

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SR/PP/2019-20/6609/157]

**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

Abhijit Rajan
Address: Rituraj, 2,
Ruia Park Military Road,
Juhu Mumbai-400049

PAN: AAEPR0342J

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(in short **NSE**) concerning the possibility of certain entities having traded in the said scrip on the basis of unpublished price sensitive information (in short **UPSI**).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) in the matter of GIPL. OD initiated adjudication proceedings against Abhijit Rajan (hereinafter referred to as **the Noticee**), to inquire into and adjudge under sections 15G and 15HB of Securities and Exchange Board of India Act, 1992 (in short **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**) and clause 1.2 & 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 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 sections 15G and 15HB of SEBI Act, 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 Securities and

Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (in short **PIT Regulations, 2015**) and clause 1.2 & 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 by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show cause notice no. EAD/NP/AS/GIL/OW/6503/1/2017 dated March 23, 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 the Noticee and why penalty under section 15G and 15HB 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:
 - a. *On September 3, 2013, a corporate announcement was made by GIPL 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. Atulesh 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,

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

		(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 observed from the finding of the Investigation that you, the Chairman and Managing Director of GIPL, despite being an insider of GIPL had traded in the scrip of GIPL during the UPSI period. It is observed from investigation that you sold 1,43,81,248 shares of GIPL on 22.08.2013 while in possession of and on the basis of UPSI regarding termination of Shareholders Agreement between GIPL and Simplex Infrastructures Ltd. (Simplex). It is noted from the findings of investigation that you had not bought any share during the UPSI period and has not traded in the scrip after the publication of UPSI. Your trading details before, during and after UPSI period is as under-

Trading Details of Noticee before UPSI Period (July 1. 2013 to July 7. 2013)-

Client Name	Buy Qty	Sell Qty	Sell Date	Net
Abhijit Rajan	0	0	NA	0

Trading Details of Noticee during the UPSI Period (July 8, 2013 to September 2, 2013)-

Client Name	Buy Qty	Sell Qty	Sell Date	Net
Abhijit Rajan	0	1,43,81,246	August 22, 2013	-1,43,81,246

Trading Details of Noticee after UPSI Period (September 3, 2013 to September)-

Client Name	Buy Qty	Sell Qty	Sell Date	Net
Abhijit Rajan	0	0	NA	0

- c. Abhijit Rajan sold shares of GIPL on August 22, 2013. Details of the same were informed by Abhijit Rajan to GIPL on August 23, 2013. Further, August 24 & 25th being Saturday & Sunday, on August 26, 2013, GIPL informed the stock exchanges. Abhijit Rajan by virtue of being the Chairman and Managing Director of GIPL was aware of the information pertaining to termination of shareholders' agreement between GIPL and Simplex. Further, he has also participated in the board meeting held on August 9, 2013 wherein the termination of shareholders' agreement was discussed and approved.
- d. The rationale for trading in GIPL as provided by Abhijit Rajan is that he needed to infuse funds in Gammon India Ltd. (GIL), the parent company of GIPL as part of a CDR scheme. In this regard, the following are the details of the amount infused as provided by the statutory auditor of GIL.

Name of Entity	Date of Amount Infusion	Amount (Rs.)
Abhijit Rajan	24.06.2013	5,00,00,000
Pacific Energy Pvt. Ltd.	28.06.2013	6,00,00,000
Abhijit Rajan	13.07.2013	5,00,00,000
Abhijit Rajan	02.08.2013	5,00,00,000
Abhijit Rajan	10.08.2013	7,00,00,000
Abhijit Rajan	14.08.2013	50,00,000
Abhijit Rajan	31.08.2013	10,00,00,000
Abhijit Rajan	17.09.2013	8,00,00,000
Total		46,50,00,000

It is observed from the table above that the fund transfer to the bank accounts of GIL happened as late as September 17, 2013. The information pertaining to termination of shareholders' agreement between GIPL and Simplex is a PSI. Further, it is clear from the certificate of statutory auditor that funds were infused as late as September 17, 2013. The information was made public on September 3, 2013. Thus, you could have sold shares any day after September 4, 2013 if there was indeed any urgency to infuse funds. It is observed from the finding of investigation that the fact that you sold shares on August 22, 2013 itself, i.e. prior

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

to the announcement of termination being made public on September 4, 2013 makes it clear that the sale was performed with a view to avoid any loss that may arise on account of the possible adverse impact of the announcement on the price of the scrip of GIPL. The following table summarizes the loss avoided by you by your trades-

No of shares sold (X)	Average Price Rs.	Total sale value Rs. (A)	Avg. Closing Price of scrip on September 4, 2013 (Rs.) (V)	Approx Sale value as on September 4, 2013 Rs. (B)=(Y)*(X)	Loss avoided Rs. (A)-(B)
1,43,81,246	7.14	Rs. 10,27,40,533.50	6.5	Rs. 9,44,07,599	Rs. 83,32,934.50

As per regulation 3(i) of Insider Trading Regulations, "No insider shall either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information".

Since you were part of the Board Meeting held on 09.08.2013 wherein the termination of tie up between GIPL and Simplex was discussed and approved, and therefore was aware of the unpublished price sensitive information. The information was made public on 03.09.2013. Thus, by virtue of the sell trades on August 22, 2013 while in possession of UPSI, it is alleged that you had violated Regulation 3(i) read with Regulation 4 of SEBI (Prohibition of Insider Trading) Regulations, 1992 read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015.

- e. Further it is observed from the finding of the Investigation that you being the Chairman and Managing Director of GIPL have also communicated the aforesaid unpublished price sensitive information pertaining to termination of agreement of GIPL with Simplex to one of your connected entity Consolidated Infrastructure Company Pvt. Ltd. (CICPL) and who had thereafter traded in the scrip of GIPL while in possession of unpublished price sensitive information. CICPL while in possession of unpublished price sensitive information sold 28,56,618 shares of GIPL during the UPSI period. It is observed from the finding of the Investigation that CICPL in its letter dated September 2, 2015 had stated that they were introduced to you around August, 2013. Further, CICPL had stated that it had acquired several properties from you for an aggregate consideration of Rs 5,15,00,000 However, it is noted from investigation that neither you nor CICPL had shown any kind of urgency to register the sale. In fact, one of the properties (at Pune; Sr.No.I of the table above) was yet to be registered after 2 years of sale. The details of acquired property by CICPL from you is as under-

Regulation 3(ii) of the Insider Trading Regulation states that no insider shall communicate or counsel or procure directly or indirectly any unpublished price sensitive information to any person while in possession of such unpublished price sensitive information shall not deal in securities. Abhijit Rajan has violated.

Thus, by virtue of passing of UPSI to CICPL, it is alleged that you have violated Regulation 3(ii) read with Regulation 4 of SEBI (Prohibition of Insider Trading) Regulations, 1992 read with Regulation 12(2) of SEBI (Prohibition of Insider

Sr. No.	Nature of Property	Property Value (Rs.)	Date Payment	Date Agreement for Sale	Date of registration of Sale
1	Agricultural Land- Village Kale, Dist.- Pune	90,00,000	28/08/2013	28/08/2013	Not yet registered
2	Agricultural Land- Village Kolgaon, Dist.- Raigad	1,10,00,000	28/08/2013	28/08/2013	20/12/2013
3	Agricultural Land- Village Kolgaon, Dist.- Raigad	2,40,00,000	28/08/2013	28/08/2013	20/12/2013
4	Flat, Four Bungalows, Andheri, Mumbai	75,00,000	28/08/2013	28/08/2013	19/09/2013

Trading) Regulations, 2015 and clause 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 which prohibits directors of the company to communicate UPSI.

- f. By virtue of trading while in possession of unpublished PSI and communicating the same to CICPL, you have also violated Section 12A(d) and (e) of the SEBI Act, 1992. 19. It is also 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 Chairman and Managing Director 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.
- g. 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 (Annexure 6). 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.

- h. 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.

- i. In view of the above it is alleged that you were Chairman and Managing Director 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.*

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 letter dated April 11, 2017 *inter alia* stated that –

(i) The allegations in the show Cause Notice are the subject matter of an order dated July 13, 2016 (“WTM Order”) passed by the Ld. Whole time Member of SEBI. The WTM Order record this position by stating inter alia that “...It is noted that SEBI has already initiated Adjudication Proceedings inter alia against Shri Abhijit Rajan in respect of the same violations alleged in the instant proceedings..”

(ii) The WTM Order is the subject of challenge in an appeal (No.232 of 2016) before the Hon’ble Securities Appellate Tribunal filed by me (“Appeal”)

(iii) Any determination by the Hon’ble Tribunal in the Appeal of such facts and allegations would be binding in the present proceedings.

(iv) The hearing of the proceedings in the present matter be kept in abeyance until conclusion of the proceedings in the Appeal before the Hon’ble Tribunal. I will keep you updated about the developments in those proceedings.

7. Subsequent to the appointment of undersigned in the matter, vide letter dated December 03, 2019, sent through SPAD, Noticee was advised to file his reply to the SCN by December 18, 2019 and an opportunity of hearing was granted on December 19, 2019. Proof of delivery is on record. Noticee vide letter dated December 16, 2019 submitted as under-

- (i) *I duly informed SEBI that the allegations raised in the SCN was subject matter of an order passed by the Ld. Whole Time Member ("WTM") dated July 13, 2016 ("WTM Order"). Further, that I had filed Appeal No. 232 of 2016 before the Hon'ble Securities Appellate Tribunal ("Tribunal") challenging the WTM Order. Considering that the proceedings arise out of the same transactions and that the same allegations as the WTM Order, I requested SEBI to keep the instant proceedings in abeyance, until conclusion of proceedings before the Hon'ble Tribunal.*
- (ii) *On November 08, 2019, Appeal No. 232 of 2016 filed by me was disposed of by the Hon'ble Tribunal and the WTM Order was set aside. The SAT Order categorically records:*

"13. Upon hearing both the sides in our opinion the appeal deserves to be allowed for the following reasons:-

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, 013 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.

2. Further, even if it is assumed that the information was is a price sensitive information, still the appellant cannot be blamed of insider trading for the reasons that he did not trade "on the basis of the information". The appellant was able to show his dire need to infuse fund in the entity under the master

restructuring agreement to implement a CDR package as detailed supra. He was even required to sell his agricultural land and flat details of which are already given hereinabove. In these circumstances he sold the shares. In the case of Rajiv B. Gandhi on fact this Tribunal held that the appellants therein were able to rebut the presumption that they traded on the basis of UPSI as they had a necessity to sell the shares. Similar is the case of Gujarat NRE Mineral Resources Ltd. and Mrs. Chandrakala decided by this Tribunal.

3. The appellant had contended that respondent SEBI had deliberately taken the closing price of September, 2013 when the price were around 30% lower than the closing price as on September 3, 2013. By adding this extra day SEBI had widened the gap between the selling price and the price found on 4th September, 2013. In fact the share closing price rose on September 3, 2013 i.e. on the date of disclosure of the information. However, according to the appellant, respondent SEBI only in order to show that the appellant had avoided the probable loss calculated the figures based on the last traded price of September 4, 2013.

4. It is already recorded that the information was disclosed to the BSE and NSE on September 3, 2012 at 1.05 p.m. and 2.40 p.m. respectively i.e. much before the closure of the market. There is no reason forwarded in the impugned order as to why the last traded price of September 3, 2013 is not taken into consideration by respondent SEBI. For all these reasons in our view the order cannot be sustained.

5. The appeal is hereby allowed. The impugned order is hereby set aside. SEBI shall take steps for refund of the amount already deposited by the appellant.”

(Emphasis supplied)

- (iii) The Hon'ble Tribunal has categorically held that the information regarding termination of the SHA was not price sensitive information. If the information regarding termination of the SHA is in itself not price sensitive, the charge insider trading i.e. trading on the basis of price sensitive information cannot be established. In light of the same, the charges of insider trading i.e. violation of Regulation 3(i) read with Regulation 4 of the PIT Regulations must fail against me.
- (iv) Since the Hon'ble Tribunal has categorically held that the information regarding termination of the SHA was not price sensitive, the charge of violation of Regulation 3(ii) read with Regulation 4 of the PIT Regulations read with Regulation 12(2) of the PIT Regulations, 2015 cannot be established and must also fail.
- (v) In the same vein, the allegation that the I failed to ensure closure of the trading

window, cannot be established and the charge of violation of Clause 2.1 of the model code of conduct read with Regulation 12(1) of the PIT Regulations must also fail.

- (vi) Without prejudice to the above, with respect to the allegation that I communicated price sensitive information to CICPL, it is submitted that the Ld. WTM in the WTM Order has observed that:

*“8.1.10 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.”*

(Emphasis supplied)

- (vii) The findings and observations made by the Ld. WTM in the WTM Order exonerating CICPL ought to be followed in the present case. SEBI has also taken a similar view vide its order dated April 13, 2017 in the matter of Re: Nirmal Bang Securities Ltd. wherein it has been held that:

“...19. It may be noted that the Confirmatory Order states that Mr. Ajit Jain and Mr. Manish Agarwal have failed to establish their claim by any evidence. I have carefully perused the Investigation Report and have found no additional material had been brought on record which leads to difference of the findings as given in the Order of WTM, SEBI on same issue. No new evidence was brought on record during investigation by SEBI to conclude that Mr. Ajit and Mr. Manish have in fact established their claim that the trades executed in the scrip of Pipavav, Parsvnath and Tulip on July 26, 2012 were actually unauthorised and were being executed by the noticee on its own.

20. In view of the fact that no new evidence had been brought on record in investigation report to show that trades executed by the noticee were unauthorised, I don't find any reason to differ with the view of WTM, particularly when payout in respect of these trades were accepted by Manish Agarwal and Ajit Jain....”

- (viii) *In light of the above, nothing survives to be determined or adjudicated upon in the instant proceedings and the instant proceedings ought to be summarily dropped against me.*
- (ix) *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. It is pertinent to mention here that the Hon'ble Tribunal has considered and accepted my submissions/ contentions and has categorically held that the information regarding termination of SHAs was not price sensitive.*
- (x) *As the information was not price sensitive, there was no occasion for GIPL to close its trading window. The Hon'ble Tribunal and SEBI itself has time and again held that in the context of companies in the infrastructure sector, award of such contracts, in the normal course of its business, is not a reason for a listed company to shut the trading window.*
- (xi) *Upon a bare perusal of the Code of Conduct of GIPL (annexed as Annexure C), it is apparent that the term 'compliance officer' refers the Company Secretary, or any other senior level employee nominated by the Board, from time to time, as the compliance officer. The minutes of the meeting of the Board of Directors held on January 07, 2019 during the course of which the GIPL Code of Conduct was adopted by the company, the Company Secretary of the company was designated as the 'Compliance Officer' for ensuring compliance with the GIPL Code of Conduct.*
- (xii) *In light of the same, when a specific officer has been designated as the compliance officer for the purpose of ensuring compliance with the GIPL Code of Conduct, the charge of violation of Clause 1.2 of the Model Code of Conduct cannot be sustained against me.*
- (xiii) *Furthermore, the five-day period is merely a reference point and cannot and does not mean that in all cases the trading window would remain shut for only five trading days, despite UPSI being available for a longer period. The Model Code is a set of principles and standards which a listed company is required to adhere to ensure compliance with the 1992 PIT Regulations. The 1992 PIT Regulations does not require a listed company to replicate the language of the Model Code of Conduct in its Code of Conduct as long as the essential principles and standards are adopted which GIPL, admittedly, has. Semantic differences between the Mode Code and GIPL's Code of Conduct cannot be grounds to impose a penalty.*

8. The Authorized Representatives (**ARs**) of the Noticee appeared for the personal hearing on December 19, 2019 and reiterated the submissions made in reply dated 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.

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 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 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) and clause 1.2 & 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?

b. Do the violations, if any, on the part of the Noticee attract monetary penalty under sections 15G and 15HB of SEBI 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?

11. 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.

12. **Issue a: *Whether the Noticee 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 Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (in short PIT Regulations, 2015) and clause 1.2 & 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?***

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

- (i) Noticee being director of GIPL during the relevant period have attended the board meeting on 07.01.2008 wherein the code of conduct was adopted and it is observed that the code of conduct of GIPL is not near thereto the model code of conduct prescribed under SEBI (Prohibition of Insider Trading) Regulations, 2015 and thus alleged to 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.
- (ii) 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.

- (iii) 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.
- (iv) 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. Noticee has contended 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 the GIPL as available on record.
- d. Noticee has also placed on record SEBI order no. WTM/SR/EFD/DRA-IV/36/07/2016 dated July 13, 2016 for the transactions made by Consolidated Infrastructure Company Pvt. Ltd. (**CICPL**) 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, interalia 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.

- e. 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.

13. In view of findings at para 12, I conclude that, the allegations levelled in the said SCN against the Noticee i.e Abhijit Rajan 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 Noticee vide SCN dated March 23, 2017 without imposing any monetary penalty.
15. Copies of this Adjudication Order is 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