

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER UNDER REGULATION 11 OF SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992 READ WITH SECTION 11 and 11 B OF SEBI ACT AGAINST RELIANCE INDUSTRIES LIMITED IN RESPECT OF DEALING IN THE SECURITIES OF LARSEN AND TOUBRO LIMITED.

- i) Larsen and Toubro Limited (hereinafter known as 'L&T') is a public limited company whose securities are listed in The Stock Exchange, Mumbai (BSE) and other stock exchanges. SEBI received a complaint on 7th January 2002 regarding the sale of 10.05% of L&T shares by Reliance Industries Ltd. (hereinafter known as "RIL") to Grasim India Ltd. (hereinafter known as "GIL"). It was alleged in the complaint that Reliance Group had increased their holding in L&T from 6.62% (in March 2001) to 10.05% (in November 2001) prior to their deal with GIL. RIL sold its stake to GIL at a rate of Rs.306.6 per share thereby making huge profit since they had purchased the additional equity shares at an average price of Rs.150/- per share from the market.
- ii) SEBI undertook an investigation regarding the allegation of insider trading. The findings, of investigation, inter-alia, are as under –
 - 1. RIL, and its subsidiaries, Reliance Industrial Investments and Holdings Limited (RIIHL) and Reliance Capital Limited (RCL) (hereinafter called as 'RIL Group') as of March 31, 2001 collectively held approximately 6.62% of L & T's share capital. Out of these 6.62% shares, RIIHL, the wholly owned subsidiary of RIL was holding 1,31,64,062 shares as on 31st March, 1997. In terms of regulation 6(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 1997 (hereinafter referred to as 'Takeover Regulations'), RIIHL vide its letter dated April 18, 1997 had made disclosures of its holding to L&T.

2. The said shareholding of RIL group in March 2001 decreased to 3.92% around October 2001. However in the first week of November, 2001 RIL group purchased the shares of L&T. Details of purchases made by RIL, RIIHL, RCL and Shreenath Enterprises and its cumulative holding and the percentage of holding, during the period 1.10.2001 to 13.11.2001 are as follows:-

Date	Purchase by Reliance Group	Sale by Reliance Group	Cumulative Holding of Reliance Group	Percentage of Holding
01-10-01	0	50000	10881821	4.38%
03-10-01	0	0	10881821	4.38%
04-10-01	0	0	10881821	4.38%
05-10-01	44475	0	10926296	4.39%
08-10-01	0	582431	10343865	4.16%
09-10-01	51500	201500	10193865	4.10%
10-10-01	0	0	10193865	4.10%
11-10-01	0	50000	10143865	4.08%
12-10-01	50000	200000	9993865	4.02%
15-10-01	1100000	0	11093865	4.46%
16-10-01	1073159	223159	11943865	4.80%
17-10-01	100000	100000	11943865	4.80%
18-10-01	136639	0	12080504	4.86%
19-10-01	0	85170	11995334	4.82%
22-10-01	0	0	11995334	4.82%
23-10-01	0	12000	11983334	4.82%
24-10-01	0	100000	11883334	4.78%
25-10-01	0	0	11883334	4.78%
29-10-01	0	0	11883334	4.78%
30-10-01	0	0	11883334	4.78%
31-10-01	39793	0	11923127	4.80%
01-11-01	0	0	11923127	4.80%
02-11-01	15000	0	11938127	4.80%
05-11-01	1289000	8000	13219127	5.32%
06-11-01	2154687	400000	14973814	6.02%
07-11-01	486174	24000	15435988	6.21%
08-11-01	3740518	45669	19130837	7.69%
09-11-01	5173173	599689	23704321	9.53%
12-11-01	1500206	0	25204527	10.14%
13-11-01	10983767	10983767	25204527	10.14%

3. From the above table it can be observed that holding of RIL Group crossed 5% shareholding in L & T on 5th November and by the 12th of November its combined holding reached 10.14%. All these purchases were done through Reliance Shares and Stock Brokers Limited on NSE / BSE. The price of L & T scrip moved in this period from around Rs.167 to around Rs.209.
4. The deals for purchase and sale on 13th November, 2001 were spot deals for consolidation of holding between RIL and its subsidiaries (RIIHL and RCL) and did not take place on any exchange.
5. The said combined holding of 10.14% of RIL in L&T was sold to GIL. In the minutes of the meeting of Board of Directors of GIL held on November 18, 2001 it is recorded that;
“Chairman informed the Board that the company has received a proposal from RIL for sale of their equity holding in L&T which apart from other businesses has a substantial cement manufacturing capacity. It was felt that the purchase of this holding which represents about 10.05% of the total paid up equity share capital of L&T is considered to be attractive, considering the fact that the company is also engaged in the business of cement wherein it is a major key player.

The Board was further informed that the negotiations for the purchase of the said shares have fructified and subject to the Board's approval, the price has been fixed at Rs.306.60 per share involving the total consideration of Rs.766.50 crore. The Board was given a detailed presentation on the transaction and of the likely benefits accruing to the Company as a result of the transaction going through if so approved by the Board”.

6. On 18th November, 2001 a formal written agreement was entered into between RIL & GIL for sale of a block of 2.5 crore shares of L&T at a price of Rs.306.60 per share by RIL to GIL. The said price was at a premium of about 47% over the prevailing market price of Rs.208.50 per share. Clause (3) of the covenant in the share sale / purchase agreement dated 18th November between RIL and GIL read as under:

“3. Obligations of the Seller

- 3.1 The Seller confirms that upon the sale of the shares as aforesaid, it does not hold either by itself or through its affiliates or associates any shares of the Company, or any instrument that would confer or will provide a right to acquire any equity shares or any other instrument that provides or will provide voting rights;*
- 3.2 The Seller undertakes that upon execution of this Agreement, the Seller and its subsidiaries, affiliates or associates will not acquire any equity shares of the Company or any other instrument that would confer a right to acquire any equity shares of the Company. The Seller further undertakes not to deal in shares of the Company and / or any other instrument that would confer a right to acquire any equity shares of the Company or any other instrument that provides voting rights. The Seller makes this covenant so as to bind themselves, their affiliates, associates or any person acting at their behest.*
- 3.3 The Seller acknowledges that the obligations contained in clause 3.1 and clause 3.2 shall be of an enduring nature and in any event the Seller shall be obliged to comply with the same for a minimum period of 5 years from the date hereof.*
- 3.4 Following the sale of the shares as aforesaid the Seller and / or Representatives will in good faith arrange to convene a Board Meeting(s) of the Company as soon as possible to inter-alia transact the following business and support the same:*
- (i) Informing the Board of Directors of the Company in respect of the shares acquired by the Purchaser from the Seller under the Spot Delivery Contract.*

(ii) Submission of letter of resignation by the Representatives to the Board of Directors of the Company.”

As per the definitions in the said share purchase agreement the Representatives of RIL, the seller, are Mr. Mukesh Ambani and Mr. Anil Ambani

7. GIL informed exchanges on 18th November, 2001 regarding the acquisition from Reliance of 2.50 crore equity shares of Rs.10/- each representing 10.05% of total paid up capital of L& T at a price of Rs.306.60 per share.
8. GIL paid the consideration for the purchase of the said shares to RIL in two tranches i.e. on 20th and 21st November, 2001. An amount of Rs.766.50 crore was paid by GIL to RIL as a consideration.
9. Shri Mukesh Ambani and Shri Anil Ambani (hereinafter called “Ambanis”) resigned from the Board of L &T on November 23, 2001 vide their letter dated November 22, 2001. L&T vide its letter dated 23rd November, 2002 informed the exchanges that at the meeting of Board of Directors of the company held on 23rd November, 2002, the Board appointed Mr. Kumar Mangalam Birla and Ms. Rajeshri Birla as Directors of L &T and accepted the resignation of Mr. Mukesh Ambani and Anil Ambani.
10. As regards the initiation of the transactions the following are worth mentioning:-
 - A) It is stated that a proposal for the deal was initiated by JM Morgan Stanley (hereinafter known as JMMS) with GIL around November 6, 2001. (This is corroborated by statement of) :

i) Shri D.D. Rath, Group Executive Vice President of Grasim, statement dated April 8, 2002.

ii) Shri Adi Patel, VP, JMMS, statement dated May 17, 2002).

- Shri D.D. Rath stated that around November 6, 2001 JMMS approached GIL with an idea that GIL acquire total stake held by RIL in L&T.
- GIL constituted an internal task team to evaluate the proposal received from JMMS (This is corroborated by the statement of Shri D.D. Rath)
- JMMS have stated that they also advised Reliance Group on various issues such as restructuring, fund-raising. (This is corroborated by the statement of Shri Adi Patel).

B) No intimation was filed by RIL group with L&T as required under regulation 7(1) of the Takeover Regulations. No intimation was filed in turn by L & T under Regulation 7(2) of Takeover Regulations with the stock exchange regarding the enhanced shareholding of more than 5% subsequent to purchase from 5th to 12th November.

C) Shri D.D. Rath, Group Executive Vice President of Grasim in his statement dated June 18, 2002 stated that the arrangements for the major part of the fund were made on 12.11.2001. A short term loan for Rs. 150 crore was sanctioned by HDFC Bank on 12.11.2001. An amount of Rs. 250 crore was raised through five negotiable commercial papers issued by GIL. Stamp duty of Rs. 12.5 lakh, i.e., Rs.2.5 lakh on each negotiable commercial paper was paid on 12.11.2001 to the General Stamp Office, Town Hall, Fort, Mumbai. Rs. 200 crore was raised from Bank of America, Nariman Point Branch. Offer letter in this regard for the

loan was issued by the Bank of America on 12.11.2001. An amount of Rs.600 crore was raised by Grasim on 12.11.2001.

- D) A non-judicial stamp paper of Rs.100 for the shares sales/ purchase agreement dated 12.11.2001, issued in favour of GIL shows that the same was procured on 12.11.2001 even though executed on 18.11.2001.
- E) The covenant in the share sale / purchase agreement dated 18th November 2001 mentions about RIL not dealing in the shares of L&T for minimum period of 5 years and resignation by Shri Anil Ambani and Shri Mukesh Ambani from the Board of L&T.
- F) During investigation the stand taken is that the entire discussion regarding sale and purchase had taken place on the 16th of November and the entire share purchase agreement for transaction of Rs. 766 crore was prepared and signed on 18th November. On 18th November itself Shri Anil Ambani and Shri Mukesh Ambani agreed to step down from the directorship of L&T.
- G) The entire transaction worth Rs.766 crore at an abnormally high premium of 47% coupled with the condition of exit of two directors of RIL in L&T and induction of 2 directors of GIL in L&T was stated to be finalized in a short period of 16th - 18th November, 2001 without any market study, due diligence, examination of policies of the company and relevant factors etc.

11. The chronology of purchase / events is follows:

Date	Chronology of purchase/event
1.10.2001	Holding of RIL Group in L&T was 4.38%
31.10.2001	Holding of RIL Group in L&T was 4.80%
5.11.2001	RIL Group purchases 1289000 shares of L&T raising its holding to 5.32%.
6.11.2001	a) As per the statement JMMS approaches Grasim to acquire stake of RIL in L&T. b) RIL Group purchased 2154687 L&T shares raising its holding to 6.02%.
7.11.2001	a) Grasim constituted an internal task team to evaluate the proposal received from JMMS. (Please see statement of DD Rathi). b) RIL Group purchased 486174 L&T shares raising its holding to 6.21%.
8.11.2001	RIL Group purchases 3740518 L&T shares raising its holding to 7.69%.
9.11.2001	RIL Group purchases 5173173 L&T shares raising its holding to 9.53%.
12.11.2001	a) RIL Group purchases 1500206 L&T shares raising its holding to 10.14%. b) Arrangements for major parts of the funds was made on 12.11.2001. A short term loan for Rs. 150 crore was sanctioned by HDFC Bank on 12.11.2001. An amount of Rs. 250 crore were raised through five negotiable commercial papers. Stamp duty of Rs. 12.5 lakh, i.e., Rs.2.5 lakh on each negotiable commercial paper was paid on 12.11.2001 to the General

Stamp Office. Rs. 200 crore was raised from Bank of America, Nariman Point Branch. Offer letter in this regard for the loan was issued by the Bank of America on 12.11.2001. An amount of Rs.600 crore was raised by Grasim on 12.11.2001.

c) stamp paper on which the share purchase agreement was entered into was procured .

13.11.2001

RIL consolidated its group holdings in L&T on 13.11.2001, which were held in the name of RIL, RIHL, RCL. and Shreenath Enterprises.

16.11.2001

It is stated that:-

a) Shri Nimesh Kampani of JMMS approached RIL for sale of L&T shares for a maximum price of Rs.315/-.

b) RIL responded on the same day to sell 2.5 crores of L&T around 50% premium.

c) deal between RIL and GIL finalized by 16th evening subject to approval of the respective boards.

d) GIL issued notice for urgent Board meeting to be held on 18.11.2001

18.11.2001

a) RIL Board Committee approves the deal.

b) Grasim Board approves the deal.

c) stock exchanges were informed about the deal by Grasim.

d) Covenant – Share sale / purchase agreement entered into by RIL and GIL, with AD Ambani and MD Ambani agreeing to step down and RIL agreeing not to deal in the shares of L&T for a minimum period of 5 years.

20 / 21.11.2001	Payment to RIL made by GIL for the deal. The total amount is Rs.766.5 crore for 2.5 crores shares.
22.11.2001	a) Shri MD Ambani & AD Ambani resigned from L&T Board. b) Grasim recommends names of Kumaramangalam Birla and Rajshree Birla for appointment in the board of L&T.
23.11.2001	Shri Kumar Mangalam Birla and Ms.Rajshree Birla were appointed as directors of L&T.

In view of the above, SEBI was of the prima facie view that RIL and Ambanis were insiders, the said acquisition is a price sensitive information and RIL acquired the shares on the basis of such unpublished price sensitive information. Hence RIL and Ambanis violated SEBI(Prohibition of Insider Trading) Regulations, 1992 (hereinafter called the said Regulations.)

iii) A show cause notice dated 18.02.2003 was issued to RIL communicating the above findings advising it to show cause, without prejudice to any action under section 24 and 15G of SEBI Act, as to why proceedings for violation of the said regulations and action under regulation 11 of the said regulations read with sections 11 and 11B of SEBI Act, 1992 should not be initiated and also as to why direction should not be issued against it to disgorge the ill-gotten gains made by them by way of this transaction. The gist of allegations against the noticees is as follows:

- 1) Shri Anil Ambani and Shri Mukesh Ambani, directors of RIL, and the then directors of L&T, were insiders to L&T under the said Regulations. Further, at the material time 4 directors of RIL were also on the Board of L&T. There were common directors in the Board of RIL as well as in the Board of L&T. Therefore, in terms of clause (g) of Section 2 of the Monopolies &

Restrictive Trade Practices Act, 1969 (“MRTP” Act”), RIL and L&T may be deemed to be corporates under the same management. Consequently RIL being a “person deemed to be a connected person” under sub-clause (i) of clause (h) of Regulation 2 of the said Regulations could also reasonably be expected to have access to Unpublished Price Sensitive Information.

2) Shri Mukesh Ambani, Shri Anil Ambani and RIL had the knowledge that GIL was interested in buying equity shareholding of RIL group in L&T; that GIL wanted the Ambanis to step down from the directorship of L&T; that RIL could not thereafter deal in the shares of L&T; that RIL started consolidating its holdings between 5th November to 12th November. None of this information which was available to them was known to the public. It became public only on 18th November 2001. On a reading of the regulations and the facts of the case it appears that this information was unpublished information. This information was price sensitive information as it was likely to affect the price of L&T shares. RIL acquired and then sold the shares of L&T while in possession and on the basis of the above price sensitive information in violation of the said regulations.

iv) RIL vide letter dated 16.04.03 replied to the show cause notice dated 18.02.03 and made, inter-alia, the following submissions:

1. RIL submitted that on an analysis of the provisions, Regulations 2(c), (e), (h) & (k) of insider trading regulations. which define “connected person”, “insider”, “person deemed to be a connected person” and “unpublished price sensitive information” respectively, it is clear that the crucial question to be addressed in deciding whether there is a violation of Regulation 3 or not, is to decide whether the information alleged to be unpublished price sensitive information relate to any of the items mentioned in clauses (i) to (vii) of Regulation 2 (k) or any information of concern directly or indirectly to a company (such information should be of a nature that it could possibly

originate from the company or is within the absolute knowledge of the company) and is likely to materially affect the price of securities of the company in the market. RIL argued that the allegation and the consequent decision or conclusion on this issue must be based on objective criteria and not on any *ipsi dixit*, assumptions or presumptions.

2. RIL submitted that there was nothing whatsoever in the entire show cause notice to show how, why and on what basis it was alleged that the information allegedly available with Shri Anil Ambani, Shri Mukesh Ambani and RIL was likely to materially or otherwise affect the price of securities of L&T in the market. RIL stated that there was no factual basis or even an indication of any basis why and how the alleged information was likely to affect the price of L&T and further that the Show Cause Notice merely alleges “this information was price sensitive information as it was information which was likely to affect the price of L&T”. RIL contended that this allegation is a mere repetition of the contents of the Regulation without there being any factual, objective or empirical basis. Therefore there is no allegation that the alleged price sensitive information related to any of the items mentioned in clauses (i) to (viii) of Regulation 2(k). RIL stated that the very jurisdictional fact that would enable the provisions of the said Regulations to be invoked is absent in the show cause notice. Further, it stated that a judgment of the likelihood of happening of the events (material effect on price) is not to be determined on the basis of any assumption but has to be based on objective criteria. They contended that the person judging has to have objective basis and should have valid reasons to come to the conclusion that the information, if disclosed, would materially affect the price. RIL contended that the show cause notice is totally silent on the basis on which even tentative conclusion can be drawn that the alleged information was price sensitive information and therefore the show cause notice is liable to be dropped on this short ground alone.

3. RIL submitted that the alleged information was not price sensitive since after the transaction was made public there was no dramatic change in the price of the shares. The last traded price of L&T shares prior to the transaction with Grasim Industries was Rs.208.50 on 15.11.2001 and the closing price of L&T shares on the Mumbai Stock Exchange after the transaction was completed and publicly announced for a continuous period of 60 days from 19.11.2001 was not such as would support any allegation that the information was materially or otherwise price sensitive. RIL stated that this submission is not a submission in “hind sight”.
4. RIL denied that the alleged price sensitive information is unpublished price sensitive information as per Regulation 2 (k). It was denied that Shri Anil Ambani, Shri Mukesh Ambani and RIL are insiders within the meaning of the definition of the word “insider” as contained in the said Regulations. It further submitted that Shri Anil Ambani, Shri Mukesh Ambani and RIL did not have access to the alleged price sensitive information by virtue of their connection with L&T, nor did they receive or have access to the alleged price sensitive information as “insiders.” RIL contended that the alleged price sensitive information was at no time available with L&T nor could it possibly be with, or originate from, L&T for Shri Anil Ambani, Shri Mukesh Ambani and RIL to have access to such alleged price sensitive information as “insiders, ” and consequently, the show cause notice is liable to be dropped.
5. RIL argued that the prohibition under Regulation 3 requires that the unpublished price sensitive information must come into existence prior to the dealings in securities and should not be the dealings in securities itself. In the present case, even if the allegations in the show cause notice were correct, the unpublished price information alleged was the transaction between Grasim and RIL itself, which was to deliver the agreed quantum of L&T shares, and no unpublished price sensitive

information is alleged to have preceded the said transaction. Thus, RIL denied that they dealt in securities on “the basis” of any unpublished price sensitive information.

6. RIL contended that Regulation 3 does not prohibit a person from trading in the shares of a company of which he is a Director. It only prohibits dealing on the basis of unpublished price sensitive information relating to that company. A Director, who knows of some other company selling its stake in the target company by virtue of his directorship of the other company, and that too, at a point of time prior to this information reaching the target company, is not an insider vis-à-vis the target company under the definition of “insider” nor would he be affected by the Regulation. RIL stated that in the present case, a fortiori, RIL, which is a corporate entity and, which has sold its shares, was twice removed from the target company and its Board of Directors, and any allegation of insider trading merely because it is a connected company within the artificial meaning of that term under the Regulations is utterly misconceived.

7. The definition of an 'insider', therefore, has two parts –

- (i) He should be a person connected with the company.
- (ii) Such person should also reasonably be expected to have access, by virtue of such connection, to the unpublished price sensitive information.

RIL contended that the show-cause notice overlooks the second limb of the definition of an 'insider,' inasmuch as while there is a deeming provision for becoming a connected person, there is no similar provision for the reasonable expectation of access to, or receipt of, the alleged unpublished price sensitive information. RIL contended that simply

because it is being alleged to be a connected person under a deeming provision, the same does not give rise to any presumption that it had access to, or received, the alleged unpublished price sensitive information, that too, by virtue of the connection.

8. RIL contended assuming that Clause (k) of Regulation 2 has two separate segments - i.e. the enumerated 8 heads and the residuary head of any other information, the basic principle remains the same. It should be information, which reaches a company in the normal course of trading, but is of a character, which is not published by such company nor is it generally known.
9. RIL submitted that it is clear from the show-cause notice that no enquiries have been made as to whether L&T was aware of any of these transactions, and indeed, given the nature of the transactions, it was just not possible for L&T to be aware of the same.
10. RIL further stated that in fact, the show-cause notice does not allege that L&T was at all aware of the negotiations of sale. It is evident that the information about the impending sale ought to have come to RIL and the Ambanis as “insiders” in order for them to be within the mischief of Regulation 3. If L&T itself was unaware of this information, then the question of RIL/Ambanis coming to know of this information as insiders just does not arise.
11. RIL contended that there are two crucial matters on which the show-cause notice is flawed, namely –
 - i) it does not even state (much less allege with particulars) that this information was available with L&T; and

- ii) it does not even state (much less allege with particulars) that this information became known to RIL / Ambanis by virtue only of any connection they have with L&T.

RIL contended therefore that the ingredients of Regulation 3 are not satisfied.

- 12. Regarding the allegation in the SCN that Ambanis & RIL had knowledge that Grasim was interested in buying the equity shareholding of RIL group in L&T, RIL submitted that it is based on mere presumption, and is not borne out by the material on record for the following reasons :

- 12.1 The Statement of Adi Patel of JMMS dated 17.5.2002 establishes that the proposal was initiated by JMMS; that the matter was entirely at the stage of a proposal with Grasim; that no discussions took place between JMMS and RIL and consequently that RIL had no knowledge of Grasim being allegedly interested in buying the equity shareholding of RIL group in L&T.

- 12.2 The said Statement acknowledges that JMMS does advise Reliance group on various issues like restructuring, fund raising etc. and that general discussions on RIL's holdings in L&T as regards the options available to RIL in relation to their holdings in L&T might have taken place in the past, more than a year prior to this transaction.

- 12.3 The above Statement of Adi Patel clearly means that in relation to the subject transaction, RIL had no prior knowledge that Grasim was interested in buying the equity shareholding of RIL Group in L&T. The said Statement of Adi Patel further states that it was on 16th November 2001 that Grasim authorised Nimesh Kampani of JMMS to approach RIL on their behalf for this deal and accordingly Nimesh Kampani approached RIL on 16th November 2001 for this deal and that RIL had no knowledge prior

to 16th November 2001 that Grasim was interested in buying RIL's holding in L&T.

- 12.4 The Statement of D.D. Rathi of Grasim of 8th April 2002 clearly establishes that the matter was entirely at the stage of a proposal initiated by JMMS and was being considered by Grasim and there was no interaction either between JMMS and RIL or between Grasim and RIL and accordingly it is established that RIL had no knowledge that Grasim was interested in buying RIL's stake in L&T. It is submitted that the statement about JMMS giving an "impression" that it may be possible to close the deal quickly, is at highest a perception of JMMS and its own independent view and is not an "impression" given by RIL and RIL denies that it gave any such "impression" to JMMS. This was the independent view of JMMS. RIL demanded that in case the said statements were intended to be used against RIL, an opportunity to cross-examine them be given at the appropriate time.
- 12.5 The statement of DD Rathi dated 18th June 2002 further establishes that the financial arrangements were done by Grasim in expectation of the proposal fructifying into a concluded transaction; that Grasim acted on its own as an interested purchaser and such action of Grasim cannot become a basis to conclude that RIL had prior knowledge that Grasim was interested in buying RIL's stake in L&T.
- 12.6 The said Statement further categorically states that Grasim did not talk to RIL any time in October / November 2001 (i.e. before 16th November 2001) about RIL's stake in L&T. The above Statement further supports the fact that RIL had no knowledge of Grasim being interested in buying RIL's stake in L&T.

12.7 The Statement dated 12th April 2002 of Amitabh Jhunjhunwala states that he received a call from N. Kampani of JMMS on 16th November 2001 regarding a possible deal of sale of RIL stake in L&T to Grasim; the Statement further states that the offer was conveyed by Kampani on the morning of 16th November 2001; that such an offer was conveyed by JMMS on behalf of Grasim. The above Statement clearly establishes that RIL had knowledge of Grasim's interest for the first time only on the morning of 16th November 2001 and it follows that RIL had no prior knowledge that Grasim was interested in buying RIL stake in L&T.

13. Regarding the allegation *that Grasim was interested in buying RIL holding in L&T; that Grasim wanted Ambanis to step down from the directorship of L&T; that RIL cannot thereafter deal in the shares of the L&T and that RIL started consolidating its holdings between 5th November and 12th November 2001 was information which was available to Grasim and RIL and was not known to the public*, RIL submitted that the allegation is not borne out by the material on record as is apparent from the following:

13.1 RIL contended that they had no prior knowledge that Grasim was interested in buying equity shareholding of RIL group in L&T and that Grasim wanted Ambanis to step down from the directorship of L&T was one of the pre-conditions of sale. They stated that they came to know about such requirement of Grasim and it was for the first time on 16th November 2001, and hence there was no question of their making this intention known to the public. RIL contended that immediately after the transaction was concluded on 18th November 2001, this fact was duly intimated to the stock exchanges and entered the public domain.

13.2 RIL submitted that the Statement dated 12th April 2002 of Amitabh Jhunjhunwala clearly suggest that RIL used the opportunity of the then prevailing low and attractive prices to consolidate their equity share

holding in L&T through secondary market purchases and not through any “deals”, whereby RIL had strengthened its position to be in an advantageous situation to make an open offer for L&T at an appropriate point of time. They contended that according to the said Statement, transfer of L&T shares by Reliance entities to RIL was part of the process of consolidation of RIL holding in the context of a likely open offer in the future so that Reliance would not have to give details of multiple entities.

13.3 RIL did not start consolidating its holding between 5th November and 12th November 2001 on the basis of any prior knowledge of Grasim’s intention to buy RIL stake in L&T, but was done for the reasons stated in the said Statement of Amitabh Jhunjhunwala. There is no basis to conclude that the said purchases were made with the intention of selling the same to Grasim.

14. Regarding the allegation *that the aforesaid information was price sensitive information as it was information which was likely to affect the price of L&T*, RIL submitted that the above allegation is not borne out by the material on record for the following reasons :

14.1 RIL contended that the aforesaid information was not within the knowledge of Ambanis or RIL prior to 16th November 2001 and the question of such information being price sensitive is unfounded. RIL argued that the concept of “price sensitive information” does not exist in isolation but there must be “unpublished price sensitive information” as defined in the Insider Trading Regulations known to the insider which was likely to affect the price of shares of L&T in the market. Such was not the case and accordingly the allegation is unfounded. RIL contended that the alleged price sensitive information does not relate to any of the items mentioned in clauses (i) to (viii) of Regulation 2 (k) or any information of concern directly or indirectly to a company as is clear from the instances of unpublished

- price sensitive information covered in clauses (i) to (viii) of Regulation 2 (k) and is likely to materially affect price of securities of the company in the market.
15. Regarding the allegation *that the fact that Grasim was interested in buying L&T shares and the fact that the Ambanis would be stepping down from the management of the Board of L&T were facts which were not known to the market and were known to Shri Anil Ambani, Shri Mukesh Ambani and RIL*, RIL submitted that the above allegation was not borne out by the material on record as is apparent from the following.
- 15.1 RIL contended that fact that Grasim was interested in buying L&T shares from RIL was first made known to RIL only on 16th November 2001 and that Grasim's intention to pursue the proposal initiated by JMMS was based on the fundamental requirement that Ambanis step down from the Board of L&T was first known to RIL only on 16th November 2001.
- 15.2 RIL argued that the proposal made known by JMMS to RIL was not a matter to be announced to the public by RIL. They further contended that one of the pre-conditions of Grasim of buying RIL stake in L&T was that the Ambanis step down from the Board of L&T was not a matter accepted by RIL on 16th November 2001 and consequently the question of RIL being obliged to announce this pre-condition to the public was inconceivable; that immediately after the transaction was concluded on 18th November 2001, this fact was duly intimated to the stock exchanges and entered the public domain.
16. Regarding the allegation *that RIL acquired and then sold the shares while in possession and on the basis of the said price sensitive information*, RIL submitted that the above allegation is incorrect and not borne out by the material on record as is apparent from the following:

- 16.1 RIL argued that the shares of L&T were acquired by RIL during 1st October 2001 and 12th November 2001 for its own reasons as explained in the Statement of Amitabh Jhunjhunwala.
- 16.2 RIL contended that the time the L&T shares were acquired, RIL had no information that Grasim was interested in buying RIL's stake in L&T. At the time the L&T shares were transferred by RIL to Grasim on 20th and 21st November 2001, the information was already within the public domain.
17. With respect to the findings of the investigation report RIL submitted as follows:
18. Regarding the Inference / Conclusion that *RIL and Grasim were in touch with JMMS prior to November 16, 2001*, RIL submitted that the above conclusion is not borne out by the material on record as is apparent from the following:
- 18.1 RIL contended that neither JMMS nor Grasim were in touch with RIL prior to 16th November 2001.
- 18.2 The Statements of Adi Patel and D.D. Rathi state that JMMS had directly approached Grasim with a proposal on or around 6th November 2001 and the Statement of Adi Patel states that JMMS had first approached RIL only on the morning of 16th November 2001. JMMS was clearly acting only on behalf of Grasim and was not in any way representing RIL or acting on its behalf. This is borne out of the fact that the fee was only paid by Grasim and not by RIL.

19. Regarding the Inference / Conclusion that *Grasim had made arrangements for a large part of the total funds paid for the deal and had also procured stamp paper for the agreement on November 12, 2001 itself indicating specific knowledge of a probable deal and simultaneously, RIL consolidated its group holdings in L&T on November 13, 2001 indicating specific knowledge of a probable deal*, RIL submitted that the above conclusion is not borne out by the material on record as is apparent from the following:

19.1 RIL argued that the Statement dated 18th June 2002 of D D Rathi establishes that the financial arrangements were done by Grasim in expectation of the proposal fructifying into a concluded transaction and that Grasim acted on its own as an interested purchaser and such action of Grasim cannot become a basis to conclude that RIL had prior knowledge that Grasim was interested in buying RIL's stake in L&T

19.2 RIL argued that the mere use of stamp paper dated 12th November, 2002 cannot be relied on to allege specific knowledge of a probable deal since as a normal practice the companies keep the stamp papers, which are valid for 6 months from the date of issue. RIL argued that there is nothing in the show cause notice to show that the stamp paper was procured to execute this particular transaction. Same is applicable for stamps for negotiable commercial papers.

19.3 RIL argued that there is nothing whatsoever in the entire show cause notice to show that the alleged price sensitive information was available with RIL prior to 16th November, 2002 particularly when the actual purchases were made by RIL between 5th November 2002 and 12th November 2002.

20. Regarding Inference / Conclusion that *Reliance made substantial purchases immediately prior to the deal increasing their stake from less*

than 5% to around 10% and that the holdings of Reliance group were consolidated on November 13, 2001 and that holdings were consolidated in the context of a likely open offer in future is not tenable. RIL submitted that the conclusion is not borne out by the material on record as is apparent from the following:

20.1 RIL stated that the Statement of Amitabh Jhunjhunwala disclosed the rationale for RIL making the purchases of L&T shares between 1st October 2001 and 12th November 2001 and for consolidating its holding on 13th November 2001. There is nothing in the show cause notice to controvert this position.

21. Regarding Inference / Conclusion that the *fact that Reliance did not make a disclosure on again crossing 5% holding in L&T also indicates that they did not wish to inform about the purchases of L&T shares in the second week of November and that this also indicates possibility of their knowledge that their holding will go down again*, RIL submitted that the above conclusion is not borne out by the material on record as is apparent from the following:

21.1 RIL contended that not having made a disclosure under the Takeover Regulations cannot become a basis to allege a contravention of the Insider Trading Regulations.

21.2 RIL contended that this conclusion is uncertain since it infers a “possibility”. And that the charge of breach of the Takeover Regulations was strongly contested by RIL which have been concluded and a penalty has been imposed on RIL. RIL paid this penalty under protest and filed an appeal against the order of SEBI, which appeal is presently pending before the Hon’ble Securities Appellate Tribunal.

21.3 RIL stated that they made due disclosures pursuant to Regulation 6 of the Takeover Code subsequent to which its shareholding in L&T reduced below 5 per cent and thereafter increased beyond 5 per cent. Even though RIL's shareholding in L&T increased beyond 5 per cent the second time, in view of the fact that the public had prior knowledge of RIL holding shares in excess of 5 per cent in L&T, RIL was not required to make a second disclosure under Regulation 7 of the Takeover Code. Regulation 7 of the Takeover Code becomes operative when a person who did not hold shares in excess of 5 per cent in another company at the time of the Takeover Regulation coming into force, subsequently acquires more than 5 per cent shares in that company.

22. Regarding Inference / Conclusion that *for a deal worth more than Rs.700 crore, the claim of Grasim that they did not know the actual stake of Reliance in L&T till November 16, 2001 and the internal task team constituted by Grasim evaluated the proposal for purchase of stake held by Reliance in L&T without knowing the actual stake cannot be accepted*, RIL submitted that the above conclusion is not borne out by the material on record as is apparent from the following:

22.1 The Statement dated 8th April 2002 of D. D. Rathi states that Grasim found the proposition attractive and to evaluate the whole deal an internal task team was constituted; the Statement states that the specific percentage was not discussed or settled but Grasim's offer was made (to JMMS) keeping in mind that holding of RIL and its associates in L&T equity would be around 7 percent as appearing in their last balance sheet; this position has been reiterated by D.D. Rathi in his Statement dated 18th June 2002; the Statement dated 18th June 2002 of D.D.Rathi states that they did not check the holding of Reliance group as Grasim though it won't be of much help as the holdings may be scattered and not openly known entities. This

was a considered decision taken by Grasim on commercial considerations and no knowledge thereof can be attributed to RIL.

23. Regarding the Inference / Conclusion that the price which was worked out for the deal was substantially above the prevailing market price, it was submitted that this price was arrived at in view of the terms of the deal, the covenants that Reliance will exit from L&T totally and will not acquire any shares of L&T in the foreseeable future. The covenants could only have been provided by Reliance and no other shareholder, the amount of funds arranged also indicates the knowledge that the deal was to take place at a substantial premium. However, there are no facts to indicate that the exact price for the deal was firmed up before November 16, 2001. RIL submitted that the above conclusion is not borne out by the material on record as is apparent from the following:

- 23.1 The Statement dated 17th May 2002 of Adi Patel clearly states that so long as RIL was holding stake in L&T, Grasim would not like to buy any stake in L&T and that a pre-requisite of any deal would be that RIL would not have any interest in L&T through its representatives on the Board or through an equity stake; the Statement dated 8th April 2002 of D. D. Rathi also confirms that Grasim were looking for the total exit of RIL and that emphasis was clearly on the exit of RIL and associates and not on the percentage; that Grasim wanted exit not just of RIL but all their subsidiaries, affiliates and their associates as well; the said Statement of D.D.Rathi also states that the price was worked out after negotiations through JMMS. The parameters determining the price were (i) market price; (ii) block deal, (iii) value for covenants of exit by RIL, (iv) intrinsic value of L&T's business; the Statement dated 12th April 2002 of Amitabh Jhunjunwala also confirms that since Grasim was insisting on certain conditions as a compulsory pre-requisite for the deal, the premium would have to be substantially higher.

23.2 The rationale for the price is clearly substantiated by the reasons given which are principally (a) that RIL undertook not to deal in shares of L&T for a minimum period of 5 years and (b) that Ambanis agreed to step down from the Board of L&T apart from other parameters stated by Grasim. It is a fact that the exact price for the deal was firmed up between 16th November 2001 and 18th November 2001 and accordingly there are no facts (as accepted by SEBI) to indicate that the exact price for the deal was firmed up before 16th November 2001; the aforesaid covenants are justifiable rationale for the price which was at a premium of 47 percent over the prevailing market price of L&T shares. It is submitted that the value of the transaction was not at an “abnormally high premium of 47%” as alleged by SEBI since the price was directly linked to the contractual covenants sought for by Grasim from RIL and duly given by RIL to Grasim and Grasim’s own commercial considerations.

23.3 Without prejudice to the foregoing, RIL submitted that the Investigation Report itself admits that there are “no facts to indicate that the exact price for the deal was firmed up before November, 16, 2001”. This admission is ground alone for the show cause notice to be dropped, in as much as if the price had itself not been finalized till November 16, 2001, there is no question of any transaction having been concluded before that date, and the mere possibility of a transaction taking place cannot be considered as unpublished price sensitive information, as there was equal likelihood of the transaction not materializing if the price could not be agreed between the parties.

24. Regarding the inference / Conclusion that there *is a contradiction in the Board minutes of the meeting of Board of Directors of Grasim held on November 18, 2001 which state that Grasim received a proposal from Reliance Industries Ltd. and the position stated by Reliance and JMMS*

that Reliance was approached by JMMS on November 16, 2001 for the deal, RIL submitted that the above conclusion is not borne out by the material on record as is apparent from the following:

24.1 The Board Resolution of Grasim dated 18th November 2001 states that “the Chairman informed the Board that the Company has received a proposal from Reliance Industries Ltd. for sale of their equity holding in Larsen & Toubro Ltd (L&T), ...”

24.2 Firstly, it is submitted that the language of the Resolution passed by Grasim cannot become a basis to allege Insider Trading by RIL, and it is for Grasim to explain the context in which minutes have been recorded in a particular fashion. Secondly, there is no contradiction in RIL and Grasim’s stance, as the show cause notice itself records in para 10, that Shri D.D. Rathi, Group Executive Vice President of Grasim, has confirmed that JMMS had approached Grasim. Thirdly, if at all we are to attempt an explanation of the language used in Grasim’s minutes, it could be that the specific language was in the context of discussions which took place between 16th November and 18th November 2001 which led to the execution of the Agreement between Grasim and RIL on 18th November 2001. The reference about RIL’s proposal in the Grasim’s Resolution could thus be in relation to the price discussions with RIL for the sale of the L&T shares which took place after 16th November 2001. The language of the Board Resolution nowhere suggests that RIL was approached by JMMS prior to 16th November 2001 (the stated position being that RIL was approached by JMMS for the first time only on 16th November 2001), or that RIL made any offer either to JMMS or Grasim prior to 16th November. Consequently, there is no contradiction. It is further submitted that the records relied upon by the Investigation Officer are of Grasim and if the said Resolution is proposed to be used, RIL reserves the right to cross-examine at the appropriate time.

25. RIL submitted that there is no material in the show cause notice which establishes that the alleged price sensitive information was available with the Ambanis or RIL at the time of the purchase of shares from the market, and instead reliance has been placed on mere presumptions. RIL further submitted that the basis of the inferences/conclusions stated in the Investigation Report and the conclusion arrived at in the Investigation Report that both RIL and Grasim were having specific knowledge of a probable deal at a price substantially higher than the market price before 16th November 2001 is unfounded and not borne out by the facts.
26. RIL denied that any “ill-gotten gains” have been made by it as alleged and accordingly the question of disgorging any alleged “ill-gotten gains” does not arise. RIL submitted that they are a public limited company with a very wide shareholder base of more than 35 lakhs shareholders spread all over India and the profits and gains made by RIL pursuant to this transaction have enured entirely for the benefit of the public at large who constitute the vast body of our shareholders, which includes all major domestic and foreign financial institutions. RIL further stated that there was no personal motive to RIL in negotiating and concluding the subject transaction, but the transaction was a commercial transaction based on purely commercial considerations and the purchase price paid to RIL by Grasim was directly relatable not only to the two restrictive covenants sought for and given to RIL by Grasim but also directly relatable to Grasim’s own commercial reasons for entering into and concluding the transactions, which is established by the statements made by D.D.Rathi on behalf of Grasim.
27. RIL submitted that apart from the reasons given in the Statement of D.D.Rathi as to why Grasim agreed to pay a premium to the market price in relation to the L&T shares acquired by Grasim, the rationale is clear

from the Press Release issued by Grasim immediately after the acquisition. The Press Release of Grasim's states as under:

The Board of Grasim Industries Limited (Grasim), a flagship company of the Aditya Birla group, today resolved to acquire 2.50 crores equity shares in Larsen & Toubro Limited from Reliance Industries Limited. This transaction will represent just over 10% of the paid up equity share capital of Larsen & Toubro (L&T). The shares are to be acquired at a price of Rs.306.60 per share, with transaction value of Rs.766.50 crore funded mainly from internal accruals.

This initiative represents a strategic investment by Grasim in what is India's premier infrastructure company. The Aditya Birla Group has identified Cement and Knowledge – intensive businesses, with a strong service orientation, as significant growth opportunities. L&T's portfolio of the businesses is a perfect fit with this aspiration. L&T is recognized as a premier enterprise, Global in competence and Indian in Character. Notably, their Engineering and Construction business is a provider of solutions to the Infrastructure Sector, both in India and abroad; and their Cement business is the largest in India. Foreign Exchange earnings constitute a significant part of the revenue stream.

This Strategic Investment by Grasim is likely to enhance long-term shareholder value.

JM Morgan Stanley acted as advisors to Grasim."

28. RIL quoted the following portion from the Annual Report of Grasim for the year ended 31st March 2002:

"Strategic Investment in equity of Larsen & Toubro Limited"

In another landmark initiative, the Company chose to acquire a 10.05% stake in Larsen & Toubro Limited, the largest cement producer and a premium infrastructure solutions provider in India. The Company acquired

2.5 crore shares from Reliance Industries Limited for a sum of Rs.766.5 crore, funded through internal sources.

Larsen & Toubro has a strong brand equity in cement industry and a 11% share of the domestic market. L&T also has enviable strengths in the Engineering & Construction sector. In fact, L&T is a premium infrastructure solutions provider in the country and thus is the best bet on infrastructure of India. The Company is exploring synergies that can stem from this relationship for mutual benefit.”

29. RIL submitted that the aforesaid facts establish that Grasim was a willing buyer of RIL's stake in L&T at the negotiated price since it had its own commercial reasons for doing so. They submitted that the allegation of RIL having made “ill-gotten gains” is unfounded, untenable and without any basis. It was further submitted neither Regulation 11 of the Insider Trading Regulations (as they then stood) nor Section 15G of the SEBI Act empower SEBI to give directions to “disgorge” any gains.
30. RIL submitted that the Notice is stated to be issued under Regulation 11 of the Insider Trading Regulations. It is assumed that the Notice has been issued by SEBI in terms of Regulation 9(1) of the Insider Trading Regulations as they then stood and this reply will be treated as RIL's explanation in terms of Regulation 9(2) of the “Insider Trading Regulations” as they then stood.
31. RIL submitted that the dealing in securities must be “on the basis of unpublished price sensitive information” in order to attract charge of the Insider Trading under Regulation 4 of the said Regulations. RIL argued, therefore, it is necessary for SEBI to establish purchases of L&T shares made by RIL during the period 1st October 2001 to 12th November 2001

were “on the basis of” unpublished price sensitive information. RIL contended that SEBI failed to establish this aspect in the Notice.

32. RIL denied that it is a “deemed to be connected person” within the meaning of the definition. They contended that merely being a “person is deemed to be a connected person” is by itself not enough and in order to be an “insider”, such person must be one (i) who is reasonably expected to have access, by virtue of such connection to any unpublished price sensitive information in respect of the securities of the company, or (ii) who has received or has had access to such unpublished price sensitive information.
33. RIL submitted that the definition of the term “insider” requires that the connected person or deemed connected person has actually received or has had access to “unpublished price sensitive information”. It further submitted that this necessarily means that such person (in this case RIL) received unpublished price sensitive information from a third party or had access to unpublished price sensitive information from a third party. It was submitted that such is not the case in the present transaction under investigation, since the matter pertaining to purchase of shares by RIL was a matter which emanated at RIL itself and the fact that RIL intended to buy (and thereafter bought) shares of L&T was not some information which was available with a third party which RIL received or which RIL had access to from a third party, but in fact was information within the knowledge of RIL itself. RIL contended that on this ground also it cannot be considered “insider” as defined in the Insider Trading Regulations and on this ground alone the show cause notice is liable to be dropped.
34. RIL submitted that it first had knowledge of Grasim’s proposal to purchase the shareholding of RIL group in L&T on the morning of 16th November 2001. Consequently, the purchase by RIL of L&T shares during October

/November 2001 was not done by virtue of RIL being a deemed connected person, nor had RIL received information of Grasim's intention to buy nor had RIL access to such intention of Grasim to buy L&T shares from RIL. It further submitted that the transaction of purchase of shares of L&T was not done by RIL based on any information which it had about the affairs of L&T. RIL stated that this is also supported by the fact that neither Shri Mukesh Ambani nor Shri Anil Ambani had been attending meetings of the Board of Directors of L&T for a long time prior to October/November 2001. Consequently, RIL contended that, the prohibition contained in Regulation 3 of the said Regulations does not apply.

35. RIL submitted that it is not disputed that the transaction of purchases made by RIL of L&T shares during October /November 2001 does not pertain to any of the eight enumerated matters. It stated that the latter part of the definition of the expression "unpublished price sensitive information" which is relatable to matters of concern to a company, but not generally known or published, must be read as taking their meaning from the eight enumerated matters preceding the latter part of the definition. It was submitted that the latter part of the definition must be construed in accordance with the principle of "noscitur i sociis" which requires that general words following specific words must be interpreted in accordance with the specific words preceding them. It was thus submitted that the matters which are of concern, directly or indirectly, to a company and not generally known or published must be such matters as are internal to the company, as are the matters spelt out in the preceding eight clauses.
36. RIL contended that the matters in question can only be those which are internal to the company is further borne out by the language of Regulation 2(e), wherein the term "insider" is defined, and which speaks of the receipt of, or access to, unpublished price sensitive information. It is evident that receipt of, or access to, some information indicates that the information is

external to the person, as one cannot receive information from one's self, and nor can one have access to information emanating from one's self. RIL stated that in the present case the alleged information is the information relating to a possible transaction of sale of shares by RIL, and this information was not internal to L&T, but arose from RIL itself.

37. RIL submitted that a purchase of shares of a listed company by one of its shareholders, for that shareholder's own commercial reasons, is not a matter internal to the company, and thus cannot be construed as a matter of concern, directly or indirectly, to the company, within the meaning of the aforesaid definition. Accordingly, RIL submitted that in the present case, the purchase of shares by RIL of L&T during October / November 2001 cannot be construed as a matter of concern directly or indirectly to L&T and accordingly, the same cannot be treated as "unpublished price sensitive information".
38. RIL contended that the transaction of purchases made by RIL of L&T shares during October / November 2001 were also not of "concern" to L&T since the purchases were being done by RIL for its own commercial considerations, and in any event was generally known since all purchases were done by RIL on the stock market. RIL stated that the purchases made by it were not done with the knowledge (as alleged by SEBI) that they were intended to be sold to Grasim since it is only on 16th November 2001 that RIL first came to know of Grasim's interest in buying the equity shareholding of RIL group in L&T.
39. RIL stated that the manifest purpose of the said Regulations is to prevent those who are privy to insider information from making an unfair gain at the cost of outsiders who deal with them and who do not have access to such unpublished information. RIL further submitted that where an insider is selling securities, the price of which he knows will fall upon disclosure of

unpublished price sensitive information (and to which information he is privy), it would be unfair for the buyer who is paying a price higher than what he would have agreed to pay if he was also privy to the same information. In the instant case RIL stated, (a) it did not have any information about L&T which was not known to Grasim; (b) Grasim was not concerned with the percentage holding of RIL in L&T (as is borne out by the Statement dated 8th April 2002 of D.D.Rathi) but rather on seeking complete exit of RIL and associates from L&T; and (c) RIL had no knowledge that the price of L&T shares would materially decline below the prevailing market price after the completion of the sale transaction. It cannot be regarded that RIL had any information which was not generally known, but which if known, was likely to materially affect the price of shares of L&T in the market.

40. RIL submitted that in order for information to be regarded as “unpublished price sensitive information”, the same must be information such as is likely to be materially affect the price of securities of the company in the market. It was submitted that all purchases of L&T shares were made by RIL on stock markets at the then prevailing market price and when such purchases were made by RIL, RIL had no reason to believe that such purchases were likely to affect the price of those securities on the stock market. RIL contended that even assuming without admitting that it made purchases of L&T shares during October / November 2001 with the knowledge of Grasim’s intent to purchase the shares from RIL, even so the purchases were not made by RIL on the basis of any information pertaining to L&T which was available to RIL but which was not available to Grasim and consequently such purchases could not be regarded as done on the basis of “unpublished price sensitive information”
41. RIL stated that if a shareholder holding a significant number of shares proposes to sell his shareholding to another, information about this

transaction itself would not fall within the scope of the Insider Trading Regulations vis-à-vis this very transaction. The reason for this is obvious – the fact that the shareholder is selling his shares is known to the buyer of the shares even if it is not known to the public. RIL further submitted that the said Regulations seek to curtail a seller of shares (who is an insider) taking undue advantage of a buyer and conversely a buyer (who is an insider) taking undue advantage of the seller – the undue advantage being derived from their being privy to insider information which would, upon disclosure, affect the price. RIL contended that this information as to this transaction cannot be considered unpublished information qua the very transaction itself.

42. RIL submitted that the premium to market price which Grasim paid to RIL was not on the basis of some information to which RIL was privy and which was not known to Grasim, but rather such premium was paid by Grasim as a willing buyer based on its own commercial considerations as narrated above and inter-alia for extracting and obtaining from RIL two restrictive covenants as explained above. The transaction between RIL and Grasim was primarily a deal of covenants to ensure RIL's complete exit from L&T and RIL agreeing not to purchase any shares of L&T in the future for a agreed period and accordingly RIL transferred its entire share holding in L&T to Grasim to implement the said understanding between them. RIL submitted that it was pertinent to note that Mr. D.D. Rathi's own statement made on behalf of Grasim emphatically shows that complete exit of RIL as a shareholder, the exit of the Ambanis and the covenant of RIL not to deal in L&T shares for a given duration was the basic and fundamental reason why Grasim paid the said price for the L&T shares acquired by RIL. These two restrictive covenants are sought to be ignored by the Investigating Officer while alleging that Grasim paid "abnormally high premium" for those shares acquired by RIL. RIL further submitted that the premium payable was absolute and was not based on the percentage

or the number of shares sold by RIL to Grasim but was for the covenants provided by RIL under the share purchase agreement and this supported by the statement dated April, 8th, 2002 of the Mr. D.D. Rathi for question no 15 and statement dated of May, 17th, 2002 of Mr. Adi Patel for question no14. RIL contended that the receipt of premium to market price by RIL cannot be regarded as a premium obtained on account of information not generally known to the public but because of commercial considerations directly attributable to the requirements of the purchaser.

43. RIL submitted that after the transaction of sale entered the public domain, the same did not have any impact on the price of L&T shares on the Bombay Stock Exchange. The prices at which the L&T shares were purchased by RIL during October / November 2001 were in the range of Rs.163.70 to Rs.217.70 per equity share and in the 60 days period following the transaction becoming known to the public, the share price of L&T from 19th November 2001 to 18th January 2002 was in the range of Rs.177.10 (the lowest on 27th December 2001) and Rs.226.05 (the highest on 11th December 2001). RIL argued that even assuming that RIL had the knowledge of Grasim's intention to purchase the L&T shares from RIL, the same would not have materially affected the price of L&T shares in the market as is borne out by the subsequent performance of L&T shares on the Bombay Stock Exchange. RIL stated that this submission is made without prejudice to RIL's position that it did not know of Grasim's intention till 16th November 2001.
44. RIL further submitted that the allegation of contravention of insider trading laws cannot be based on assumptions. The Investigation Report, at worst, alleges only of knowledge of a "probable" transaction between RIL and Grasim, which, it is submitted, is a very different proposition from knowledge of an actual deal. It may kindly be appreciated, RIL stated, a charge as serious as insider trading cannot be brought on the basis of

- mere probabilities. RIL contended that it could have acquired shares of L&T from the market, simply as a measure to protect its own position, and if, in this manner, RIL made a profit on the additional shares prudently acquired, the same by no means can be attributed to insider trading.
45. RIL submitted that where more than one plausible explanation is possible, as is the situation in the present case, a show cause notice alleging the commission of an offence, that too of a serious nature as insider trading, cannot be proceeded with based purely on assumptions and alleged probabilities, but must be based only on definite and substantial evidence and material, which is absent in the present case. RIL further submitted that the burden under the statute to establish the alleged offence has not been shifted to the noticee, as while there is a deeming provision with relation to a person who can be deemed a connected person, there is no such deeming provision or presumption in relation to the access to, or receipt of, unpublished price sensitive information.
- v) Vide its letter dated 16.04.2003, in reply to the SCN dated 18.02.03, RIL requested for a personal hearing. A personal hearing was granted on September 9, 2003 at 11.30 A.M before the SEBI Board Committee which was constituted by the Board at its meeting held on 27.06.2003 pursuant to the request from RIL vide its letter dated 12.06.2003. The Board Committee consisted of Chairman, SEBI along with two Members of the Board - Whole Time Member, Shri A K Batra and Smt. K J Udeshi, Member SEBI and Dy. Governor, Reserve Bank of India. The Board Committee was presided by Shri G N Bajpai, Chairman, SEBI. Shri Kapil Sibal (Senior Advocate), Shri J J Bhatt, (Senior Advocate), Advocates Ms Anjali Chandurkar, S H Junnarkar, M M Bandukwala, Saurab Jaywant and S K Honnesh of RIL, represented RIL. Shri Kapil Sibal made submissions before the Board Committee. RIL was granted 14 days time to file their written submissions. RIL vide letter dated 26th September, 2003 filed its

written submissions in addition to its submissions made vide letter dated 16.4.03 which also consists of submissions made before the Board Committee. Through the said letter RIL made, *inter-alia*, the following submissions:

1. RIL submitted that the focus of the entire investigation of SEBI, pursuant to which SEBI has drawn inferences from purely circumstantial evidence has been the following conclusions (which have led to the issue of the Show cause notice):
 - (a) RIL and Grasim were in touch with JMMS prior to 16th November 2001;
 - (b) Grasim made arrangement for funds and also procured stamp paper on 12th November 2001 indicating specific knowledge of a probable deal;
 - (c) RIL consolidated its group holdings in L&T on 13th November 2001 indicating specific knowledge of a probable deal.
 - (d) RIL made substantial purchases of shares of L&T immediately prior to the deal, as a result of which RIL, between 5th November 2001 and 13th November 2001, increased its shareholding to 10.14%.
 - (e) the price arrived at for the deal was substantially higher than the prevailing market price and that the price was arrived at in view of the covenants given by the Noticees to GIL and that these covenants could only have been given by RIL and no other shareholder;
 - (f) the amount of funds arranged, indicate knowledge that the deal was to take place at a substantial premium.
2. RIL stated that SEBI has, thus, sought to conclude that both RIL and GIL had specific knowledge of a probable deal at a price substantially higher than the market price “before 16th November 2001” and that on the basis of this unpublished price sensitive information “prior to 16th November 2001” RIL made purchase of shares of L&T in early November 2001. However, at the same time, in its Investigation Report, SEBI has accepted

that there are no facts to indicate that the exact price for the deal was firmed up before 16th November 2001.

3. RIL submitted that, for reasons more specifically stated in the reply to the showcase notice, there is no evidence whatsoever to arrive at the aforesaid conclusions. RIL further submitted that the entire focus of the investigation of SEBI has been misdirected towards the Noticees having knowledge of the probable deal prior to 16th November 2001. RIL contended that this inference of SEBI that the Noticees had prior knowledge of the probable deal with GIL is not admitted and in an event is not relevant to the issue for determination, namely:
 - whether the alleged information is “unpublished price sensitive information”?
 - whether the Noticees had knowledge of such unpublished price sensitive information “by virtue of their connection” with L&T?
4. RIL submitted that the aforesaid conclusions of SEBI referred to in Paragraphs 1 and 2 above have no bearing on the legal conclusion arrived at by SEBI that the Noticees are “insiders” and have bought and sold shares of L&T on the basis of “unpublished price sensitive information” and in fact demonstrate that the transaction between RIL and GIL was not L&T’s information and not received by the Noticees in their capacity as connected persons within the meaning of the Regulations.
5. RIL submitted that the investigation of SEBI disregarded the admitted fact that the substantial premium agreed to be paid by GIL for RIL’s shareholding was arrived at in consideration of the covenants to be given by the Noticees and which covenants could not have been provided by any other shareholder.

6. RIL contended that the alleged knowledge of the Noticees was not “unpublished price sensitive information” at all, since it was not information belonging to or known to L&T nor was it information which emanated from L&T and it is pertinent to note that during its investigation, SEBI has not examined L&T or any of its officers.
7. RIL while quoting relevant regulations i.e. regulation 3 and Clauses (c), (e), (h) and (k) of Regulation 2 of SEBI (Insider Trading) Regulations, 1992, stated that the Regulations prohibit dealing in securities of a listed company by a person who is an “insider” on the basis of “unpublished information”, which is considered to be “price sensitive”.
8. RIL contended that the alleged inferences and conclusions of SEBI in the said show cause notice are extraneous to the issues for consideration. Further, it submitted (without admitting) that even if the alleged inferences and conclusions of SEBI are correct, the same cannot be the justifications for the legal conclusions drawn by SEBI and there has been an erroneous application of the law to the alleged facts.
9. RIL submitted that in order to attract the rigours of the Regulations it is essential to establish the following :
 - firstly, that the alleged information within the knowledge of the Noticees is/was “unpublished price sensitive information” belonging or known to the company (L&T);
 - secondly, that such information was generated by or emanated from the company;
 - thirdly, that the Noticees had knowledge of such information “by virtue of their connection” with the company; and
 - lastly, based on the foregoing, the Noticees were “insiders”

RIL stated that if it had dealt in securities of L&T on the basis of “unpublished price sensitive information” of L&T which was derived by them from L&T could the noticees be termed as “insiders” under Regulation 2(e) of the Regulations.

10. RIL submitted that in the present case the information alleged to have been within the knowledge of the Noticees and on the basis of which it is alleged that the Noticees dealt in the securities of L&T was purely self-generated information of the Noticees and arising out of its own decision-making and was not information of L&T or which emanated from L&T. It further submitted that self-generated information does not fall foul of any of the above quoted provisions of the Regulations and accordingly, the Regulations have no application in the present case.

11. RIL submitted that in the absence of generation of information by the company and in the absence of the company having any knowledge of the information, the basic ingredient of the definition of “unpublished price sensitive information” that it is not information generally known or published by such company for general information is not satisfied. Thus, RIL stated that, if the Regulations are to be attracted, it is first necessary that the information should be known to the company and second, such information should not be generally known or published by the company for general information.

12. RIL contended that the alleged information with regard to the proposed deal was information of the Noticees, which information was not at all received by anyone of RIL, Shri Mukesh Ambani and Shri Anil Ambani in their capacity as “connected person” or “deemed connected person” as defined in Regulation 2(c) and Regulation 2(h) of the Regulations. RIL stated that the alleged information was information received by RIL as shareholder of L&T to which information L&T was not privy. RIL further

contended that merely because at the material time Shri Mukesh Ambani and Shri Anil Ambani were Directors of L&T cannot be the basis to conclude that the alleged information is “unpublished price sensitive information” since they did not receive such information from L&T in the course of performing their duties as Directors of L&T.

13. RIL stated that there is no evidence whatsoever on record to suggest that the alleged information was at all information possessed by or known to L&T. Further RIL contended that L&T was not a part of the investigation undertaken by SEBI nor was any officer or person representing L&T interrogated by SEBI in this connection.

14. RIL submitted that “unpublished price sensitive information” is information:

- which is of concern directly or indirectly to a company; and
- which is not generally known or published by such company for general information; but
- which if published or known is likely to materially affect the price of securities of that company in the market.

RIL stated that the alleged information was self-generated information of the Noticees and arising out of their own decision-making. The alleged information, offer of GIL to buy RIL’s shareholding in L&T, was received by RIL in its capacity as shareholder of L&T and not as “deemed connected person” of L&T. The alleged information, if at all it was received by Shri Mukesh Ambani and Shri Anil Ambani, it was received by them in their capacity as Directors of RIL, and not as Directors (‘connected persons’) of L&T. RIL contended that the alleged information did not concern or belong to L&T and was not within the knowledge of, nor did it emanate from L&T and RIL, as shareholder of L&T, was under no obligation or duty to L&T to disclose its probable dealings in the shares of L&T.

15. RIL further contended that the allegation that the information is “price sensitive” is without any factual basis. There is no indication in the show cause notice as to why and how the alleged information was likely to materially affect the price of L&T in the market. RIL stated that in fact, the record shows that there was no significant fluctuation in the market price of the shares of L&T post information of the sale of L&T’s shares by RIL to GIL becoming known to the public. For the foregoing reasons, RIL submitted that the alleged information was not at all “price sensitive” information.
16. In support of its submissions RIL quoted the decision of the Appellate Authority (Central Government) dated 14th July, 1998 in the case of Hindustan Lever Ltd. Vs Securities and Exchange Board of India. Further, Rule 10b-5 10b-5 -1 of the General Rules and Regulations under the Securities Exchange Act, of 1934 of the United States of America were referred. The principal decisions of the United States Supreme Court on the applicability of Rule 10b-5 were discussed - in the cases Vincent F. Chiarella vs United States [reported in 445US 222(1980), 63 L Ed. 2d 348], Cady, Roberts and Co. [reported in 40 S.E.C. 907 (1961)] and Ramond L. Dirks vs Securities and Exchange Commission [reported in 463 U.S. 646 (1983), 77 L Ed 2d 911].
17. RIL submitted that the Noticees are not at all “insiders” within the meaning of Regulation 2(e) of the Regulations. It was submitted that the information alleged to be “unpublished price sensitive information” is, purely self-generated information, i.e. self-generated by RIL and arising out of an independent transaction between RIL, as shareholders of L&T and GIL (the purchaser of the shares). This information is not at all information generated by, or of, L&T and not at all information acquired by virtue of Shri Mukesh Ambani and Shri Anil Ambani being at the relevant time Directors on the Board of Directors of L&T.

18. RIL stated that from the aforesaid analysis, it is clear that for information to qualify as insider information resulting in a duty to either disclose such information or abstain from trading on the basis of such information, firstly, the information must be intended to be available only for a corporate purpose of the company whose shares were traded on the basis of such information and not for the personal benefit of any other person; and secondly, there must be no inherent unfairness involved in trading on the basis of such information.

19. RIL contended that in the present case, even assuming that the alleged information was known to the Noticees prior to the purchase of shares of L&T by RIL, such information was not the information of L&T meant for L&T's corporate purpose and for L&T's benefit but was information of RIL for its own purpose; there was no inherent unfairness to the buyers (GIL) since GIL knowingly paid a premium in consideration for the covenants given by the Noticees and such covenants could not have been provided by any other shareholder; and there was no inherent unfairness to other shareholders of L&T since, if GIL had purchased the shares of L&T directly from the market instead of purchasing such shares from RIL, the sellers would have received from GIL the same market price as paid by GIL to the said sellers and accordingly, there was no unfairness to them. RIL stated that the reason for this is that sellers in the market could not have commanded the premium paid to RIL in exchange for the covenants.

20. RIL reiterated that assuming that the alleged information regarding the probable deal for sale of RIL's shareholding in L&T to GIL was within the knowledge of the Noticees prior to 16th November 2001, nevertheless:

- such information was self-generated information of the Noticees and arising out of its own decision-making;

- such information did not emanate from L&T or pertain to L&T's corporate purpose;
- such information was not acquired by the Noticees by virtue of their connection with L&T;
- there was no unfairness involved in the dealing by RIL in the securities of L&T;

RIL contended that accordingly the alleged information is not “unpublished price sensitive information” and the Noticees not having received the same by virtue of their connection with L&T, the Noticees are not “insiders” within the meaning of Regulation 2(e) of the Regulations.

21. RIL submitted that for the reasons more specifically set out in the replies dated 16th April 2003 filed to the show cause notice as also in view of the submissions made at the personal hearing granted by this Hon'ble Board on 9th September 2003 and further written submissions, it prayed that the said show cause notice dated 18th February 2003 be dropped.

22. The Board Committee has carefully examined the facts and circumstances of the case. The Committee has also carefully considered the submissions during the personal hearing on September 9, 2003 and submissions of RIL vide letters dated 16.04.2003 and 26th September, 2003. The following issues arise for consideration.

23. Whether the noticees i.e. RIL, Shri Mukesh Ambani and Shri Anil Ambani are ‘insiders’ within the meaning of Regulation 2(e) of SEBI (Insider Trading) Regulations, 1992 (hereinafter referred to as “the said Regulations”) and whether the noticees can be termed as “Connected person” or “deemed to be a connected person” in terms of Sub-Regulations (c) and (h) of Regulation 2 of the said Regulations.

24. Whether the transaction between RIL and GIL can be regarded as the transaction based on “unpublished price sensitive information” in terms of Regulation 2 (k) of the said Regulations.

25. Whether the noticees violated any of the Insider Trading Regulations

The said issues are considered and findings are as under:

26. Whether the noticees i.e. RIL, Shri Mukesh Ambani and Shri Anil Ambani are ‘insiders’

1) The Insider Trading Regulations that are applicable to the present case are the Regulations as were existing before 20.02.2002. Regulation 2 (e) of the said Regulations define an insider as under:

2(e) “insider” means any person who, is or was connected with the company or is deemed to have been connected with the company, and who is reasonably expected to have access, by virtue of such connection, to unpublished price sensitive information in respect of securities of the company, or who has received or has had access to such unpublished price sensitive information;

2) As per the said definition, any person to be termed as an insider should be a person:

- a) Who is or was connected with the company
- b) Who is deemed to have been connected with the company
- c) Who is reasonably expected to have access, by virtue of such connection, to unpublished price sensitive information in respect of securities of the company or

- d) Who has received or has had access to such unpublished price sensitive information by virtue of such connection.

3) For the purpose of understanding the meaning of expressions 'connected person' or 'person is deemed to have been connected person' as used in the definition of the 'Insider' in regulation 2(e) one may have to take assistance from regulation 2 (c) and regulation 2 (h) of the said Regulations which are as under:

"2. In these regulations, unless the context otherwise requires :-

(c) "connected person" means any person who –

- (i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act;*
- (ii)*

2 (h) "person is deemed to be a connected person", if such person-

- (i) is a company under the same management or group, or any subsidiary company thereof within the meaning of sub-section (1B) of section 370, or sub-section (11) of section 372, of the Companies Act, 1956 (1 of 1956), or sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), as the case may be; or*
- (ii)*

4) From the facts and allegations in the show cause notice dated 18.02.03, the Committee finds that the combined shareholding of RIL group was 6.62% in March 2001 which decreased to 3.92% around October 2001. Subsequently, however, during 01.10.01 to 13.11.01 Reliance Group acquired the (6.22%) shares of L&T.

- 5) During the said period RIL Group crossed 5% shareholding in L & T on 5th November and by the 12th of November its combined holding reached 10.14% which constituted 2.5 crore shares. The price of L & T scrip moved in this period from around Rs.167 to around Rs.209.
- 6) On 18th November, 2001 a formal written agreement was entered into between RIL and GIL for sale of a block of 2.5 crore shares of L&T at a price of Rs.306.60 per share. The said price was at a premium of about 47% over the prevailing market price of Rs.208.50 per share.
- 7) Shri Mukesh Ambani and Shri Anil Ambani were directors on the Board of L & T during the relevant period i.e. before 18.11.2001. One of the covenants of the agreement dated 18.11.2001 was that the Ambanis would resign from the Board of L & T.
- 8) RIL vide its letter dated 16.04.03 contended that a person to be called an 'insider' should fulfil the following criteria –
- (i) He should be a person connected with the company.
 - (ii) Such person should also reasonably be expected to have access, by virtue of such connection, to the unpublished price sensitive information.

RIL argued that the show-cause notice overlooks the second limb of the definition of an 'insider,' since, there is no deeming provision for the reasonable expectation of access to, or receipt of, the alleged unpublished price sensitive information unlike connected person. RIL stated that simply because it is a connected person under a deeming provision, the same does not give rise to any presumption that it had access to, or received,

the alleged unpublished price sensitive information, that too, by virtue of the connection.

9) The committee finds it difficult to accept this contention of RIL. There is no doubt that the Ambanis being Directors on the Board of L & T were connected persons within the meaning of regulation 2 (c) of the said Regulations and further the second limb is also satisfied by the inference drawn from the facts that the Ambanis were reasonably expected to have access, by virtue of their being directors of L & T, to the unpublished price sensitive information. Whether the Ambanis received any unpublished price sensitive information by virtue of their being Directors would be examined subsequently.

10) As per sub clause (i) of clause (h) of regulation 2, RIL and L & T may be deemed to be bodies corporate under same management as per sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969. This is supported by the fact that RIL had 14 Directors and L & T had 17 Directors at the relevant point of time. Both RIL and L & T had four common directors. As per Explanation I given to the definition of 'inter connected undertakings' in section 2(g) of the Monopolies and Restrictive Trade Practices Act, 1969, if one or more Directors of one such body corporate constitute one-fourth of the Directors of the other, then the two bodies corporate shall be deemed to be under the same management. In the instant case, admittedly four Directors of L & T constitute one-fourth of the Directors of RIL. Therefore, it can be safely concluded that RIL and L & T are under the same -management and RIL would be "deemed to be a connected person" with L & T.

11) Therefore the Committee finds that Ambanis were 'connected persons' and RIL 'a deemed connected person' within the meaning of the above

cited provisions of Insider Trading Regulations during the relevant period.

vi) Whether there was an unpublished price sensitive information in terms of Regulation 2 (k) of the said Regulations and whether RIL's dealing in securities of L & T was based on such unpublished price sensitive information.

- 1) Admittedly, Reliance group as of March 31, 2001 held approximately 6.62% of L & T's share capital. Out of these 6.62% shares, RIIHL, the wholly owned subsidiary of RIL was holding 1,31,64,062 shares as on 31st March, 1997. Around October 2001, the shareholding of RIL, RIIHL and RCL decreased to 3.92%. However in the first week of November, 2001 Reliance group acquired the shares of L&T. Details of purchases made by RIL, RIIHL, RCL and Shreenath Enterprises during the period 1.10.2001 to 13.11.2001 are as follows:-

Date	Purchase by Reliance Group	Sale by Reliance Group	Cumulative Holding of Reliance Group	Percentage of Holding
01-10-01	0	50000	10881821	4.38%
03-10-01	0	0	10881821	4.38%
04-10-01	0	0	10881821	4.38%
05-10-01	44475	0	10926296	4.39%
08-10-01	0	582431	10343865	4.16%
09-10-01	51500	201500	10193865	4.10%
10-10-01	0	0	10193865	4.10%
11-10-01	0	50000	10143865	4.08%
12-10-01	50000	200000	9993865	4.02%
15-10-01	1100000	0	11093865	4.46%
16-10-01	1073159	223159	11943865	4.80%
17-10-01	100000	100000	11943865	4.80%
18-10-01	136639	0	12080504	4.86%
19-10-01	0	85170	11995334	4.82%
22-10-01	0	0	11995334	4.82%
23-10-01	0	12000	11983334	4.82%
24-10-01	0	100000	11883334	4.78%
25-10-01	0	0	11883334	4.78%

29-10-01	0	0	11883334	4.78%
30-10-01	0	0	11883334	4.78%
31-10-01	39793	0	11923127	4.80%
01-11-01	0	0	11923127	4.80%
02-11-01	15000	0	11938127	4.80%
05-11-01	1289000	8000	13219127	5.32%
06-11-01	2154687	400000	14973814	6.02%
07-11-01	486174	24000	15435988	6.21%
08-11-01	3740518	45669	19130837	7.69%
09-11-01	5173173	599689	23704321	9.53%
12-11-01	1500206	0	25204527	10.14%
13-11-01	10983767	10983767	25204527	10.14%

- a) From the above table it can be seen that the holding of Reliance Group crossed 5% shareholding in L & T on 5th November and by the 12th of November its combined holding reached 10.14% in L & T. The deals for purchase and sale on 13th November, 2001 were spot deals for consolidation of holding between RIL and its subsidiaries (RIIHL and RCL) and did not take place on any exchange.
- b) Admittedly, the said combined holding of 10.14% of RIL in L&T was sold to GIL. In the minutes of the meeting of Board of Directors of GIL held on November 18, 2001 it was recorded that it received a proposal from RIL for sale of their equity holding in L&T which represents about 10.05% of the total paid up equity share capital of L & T and considered the offer to be attractive as GIL was also engaged in cement business. Further, it was stated that the negotiations for the purchase of the said shares have fructified and subject to the Board's approval, the price has been fixed at Rs.306.60 per share involving the total consideration of Rs.766.50 crore.

- c) It is further noted that on 18th November, 2001 a formal written agreement was entered into between RIL & GIL for sale of a block of 2.5 crores shares of L&T (10.14%) at a price of Rs.306.60 per share. The said price was at a premium of about 47% over the prevailing market price of Rs.208.50 per share. The Committee noted that Clause (3) of the covenant in the share sale / purchase agreement dated 18th November between RIL and GIL reads as under:

“3. Obligations of the Seller

- 3.1 *The Seller confirms that upon the sale of the shares as aforesaid, it does not hold either by itself or through its affiliates or associates any shares of the Company, or any instrument that would confer or will provide a right to acquire any equity shares or any other instrument that provides or will provide voting rights;*
- 3.2 *The Seller undertakes that upon execution of this Agreement, the Seller and its subsidiaries, affiliates or associates will not acquire any equity shares of the Company or any other instrument that would confer a right to acquire any equity shares of the Company. The Seller further undertakes not to deal in shares of the Company and / or any other instrument that would confer a right to acquire any equity shares of the Company or any other instrument that provides voting rights. The Seller makes this covenant so as to bind themselves, their affiliates, associates or any person acting at their behest.*
- 3.3 *The Seller acknowledges that the obligations contained in clause 3.1 and clause 3.2 shall be of an enduring nature and in any event the Seller shall be obliged to comply with the same for a minimum period of 5 years from the date hereof.*
- 3.4 *Following the sale of the shares as aforesaid the Seller and / or Representatives will in good faith arrange to convene a Board Meeting(s) of the Company as soon as possible to inter-alia transact the following business and support the same:*
- (i) *Informing the Board of Directors of the Company in respect of the shares acquired by the Purchaser from the Seller under the Spot Delivery Contract.*

(ii) Submission of letter of resignation by the Representatives to the Board of Directors of the Company.”

- d) Committee further found that GIL informed exchanges on 18th November, 2001 regarding the acquisition from Reliance of 2.50 crores equity shares of Rs.10/- each representing 10.05% of total paid up capital of L& T at a price of Rs.306.60 per share.
- e) Shri M.D.Ambani and Shri A.D.Ambani resigned from the Board of L &T on November 23, 2001 vide their letter dated November 22, 2001. L&T vide its letter dated 23rd November, 2002 informed the exchanges that at the meeting of Board of Directors of the company held on 23rd November, 2002, the Board appointed Mr. Kumar Mangalam Birla and Ms. Rajeshri Birla as Directors of L &T and accepted the resignation of Mr. M.D.Ambani and A.D.Ambani.
- f) The proposal for the deal was initiated by JM Morgan Stanley (hereinafter known as JMMS) with GIL around November 6, 2001. Further, GIL constituted an internal task team to evaluate the proposal received from JMMS.
- g) No intimation was filed by Reliance group with L&T as required under regulation 7(1) of the Takeover Regulations with regard to the said acquisitions.
- H) Shri D.D. Rathi Group Executive Vice President of Grasim in his statement dated June 18, 2002 stated that the arrangements for the major part of the fund were made on 12.11.2001. A short term loan for Rs. 150 crore was sanctioned by HDFC Bank on 12.11.2001. An amount of Rs. 250 crore were raised through five negotiable commercial papers issued by GIL. Stamp duty of

Rs. 12.5 lakh, i.e., Rs.2.5 lakh on each negotiable commercial paper was paid on 12.11.2001 to the General Stamp Office, Town Hall, Fort, Mumbai. Rs. 200 crore was raised from Bank of America, Nariman Point Branch. Offer letter in this regard for the loan was issued by the Bank of America on 12.11.2001. An amount of Rs.600 crore was raised by Grasim on 12.11.2001.

I) A non-judicial stamp paper of Rs.100 on which the agreement was entered into was procured on 12.11.2001 even though executed on 18.11.2001. The covenant in the agreement dated 18th November 2001 mentions about RIL not dealing in the shares of L&T for minimum period of 5 years and resignation by Shri Anil Ambani and Shri Mukesh Ambani from the Board of L&T.

J) The stand taken by RIL was that the entire discussion regarding sale and purchase had taken place on the 16th of November and the entire share purchase agreement for transaction of Rs. 766 crore was prepared and signed on 18th November. On 18th November itself Shri A. D. Ambani and Shri M.D. Ambani agreed to step down from the directorship of L&T. The entire transaction worth Rs.766 crore was at an abnormally high premium of 47% coupled with the condition of exit of two directors of RIL in L&T and induction of 2 directors of GIL in L&T was stated to be finalized in a short period of 16th - 18th November, 2001 without any market study, due diligence, examination of policies of the company and relevant factors etc.

2) The above facts and events suggest prima-facie that there had been some exercise by RIL and GIL independently before entering into the said transaction on November 18, 2001. Therefore the stand taken by

RIL and GIL that the entire discussion regarding sale and purchase had taken place only on the 16th of November and the entire share purchase agreement for transaction of Rs. 766 crore was prepared and signed on 18th November does not appear to be convincing or borne out of facts. The chronology of purchase/events as per the investigation report are worth noting in this regard.

Date	Chronology of purchase/event
1.10.2001	Holding of RIL Group in L&T was 4.38%
31.10.2001	Holding of RIL Group in L&T was 4.80%
5.11.2001	RIL Group purchases 1289000 shares of L&T raising its holding to 5.32%.
6.11.2002	a) As per the statement JMMS approaches Grasim to acquire stake of RIL in L&T. b) RIL Group purchased 2154687 L&T shares raising its holding to 6.02%.
7.11.2001	a) Grasim constituted an internal task team to evaluate the proposal received from JMMS. (Please see statement of DD Rathi). b) RIL Group purchased 486174 L&T shares raising its holding to 6.21%.
8.11.2002	RIL Group purchases 3740518 L&T shares raising its holding to 7.69%.
9.11.2001	RIL Group purchases 5173173 L&T shares raising its holding to 9.53%.
12.11.2001	a) RIL Group purchases 1500206 L&T shares raising its holding to 10.14%. b) Arrangements for major parts of the funds was made on 12.11.2001. A short term loan for Rs. 150 crores was sanctioned by HDFC Bank

on 12.11.2001. An amount of Rs. 250 crores were raised through five negotiable commercial papers. Stamp duty of Rs. 12.5 lakhs, i.e., Rs.2.5 lakhs on each negotiable commercial paper was paid on 12.11.2001 to the General Stamp Office. Rs. 200 crores was raised from Bank of America, Nariman Point Branch. Offer letter in this regard for the loan was issued by the Bank of America on 12.11.2001. An amount of Rs.600 crores was raised by Grasim on 12.11.2001.

c) stamp paper on which the share purchase agreement was entered into was procured .

13.11.2001

RIL consolidated its group holdings in L&T on 13.11.2001, which were held in the name of RIL, RIIHL, RCL. and Shreenath Enterprises.

16.11.2001

a) Shri Nimesh Kampani of JMMS approached RIL for sale of L&T shares for a maximum price of Rs.315/-.

b) RIL responded on the same day to sell 2.5 crores shares of L&T at around 50% premium.

c) deal between RIL and GIL finalized by 16th evening subject to approval of the respective boards.

d) GIL issued notice for urgent Board meeting to be held on 18.11.2001.

18.11.2001

a) RIL Board Committee approves the deal.

b) Grasim Board approves the deal.

c) stock exchanges were informed about the deal by Grasim.

	d) Covenant – Share sale / purchase agreement entered into by RIL and GIL, with AD Ambani and MD Ambani agreeing to step down and RIL agreeing not to deal in the shares of L&T for a minimum period of 5 years.
20 / 21.11.2001	Payment to RIL made by GIL for the deal. The total amount is Rs.766.5 crore for 2.5 crores shares.
22.11.2001	a) Shri MD Ambani & AD Ambani resigned from L&T Board. b) Grasim recommends names of Kumaramangalam Birla and Rajshree Birla for appointment in the board of L&T.
23.11.2001	Shri Kumar Mangalam Birla and Ms.Rajshree Birla were appointed as directors of L&T.

3) From the above chronology, it is difficult to believe that no exercise whatsoever was undertaken by RIL and GIL before the transaction date i.e. 18.11.03. In light of the facts and findings it is found that before the transaction date i.e. 18.11.01, GIL was arranging for funds and other requirements necessary for entering into an agreement. These are sufficient circumstances to conclude that RIL was aware that GIL was interested in buying RIL's stake in L & T before 16.11.01 and that there were conditions precedent for that sale such as RIL exiting L&T's Board. The Committee is therefore of the view that RIL acted on the basis of the information. However, the basic issue that emerges for consideration before the Committee is whether RIL was acting based on any unpublished price sensitive information.

4) Regulation 2 (k) of the said Regulations define unpublished price sensitive information as under:

2 (k) *“unpublished price sensitive information” means any information which relates to the following matter or is of concern, directly or indirectly, to a company and is not generally known or published by such company for general information, but which if published or known, is likely to materially affect the price of securities_ of that company in the market –*

- (i) financial results (both half-yearly and annual) of the company;*
- (ii) intended declaration of dividends (both interim/final);*
- (iii) issue of shares by way of public rights, bonus, etc;*
- (iv) any major expansion plans or execution of new projects;*
- (v) amalgamation, mergers and takeovers;*
- (vi) disposal of the whole or substantially the whole of the undertaking;*
- (vii) such other information as may affect the earnings of the company;*
- (viii) any changes in policies, plans or operations of the company.”*

a) As per Regulation 2(k) of the said Regulations, the unpublished price sensitive information must be such information which is of concern, directly or indirectly to the company and is not generally known or published by such company for general information and which relate to matters as in sub-clause (i) to (viii) under clause (k) of Regulation 2 of the said Regulations. The matters relating to the information have been exhaustively provided in sub-clauses (i) to (viii). The issue that emerges for consideration is as to whether the knowledge or understanding of RIL that GIL was interested in buying shares of L& T from RIL could be regarded as falling under any of the categories stated in sub clause (i) to (viii). Committee is of the considered view that subject to the compliance of other requirements of regulation 2 (k) this could be covered by sub clause (vii) if it had affected the earnings of the company but the record shows that

there was no significant fluctuation in the market price of shares of L & T post information of the sale of L & T shares by RIL to GIL becoming known to the public. Another point that had been strongly emphasized by RIL before the Committee was that the said information did not emanate from L & T. It had been submitted by RIL that the information of the impending sale was with RIL not because it was “connected” with L & T, but because it was a potential seller. The Ambanis also had information of this by virtue of being Managing Directors of RIL, and not by virtue of their being Directors of L & T. RIL has submitted that it is not even stated as to how this information came to RIL or to the Ambanis by virtue of their connection with L & T. That no enquiries were made as to whether L& T was aware of any of these transactions and it was just not possible for L&T to be aware of the same in view of the nature of the transactions. In this connection, Committee also noted the argument of RIL that the alleged information was self-generated information of the noticees and arising out of their own decision-making and that the alleged information did not concern or belong to L & T.

- b) The Committee also considered as to whether the knowledge of directors of L&T (Ambanis) about the proposed sale of L&T's shares by RIL to GIL could be deemed as knowledge of the company (L&T) applying the principle to this effect laid down in English case *El Ajou Vs Dollar Land Holdings plc.* (1993) BCLC 735: (1993) 2 All ER 717 (CL.D) and followed by the Hon'ble Supreme Court of India in *Barium Chemicals Ltd Vs Company Law Board* (AIR 1967 SC 295). On careful analysis of the factual position Committee is of the view that Ambanis were not ‘directing mind and will’ of L&T as they were two ordinary directors out of 17 directors constituting Board of L&T and they

were under no legal obligation to disclose the aforesaid information to L&T. In view of this, Committee does not hold the knowledge of Ambanis about the deal as knowledge of the company (L&T).

c) The fact is that unpublished price sensitive information must come to insider by being an insider. Having held so the Committee finds that in the present facts and circumstances of the case there is nothing to suggest that L & T was even aware of the developments relating to the said transaction between RIL and GIL before 18.11.03 and that “unpublished price sensitive information” was received by RIL or Ambanis from L&T as an insider. The Committee further agrees with RIL’s submission that the information is RIL’s self generated information not emanating from L & T in terms of sub clauses (i) to (viii) of clause (k) of Regulation 2 of the said Regulations and the noticees did not get the information by virtue of being insiders. Therefore, in the present case the testing ground that “unpublished price sensitive information” was received by insider as an insider is missing thereby taking the said transaction out of the purview of the said Regulations.

5) RIL further contended that as shareholder of L & T, it was under no obligation or duty to L & T to disclose its probable dealings in the shares of L & T. The Committee is not inclined to accept this submission. The Show cause notice dated 18.02.03 clearly brings out the charge that RIL failed to file an intimation with L&T as required under regulation 7(1) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997. Admittedly, no intimation was filed by L & T under Regulation 7(2) of the SEBI Takeover Regulations with

the stock exchange regarding the enhanced shareholding of more than 5% subsequent to purchases from 5th to 12th November.

- 6) The Takeover Regulations provides for transparency and dissemination of information to the investors and also to the management of the target company. In matters of substantial acquisition of shares or control, Regulation 7 requires the acquirer to report to the target company his holding on exceeding 5 percent of the company's share capital and the target company thereafter to report the position to the concerned stock exchange. The reporting of RIL's acquisition was crucial at that point of time in the given facts and circumstances of the case. However, failure on part of RIL to do so attracted penalty as prescribed in the SEBI Act. The Committee finds that SEBI vide order dated 13.02.2002 appointed an Adjudicating Officer. The Adjudicating Officer after conducting Enquiry as per the procedure imposed a penalty of Rs. 4, 75,000/-, which was paid by RIL.

The Object of filing such information with target company and consequence of not filing of such information with target company was appropriately explained by Hon'ble Securities Appellate Tribunal in Appeal No. 49 of 2001 – Mega Resources Ltd. Vs. SEBI as under:

.....The purpose of making timely disclosure to the company is to inform it about the cornering/concentration of shares by others so as to enable it to take preventive measures, if it so desires, to ward off the entry of potential raiders and strengthen the managements position....

vii) Whether the noticees violated any Insider Trading Regulations

Regulation 3 of the applicable Regulations prevailing at the relevant time (i.e. prior to 20th February 2002), which prohibits, inter alia, dealing in securities on the basis of “unpublished price sensitive information”, reads as follows :

“3. No insider shall –

- a. 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.*
- b. ...*
- c. Counsel or procure any other person to deal in securities of any company on the basis of unpublished price sensitive information.”*

In the light of the above, it is proved that unpublished price sensitive information was not received by RIL/ Ambanis as insiders of L&T and as such they cannot be held liable for violation of regulation 3.

Therefore, in exercise of the powers conferred on the Board under sections 11, 11 B and 19 of the SEBI Act, 1992 read with Regulation 11 of SEBI (Prohibition of Insider Trading) Regulations, 1992, we, the members of the Committee of the Board hereby hold that Reliance Industries Ltd.,

Shri Mukesh D Ambani and Shri Anil D Ambani have not violated the provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 as alleged in the show cause notice dated 18.02.2003.

G N Bajpai

Chairman

K J Udeshi

Member

A K Batra

Whole Time Member

Date: 21st January 2004

Place: Mumbai

