

Securities and Exchange Board of India

Order

In the matter of directions under Section 11 and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 11 of the SEBI (Insider Trading) Regulations, 1992 against Shri Dilip S Pendse in the matter of insider trading by Shri J E Talaulicar in the shares of Tata Finance Limited

WTMO/17/IVD/12/03

1.0 Background

- 1.1. Shri Dilip S Pendse (hereinafter referred to as “Shri Pendse”) was the Managing Director of Tata Finance Limited (hereinafter referred to as “TFL”) from 01.06.96 to 31.5.2001 and director of Niskalp Investments and Trading Co. Limited (hereinafter referred to as “NITCL”) during 19.06.1997 to 1.6.2001. TFL is a Non Banking Finance Company, incorporated under the Companies Act and is 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”).
- 1.2. The Securities and Exchange Board of India (hereinafter referred to as SEBI) ordered preliminary investigation on 28.08.01 into the alleged manipulation and insider trading in the shares of TFL. The Preliminary investigation revealed that Shri J E Talaulicar (hereinafter referred to as “Shri Talaulicar”), the Chairman of NITCL and a non-executive director of TFL along with his family members had received Rs.69 lakhs from one 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 Shri Talaulicar had delivered 1,00,000 shares of TFL on April 04, 2001 to JIP. It was also observed that a sum of Rs.69 lakhs was a consideration for sale of 1 lakh shares of TFL @ Rs.69 per share. Subsequently, during 18th to 30th May 2001, the shares were sold in

the market by JIP through JHP and Prashant J. Patel, a member of NSE on behalf of Shri Talaulicar and his family at a price of about Rs.34/- per share. It was also observed that Shri Talaulicar refunded Rs.34.79 lakhs being the difference in prices to JIP.

- 1.3. It was also noticed that NITCL had paid a sum of Rs. 70 lakhs to JHP on March 30, 2001 and that on the next day i.e. 31.3.2001, an amount of Rs.69 lakhs was transferred by JHP to its sub-broker JIP, which, in turn paid the said amount to Shri Talaulicar and his family. Copies of bills dated 06.09.2000 purportedly issued by JIP in favour of Talaulicar and his family for sale of 1,00,000 shares of TFL at a price of Rs.69 per share were traced during the investigations. These documents along with the payments made by JIP to Talaulicar and family in March 2001 when the market price of TFL was only about Rs.40/-, raised suspicions about insider trading. In view of this, vide order dated 8.11.2001, SEBI initiated a formal investigation into the dealings of Shri Talaulicar and his family in the scrip of TFL.

2.0 Investigation and findings thereof.

2.1 Rights Issue by TFL

- 2.1.1 It was seen that, TFL, at its Board meeting on 04.01.2001 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 29.01.2001. Shri Talaulicar as a Director was present in both the meetings. The issue opened on 30.03.2001 and closed on 30.04.2001.
- 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 30.4.2001, disclosed to its shareholders that there was a substantial erosion in the value of the stocks held by it and that NITCL had incurred a provisional loss of Rs.79.37 crores for the year ended

31.3.2001 as against a disclosed profit of Rs.11.46 crores for the six month period ended 30.9.2000, 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 Shri. Talaulicar and his dealing in the shares of TFL

2.2.1 It was observed that on 30.03.2001 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 31.03.2001 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 Shri Talaulicar and his family on 30.03.2001. The details are as follows:

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

2.2.2 The payment was made to Shri Talaulicar in the form of 5 cheques which were banked by him. The monies were debited from the bank account of JIP on 04.04.2001 and 07.04.2001. According to the submission made by Shri Talaulicar, no sale contract / bills for the sale of 1,00,000 shares TFL were received by him. However, delivery instructions were given by Shri Talaulicar to the depository for transfer of 1 lakh shares to JIP's account and on 4.4.2001, the shares were transferred to JIP's account with another depository.

- 2.2.3 It was observed that the letter of offer in respect of the rights issue was approved by the Board of Directors of TFL on 20.03.2001. This final letter of offer contained financial results of TFL and NITCL as on 31.12.2000 and 30.09.2000 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 30.06.2000, 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 30.04.2001 disclosed that NITCL had suffered a provisional loss of Rs.79.37 crores as on 31.3.2001. Therefore, the information regarding the losses suffered by NITCL was price sensitive information.
- 2.2.4 It was also noted that the information of the losses suffered by NITCL was not available to the public prior to 30.04.2001 and was therefore unpublished price sensitive information. It was further noted from the minutes of the Board meeting dated 02.02.2001 that the estimated Profit and Loss account for NITCL for the period 01.04.2000 to 31.01.2001, which was tabled at the said meeting, disclosed a loss of Rs.17.10 crores. It was also observed that Shri Talaulicar was present at the said meeting and was therefore aware from 02.02.2001 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 Shri 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.

2.3 Counselling by Shri Pendse

- 2.3.1 In his letter dated 30.11.2001 to SEBI, Shri Talaulicar stated that he had intended, after retirement from the Tata Group of Companies to settle down in Goa which is his birth place and home town. He also stated that Shri Pendse was aware that he was desirous of purchasing a residential accommodation in Goa and advised that rather than selling the shares of TFL, he should take a loan from Tata Home Finance Ltd. (THFL). He further stated that Shri Pendse had advised him not to take a loan from another financial institution as it would reflect badly on the Tata name if a senior Tata Executive like himself were to take housing loan from an outside institution when the same was available in-house with THFL. Shri Talaulicar submitted that since he was a Director of TFL an application was made by the company to the Department of Company Affairs, Ministry of Law and Justice, New Delhi for permission under Section 295 of the Companies Act. Shri Pendse arranged for the application and also pursued the same.
- 2.3.2 Shri Talaulicar further stated in his letter dated 30.11.2001 that as non Executive Director of TFL, he was not involved in the preparation of the proposal which led to the Rights Issue. His role with respect to the said rights issue was restricted to the decision taken at the Board meeting held on 04.01.2001 at which the rights issue was passed on the strength of the recommendation of Shri Pendse. He further stated that in March 2001, Shri Pendse orally informed him that the approval of the DCA under Section 295 was not likely to come through. **He stated that he spoke with Shri Pendse and Shri A L Shilotri of his desire to sell the shares in view of the fact that he was unable to get a loan from THFL and they offered to organise the sale of his shares.** He stated that at the time of entrusting the sale of his shares in TFL to Shri Pendse, he had implicit trust and faith in Shri Pendse who was a trusted Tata employee and whom he considered to be a friend.

- 2.3.3 **Shri Talaulicar further stated that on 31.03.2001, Shri Pendse had given him the cheques aggregating to Rs.69 lakhs towards the sale of his shares and the shares of his family. He further stated that Shri Pendse while handing over the cheques orally informed him that the said cheques represented the sale consideration of 1 lakh shares of TFL held by him and his family and that the same was to a close friend of Shri Pendse.** Shri Talaulicar further stated that Shri Pendse requested him to issue necessary instructions to his depository viz. HSBC for the transfer of 1 lakh shares to an unnamed transferee (i.e. keeping the column blank). He states that he had no reason to doubt the reason / explanation offered by Shri Pendse. He also stated that since he was not a regular trader in the Stock Exchange, he believed the word of Shri Pendse.
- 2.3.4 Shri Talaulicar further submitted that when he contacted Shri Pendse and Shri Shilotri in early May 2001, they represented to him that the shares had not been sold and that they had now organised the sale and that he would have to refund the difference between the price paid to him and the ruling market price. He reiterated the statement that he had trusted Shri Pendse and had no cause to doubt that he was acting for his benefit in agreeing to sell the shares held by him and his family.
- 2.3.5 Shri Talaulicar further stated that none of the Executive Directors of TFL including himself was aware on any erosion in TFL's fortunes. Only at the Board meeting of TFL on 25.05.2001, were he and other non executive Directors informed of the various illegal and unauthorised actions of Shri Pendse and his team.
- 2.3.6 It was therefore alleged that Shri Pendse had aided Shri Talaulicar in insider trading through counselling and organising the dealings in the shares of TFL and had thereby violated Regulation 3 of SEBI (Insider

Trading) Regulations, 1992 (hereinafter referred to as Insider Trading Regulations).

3.0 Show Cause Notice and Hearing

3.1 Show Cause Notice was issued to Shri Pendse on 08.08.2002 communicating the findings of the investigations and also advising him to submit his explanations on the said findings. Shri Pendse submitted his written submissions in respect of findings of investigation through his advocates Bhawe & Co. vide their letter dated 22.11.2002. The written submissions of Shri Pendse (noticee) in brief are as under:

- 3.1.1 *The noticee denies having contravened any of the provisions of the SEBI (Insider Trading) Regulations, 1992 as alleged or otherwise.*
- 3.1.2 *The noticee denies that Mr. J E Talaulicar requested the noticee to sell the 100,000 shares of Tata Finance Limited.*
- 3.1.3 *The noticee does not recollect the purpose of payment of the amount of Rs.70 Lacs from NITCL to JHP Securities Pvt. Ltd. The noticee states that it appears that the said amount of Rs.70 Lacs was paid as ad hoc margin by NITCL to JHP. With reference to the remaining portion of paragraph 5, the noticee is not aware of and had no knowledge of the said transactions between JHP and its sub-broker JIP Investments and between JIP and Mr. J E Talaulicar and his family.*
- 3.1.4 *The noticee was not aware and had no knowledge of the transactions between Shri Talaulicar and JIP.*
- 3.1.5 *The noticee denies informing Mr. J E Talaulicar that the said shares had not been sold in March 2001 and that the sale would take place in early May 2001. The noticee denies having told Mr.*

J E Talaular to refund the difference between the price paid to him and the ruling market price of the shares. The noticee had no knowledge and was not aware of any refund of Rs.34.79 Lacs or any other amounts to JIP by J E Talaular

3.1.6 *The noticee is not aware of and has no knowledge of the payment made by JIP to Mr. J E Talaular and the mode of recording the same in the books of account of JIP. The noticee was also not aware of and had no knowledge that the transaction of sale of shares of TFL was by way of an off-market sale and of the alleged admission by Mr. J E Talaular of the same.*

3.1.7 *The noticee denies that the noticee had any dealings prior to the year 1997 (the year of JHP being empanelled as a broker with TFL and NITCL) with JHP. The noticee states that it was for the first time in the year 1998-99 that JHP undertook some dealings on behalf of the noticee. The noticee also denies that he had any role to play or was involved in any way in arranging the sale of shares of Shri J E Talaular and his family. The noticee also denies that he arranged for putting through the transaction through JHP and also denies transferring the funds from NITCL to JHP to be transferred to Mr. J E Talaular and his family.*

3.1.8 *The noticee was not aware of and had no knowledge as to the transfer of shares from Mr. J E Talaular and his family to JIP and the payment by JIP to Mr. J E Talaular which was allegedly termed as a loan between the two of them.*

3.1.9 *The noticee was not aware of and had no knowledge of the sale of the said 100,000 shares of TFL by JIP through JHP in the market. The noticee was not aware of and had no knowledge of the receipt by JIP of the differential amount from Shri Talaular.*

- 3.1.10 *The noticee states and submits that under Regulation 5 read with Regulation 6 of the SEBI (Insider trading) Regulations 1992 before undertaking an investigation the Board must give a reasonable notice to the 'insider'. The noticee states and submits that no such notice has been issued to the noticee. The mandatory condition that a prior notice must be given has not been complied with and the said findings of the investigation must be set at naught and cannot be relied upon.*
- 3.1.11 *The Noticee states that NITCL became a subsidiary of TFL effective January 1996, but operative only in April 1997. The Investment Division of NITCL was activated some time in 1997-98. Mr. J E Talaulicar was actively involved in the day-to-day management of NITCL and used to actively monitor the investments made by NITCL. All the investment decisions of NITCL were taken either by the Board of NITCL and/or by the Investment Committee of NITCL, both chaired by Mr. J E Talaulicar.*
- 3.1.12 *The Noticee states and submits that he has at no stage counselled, organised or otherwise aided Mr. J E Talaulicar in the sale of the said shares and the other alleged transactions.*
- 3.1.13 *The Noticee states and submits that to have violated regulation 3 (iii), the insider should have counselled or procured any other person to deal in securities of any company on the basis of unpublished price sensitive information. The noticee states and submits that it would be absurd to suggest that the noticee had aided Mr. J E Talaulicar, an insider, for dealing in securities of a company in which Mr. J E Talaulicar was not only an insider but was also admittedly aware of and in the know and knowledge of the alleged unpublished price sensitive information.*

3.1.14 *The noticee states and submits that in the findings of investigation, it has been held that Mr. J E Taulicar was an insider, who was in receipt of the knowledge of the financial condition of NITCL as well as TFL, who was in the knowledge of the daily NAV statement of NITCL and was also aware of the market price of the shares of TFL.. The noticee states and submits that he had no role to play in the sale of the said shares.*

3.1.15 *The noticee states and submits that there is no role attributable to the noticee. The intention/motive of the noticee has not even been attempted to be dealt with by the Investigation Department, SEBI.*

3.1.16 *The noticee states and submits that in proceedings of this nature, it is incumbent for the motive to be established but in the present case, not only is the motive not established, it is not even attempted to be established. The noticee states and submits that there was no motive and no motive could be attributable to him. The noticee states that the findings of the investigation proceed on the basis that a financial benefit accrued to Mr. J E Taulicar*

3.2 Subsequently upon his request Shri Pendse was granted an opportunity to be heard before me on 08.09.2003. Shri Pendse appeared before me along with Shri Shyam Divan, V M Singh and Narayan Sahu, Advocates. In brief, the following are the submissions made on behalf of Shri Pendse:

3.2.1 *The show cause notice alleged that Shri Pendse had aided Mr. J.E. Taulicar through counselling. It is submitted that Mr. J.E. Taulicar had decided to sell his shares and the shares of his family in TFL and that he had requested Shri Pendse to sell the shares.*

- 3.2.2 *Reasonable notice under Regulation 6(1) of the Insider Trading Regulations which was required to be given prior to the investigation, was not issued to Shri Pendse. No reason was given by SEBI in its investigation report as to why the requirement of the said notice was waived. Therefore, the investigations / proceedings are vitiated.*
- 3.2.3 *Mr. J.E. Talaucar is found to be an insider in the investigation report. If so, there is no need for counselling by Shri Pendse or any others.*
- 3.2.4 *The internal committee appointed by TFL i.e. the Kale Committee did not hear Shri Pendse and therefore SEBI should not rely upon the report of the said committee.*
- 3.2.5 *There was an agreement between Chowgule Developers and Mr. J.E. Talaucar for purchase of a residential property at Miramar. The agreement was for a total consideration of Rs.71.80 lakhs. 40% of the consideration was to be paid upon signing of the agreement and in case of any default, 10% of the amount was to be paid to Chowgule Developers. Mr. J.E. Talaucar had paid Rs.3 lakhs on 21.03.2001 and Rs.38 lakhs on 25.03.2001. In order to avoid any default in the payment of the balance amount, Mr. Talaucar needed to raise funds and he had no option but to sell the shares of TFL in his name and in the name of his family members.*
- 3.2.6 *In the letter dated 30.11.2001 from Mr. J.E. Talaucar to SEBI, he has stated that Shri Pendse advised him not to sell the shares and rather to take a housing loan (Para 6). Mr. J.E. Talaucar has stated that he decided to sell the shares (Para 10). Mr. J.E. Talaucar has also mentioned the reason for his divestment in*

Para 24 and has stated that he advised Shri Pendse to sell the shares.

3.2.7 In his statement dated 15.03.2002, Mr. J.E. Talaulicar has stated that he sold the shares through JIP Investments.

3.2.8 In the statement of Jignesh Patel of JIP Investments, he has stated that he gave Shri A.L. Shilotri 5 cheques. This would mean that if anybody had recommended sale of shares, it was none other than Shri Shilotri.

3.2.9 From the above, it is clear that Mr. J.E. Talaulicar wanted to raise funds for purchase of the house at Goa and he had only one asset to dispose off viz. the shares of TFL in his name and in the name of his family members. Shri Pendse had dissuaded him from selling the shares and had advised him to go in for a housing loan. The hand of Mr. J.E. Talaulicar was forced due to the sanction from Central Govt. under section 295 of the Companies Act not being forthcoming. There was no benefit to Shri Pendse from the sale of the shares and he has not counselled Mr. J.E. Talaulicar.

3.2.10 It is alleged in the investigation report that both Mr. J.E. Talaulicar and Shri Dilip Pendse were insiders. In this regard, Regulation 3(i) of the Insider Trading Regulations as they existed at the material time has no application to Shri Pendse. Mr. J.E. Talaulicar had decided to sell his shares and he had actually sold the shares. Shri Pendse did not sell or otherwise deal in any securities.

3.2.11 As far as the application of Sub-regulation (iii) of Regulation 3 of the insider trading regulations is concerned, it is submitted that there was no counselling or procurement. The word 'counsel' as defined in the Collins English Dictionary (3rd Ed.) means – advise

or guidance of behaviour / conduct etc. The meaning of the word procure as defined in the said dictionary is to obtain or acquire. Shri Pendse has not counselled Mr. J.E. Talaulicar to deal in shares, rather he has counselled him to take a loan instead of selling the shares. There is also no allegation that Shri Pendse had access to unpublished price sensitive information on the basis of which he counselled Mr. J.E. Talaulicar to deal in securities.

3.2.12 *The 'other person' referred to in Regulation 3 is a person other than the insider and since Mr. J.E. Talaulicar was an insider as held in the report, there was no need to counsel Mr. J.E. Talaulicar and the said Regulation would not be applicable.*

4.0 Consideration of issues :

I have considered the facts of the matter, the findings of the investigation, the reply of Shri Pendse and the submissions made on his behalf during the personal hearing before me and other material on record.

Regulation 3 of the Insider Trading Regulation provides that

"no insider" shall

(i) ...

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.

In the light of the above prohibition, the issues that arise for consideration are:

- (i) Whether Shri Pendse was an Insider?
- (ii) Whether Shri Pendse had counselled Shir Talaulicar to deal in the shares of TFL held by him and his family based on unpublished price sensitive information?

The aforesaid issues are dealt as follows:

4.1 Whether Shri Pendse was an Insider?

4.1.1 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.

4.1.2 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.

4.1.3 The next question that arises is whether, as a person connected with TFL, Shri Pendse 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. Unpublished price sensitive information is defined in Regulation 2 (k) of the Insider Trade 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 and 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 take-overs;
- (vi) disposal of the whole or substantially the whole of the undertaking ;

- (vii) such other information as may affect the earning of the company;
- (viii) any changes in policies, plans or operations of the company.

4.1.4 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.

4.1.5 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.

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

(Rs. In Crores)

	Year ended June 30				
Financial Performance	2001	2000	1999	1998	1997
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)

Financial Performance	Year/period			
	30.9.2000 (6 months)	31.3.2000 (10 months)	31.5.1999	31.5.1998 (14 months)
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

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

4.1.8 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 31 December 2000 and 30 September 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 30 April 2001, NITCL, in fact, suffered provisional losses of Rs.79.37 crores for the year ended 31 March 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 31 January 2001 itself showed a loss of Rs.17.10 crores. This Board meeting had been attended by Shri Pendse as Managing Director.**

4.1.9 In view of the above, I have no hesitation in holding that Shri Pendse was an "insider" in terms of the Insider Trading Regulations

4.2 Whether Shri Pendse had counselled Shri Talaulicar to deal in the shares of TFL held by him and his family, based on the unpublished price sensitive information?

4.2.1 I have already found Shri Talaulicar to have indulged in "Insider Trading" and prohibited him from being associated with the capital market and dealing in securities for a period of 5 years – vide order WTMO/9/IVD/10/03 dated 14/10/2003.

4.2.2 It is argued that since Shri Talaulicar himself was "an insider", there was no need for him to be counselled by Shri Pendse or any other person. It is

further argued that the “other person” referred to in Regulation 3 of Insider Trading Regulations shall mean a person “other than an insider”. This interpretation of the expression “other person” seems to be inappropriate. If that had been the intention, framers of the regulations would have used the expression “any person other than the insider”. It is not “absurd”, as assumed by Shri Pendse, to envisage that “one insider” can counsel another “to deal in securities” of a company on the basis of unpublished price sensitive information that both may be having.

4.2.3 In this context, “counselling” need not necessarily mean mere sharing of information or simple “tipping”. Even lexicon meaning of “counselling” includes act or process of “assisting” or “guidance”. Any ‘assistance’ or ‘guidance’ by an insider to another to “deal in securities” of a company on the basis of unpublished price sensitive information can, therefore, be deemed to come within the mischief of the Insider Trading Regulations.

4.2.4 Shri Pendse has averred that he had not “counselled” Shri Talaulicar to deal in the shares, but, on the contrary, he had advised him to take a loan instead. Admittedly, Shri Pendse had earlier advised Shri Talaulicar to take a loan for acquiring a flat in Goa. Shri Pendse had also arranged for application to the Government for necessary permission for Shri Talaulicar to avail himself of a loan from Tata Housing Finance Co. and he was also following up the application. Shri Pendse had been described by Shri Talaulicar as his friend. The available information indicate that both Shri Talaulicar (Director of TFL and Chairman of NITCL) and Shri Pendse (Managing Director of TFL and Director of NITCL) were not only colleagues on the Boards of TFL and NITCL but were “friends” too and that their friendship was such that Shri Talaulicar could look for Shri Pendse’s guidance in personal matters like availing of a housing loan or raising resources for acquiring a flat. It is observed that Shri Pendse’s advice to Shri Talaulicar to avail of a loan rather than sale of shares for acquiring a flat had been given some time in November 2000, but in

March 2001, Shri Pendse had assisted or guided Shri Talaulicar for the sale of shares of TFL held by him and his family. Shri Talaulicar in his submissions had stated that Shri Pendse who had “arranged” for the sale of shares had also told him that the shares had been sold to a friend of Shri Pendse who was committed to buy the shares at a price higher than the then ruling market price. It is observed that the shares had been sold at Rs.69/- when the ruling market price was around Rs.40/-. Further, the sale had been organized by Shri Pendse through an off market deal. It is noted that Shri Talaulicar had caused transfer of 1 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 a sum of Rs.69 lakhs as sale consideration. It is also observed that NITCL the then subsidiary of TFL had transferred a sum of Rs.70 lakhs to the broker JHP on March 30, 2001 purportedly as “margin money”. The concerned account of NITCL in the books of JHP was then having a credit balance of Rs.83 lakhs and subsequent to the transfer of the said sum of 70 lakhs, there were no major purchase transactions found to have been made by JHP on behalf of NITCL. The transfer of the sum of Rs.69 lakhs by JHP to sub broker JIP on the very next day and issuance of cheques dated March 30, 2001 for an aggregate sum of Rs.69 lakhs by JIP to Talaulicar and his family cannot be brushed aside as unrelated transactions or mere co-incidence. It is also observed that Shri Pendse had co-signed the voucher for disbursal of Rs.70 lakhs by NITCL to JHP. The transfer of company’s funds to the brokers obviously to enable the broker to pay Shri Talaulicar and his family for sale of their shareholdings in TFL was unethical to say the least. Incidentally, it is noted that on criminal complaints filed by TFL itself against Shri Pendse, for certain alleged financial irregularities, legal proceedings are pending in Court. Shri Pendse has also ceased to be the Managing Director of TFL effective May 31, 2001.

4.2.5 To sum up, the following series of acts of Shri Pendse appear to form the beads of a string:

- the initial advice to Shri Talaulicar to take a housing loan for acquiring a flat in Goa,
- assisting Shri Talaulicar in the matter of applying for approval from Government for the housing loan,
- keeping track of the application with Government of India,
- later assisting/ guiding Shri Talaulicar in sale of his and his family's shareholding to a broker, through non transparent, off market deal, at a price higher than the market price
- active involvement as a co-signatory to the relevant voucher, in the transfer of the required amount by NITCL to the broker obviously to enable him to pay to Shri Talaulicar and his family the amount of consideration for the sale of shares,

4.2.6 The above acts of Shri Pendse, considered together, point to his complicity in the insider trading by Shri Talaulicar in the shares of Tata Finance Ltd. held by Shri Talaulicar and his family which, in my view, tantamounts to more than "counselling" by Shri Pendse.

4.2.7 It is noted that based on some other complaints/ allegations of "insider trading" and fraudulent and unfair trade practices, against Shri Pendse, separate investigations/ proceedings by SEBI are in progress. The order to be passed in the instant case will not preclude any penal action that may be warranted, based on the outcome of the pending investigations/ proceedings by SEBI against Shri Pendse.

5.0 Directions

- 5.1 In the light of the findings, I hold that Shri Dilip S. Pendse has violated regulation 3 of SEBI (Prohibition of Insider Trading Regulations), 1992.
- 5.2 In view of the above, in the interests of investors and in order to protect the integrity of the securities market it is imperative to prohibit Shri Dilip S. Pendse from dealing in securities for a particular period. 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 Dilip S. Pendse shall dissociate himself from the securities market and that he shall not deal in securities henceforth for a period of 6 months.
- 5.3 This order shall come into force with immediate effect.

Place: Mumbai
Date: 22.12.2003

T.M. NAGARAJAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA