

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

**[ADJUDICATION ORDER NO. Order/SR/PP/2019-20/6284-6286/145]**

**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**

**In respect of**

<b>Noticee</b>	<b>PAN</b>
Consolidated Infrastructure Company Pvt. Ltd.	AACCC6756C
Indru B. Hingorani	AAAPH5679L
Kiran Indru Hingorani	AAAPH4604F

**In the matter of Gammon Infrastructure Projects Ltd**

**FACTS OF THE CASE IN BRIEF**

1. A department of Securities and Exchange Board of India (**OD**) undertook an investigation in the scrip of Gammon Infrastructure Projects Limited (in short **GIPL**) for the period from July 01, 2013–September 30, 2013 (**Investigation period / IP**) pursuant to receipt of an input from the National Stock Exchange of India Limited (**NSE**) concerning the possibility of certain clients having traded in the said scrip on the basis of unpublished price sensitive information (**UPSI**).
2. OD observed certain non-compliances with regard to Securities and Exchange Board of India Act, 1992 (in short **SEBI Act**) and Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (in short **PIT Regulations, 1992**) in Adjudication Order in respect of Consolidated Infrastructure Company Private Limited ; Indru B. Hingorani & Kiran Indru Hingorani in the matter of Gammon Infrastructure Projects Ltd.

the matter of GIPL. OD initiated adjudication proceedings against Consolidated Infrastructure Company Pvt. Ltd. (**CICPL/ Noticee 1**), Indru B. Hingorani (**Noticee 2**) and Kiran Indru Hingorani (**Noticee 3**) (hereinafter collectively referred to as **the Noticees**), to inquire into and adjudge under section 15G of SEBI Act, the alleged violations of provisions of section 12A(d) and (e) of the SEBI Act and regulation 3(i) and 3(ii) read with (**r/w**) regulation 4 of PIT Regulations, 1992 and regulation 12(2) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (in short **PIT Regulations, 2015**) by the Noticees and also regulation 3A r/w regulation 4 of PIT Regulations, 1992 and regulation 12(2) of PIT Regulations, 2015 by Noticee 1.

### **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, 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**) to inquire into and adjudge under the alleged violations of section 12A(d) and (e) of the SEBI Act and regulation 3(i) and 3(ii) read with (**r/w**) regulation 4 of PIT Regulations, 1992 and regulation 12(2) of PIT Regulations, 2015 by the Noticees and also regulation 3A r/w regulation 4 of PIT Regulations, 1992 and regulation 12(2) of PIT Regulations, 2015 by Noticee 1.

### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

4. Show cause notice no. EAD/NP/AS/GIL/OW/6324-6326/2017 dated March 22, 2017 (hereinafter referred to as **SCN**) was issued by the previous AO to the Noticees under rule 4 of the AO Rules, 1995 to show cause as to why an inquiry should not be held against him and why penalty under section 15G of SEBI Act be not imposed on him for the violations alleged and specified in the said SCN.
5. Details of the violations alleged in the SCN are given as follows:

Noticee	Alleged violation of provisions of law	Charging sections under the Act
Consolidated Infrastructure Company Pvt. Ltd. (Noticee 1);  Indru B. Hingorani (Noticee2);  Kiran Indru Hingorani (Noticee 3)	section 12A(d) and (e) of the SEBI Act and regulation 3(i) and 3(ii) r/w regulation 4 of PIT Regulations, 1992 and regulation 12(2) of PIT Regulations, 2015	section 15G of SEBI Act
Consolidated Infrastructure Company Pvt. Ltd. (Noticee 1)	section 12A(d) and (e) of the SEBI Act and regulation 3A r/w regulation 4 of PIT Regulations, 1992 and regulation 12(2) of PIT Regulations, 2015	section 15G of SEBI Act

- a. GIPL in its letter dated September 18, 2014 had submitted that termination of the tie-up between GIPL and Simplex Infrastructures Ltd. (**Simplex**) was a major corporate development, and the definition of price sensitive information as given in PIT Regulations and as given in GIPL's 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 observed from the finding of the investigation that Abhijit Rajan (Mr. Rajan), the then Chairman and Managing Director of GIPL has communicated the aforesaid unpublished price sensitive information pertaining to termination of agreement of GIPL with Simplex to Noticee 1.
- c. In view of the trading pattern of CICPL and its own admission that it is connected to Mr Rajan, and in view of its business relationship with Mr Rajan as evidenced from the property transactions and in view of the fact that Mr. Rajan has communicated the unpublished price sensitive information (UPSI) pertaining to termination of agreement of GIPL with Simplex to Noticee 1, Noticee 1 is an insider to the information pertaining to termination of above said agreement.
- d. From the findings of investigation it is further observed that Noticee 1 despite being an insider had sold 28, 56,618 shares of GIPL during the UPSI period. While Noticee 1 had also sold shares during the period prior to UPSI (29,902 shares) the same constitutes only 1.04% of its sell during the UPSI period. It is noted from the findings of investigation that the Noticee 1 had not bought any share during the UPSI period and has not traded in the scrip after the publication of UPSI.
- e. In view of the fact that Noticee 1 traded in the scrip of GIPL while in possession of UPSI, Noticee 1 and its Directors i.e. Noticee 2 and 3 have violated provisions of

section 12A(d) and (e) of the SEBI Act and regulation 3(i) and 3(ii) r/w regulation 4 of PIT Regulations, 1992 and regulation 12(2) of PIT Regulations, 2015. Further, Noticee 1 is alleged to have traded in the shares of another company while in possession of the said UPSI and also regulation 3A r/w regulation 4 of PIT Regulations, 1992 and regulation 12(2) of PIT Regulations, 2015 by Noticee 1.

6. The SCN was sent to the Noticees through the speed post acknowledgment due. Proof of service of the SCN upon the Noticees is available on record. Noticees vide their letter dated April 13, 2017 interalia requested for inspection of documents. Vide letter dated May 02, 2017, Noticees were 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 Noticees were advised to file reply to the SCN and an opportunity of hearing was granted on September 15, 2017. Vide letter dated September 13, 2017, Noticees requested for two week's time for filing of reply. Vide letter dated September 15, 2017, Noticees were granted time till September 28, 2017 for filing of reply and an opportunity of hearing is granted on October 05, 2017. Vide email dated October 03, 2017, Noticees requested for additional week's time to file their response to the SCN. Vide letter dated October 04, 2017, acceding to the request, Noticees were granted additional time till October 10, 2017 for filing of reply and an opportunity of hearing was granted scheduled on October 25, 2017. Vide email and letter dated October 23, 2017, Noticees submitted their reply, given in brief as under-

- a) The Noticees are not connected persons to GIPL and did not have access to UPSI;
- b) The sale transaction was undertaken for clearing a margin shortfall owed to a RBI registered Non-banking Finance company;
- c) The sale transaction took place prior to the alleged UPSI actually coming into existence;
- d) The sale transaction did not result in CICPL making unlawful gains or wrongfully avoiding any losses;
- e) CICPL's actions in clearing a margin shortfall in fact is in the interests of the securities market; and
- f) The WTM vide order dated July 13, 2016, in relation to the same facts against the Noticees, exonerated the Noticees on every count and disposed of the proceedings pursuant to the SCN against them.
- g) In any case, the SCN pertains to acts of Noticee 1, when there has been no finding of liability against the Noticee 1, there exists no reason to impute liability for the acts of Noticee 1 on the Directors.

8. Vide email dated October 23, 2017, Noticees were informed of postponement of hearing from October 25, 2017 to October 31, 2017. Authorized representatives (ARs) attended the hearing scheduled on October 31, 2017. ARs reiterated the submissions made in reply dated October 23, 2017. The ARs were also directed to submit the additional documents by November 08, 2017. Vide letter dated November 08, 2017, submitted the copies of submissions filed by them before the Whole Time Member, (WTM), SEBI pursuant to which they were exonerated. Vide letter dated December

04, 2019, Noticees were advised to file additional submissions, if any latest by December 18, 2019. Vide letter dated December 16, 2019, given in brief as under:

- a) We would like to repeat and reiterate the submissions made vide replies dated October 23, 2017 and November 18, 2017.
- b) Further, we would like to place on record 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 in para 13 at page 15 of the order that the cancellation of two shareholders agreements of GIPL was not price sensitive information.

9. 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**

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

***a. Whether the Noticees has violated the provisions of section 12A(d) and (e) of the SEBI Act and regulation 3(i) and 3(ii) r/w regulation 4 of PIT Regulations, 1992 and regulation 12(2) of PIT Regulations, 2015 and also Noticee 1 has violated regulation 3A r/w regulation 4 of PIT Regulations, 1992 and regulation 12(2) of PIT Regulations, 2015?***

- b. Do the violations, if any, on the part of the Noticees attract monetary penalty under section 15G of SEBI Act for the alleged violations by the Noticees?***
- c. If yes, then what would be the monetary penalty that can be imposed upon the Noticees, taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5(2) of the AO Rules?***

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

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

***3. No insider shall—***

*(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange<sup>3</sup>[when in possession of] any unpublished price sensitive information; or*

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

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

***[3A. No company shall deal in the securities of another company or associate of that other company while in possession of any unpublished price sensitive information.]***

***Violation of provisions relating to insider trading.***

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

***Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.***

***12A. No person shall directly or indirectly—***

*(a).....*

*(b).....*

*(c).....;*

*(d) engage in insider trading;*

*(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;*



**12. Issue a: Whether the Noticees has violated the provisions of section 12A(d) and (e) of the SEBI Act and regulation 3(i) and 3(ii) read with (r/w) regulation 4 of PIT Regulations, 1992 and regulation 12(2) of PIT Regulations, 2015 and also Noticee 1 has violated regulation 3A r/w regulation 4 of PIT Regulations, 1992 and regulation 12(2) of PIT Regulations, 2015?**

a) I find that the allegations against the Noticee is that Mr. Rajan has communicated the UPSI pertaining to termination of agreement of GIPL with Simplex to Noticee 1, thus Noticee 1 is an insider to the information pertaining to termination of above said agreement. It is further alleged that Noticee 1 despite being an insider had sold 28, 56,618 shares of GIPL during the UPSI period. In view of the fact that Noticee 1 traded in the scrip of GIPL while in possession of UPSI, Noticee 1 and its Directors i.e. Noticee 2 and 3 are therefore alleged to have violated provisions of section 12A(d) and (e) of the SEBI Act and regulation 3(i) and 3(ii) r/w regulation 4 of PIT Regulations, 1992 and regulation 12(2) of PIT Regulations, 2015. Further, Noticee 1 is alleged to have traded in the shares of another company while in possession of the said UPSI and therefore also alleged to have violated regulation 3A r/w regulation 4 of PIT Regulations, 1992 and regulation 12(2) of PIT Regulations, 2015 by Noticee 1.

b) The questions before me is whether the information was an UPSI and when did it came into existence and also that the Noticee 1 was connected to Mr. Rajan? I note that the termination of tie-up of GIPL with Simplex was communicated to Noticee 1 by Mr. Rajan is an admitted position. Noticee 1 had business relationship with Mr Rajan, as evidenced from the property transactions recorded

in IR. However, with regards to the termination of abovesaid tie-up as aforesaid does qualify to be an UPSI or the same falls under exception whereby any communication required in the ordinary course of business / profession / employment or under any law. Looking into the material on record, I note that no evidence is available on record to show the termination of an agreement as aforesaid does not fall under the exception mentioned in regulation 3 of PIT Regulations 1992. Thus, it cannot be concluded that the Noticees have violated the provisions as alleged. Further, as seen from the available record that no adverse inference is drawn against the Noticees.

- c) Noticees have also placed on record SEBI order no. WTM/SR/EFD/DRA-IV/36/07/2016 dated July 13, 2016 for the transactions made by Noticee 1 in the scrip of GIPL under sections 11(1), 11(4) and 11B of the SEBI Act, 1992 and regulation 11 PIT Regulations, 1992 r/w PIT Regulations, 2015, *inter alia* which observed that-

*“...8.1.10 In the instant proceedings, CICPL and its Directors, have been able to substantiate their contention with adequate evidence that the sale of GIPL shares were executed to clear the margin shortfall. As stated earlier, the letter dated July 30, 2013 (addressed to CICPL by IIFL Finance), clearly stated that the net margin shortfall was approximately Rs. 2.55 Crores and accordingly, CICPL was required to arrange for the aforesaid funds by August 7, 2013. Hence the action of selling the shares appear to be pursuant to the demand made by IIFL Finance. Further, the property transactions entered into between CICPL and Shri Abhijit Rajan were registered within the permissible statutory limit permitted by law. While it is*

*possible that discussions in respect of the property transactions entered into between CICPL and Shri Abhijit Rajan may have been happening a few months prior to the impugned trades, no material evidence has been placed before me in the instant proceedings in support of such negotiations actually taking place prior to the execution of said trades. In the aforementioned context, the allegations against CICPL and its Directors as contained in the SCN, are not supported by any material evidence. On the other hand, CICPL and its Directors have substantiated their contention regarding the need for urgent sale of GIPL shares with the support of documentary evidence.*

*8.1.11 In view of the preceding paragraph, I have no alternative but to find that the charges against CICPL and its Directors i.e. Shri Kiran Indru Hingorani and Shri Indru B. Hingorani, as alleged in the SCN, have not been made out on the basis of the material available on record. For the aforementioned reasons, I am constrained to give the benefit of doubt to CICPL and its Directors i.e. Shri Kiran Indru Hingorani and Shri Indru B. Hingorani....”*

- d) Also, Noticees 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 in para 13 at page 15 of the order that the cancellation of two shareholders agreements of GIPL was not price sensitive information.

13. In light of findings at para 12, I conclude that, the allegations levelled in the said SCN against the Noticees does not stand established. Thus, issue (b) and (c) do not need consideration.

## **ORDER**

14. In view of the above paragraphs, I hereby dispose of the adjudication proceedings initiated against the Noticees i.e Consolidated Infrastructure Company Pvt. Ltd. (CICPL/ Noticee 1), Indru B. Hingorani (Noticee 2) and Kiran Indru Hingorani (Noticee 3) vide SCN dated March 22, 2017 without imposing any monetary penalty.
15. Copies of this adjudication order are being sent to the Noticees and also to SEBI in terms of rule 6 of the AO Rules, 1995.

**Date: December 27, 2019**

**Place: Mumbai**

**SANGEETA RATHOD**

**ADJUDICATING OFFICER**