicate any unpublished price sensitive information to any person with or without his request for such information, except as required in the ordinary course of business or under any law

or

- (iii) counsel or procure any other person to deal in securities of any company on the basis of unpublished price sensitive information.

5.3.2. As aforesaid, Talaulicar was in possession of unpublished price sensitive information relating to loss being incurred by NITCL, subsidiary of TFL, which would have impact on earnings and the value of the equity of, TFL. Talaulicar has not denied that he dealt in the shares of TFL. Whether the loss of NITCL did really impact the prices of TFL ultimately is immaterial. What is material is the price-sensitivity of the information, i.e. whether the information was price sensitive. There is no denying the fact that the information relating to the potential loss of the subsidiary of TFL was a price sensitive information, as it had the potential of affecting the share prices of TFL. The argument that the market was experiencing tremendous volatility does not cut much ice and the statement of Talaulicar that all the non Executive Directors (including himself) came to know of the loss in TFL for the first time at the Board Meeting held on May 25, 2001 is irrelevant. It bears repetition that, Talaulicar was privy to the information that NITCL was in fact incurring loss, which would impact the profit of TFL and the value of its equity shares.

5.3.3 The argument that Talaulicar could not avail himself of housing loan from Tata Housing Finance Ltd for want of the required statutory approval, for meeting his need of funds to buy a house in Goa and that he heeded the advice of Pendse that he should not seek a housing loan from any other institution sounds frivolous. By virtue of his long-standing position in Tata Group, he could have secured a housing loan

from any institution and his resorting to such a housing loan from an outside institution in the given circumstances would not have been deemed as a “reflection on the Tata name”. Alternatively, Talaulicar could have sold his other shareholdings to raise funds, if needed. As director of TFL and Chairman of NITCL, Talaulicar was holding a position of fiduciary relationship with the share holders of both the companies. **The fiduciary responsibility cast upon him, leave alone the regulatory requirement, should have demanded him to abstain from dealing in the equity shares of TFL, before disclosing the said price sensitive information to the public.**

5.3.4 I note that Talaulicar had in fact caused transfer of one lakh shares of TFL held by him and his family to the account of JIP and in turn he and his family had received from JIP on April 4, 2001 a sum of Rs.69 lakhs, representing the sale consideration. The transaction was not denied by Talaulicar. It has been submitted that Talaulicar was informed by Pendse in May 2001 that the shares in fact had not been sold in March/ April 2001 but would now be sold at the ruling market price and that he refunded Rs.34.21 per share being the difference between the price received and the ruling market price. **This act of Talaulicar, though ostensibly appropriate, was obviously an afterthought and, as circumstances indicate was intended to make it appear that the trading in the shares of TFL was really done after the price sensitive information became public.**

5.3.5 The foregoing facts and circumstances clearly indicate that Talaulicar, as an insider, traded in the shares of TFL on the basis of unpublished price sensitive information in violation of the provisions of Insider Trading Regulations.

#### 5.4.0 **Other issues**

5.4.1 The impugned transaction was said to be an off market deal, arranged by Pendse, the then Managing Director TFL, and a colleague and “considered to be a friend” of Talaulicar. It sounds strange that Talaulicar had to resort to a non-transparent off-market deal, through his colleague-friend, when the scrip was liquid and readily saleable through stock exchange. Talaulicar has in his submissions objected to certain alleged back dated documents relating to bills for sale of share being relied upon by the investigating officer. Since the sale transaction and the receipt of consideration therefor have been admitted by Talaulicar, the said documents are irrelevant for the issue at hand – viz. violation of Insider Trading Regulations.

5.4.2 It is observed that transfer of a sum of Rs.70 lakhs by NITCL to the broker JHP on March 30, 2001, purportedly as an ‘ad hoc margin’ seemed rather strange. Normally such margin money is provided by the intending buyer with the broker as advance towards purchase of securities. The concerned account of NITCL in the books of the JHP was already having a credit balance of Rs.83 lakhs and subsequent to the transfer of the said further sum of Rs.70 lakhs, there were no major purchase transactions put through by JHP on behalf of NITCL. Transfer of Rs.69 lakhs by JHP to sub-broker JIP the very next day (i.e. March 31, 2001) and issuance of cheques dated March 30, 2001 for an aggregate sum of Rs.69 lakhs by JIP to Talaulicar and his family appear to be more than a coincidence. The transfer of the company’s funds to the brokers obviously to enable the brokers to pay to Talaulicar and his family for sale of their shareholding in TFL raise a highly ethical issue.

## 6.0 **Conclusion**

Based on study of the facts and circumstances of the case and the argument put forward by Talaulicar, I have reached the conclusion that Talaulicar was an insider and that he dealt in the equity shares of TFL on the basis of unpublished price sensitive information. While the obviously unethical conduct of Talaulicar in acquiescing in transfer of NITCL's funds to the brokers for his benefit is a matter outside the scope of SEBI's regulations, I hold that Talaulicar violated the provisions of Insider Trading Regulations.

6.1 Therefore, in exercise of the powers conferred on me vide Sections 19, 11 (4) (b) and 11B of the SEBI Act and Regulation 11 of the SEBI (Insider Trading) Regulations, 1992, I hereby direct that Shri J E Talaulicar shall dissociate himself from the securities market and that he shall not deal in securities henceforth for a period of 5 years.

**Place: Mumbai**  
**Date: 14-10-2003**

**T M Nagarajan**  
**Whole Time Member**  
**Securities and Exchange Board of India**