

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PG/ TT/ AO-01- 03/2012]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of

Manoj Gaur

(PAN. AAOPG1931A),

Urvashi Gaur

(PAN.AAOPG1932D)

&

Sameer Gaur

(PAN. AAOPG1933C)

In the matter of

Jaiprakash Associates Ltd.

Adjudication order in respect of Manoj Gaur, Urvashi Gaur and Sameer Gaur in the matter of Jaiprakash Associates Ltd.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation into the trading in the scrip of Jaiprakash Associates Ltd. (hereinafter referred to as “**JAL/Company**”) during the period September 29, 2008 to October 27, 2008 (hereinafter referred to as “**investigation period**”).
2. Shri Manoj Gaur (**MG / Noticee-1**), Executive Chairman of JAL, a connected person with the company had access to Unpublished Price Sensitive Information (“**UPSI**”) of the Company and hence an insider under the SEBI (Prohibition of Insider Trading) Regulations, 1992 (“**PIT Regulations**”). It was alleged that the Noticee was in possession of UPSI with regard to JAL and communicated the same to his wife Urvashi Gaur (**UG / Noticee -2**) and brother Sameer Gaur (**SG / Noticee-3**), who traded in the scrip of JAL taking advantage of the UPSI.
3. The findings of the investigation led to the allegation that:
 - Noticee-1 had violated regulation 3(ii) of PIT Regulations and consequently was liable for monetary penalty under section 15 G of Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”),
 - Noticee- 2 had violated regulations 3(i), 3(ii) & 4 of PIT Regulations and consequently was liable for monetary penalty under section 15 G of SEBI Act.
 - Noticee – 3 had violated regulations 3(i), 3(ii) & 4 of PIT Regulations and consequently was liable for monetary penalty under section 15 G of SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer vide order dated January 17, 2011 under rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules**') to inquire into and adjudge under Section 15G of SEBI Act, the alleged violation of the provisions of PIT Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notices dated March 22, 2011 ("**SCN**") were issued to Noticee -1, Noticee -2 and Noticee -3 (collectively referred to as "**Noticees**") under rule 4 of the Rules to show cause as to why an inquiry should not be held against them and penalty be not imposed under section 15G of SEBI Act for the alleged violations specified in the said SCN.
6. Noticee -1, Noticee – 2 and Noticee - 3 vide letter dated April 22, 2011, April 22, 2011 and April 23, 2011, respectively, replied to the said SCN.
7. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, Noticees were granted opportunity of personal hearings on April 26, 2011, vide hearing notices dated April 11, 2011. Mr. Vinay Chauhan, Authorized Representative of the Noticees appeared for the hearings. During the hearings, Mr. Vinay Chauhan reiterated the submission made by the Noticees vide their replies dated April 22, 2011 and April 23, 2011 and

sought time till May 15, 2011 to make further submissions in the matter.

8. Noticees, vide letters dated May 14, 2011, made further submissions in the matter.

CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the present case are :
 - a. Whether Noticee-1 had violated provisions of regulation 3(ii) of PIT Regulations?
 - b. Whether Noticee-2 and Noticee -3 had violated regulations 3(i), 3(ii) & 4 of PIT Regulations?
 - c. Does the non-compliance, if any, attract monetary penalty under section 15G of SEBI Act?
 - d. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?
10. Before moving forward, it would be pertinent to refer to the provisions of regulations 3(i), 3(ii) & 4 of PIT Regulations, which reads as under:-

INSIDER TRADING REGULATIONS

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

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 when in possession of any unpublished price sensitive information; or
(ii) communicate counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities :

Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.

Violation of provisions relating to insider trading.

4. Any insider who deals in securities in contravention of the provisions of regulation 3 or 3A shall be guilty of insider trading.”

Unpublished Price Sensitive Information (UPSI)

11. As per investigation report, the Company received the trial balances for the Quarter ended September 30, 2008 from its various units in the 1st week of October 2008. Thereafter, the Company made an announcement on October 11, 2008 that in the Board Meeting scheduled to be held on 21st October 2008 the following matters will be considered/approved:

- i) Unaudited financial result for the quarter ended 30th September, 2008,
- ii) Interim dividend for the year 2008-09; and
- iii) Rights Issue.

12. As per investigation report, the consolidated trial balance of the Company for the quarter ended September 30, 2008 was available on October 12, 2008 and its Board approved the Consolidated Quarterly results on October 21, 2008 as well as declared interim dividend of 15 %. The Board also approved issuance of shares on rights basis. In view of the above, the period from October 12, 2008 to October 21, 2008 was considered as the period when the information about the financial results and interim dividend was unpublished price sensitive information (hereinafter referred to as “UPSI”).

13. In this regard, Noticee-1 vide letter dated April 22, 2011 submitted that *“It is denied that the Trial Balances for the quarter ended September 30, 2008 were received from various units of the Company “in the 1st week of October,2008” or that the “consolidated trial balance” of the company for the quarter ended September 30,2008 was available on October 12, 2008 and that in view of the same the period from 12.10.2008 to 21.10.2008 is to be considered as the period when the information about the financial results and interim dividend was unpublished price sensitive information (UPSI), as alleged.*

*In this context it may be noted that there are over 50 locations of various projects /Plants/ work sites/ offices of the company. The respective office/sites/plants etc maintain their respective accounts, which are sent at the end of each quarter to the corporate office through the command office of the company consolidation. The details of the different locations are annexed as **Annexure 3**.*

*In fact, as stated in JAL’s letter dated 15.2.2010 addressed to SEBI (copy enclosed at **Annexure 4**), the Trial balances started reaching the Accounts Deptt. at Corporate Office from various units in the 1st week of October, 2008 till 10th October, 2008.*

You will kindly appreciate, receipt of the Trial Balances, which contain all transactions relating to assets, liabilities, incomes & expenditure of the concerned project/site/plant/office, is only an initial step towards making of Financial Results for the relevant quarter. As stated in JAL's letters dated 15.2.2010 & 31.5.2010 (copies enclosed at Annexure – 4 colly), number of other activities are undertaken before the financial results can be prepared/made available by the persons/senior officers in Finance & Accounts Department of the Company. After receipt of Trial Balances from various units, i.e., after 10.10.2008 in this case, the same were scrutinised with specific reference to the following aspects in each Trial Balance:

- 1. Income Accounting/ Revenue recognition/ Work-in- Progress/ Contracts.*
- 2. Expenses/ Provisions for expenses/liabilities*
- 3. Accounting of Current Assets/ Current Liabilities/ Debtors/ Creditors/ Cash & Bank balances/Fixed Deposits*
- 4. Fixed Assets Accounting/ Capital Work-in-Progress*
- 5. Stock Position and valuation*
- 6. Interest expenses & Provisions of accruals*
- 7. Loan Repayments/ Borrowings/ Public Deposits*
- 8. Inter unit reconciliation of Debit & Credit Balances*
- 9. Related party transactions*
- 10. Accounting of Foreign Exchange Transactions*
- 11. Accounting of Investments etc.*

*Even the first cut of consolidated Trial Balance was available **only after** 12th October, 2008. Difference in unit Trial Balances with Head Office books and intra/inter division/unit is taken up with each Unit and got*

reconciled in respect of all the above items. This process took about 5 days.

The Sites after reconciliation and setting all the queries send their fresh Trial Balances which are then consolidated at HO. The consolidation took about 2 days before the status of results for the quarter was known, i.e., by 17th October, 2008. The quarterly results were thereafter drawn in the prescribed format and put up to me by the Director (Finance) on 17th October, 2008 (i.e., **much after 12th October, 2008, mentioned in your notice**), before putting up the same to the Audit committee in its meeting fixed for 18th October, 2008.

The Finance & Accounts Department is responsible for this function and manned by a dedicated team of professionals. The details of persons involved in the process are given in JAL's letter dated 31st May, 2010. As stated above, the financial result is put up to me by the Director (Finance) after the same are ready.

From the aforesaid sequence of events it is clear that the quarterly results for the quarter ended September 30, 2008 were ready and finalized, post consolidation, inter-unit reconciliation & finalization, **only by 17th October, 2008** which were placed before the Audit Committee in its Meeting held on 18th October 2008.

In so far as I am concerned, I myself became aware about the numbers of the quarterly results only on October 17, 2008 when the same were put up to me by Director (Finance) before the impending Audit Committee Meeting fixed for October 18, 2008 to be followed by Board Meeting scheduled for October 21, 2008.

It is denied that the period from October 12, 2008 to October 21, 2008 can be considered as the period when the information about the financial results and the interim dividend was unpublished price sensitive information as alleged. Same is completely contrary to factual position on record. Admittedly, the company had made corporate announcement to

*the stock exchange on October 11, 2008 about the financial results and the interim dividend. Thus, on October 11,2008 consequent to the corporate announcement made by the Company, the information regarding financial results and the interim dividend was disseminated in public domain and the information regarding the same no more remained unpublished price sensitive information, except for the numbers which could be available much later, i.e., only on 17th October, 2008. **Thus, at best, October 17, 2008 to October 21, 2008 could be considered as the period of existence of UPSI, i.e., when the numbers of financial results could be available.***”

14. Further Noticee 2 and 3 submitted as under:
“With regard to receipt of Trial balances for the Quarter ended September 30, 2008 by the Company from various units of the Company in the 1st week of October, 2008 or that the consolidated trial balance of the Company for the quarter ended September 30, 2008 was available on October 12, 2008 as alleged, it is submitted that I am not aware about the same and the same is of no concern to me. As stated hereinbefore, I am not an employee or in the management of the Company and therefore I had no awareness/knowledge about the internal affairs of the Company including the one referred by you.”

15. I find that the Noticee-1 in his reply has inter alia submitted that the consolidated trial balance was not available on October 12, 2008 and also that the same cannot be considered as UPSI as it had to be further worked upon before becoming a price sensitive information. The consolidated trial balance is the base document from which the financial results of a company would be derived and decision about dividend can be taken. The financial results and dividend declaration are both price sensitive information as per

regulation 2(ha) of PIT Regulations. Further, I am of the view that it is very difficult for the adjudication officer or any external agency to determine when the information became UPSI as the same forms part of the internal working of the corporate. However, I find that JAL had closed its trading window from October 11, 2008 indicating that there was UPSI as on that date. The fact that JAL closed its trading window on October 11, 2008 itself proves that UPSI existed from that date and therefore, Noticee 1's submission that no UPSI existed on October 12, 2008 is not acceptable.

16. Another contention of Noticee-1 is that there was no UPSI as pursuant to announcement of Board Meeting, the public was already aware of news about forthcoming financial results and interim dividend. In support of this contention, Noticee 1 in his letter dated April 22, 2011 has mentioned about the past interim dividends as under:-

“Interim Dividend for the year 2008-09

In view of the satisfactory performance of the Company, declaration of dividend, both interim & final, had been a regular feature, as is evident from the dividend history given below:-

<i>Sl. No.</i>	<i>Financial Year</i>	<i>Interim / Final</i>	<i>Rate of Dividend</i>	<i>Aggregate Dividend</i>
1.	2001-02	<i>Interim</i>	7% (21/1/02)	12%
		<i>Final</i>	5% (27/9/02)	
2.	2002-03	<i>Final</i>	15% (6/10/03)	15%
3.	2003-04	<i>Final</i>	15% (29/9/04)	15%
4.	2004-05	<i>Interim</i>	18% (30/4/05)	24%
		<i>Final</i>	6% (27/9/05)	
5.	2005-06	<i>Interim</i>	18% (3/3/06)	27%

		<i>Final</i>	9% (27/10/06)	
6.	2006-07	<i>Interim</i>	20% (11/1/07)	36%
		<i>Final</i>	16%(30/8/07)	
7.	2007-08	<i>1st Interim</i>	15% (14/7/07)	50%
		<i>2nd Interim</i>	15% (12/1/08)	
		<i>Final</i>	20% (27/8/08)	
8.	2008-09	<i>1st Interim</i>	15% (21/10/08)	50%
		<i>2nd Interim</i>	15% (27/4/09)	
		<i>Final</i>	20% (29/9/09)	
9.	2009-10	<i>1st Interim</i>	27% (21/10/09)	54%
		<i>Final</i>	27% (21/9/10)	
10.	2010-11	<i>1st Interim</i>	20% (28/1/11)	

It will be appreciated from the above that the company had been declaring 1 or 2 interim dividends, besides the Final Dividend, for quite some time in the past. Since for the 1st Quarter of 2008-09 no interim dividend was declared, it was very reasonable & wide expectation of the shareholders and investors at large that 1st Interim Dividend will come with the results of 2nd Quarter ended 30.09.2008.

Further, the announcement of the proposal was made on 11th October, 2008 with the notice to Stock Exchange thereby clearly bringing the information within the public domain. The quantum of dividend was not in the knowledge of any one of the same was decided by the Board in its meeting of 21st October, 2008, which decision was conveyed to the Stock Exchanges on 21st October, 2008, at the earliest possible, and the Trades in question, though highly insignificant in volume, were transacted much before that.”

Noticee 1 has replied that the company had been declaring dividend, both interim and final, regularly. It is also submitted that

since no interim dividend was declared while declaring results for 1st quarter of 2008-09, it was reasonable to expect interim dividend while declaring results for the 2nd quarter of 2008-09.

Noticee-1's submissions themselves indicate the need to consider the information as UPSI. A probability, even though high, does not mean a certainty. As observed from the table above; in 2006-07, the company declared interim dividend on 11.01.2007 (20 %) and final dividend on 30.08.2007 (16 %). In 2007-08, 1st interim dividend was declared on 14.07.2007 (15 %), 2nd interim dividend on 12.01.2008 (15 %) and final dividend on 27.08.2008 (20 %). In 2008-09, 1st interim dividend was declared on 21.10.2008 (15 %), 2nd interim dividend on 27.04.2009 (15 %) and final dividend on 29.09.2009 (20 %). If the company was following the previous precedent, it would have declared 1st interim dividend while considering results for 1st quarter of 2008-09 but it did not do so and announced the interim dividend only while considering results for 2nd quarter. In other words, shareholders and other members of public who were expecting 1st interim dividend at the time of consideration of 1st quarter results would have been disappointed. Thus, the dividend till declared remained UPSI as there was no certainty regarding the timing or quantum thereof.

Similarly financial results, although could be estimated, but exact figures thereof would be known only on declaration and could then impact the share price.

17. Noticee 2 & 3 have stated that they were not aware whether the consolidated trial balance of JAL for quarter ended September 30, 2008 was available on October 12, 2008. They have denied that

period between October 12 to 21, 2008 can be considered as UPSI period. They have also stated that there was no UPSI with regard to financial results and dividend since the Company had already made announcement on October 11, 2008. Their contention regarding period of UPSI has been dealt with in the preceding paragraphs.

Connected/ deemed connected persons

18. I find that Noticee -1 is the Executive Chairman of JAL and therefore is a connected person as defined under regulation 2 (c) (i) of PIT Regulations.
19. Noticee -2 is the wife of Noticee -1. The residential address of Noticee -2 is same as that of Noticee-1. Thus, she falls within the ambit of “person deemed to be connected person” as per its definition given under Regulation 2(h)(viii) of PIT Regulations and therefore, is reasonably expected to have received UPSI and hence she is an insider.
20. Sameer Gaur / Noticee -3 is brother of Noticee -1, Executive Chairman of JAL. The residential address of Mr. Sameer Gaur is same as that of Noticee-1. Thus, he falls within the ambit of “person deemed to be connected person” as per its definition given under Regulation 2(h) (viii) of PIT Regulations and therefore, is reasonably expected to have received UPSI and hence he is an insider.

Trading Details

21. The trading details of Noticee -2 during the investigation period are as under:

Date	Dealt through Broker	Client Id	Buy Qty	Buy Rate (₹)	Buy Value (₹)
30-Sep-08	Tuli Investments Ltd.	UG1	2,500	103.25	258025
14-Oct-08	Tuli Investments Ltd.	UG1	1,000	86.45	86420
Total			3,500		3,44,445

22. It is observed from the above trading details that Noticee -2 bought 3,500 shares in the scrip of JAL during the investigation period out of which 2,500 shares were bought prior to the existence of UPSI and the rest 1,000 shares were bought during the period of UPSI. Further, she had not sold any shares during the investigation period.

23. The trading details of Noticee-3 during the investigation period are as under:

Date	Dealt through Broker	Client Id	Buy Qty	Buy Rate (₹)	Buy Value (₹)
13-Oct-08	Tuli Investments Ltd.	S47	2,000	79.20	158400
14-Oct-08	Tuli Investments Ltd.	S47	4,000	86.20	344800
16-Oct-08	Tuli Investments Ltd.	S47	1,400	65.85	92190
Total			7,400		595390

24. It is observed that Noticee -3 had bought 7,400 shares of JAL after the existence of UPSI and during the period of UPSI. He had not sold any shares during the investigation period.
25. During the calendar year 2008 and prior to the investigation period, Noticee-3 purchased 1,000 shares on 22nd January 2008, 2,000

shares on 25th January 2008 and 5,000 shares on 1st February 2008. Subsequent to the investigation period, he sold 1,400 shares during May 2009, 6,000 shares during September 2009 and 15,000 shares during October 2009. During the calendar year 2008 and prior to the investigation period, Noticee-2 purchased a total of 7450 shares and did not sell any shares.

26. As regard the trading pattern of Noticee 2, vide her letter dated May 14, 2011 she submitted as under:

“a. I am financially independent and have employed my own funds for trading in the scrip of JAL,

b. I have traded in the scrip of JAL pre-Oct 11-2008 to October 21,2008 and also post Oct 11-2008 to October 21,2008 in similar quantities;

c. I have not sold the shares purchased by me during Oct 11, 2008 to October 21, 2008, immediately post October 21, 2008 when the alleged UPSI became public;

d. The quantum of shares bought by me, based on the alleged UPSI, is exceedingly insignificant vis-a-vis individual net worth;

e. I am part of the promoter group of JAL who were holding 52,16,13,213 shares constituting 44.44% of the paid up capital of JAL at the relevant time. Shares which are subject matter of alleged insider trading are mere 1000 shares which constitute 0.0001% shares of the total equity capital of JAL.

f. I have impeccable track record in terms of compliance and have never received any notice from SEBI prior to the one under reference.”

27. As regard the trading pattern of Noticee 3, vide his letter dated May 14, 2011 he submitted as under:

*“a. I am financially independent and have employed my own funds for trading in the scrip of JAL,
b. I have traded in the scrip of JAL pre-Oct 11-2008 to October 21,2008 and also post Oct 11-2008 to October 21,2008 in similar quantities;
c. I have not sold the shares purchased by me during Oct 11,2008 to October 21,2008, immediately post October 21, 2008 when the alleged UPSI became public;
d. The quantum of shares bought by me, based on the alleged UPSI, is exceedingly insignificant vis-a-vis m individual net worth;
e. I am part of the promoter group of JAL who were holding 52,16,13,213 shares constituting 44.44% of the paid up capital of JAL at the relevant time. Shares which are subject matter of alleged insider trading are mere 7400 shares which constitute 0.0006% shares of the total equity capital of JAL.”*

Insider Trading

28. Noticee -1, being Executive Chairman of JAL had access to UPSI and was thus an insider. As regard allegation against Noticee -1 of communicating UPSI to Noticee-2 and Noticee 3, I find that Noticee-2 and 3 are relatives of Noticee-1 and therefore had access to UPSI through their connection with Noticee-1 and common address. The circumstances and the conduct of Noticee-2 and 3 establishes that Noticee -1 had communicated the UPSI to them and therefore, violated regulation 3(ii) of PIT Regulations.
29. As regard allegations of insider trading done by Noticee -2 and Noticee 3, I find that regulation 3(i) of PIT states that no insider shall “*either on his own behalf or on behalf of any other person, deal in*

securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information". The aforesaid regulation prohibits an insider to deal in securities of a listed company when in possession of any UPSI. While considering the facts of the said case with regard to Noticee 2 and 3 in the light of the aforesaid interpretation of the said regulation, I am of the view that Noticee 2 and 3 had access to the UPSI due to their relation with Noticee-1, who is connected person as defined under regulation 2 (c) (i) of PIT Regulations and therefore by virtue of their connection Noticee -2 and 3 fall within the ambit of "person deemed to be connected person" as per its definition given under Regulation 2(h)(viii) of PIT Regulations and are thus insiders. Thus, I am of the view that Noticee 2 and 3 were in possession of the UPSI with regards to JAL. Further, Noticee 2 and 3 had traded in the scrip of JAL while being in possession of the UPSI with regards to JAL. In view of the foregoing, I find that Noticee 2 and 3 had indulged in insider trading and had therefore violated regulations 3(i), 3(ii) & 4 of PIT Regulations.

LEVY OF PENALTY

30. The aforesaid violations of PIT Regulations by the Noticees, make them liable for penalty under section 15 G of SEBI Act, 1992 which reads as follows:

"15G.Penalty for insider trading. - If any insider who,-
(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or

(ii) communicates any unpublished price- sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
(iii) counsels, or procures for any other person to deal in any securities of any body
corporate on the basis of unpublished price-sensitive information, shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.”

31. I find that unlike the charging provision of regulation 3 (i) of PIT Regulations which prohibits trading in a scrip ‘while in possession’ of UPSI regarding the same scrip, section 15 G of SEBI Act prohibits trading in a scrip ‘on the basis of’ the UPSI. For interpretation of the words ‘on the basis of’ in section 15G of SEBI Act, I rely on the interpretation of the words ‘on the basis of’ by the Hon’ble SAT in its order dated May 09, 2008 in the matter of Rajiv B Gandhi vs. SEBI (Appeal No.50 of 2007). In the said case, the Hon’ble SAT has elaborated on the issue of whether the insider, though in possession of unpublished price sensitive information, had traded ‘on the basis of’ that information or not? In this regard the Hon’ble SAT made the following observation:

*“On a plain reading of regulation 3 it appears to us that the prohibition contained therein shall apply only when an insider trades or deals in securities **on the basis of** any unpublished price sensitive information and not otherwise. The words “**on the basis of**” are significant and mean that the trades executed should be motivated by the information in possession of the insider. To put it differently, the information in possession of the “insider” should be the factor or circumstance that should induce him to*

trade in the scrip of the company. It is then that he will be said to have dealt with or traded “on the basis of” that information. We are of the considered opinion that if an insider trades or deals in securities of a listed company, it would be presumed that he traded on the basis of the unpublished price sensitive information in his possession unless he establishes to the contrary. Facts necessary to establish the contrary being especially within the knowledge of the insider, the burden of proving those facts is upon him. The presumption that arises is rebuttable and the onus would be on the insider to show that he did not trade on the basis of the unpublished price sensitive information and that he traded on some other basis. He shall have to furnish some reasonable or plausible explanation of the basis on which he traded. If he can do that, the onus shall stand discharged or else the charge shall stand established. Let us illustrate to explain what we mean. If an insider who sold the shares were to plead that he wanted to raise funds to meet an emergency in his family say, marriage of his daughter or bypass surgery of a close relation and could establish that fact, it would be reasonable to hold that even though he was in possession of unpublished price sensitive information, the motive of the trade was to meet the emergency. He would not be guilty of the charge of insider trading.”

The explanation submitted by Noticee 2 & 3 is not adequate to establish that they traded during the above period on some other basis and not the UPSI.

32. Submissions of Noticee-2 and 3 in defense of the allegations of insider trading against them have been given in para 26 and 27 above.

33. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."*
34. While determining the quantum of penalty under section 15G, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-
- "15J - Factors to be taken into account by the adjudicating officer***
While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-
- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
 - (b) the amount of loss caused to an investor or group of investors as a result of the default;*
 - (c) the repetitive nature of the default."*
35. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticees or loss caused to the investors as a result of the aforesaid violations is not quantifiable. Noticee-1 passed on the UPSI to Noticee -2 and Noticee-3. Noticee-2 purchased 1000 shares and Noticee-3 had purchased 7400 shares of JAL during the UPSI period. This purchase is quite insignificant as compared to the promoter group holding and the net worth of Noticee 2 & 3. Nevertheless, Noticee-2 and 3 should not have transacted in the shares of JAL during the

UPSI period while in possession of the same. It is difficult to arrive at the gain made by them as Noticee-2 did not sell her shares and Noticee-3 sold certain shares during May 2009, September, 2009 and October, 2009 (i.e. after the investigation period). The Noticees were at an advantage due to possession of UPSI. The investing public lost as they were not privy to the UPSI. Further, while Noticee-2 has made only one purchase, Noticee-3 did three transactions during the UPSI period. The purchase of shares by Noticee 2 & 3 during the UPSI period is sufficiently indicative of Noticee-1 having passed on information to Noticee 2 & 3. The object of the PIT Regulations prohibiting insider trading is to give equal opportunity to all investing public and protect their interests. To translate this objective into reality, measures have been taken by SEBI to prohibit communication of information as well as trading by insiders while in possession of UPSI. . I am of the view that insider trading is a serious offence in securities market which warrants a stringent penalty.

ORDER

36. After taking into consideration all the facts and circumstances of the case and the replies of the Noticees, I hereby impose a penalty of :
- a. ₹10,00,000/- (Rupees Ten Lakhs only) on Mr. Manoj Gaur (Noticee-1) under section 15G of SEBI Act for violation of regulation 3(ii) of PIT Regulations.
 - b. ₹10,00,000/- (Rupees Ten Lakhs only) on Ms. Urvashi Gaur (Noticee-2) under section 15G of SEBI Act for violation of regulations 3(i), 3(ii) & 4 of PIT Regulations.

- c. ₹10,00,000/- (Rupees Ten Lakhs only) under section 15G of SEBI Act on Mr. Sameer Gaur (Noticee-3) for violation of regulations 3(i), 3(ii) & 4 of PIT Regulations.
- In my opinion, the said penalty will be commensurate with the violation committed by them.
37. The Noticees shall pay the said amount of penalty by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Mr. G. Ramar, General Manager, Investigations Department - ID3, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
38. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: January 5, 2012	Piyoosh Gupta
Place: Mumbai	Adjudicating Officer