

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SR/PP/2019-20/6604/152]

**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

G. Sathish Chandran

(Address: 1B, Bhartiya Bhavan, 17th Road,
Khar-West, Mumbai 400052)

PAN: AAFPC3270R

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 (in short **GIPL**) for the period from July 01, 2013 to 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(in short **NSE**) concerning the possibility of certain entities having traded in the said scrip on the basis of unpublished price sensitive information (in short **UPSI**).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 and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (in short **PIT Regulations, 1992**) and thus initiated adjudication proceedings against G. Sathish Chandran (hereinafter referred to as **Noticee / Compliance Officer**), to inquire into and adjudge under section 15HB of Securities and Exchange Board of India Act, 1992 (in short **SEBI Act**) 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 3.2 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 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**) to inquire into and adjudge under section 15HB of SEBI Act 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 3.2 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 by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show cause notice no. EAD/NP/AS/GIL/OW/5955/1/2017 dated March 17, 2017 (hereinafter referred to as **SCN**) was issued by the previous AO to the Noticee 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 15HB of SEBI Act 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 GIPL 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 Chakravarty (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, GIPL in its 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 GIPL's 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 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 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. Since you were the compliance officer of GIPL during the relevant period, you were responsible for ensuring closure of 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. 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. Clause 1.2 of the model code of conduct for prevention of insider trading states that the compliance officer shall be responsible for implementation of the code of conduct under the overall supervision of the Board of the company. The code of conduct of GIPL was adopted in its board meeting held on 07.01.2008.

In view of the above it is alleged that you were compliance officer of GIPL during the relevant period when board meeting of GIPL dated 07.01.2008 took place wherein the code of conduct was adopted and 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 and thus 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.

- d. 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 on the part of its compliance officer.

In view of the above, it is alleged that you being Compliance Officer of GIPL during the relevant period, have also violated clause 3.2 of the code of corporate disclosure practices for prevention of insider trading under schedule II 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.

6. The aforementioned SCN issued by to the Noticee by previous AO through the speed post acknowledgment due (SPAD) and the same returned undelivered with the comment “unclaimed”.
7. Subsequent to the appointment of undersigned in the matter, another attempt to serve the SCN upon the Noticee was made through affixture in terms of Rule 4 of Adjudication Rules. Affixture report is on record. Vide letter dated September 04, 2017, an opportunity of hearing was granted to the Noticee on September 20, 2017. This was also served by way of affixture and affixture report is on record. However, the Noticee has neither filed its reply to the SCN nor availed of the hearing fixed on the stipulated date. In view of the above reasons, I am compelled to proceed further in the matter on the basis of material available on record.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

8. I have carefully perused the charges levelled against the Noticee in the SCN and the material 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 3.2 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?***
- b. Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HB of SEBI Act 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?***

9. 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 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.

10. **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 & 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?**

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. I find that opportunities were given to the Noticee to submit reply to the said SCN and also to appear for personal hearing in the instant adjudication proceedings. However, the Noticee neither replied to the SCN nor attended the personal hearing granted to it. In this regard, it is pertinent to refer to the judgment dated December 08, 2006 of Hon'ble Securities Appellate Tribunal in the matter of Classic Credit Ltd. v SEBI (Appeal No. 68 of 2003) wherein, it observed that “... *the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against it in the show cause notice were admitted by it*”. I also observe that the Hon'ble Securities Appellate Tribunal in the matter of Sanjay Kumar Tayal & Ors. v SEBI (Appeal 68 of 2013 dated February 11, 2014) had inter alia observed that “...*As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to it nor availed opportunity of personal hearing offered to it in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against it in the show cause notices...*”
- Therefore, in view of the above case laws, it is presumed that the Noticee has admitted the charges levelled against it in the said SCN. However, in the interest of natural justice, I still proceed to decide the matter on merits.
- c. 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 GIPL is near thereto the MCC.

- d. 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. Further, I note 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 GIPL, I do not observe any deviation of MCC from the insider trading code of GIPL as available on record. Thus, alleged violation against the Noticee for non-implementation of the code of conduct of GIPL near thereto to the model code of conduct.
- e. Also, I note that other entities were charged in the same matter, and as regards the question of UPSI in the instant matter I refer to the judgment dated November 08, 2019 of Hon'ble Securities Appellate Tribunal in the matter of Abhijit Rajan vs. SEBI, has held that “ 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, 2013 and only 0.7% of its turnover for the said financial year....*”

11. 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

12. In view of the above paragraphs, I hereby dispose of the Adjudication Proceedings initiated against the Noticee i.e G. Sathish Chandran vide SCN dated March 17, 2017 without imposing any monetary penalty.
13. 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.

Date: January 28, 2020

Place: Mumbai

SANGEETA RATHOD

ADJUDICATING OFFICER