WTM/RKA/ISD/ 22 /2015

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN RESPECT OF MR. ABHIJIT RAJAN, EX-CHAIRMAN AND MANAGING DIRECTOR OF GAMMON INFRASTRUCTURE PROJECTS LIMITED.

Appearances:

For Noticee: Mr. Janak Dwarkadas, Senior Advocate,
Mr. Paras Parekh, Advocate,
Mr. Abhishek Venkataraman, Advocate,
Mr. Dhaval Kothari, Advocate,
Mr. Vinod Modi, Chartered Accountant

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1. Vide an *ad interim ex-parte order* dated July 17, 2014 (hereinafter referred to as "*interim order*") SEBI restrained Mr. Abhijit Rajan (hereinafter referred to as "the Noticee") from buying, selling or dealing in securities and accessing the securities markets, either directly or indirectly, in any manner whatsoever, till further directions.

2. The *interim order* was passed on the basis of *prima facie* findings that the Noticee had engaged in insider trading by selling 1,43,81,248 shares held by him in Gammon Infrastructure Projects Limited ("GIPL") on August 22, 2013 while in possession of and on the basis of "*unpublished price sensitive information*" regarding the termination of Shareholders' Agreement ("SHA") dated April 26, 2012 between GIPL and Simplex Infrastructures Limited ("SIL") and the likely fall in price of the scrip as a result thereof. The said agreement was entered by GIPL with SIL for purchasing 49% equity stake in Maa Durga Expressways Private Limited (hereinafter referred to as "MDEPL") promoted by SIL and selling 49% equity stake in Vijayawada Gundugolanu Road Project Private Limited (hereinafter referred to as "VGRPPL") promoted by GIPL. The disclosure regarding the termination of the said agreement was made by GIPL to the stock exchange on September 03, 2013. Based on these findings, the Noticee was *prima facie* found to have violated provisions of section 12A (d) and (e) of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") and regulation 3(i) read with regulation 4 of the SEBI (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations").

3. Pursuant to the *interim order*, vide letter dated August 5, 2014, the Noticee submitted that SEBI passed the *interim order* against him in complete disregard of the principles of natural justice in as much as no opportunity of a hearing was provided to him. Vide the said letter, the Noticee also sought inspection of all documents and records which were relied upon by SEBI for passing the *interim order*. On August 22, 2014, SEBI granted to Noticee's representatives an inspection of all the documents sought on behalf of the Noticee *viz,* e-mail correspondence between SEBI and GIPL, Board Minutes and Agenda of GIPL, extracts of trade log and the trading report of the Noticee generated by SEBI system. Copies of desired documents were also provided to the representatives. An opportunity of personal hearing was granted to the Noticee on October 16, 2014 which, at the request of the Noticee, was first re-scheduled to October 30, 2014, then to November 13, 2014 and then again to November 21, 2014. On November 21, 2014, the representatives on behalf of the Noticee appeared and made submissions on his behalf. On November 21, 2014, the Noticee also filed his reply to the *prima facie* findings contained in the *interim order, inter alia,* submitting the following*:*

   i. *Interim order* has erroneously concluded that the impugned Sale Transaction is in violation of the PIT Regulations.

   ii. The Noticee is the promoter of GIPL's parent company Gammon India Ltd ("GIL"). The sale transaction was undertaken under compelling need for funds arrangement to approved Corporate Debt Restructuring ("CDR") package with lenders to prevent GIL from liquidation having debt of ₹14000 crore. Under the terms of the letters of approval of lenders in respect of the CDR package, the promoters of GIL including the Noticee were required to infuse an amount of ₹ 100 crore in two tranches. ₹ 50 crore was required prior to the signing of the Master Restructuring Agreement ("MRA") with lenders and ₹ 50 crore was required within 120 days from the date of the CDR - letters of approval. For the same, the Noticee sold his personal assets including shares in various companies such as GIPL. The proceeds of the sale transaction (approximately ₹ 10 crore) were transferred to GIL in August, 2013. If the Noticee had not infused the funds into GIL, it would have gone into bankruptcy. This would have adversely affected and prejudiced the interests not only of the shareholders of GIL but also the shareholders of GIPL which is a listed company having a public shareholding. The Noticee placed reliance on the judgment of Hon'ble Securities Appellate Tribunal ("SAT") in the matte of *Rajiv B. Gandhi v. SEBI* (Appeal No. 50/2007) to contend that if a transaction is carried out by an insider to meet an emergency, he would not be guilty of the charge of insider trading.

iii. The sale transaction was not done with a view to gain any unfair advantage or to defraud the market or investors of GIL or GIPL.

iv. The MRA has also envisaged issuance of equity shares on a preferential basis to the promoters including the Noticee to raise the net-worth of GIL. The net-worth of a company in the infrastructure space is an important yardstick and a pre-qualifying requirements for new projects to be awarded to bidders. However, the *interim order* has resulted in GIL being unable to allot securities to the promoters which has had an adverse bearing on its net-worth and resulted in GIL not meeting its pre-qualifying requirements for various projects thereby adversely affecting its business.

v. SEBI in its Board Meeting dated November 19, 2014 has proposed formulating new Regulations for insider trading. The proposal *inter alia* includes exempting transaction for a legitimate business purpose from the general prohibition on communication and /or trading in shares while in possession of unpublished price sensitive information.

vi. As the Chairman and Managing Director of GIPL, the Noticee was privy o the discussions relating to the termination of the foresaid SHA much prior to the sale transaction. Had it been the intention of the Noticee to take advantage of the UPSI, he would have sold the shares of GIPL much earlier than he actually did since the discussion relating to the termination of the SHA began in June - July 2013. Further, to take advantage of *UPSI,* the Noticee would have traded on all days from August 22, 2013 to till the date when the information became published i.e. September 03, 2013. The Noticee sold his stake in GIPL on a single day contrary to the well accepted market practice that a substantial sale transaction is usually effected in tranches in order to obtain the best price and mitigate the consequences of a sudden fall in the price as a result of a large sell order. Therefore, the very nature of the transaction and the surrounding circumstances including the negligible price movement clearly establish that the Noticee did not trade on the basis of *UPSI.*

vii. The *interim order* has been passed in connection with events occurred over a year ago and SEBI's powers under Sections 11 and 11B of the SEBI Act should be remedial in nature and not punitive. The directions issued vide the *interim order* are hurting the interests of public shareholders in GIL and GIPL. As stated earlier, as part of the CDR scheme approved by the lenders, GIL was required to make a preferential allotment of equity shares to the promoters including Noticee. GIL had approached the consortium of lenders to approve the preferential allotment. The process was conceived before the *interim order.* As a consequence of the *interim order*, GIL could not undertake the preferential allotment resulting in the same having an adverse bearing

on the net worth of GIL. GIL, vide letter dated September 24, 2014, sought permission from SEBI to undertake the preferential allotment of shares to the Noticee. GIL is yet to receive a response from SEBI in that regard.

viii. The continuation of the restraints against the Noticee and the delay in considering the request of GIL is hurting the interest of the shareholders of both GIL and GIPL as the same has prevented the beneficial allotment conceived under the CDR scheme from flowing to GIL and GIPL. SEBI ought to balance the need for restraints and the harm caused by such restraint to the investors. The Noticee's conduct cannot even remotely be described as being in the nature of a fraud on investors of GIL and GIPL.

ix. If at all SEBI was to determine upon completion of its investigation (already initiated in the matter) that there has been a *prima facie* violation of the PIT Regulations, it would be just and proper for SEBI to initiate adjudication proceedings and the adjudicating officer would conduct a detailed fact finding exercise. No regulatory intervention of the manner envisaged under sections 11 and 11B is called for in these circumstances.

x. Termination of SHA is not a *price sensitive information* as concluded erroneously in *interim order*. The Mahulia – Kahargapur Road Project was awarded to SIL by National Highway Authority of India Limited (SIL's Project") and Vijayawada Gundugolanu Road Project was awarded to GIPL ("GIPL's Project"). The cost of GIPL's project was ₹ 1648 Crore and cost of SIL's project was ₹ 940 Crore. In April 2012, GIPL and SIL agreed on a reciprocal basis to acquire a 49% stake in each other's special purpose vehicle formed for the execution of the aforesaid road projects. Accordingly GIPL acquired a 49% stake in MDRPL the SPV formed by SIL for the execution of Mahulia – Kahargapur Road Project and SIL acquired a 49% stake in VGRPPL. The termination of the SHA merely resulted in GIPL selling its 49% stake in MDEPL to SIL and GIPL acquiring 100% stake in VDRPPL. Therefore, any suggestion that the project awarded to GIPL was cancelled is incorrect. GIPL's investment in MDEPL was limited to an equity participation and was primarily in order to assist SIL with its technical expertise. As regards GIPL's project, GIPL continues to remain responsible for the Project awarded to it by NHAI and stands to substantially benefit as the larger project was awarded to it and the benefit from the project would be derived exclusively by GIPL and its stakeholders. The termination of the SHA merely involved re-alignment of interests and clearly was not of a nature that could have been taken advantage of. In any event, there was negligible price movement when the

announcement of the termination of the SHA was made which clearly shows that the investors did not regard the news of the termination as being price sensitive in nature.

xi. The *interim order* erroneously concludes that the information regarding the termination of SHA was price sensitive merely because GIPL disclosed the same to stock exchange. The re-alignment of interests was disclosed by GIPL to the stock exchanges on September 3, 2014 under clause 36(7) of the listing agreement pursuant to execution of the agreements for termination of the SHA on August 30, 2014 as a matter of good governance. In this regard, the Noticee has placed reliance on the judgement in *Anil Harish Vs SEBI (Appeal No. 217 of 2011).*

4. I have carefully considered the allegations against the Noticee, his reply and the material available on record. I note that in the instant case, the directions issued against the Noticee are *interim* in nature and have been issued on the basis of *prima facie* findings. Detailed investigation in the matter is still in progress. Thus, the issue for consideration at this stage is whether the *interim* directions, issued against the Noticee vide the *interim order*, need to be confirmed, vacated or modified in any manner, during pendency of investigation in the matter.

5. The Noticee has contended that the *interim order* has been passed in complete disregard of the principles of natural justice in as much as no opportunity of hearing was provided to him. In this regard, I note that the power of SEBI to pass *interim orders* flows from sections 11 and 11B of the SEBI Act which empower SEBI to pass appropriate directions in the interests of investors or securities market, pending investigation or inquiry or on completion of such investigation or inquiry. While passing such directions, it is not always necessary for SEBI to provide the entity with an opportunity of pre-decisional hearing. The law with regard to doing away with the requirement of pre-decisional hearing in certain situations is also well settled. The following findings of the Hon'ble Supreme Court of India in the matter of *Liberty Oil Mills & Others Vs Union Of India & Other* (1984) 3 SCC 465 are noteworthy:-

> *"It may not even be necessary in some situations to issue such notices but it would be sufficient but obligatory to consider any representation that may be made by the aggrieved person and that would satisfy the requirements of procedural fairness and natural justice. There can be no tape-measure of the extent of natural justice. It may and indeed it must vary from statute to statute, situation to situation and case to case. Again, it is necessary to say that pre-decisional natural justice is not usually contemplated when the decisions taken are of an interim nature pending investigation or enquiry. Ad-interim orders may always be made ex-parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not*

make provision for such an opportunity, an aggrieved party has, nevertheless, always the right to make appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at the request. "

6. Thus, considering the facts and circumstances of a particular case, an *ad-interim ex-parte order* may be passed by SEBI in the interests of investors or the securities market. It is pertinent to note that the *interim order* in the present case was passed under the provisions of sections 11(1), 11(4) and 11B of the SEBI Act. The second proviso to section 11(4), in fact, clearly provides that *"Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned*". Further, various Courts, while considering the aforesaid sections of the SEBI Act have also held that principles of natural justice will not be violated if an *interim order* is passed and a post-decisional hearing is provided to the affected entity. In this regard, the Hon'ble Bombay High Court in the matter of *Anand Rathi & Others Vs. SEBI* (2002) 2 Bom CR 403, has held as under:

"It is thus clearly seen that pre decisional natural justice is not always necessary when ad-interim orders are made pending investigation or enquiry, unless so provided by the statute and rules of natural justice would be satisfied if the affected party is given post decisional hearing. It is not that natural justice is not attracted when the orders of suspension or like orders of interim nature are made. The distinction is that it is not always necessary to grant prior opportunity of hearing when ad-interim orders are made and principles of natural justice will be satisfied if post decisional hearing is given if demanded. Thus, it is a settled position that while ex parte interim orders may always be made without a pre decisional opportunity or without the order itself providing for a post decisional opportunity, the principles of natural justice which are never excluded will be satisfied if a post decisional opportunity is given, if demanded."

7. Further, the Hon'ble High Court of Judicature of Rajasthan at Jaipur in the matter of *M/s. Avon Realcon Pvt. Ltd. & Ors Vs. Union of India & Ors* (D.B. Civil WP No. 5135/2010 Raj HC) has held that:

"…Perusal of the provisions of Sections 11(4) & 11(B) shows that the Board is given powers to take few measures either pending investigation or enquiry or on its completion. The Second Proviso to Section 11, however, makes it clear that either before or after passing of the orders, intermediaries or persons concerned would be given opportunity of hearing. In the light of aforesaid, it cannot be said that there is absolute elimination of the principles of natural justice. Even if, the facts of this case are looked into, after passing the impugned order, petitioners were called upon to submit their objections within a period of 21 days. This is to provide opportunity of hearing to the petitioners before final decision is

taken. Hence, in this case itself absolute elimination of principles of natural justice does not exist. The fact, however, remains as to whether post-decisional hearing can be a substitute for pre-decisional hearing. It is a settled law that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, the requirement of giving reasonable opportunity exists before an order is made. The case herein is that by statutory provision, principles of natural justice are adhered to after orders are passed. This is to achieve the object of SEBI Act. Interim orders are passed by the Court, Tribunal and Quasi Judicial Authority in given facts and circumstances of the case showing urgency or emergent situation. This cannot be said to be elimination of the principles of natural justice or if ex-parte orders are passed, then to say that objections thereupon would amount to post-decisional hearing. Second Proviso to Section 11 of the SEBI Act provides adequate safeguards for adhering to the principles of natural justice, which otherwise is a case herein also…"

8. In view of the above, I find that the *interim order* passed by SEBI was not in disregard of the principles of natural justice since, in accordance with the settled law, the Noticee was afforded an opportunity to file his reply and avail the opportunity of personal hearing. I, therefore, reject the contention of the Noticee in this regard.

9. The Noticee has also contended that regulatory intervention of the manner envisaged under sections 11 and 11B was not called for in the facts and circumstances of the present case and if at all SEBI was to determine upon completion of its investigation that there has been a *prima facie* violation of the PIT Regulations, it would be just and proper for SEBI to initiate proceedings thereafter. In this regard, I note that the directions against the Noticee have been issued for *prima facie* act of insider trading which is a very serious violation under the securities laws. The *interim order* discusses (especially at paragraph 9 and 10) the basis for issuance of the directions against the Noticee by way of *ad-interim order*. It is pertinent to note that the Noticee is currently a director in 2 listed companies and he also holds substantial number of shares in 9 listed companies. Thus, such a serious violation by a person, who holds a significant position in listed companies and has a considerable stake in 9 listed companies, poses a threat to the integrity of the securities market and sends a wrong signal to the investors in securities market. The exercise of powers under the SEBI Act by passing interim orders for the protection of interests of investors and securities market has also been upheld by Courts and SAT. The following findings of Hon'ble SAT in the matter of *Libord Finance Ltd. Vs. SEBI* (Order dated March 31, 2008) is noteworthy:

"If the nature of the misconduct is such which is likely to affect adversely the securities market or the interest of the investors in general, it is open to the Board to issue under section 11-B such directions

as may be necessary to protect the integrity of the market or the interests of the investors including a direction to restrain the delinquent from accessing the capital market. When such directions are issued, the object is not to punish the delinquent but to protect and safeguard the market and the interest of the investors which is the primary duty cast on the Board under the Act. The directions may result in penal consequences to the entity to whom those are issued but that would be only incidental. The purpose or the basis of the order or the directions would nevertheless be to protect the securities market and the interest of the investors."

10. Considering the above, I find that SEBI was justified in exercising its powers under sections 11(1), 11(4) and 11B of the SEBI Act for restraining the Noticee from buying, selling or dealing in securities and accessing the securities markets. I, therefore, reject the contention of the Noticee in this regard.

11. The Noticee has further contended that termination of SHA dated April 26, 2012 was not a price sensitive information for the following reasons:
    i. The termination of infrastructure projects between SIL and GIPL has merely resulted in GIPL selling its 49% stake in MDEPL to SIL and acquiring 100% stake in VGRPPL. As regards GIPL's project, GIPL continues to remain responsible for the Project awarded to it by NHAI and stands to substantially benefit as the larger project was awarded to it and the benefit from the project would be derived exclusively by GIPL and its stakeholders.
    ii. There was negligible price movement when the announcement of the termination of the SHA was made which clearly shows that the investors did not regard the news of the termination as being price sensitive in nature.
    iii. The re-alignment of interests was disclosed by GIPL to the stock exchanges on September 3, 2014 under clause 36(7) of the listing agreement pursuant to execution of the agreements for termination of SHA on August 30, 2014 as a matter of good governance. The *interim order* wrongly assumes that the disclosures themselves are determinative of the fact that the information was price sensitive in nature.

12. In order to deal with the above contention of the Noticee, I find it important to note the following points:
    a) The core activity of GIPL is participation in infrastructure projects.
    b) As per the profit and loss account for the financial year ended March 31, 2013, the net profit of GIPL was only ₹ 14.7 crore.

13. The first basis of Noticee's contention is that the termination of SHA merely resulted in re-alignment of interests of GIPL and SIL, and GIPL stood to substantially benefit as the larger project was awarded to it and the benefit from the project would be derived

exclusively by GIPL and its stakeholders. I note that the Noticee has not provided any explanation as to why the agreement with SIL for re-alignment of interests was entered into by GIPL if the project awarded to GIPL by NHAI was beneficial to it and its stakeholders. Nonetheless, it is an admitted fact that the value of the two projects was cumulatively ₹2600 crore (approx.). I note that in terms of regulation 2(ha) of the PIT Regulations, price sensitive information is an information relating to a company and which if published, is *likely* to affect the price of the securities of that company. In the present case, given the fact that the core activity of GIPL was participation in infrastructure projects and that the net profit of GIPL in the year ending March 31, 2013 was ₹14.7 crore only, the projects for a cumulative value of ₹2600 crore were substantial. Thus, termination of an agreement whereby the interests of GIPL in these projects were re-aligned, had all the likelihood of having an impact on the price of the scrip of GIPL. The fact that after the disclosures of the information, the price movement in the price of the scrip of GIPL was negligible (which is the second basis of Noticee's contention), does not have any bearing on the possibility / likelihood of the impact of the information on the price of the scrip. It is pertinent to highlight that as per the definition of "price sensitive information" under the PIT Regulations, the key element of such information is the *likely* impact and not the actual movement of the price of the scrip. In this context, the following observations of Hon'ble SAT in the matter of *Rajiv B. Gandhi & Others Vs. SEBI* (Order dated May 9, 2008) are noteworthy:

> *"Unpublished price sensitive information has been defined in the regulations to mean any information which relates to any of the matters referred to in sub clauses (i) to (viii) of regulation 2(k) and is not generally known or published by the company for general information but which, if published or known, is* ***likely*** *to materially affect the price of the securities of the company in the market. In other words, any information which is not known but, if known,* ***could*** *either way affect the price of the scrip of the company would be unpublished price sensitive information."*

14. Another basis of the Noticee's contention that the information regarding termination of SHA was not price sensitive is that the disclosure was made by GIPL to the stock exchange under clause 36(7) of the listing agreement as a matter of good governance. In order to address the same, it is important to refer to the text of clause 36(7) of the listing agreement, which is reproduced as under:

> *"36. …. 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.*** *The material events may be events such as:*

(1)……
……..

(7) Any other information having bearing on the operation/performance of the company as well as ***price sensitive information*** *which includes but not restricted to:*

i. *Issue of any class of securities.*
ii. *Acquisition, merger, de-merger, amalgamation, restructuring, scheme of arrangement, spin off of setting divisions of the company, etc.*
iii. *Change in market lot of the company's shares, sub-division of equity shares of the company.*
iv. *Voluntary delisting by the company from the stock exchange(s).*
v. *Forfeiture of shares.*
vi. *Any action which will result in alteration in the terms regarding redemption/cancellation/retirement in whole or in part of any securities issued by the company.*
vii. *Information regarding opening, closing of status of ADR, GDR or any other class of securities to be issued abroad.*
viii. *Cancellation of dividend/rights/bonus, etc.*

The above information should be made public immediately."

15. On a plain reading of the above clause, it is apparent that the first paragraph of clause 36 and the first line of sub-clause (7) stipulate the requirement for a company to disclose price sensitive information to the stock exchange. Quite clearly, the inclusive list of information provided in sub-clause (7) does not cover the information of the nature which is the subject matter of consideration in the present case i.e. the termination of SHA. I note that in terms of sub-clause (7), any information which has a bearing on the operation/performance of the company as well as price sensitive information has to be disclosed by the company to the stock exchange. Thus, the fact that the information regarding termination of SHA was disclosed by GIPL under clause 36(7) of the listing agreement is itself indicative of the fact that it had a bearing on the operations/ performance of GIPL as well as it was price sensitive in nature. In this regard, the Noticee has relied upon the judgment of Hon'ble SAT in *Anil Harish Vs SEBI (Appeal No. 217 of 2011),* which, in my view, is not applicable in the present case as the facts of that case are clearly distinguishable from the present case. I note that in the case of *Anil Harish*, Hon'ble SAT had based its judgment on certain important facts, *viz.* the company had a laid down policy that whenever the company bags projects(s) over the value of ₹100 crore, the same will be disclosed to the stock exchange and previously on 5 occasions the company had made such disclosures, and also that the company in its previous annual general meeting had informed its shareholders that it had orders of about

₹1000 crore on hand which would normally be implemented in about 1 ½ to 2 years. I note that the facts of the instant case are entirely different and not comparable with the facts in the case of *Anil Harish*. It is also pertinent to note that in the same case of *Anil Harish,* Hon'ble SAT has held that *"Whether information is price sensitive and on what date it became price sensitive will depend on the facts and circumstances of each case"*. In the case in hand, as already discussed, the information regarding the termination of SHA between GIPL and SIL was very significant and had all the potential to affect the price of the scrip of GIPL especially in light of the size and operations of GIPL.

16. In light of the above, I do not find any merit in the contention of the Noticee that the information regarding the termination of SHA was not price sensitive in nature and reject the same.

17. Another contention of the Noticee is that he undertook the sale transaction in question under compelling necessity and legitimate business purpose to infuse funds into GIL (in the capacity of its promoter) to meet his obligations under the CDR package for the revival of GIL. According to the Noticee, under the CDR scheme the promoters of GIL including the Noticee were required to infuse an amount of ₹ 100 crore in two tranches. ₹ 50 crore was required prior to the signing of the MRA with lenders and ₹ 50 crore was required within 120 days from the date of the CDR - letters of approval and for the same, the Noticee sold his personal assets including shares in various companies such as GIPL. In this regard, it is important to note that in the month of August 2013, the Noticee sold only the shares of GIPL and did not sell any other shares. Further, on August 7, 2013, he bought the shares of GIL for an approximate amount of ₹ 7.76 crore and on August 21, 2013 (i.e. just a day prior to the sale transaction under question), he paid an amount of ₹ 7.53 crore (approx.) for closing the pledge in respect of 75,00,000 shares of GIPL which he had created on July 2, 2013. Moreover, the Noticee has not provided any explanation as to why he sold the shares of GIPL prior to disclosure of the UPSI to the stock exchange on September 3, 2013, if the MRA relating to GIL was signed with the lenders only on September 24, 2013. This fact itself contradicts the submission of the Noticee that it sold the shares of GIPL under the compelling urgency to infuse ₹50 crore (along with other promoters) into GIL prior to signing of the MRA since there was a gap of more than 30 days between the sale of shares of GIPL by the Noticee and signing of the MRA. In my view, the above facts indicate that there was no compelling urgency under which the Noticee was required to sell the shares of GIPL. The Noticee has thus failed to establish that there was an emergency of the nature as has been discussed by Hon'ble SAT in the case of *Rajiv B. Gandhi and Others Vs. SEBI.* I also note that on August 9, 2013, the resolution in respect of termination of agreement of the SHA was passed by the board of

directors of GIPL of which the Noticee was Chairman and Managing Director. Thus, the price sensitive information regarding the termination of SHA (as found above) could have been disclosed to the stock exchange any time thereafter but the Noticee sold the shares of GIPL while being in possession of and on the basis of the said price sensitive information before disclosing the same to the stock exchanges. In view of the above facts and circumstances, I reject the contention of the Noticee in this regard and find that he traded in the scrip of GIPL while in possession of and on the basis of the UPSI relating to the termination of SHA between GIPL and SIL.

18. The Noticee has also contended that continuation of the restraints against him and the delay in considering the request of GIL regarding the preferential allotment of shares to the Noticee under the CDR scheme is hurting the interests of the shareholders of both GIL and GIPL. In this regard, I note that the reasons for issuance of the directions against the Noticee have been clearly mentioned in the *interim order*. Further, the justification for passing the *ad-interim order* pending investigation has also been discussed above. Whilst the request of GIL regarding the preferential allotment to the Noticee and other promoter companies is being examined separately, it is pertinent to note that the same does not form a subject matter of these proceedings against the Noticee as GIL is not a party to these proceedings.

19. In addition to the above, the Noticee has also contended that SEBI in its recent board meeting dated November 19, 2014 has proposed formulating new Regulations for Insider trading which also include a proposal for exempting transaction for a legitimate business purpose from the general prohibition on communication and / or trading in shares while in possession of unpublished price sensitive information. In this regard, I note that there is no dispute as to the fact that the PIT Regulations, 1992 are applicable in the present case. Thus, the provisions of the new Insider Trading Regulations cannot be imported for the purpose of consideration of the question under consideration in the present case. I, therefore, do not find any merit in the above contention of the Noticee and reject the same.

20. Considering the above, I find that the Noticee has not been able to show sufficient and plausible reasons to draw any inference other than those drawn in the *interim order* against him. The Noticee has failed to make out a *prima facie* case and to establish a preponderance of probabilities in its favour. I, therefore, am of the considered view that no intervention is called for, at this stage, in either vacating the interim directions or modifying them.

21. I, therefore, in exercise of the powers conferred upon me under sections 11(1), 11(4) and 11B of the SEBI Act read with section 19 thereof, hereby confirm the directions issued in respect of Mr. Abhijit Rajan vide *ad-interim ex-parte* order dated July 17, 2014. The directions issued vide the *interim order* dated July 17, 2014 shall continue to be in force till further directions subject to outcome of the examination mentioned in paragraph 18 above.

22. The order shall come into force with immediate effect. A copy of the order shall be served on the stock exchanges and depositories for ensuring compliance with the above directions.

Sd/-

Date: March 23rd, 2015
Place: Mumbai

RAJEEV KUMAR GARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA