**WTM/MPB/EFD-1-DRA-III/ 191 /2021**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**MS. MADHABI PURI BUCH, WHOLE TIME MEMBER**

**Order**

**Under Regulation 27(5) read with Regulation 38 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008**

**In Re: SEBI (Prohibition of Insider Trading) Regulations, 1992**
**SEBI (Stock Brokers and Sub Brokers) Regulations, 1992**
**SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995**

**In the respect of**

| Sl. No | Name | Registration No. |
|---|---|---|
| **1.** | **MSS Securities Private Limited (Formerly known as "Malini Sanghvi Securities Pvt. Ltd")** | **INB010994130** |

**In the matter of Tata Finance Limited**

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***BACKGROUND OF THE CASE:***

1. M/s MSS Securities Private Limited (formerly known as **"Malini Sanghvi Securities Private Limited"**) (hereinafter referred to as the **"Noticee" / "MSS" / "Broker"**) is a member of Bombay Stock Exchange Limited, Mumbai (hereinafter referred to as **"BSE"**) and is registered with the Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) as a Stock broker under Section 12 of SEBI Act, 1992 with Registration Number INB010994130.

2. Pursuant to a complaint received from Tata Finance Limited (hereinafter referred to as **"TFL" / "Company"**), SEBI conducted an investigation in the transaction in shares of TFL during the period from September 2000 to April 2001. The investigation *inter alia* alleged that MSS, a SEBI registered broker and a member of BSE, gave antedated contract notes in Form B to the sellers i.e. Mrs. Anuradha Pendse (hereinafter referred also as **"Anuradha"**), Nalini Properties Pvt. Ltd. (hereinafter referred to as **"NPPL"**), Anjudi Property & Investment Pvt. Ltd. (hereinafter referred to as **"APIPL"**) and Dr. Anjali Beke (hereinafter referred also as **"Anjali"**) for off market transaction of 1,40,000 shares of TFL. Further MSS issued antedated contract notes in Form - B to ultimate buyers of the shares, India Emerging Company Investment Ltd (hereinafter referred to as **"IECIL"**) for off market transaction of 1,40,000 shares of TFL. Investigation alleged that MSS have done the back dating and falsification of contract notes, bills and books of accounts to show that these transactions in the shares of TFL had taken place during September 2000, though the transactions were actually entered in March 2001. Further, during the investigation it was also alleged that MSS had assisted, aided and abetted Mrs. Anuradha Pendse, NPPL, APIPL and Dr. Anjali Beke in insider trading and in causing wrongful loss to IECIL.

3. Based on the findings of the investigation, SEBI initiated enquiry proceedings against MSS in terms of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and imposing Penalty) Regulations, 2002 (hereinafter referred to as **"Enquiry Regulations, 2002"**). An Enquiry Officer was appointed to enquire into the alleged violations of various provisions of the SEBI (Stock Brokers & Sub Brokers) Regulations, 1992**,** (hereinafter referred to as the "**Brokers Regulations**"), SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as "**PFUTP Regulations**"), SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **"PIT Regulations"**) and SEBI Circulars. Accordingly, a show cause notice dated July 21, 2003 was issued to MSS by the Enquiry Officer.

***ENQUIRY REPORT:***

4. After concluding the enquiry, in terms of Regulation 13(1) of Enquiry Regulations, 2002 the Enquiry Officer had submitted the Enquiry Report dated August 08, 2005 in respect of MSS, wherein the Enquiry Officer had found that MSS have violated the certain provisions of SEBI Circular and recommended a minor penalty of censure against MSS.

5. ***Allegation before Enquiry Officer:*** The allegation made against broker, MSS in the Enquiry Report are inter alia as under:

5.1. It is alleged that the broker, MSS had issued contract notes in Form B dated September 11, 2000 whereby Mrs. Anuradha Pendse, NPPL, Dr. Anjali Bake and APIPL are shown to have sold, 10,000, 30,000, 20,000 and 80,000 shares of TFL respectively to the broker, MSS at a price of Rs. 90/- per share and the broker had also issued contract notes of the same date in Form B whereby IECIL is shown to have purchased 1,40,000 shares from the broker at a price of Rs.90/- per share. It is also alleged that there was no corresponding credit or debit entry in the broker's neither demat account or that of the buyers or sellers for the aforesaid transactions nor was there any payments made by the broker to the seller or receipt of funds by the broker. Therefore it is alleged that the broker had issued fictitious contract notes without there being actual transaction in contravention of Regulation 6(d) of PFUTP Regulations, 1995.

5.2. Thus, it is further alleged that for the transactions mentioned in table below, the broker did not issue any contract notes in violation of Clause B(2) of the Code of Conduct specified in Schedule II, read with Regulation 7 of Broker Regulations. It is also alleged that these transactions were not executed on the screen based trading system of BSE in violation of SEBI Circular No. SMDRP/POLICY/CIR-32/99 dated September 14, 1999.

***Table No. 1***

| **Seller** | **Scrip** | **Quantity** | **Rate (Rs.)** | **Credit of shares into your demat a/c** | **Payment to seller** |
|---|---|---|---|---|---|
| Mrs Anuradha Pendse | TFL | 10,000 | 90 | 28.03.01 | 26.04.01 |
| NPPL | TFL | 30,000 | 90 | 30.03.01 | |

| | | | | | |
|---|---|---|---|---|---|
| Dr. Anjali Beke | TFL | 20,000 | 90 | 28.03.01 | Rs. 13.5 lakhs - 02.04.01,<br>Rs. 4.5 lakhs - April 01 |
| APIPL | TFL | 80,000 | 90 | 28.03.01 | March 01 (end |
| **Total** | | 1,40,000 | | | |

5.3. It is alleged that aforesaid transactions were not reported to BSE is in violation of SEBI Circular No. SMD/RCG/CIR/(BKG)/293/95 dated March 14, 1995. Besides, the broker failed to obtain written consent from the clients for acting as principal for the aforesaid transactions in violation of SEBI Circular dated October 29, 1993 read with Regulation 17(1)(j) of Broker Regulations, 1992 especially when the price of the scrip was between Rs.39 and 43/- during the period March 28-31, 2001 in BSE. It is alleged that payment to the client was not made within the stipulated period in violation of Clause B(1) of the Code of Conduct as specified in Schedule II read with Regulation 7 of Broker Regulations and Circular dated November 18, 1993.

5.4. It is alleged that Mr. Dilip Pendse being an insider and connected person knew about the poor financial position of TFL on account of losses incurred by Niskalp Investment and Trading Company Ltd (NITC) a wholly owned subsidiary of TFL even before the said information was made public on April 30, 2001 and communicated this unpublished price sensitive information to broker, MSS. It is alleged that MSS had assisted, aided and abetted Mrs. Anuradha Pendse, NPPL, APIPL and Dr. Anjali Beke in insider trading. Therefore, it is alleged that MSS has violated Regulation 3(i) of PIT Regulations.

6. ***Finding in Enquiry Report:*** The findings mentioned against broker, MSS in the Enquiry Report are inter alia as under:

6.1. The contract notes and bills thereto were issued on September 11, 2000 and September 16, 2000 respectively. The BSE was informed of the transaction on September 16, 2000. The payment and deliveries were completed on March 28, 2001 when the parties to the contract have fulfilled their respective obligations. There is no dispute between the parties on the delay in settlement of the contract. The parties have accepted payments and effected deliveries. Merely because, there is delay in consummation of the contract

entered into by and between the parties, it would be difficult to conclude that the contracts themselves were fictitious ones. It is not the case that the broker has issued contract notes twice for the same transactions. The broker has informed the stock exchange about the impugned transactions on September 16, 2000. However, there appears to be some delay in informing the same to BSE and the BSE vide its letter dated March 11, 2004 has warned the broker to be careful in future.

6.2. It is not disputed that the contract notes were issued on September 11, 2000 for the impugned transactions. Bills thereto were also issued by the broker on September 16, 2000. BSE was also informed of the transactions by the brokers Letter dated September 16, 2000. There was considerable delay in settlement of the transactions until March 28, 2001 when the shares were delivered by the selling clients and consequently payments were made to the buying clients. There is no dispute by and between the buying and selling parties to the contract with respect to their respective obligation. Therefore, it cannot be said that the broker had issued fictitious contract notes. However, there is definitely an irregularity in the issuance of contract notes in Form-B which the broker had admitted.

6.3. Since the impugned transactions have been reported to BSE vide letter dated September 16, 2000 of the broker, it cannot be concluded that there is violation of SEBI circular SMD/RCG/CIR/(BKG)/293/95 dated March 14, 1995.

6.4. To the allegation that the broker has assisted, aided and abetted Mrs. Anuradha Pendse, NPPL, APIPL and Dr Anjali Beke in insider trading, there is no sufficient evidence to suggest that the broker had knowingly assisted the clients in their alleged insider trading. It is not the case that the broker himself had traded in securities of TFL based on unpublished price sensitive information in violation of Regulation 3(i) of SEBI (Insider Trading) Regulations, 1992. In the absence of any such material to suggest that the broker had derived any undue advantage by executing such transaction except that of normal brokerage, the allegation that the broker had aided and abetted his clients for their insider trading is not conclusively established.

6.5. The aforesaid transactions have not been done on the screen based trading system of BSE which is in violation of SEBI Circular No. SMDRP/POLICY/CIR-32/99 dated September 14, 1999 and also cannot be termed as 'hand delivery' contracts as per Bye-law 48(ii) of BSE Byelaws as the delivery is not affected within 7 days from the date of

contract. It also cannot be said that these transaction are not spot delivery contracts permitted under the SCR Act, 1956. The violation of SEBI Circular dated September 14, 1999 in as much as the transactions have not been executed on the screen of the exchange is established. Further, issuance of Form-B contracts by the broker for these transactions is also not in order. There was delay in reporting the transactions to BSE for which the broker was warned by BSE. However, the stock exchange issued a warning to the broker through Disciplinary Action Committee of the exchange.

7. ***Recommendation in Enquiry Report:*** The recommendation made against broker, MSS in Enquiry report are as under:

   7.1. Having regard to the nature and gravity of the charges established, the submissions made and in view of the case law discussed, it is recommended that a minor penalty of censure may be considered against M/s MSS Securities Private Limited (formerly Known as Malini Sanghvi Securities Private Limited) member BSE in terms of Regulation 13(1)(a)(i) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

***POST ENQUIRY SHOW CAUSE NOTICE:***

8. Pursuant to the submission of Enquiry Report dated August 08, 2005, in respect of MSS by the Enquiry Officer, SEBI issued a post enquiry Show Cause Notice dated October 03, 2005 enclosing a copy of Enquiry Report dated August 08, 2005 (hereinafter referred to as **"SCN" / "Enquiry Report"**) under Regulation 13(2) of Enquiry Regulations, 2002, to MSS wherein MSS was advised to reply to the SCN within 21 days from the date of receipt of said notice. The said SCN was delivered to MSS on October 03, 2005. The proof of delivery is available on record.

***REPLY TO POST ENQUIRY SCN:***

9. MSS vide its letter dated October 20, 2005, had submitted its reply to the SCN dated October 03, 2005. The reply of MSS in brief are as under:

9.1. With reference to the allegation that the transaction referred to in the Enquiry Notice was one on principal to principal basis, as the contract format used was Form B, Enquiry Officer has absolved MSS. Enquiry Officer finding establishes MSS contention that they had not done any proprietary trading but only traded for the clients and that Form B was inadvertently issued. The Enquiry Officer has come to the conclusion that MSS had not done any trading on a principal to principal basis and issuance of Form B Contract was only a procedural irregularity. Since Enquiry Officer has not viewed the same as an offence, therefore it is submitted that no penalty is called for.

9.2. The Enquiry Officer has observed that since the impugned transactions have been reported to BSE vide letter dated 16.9.2000, it cannot be concluded that there is violation of SEBI Circular SMD/RCG/CIR/BKG/293/95 dated 14.3.95. With reference to the alleged delayed reporting of the transaction to BSE, Enquiry Officer has also noted that since BSE has already issued a warning, therefore it is submitted that no further penalty is called for again.

9.3. It is submitted that the said transactions were "hand delivery" bargains as provided for under the byelaws of BSE. The requirement of bye law 48(ii) of BSE bye laws is that *"for hand delivery i.e. for delivery and payment within the time or on the date stipulated when entering into the bargain..."*. MSS had fulfilled the said requirement by stipulating the requisite timeframe for settlement while issuing the contract notes / bills. The settlement period mentioned was 09.09.2000 to 16.09.2000 on the contract notes & bills. Thus, it was clear that the transactions were to be completed within the stipulated time frame. The constituents delayed performing their obligations. As per byelaw 48(ii) relating to "Bargains" reads as follows: *"for hand delivery", i.e. for delivery and payment within the time or on the date stipulated when entering into the bargain, which time or date shall not be more than fourteen days following the date of the contract."*

9.4. For the said contracts when entered into, the settlement period is mentioned as 09.09.2000 to 16.09.2000, which was not more than 14 days as stipulated in bye law 48(ii).

9.5. Further such off the floor transactions, were not barred or prohibited as per Rules, Bye laws or Regulations of BSE. The said transactions were reported to BSE. Therefore, it is erroneous to hold that MSS have violated SEBI Circular SMDRP/POLICY/CIR-32/99 dated September 14, 1999. In any case, the said circular applies to Negotiated Deals but does not have the effect of taking away what is permitted and contemplated in Byelaw 48(ii) of the Rules, Byelaws, and Regulations of BSE. Further, as per the said circular, Negotiated Deals to be executed on the screens of the exchanges in the price and order matching mechanism of the exchanges.

9.6. Further, the Hon'ble Supreme Court in the case of *Ex-Naik Sardar Singh V. Union of India (1991) 3 SCC 212* has *inter alia* held that *"the penalty imposed must be*

*commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution".* It is submitted that, in the light of the principle laid down by the Hon'ble Supreme Court the minor penalty of censure for technical and procedural violation is very harsh in the facts and circumstances of the instant case. In this regard MSS may also invite attention to the order dated 31.08.04 passed by Hon'ble Securities Appellate Tribunal in the matter of *Reliance Industries Ltd vs. SEBI*.

***SUPPLEMENTARY SHOW CAUSE NOTICE:***

10. While these proceedings were pending, the Enquiry Regulations, 2002 were repealed on May 26, 2008, by Intermediaries Regulations 2008. Accordingly, the Designated Member continued with the proceedings in terms of Regulation 28 read with 38(2) of the Intermediaries Regulations 2008 and Regulation 13 of the Enquiry Regulations, 2002.

11. Subsequently, the Designated Member after considering the recommendation in the Enquiry Report dated August 08, 2005 submitted to him along with show cause notice dated July 21, 2003 issued by the Enquiry Officer, was of the view that there are certain additional / other facts which are found fit for consideration and which have not been considered by the Enquiry Officer while making recommendations in his report. Therefore, SEBI had issued a Supplementary Show Cause Notice dated January 19, 2012 (hereinafter referred to as **"SSCN"**) to MSS. Vide the said SSCN, MSS was informed that SSCN was issued under Regulation 28(1) read with Regulation 38(2) of Intermediaries Regulations in continuation of SCN dated October 03, 2005. Further, MSS was also called upon to show cause as to why higher penalty as considered appropriate should not be imposed in terms of Regulation 28(1) read with Regulation 38(2) of Intermediaries Regulations in respect of the transactions executed by MSS in the shares of TFL.

12. The allegation mentioned in SSCN in brief are as under:

    12.1. MSS have reported the impugned transactions to BSE in September 2000 vide letter dated September 16, 2000, to BSE enclosing 5 contract notes executed by them in Form B, bearing nos. GB01/1, GB01/2, GB01/3, GB01/4 and GB01/5. On the examination of MSS letter sent to BSE on September 16, 2000, following has been noted by the Designated Member and alleged in SSCN:

12.1.1. That the date and time of receipt is absent in the place provided for the same in the acknowledgment seal.

12.1.2. That the date '19/9/2000' is handwritten on the said letter with the initial, outside the space provided for in the acknowledgment seal.

12.1.3. The contract notes are printed, its sub-serial number is observed to be hand written in few instances.

12.1.4. The case is that Mrs. Anuradha Pendse, NPPL, APIPL and Dr. Anjali Beke sold the shares of TFL to MSS. However, these contract notes shows that the transactions of Mrs. Anuradha Pendse, NPPL, APIPL and Dr. Anjali Beke were entered under the column *'Securities SOLD To you for'* and in the case of IECIL the transaction was mentioned under the column *'Securities BOUGHT FROM you for'*.

12.1.5. The serial numbers of these contract notes reveal that prior to selling 1,40,000 shares to IECIL, MSS had bought total 30,000 shares from Mrs. Anuradha Pendse and Dr. Anjali Beke and 1,10,000 shares were bought by MSS after selling 1,40,000 shares to IECIL. MSS could not have sold 1,40,000 shares of TFL [Contract Note No. GB01/3] to IECIL, when only 30,000 shares of TFL were available [Contract Note Nos.GB01/1 (for 10,000 shares) and GB01/2 (for 20,000 shares)].

12.2. From the Ledger statement of Mrs. Anuradha Pendse maintained by MSS, it is noted that there was a credit amount of Rs.9,00,000/- on September 16, 2000, towards Bill No. 201003. However, the corresponding debit was recorded only on March 30, 2001. This kind of delay is abnormal and shows that the sale of the shares of TFL by Mrs. Anuradha Pendse had taken place in March, 2001 and not September, 2000.

12.3. From the Ledger statement of NPPL for the financial year 2000-01, following is noted:

12.3.1. Rs.27,00,000/- was credited by MSS to the account of NPPL on September 16, 2000, by Bill No.201006 / ZGBO1. However, there is no mention of any date of receipt of actual payment for the said credit entry by NPPL from MSS.

12.3.2. Additional credit was advanced to the account of NPPL vide Bill Nos. 200001/ZGFC2, 200003/ZGFC3 and 200001/ZGFC4 dated 9/09/2000, 10/09/2000 and 11/09/2000 respectively to the tune of Rs.18,12,941.99/-, Rs.13,13,006.82/- and Rs.2,05,726.38/- respectively. The consequent payment for these credit entries were received in the month of September 2000 itself vide PYMT No. 317/ZBCO8, PYMT No. 320/ZBCO8 and PYMT No. 321/ZBCO8 for the corresponding amounts as mentioned above.

12.3.3. MSS received Rs.50,00,000/- from NPPL which was shown as a credit entry on December 20, 2000 in MSS books. There is no valid explanation for NPPL to have paid Rs.50,00,000/- to MSS in December 2000 when a due of Rs.27,00,000/- was outstanding from MSS side since September 16, 2000.

This shows that the transactions in shares of TFL shown to have taken place in September, 2000, were not genuine and actual transactions have taken place in March, 2001.

12.4. That these transactions pertain to the financial year 2000-2001, whereas the BSE Disciplinary Committee minutes are dated March 12, 2003. The contract notes relied upon by the Disciplinary Action Committee suffers from several discrepancies.

12.5. With regard to the sale of shares of TFL by Mrs. Anuradha Pendse, she had claimed a taxable gain of Rs. 6,05,199/- on sale of 10,000 TFL shares. For the sale of shares in September 2000 as claimed by her, Mrs. Anuradha Pendse was required to pay advance tax on the capital gains by September 15, 2000 or December 15, 2000 as applicable. It is noted that no advance tax was paid during the financial year 2000-01 and interest of Rs. 44,057 u/s 234B of the Income Tax Act, 1961 was paid for default on payment of advance tax and a sum of Rs. 31,754 was paid u/s 234C of the said Act towards interest for deferment of advance tax. The fact that Mrs Anuradha S Pendse did not pay advance tax in respect of sale of TFL shares in December 2000 strengthens the allegations that the transaction happened after December, 2000.

12.6. Thus, on the basis of above ground, it was alleged in the SSCN that MSS have issued backdated / fictitious contract notes to show that the transactions have taken place in September, 2000 instead of March 2001, and thus assisted, aided and abetted in insider trading.

***REPLY TO SSCN:***

13. MSS vide its letter dated March 20, 2012, had submitted its reply to the SSCN dated January 19, 2012. Vide said reply, MSS had requested for the inspection of documents and cross examination of Mr. R.V. Ramanujan, Mr. P.B. Bandvedkar, Mr. Dilip Pendse, Dr. Anjali Beke, Mrs. Anuradha Pendse, SEBI officers who visited them on January 19, 2002, and any other person whose statement is relied upon by SEBI. The reply of MSS in brief are as under:

13.1. MSS denied the allegation made in the SSCN dated January 19, 2012, and SCN dated October 03, 2005.

13.2. The SSCN was issued after a passage of almost 6 years from the date of filing of their reply dated October 20, 2005, to the SCN dated October 03, 2005. The Enquiry Regulations, 2002 under which SCN dated October 03, 2005, was issued requires the Chairman or Member to pass such order within one hundred and twenty days from the date of receipt of reply to the SCN, which SEBI evidently failed to pass even after a passage of more than 6 years from the date of reply to the SCN. The inordinate and inexplicable delay of 6 years is in contradiction to applicable regulations and also in violation of Principles of Natural Justice.

13.3. The investigation into the same transactions was also conducted by BSE. Based on its investigations, the Disciplinary Action Committee (hereinafter referred to as **"DAC"**) of BSE, after considering all the facts and circumstance of the matter, only issued warning to MSS.

13.4. Further, the issue involved in the SSCN is no more res-integra, since the same has been already decided by the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"Hon'ble SAT"**) vide its order dated November 19, 2009, in Appeal no. 80 of 2009, wherein Hon'ble SAT has given a categorical finding that the transactions were not backdated. In the light of the findings of Hon'ble SAT, which as matter of Judicial discipline are binding on SEBI, the charges / allegation in the SCN do not survive.

***INSPECTION OF DOCUMENTS:***

14. From the reply of MSS, it is noted that MSS had sought for the inspection of documents. From the documents available on record, I find that SEBI had provided the opportunity of inspection of documents to MSS multiple times and the same was finally availed by MSS on January 24, 2017. The details in this regard are as under:

***Table No. 2***

| Date of MSS letter seeking Inspection | Date of SEBI Inspection Notice | Date of Inspection | Date of MSS letter requesting adjournment of Inspection | Opportunity of Inspection availed or not |
|---|---|---|---|---|
| March 20, 2012 June 15, 2012 | May 18, 2012 | June 06, 2012 | | Adjourned, due to Administrative Exigencies |
| | June 21, 2012 | July 06, 2012 | July 03, 2012 | Adjourned, on request of MSS |
| | December 16, 2016 | December 22, 2016 | December 20, 2016 | Adjourned, on request of MSS |
| | December 26, 2016 | January 06, 2017 | December 30, 2016 | Adjourned, on request of MSS |
| | January 10, 2017 | January 24, 2017 | | Yes, availed on January 24, 2017 |

***CROSS EXAMINATION:***

15. MSS vide its letter dated March 20, 2012 had requested for the cross examination of Mr. R.V. Ramanujan, Mr. P.B. Bandvedkar, Mr. Dilip Pendse, Dr. Anjali Beke, Mrs. Anuradha Pendse, SEBI officers who visited them on January 19, 2002, and any other person whose statement is relied upon by SEBI. From the documents available on record, I find that SEBI had provided the opportunity of cross examination to MSS multiple times. It is noted that after acceding multiple request of MSS to adjourn cross examination, SEBI vide letter dated April 03, 2017, has advised MSS to avail the opportunity of cross examination on April 06, 2017 and if MSS, fail to avail, then opportunity of cross examination may be closed. I find that MSS did not avail the opportunity of cross examination on April 06, 2017, thereby, the proceeding of cross examination was closed. The details in this regard are as under:

***Table No. 3***

| **Witness name** | **Date of MSS letter seeking Cross Examination** | **Date of SEBI Notice** | **Date of Cross Examination** | **Date of MSS letter requesting adjournment of Cross Examination** | **Opportunity of Cross Examination availed or not** |
|---|---|---|---|---|---|
| 1. Mr. Dilip Pendse.<br>2. Mr. P.C Bandivadekar<br>3. Mr. R.V. Ramanujan<br>4. Mrs. Anjali Beke | March 20, 2012 | December 16, 2016 | January 09, 2017 | | Adjourned, due to Administrative Exigencies |
| | | December 26, 2016 | January 11, 2017 | December 30, 2016 | Adjourned, on request of MSS |
| | | January 04, 2017 | February 16, 2017 | February 08, 2017 | Adjourned, on request of MSS |
| | | March 21, 2017 | April 06, 2017 | March 27, 2017 | Witnesses appeared except Mr. Dilip. Pendse.<br>MSS did not appear to cross examine.<br>Cross examination proceedings were closed. |

***HEARING, REPLY AND WRITTEN SUBMISSION:***

16. In the interest of natural justice, vide notice dated May 11, 2017, MSS was granted an opportunity to appear for a personal hearing on May 30, 2017, at SEBI, Head Office, Mumbai. MSS vide letter dated May 19, 2017, had requested for adjournment of hearing.

Acceding to the request, in the interest of natural justice, vide notice dated May 30, 2017, MSS was granted another opportunity to appear for a personal hearing on June 13, 2017, at SEBI, Head Office, Mumbai. MSS once again vide letter dated June 06, 2017, had requested for adjournment of hearing. However, it is noted that said adjournment request was not acceded to and same was communicated to MSS vide notice dated June 12, 2017. Vide said notice MSS was advised to appear for a personal hearing on June 13, 2017, at SEBI, Head Office, Mumbai. Mr. Ajit R Sanghvi, Director of MSS Securities Private Limited and Mr. Apurv Gupta, Advocate, Authorized Representatives (ARs) appeared on behalf of MSS Securities Private Limited and submitted the reply dated June 12, 2017, to the post enquiry SCN dated October 03, 2005, and supplementary SCN dated January 19, 2012. The ARs requested for the adjournment of hearing, however the same was rejected, as adequate opportunity was already granted. ARs were advised to make their oral submissions. ARs made oral submissions in line with replies available on record. ARs denied all the allegations levelled against MSS in the post enquiry SCN dated October 03, 2005, and supplementary SCN dated January 19, 2012. ARs were granted one week's time i.e. till June 20, 2017, to submit the additional written submissions, if any, in the matter.

17. During the course of hearing, ARs submitted MSS reply dated June 12, 2017, to the post enquiry SCN dated October 03, 2005, and supplementary SCN dated January 19, 2012. Further, subsequent to the hearing held on June 13, 2017, MSS vide letter dated June 19, 2017, submitted written submission in the matter. The reply and written submission of MSS have been considered and dealt in detail in later part of this order below.

## ***FINDINGS AND CONSIDERATION***

18. I have perused the SCN, SSCN, replies of MSS, oral and written submissions made by MSS and other materials available on the record. On perusal of the same, the following issues arise for consideration. Each issue is dealt with separately under different headings:

18.1. ***Issue No. 1:*** *Whether, in view of the order dated November 19, 2009 of Hon'ble SAT in Appeal no. 80 of 2009 passed in the connected matter, the issue involved in the SSCN is no more res-integra and the decision of Hon'ble SAT is binding on quasi-judicial authority of SEBI?*

18.2. ***Issue No. 2:*** *If issue No. 1 above is determined in affirmative, then whether the contract notes dated September 11, 2000 issued by Noticee to Mrs. Anuradha Pendse, NPPL, Dr. Anjali Bake and APIPL and IECIL are fictitious and thereby, Noticee had violated Regulation 6(d) of PFUTP Regulations, 1995?*

18.3. ***Issue No. 3:*** *Whether Noticee had assisted, aided and abetted Mrs. Anuradha Pendse, NPPL, APIPL and Dr. Anjali Beke in insider trading, thereby Noticee had violated Regulation 3(i) of PIT Regulations, 1992?*

18.4. ***Issue No. 4:*** *Whether the Noticee had failed to execute the transaction dated September 11, 2000 between selling clients and buying client, on screen based trading system of BSE, and thereby violated SEBI circular SMDRP/POLICY/CIR-32/99 dated September 14, 1999?*

18.5. ***Issue No. 5:*** *Whether Noticee had failed to obtain written consent from client for acting as principal for the impugned transactions and thereby violated SEBI Circular no. SMD(B)/104/22775/93 dated October 29, 1993 read with Regulation 17(1)(j) of Broker Regulations?*

18.6. ***Issue No. 6:*** *Whether Noticee by not reporting the transaction to BSE which it executed in March 2001 had violated the provision of SEBI Circular no. SMD/RCG/CIR/(BKG)/293/95 dated March 14, 1995?*

18.7. ***Issue No. 7:*** *Whether Noticee by not issuing of any contracts notes for the transaction executed in March 2001 had violated the provision of Clause B((2) of Code of Conduct as Specified in Schedule II read with Regulation 7 of Broker Regulations, 1992?*

18.8. ***Issue No. 8:*** *Whether Noticee by not making the payment to client NPPL within the stipulated time, had violated the provision of Clause B(1) of Code of Conduct as Specified in Schedule II read with Regulation 7 of Broker Regulations, 1992 and SEBI circular No. SMD/SED/CIR/93/23321 dated November 18, 1993?*

18.9. ***Issue No. 9:*** *If any or all of the above issues are determined in affirmative, then whether any penalty as proposed should be issued against MSS?*

19. Before moving forward it will be appropriate to refer to the relevant provisions of PFUTP Regulation, 1995, Broker Regulation, 1992, PIT Regulations, 1992 and relevant SEBI Circulars which read as under:

***Relevant Provisions:***

19.1. ***PFUTP REGULATIONS, 1995***

***Prohibition on unfair trade practice relating to securities***

***Regulation 6.*** *No person shall -*

*(a) …*

*(b) .....*

*(c)……*

*(d) indulge in falsification of the books, accounts and records (whether maintained manually or in computer or in any other form);*

19.2. ***BROKERS REGULATIONS:***

***To maintain proper books of account, records, etc.***

***Regulation 17*** *(1) Every Stock Broker shall keep and maintain the following books of account, records and documents, namely:—*

*(j) Written consent of clients in respect of contracts entered into as principals;*

***SCHEDULE II***

*Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992*

***CODE OF CONDUCT FOR STOCK BROKERS***

***B. Duty to the Investor***

*(1) Execution of Orders: A stock-broker, in his dealings with the clients and the general investing public, shall faithfully execute the orders for buying and selling of securities at the best available market price and not refuse to deal with a Small Investor merely on the ground of the volume of business involved. A stock-broker shall promptly inform his client about the execution or non-execution of an order, and make prompt payment in respect of securities sold and arrange for prompt delivery of securities purchased by clients.*

*(2) Issue of Contract Note: A stock-broker shall issue without delay to his client a contract note for all transactions in the form specified by the stock exchange.*

19.3. ***PIT REGULATIONS, 1992:***

***Prohibition on dealing, communicating or counselling on matters relating to insider trading.***

***Regulation 3. 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;*

19.4. ***SEBI circular SMD/RCG/CIR/(BKG)/293/95 dated March 14, 1995***

*The exchange is, therefore, directed to take steps to ensure that:*

1. *Brokers are required to report all transactions done on a spot basis on the same day.*
2. *Brokers are required to report on the same day all transactions adjusted in their books - whether between two clients or whether between a client and the broker as a principal.*

19.5. ***SEBI circular SMDRP/POLICY/CIR-32/99 dated September 14, 1999***

*All negotiated deals (including cross deals) shall not be permitted in the manner prescribed in circulars mentioned above and all such deals shall be executed only on the screens of the exchanges in the price and order matching mechanism of the exchanges just like any other normal trade.*

19.6. ***SEBI circular SMD/SED/CIR/93/23321 dated November 18, 1993***

*Member Brokers shall make payment to their clients or deliver the securities purchased within two working days of pay-out unless the client has requested otherwise. Stock Exchange shall issue a Press Release immediately after the pay-out.*

***Preliminary Objections:***

20. Further, before moving forward to the main issues in the matter, I first discuss the preliminary objections raised by MSS.

21. **Inspection of documents:**

21.1. MSS contented that vide their various letters dated March 20, 2012, June 15, 2012, July 03, 2012, September 04, 2012, December 20, 2016, December 30, 2016, February 08, 2017 and dated March 27, 2017, they had, inter-alia, sought inspection of various documents referred to or relied upon in Investigation Report, SCN and SSCN. Further, copies of all the documents as sought for have not been provided to them as on date.

21.2. In this regard, from the records available on record, it is noted that after granting multiple opportunities of inspection (as mentioned in table 2 above) to MSS, on January 24, 2017, the director of MSS along with Authorized Representative Adv. Apurv Gupta and Adv. Ayush Agarwal had conducted the inspection of documents and copies of all the inspected documents were provided to them. Accordingly, the proceeding of Inspection was concluded. Subsequently, MSS vide letter dated February 08, 2017, pointed out several deficiencies in the documents provided for inspection and requested to provide copies of additional documents. In response to MSS letter February 08, 2017, SEBI vide letter dated February 15, 2017, gave point-wise reply to the deficiencies pointed out by MSS and provided copies of some additional documents sought by MSS. Vide said letter dated February 15, 2017 SEBI also communicated to MSS that majority of additional documents sought by them have already been provided to them during the inspection of documents conducted on February 03, 2004 (inspection granted prior to the submission of enquiry report) and January 24, 2017. A copy of acknowledgement of receipt of such documents by MSS was also provided to them.

21.3. It is noted that MSS vide letter dated March 27, 2017, had once against sent a list of deficiencies in the documents forwarded by SEBI and requested to re-schedule the cross-examination on April 06, 2017. SEBI vide letter dated April 03, 2017, had provided the point wise reply to MSS's letter dated March 27, 2017, and advised MSS to be present for the cross-examination on April 06, 2017. It relevant to note that MSS had sent the letter dated March 27, 2017, only after receiving the communication of the schedule of cross-examination and had pointed out further deficiencies in the documents forwarded by SEBI. I note from the conduct of the Noticees, that it had sought multiple adjournments of Inspection of documents and Cross Examination

causing repeated delay in the proceedings. The details of the same are mentioned at Table 2 and 3 respectively. I note that multiple opportunities for inspection were provided to MSS; detailed replies / clarification along with additional documents were forwarded to MSS in response to all MSS letters and SEBI vide letter dated February 15, 2017, and April 03, 2017, had communicated MSS that all relevant documents were provided to them. In view of the same, the contention of MSS that inspection is incomplete is not tenable

22. **Cross Examination of witnesses:**

22.1. MSS submitted that they have been making requests for conducting cross examination vide their letters dated February 04, 2004, February 05, 2004, March 20, 2012 and February 08, 2017. SEBI vide its letters dated March 21, 2017 and April 3, 2017 had advised MSS to be present for the cross-examination of witnesses (namely Mr. P.C. Bandivadekar, Mr. Dilip Pendse, Ms. Anjali Beke and Mr. RV Ramanujam) scheduled on April 06, 2017. It is further submitted by the Noticee, that the statement of said witnesses were attached with letter dated April 03, 2017 except of Mr. Dilip Pendse's statement. MSS had also requested SEBI to provide with the copy of the statements of Mr. Dilip Pendse for the purpose of seeking cross examination but the statement was provided by SEBI vide its letter dated May 11, 2017 i.e. after the opportunity of cross examination was lapsed. Further, it is observed that Mr. Dilip Pendse was not present for cross examination on April 6, 2017 as per the proceedings sheet sent to them by SEBI. Further, from May 11, 2017 letter of SEBI it was surprising to note that the cross examination opportunity is closed. Thus, the denial of cross examination of a person whose statement has been relied upon and referred to by SEBI is in gross violation of principles of natural justice.

22.2. I note that from the records available, during the inspection of documents on February 03, 2004, that all the documents along with statement of witnesses including that of Mr. Dilip Pendse was provided by SEBI to MSS and the same was also acknowledged by MSS vide letter dated February 04, 2004. Further, as requested by MSS vide letter dated March 27, 2017, copy of statement of the witnesses which was already available

with MSS was again provided vide letter dated April 03, 2017 and May 11, 2017. Thus, I do not find merit in the contention of MSS that Mr. Dilip Pendse's statement was not provided to them.

22.3. From the records available, it is noted that multiple opportunities of cross examination (4 nos) were provided to MSS by SEBI through various notices. The details in this regard are mentioned at Table 3. It is pertinent to note that MSS received and acknowledged the said notices communicating the cross examination dates, but did not confirm its presence for attending any of the aforesaid cross-examination proceedings and instead requested adjournment to next dates which were granted by SEBI. Therefore, a final cross examination notice was issued vide SEBI letter dated March 21, 2017, in response to which MSS vide letter dated March 27, 2017, requested SEBI to provide copies of several documents and thereafter schedule the cross-examination of witnesses. Thereafter, a day before the scheduled date of cross-examination, MSS vide email dated April 05, 2017, submitted that the statement of Mr. Dilip Pendse was not attached with SEBI letter dated April 03, 2017. In view of the same MSS requested SEBI to provide the statement of Mr. Dilip Pendse and sought two weeks' time to confirm its presence for cross-examination in the matter. However, as already considerable time has passed and opportunities of cross examination were already provided which MSS itself got it adjourned, MSS was informed vide email dated April 05, 2017, that the witnesses in the matter had already confirmed their presence on April 06, 2017, and one of the witness was flying from Chennai, and therefore advised MSS to be present for the last opportunity for cross-examination scheduled on April 06, 2017, without any further adjournment. It is noted that despite SEBI's communication dated April 03, 2017 and April 05, 2017, and given the fact that the statements are already available with MSS, it failed to attend the cross-examination proceeding scheduled on April 06, 2017, and therefore cross examination proceedings were closed due to non-appearance. Thus, I am of the view that reasonable opportunities of cross examination of the witnesses were provided to MSS, which MSS itself got it adjourned. Further, I note that, MSS has neither requested SEBI to provide a copy of statements of Mr. Dilip Pendse nor indicated in any of its communication that the statement of Mr. Dilip Pendse is not available with them

before March 27, 2017. It is also noted that even during the inspection of documents conducted by MSS on January 24, 2017 and in MSS's letters dated December 20, 2016, December 30, 2016, January 19, 2017 and February 08, 2017, seeking adjournments and requesting SEBI to provide inspection/copies of specific documents, MSS neither requested SEBI to provide a copy of statements of Mr. Dilip Pendse nor mentioned that it is unable to trace the copies of the same at its end. I also note that MSS is only making its contention on the basis of the cross examination opportunity scheduled on April 06, 2017, but has not considered the previous three opportunities granted which were adjourned on its request despite the statement of Mr. Dilip Pendse already available with MSS since 2004. Hence, I do not find any merit in the contention of MSS that it has been denied of cross examination of a person whose statement has been relied upon by SEBI.

22.4. Further, MSS contented that Mr. Dilip Pendse was not present for cross examination on April 6, 2017 and the opportunity of cross examination was closed. In this regard, it is noted that other three witnesses namely, Mr. P.C. Bandivadekar, Ms. Anjali Beke and Mr. RV Ramanujam were present on the scheduled date, however, MSS chose not to appear and avail the opportunity to cross examine. It could have been a different case, if MSS has appeared and witnesses were not present. However, that is not the case here. It is also noted that four opportunities of cross examination (Table 3 above) were granted to MSS, which were either adjourned on the request of MSS or not availed by MSS. The conduct of the Noticee shows that it had no serious intention to complete the cross examination proceedings but, was using the opportunities to delay the proceeding. Thus, I am of the view that reasonable opportunities of cross examination of the witnesses were provided to MSS. Hence, I do not find any merit in the contention of MSS that it has been denied of cross examination of a person whose statement has been relied upon by SEBI and there is a violation of principles of natural justice. Therefore, I am of the view that SEBI had adhered to principles of natural justice.

22.5. Further, MSS contented that till date SEBI has not informed them about any decision regarding cross-examination of Ms. Shirin Bharucha, Authorised Signatory of IECIL

(purchaser of shares) letter dated January 24, 2002, relied on by SEBI, Director of Sheba Properties Ltd. and Mr. B Rayanathan of IECIL who signed, sent letter dated January 24, 2002 relied upon by SEBI. In this regard, it is noted that SEBI vide letter dated May 11, 2017 had communicated MSS about the closure of the opportunity of cross-examination proceedings and denial of cross examination of certain persons along with reasons mentioned as under:

***Table No. 4***

| **Sl.no.** | **Witnesses** | **Reason for closure of opportunity to cross-examine/denial of cross-examination** |
|---|---|---|
| 1 | a. Mrs. Anjali Beke,<br>b. Mr. RV Ramanujan,<br>c. Mr. P.C Bandivadekar,<br>d. Mr. Dilip Pendse | Four opportunity to cross-examine witnesses was given to MSS however the same was not availed. Due to non-appearance of MSS for cross-examination on the fourth opportunity on April 06, 2017.(Table 3) it was closed. |
| 2 | a. Ms. Shirin Bharucha, (Constituted Attorney of TFL)<br>b. Director of India Emerging Corporation Ltd. (IECL),<br>c. Director of Sheba Properties Ltd.,<br>d. Mr. B Rayanathan (Authorised Signatory of IECL) | Opportunity to cross-examine witnesses is denied as no statements have been recorded of these persons. |

22.6. It is noted that MSS had admitted and acknowledged the receipt of letter dated May 11, 2017, therefore, the contention of MSS that till date SEBI has not informed them about any decision regarding cross-examination of Ms. Shirin Bharucha, Director of IECL, Director of Sheba Properties Ltd. and Mr. B Rayanathan is not tenable.

22.7. Further, it is noted that during the enquiry proceedings, Mrs. Anuradha Pendse expired, therefore the opportunity to grant cross examination of witness Mrs. Anuradha Pendse became impossible.

22.8. Further, upon perusal of enquiry report submitted by the enquiry officer and SSCN dated January 19, 2012, I find that apart from the statement of Mrs. Anuradha Pendse,

Mr. Dilip Pendse and Director of MSS, Mr. Ajit Singhvi, SEBI had not relied upon the statement of any other persons in support of allegations against it.

23. **Inordinate Delay:**

23.1. Noticee contended that the impugned transactions pertains to the year 2000. The investigation pertaining to these transactions was completed in 2002, while the Enquiry which commenced in 2003 was completed in the year 2005. Subsequently, the SCN based on the Enquiry Report was issued in 2005. MSS submitted its reply in 2005. After a lapse of around seven years of SCN, SEBI has issued SSCN asking MSS to show cause as to why penalty should not be enhanced. The said inordinate delay is unexplained and severely prejudicial to them and on this ground alone, the proceedings should be dropped.

23.2. In this regard, it is noteworthy that as a generally accepted principle regarding enforcement proceedings / quasi-judicial proceedings by any quasi-judicial authority, inquiry against any subject entity and the consequent action in pursuance of the same should be completed in a reasonable time frame which would serve the objective of balancing the rights of the persons subjected to enforcement action and the investors whose rights are being protected though enforcement proceedings. However, it is equally true that the time consumption in enforcement actions can be caused due to multiplicity of factors such as proceeding is pending against the connected entities on same sets of facts, connected matter is sub-judice i.e. pendency of connected matters before other courts / authorities, non-cooperation by the connected entities involved in a matter, the requisite data / material not being readily available etc.

23.3. In the present case, it would not be out of context to mention that consumption of time was caused, inter alia, on account of similar question of facts and law was covered in a related appeal before the Hon'ble judicial forums and repeated adjournments sought by Noticee regarding inspection of documents, cross examination, hearings, etc.

23.4. Hence, considering the facts and circumstance of the case, I am of the view that passage of time in concluding quasi-judicial proceedings itself cannot be a ground for exonerating the Noticee. What is important is whether the delay, if any, has caused prejudice to the Noticee. At this point, it is important to mention that no case has been

made out by the said Noticee that any prejudice was caused to them on account of the time consumption in concluding enforcement proceedings / quasi-judicial proceedings in the present matter. In this context, I find it relevant to refer to the order passed by Hon'ble SAT in the case of *Metex Marketing Pvt. Ltd. vs. SEBI* (order dated June 4, 2019) wherein Hon'ble SAT held that: *"This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation."* In view of the above, I find that no prejudice has been caused to the Noticee. The elapse of time can be treated as a mitigating factor for moulding the directions, if any, in the facts and circumstances of the case. Thus, I do not find any merit on the said contention of the Noticee that the proceedings should be dropped on the ground of delay alone.

24. ***Irregularity in conducting investigation*:**

24.1. Noticee contented that:

24.1.1. In terms of the Investigating Authority appointment order dated February 08, 2002, the Investigating Officer was appointed to investigate into the affairs relating to the alleged insider trading and the reach of the investigation is limited to insider trading by Shri Dilip Pendse and his relatives / associates and connected persons/companies. The Investigating Officer had no mandate to conduct investigation against MSS and to investigate matters of alleged violations of FUTP Regulations and Stock Broker Regulations.

24.1.2. The power to the SEBI officer were granted by the SEBI Board only on February 8, 2002, whereas the SEBI officers visited Noticee's premises, recorded statement, took certain documents from its office on January 18, 2002 and recorded statement of its director on January 24, 2002. Thus, the investigating officer has acted illegally and without authority. Therefore, the entire proceedings needs to be quashed on this ground alone.

24.2. Upon perusal of Investigating Authority appointment order dated February 08, 2002, I find that that SEBI is empowered to exercise power under Section 11(3) of SEBI

Act. Further, under Section 11(2)(i) of SEBI Act, SEBI has power for calling for information, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organizations in the securities market. The power under Section 11(2)(i) of SEBI Act, can be executed through the means of Section 11(3) of SEBI Act. Section 11(2)(i) read with Section 11(3) of SEBI Act, empowers SEBI for calling for information from, undertaking inspection, conducting inquiries and audits of intermediaries in the securities market, as SEBI has been conferred the power with civil court under the Code of Civil Procedure, 1908 for discovery and production of books of account, inspection of any books and summoning and examining the person on oath. I note that Noticee is an intermediary i.e. broker in securities market. Hence, Section 11(2)(i) read with Section 11(3) of SEBI Act gives power to SEBI to undertake inspection, examine the person on oath and collect the documents etc. against an intermediary at any time. Thus, I do not find any merit on the said contention of the Noticee that investigating officer has acted illegally and without authority.

***Findings on Merits of the case:***

***ISSUE No. 1:*** ***Whether, in view of the order dated November 19, 2009 of Hon'ble SAT in Appeal no. 80 of 2009 passed in the connected matter, the issue involved in the SSCN is no more res-integra and the decision of Hon'ble SAT is binding on quasi-judicial authority of SEBI?***

25. With regard to the allegation against Noticee in the SSCN dated January 19, 2012, Noticee submitted that Hon'ble SAT, in the connected matter of Mr. Dilip Pendse, Mrs. Anuradha Pendse and Nalini Properties Private Limited (NPPL) had passed an order dated November 19, 2009 in Appeal No. 80 of 2009. It is also submitted that the allegations / issues mentioned in SSCN are covered in the said order and is no more res-integra and judicial discipline requires that the said order is binding on SEBI.

26. I note that the allegation / issue mentioned in the present matter is related to the connected matter against Mr. Dilip Pendse, Mrs. Anuradha Pendse and NPPL. In the said connected matter, SEBI has passed an order dated March 31, 2009 against Mr. Dilip Pendse, Mrs. Anuradha Pendse and NPPL. The said entities had filed an appeal against SEBI order dated March 31, 2009 before Hon'ble SAT. The Hon'ble SAT in the said connected matter, vide order dated November 19, 2009 in the appeal no. 80 of 2009, *Dilip S Pendse Vs. SEBI*, had set aside SEBI order dated March 31, 2009.

27. Upon perusal of Supplementary SCN dated January 19, 2012 and Hon'ble SAT order dated November 19, 2009 in the appeal no. 80 of 2009, *Dilip S Pendse Vs. SEBI*, it is noted that the connected matter was on same set of facts / allegation as mentioned in the SSCN, Hon'ble SAT had passed a detailed order which is mentioned in the later part of this order. It is also noted that against the said Hon'ble SAT order dated November 19, 2009, SEBI had filed an appeal before the Hon'ble Supreme Court of India.

28. Hon'ble Supreme Court vide order dated October 08, 2015 in Civil Appeal No. 3771 of 2010 between *SEBI Vs Anuradha D Pendse* had disposed of said appeal as abated on the ground Mrs. Anuradha Pendse has passed away. Further, Hon'ble Supreme Court vide order dated November 28, 2019 in Civil Appeal No. 3769 of 2010 between *SEBI Vs Dilip S Pendse* had disposed of said appeal as abated on the ground Dilip Pendse has passed away. It is also noted vide said order dated November 28, 2019, appeal against NPPL is also disposed of by Hon'ble Supreme Court on the ground that NPPL was owned by the father of deceased Dilip Pendse and Mrs. Anurahdha Pendse, who have both expired and NPPL is only a shell company without any assets. Upon perusal of the said Hon'ble Supreme Court orders, it is noted that in view of the abatement of the appeals, the Hon'ble SAT order dated November 19, 2009 determining the issues mentioned therein occupies the field.

29. In view of the foregoing and considering that the facts / allegation / issue mentioned in SSCN and Hon'ble SAT order dated November 19, 2009, in the connected matter are identical and in view of the abatement of appeals before Hon'ble Supreme Court, I note that, on the determination of identical facts / allegation mentioned in the SSCN dated January 19, 2012,

the decision and finding of Hon'ble SAT vide order dated November 19, 2009, has become final.

30. Now the question that arises for determination is whether, in view of the order dated November 19, 2009, of Hon'ble SAT in Appeal no. 80 of 2009, passed in the connected matter, the issue involved in the SSCN is res-integra or not.

31. MSS contented that the issue involved in the SSCN dated January 19, 2012, has been already decided by the Hon'ble SAT vide its order dated November 19, 2009, in Appeal no. 80 of 2009, wherein Hon'ble SAT has given a categorical finding that the contract notes were not backdated.

32. From the Hon'ble SAT vide order dated November 19, 2009, it is noted that *"....If the whole time member had any doubt about the transactions at any stage of the proceedings, he could have easily gathered further information from the Exchange which is not only as intermediary of the securities market but also under the regulatory control of the Board...."*.

33. Accordingly, SEBI vide email dated July 20, 2020 to BSE, had requested to provide following information:

    33.1. Whether on September 19, 2000, BSE has acknowledged the letter dated September 16, 2000, from MSS enclosing 5 contract notes executed by MSS in Form B. If so the name and designation of the person acknowledging the said letter and the office copy of said letter dated September 16, 2000, along with enclosures.

    33.2. Whether BSE vide letter dated November 26, 2002, addressed to India Emerging Company Investment Limited, had acknowledged the receipt of letter dated September 16, 2000, from MSS. If, so the office copy of the letter dated November 26, 2002, along with enclosures.

    33.3. Whether BSE vide letter dated May 03, 2003, addressed to EOW has informed that the details of the aforesaid transactions covered in MSS letter dated September 16, 2000, were placed before Disciplinary Action Committee of Exchange in its meeting held on March 12, 2003. If so office copy of the letter dated May 03, 2003, along with enclosures.

33.4. Copy of minutes of Disciplinary Action Committee of Exchange meeting held on March 12, 2003.

34. BSE vide email dated August 03, 2020, informed SEBI that the documents requested pertains to year 2000 to 2003, therefore they are unable to provide the same.

35. Therefore, in view of the above and in the absence of information received from BSE, now I proceed to assess whether the Hon'ble SAT order dated November 19, 2009 passed in the connected matter covers the issues involved in the SSCN.

36. On the basis of various grounds as mentioned in the SSCN, it was alleged that MSS have issued backdated / fictitious contract notes to show that the transactions have taken place in September, 2000 instead of March 2001. In this regard, it is pertinent to refer one by one, the grounds of allegations in the SSCN vis-a vis reply of the Noticee vis-à-vis finding of the Hon'ble SAT in its order dated November 19, 2009.

37. SSCN stated that Noticee had submitted before the Enquiry Officer that they reported the impugned transactions to BSE in September 2000, and copy of the letter dated September 16, 2000, to BSE, enclosing 5 contract notes executed by them in Form B, bearing nos. GB01/1, GB01/2, GB01/3, GB01/4 and GB01/5 has been submitted by them to show that the transactions had happened in September 2000. The said letter was acknowledged by BSE on September 19, 2000.

38. On the examination of letter purportedly sent by MSS to BSE on September 16, 2000, it was alleged in the SSCN that the date and time of receipt is absent in the place provided for the same in the acknowledgment seal. Instead, the date '19/9/2000' is handwritten on the said letter with the initial, outside the space provided for in the acknowledgment seal.

39. In this regard, Noticee had made following submissions:

39.1. SEBI is pointing out totally irrelevant issues as to whether the date and time of receipt is absent in the place provided for it or that the date is printed or handwritten, whether it is specified outside or within the space provided, is something which is beyond our

control. The fact that the BSE itself has confirmed its authenticity of the acknowledgement is itself sufficient proof of the genuineness of the submission on that date. This fact has been further corroborated by the BSE Inspection Note and BSE DAC minutes dated March 12, 2003.

39.2. The letter dated November 26, 2002, from the BSE addressed to IECIL to whom MSS had sold the shares in a back to back transaction, acknowledges the receipt of letter dated September 16, 2000, from MSS by which MSS had reported the aforesaid transactions to BSE.

39.3. The purchasing client, IECIL, has in their letter dated April 19, 2002, regarding Confirmation of Trade to BSE clearly confirmed that they bought above shares in September 2000, and also confirmed Settlement Period: September 09, 2000, to September 16, 2000. The said confirmation letter from purchasing client to BSE leaves no scope of any allegation of backdating of contracts, bills.

40. In this regard, following finding of Hon'ble SAT vide order dated November 19, 2009, is noted:

*"…… By its letter dated September 16, 2000, the Broker sent five contract notes dated September 11, 2000, including the two issued to Mrs. Anuradha S. Pendse and Nalini. A photocopy of this letter is on the record before us and it bears the stamp of the Stock Exchange, Mumbai showing acknowledgement of the receipt of this letter. It has been initialed by the official who received the same in the office of the Exchange and the acknowledgement bears the date 19.9.2000. We also have on record, letter dated November 26, 2002 from the Stock Exchange, Mumbai addressed to IECIL to whom the Broker had sold the shares in a back to back transaction, acknowledging the receipt of letter dated September 16, 2000 from the Broker by which it had reported the aforesaid transactions to the Exchange. A perusal of this letter leaves no room for doubt that the broker had reported the transactions to the Bombay Stock Exchange as per its letter dated September 16, 2000 which had been received by the Stock Exchange, Mumbai on 19.9.2000….*

*……..This letter of the Broker by which it reported the transactions to the Exchange has not been accepted and the whole time member has given two reasons for the same in para 14 of the impugned order. The first ground for rejection is that even though it bears the stamp of the Exchange acknowledging receipt of the letter, the date and time has not been recorded in the place provided for the same in the acknowledgement receipt and that the date "11.9.2000" is handwritten outside the*

*seal. We have perused the photocopy of this letter which is on the record and can only observe that this ground, to say the least, is most flimsy. The letter bears the initials of the official who received it in the office of the Exchange and he put the date with his hand outside the seal. There is nothing unusual about it which should raise any doubt regarding the existence of the letter……"*

41. On the examination of 5 contract notes dated September 11, 2000, attached to Noticees's letter dated September 16, 2000, it is alleged in the SSCN that while the contract notes are printed, its sub-serial number is observed to be hand written in few instances.

42. In this regard, Noticee submitted that the contracts were manually typed. A part of the number was not very bright and the same was made legible with a ball pen. Such trivial issues are not relevant but are extraneous to the main issue that contracts were issued, accepted on September 11, 2000. The allegations are based on pre-conceived notion due to which, SEBI has totally overlooked and avoided consideration of all other transaction related documents such as bills, consents, payments / deliveries, accounting entries, year-end ledger confirmations which clearly records details of all the sellers and purchaser and confirms sale by Mrs. Anuradha Pendse, NPPL, APIPL and Dr. Anjali Beke and purchase by IECIL. These documents clearly establish that the contracts were issued, accepted on September 11, 2000, deliveries of payments were delayed and completed in March 2001.

43. In this regard, following finding of Hon'ble SAT vide order dated November 19, 2009 is noted:

*".....The contract notes relied upon by the appellant dated September 11, 2000 have also been doubted. One of the reasons given by the whole time member is that the sub-serial numbers on some of them have been handwritten. We have perused the photocopy of the contract notes which are on the record and cannot accept the version of the whole time member. The contract notes are in Form B which have been generated from the computer. A part of the number was dim and the same has been made legible with a ball pen. Nothing much can be read into this ..."*

44. It is observed that all such contract notes claimed to have been issued by MSS in Form B are dated September 11, 2000, with consecutive serial numbers starting from GB01/1 to GB01/5, as mentioned below:

***Table - 5***

| Contract Note No. | Person/Entity | Quantity |
|---|---|---|
| GB 01/ 1 | Mrs. Anuradha Pendse | 10,000 shares |
| GB 01/ 2 | Dr. Anjali Beke | 20,000 shares |
| GB 01/ 3 | IECIL | 1,40,000 shares |
| GB 01/ 4 | Anjudi Property & Investment Pvt. Ltd. | 80,000 shares |
| GB 01/ 5 | Nalini Properties Pvt. Ltd., | 30,000 shares |

45. The case is that Mrs. Anuradha Pendse, NPPL, APIPL and Dr. Anjali Beke sold the shares of TFL to MSS. It is alleged in the SSCN that, on perusal of the contract notes issued by the Noticee, it shows that the transactions of Mrs. Anuradha Pendse, NPPL, APIPL and Dr. Anjali Beke were entered under the column *'Securities SOLD To you for'* and in the case of IECIL the transaction was mentioned under the column *'Securities BOUGHT FROM you for'*. It appears that the basic content of these contract notes are in the contrary and opposite direction as they reflect buy transactions in place of the sale transaction of Mrs. Anuradha Pendse, Dr. Anjali Beke, NPPL and APIPL in the shares of TFL and it reflect sale transaction in place of buy transact of IECIL. If the four entities had actually sold the shares of TFL to MSS on principal to principal basis, then the contract notes should have specifically mentioned such fact and they would have been reflected clearly as sale transactions. The copy of the contract notes issued by MSS indicates that IECIL was a seller in the said transactions.

46. In this regard, Noticee had made following submissions:

46.1. That in the contracts "To", "From" and "For" were misplaced due to sheer advertence. This was merely a typographical error of placement of the word "To", "From" and "For". The typographical errors were not restricted to said errors but there were other instances of typographical errors also such as "Restaurant" was typed as "Resturent" in the address and name of the authorized signatory on the contract note was typed as

"Pradad D Shah" instead of "Paras D Shah". This was a technical/ typographical error without any malafide intention and the attendant facts and subsequent performance of transaction clearly shows that the sellers were Mrs. Anuradha Pendse, NPPL, APIPL and Dr. Anjali Beke and purchaser was IECIL.

46.2. That the allegation is in the nature of an after-thought by SEBI as before SSCN, it was never alleged that Mrs. Anuradha Pendse, NPPL, APIPL and Dr. Anjali Beke purchased the shares or IECIL sold the shares. If the allegation that the transaction was contrary to what was executed by them, then SEBI's entire allegation of insider trading against the sellers collapses. The investigations carried out by SEBI had indicated Mrs. Anuradha Pendse, NPPL and other associates had sold shares of TFL and this has been the case of SEBI throughout. On the basis of the findings of the investigations, MSS were issued SCN dated July 21, 2003. When the SCN was issued, SEBI was in possession of the contract notes dated September 11, 2000 on which the SSCN is relying. The case in the SCN is that Mrs. Anuradha Pendse and NPPL had sold the shares. The contract notes of September 11, 2000 have also been referred to. Nowhere does the SCN allege that Mrs. Anuradha Pendse and NPPL had ever purchased the shares.

46.3. It is for the first time in the SSCN that a finding has been recorded that the contract notes pertain to the purchase of shares by Mrs. Anuradha Pendse and NPPL at no stage prior to the said SSCN of 2012, MSS were ever confronted with the fact that Mrs. Anuradha Pendse and NPPL had purchased the shares or that the contract notes pertained to their purchases. During Investigation, all the questions put to MSS, Mrs. A. Pendse and NPPL which were recorded in statements on record clearly indicate that the case of SEBI all through has been that Mrs. Anuradha Pendse and NPPL sold the shares which in turn were sold in back to back transaction to IECIL.

47. In this regard, following findings of Hon'ble SAT vide order dated November 19, 2009 is noted:

*"……The case of the appellant is that Mrs. Pendse and Nalini had sold the shares on September 11, 2000 to the Broker and the latter sold the same to IECIL on a back to back basis on the same day. The whole time member has referred to the contract notes and finds that in the ones issued to Mrs. Pendse and Nalini, it is stated "Securities SOLD TO you for" and in the one issued to IECIL it was*

*mentioned "Securities BOUGHT FROM you for'. On the basis of these captions, the whole time member jumps to the conclusion that these contract notes refer to some transactions by which Mrs. Pendse and Nalini had purchased the shares and that these contract notes belie the stand of the appellant that they had sold the shares of TFL in September, 2000. On this basis the whole time member holds that they are not relevant to the issue. He further holds that the appellant has failed to substantiate his plea that the shares were actually sold by Mrs. Pendse in September, 2000 as claimed. We are really surprised at these findings recorded by the whole time member. To say the least, there is total non-application of mind to the facts of the case and he has not even cared to look at the material on the record. The investigations carried out by the Board had indicated that at the behest of the appellant, Mrs. Pendse, Nalini and other associates had sold 2,90,000 shares of TFL and this has been the case of the Board throughout. As a matter of fact, the complaint received by the Board on the basis of which the investigations were started, itself states that Mrs. Pendse and Nalini had sold the shares when the appellant was in possession of the unpublished price sensitive information. On the basis of the findings of the investigations, the appellant was issued a show cause notice dated April 7, 2003.....*

*..... When the show cause notice was issued, the Board was in possession of the contract notes dated September 11, 2000 on which the appellant is relying. As is clear from the aforesaid para, the case in the show cause notice is that the associates of the appellant including Mrs. Pendse and Nalini had sold the shares. The contract notes of September 11, 2000 have also been referred to. It is a different matter that the show cause notice subsequently alleges that these contract notes were ante-dated to show that the sale took place in September 2000 when, according to the Board, the shares were sold between March 28 and March 30, 2001 but nowhere does the show cause notice allege that Mrs. Pendse and Nalini had ever purchased the shares. If that had been the case, it would not support the charge of insider trading, having regard to the nature of the unpublished price sensitive information available with the appellant. As a matter of fact, the Board proceeded throughout on the basis that Mrs. Pendse and Nalini had sold the shares and the only dispute between them was whether the sale took place in September, 2000 or in March, 2001. It is for the first time in the impugned order that a finding has been recorded that the contract notes pertain to the purchase of TFL shares by Mrs. Pendse and Nalini. At no stage prior to the passing of the impugned order was the appellant or Mrs. Pendse or even Nalini ever confronted with the fact that they had purchased the shares or that the contract notes pertained to their purchases. It is true that the contract notes were produced by the appellant and he did so in support of the plea that Mrs. Pendse and Nalini had sold the shares. During the*

*course of the investigations, the representative of the Broker was summoned to appear on 24.1.2002 and again on 10.8.2002 and it was never put to him that the contract notes issued by it pertain to the purchases made by Mrs. Pendse and Nalini. On the other hand, all the questions put to the Broker clearly indicate that the case of Board all through has been that Mrs. Pendse and Nalini sold the shares to the Broker who, in turn, sold the same to IECIL…..*

*…… just on the basis of the two captions in the contract notes which were neither put to the appellant or his associates and not even to the Broker conclude that IECIL had sold the shares and Mrs. Pendse and Nalini had bought the shares and thereby holding the contract notes to be irrelevant. What happened is that the sale transactions by Mrs. Pendse and the purchase made by IECIL were back to back transactions executed by the Broker and it issued the contract notes simultaneously and the two captions inadvertently got reversed on the basis of which the whole time member has recorded his findings without appreciating that the finding now recorded in the impugned order was never the case of the Board. Had any questions been asked to the appellant or even to the Broker, the matter would have been clarified. Since the findings have been recorded for the first time in the impugned order, the appellant has had no opportunity to explain the discrepancy, if any. Further, there is on record the letter dated January 21, 2002 addressed by Mrs. Anuradha Pendse to the Chief General Manager of the Board pointing out that she had entered into only one off market deal in September 2000 through the Broker and sold 10,000 shares of TFL. She also pointed out that she did not execute any other transaction in TFL shares during the period from April 1, 2000 to April 30, 2001. This part of her statement has never been doubted by the Board and nor is there any material on the record to show that she executed any other trade except the one evidenced by the contract note……"*

48. It is further alleged in the SSCN that the contracts notes issued by Noticee (given at Table 1 above) show that Mrs. Anuradha Pendse, Dr. Anjali Beke, APIPL and NPPL had sold 1,40,000 shares of TFL to Noticee and same quantity of the shares of TFL were bought by IECIL from Noticee. However, the serial numbers of these contract notes reveal that prior to selling 1,40,000 shares to IECIL, Noticee had bought total 30,000 shares from Mrs. Anuradha Pendse and Dr. Anjali Beke and 1,10,000 shares were bought by Noticee after selling 1,40,000 shares to IECIL. If the transactions of Mrs. Anuradha Pendse, Dr. Anjali Beke, NPPL and APIPL were sell transactions, Noticee could not have sold 1,40,000 shares of TFL [Contract Note No. GB01/3] to IECIL, when only 30,000 shares of TFL were

available [Contract Note Nos.GB01/1 (for 10,000 shares) and GB01/2 (for 20,000 shares) as mentioned in the Table 1].

49. In this regard, Noticee submitted that there is no time stamp on the contracts that shows that these transactions have not been executed in the sequence claimed by SEBI. The staff member who issued the contracts issued them on the basis of that day's transaction and accordingly the contracts have been numbered manually by assigning serial numbers for the transactions of that particular day. The numbering does not entail the sequence of transactions unlike in current technology driven system where numbers are automatically inserted by the software based on the date and time of execution of contracts. Numbering of contract notes does not have to be in sequence if the transactions are done back to back on a single day. The fact that the date is same itself shows that the transactions were back to back transactions. It is akin to bank account statement which does not show the time of the transactions but will show all the transactions on a particular day. Subsequently, if the data of such transactions is compiled, it does not necessarily have to be in any particular sequence. Merely because numbering has been done manually and not in the sequence as it should have been as per SEBI's allegation, it cannot be held that there was no transaction on that where there is sufficient material on record to show that the transactions indeed took place.

50. In this regard, following finding of Hon'ble SAT vide order dated November 19, 2009, is noted:

> *"…….The second reason mentioned is that all the contract notes issued by the Broker to Mrs. Pendse, Nalini and other associates of the appellant bear consecutive serial numbers and this, too, has raised a doubt in the mind of the whole time member. We wonder how the validity of the document could be doubted on this ground. Since the Broker issued the contract notes on the same day, there is nothing unusual if they are in consecutive serial numbers. This is rather in order…..Since the reasons mentioned by the whole time member are so unconvincing, we have no hesitation in rejecting the same and we cannot agree with him that there is any basis for doubting the existence of the letter dated September 16, 2000 written by the Broker to the Exchange which the latter itself admits having received it and the admission is in its communication dated November 26, 2002 addressed to IECIL ….."*

51. It is alleged in the SSCN that from the Ledger statement of Mrs. Anuradha Pendse maintained by Noticee, it is noted that there was a credit amount of Rs.9,00,000 on September 16, 2000, towards Bill No. 201003. However, the corresponding debit was recorded only on March 30, 2001. The time lag between the credit entry in MSS ledger account and the actual receipt of payment by Mrs. Anuradha Pendse is approximately six months which is abnormal and unusual. From the said ledger statement, Investigation has come across certain instances where the settlement has been within a period of 1 month. These instances are shown below:

    51.1. Additional credits were entered in the account of Mrs. Anuradha Pendse vide entries dated November 18, 2000 and November 25, 2000, against Bill Nos. 134009/ ZGA34 and 135008/ZGA35 respectively. The consequent payment for these credit entries was received by Mrs. Anuradha Pendse on December 15, 2000, vide PYMT No. 468/ZBCO8.

    51.2. There was a credit provided on February 24, 2001, vide Bill No. 148009/ZGA48 and the corresponding payment was received by her, vide PYMT No. 693/ZBCO8 dated March 23, 2001.

    51.3. However, for the credit of Rs.9,00,000 on September 16, 2000, the actual payment was made almost after 7 months. This kind of delay is abnormal and shows that the sale of the shares of TFL by Mrs. Anuradha Pendse had taken place in March, 2001 and not September, 2000.

52. It is also alleged in the SSCN that from the Ledger statement of NPPL for the financial year 2000-01, following is noted:

    52.1. Rs.27,00,000/- was credited by MSS to the account of NPPL on September 16, 2000, by Bill No.201006 / ZGBO1. However, there is no mention of any date of receipt of actual payment for the said credit entry by NPPL from MSS.

    52.2. Additional credit was advanced to the account of NPPL vide Bill Nos. 200001/ZGFC2, 200003/ZGFC3 and 200001/ZGFC4 dated 9/09/2000, 10/09/2000 and 11/09/2000 respectively to the tune of Rs.18,12,941.99/-, Rs.13,13,006.82/- and Rs.2,05,726.38/- respectively. The consequent payment for these credit entries were received in the month of September 2000 itself vide PYMT No. 317/ZBCO8, PYMT No. 320/ZBCO8 and PYMT No. 321/ZBCO8 for the corresponding amounts as

mentioned above. Thus, the time lag between the advancement of the credit and the receipt of payments is less than a month.

52.3. MSS received Rs.50,00,000/- from NPPL which was shown as a credit entry on December 20, 2000 in MSS books. There is no valid explanation for NPPL to have paid Rs.50,00,000/- to MSS in December 2000 when a due of Rs.27,00,000/- was outstanding from MSS side since September 16, 2000.

53. In this regard, Noticee had made following submissions:

53.1. That the transactions were to be completed within the stipulated time frame. However, the clients delayed in performing their obligations. The deliveries were given by selling clients in performance of Contract No. GB01/01, GB01/5, GB01/2, GB01/4 issued on September 11, 2000, and Bills Nos. 201003, 201006, 201004, 201005 issued on September 16, 2000, deliveries were made to and accepted by purchasing client in performance of Contract No.GB01/3 issued on September 11, 2000, and Bill No.201002 issued on September 16, 2000. The fact that the contract notes and bills were issued in September 2000 remains undisputed. Therefore, the contracts and transactions were genuine dealings in securities and not fictitious transactions as alleged.

53.2. That the transactions by Mrs. Anuradha Pendse have not been disputed by her that she sold shares vide contract issued and accepted on September 11, 2000, and bill issued and accepted on September 16, 2000, for which accounting entries were made in her books on September 16, 2000, and deliveries/payments were completed in March 2001.

53.3. That the payments were immediately completed upon receipt of shares by MSS from the client in March 2001 and payment can only be made upon performance of the obligation i.e. delivery of shares by the seller and not before that. It is a common market practice to make the payment only when the deliveries are made and the same cannot be called as delayed payment. Institute of Chartered Accountants of India (ICAI) and Income Tax authorities recognize that revenue and costs accrue first and they may be received/ paid later. It is the generally accepted universal accounting principle.

53.4. The fact that the payment was received upon the delivery of shares does not itself show that there was anything abnormal in the sale of shares of TFL by Mrs. Anuradha Pendse and does not show that the transaction took place in March 2001 and not in September 2000. While the transaction was entered into in September 2000, the delivery of shares was made subsequently only in March 2001 and it was only upon the delivery of shares, the payment was made to the sellers.

53.5. From ledger copy of NPPL that payments for Bill Nos. 200001/ZGFC2, 200003/ZGFC3 and 200001/ZGFC4 dated 9/09/2000, 10/09/2000 and 11/09/2000, respectively amounting to Rs. 18,12,941.99/-, Rs. 13,13,006.82/- and Rs. 2,05,726.38/- respectively were made, as per market practice, upon delivery of shares sold by the client vide above bills.

53.6. For September 16, 2000, bill of Rs. 27,00,000, the payment was not made in September 2000 since client delayed delivery and made delivery only in March 2001. The amount was adjusted in their account in the month of March 2001 against other debits in account and there was 'nil' balance as on March 31, 2001. There was no receivable or payable at the closing of the financial year i.e. as on March 31, 2001. An amount of Rs. 27 lakhs was promptly paid/ adjusted immediately upon delivery of shares by the selling client – NPPL.

54. In this regard, following findings of Hon'ble SAT vide order dated November 19, 2009 is noted:

*"……A perusal of this ledger account clearly indicates that on September 16, 2000 a credit was given to her for an amount of Rs.9 lacs by the Broker in relation to bill no. 201003 GB01. A copy of this bill was then produced by the learned counsel for the appellant which could not be disputed by the Board. This bill was raised by the Broker on 16.9.2000 after the shares had been sold by Mrs. Pendse and the same has been noticed by the whole time member in the impugned order while referring to the letter of Mrs. Pendse. When we examine this bill and bill no. GB01/201006 which was raised in favour of Nalini, they clearly indicate that Mrs. Anuradha Pendse and Nalini had sold 10,000 and 30,000 shares of TFL respectively through the Broker thereby earning a credit of Rs.9 lacs and Rs.27 lacs respectively in their ledger accounts. The bills further demonstrate that the amounts were due to the sellers. The Party Ledger of Mrs. Pendse further indicates that it was on 30th March, 2001 that a cheque for Rs.9 lacs was actually received by her and the same was*

*credited by making a debit entry in the Party Ledger account, which cheque was subsequently encashed in April, 2001. The running ledger account of Mrs. Anuradha Pendse maintained by the Broker in its books also substantiates the plea that the trades took place in September, 2000 when, after the contract was concluded, she was given a credit entry and the amount became due to her though it was actually received by her in March, 2001. According to the Indian Accounting Standards prescribed by the Institute of Chartered Accounts of India which is the account setting body laying down the accounting standards for the companies in India under the Companies Act, 1956, "Revenues and costs are accrued, that is, recognized as they are earned or incurred (and not as money is received or paid) and recorded in the financial statements of the periods to which they relate." (Accounting Standard (AS)1 on Disclosure of Accounting Policies Clause 10.c). It is, thus, clear that there is a clear distinction between the revenue earned and revenue received and the moment a contract is complete, the right to receive the revenue thereunder accrues though it may be received subsequently. When we look at the aforesaid bill(s) and the contract notes read with the Party Ledger maintained by the Broker in the name of Mrs. Anuradha Pendse, it is more than clear that the sale transactions by Mrs. Anuradha Pendse and Nalini were clinched in September, 2000 though the amount thereunder was received by her on March, 30, 2001…….*

*…….it is clear that the shares of TFL were sold by Mrs. Anuradha Pendse and Nalini on September 11, 2000 through the Broker which issued the contract notes on the same day and reported the trades to the Stock Exchange, Mumbai only on 19.9.2000. The documents produced by the appellant make it further clear that even though the deal for the sale of the shares was struck in September, 2000 and credit given for the amount that became due to Mrs. Pendse in the Party Ledger account maintained by the Broker, actual delivery of the shares was given on March 28, 2001 when the demat accounts of Mrs. Anuradha Pendse and Nalini were debited and the payment was actually received on March 30, 2001 at the time of the settlement of the account at the end of the accounting year 2000-01. It is further clear that the trades though executed in September, 2000 were not settled within the time prescribed by the Bye-laws of Bombay Stock Exchange Limited. It is common case of the parties that the trades executed by Mrs. Anuradha Pendse and Nalini were off market hand delivery transactions which according to Bye-law 48(ii) of the Bye-laws had to be settled not later than fourteen days following the date of the contract. Admittedly, there was a long delay in settling the trades and since it was the responsibility of the Broker to settle the trades, the Stock Exchange, Mumbai, through its Disciplinary Action Committee took action against it for the delay and issued the warning as noticed earlier. It is pertinent to*

*mention that during the course of the investigations, the Broker was sent for and its representative appeared on January 24, 2002…..*

*….From the answer given by the Broker, it appears that delays in the settlement of the trades were not unusual and the proviso to Bye-law 48(ii) of the Bye-laws does give power to the governing board of the Exchange to extend the time for delivery and payment from time to time by a further period of 14 days each, so that the overall period does not exceed 90 days from the date of the contract. As mentioned by the Broker, there was a similar delay in another case as well and it appears to us that such delays are not a rare phenomena. Since such delays are not very uncommon, the Disciplinary Action Committee of the Exchange also did not take a serious view of the lapse and only issued a warning to the Broker to be careful in future……"*

55. It is alleged in the SSCN that these transactions pertain to the financial year 2000-2001, whereas the BSE - DAC minutes are dated March 12, 2003. The contract notes relied upon by the Disciplinary Action Committee suffers from several discrepancies, as mentioned in the SSCN.

56. In this regard, Noticee had made following submissions:

    56.1. That the disciplinary action taken by BSE was initiated in 2002 on the complaint filed with BSE, which sought many documents and after thorough verification and scrutiny by BSE at various levels, the matter was put up before its high powered, legally constituted DAC in March 2003, which was chaired by Justice D.R. Dhanuka - former Judge, High Court, Mumbai.

    56.2. It is normal that the minutes of the meeting would be the one that will be put as the date of meeting i.e. March 12, 2003. It is quite absurd to even comment that the transactions took place in 2000 and DAC minutes are dated March 12, 2003. It is obvious that the date of DAC will be after the date of transaction and would include the time involved in the review of the entire matter.

    56.3. DAC has held that MSS letter was indeed submitted by MSS to BSE in September 2000 regarding the transaction, all other issues such as discrepancy etc. are all irrelevant. Based on the material on record, DAC came to the firm conclusion that the transaction was duly reported to the stock exchange in September 2000.

57. In this regard, following finding of Hon'ble SAT vide order dated November 19, 2009 is noted:

> *…….We have already noticed that the appellant had placed strong reliance before the Board on the proceedings recorded by the Disciplinary Action Committee of the Bombay Stock Exchange chaired by a former Judge of the Bombay High Court. The proceedings to which detailed reference has already been made, clearly establish the fact that the transactions executed by Mrs. Pendse and Nalini in September, 2000 had been reported though there was a delay of eight days in reporting. These proceedings also indicate that there was a delay in the settlement of the trades. Having regard to these delays, the Disciplinary Action Committee decided to warn the Broker. The minutes of the Disciplinary Action Committee have been brushed aside by the whole time member merely by observing that the transactions in question were executed in the year 2000-01 whereas the minutes of the Disciplinary Action Committee were recorded on March 12, 2003. This had to be so and this is no ground to discard the minutes. We cannot uphold the findings recorded by the whole time member in this regard….."*

58. Considering the decision of Hon'ble SAT and abatement of appeals by Hon'ble Supreme Court and having noted that the above-mentioned facts / allegation mentioned in the SSCN dated January 19, 2012, and in the Hon'ble SAT order dated November 19, 2009, are being identical and have been decided by the Hon'ble SAT, I am of the view that facts / allegation / issues mentioned in the SSCN which have been determined by Hon'ble SAT, thus are no more res-integra.

59. In addition to the aforesaid allegations, following allegation was also mentioned in the SSCN to support the allegation that transactions in the shares of TFL happened in March 2001 instead of September 2000:

    59.1. That the date of transaction, as stated by Mrs. Anuradha Pendse in her letter dated January 21, 2002, with respect to subject transaction differs from that shown in the contract notes submitted by MSS. Mrs. Anuradha Pendse vide said letter refers the date of sale of TFL shares to MSS as September 16, 2000 whereas contracts notes submitted by MSS reflect date of transaction as September 11, 2000.

    59.2. The delay in settlement of the subject transaction is contrary to the statement of Mrs. Anuradha Pendse who had stated that she was in need of money when she decided to

sell the shares of TFL belonging to her and NPPL in September, 2000 since the consideration against such transactions as claimed by her was received only in March 2001. If she had sold the shares of TFL in September 2000, as she needed money then, she would not have waited till March 2001 / April 2001 to realize the same. This indicates that the shares were actually sold in the month of March 2001 and not in September 2000.

59.3. With regard to the sale of shares of TFL by Mrs. Anuradha Pendse, she had claimed a taxable gain of Rs. 6,05,199 on sale of 10,000 TFL shares. For the sale of shares in September 2000 as claimed by her, Mrs. Anuradha Pendse was required to pay advance tax on the capital gains by September 15, 2000 or December 15, 2000 as applicable. It is noted that no advance tax was paid during the financial year 2000-01 and interest of Rs. 44,057 u/s 234B of the Income Tax Act, 1961 was paid for default on payment of advance tax and a sum of Rs. 31,754 was paid u/s 234C of the said Act towards interest for deferment of advance tax. The fact that Mrs Anuradha S Pendse did not pay advance tax in respect of sale of TFL shares in December 2000 strengthens the allegations that the transaction happened after December, 2000.

60. In this regard, Noticee had made following submissions:

60.1. That the entire allegations are based on pre-conceived notion due to which, SEBI has totally overlooked and avoided consideration of all other transaction relevant documents such as contracts, bills, consents, payments/deliveries, accounting entries, year-end ledger confirmations which clearly records details of all sellers and purchaser and confirms sale by Mrs. Anuradha Pendse, NPPL, APIPL and Dr. Anjali Beke and purchase of shares by IECIL. All transaction related documents have to be considered, read together to ascertain at full facts of transactions till its completion. These documents establish that the contracts were issued, accepted on September 11, 2000, deliveries of payments were delayed and completed in March 2001. The purchaser and sellers have confirmed the above and the Audited Accounts have recorded bills on September 16, 2000.

60.2. That SSCN refers to and relies upon statements of Mrs. Anuradha Pendse. MSS have asked for her cross examination, but have not been provided an opportunity to conduct her cross examination. Without prejudice to the aforesaid, the payments were made

immediately upon delivery of shares, which clearly shows that MSS were prompt in making payments to clients as per schedule. It is a matter of fact that while Mrs. Anuradha Pendse wanted to sell shares in September 2000 but delivered shares subsequently only in March 2001, reasons of which can only be answered by her. MSS followed established market practice which is to pay upon delivery and nothing adverse can be held against them as being a market intermediary, they only followed the instructions of the clients in terms of making delivery of shares and payments.

60.3. With regard to the non-payment of advance tax by Mrs Anuradha S Pendse in respect of sale of TFL shares, MSS submitted that Income tax authorities did not deny existence of the underlying transaction for non or late payment of advance tax. Since MSS have not been given the opportunity of conducting her cross examination, MSS will not be able to provide any reply to that effect. However, it is market practice that payment for sale of shares was made to the seller on delivery of shares.

61. With regard to the allegation that transaction in the shares of TFL happened in March 2001 instead of September 2000 following findings of Hon'ble SAT vide order dated November 19, 2009 is noted:

*"…….When we look at the aforesaid bill(s) and the contract notes read with the Party Ledger maintained by the Broker in the name of Mrs. Anuradha Pendse, it is more than clear that the sale transactions by Mrs. Anuradha Pendse and Nalini were clinched in September, 2000 though the amount thereunder was received by her on March, 30, 2001. In the letter of January 21, 2002 Mrs. Anuradha Pendse has also admitted that the delivery of the shares was given on March 28, 2001 subsequent to the transactions……*

*…….We have no reason to suspect the correctness of the bill. These bills clearly support what is stated in the contract notes and the ledger account. When all these three documents are read together, the transaction of sale of TFL shares in September, 2000 is complete and this wholly substantiates the case of the appellant…..*

*…..The only ground on which the whole time member holds that the sale transactions of Mrs. Pendse and Nalini were executed in the end of March 2001 is that the delivery of shares was given by the sellers on March 28, 2001 and payment for the shares was received on March 30, 2001. The whole time member has noticed*

*the long delay in settling the trade for which the contract was completed in September, 2000 and has concluded that the sale of the shares took place in March, 2001. We have already dealt with this aspect of the matter earlier in our order and we cannot agree with the findings recorded in this regard..... If the sale did not take place in September, 2000 then what was the Broker reporting to the stock exchange as per its letter dated September 16, 2000. We have already noticed that the Bombay Stock Exchange had acknowledged the receipt of this letter from the Broker in its letter of November 26, 2002……"*

62. In view of the foregoing, I note that while Hon'ble SAT vide order dated November 19, 2009 does not cover the circumstantial evidence mentioned at paragraph 59, I am of the view that the weightage of evidence considered by Hon'ble SAT vis-à-vis the circumstantial evidence does not tilt the ultimate finding of Hon'ble SAT i.e. that the transaction in the shares of TFL was carried out in September 2000, albeit settlement (i.e. delivery of shares and payment) had happened in March, 2001. Therefore, the issues / allegations mentioned at paragraph 59 are also no more res-integra.

***<u>ISSUE No. 2:</u> If issue No. 1 above is determined in affirmative, then whether the contract notes dated September 11, 2000 issued by Noticee to Mrs. Anuradha Pendse, NPPL, Dr. Anjali Bake and APIPL and IECIL are fictitious and thereby, Noticee had violated Regulation 6(d) of PFUTP Regulations, 1995?***

63. I have noted that the Hon'ble SAT has already determined that the transaction in the shares of TFL between clients through Noticee had happened in September 2000 for which the contracts notes in Form –B were issued by the Noticee in September 2000 and settlement (i.e. delivery of shares and payment) had happened in March, 2001. Hence, there was no new transaction that happened in the shares of TFL between clients through Noticee in March 2001.

64. It may be noted that the Hon'ble SAT vide order dated November 19, 2009, already found that:

64.1. The contract notes and bills thereto were issued by the Noticee on September 11, 2000, and September 16, 2000, respectively.

64.2. The BSE was informed of the transaction by the Noticee vide letter dated September 16, 2000, and same was acknowledge by BSE on September 19, 2000.

64.3. BSE vide letter dated November 26, 2002, to IECIL had acknowledged the receipt of Noticee's letter dated September 16, 2000, by which Noticee had reported the aforesaid transactions to BSE.

64.4. The actual delivery of shares were completed on March 28, 2001, and payment was completed on March 30, 2001. The parties have accepted payments and effected deliveries.

64.5. BSE DAC noted that there was delay in reporting the transaction to BSE and there was delay in the settlement of the trades. In this regard, BSE DAC had warned the broker to be careful in future.

65. In view of the foregoing, I do not find that contract notes issued by the Noticee were fictitious / back dated. Thus, I am of the view that the allegation that the contract notes issued by the Noticee in September 2000 were fictitious and without there being actual transactions in contravention of Regulation 6(d) of PFUTP Regulations, 1995, does not stand established.

***<u>ISSUE No. 3:</u> Whether Noticee had assisted, aided and abetted Mrs. Anuradha Pendse, NPPL, APIPL and Dr. Anjali Beke in insider trading, thereby Noticee had violated Regulation 3(i) of PIT Regulations, 1992?***

66. It is alleged that the Noticee had assisted, aided and abetted Mrs. Anuradha Pendse, NPPL, APIPL and Dr. Anjali Beke in insider trading and causing wrongful loss to IECIL. Noticee had denied that it had assisted, aided and abetted Mrs. Anuradha Pendse, NPPL, APIPL and Dr. Anjali Beke or anybody else in insider trading and causing wrongful loss to IECIL.

67. In this regard, following finding of Hon'ble SAT vide order dated November 19, 2009 is noted:

> *As already observed, the trades may have been contrary to the Bye-laws of the Exchange but it cannot be said that the contract was not completed in September, 2000. If the sale did not take place in September, 2000 then what was the Broker reporting to the stock exchange as per its letter dated September 16, 2000. We have already noticed that the Bombay Stock Exchange had acknowledged the receipt of*

*this letter from the Broker in its letter of November 26, 2002. In this view of the matter, the charge must fail. Accordingly, we answer the question posed in the opening part of our order in the negative and hold that the appellants are not guilty of insider trading……"*

68. I note that the charge against the Noticee is not insider trading per se but aiding and abetting clients namely Mrs. Anuradha Pendse, NPPL, APIPL and Dr. Anjali Beke who are alleged to have done insider trading. In this regard, I note that Hon'ble SAT vide order dated November 19, 2009 had held that the transaction in the shares of TFL had completed in September 2000 albeit settlement (i.e. delivery of shares and payment) had happened in March, 2001, therefore, Mr. Dilip Pendse, Mrs. Anuradha Pendse and NPPL are not guilty of insider trading.

69. I note that abetment emanates only when there is an abetment of any act or illegal omission prevented by law and in the present case, the act or omission prevented by PIT Regulations, 1992. In the present case, for violation of insider trading, the UPSI relates to financial results of Tata Finance Limited (TFL) for quarter ending March 2001. It was alleged that Mr. Dilip Pendse, who was in possession of UPSI had communicated the said USPI to the Noticee and Mr. Dilip Pendse and his associates traded in the scrip of TFL through Noticee in March 2001. Hence, if trading in the shares of TFL had happened in March 2001, then trading may be considered as having been done while in possession of/on the basis of said UPSI and such act of insider trading is said to be prevented under PIT Regulations, 1992. In other words, if trading in the shares of TFL had happened in September 2000, then the said trading cannot be considered to be done while in possession of/on the basis of UPSI of financial results of quarter ending March 2000, as said UPSI was not in existence in September 2000. In the present case, as determined by Hon'ble SAT, trading in the shares by entities through Noticee happened in September 2000 i.e. when the UPSI in question had not arisen. Hence, the trading in the shares of TFL in September 2000, cannot be considered as insider trading under PIT Regulations, 1992. In this context, the question of abetment by the Noticee in the act of insider trading in shares of TFL in September 2000 through Noticee does not arise.

70. Therefore, in view of the foregoing, I am of the view that the allegation that Noticee had assisted, aided and abetted his clients for their insider trading does not stand established.

Thus, the allegation that Noticee had violated Regulation 3(i) of PIT Regulations, 1992 also does not stand established.

***ISSUE No. 4:*** ***Whether the Noticee had failed to execute the transaction dated September 11, 2000 between selling clients and buying client, on screen based trading system of BSE, and thereby violated SEBI circular SMDRP/POLICY/CIR-32/99 dated September 14, 1999?***

71. It is alleged that the transaction dated September 11, 2000 between clients through Noticee were not executed on screen based trading system of BSE, thereby Noticee was alleged to have violated SEBI circular SMDRP/POLICY/CIR-32/99 dated September 14, 1999.

72. In this regard, Noticee had made the following submissions:
    72.1. The transaction was "hand-delivery" bargain and was permitted under Bye-Law 48(ii) of the BSE's Bye-laws. The requirement of bye-law states that 'for hand delivery', i.e. for delivery and payment within the time or on the date stipulated when entering into the bargain, which time or date shall not be more than fourteen days following the date of the contract.
    72.2. Noticee had fulfilled the said requirement by stipulating the requisite timeframe for settlement while issuing the contract notes / bills. The settlement period was clearly specified as September 09, 2000, to September 16, 2000, [which is less than 14 days and in consonance with bye-law 48(ii)] on the contract notes and bills and it is the responsibility of the parties to the contract to fulfill these requirements. Thus, the transactions were to be completed within the stipulated time frame but it is the constituents that delayed performing their part of obligation.
    72.3. SEBI Circular dated September 14, 1999, applies to negotiated deals/cross deals on the floor of the stock exchanges. The circular does not have the effect of taking away what is permitted and contemplated in the BSE Bye laws, which is in the nature of a statutory provision. It is a settled law that a circular cannot have an overriding effect of the statutory provisions.

73. I note that as per SEBI circular SMDRP/POLICY/CIR-32/99 dated September 14, 1999, all negotiated deals (including cross deals) shall not be permitted and all such deals shall be executed only on the screens of the exchanges in the price and order matching mechanism of the exchanges. Noticee submitted that said circular is applicable to negotiated deals / cross deals and the transaction dated September 11, 2000, is off market hand delivery bargains under bye law 48(ii) of the Exchange.

74. I note that vide said circular dated September 14, 1999, all negotiated deals including cross deals are prohibited and shall be executed only on the screens of the exchanges. Now the question for determination is whether the transaction dated September 11, 2000, between buying clients and selling client through Noticee is a negotiated deal / cross deal or not. As per SEBI circular No. SMDRP/Policy/Circular-20/98 dated September 18, 1998 Negotiated Deal means *"Any transaction which has either a transaction value of not less than Rs 25 lakhs or volume of not less than 10,000 shares and which has been executed at a price not formed through the stock exchange price and order matching mechanism would be termed as a negotiated deal".* Cross deals means *"Cross deals executed between two clients of the same broker above the size applicable for negotiated deals…"*

75. Upon perusal of material available on record I note that in the present matter, the transaction dated September 11, 2000, between buying clients and selling clients through Noticee in the shares of TFL had volume of 10,000 shares or more and has been executed at a price not formed through the stock exchange price and order matching mechanism. Thus, I am of the view that as per SEBI circular No. SMDRP/Policy/Circular-20/98 dated September 18, 1998, the transaction dated September 11, 2000 falls within the definition of negotiated deals / cross deals.

76. In respect of the argument of the Noticee that the contract is a "hand delivery contract", the perusal of the clause 48 of BSE Bye law shows that bargains in securities may be of the following kinds such as "spot delivery", "hand delivery" "Bargain for the clearing" and "Special delivery". The definition of hand delivery contract as per clause 48(ii) of BSE Bye law shows that hand delivery contract is for delivery and payment within the time or on the

date stipulated when entering into the bargain, which time or date shall not be more than fourteen days following the date of the contract. The proviso annexed to the said clause, shows that in the case of such shares as may be designated by the Governing Board as specified shares delivery and payment may be extended or postponed by the Governing Board by further periods of 14 days each, so that the overall period does not exceed 90 days from the date of the contract.

77. The larger category of hand delivery contract includes, inter alia, categories of contracts such as cross deal and negotiated deal, however, such categories of hand delivery contracts are required to follow the stipulations made by SEBI from time to time for these specific categories of the contracts. For instance, cross deals were required to be reported to the stock exchange on the same day of transaction vide SEBI circular dated March 14, 1995, and vide circular dated September 18,1998 the negotiated transactions are required to be reported to the stock exchange within 15 minutes of the trade being negotiated.

78. The said circular dated September 18, 1998, further stipulated that negotiated deal can be settled through clearing house or bilaterally. Thereby, post September 1998 the negotiated deal, if selected through clearing, would lose the character of "hand delivery" bargain for those trades which are settled through clearing house as in such case the settlement period would be as per the settlement calendar prevailing at the relevant point of time and not as per the delivery and settlement as per the permissible period mentioned in the bye law. Similar requirements were placed for "cross deals" as well under the circular dated September 18, 1998.

79. Subsequently, vide circular dated January 14, 1999, the discretion of parties to the negotiated deals and cross deals in determining the "price" was also limited to "eight percentage price band from the previous day's closing price on the normal market on the exchange". Further the same circular limited the delivery period of hand delivery trades (including negotiated trades and cross deals) to seven days from the date of the contract.

80. The above discussion shows that by January 14, 1999, hand delivery trades (including negotiated trades and cross deals) could be executed only with 7 days settlement period (if chosen for bilateral delivery).

81. In essence the categories of contracts such as cross deal and negotiated deals cannot take the shelter of "hand delivery contract" in view of the subsequent stipulations prescribed by SEBI. On continuous regulation of "negotiated deals"/"cross deals", SEBI vide circular SMDRP/POLICY/CIR-32/99 dated September 14, 1999, mandated the earlier requirements for "negotiated deals/cross deals would not be applicable anymore and mandated all "negotiated deals/cross deals to be placed through price order matching mechanism of the exchange just like any other trade".

82. I have already found that the impugned trades are negotiated deals/cross deals. Therefore, post September 14, 1999, the category of "negotiated deals/cross deals were completely taken away from the category of hand delivery contract and therefore post this circular, the argument of the Noticee that the impugned trades are "hand delivery contract" is not sustainable as negotiated and cross deals at the relevant point of time was no more falling within the category of "hand delivery contract", particularly post the circular dated September 14, 1999.

83. Thus, I am of the view that Noticee had failed to execute the transaction dated September 11, 2000, between buying clients and selling clients, on the screens of the exchanges in the price and order matching mechanism of the exchange. Therefore, I am of the view that allegation of violation of provision of SEBI circular SMDRP/POLICY/CIR-32/99 dated September 14, 1999, against Noticee stands established.

***<u>ISSUE No. 5:</u> Whether Noticee had failed to obtain written consent from client for acting as principal for the impugned transactions and thereby violated SEBI Circular no. SMD(B)/104/22775/93 dated October 29, 1993 read with Regulation 17(1)(j) of Broker Regulations?***

84. It is alleged that for the below mentioned transaction the Noticee had failed to obtain written consent from client for acting as principal, thereby alleged to have violated SEBI Circular No. *SMD(B)/104/22775/93* dated October 29, 1993 read with Regulation 17(1)(j) of Broker Regulations.

***Table No. – 6***

| Seller | Scrip | Quantity | Rate (Rs.) | Credit of shares into your demat a/c | Payment to seller |
|---|---|---|---|---|---|
| Anuradha Pendse | TFL | 10,000 | 90 | 28.03.01 | 26.04.01 |
| NPPL | TFL | 30,000 | 90 | 30.03.01 | |
| Dr. Anjali Beke | TFL | 20,000 | 90 | 28.03.01 | Rs. 13.5 lakhs - 02.04.01, Rs. 4.5 lakhs - April 01 |
| APIPL | TFL | 80,000 | 90 | 28.03.01 | March 01 (end |
| **Total** | | 1,40,000 | | | |

85. In this regard, Noticee had made following submissions:

85.1. Noticee had not done any proprietary trading but only traded for the clients and Form B was inadvertently issued.

85.2. Noticee had obtained the written consents from the clients. BSE DAC proceedings have also noted the same.

85.3. The transaction was that between clients, which was executed through MSS. Their role was limited to that of broker in the transactions and the same is also evident from the documents on record that the transaction indeed took place by execution and acceptance of contracts, bills in September 2000 itself.

85.4. The transaction was not on Principal to Principal basis and the same is evident from the intent, facts, documents, records and surrounding circumstances mentioned below:

85.4.1. Deliveries were affected through MSS Demat Pool Account through which client transactions are executed and not through MSS Beneficiary Account where MSS own transactions are executed.

85.4.2. Payments were received and deposited in MSS designated Client Account No. 13493 with Bank of India.

85.4.3. The clients have confirmed that the transactions were carried out through MSS. Reference is made to IECIL letter dated April 19, 2002 to BSE.

85.4.4. Accounting entries in MSS books of account and in the books of clients, are in MSS running broking account where all other broking transactions are recorded.

85.4.5. The fact that the contract notes were executed simultaneously is also indicative of the fact that MSS were only acting as a broker.

85.4.6. MSS had no net position.

85.5. It is a well-settled law that it is not the form/format in which the contract is executed that decides the nature of the contract, but the substance of the contract. It is particularly the intent of the parties at the time of execution of the contract that is relevant for deciding the nature of contract and what is important is the resultant performance of the transaction.

85.6. That since MSS had inadvertently executed contract note in Form B and since it has a requirement of obtaining consents with reference to contracts executed in Form B, with a view to comply with the technicalities of law and by way of abundant caution, MSS had obtained written consents at the time of execution of contracts. All along, MSS role as a broker to this transaction has been clearly explained by the purchasing client also in its letter to BSE dated April 19, 2002, that the shares were purchased through MSS.

86. Now the question for determination is whether the transaction mentioned at Table – B above is principal to principal basis or not. In this regard, I have noted in Issue No.1 above that the transaction in the shares of TFL between clients through Noticee had happened in September 2000 for which the contracts notes in Form B were issued by the Noticee in September 2000 and settlement (i.e. delivery of shares and payment) had happened in March, 2001 i.e. no new transaction happened in the shares of TFL between clients through Noticee in March 2001. The said transaction was informed to BSE by the Noticee vide letter dated September 16, 2000 and same was acknowledge by BSE.

87. With regard to principal to principal transaction, following findings are mentioned in the enquiry report:

87.1. Details of demat shares received from selling clients from Stock Holding Corporation into brokers pool account 10382956 is as under:

***Table No. – 7***

| **Shares Recevied on** | **Quantity** | **Client Name** | **Demat ID Nos** | **Qty as per Contract Note issued on 11.09.2000** | **Qty as per Bill issued on 16.09.2000** |
|---|---|---|---|---|---|
| 28.03.2001 | 10,000 | Anuradha Pendse | 10001066 | 10,000 | 10,000 |

| | | | | | |
|---|---|---|---|---|---|
| 28.03.2001 | 20,000 | Dr. Anjali Beke | 10064731 | 20,000 | 20,000 |
| 28.03.2001 | 80,000 | APIPL | 10086753 | 80,000 | 80,000 |
| 28.03.2001 | 30,000 | NPPL | 10058841 | 30,000 | 30,000 |

87.2. Details of demat shares transferred to purchasing clients from Stock Holding Corporation of brokers pool account 10382956 is as under:

***Table No. – 8***

| **Shares Transferred on** | **Quantity** | **Client Name** | **Demat ID Nos** | **Qty as per Contract Note issued on 11.09.2000** | **Qty as per Bill issued on 16.09.2000** |
|---|---|---|---|---|---|
| 30.03.2001 | 1,10,000 | IECIL | 13033202 | 1,40,000 | 1,40,000 |
| 31.03.2001 | 30,000 | IECIL | 13033202 | | |

87.3. Details of Debit / Credit in client's financial account in the broker's books for client's ledger for Financial Year 2000-01 are as under:

***Table No. – 9***

| **Contract Note No.** | **Date of Issue** | **Bill No.** | **Date of Issue** | **Client Name** | **Quantity** | **Rate (Rs).** | **Amount (Rs.)** | **Date of debit / Credit** | **Party Account Code No.** |
|---|---|---|---|---|---|---|---|---|---|
| GB01/1 | 11.09.2000 | 201003 | 16.09.2000 | Anuradha Pendse | 10,000 | 90 | 9,00,000 | Credit 16.09.2000 | 3020 |
| GB01/5 | 11.09.2000 | 201006 | 16.09.2000 | NPPL | 30,000 | 90 | 27,00,000 | Credit 16.09.2000 | 3716 |
| GB01/2 | 11.09.2000 | 201004 | 16.09.2000 | Dr. Anjali Beke | 20,000 | 90 | 18,00,000 | Credit 16.09.2000 | 3033 |
| GB01/4 | 11.09.2000 | 201005 | 16.09.2000 | APIPL | 80,000 | 90 | 72,00,000 | Credit 16.09.2000 | 3034 |
| GB01/3 | 11.09.2000 | 201002 | 16.09.2000 | IECIL | 1,40,000 | 91 | 1,27,40,000 | Debit 16.09.2000 | 2012 |

87.4. In view of the above, the transactions do not appear to be principal to principal contracts as the shares have moved from the client's accounts into the broker's pool account and payment were made from the Bank of India, Client A/c of the broker. It is also pertinent to note that the purchasing client vide its letter dated 190.4.2002 had confirmed that it bought 1.4 lakhs shares of TFL through the brokers. Therefore as per the finding in the Enquiry Report when the contract is not on principal to principal basis the broker is not in required to issue contracts notes in Form-B.

88. As per SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 *"....It shall be compulsory for all Member brokers to keep the money of the clients in a separate account and their own money in a separate account. No payment for transactions in which the Member broker is taking a position as a principal will be allowed to be made from the client's account."*

89. In view of the above, I agree with the finding of the Enquiry report that the transactions do not appear to be principal to principal basis because the shares of TFL were moved from / to the clients account into / from the brokers pool account and payment were made from / received to the Bank of India, Client A/c of the broker to / from the bank account of clients. Thus, I am of the view that when the transaction is not on principal to principal basis, Noticee was not required to issue contracts notes in Form –B, thereby was also not required to obtain written consent from clients.

90. However, I note that there appears to be a procedural irregularity in issuance of contract notes (type of FORM) i.e. Noticee had admitted that it issued contract notes in Form –B instead of Form -A. In this regard, Noticee submitted that it had inadvertently executed contract note in Form B and since it was a requirement of obtaining consent with reference to contracts executed in Form B, Noticee had obtained written consents from clients at the time of execution of contracts. The same is also available on record. Further, I note that BSE DAC vide its meeting dated March 12, 2003 have noted that written consent of the clients was obtained by the Noticee.

91. Thus, even otherwise, in view of the foregoing, Noticee had obtained written consent from client for transactions happened in September 2000. Thus, the allegation of violation of provision of SEBI dated October 29, 1993, read with Regulation 17(1)(j) of Broker Regulations against Noticee is not attracted.

***<u>ISSUE No. 6:</u> Whether Noticee by not reporting the transaction to BSE which it executed in March 2001 had violated the provision of SEBI Circular no. SMD/RCG/CIR/(BKG)/293/95 dated March 14, 1995?***

92. I have noted that, as determined by Hon'ble SAT, the transactions in the shares of TFL between clients through Noticee had happened in September 2000 for which the contracts notes in Form –B were issued by the Noticee in September 2000 albeit settlement (i.e. delivery of shares and payment) had happened in March, 2001 i.e. no new transactions happened in the shares of TFL between clients through Noticee in March 2001.

93. In the Issue no.4 above, I have noted that Noticee had failed to execute the transaction dated September 11, 2000, between buying clients and selling clients, on the screens of the exchanges in the price and order matching mechanism of the exchange, and thereby violated the provision of SEBI circular SMDRP/POLICY/CIR-32/99 dated September 14, 1999.

94. Since the Noticee was required to execute the transaction on the screen of exchanges, which the Noticee had failed to do, therefore, the requirement of the Noticee to report the transaction to BSE under SEBI Circular no. SMD/RCG/CIR/(BKG)/293/95 dated March 14, 1995, shall not arise. Thus, SEBI Circular no. SMD/RCG/CIR/(BKG)/293/95 dated March 14, 1995, is not applicable to the Noticee. However, I note that in any case, the Noticee vide letter dated September 16, 2000, had reported the transactions dated September 11, 2000, to BSE and same was acknowledge by BSE on September 19, 2000, i.e. a delay 8 days. The same has also been taken on record by Hon'ble SAT and BSE DAC. Thus, the allegation of violation of provision of SEBI Circular no. SMD/RCG/CIR/(BKG)/293/95 dated March 14, 1995, against Noticee is not attracted.

***Issue No. 7:*** ***Whether Noticee by not issuing of any contracts notes for the transaction executed in March 2001 had violated the provision of Clause B((2) of Code of Conduct as Specified in Schedule II read with Regulation 7 of Broker Regulations, 1992?***

***Issue No. 8:*** ***Whether Noticee by not making the payment to client NPPL within the stipulated time, had violated the provision of Clause B(1) of Code of Conduct as Specified in Schedule II read with Regulation 7 of Broker Regulations, 1992 and SEBI circular No. SMD/SED/CIR/93/23321 dated November 18, 1993?***

95. I have noted that as determined by Hon'ble SAT, the transaction in the shares of TFL between clients through Noticee had happened in September 2000 albeit settlement (i.e. delivery of shares and payment) had happened in March, 2001 i.e. no new transactions happened in the shares of TFL between clients through Noticee in March 2001. It is noted that Noticee had issued the contract notes in Form B for the transactions, that happened in September 2000 and same are available on record. Hence, I am of the view that since there were no new transactions that happened in the shares of TFL between clients through Noticee in March 2001, Noticee was not required to issue any contract notes for transactions executed in March 2001. Thus, the allegation of violation of provision of Clause B(2) of Code of Conduct as Specified in Schedule II read with Regulation 7 of Broker Regulations, 1992 against Noticee does not stand established.

96. As per the SEBI circular No. SMD/SED/CIR/93/23321 dated November 18, 1993, Noticees were required to make payment to their clients or deliver the securities purchased within two working days of pay-out unless the client has requested otherwise. In this regard, it is noted that transaction in the shares of TFL between selling clients and buying client through Noticee had happened in September 2000 and settlement (i.e. delivery of shares and payment) had happened in March, 2000. The Noticee had delayed in making payment / delivery of securities to its clients to the extent of six months. The same was also admitted by the Noticee and has also been taken on record by Hon'ble SAT and BSE DAC. Thus, the allegation of violation of provision of Clause B(2) of Code of Conduct as Specified in Schedule II read with Regulation 7 of Broker Regulations, 1992 and SEBI circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 against Noticee stands established.

***<u>ISSUE No. 9:</u> If any or all of the above issues are determined in affirmative, then whether any penalty as proposed should be issued against MSS?***

97. I note that the allegations of violations made in SSCN proposed higher penalty, if established. However, for reasons mentioned in previous paragraphs, the allegations of violations in SSCN does not stand established. In view of the foregoing, I note that the issue No. 4 and 8 has been determined in affirmative i.e. (a) Noticee had failed to execute the transaction dated September 11, 2000 between buying clients and selling clients, on the screens of the exchanges in the price and order matching mechanism of the exchange and (b) the Noticee had delayed in making payment / delivery of securities to its clients to the extent of six months.

98. I also note that Noticee had admitted that:

98.1. There are irregularities in contracts notes, which are as under:

98.1.1. Inadvertently executed contract note in Form B instead of Form A.

98.1.2. Contract notes were manually typed and part of the number was not very bright and the same was made legible with a ball pen.

98.1.3. There were a typographical error of placement of the word "To", "From" and "For" in contract notes. These were technical/ typographical error without any malafide intention.

98.2. There was delay in settlement of trades i.e. the contract notes were issued on September 11, 2000 and payments / delivery of shares were completed in March 2001.

99. I note that Enquiry Officer had recommended that a minor penalty of censure may be considered against the Noticee. I have also noted the factors that (a) the transaction occurred in the year 2000/2001 i.e. 20 years back and (b) BSE DAC had already warned Noticee to be careful in future and strictly follow the Rules, Bye-laws and Regulations of BSE. I am of the view that the said factors may be considered as mitigating factors for appropriate action. Therefore, I am of the view that with respect to the aforesaid established violation, and the Noticee being a broker, for its irregularities in contract notes and delayed settlement of trades, it is appropriate that the Noticee exhibits high degree of care, skill and employs due

diligent measures such as checks and balances in terms of adequate systems and procedures in the operations, to avoid any regulatory lapses.

***ORDER:***

100. Thus, in view of the foregoing, I, in exercise of the powers conferred upon me under Regulation 27(5) read with Regulation 38 of SEBI (Intermediaries) Regulations, 2008, in the interest of investors and to protect the integrity of the securities market, hereby advise MSS Securities Private Limited a) to be more careful in future with respect to the dealings in securities market and b) to adopt due diligent measures such as checks and balances in terms of adequate systems and procedures in its operations to avoid any regulatory lapse.

101. The order shall come into force with immediate effect.

102. A copy of this order shall be served on the Noticee and upon all recognized Stock Exchanges and Depositories.

-sd-

**Date: MAY 21 , 2021** **MADHABI PURI BUCH**

**Place: MUMBAI** **WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**