

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**

**CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

**In the matter of  
Insider Trading by Shri J.E. Talaulicar in the Shares of Tata Finance Ltd.**

**In respect of  
JIP Investment Share & Stock Sub-Broker  
(SEBI Reg No. INS 010370919/06130)**

**ORDER**

**Under Regulation 28(2) read with Regulations 38(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008**

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigation into the insider trading by Shri J. E. Talaulicar in the shares of Tata Finance Ltd. (since merged with Tata Motors Ltd, hereinafter referred to as 'TFL'), for the period September, 2000 to March, 2001. Shri J.E. Talaulicar was the director of TFL and the chairman of Niskalp Investments and Trading Company Limited (hereinafter referred to as 'NITCL'), a subsidiary of TFL.
2. Investigations revealed that Jaivant E. Talaulicar was a director of TFL from January 3, 1995 to August 17, 2001 and a director of NITCL from March 15, 1991. Talaulicar became the chairman of NITCL in May, 1995 and continued till September 21, 2001. The shares of TFL were listed on the Bombay Stock Exchange (BSE) as well as on the National Stock Exchange (NSE). Investigations further revealed that JHP Securities Pvt. Ltd (hereinafter referred to as 'JHP'), an empanelled broker of NITCL, and its sub broker JIP Investment Share & Stock Sub-Broker (hereinafter referred to as 'JIP'/ 'the noticee'/ 'the sub-broker') acted as a conduit for the transfer of funds from NITCL to Talaulicar and thus facilitated the siphoning off of funds from NITCL.

3. Based on the findings of the investigation, SEBI initiated enquiry proceedings against the noticee in terms of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'Enquiry Regulations'), and appointed an Enquiry Officer under Regulation 28(1) of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 to inquire into the dealings of JIP in the scrip of Tata Finance Ltd. (TFL). The Enquiry Officer submitted his Report dated October 20, 2004 in terms of Regulation 13 (1)(b)(ii) of the Enquiry Regulations recommending a penalty of suspension of the certificate of registration of the noticee for a period of four months for violating the provisions of Clauses A(1), B(1), B(2) & D(4) of Schedule II of the Code of Conduct for Sub Brokers under Regulation 15 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 read with Regulation 4 of SEBI (Insider Trading) Regulations, 1992 and Regulation 4(c) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995.
  
4. Subsequently, a notice dated November 5, 2004 (hereinafter referred to as SCN), under Regulation 13(2) of the Enquiry Regulations was issued to the noticee asking it to show-cause as to why appropriate action, including the penalty recommended by the Enquiry Officer, should not be imposed upon it. The noticee was advised to reply to the SCN within twenty-one days of the receipt thereof. The noticee was also informed that in case of failure to reply, it would be presumed that the noticee had no explanation to offer and that SEBI shall be free to take such action in the manner as it deemed fit. A copy of the Enquiry Report was also forwarded to the noticee along with the SCN.
  
5. The noticee has not replied to the SCN till date.
  
6. I note that the noticee has been given various opportunities of personal hearing. However, he went on seeking adjournments under one pretext or the other. The first such hearing was scheduled on **March 11, 2005**, which had to be postponed at the request of the noticee. The second hearing was scheduled on **March 2, 2006**, which was also adjourned. The third hearing was fixed on **October 4, 2007** and at this point of time, the noticee submitted that

he was interested in settling the matter through consent in terms of the SEBI Circular dated April 20, 2007, and therefore the matter was kept in abeyance. However, the consent proposal of the noticee was rejected by the High Powered Action Committee, in its meeting dated December 01, 2008. The noticee was, therefore, given another opportunity of personal hearing on **March 31, 2009**. Meanwhile, the noticee, vide a fax-letter dated March 31, 2009 requested for rescheduling the date of hearing. The noticee was then given an opportunity of personal hearing before me on **June 3, 2011**. However, the noticee failed to appear for the hearing and requested a month's time to enable him to prepare for the case. Accordingly, the next date for personal hearing before me was fixed on **July 15, 2011**. The noticee, vide its letter dated July 9, 2011, again requested for postponement of the scheduled hearing.

7. In the interest of natural justice, the noticee was given final opportunity to appear in person before me on **August 29, 2011** and it was clearly told to the noticee that this was the final opportunity and no further opportunities would be given to him. The noticee was intimated about the aforesaid date of personal hearing vide letter dated July 18, 2011, which was received by the noticee on July 20, 2011 at its office. The noticee neither conveyed its decision to appear before me nor did it appear before me. Vide its letter dated October 1, 2011 received on October 5, 2011, the noticee submitted that it wants another opportunity of personal hearing before me. I note that the noticee, on all previous occasions, has not appeared for personal hearing, despite various opportunities given to him. I am of the considered view that the matter can be proceeded *ex-parte*, having granted the noticee sufficient opportunities to defend its case.

8. I have carefully considered the SCN and the other relevant material on record. I note that the broker member JHP, being an empanelled broker of NITCL, received an amount of Rs. 70 lakh on March 30, 2001 from NITCL. This, I note, was despite the fact that the account reflected a credit balance of Rs. 83 lakh. On the very next day of this transaction, JHP transferred Rs. 69 lakh to its sub-broker, JIP, which in turn issued cheques dated March 30, 2001 in favour of Talaulicar and his family members purporting to be a sale transaction of one lakh shares of TFL by them on September 6, 2000 at the rate of Rs. 69 per share. The details of the transactions are given below:

Bill No.	Bill Date	Shares	Rate	Seller	Amount	Corporation Bank cheque
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		<b>sold</b>	<b>(Rs)</b>		<b>(Rs.)</b>	<b>details</b>
FST/165	06.09.00	10,000	69	Anant Talulikar	690000	106293, dtd.30/03/01
FST/166	06.09.00	22,500	69	Aparna Talulikar	1552000	106292, dtd.30/03/01
FST/167	06.09.00	35,000	69	J. E. Talulikar	2415000	106289, dtd.30/03/01
FST/18	06.09.00	10,000	69	Sandeep Talaulicar	690000	106290, dtd.30/03/01
FST/169	06.09.00	22,500	69	Usha Talaulicar	1552000	106291, dtd.30/03/01
Total		100,000			69,00,000	

9. JIP's account was debited on April 4, 2001 and April 7, 2001. Further, Talaulicar had given instructions to the depository for transfer of 1 lakh shares to JIP's DP account and the shares were actually transferred to JIP's account on April 4, 2001. Thus, while the cheques were dated March 30, 2001 and the shares were transferred on April 4, 2001, the bills were dated September 9, 2000. I note that the price of the shares of TFL on March 30, 2001 was only Rs.40 per share, whereas on September 6, 2000 it was Rs.69 a share.
10. Moreover, I note that there was already a credit balance of Rs. 83 lakh in JHP's account and there were no major purchases by NITCL at the relevant time. In this scenario, a further amount of Rs.70 lakh was transferred by NITCL to JHP on March 30, 2001. Thereafter, Rs. 69 lakh was transferred on the very next day to the sub-broker (JIP), who issued cheques in favor of Talaulicar and family members on the same day. I further note that Jignesh Patel, proprietor of JIP, is a relative of Pankaj Patel, director of JHP Securities.
11. These shares were then sold by JIP through JHP and Prashant J. Patel, Member of NSE between May 18, 2001 and May 29, 2001 for a total of Rs. 34.21 lakh. Thus, it appears that, while the actual sale of shares had taken place in May, 2001 for Rs. 34.21 lakh, Talaulicar and his family members received a consideration of Rs. 69 lakh on March 30, 2001. Thus, Talaulicar and his family members seemed to have received an excess amount of sale consideration of Rs. 34.79 lakh, i.e. the difference between Rs. 69 lakh and Rs. 34.21 lakh.

12. I note that on April 30, 2001 TFL made disclosures, whereby it was announced that there had been a substantial erosion in the value of NITCL and that NITCL had incurred a provisional loss of Rs. 79.37 crore for the year ended March 31, 2001 as against the disclosed profit of Rs. 11.46 crore for the six months ending on September 30, 2000. Thereafter, Talaulicar transferred Rs. 34.79 lakh, an amount equal to the excess sale consideration to JIP between May 25, 2001 and June 6, 2001. JIP transferred Rs.69 lakhs (the amount of excess sale consideration of Rs. 34.79 lakh along with the actual sale proceeds of Rs. 34.21 lakh) to JHP in June 2001. JHP in turn returned that credit balance of Rs. 83 lakh together with Rs. 70 lakh that it had received on March 30, 2001 to NITCL in May-June 2001 as no major purchase of securities was made. Thus, overall, a sum of Rs. 153 lakh was returned by JHP in May-June, 2001 to NITCL as NITCL decided not to invest in securities. Hence, it appears that Talaulicar wanted to refund the excess consideration that he received over and above the ruling market price in advance to avoid scrutiny of the transaction once the financial status of the affairs of TFL and NITCL became public in view of the aforesaid disclosure dated April 30, 2001 by TFL.

13. JIP, the noticee herein, had issued bills dated September 6, 2000 reflecting sale of one lakh shares of TFL by Talaulicar and his family members. It appears that no such transactions had ever taken place and the aforesaid bills were created with a back date to enable Talaulicar to get a higher price for the shares of TFL prevailing on September 6, 2000 which was between Rs. 65.10 to Rs. 74.05 at BSE as against the then ruling market price of Rs. 40 on March 30, 2001. Moreover, Talaulicar had given a request to his DP to transfer shares on April 4, 2001 and those shares were in JIP's demat accounts till May 2001.

14. In its reply submitted before the Enquiry officer vide its letter dated September 9, 2003, JIP denied any link between receiving Rs. 69 Lakh from JHP on March 31, 2001, which it stated was on account of dues receivable and the amount of Rs. 69 Lakhs given to Talaulicar and his family members on March 30, 2001. The noticee had also stated that the amounts paid by JIP to JHP were towards margin deposit in the normal course of business and not towards repayment to NITCL by Talaulicar. The sub-broker stated that the amount of Rs. 69 lakh

given to Talaulicar and his family was towards loan for which the latter had deposited 100,000 shares of TFL in the demat account of JIP on April 4, 2001.

15. Further, appearing before the Enquiry Officer, JIP denied that it had ever issued 5 bills, number FST/165-169 all dated September 6, 2000 for a total amount of Rs. 69 lakh in favour of Talaulicar and his family members for any transaction in securities as alleged. The noticee submitted that the bills dated September 6, 2000 purported to have been issued by it are fake, fabricated and forged. According to JIP, the 1 lakh shares deposited by Talaulicar and family were sold between May 18, 2001 and June 1, 2001.
  
16. The noticee further submitted that after the sale of the shares for a total consideration of Rs. 34.21 lakh as mentioned above, Talaulicar also paid the balance amount of Rs. 34.79 lakh between May 25, 2001 and June 6, 2001. The sub broker claimed that the amount was towards repayment of loan.
  
17. I note that the contention of the sub broker that it had lent Rs. 69 lakh to Talaulicar and his family members on March 30, 2001 is not supported by any evidence as there were no loan agreement stipulating the terms and conditions of the loan, the interest to be charged, the repayment schedule, and so on. Even the receipt of shares of TFL which were supposed to be collateral for the loan, were transferred to the sub broker's pool account on April 4, 2001. I note that at the time, these shares were worth only Rs. 40 lakh. I agree with the Enquiry Officer that the payment of Rs. 69 lakh against a collateral of just Rs. 40 lakh is very unusual in a loan transaction where normally high margins are maintained to avoid erosions of value in case of fluctuations in market prices. Further, neither was a pledge created in terms of SEBI (Depositories and Participants) Regulations, 1996 for the so called loan, nor does there appear to be any notice given by the sub broker before selling those share as is usually the practice in such transactions.

18. In view of the foregoing, it appears that the noticee sub-broker acted as a conduit for the transfer of funds from NITCL to Talaulicar and later for the refund of the amount by Talaulicar to NITCL. Furthermore, bills were issued by the sub broker for the ostensible sale of 1 lakh shares on September 6, 2000 to facilitate Talaulicar to get higher price of Rs. 69 as against the market price of Rs. 40 prevailing on March 30, 2001. The conduct of the sub-broker is highly irregular and in violation of the provisions of Clauses A(1) & D(4) of Schedule II of the Code of Conduct for Sub Brokers under Regulation 15 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 and Regulation 4(c) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995.
19. I note that pursuant to the notification of the Intermediaries Regulations, the Enquiry Regulations have been repealed and in terms of Regulation 38(2) of the Intermediaries Regulations, notwithstanding such repeal, any enquiry commenced under the Enquiry Regulations, shall be deemed to have been commenced under the corresponding provisions of intermediaries Regulations.
20. Accordingly, I, in exercise of the powers conferred upon me in terms of Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulations 28(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby suspend the certificate of registration of **JIP Investment Share & Stock Broker** (SEBI Registration no. **INS 010370919/06130**), sub-broker BSE for a period of **four (4) months**.
21. This order shall come into force on expiry of twenty one days from the date of this order.

**DATE: March 27, 2012**

**PLACE: MUMBAI**

**PRASHANT SARAN**  
**WHOLE TIME MEMBER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

