

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SR/PP/2019-20/6334/148]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 AND UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of

Gammon Infrastructure Projects Ltd.

(Address: Gammon House, Veer Savarkar Marg,
Prabhadevi, Mumbai- 400 025)

ISIN: INE181G01025

In the matter of Gammon Infrastructure Projects Ltd.

FACTS OF THE CASE IN BRIEF

1. A department (in short **OD**) of Securities and Exchange Board of India (in short **SEBI**) undertook an investigation in the scrip of Gammon Infrastructure Projects Limited for the period from July 01, 2013–September 30, 2013 (in short **Investigation period / IP**) pursuant to receipt of an input from the National Stock Exchange of India Limited (in short **NSE**) concerning the possibility of certain entities

Adjudication order in respect of Gammon Infrastructure Projects Ltd in the matter of Gammon Infrastructure Projects Ltd.

having traded in the said scrip on the basis of unpublished price sensitive information (in short **UPSI**).

2. OD observed certain non-compliances with regard to Securities Contracts (Regulation) Act, 1956 (in short **SCRA**), Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (in short **PIT Regulations, 1992**) and Listing Agreement and thus initiated adjudication proceedings against Gammon Infrastructure Projects Limited (hereinafter referred to as **GIPL / Noticee / you**), to inquire into and adjudge under section 15HB of Securities and Exchange Board of India Act, 1992 (in short **SEBI Act**) and section 23A(a) of SCRA, the alleged violations of provisions of clause 1.2 and 3.2.1 of the model code of conduct for prevention of insider trading read with (r/w) regulation 12(1) of the PIT Regulations, 1992 and regulation 12(2) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (in short **PIT Regulations, 2015**) & clause 2.1 of the code of corporate disclosure practices for prevention of insider trading under schedule II r/w regulation 12(2) of the PIT Regulations, 1992 and regulation 12(2) of the PIT Regulations, 2015 & section 21 of SCRA r/w clause 36 of Listing Agreement by the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI appointed Shri Nagendraa Parakh as the Adjudicating Officer (**AO**) and his appointment was communicated vide communique June 15, 2016. Subsequently, matter was transferred and Ms. Sangeeta Rathod (undersigned) was appointed AO in this matter. The appointment of undersigned as AO was communicated vide communique dated July 10, 2017 under section 15-I of the SEBI Act r/w rule 3 of the

Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (in short **AO Rules, 1995**) and under section 23-I of SCRA r/w rule 5 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (in short **AO Rules, 2005**) to inquire into and adjudge under section 15HB of SEBI Act and section 23A(a) of SCRA the alleged violations of provisions of clause 1.2 and 3.2.1 of the model code of conduct for prevention of insider trading r/w regulation 12(1) of the PIT Regulations, 1992 and regulation 12(2) of the PIT Regulations, 2015 & clause 2.1 of the code of corporate disclosure practices for prevention of insider trading under schedule II r/w regulation 12 (2) of the PIT Regulations, 1992 and regulation 12(2) of the PIT Regulations, 2015 & section 21 of SCRA r/w clause 36 of Listing Agreement by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show cause notice no. EAD/NP/AS/GIL/OW/6241//1/2017 dated March 22, 2017 (hereinafter referred to as **SCN**) was issued by the previous AO to the Noticee under rule 4 of the AO Rules, 1995 and rule 4 of the AO Rules, 2005 to show cause as to why an inquiry should not be held against him and why penalty under section 15HB of SEBI Act and section 23A(a) of SCRA be not imposed on it for the violations alleged and specified in the said SCN.
5. Details of the violations alleged in the SCN are given as follows:
 - a. On September 3, 2013, a corporate announcement was made by you stating termination of shareholders agreement with Simplex. As per the details submitted

by you vide letter dated September 18, 2014 and e-mail dated August 4, 2015, a chronology of events related to corporate announcement "Termination of Shareholders Agreement with Simplex Infrastructures Limited" is given below:

Date	Event	Participants
2nd Week of July, 2013	Telephonic discussion; Termination of the tie-up between Simplex and GIPL	Mr. K.K. Mohanty, MD (GIPL) and Mr. Rajiv Mundhra, MD, Simplex
29/07/2013 to 28/08/2013	E-mails exchanged between GIPL and Simplex culminating in the finalization of the termination terms and a decision to execute the termination agreement on 30/08/2013.	Mr. K.K. Mohanty (M.D., GIPL), Mr. Atullesh Sharma (Technical Head, GIPL), Pravin Satpute (Project Coordinator, GIPL), Neeraj Vijay (Head-Roads, GIPL), Mr. Prakash Naik, Head Legal, GIPL), Mr. Rajeev Mundra (MD, Simplex), Mr. Salil Chakraborty, (Director (Maa Durga), Mr. Kunj Rajgaria (Manager- Finance, Simplex), Mr. Atindra Basu (Director, Maa Durga)
07/08/2013	Circulation of Agenda for Board meeting to be held on 09/08/2013. Agenda included item "Disassociation with Simplex Infrastructure in Vijayawada Gundugolanu Project and Maa Durga Project"	Agenda circulated to Board of Directors of GIPL.
09/08/2013	Meeting of Board of Directors; Approval taken to terminate the two shareholders agreement with Simplex for the two projects.	The directors of GIPL
30/08/2013	Execution of Termination. Two agreements signed	Mr. Salil Chakraborty (Director, Maa Durga), Mr. Neeraj Vijay (Head-Roads, GIPL)
03/09/2013	Intimation to Stock Exchange	Mr. Sathis Chandran (Company Secretary, GIPL). Information was made public on BSE website at 13:05 hrs and on NSE website at 14:40 hrs.

Further, in your submission dated September 18, 2014 in response to a query seeking major corporate developments during the investigation period has stated that termination of the tie-up between GIPL and Simplex Infrastructures Limited (Simplex) was the only major corporate development. Based on your submissions

that termination of tie with Simplex was a major corporate development, and the definition of price sensitive information as given in Insider Trading Regulations and as given in your own code of conduct, it is observed that the corporate announcement dated September 3, 2013 pertaining to termination of tie-up with Simplex was a Price sensitive information.

- b. It is noted from the findings of investigation report that the trading window of GIPL was not closed during the period the PSI pertaining to termination of shareholders' agreement between GIPL and Simplex was unpublished as mandated in the model code of conduct for prevention of insider trading as prescribed under SEBI (Insider Trading Regulations) 1992. It is noted that you were required to close trading window during the time UPSI pertaining to termination of shareholders agreement between GIPL and Simplex was unpublished as required under clause 3.2.1 of the model code of conduct for prevention of insider trading read with Regulation 12(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 and Regulation 12(2) of the SEBI (Prohibition of Insider Trading) Regulations, 2015. However it is alleged that you have failed to do so.
- c. The code of conduct for prevention of Insider Trading as provided by GIPL states that "Prohibited Period" means the period commencing from 5th day prior to holding of the Board meet at which any "Price Sensitive Information" is on agenda and ending 24 hours after the "Price Sensitive Information" is made public. However, it may be noted that clause 3.2.1 of the model code of conduct as prescribed under SEBI (Insider Trading Regulations) 1992 state that trading window shall be closed

during the time information referred to in 3.2.3 of the model code remains unpublished.

Based on the submissions of GIPL and BSE corporate announcements, it is observed from the investigation that the period of UPSI extends from 08/07/2013 to 02/09/2013 for the information pertaining to termination of shareholders' agreement between GIPL and Simplex. It is noted that you were required to close trading window during the time UPSI pertaining to termination of shareholders agreement between GIPL and Simplex was unpublished as required under clause 3.2.1 of the model code of conduct for prevention of insider trading read with Regulation 12(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 and Regulation 12(2) of the SEBI (Prohibition of Insider Trading) Regulations, 2015. However, it is alleged that you have failed to do so.

- d. Further the code of conduct for prevention of insider trading stipulated in the SEBI (Prohibition of Insider Trading Regulations), 1992 (Insider Trading Regulations) of GIPL was examined during investigation and the findings of investigation has revealed deficiency in implementation of clause 3.2.1 of the model code pertaining to closure of trading window while the information is unpublished. The code of conduct for prevention of Insider Trading as provided by GIPL states that "Prohibited Period" means the period commencing from 5th day prior to holding of the Board meet at which any "Price Sensitive Information" is on agenda and ending 24 hours after the "Price Sensitive Information" is made public. However, it may be noted that clause 3.2.1 of the model code of conduct as prescribed under SEBI (Insider Trading Regulations) 1992 state that trading window shall be closed during

the time information referred to in 3.2.3 of the model code remains unpublished. As per the findings of the Investigation Report, the code of conduct for prevention of insider trading by GIPL is not near thereto the model code of conduct as there may be any price sensitive information that may exist before 5 days of the board meeting. The absence of wordings pertaining to closure of trading window during the time the information is unpublished coupled with restricting closure of trading window only 5 days prior to the board meeting provides a scope for not closing the trading window during the existence of price sensitive information. This is also seen in the instant case pertaining to PSI of termination of shareholders agreement between GIPL and Simplex. The information was in existence since July 8, 2013 however, if GIPL had followed its code even then the trading window would have been closed only 5 days prior to the board meeting wherein the termination was discussed i.e from August 4, 2013. However, as per the model code of conduct the trading window should have been closed from July 8, 2013.

Regulation 12(1) of the Insider Trading Regulations state that companies shall frame code of conduct for prevention of insider trading as near thereto to the model code. However it is observed that the code of conduct of GIPL is not near thereto to the model code of conduct prescribed under SEBI (Prohibition of Insider Trading) Regulations, 2015.

In view of the above it is alleged that you have violated clause 1.2 and clause 3.2.1 of the model code of conduct read with Regulation 12(1) of the SEBI (Insider Trading Regulations), 1992 and Regulation 12(2) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 for which liability u/s 15HB of the SEBI Act, 1992 arises lies you.

- e. With regard to disclosure to stock exchanges, it is observed that the results of the board meeting dated August 9, 2013 (mentioned in Table above) were conveyed to Stock Exchanges on August 10, 2013 however, you failed mentioning about the impending disassociation between GIPL and Simplex which is a price sensitive information.

As per clause 2.1 of the code of corporate disclosure practices for prevention of insider trading under schedule II of the PIT Regulations price sensitive information shall be given by listed company to stock exchange and disseminated on a continuous and immediate basis. Regulation 12(2) of the Insider Trading regulations state that all listed companies shall abide by the code of corporate disclosure as specified in schedule II of the Regulations. Further, clause 3.1 and 3.2 of the code of corporate disclosure practices for prevention of insider trades under schedule II of the PIT Regulations state that the listed companies shall designate a compliance officer to oversee corporate disclosure and compliance officer shall be responsible for ensuring that the company complies with continuous disclosure requirements respectively.

The board decision granting approval for termination of tie up with Simplex should have been intimated to exchanges immediately i.e. on August 9, 2013. However, the same was done only on September 3, 2013 i.e. pursuant to formalities related to signing of documents. It is observed from the finding of Investigation Report that there is a delay of 26 days in dissemination of information pertaining to the board decision (approval) to terminate its agreement with Simplex.

In view of the above, it is alleged that in light of the delay in disclosure of corporate announcement w.r.t the board decision (approval) to terminate its agreement with Simplex, you have also violated clause 2.1 of the code of corporate disclosure practices for prevention of insider trading under schedule II read with Regulation 12 (2) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 read with Regulation 12(2) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 for which liability u/s 23A(a) of the SCRA, 1956 and u/s 15HB of the SEBI Act, 1992 arises.

6. The aforementioned SCN was sent to the Noticee through the speed post acknowledgment due. Proof of service of the SCN upon the Noticee is available on record. Noticee vide its letter dated April 12, 2017 inter alia requested for inspection of documents. Vide letter dated May 02, 2017, Noticee was advised to complete the inspection within 21 days of receipt of the letter.
7. Subsequent to the appointment of undersigned in the matter, vide letter dated September 01, 2017 Noticee was advised to file reply to the SCN and an opportunity of hearing was granted on September 15, 2017. Vide letter dated September 13, 2017, Noticee requested for three week's time for filing of reply. Vide letter dated September 18, 2017, Noticee was granted time till October 06, 2017 for filing of reply and an opportunity of hearing is granted on October 09, 2017. Vide email and letter dated October 08, 2017, Noticee submitted its unsigned reply, given in brief in subsequent para.

8. The ARs of the Noticee appeared for the personal hearing on October 09, 2017 and reiterated the submissions made in its reply October 08, 2017 submitted vide email dated October 08, 2017. Further, vide letter dated October 12, 2017, Noticee submitted the signed copy of the reply stating *"the contents of present letter are identical to the unsigned letter dated October 08, 2017 with some minor edits"*, given in brief as under-

- a. *The termination of the SHAs with Simplex was not price sensitive information. The same was in the normal and ordinary course of GIPL's business as an infrastructure development company and not a "change" let alone a "significant" one in operations of GIPL and in fact these developments are in the ordinary and normal course of GIPL's business as an infrastructure development company.*
- b. *In any case, as ruled by the Hon'ble SAT and other Adjudicating Officers of SEBI, in the context of companies in the infrastructure sector, award of such contracts is not a reason for a listed company to shut the trading window.*
- c. *There is no cause for the Code of Conduct of GIPL to be assailed in light of the fact that the model code provides a listed company with the discretion to effect the timing of the shutting of the trading window under Clause 3.2.3A which provides that " ...The time for commencement of closing of trading window shall be decided by the company....". In the instant case, as there was no requirement to shut the trading window of GIPL, there cannot be any allegation of wrong-doing in this regard.*
- d. *In any case, in compliance with Clause 3.2.3A of the Model Code, the Code of Conduct adopted by GIPL does set out, at Clause 13 thereof, that " ..."Prohibited Period" means: (ii) such other period as may be specified by the Compliance Officer from time to time after consultation with the Managing Director ...". It is apparent therefore that there was discretion available for closing of the trading window in the event that it became necessary. The allegation against GIPL and its Directors about not adopting the correct Model Code is therefore misplaced.*
- e. *It is submitted that none of the provisions of Clause 36 of the listing agreement assume importance in the present case. The development with Simplex was a minor development not requiring any disclosure under the Code of Conduct or under the Code of Corporate Disclosures.*
- f. *On August 9, 2013, the Board of GIPL had authorized the termination of the SHAs, subject to negotiations with Simplex and subject to agreements being entered into with Simplex. The termination was not a unilateral act or even an adversarial act of GIPL. The termination was to be effected mutually*

subject to negotiations with Simplex and with the terms of the termination, being reduced to writing. Therefore, any disclosures prior to September 3, 2013 i.e. until binding termination agreements were concluded after negotiations, would have been premature and led to a charge of wrongful disclosure against GIPL and its personnel. It is submitted that GIPL was correct in making the disclosure only after the termination fructified since the termination was not a unilateral act of GIPL but one that was to be done with the consent and co- operation of Simplex and with terms being reduced to writing.

- g. Assuming whilst denying that there is any violation, although none has been demonstrated, the same does not call for any monetary penalty in as much as: (i) there is no gain or benefit to GIPL or its directors as a result of the same, (ii) no loss has been occasioned to any investor; and ii) the same is not repetitive in nature.*
9. Vide letter dated December 03, 2019, Noticee was advised to file additional submissions, if any latest by December 18, 2019. Vide letter dated December 16, 2019, Noticee reiterated the submissions made vide his reply dated October 12, 2017 and further submitted that-
- a. We would like to place on record order dated November 08, 2019 passed by the Hon'ble Securities Appellate Tribunal ("**Tribunal**") vide which the Hon'ble Tribunal: has allowed Appeal No. 232 of 2016 filed by Mr. Abhijit Rajan; has set aside the order dated July 13, 2016 passed by the Ld. Whole Time Member, in the matter of GIPL; and, has categorically held that the cancellation of two shareholders agreement of GIPL was not price sensitive information:*

" **Reasons**

***1. In our view the information itself was not a price sensitive information.** The record would show that GIPL had invested only Rs.4.9 crores in the Simplex project in the said financial year. It represented only 0.05% of the GIPL's order book value at the end of August, 13 and only 0.7% of its turnover for the said financial year. Further due to the termination of the agreement a large project worth Rs.1648 returned back to GIPL while the smaller project of Rs.940 crore remained with Simplex. In a way it could have been a positive information to the shareholders. The Adjudicating Officer however has calculated the change in the order book value without assessing whether the change was positive or negative. Considering the minor proportion of the*

transaction to the turnover of GIPL, in our view the information cannot be termed as price sensitive information. The Simplex had not even disclosed the said information to the stock exchanges.”
(Emphasis supplied)

- b. *The allegations in the SCN have been dealt with, considered and finally decided by the Hon’ble Tribunal. It is thus apparent that there is nothing in the SCN that survives adjudication given that the same issues/allegations have already been pleaded before the Hon’ble Tribunal and have been struck down conclusively.*
 - c. *The findings and observations in the SCN are a repetition of those recorded in the order dated July 13, 2016 passed by the Ld. WTM, which has now been set aside. In light of the fact that there is no further/ additional evidence that has been brought against the Noticee, the charges against the Noticee ought to be similarly dropped.*
 - d. *Considering that the Hon’ble Tribunal vide the SAT Order has categorically held vide the SAT Order that there is no violation of PIT Regulations, and considering that no harm or loss has been caused to any individual/ investor, in the facts and circumstances of the instant proceedings, we humbly submit that it would be commensurate to take a lenient view and not pass any adverse directions against the company, at this stage.*
10. The ARs of the Noticee appeared for the personal hearing on December 19, 2019 and reiterated the submissions made in replies dated October 12, 2017 and December 16, 2019. During the course of hearing, ARs have submitted judgments delivered by Hon’ble SAT on September 04, 2019 in the matter of AstraZeneca Pharma India Limited and November 08, 2019 in the matter of Abhijit Rajan vs. SEBI.
11. After taking into account, the allegations levelled in the SCN, replies received and material available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

12. I have carefully perused the charges levelled against the Noticee in the SCN and the materials available on record. In the instant matter, the following issues arise for consideration and determination:-

- a. Whether the Noticee has violated the provisions of Clause 1.2 and 3.2.1 of the model code of conduct for prevention of insider trading read with regulation 12(1) of the PIT Regulations, 1992 and regulation 12(2) of the PIT Regulations, 2015 & clause 2.1 of the code of corporate disclosure practices for prevention of insider trading under schedule II read with regulation 12(2) of the PIT Regulations, 1992 and regulation 12(2) of the PIT Regulations, 2015 & section 21 of SCRA read with clause 36 of Listing Agreement?*
- b. Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HB of SEBI Act and section 23A(a) of SCRA for the alleged violations by the Noticee?*
- c. If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in section 15J of the SEBI Act r/w rule 5(2) of the AO Rules, 1995 and section 23J of the SCRA r/w rule 5(2) of the AO Rules, 2005?*

13. Before proceeding further, I would like to refer to the relevant provisions:-

- **PIT REGULATIONS, 1992**

2(ha) price sensitive information means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.

Explanation - The following shall be deemed to be price sensitive information:-

1. Periodical financial results of the company;
2. Intended declaration of dividends (both interim and final);
3. Issue of securities or buy-back of securities;
4. Any major expansion plans or execution of new projects;
5. Amalgamation, mergers or takeovers;
6. Disposal of the whole or substantial part of the undertaking; and
7. Significant changes in policies, plans or operations of the company.

Code of internal procedures and conduct for listed companies and other entities.

12. (1) All listed companies and organisations associated with securities markets including :

- (a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;
- (b) the self regulatory organisations recognised or authorised by the Board;
- (c) the recognised stock exchanges and dealing house or corporations;
- (d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and
- (e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,

shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule 1 of these Regulations 4 without diluting it in any manner and ensure compliance of the same.

SCHEDULE I [Under regulation 12(1)] PART A MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

1.2 The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

Explanation : For the purpose of this Schedule, the term 'designated employee' shall include :— (i) officers comprising the top three tiers of the company management; (ii) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.

3.2 Trading Window

3.2.1 The company shall specify a trading period, to be called "trading window", for trading in the company's securities. The trading window shall be closed during the time the information referred to in para 3.2.3 is unpublished.

- **PIT REGULATIONS, 2015**

Repeal and Savings

12. (2) Notwithstanding such repeal,— (a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and (b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations; (3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

**SCHEDULE II [See wider regulation 12(2)] CODE OF CORPORATE
DISCLOSURE PRACTICES FOR PREVENTION OF INSIDER TRADING**

3.0 Overseeing and co-ordinating disclosure

3.1 Listed companies shall designate a senior official (such as compliance officer) to oversee corporate disclosure.

3.2 This official shall be responsible for ensuring that the company complies with continuous disclosure requirements. Overseeing and co-ordinating disclosure of price sensitive information to stock exchanges, analysts, shareholders and media and educating staff on disclosure policies and procedure.

- **SCRA**

Conditions for listing.

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

- **LISTING AGREEMENT**

Clause 36. *Apart from complying with all specific requirements as above, the Company will keep the Exchange informed of events such as strikes, lock-outs, closure on account of power cuts, etc. both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the shareholders and the public to appraise the position of the Company and to avoid the establishment of a false market in its securities. In addition, the Company will furnish to the Exchange on request such information concerning the Company as the Exchange may reasonably require. The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/ operations of the company as well as price sensitive information....*

14. **Issue a: Whether the Noticee has violated the provisions of Clause 1.2 and 3.2.1 of the model code of conduct for prevention of insider trading read with regulation 12(1) of the PIT Regulations, 1992 and regulation 12(2) of the PIT Regulations, 2015 & clause 2.1 of the code of corporate disclosure practices for prevention of insider trading under schedule II read with regulation 12 (2) of the PIT Regulations, 1992 and regulation 12(2) of the PIT Regulations, 2015 & section 21 of SCRA read with clause 36 of Listing Agreement?**

a. I find that the allegations against the Noticee are-

- (i) The trading window of GIPL was not closed during the period the PSI pertaining to termination of shareholders' agreement between GIPL and Simplex was unpublished as mandated in the model code of conduct (in short **MCC**) for prevention of insider trading as prescribed

under PIT Regulations, 1992 under clause 3.2.1 of the MCC for prevention of insider trading r/w regulation 12(1) of PIT Regulations, 1992 and regulation 12(2) of the PIT Regulations, 2015. Thus, Noticee is alleged to have failed to do so.

- (ii) The UPSI was in existence since July 8, 2013 however, if GIPL had followed its code even then the trading window would have been closed only 5 days prior to the board meeting wherein the termination was discussed i.e from August 4, 2013. However, as per the model code of conduct the trading window should have been closed from July 8, 2013. Thus, Noticee is alleged to have violated clause 1.2 and clause 3.2.1 of the MCC r/w regulation 12(1) of the PIT Regulations, 1992 and regulation 12(2) of the PIT Regulations, 2015.
- (iii) With regard to disclosure to stock exchanges, the board decision granting approval for termination of tie up with Simplex should have been intimated to exchanges immediately i.e. on August 9, 2013. However, the same was done only on September 3, 2013 i.e. pursuant to formalities related to signing of documents. It is observed from the finding of Investigation Report that there is a delay of 26 days in dissemination of information pertaining to the board decision (approval) to terminate its agreement with Simplex. Thus, Noticee is alleged to have violated clause 2.1 of the code of corporate disclosure practices for prevention of insider trading under schedule II read with regulation 12(2) of the PIT Regulations, 1992 r/w regulation 12(2) of the PIT Regulations, 2015.

- b. The questions before me are whether the information was an UPSI and when did it came into existence and whether the code of conduct followed by the Noticee is near thereto the MCC.
- c. From the material available on record, I observe that GIPL is an infrastructure project development company and during the IP, a corporate announcement was made by GIPL stating termination of agreement with Simplex on September 3, 2013. I accept Noticee's contention that GIPL's investment in the Simplex project in the said financial year represented only 0.05% of the GIPL's order book value at the end of August, 2013, which cannot be construed as price sensitive given the fact that the Noticee is in the business of infrastructure development, and such agreement would be one of many. Further, there is no other evidence on record to show otherwise. Thus, it cannot be concluded that the said information is UPSI and that the disclosure of the same to the exchange on a particular date was relevant at that juncture. With regards to the code of conduct followed by the Noticee, I do not observe any deviation of MCC from the insider trading code of the Noticee as available on record.
- d. Also, Noticee made a reference to the order dated November 08, 2019 passed by Hon'ble SAT has set aside order dated July 13, 2016 passed by WTM, SEBI, in the matter of GIPL; and has categorically held that the cancellation of two shareholders agreements of GIPL was not price sensitive information.

15. In view of all of the above, the allegations levelled in the said SCN against the Noticee does not stand established. Thus, issue (b) and (c) do not need consideration.

ORDER

16. In view of the above paragraphs, I hereby dispose of the Adjudication Proceedings initiated against the Noticee i.e Gammon Infrastructure Projects Limited vide SCN dated March 22, 2017 without imposing any monetary penalty.
17. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of rule 6 of the AO Rules, 1995 and rule 6 of the AO Rules, 2005.

Date: December 31, 2019

Place: Mumbai

SANGEETA RATHOD

ADJUDICATING OFFICER