

WTM/AB/IVD/ID3/14893/2021-22

**SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER**

Under Sections 11(1), 11(4), 11(4A), 11B (1) and 11B (2) of the Securities and Exchange Board of India Act, 1992 read with Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.

In respect of:

Noticee No.	Name of the Noticee	PAN
1.	Mr. Mehul Chinubhai Choksi	AABPC1451E
2.	Mr. Rakesh Girdharlal Gajera	ANUPG6157D

The aforesaid entities are hereinafter individually referred to by their respective names/noticee numbers and collectively as “the Noticees”.

In the matter of Gitanjali Gems Limited.

1. The present proceedings have emanated from a show cause notice dated July 15, 2021 (hereinafter referred to as “**SCN**”), issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), to the Noticees, alleging violation of Section 12A (d) and (e) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) and Regulation 4(1) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as “**PIT Regulations, 2015**”) by the Noticees for dealing in the securities of Gitanjali Gems Limited (hereinafter referred to as “**GGL/ the company**”) when in possession of Unpublished Price Sensitive Information (hereinafter referred to as “**UPSI**”). Noticee No.1 is also alleged to be in violation of Regulation 3(1) of PIT Regulations, 2015 for communicating the UPSI to

Noticees No. 2. The SCN called upon the Noticees to show cause as to why suitable directions under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) including directions for disgorgement of unlawful gains and imposing penalty under Section 11B(2) and 11(4A) read with Section 15G of SEBI Act, 1992 and SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “**the Rules**”) should not be issued against them.

2. The SCN also called upon the Noticee No. 1 to show cause as to why appropriate directions for imposing penalty under Sections 11B(2) and 11(4A) read with Section 15A(a) of the SEBI Act, 1992 and the Rules should not be issued against him for the alleged violation of Section 11C(3) of SEBI Act, 1992 for not furnishing the information sought by the Investigating Authority of SEBI.
3. The SCN also called upon the Noticee No. 2 to show cause as to why appropriate directions for imposing penalty under Sections 11B(2) and 11(4A) read with Section 15A(b) of the SEBI Act, 1992, and the Rules should not be issued against him for the alleged violation of Regulation 29(2) read with Regulation 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as “**SAST Regulations, 2011**”) for not making the disclosures about change in his shareholding in GGL, by more than two percent.
4. As can be noted from the SCN, the aforesaid SCN came to be issued against the Noticees in view of the fact that SEBI had conducted an investigation into suspected insider trading activities of certain entities in the scrip of GGL for the period May 31, 2017 to February 05, 2018 (hereinafter referred to as “**Investigation Period**”) to ascertain whether or not the suspected entities had traded in the aforesaid scrip on the basis of UPSI, in contravention of the provisions of SEBI Act, 1992 read with PIT Regulations, 2015.
5. The facts and allegations as mentioned in the SCN are narrated in hereunder:

- (i) SEBI conducted an investigation in the scrip of GGL to ascertain whether there was any violation of the provisions of the SEBI Act, 1992 read with PIT Regulations, 2015 and SAST Regulations, 2011.
- (ii) GGL was incorporated in 1986 and got listed on BSE and NSE in 2006. It was in the business of global jewellery markets ranging from rough diamond sourcing, cutting, polishing and its distribution, jewellery manufacturing to branding and retailing in India and abroad.
- (iii) On February 05, 2018, Punjab National Bank ('PNB'), based on its preliminary investigation report made an announcement to the exchanges regarding a suspected fraud involving Rs 280.70 crores. It was also observed that on the same day, certain media reports stated that the Central Bureau of Investigation ('CBI') had booked certain people including, Nirav Modi and Mr. Mehul Chinubhai Choksi for allegedly cheating the PNB of over Rs 280.70 crore. Mr. Mehul Chinubhai Choksi is the promoter and Managing Director of GGL. As per the final investigation report dated March 27, 2018 of PNB, the number of fraudulent LOUs issued on behalf of Gitanjali Group which included GGL, Gili India Ltd. and Nakshatra Brands Ltd. were 376 amounting to Rs. 5822.02 crores and the outstanding was 142 LOUs amounting to Rs. 3011.39 crore. For the Nirav Modi Group, the fraudulent LOUs issued were 1348 amounting to Rs. 24258.90 crore and the outstanding was 150 LOUs amounting to Rs 6498.18 crore. The magnitude of the fraud was also reported in the media at a later stage. Further, it was also observed that the closing price of GGL fell down by 8.4% on February 06, 2018, as compared to previous day closing price i.e., when the aforementioned announcement of suspected fraud by PNB along with media reports about involvement of Mr. Mehul Chinubhai Choksi, the Managing Director and promoter of GGL, was disclosed, it had materially affected the price of the Gitanjali shares.

UPSI:

- (iv) Based on the preliminary investigation reports of PNB dated January 25, 2018, February 03, 2018, February 12, 2018 and March 27, 2018, following is observed in the SCN:
- a. Entities belonging to the Nirav Modi Group and the Gitanjali Group were assisted in the fraudulent issuance of LOUs by an employee of PNB, Mr. Gokulnath Shetty, Deputy Manager, who had retired from the services of PNB on May 31, 2017.
 - b. On January 16, 2018, firms belonging to the Nirav Modi Group approached the PNB branch at Brady House, Mumbai, and requested for buyers' credit to make payment to overseas suppliers. As the firms had no sanctioned limits in their names and contended that they were availing buyers' credit for years without sanctioned limit and without providing upfront 100% cash margin, preliminary investigation into the issuance of fraudulent Letters of Undertaking (LOUs) on behalf of these firms was carried out by PNB. This incident also triggered an investigation into the issuance of fraudulent LOUs to certain entities belonging to the Gitanjali Group.
 - c. Investigation revealed that buyers' credit availed against these fraudulent LOUs were adjusted by raising fresh buyers' credit against fraudulent issue of LOUs again. Thus, some of the buyers' credit were rolled over again and again. It was observed from the SWIFT messaging system that the unauthorized transactions were authorized in the system by the aforesaid Mr. Shetty.
 - d. LOUs were utilized by Gitanjali Group entities from March 17, 2015, till May 31, 2017. As on February 03, 2018, LOUs issued by PNB on behalf of Gitanjali Group entities, including GGL, in March 2017, were maturing in February 2018.

- (v) The preliminary investigation report dated February 12, 2018 of PNB enclosed as Annexure A to the SCN provides the modus operandi of the fraud on PNB through issuance of LOUs. As per the report, the LOUs were issued on behalf of Gitanjali Group by PNB through SWIFT message to overseas funding bank. LOUs were issued without obtaining any documents required by law from the Gitanjali Group entities and without making entry in the trade finance module of the bank's Central Banking Solution (CBS) system to avoid detection.
- (vi) From the above observations, it can be seen that fraudulent LOUs were issued on behalf of entities belonging to the Gitanjali Group, including GGL, and that these LOUs would mature in February 2018, wherein the Gitanjali Group would then have to repay the amount. The Gitanjali Group was aware of this liability. It is also alleged that these entities were aware of the retirement of Mr. Shetty, employee of PNB who had assisted Gitanjali Group in issuance of these fraudulent LOUs.
- (vii) Further, a fraud, involving similar modus operandi, had already occurred in Indian Overseas Bank in August 2016 and was already being investigated by the Central Bureau of Investigation (CBI). The details of this event, including the investigation by the CBI, were already in public domain since August 2016.
- (viii) Hence, post May 31, 2017, i.e., after the retirement of Mr. Shetty, it can be said that the Gitanjali Group entities were reasonably aware and conscious of the increased probability of the following events happening:
 - a. Reconciliation of the SWIFT messages may take place, which would reveal the above-mentioned unauthorized transactions.
 - b. The employee of PNB who takes over the roles of Mr. Shetty after his retirement may not assist them in the same manner for issuance of fresh LOUs for availing buyer's credit, as done by Mr. Shetty.

- c. Fraudulent nature of LOUs issued on their behalf may get exposed, which would lead to an examination by PNB and possible subsequent investigations by various law enforcement agencies, including the CBI, as was done in the case of Indian Overseas Bank.
 - d. The examination by PNB and any/ or other law enforcement agency into the transactions of GGL would have to be disclosed to the public by PNB as it is a material event and PNB is a listed entity.
- (ix) PNB made an announcement on February 05, 2018, regarding a suspected fraud involving Rs. 280.70 crores based on a preliminary investigation report. On the same day, it was reported in the media that the CBI had booked Mr. Mehul Chinubhai Choksi, among others, for allegedly cheating PNB for over Rs. 280.70 crores. Pursuant to the aforesaid disclosure by PNB and media reports on February 05, 2018, the closing price of GGL fell down by 8.4% on February 06, 2018.
- (x) Post February 15, 2018, the price of GGL has only dropped further. When the information of a suspected fraud in PNB involving over 280.70 crores, linked with news article mentioning the name of Mr. Mehul Chinubhai Choksi, MD of GGL, was first disseminated on February 05, 2018, it had a material effect on the closing price of GGL the next day. This shows that information related to the suspected fraud in PNB with involvement of Gitanjali Group entities was information which was price sensitive in nature.
- (xi) In view of the above, the following is alleged as UPSI in the SCN:

“Any Information related to the scenario of high probability of detection of the fraudulent transactions involving LOUs issued by PNB on behalf of the Gitanjali Group, leading to such information coming into the public domain.”

- (xii) SCN alleges that the above mentioned information is information that cannot be considered as "generally available information" in terms of Regulation 2(1)(e) of the PIT Regulations, 2015, as it would only be known to the Gitanjali Group entities, the employees of PNB involved in the fraud and those investigating the fraud.
- (xiii) Hence, the UPSI came into existence on May 31, 2017, when Mr. Shetty retired i.e., when the probability of detection of the fraud increased, and it got published on February 05, 2018, i.e., when part information related to the suspected fraud in PNB, coupled with the news article mentioning the name of Mr. Mehul Chinubhai Choksi, MD of GGL, appeared in the public domain. Therefore, the UPSI period is from May 31, 2017, till February 05, 2018.
- (xiv) Noticee no. 1 is alleged to be an insider under Regulation 2(1)(g)(i) read with 2(1)(d)(i) and 2(1)(g)(ii) of PIT Regulations, 2015.
- (xv) Noticee no. 2 is alleged to be an insider under Regulation 2(1)(g)(i) read with 2(1)(d)(i) of PIT Regulations, 2015.
- (xvi) SCN alleges that Noticee no. 1 and 2 traded in the securities of the Company when in possession UPSI and thus, have violated provision of Regulation 4(1) of PIT Regulations, 2015. Noticee No.1 is also alleged to be in violation of Regulation 3(1) of PIT Regulations, 2015 for communicating the UPSI to Noticees No. 2.
- (xvii) SCN also alleges that Noticee No. 1 did not furnish the information sought by the Investigating Authority of SEBI and thereby hampered the process of investigation leading to violation of Section 11C(3) of SEBI Act, 1992.
- (xviii) SCN also alleges that Noticee no. 2 violated provisions of Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011 as he held more than 5% of the total share capital of GGL during the quarter ending September, 2017 and failed to make disclosure of more than two percent change in his shareholding in GGL to the stock exchanges in

December, 2017.

6. In view of the above SCN alleges following violations by the Noticees:

- (i) Noticee no. 1 violated provisions of Regulations 3(1) and 4(1) of the PIT Regulations, 2015 and Sections 12A(d) and 12A(e) of the SEBI Act, 1992, for allowing access to UPSI/ communicating UPSI and for trading in the scrip of Gitanjali during the UPSI period.
 - (ii) Noticee no. 2 violated provisions of Regulation 4(1) of the PIT Regulations, 2015 and Sections 12A(d) and 12A(e) of the SEBI Act, 1992, for trading in the scrip of Gitanjali during the UPSI period while in possession of UPSI.
 - (iii) Noticee no. 1 violated provisions of Section 11C(3) of SEBI Act, 1992, as he failed to furnish the information sought by the Investigating Authority of SEBI and thereby hampered the process of investigation.
 - (iv) Noticee no. 2 violated provisions of Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011 as he held 68,24,226 shares i.e. 5.75% of the total share capital of GGL during the quarter ending September, 2017 and failed to make disclosure of more than two percent change in his shareholding in GGL to the stock exchanges in December, 2017.
7. SCN was served on Noticee no. 1 through email dated July 15, 2021. The email serving the SCN did not bounce back and delivery confirmation from the mail delivery system was received. SCN to Noticee no. 2 was also served through email dated July 16, 2021. Noticee no. 2 submitted his reply to the SCN vide email dated August 20, 2021. I note that Noticee no. 1 did not submit any reply to the SCN. Thereafter, the matter was placed before the undersigned on August 27, 2021. After perusing the reply of Noticee no. 2, it was decided to conduct an inquiry in the matter against him. Similarly, considering the material available on record, it was decided to proceed *ex-parte*

against Noticee no. 1 for conducting enquiry against Noticee no. 1. Accordingly, Noticees were provided an opportunity of hearing on November 12, 2021. Noticee no.1 did not appear for the hearing on November 12, 2021 and also did not file any request for adjournment, accordingly, hearing *qua* him was closed. Noticee no. 2 appeared through his authorised representative, on November 12, 2021 and requested for an adjournment on the grounds that he was recently appointed for appearing in the matter and he required more time to take instructions from his client. Accordingly, a final opportunity of personal hearing was granted to Noticee no. 2 on November 18, 2021. On November 18, 2021, the authorised representative of Noticee no. 2 appeared through video conferencing and made submissions and sought time to file written submissions. He was given 10 days time to file written submissions. Thereafter, written submission was filed by the Noticee no. 2 vide email dated November 26, 2021.

8. The Noticee no. 2 in his reply dated August 20, 2021 made *inter alia* the following submissions:

“4. With regard to Joyce Trading Pvt. Ltd. (JTPL) the notice would like to state that there was a proposal for sale of property to Gitanjali which required common directors and shareholders to transfer the said property, for the said reason noticee and others were made shareholders and directors of Joyce Trading Pvt. Ltd. But, finally nothing materialized and the said property is still with the noticee. As the proposal failed so there was no money transaction has happened between both companies.

4.1. It is a matter of record that the Noticee no.2 had acquired 68,24,227 warrants of GGL through preferential allotment and that initial payment for which was made in the year 2015. Table -2 of paragraph 19.3 narrates the basic facts about the transaction.

4.2. In paragraph 19.6 it has been mentioned that the Noticee no.2 had, vide his e- mail dated 03.12.2020, submitted that the amount was received in 2015 from Eternity Jewels, as a loan. It is alleged that the Noticee no.2 had not provided any documentary evidence about the said loan, that details of any collateral given in lieu of loan was also not furnished, that other details about the loan were also not provided, that the version of the noticee no.2 about the loan could not be accepted.

4.2.1. From the statement of Sh. Jitendra Mahajan, recorded u/s. 50 of the PMLA by the Enforcement Directorate officials on 20.06.2018. it becomes clear that the Noticee No.2 had taken a loan. The Noticee No.2 has informed the Directorate of Enforcement about the loan in the proceedings before the Hon'ble Appellate Tribunal (Appeal under Section 26 of PMLA, 2002 in Original Complaint No. 1000/2018).

.....

6 As regards to the allegation of shares, it is submitted that the Appellant had been allotted equity shares of M/s Gitanjali Gems Ltd. on preferential basis comprising of 5.75% (6824226 number of shares) of the total paid up capital during the year 2016. Part of this amount i.e. approximately Rs. 12.00 crores is purely a business loan at the rate of 4 % per annum which is yet to be paid to M/s Eternity Jewells, FZE, Dubai. Therefore, it cannot be termed as 'proceeds of crime' as there were other people also who were issued shares at the same time. In addition, the amount of approximately Rs. 37 crores generated by the Appellant himself was also used for purchase of preferential shares of the said company, the break-up of which is given as under:

(i) Details of Rs. 49 crores approximately (Rs. 12 crores as loan + Rs. 37 crores of his own) paid to buy shares in M/s Gitanjali Gems Ltd:

16th Jan 2015: Amount paid Rs. 123501448.12

07th May, 2016: Rs. 65794140.00

19th May, 2016: Rs. 66482819.00

17th June, 2016: Rs. 67028503.00

12th July, 2016: Rs. 66656056.00

19th July, 2016: Rs. 66355400.00

21st July, 2016: Rs. 38187426.00

Amount Paid: Rs. 494005792"

From the above, it is clear that loan was taken for a period of five years and at the prevalent interest rate. There is no doubt about genuineness of the loan transaction, as evidenced by the statement of the third party who is not related to the Noticee No.2 in any manner. Mr. Mahajan was the employee of GGL group and he could know the real nature of the transaction only if someone, who was privy to the transaction, informed him specifically about it. The independent corroboration by a third party leaves no doubt the Noticee No.2 had taken a loan. After taking a loan how to use it is the prerogative of the person who has to pay interest. So taking of loan does not prove anything except that the Noticee No.2 had entered in to commercial transaction. Observations in the SCN about collateral and other factors are in the humble opinion of the Noticee No.2 is stepping in the shoes of an individual. Hon'ble Court have held that while deciding the commercial transactions IO.s should not sit on the chair of the citizens and take decision about their activities. Loan should be advanced at what terms and conditions is a matter purely between two parties. One more thing to be noted about the said loan is that the transaction had not taken place in India.

4.3. With regard to Joyce Trading Pvt. Ltd. (JTPL) the notice would like to state that there was a proposal for sale of property to Gitanjali which required common directors and shareholders to transfer the said property, for the said reason noticee and others were made shareholders and directors of Joyce Trading Pvt. Ltd. But, finally nothing materialized and the said property

is still with the noticee. Not a single paise was paid or received by anyone in the alleged transaction. So, the proposed transaction of JTPL does not prove anything.

4.4. Noticee no.2 is a foreign national(a citizen of Belgium) and was carrying on his business from Hongkong and Dubai. He had some business friends / acquaintances in India who informed him that GGL was issuing warrants through preferential allotment. At that time GGL was considered to be one of the best corporate entities. Vide resolution, dated 01.08.2014, the Board of Directors of GGL decided to offer 2,38,05, 296 warrants for preferential allotment having a lock in period of 18 months. Considering the opinion of his friends and after evaluating the performance of GGIL, he decided that he would apply for 68,24,227 warrants out of the 2,38,05,296 warrants through preferential allotment to be issued by GGIL. He had totally invested Rs.49.4 crores including the loan of Rs.12.35 Crores. Investment of Rs. 37.05 crores from the capital account by the Noticee no.2 clearly proves that he was very well convinced about the sound financial health of GGIL and that he was expecting a good return for his investment. It was a pure commercial decision based on available facts and circumstances existing at that time.

4.4.1. It is also a fact that four other investors were allotted the remaining 1,69,81,069 by the same resolution of 14.08.2014. Out of the remaining 4 two investors were also allotted same number of warrants i.e. 68.24 lakh warrants. All these events clearly prove that Noticee No.2 was not given any preferential treatment by GGL

4.4.2. In paragraph No.25.3 the SCN it is mentioned that sale of the entire holding in GGL precipitated by the information available with Noticee No.1 that Nirav Modi Group had reason to approach the same branch of PNB for issuance of fresh LOUs. As this visit of Nirav Modi Group was actually made in January,2018, that the advance knowledge of this information was communicated by Noticee No.1 to Noticee No.2 which resulted in opening of demat account and subsequent sale of shares. The SCN also mentions that Noticee No.1 had made available Unpublished Price sensitive Information" (UPSI) to Noticee No.2

.....
4.4.4. If the above mentioned definition is analysed, it becomes clear that a piece of information can become UPSI, if it is likely to materially affect the price of the securities. First of all no information at all was shared with Noticee No.2 by the Noticee No.1. Secondly, the alleged information about Nirav Modi visiting a PNB branch in near future does not fall in any of the above mentioned categories.

4.4.5. The underlying fundamental principle under the definition of connected person, as given under Regulation 2(1)(d)(i), is the direct or indirect association with the company in the ways mentioned therein like frequent communication with the officers of the company. In terms of Regulation 2(1)(f), mere existence of relationship is not sufficient to term a person as "immediate relative" unless there is financial dependence and/or consultation in financial matters.

4.4.6. Noticee No.2 would like to state that there is no iota of evidence in the allegation. It is a fanciful imagination only. There is no basis for holding that Noticee No.1 had informed Noticee No.2 that Nirav Modi would be visiting PNB for issuance of fresh LOUs. Finding out the chronology of events taking place in the last quarter of the year 2017 and first quarter of year 2018 as appearing in the press an imaginary theory has been propounded to state that Noticee No.1 has passed on some 'inside information' to Noticee No.2. Noticee No.2 clearly and emphatically denies to have received any UPSI from Noticee No.1. No information about imminent visit by Nirav Modi to PNB was ever shared with Noticee No. 2 by Noticee No.1

4.4.7. Even for sake of argument, for a moment, it is presumed that Mehul Choksi had passed on information about the future visit of Nirav Modi to PNB to the Noticee No.2 that piece of information is of no use for holding or selling the shares of GGL. Unless and until the real nature of LOU.s (fraudulent LOU.s) to be obtained by Nirav Modi was communicated by Noticee No.1, no one could have fathomed the importance of such a vague piece of information. It presumes that a person like Mehul Choksi would divulge the real nature of fraud committed by him and his nephew on PNB to a person who is not related to him and suggest him to offload the shares of a company where he himself was a director. The theory about passing on UPSI by the Noticee No.1 is only an imagination and has no legs to stand.

4.4.8. It is learnt that other investors who along with the Noticee No.2 had purchased warrants had sold the shares during the same period. As stated earlier two of them were holding the same number of shares as the Noticee No.2 was holding. So, to presume that only he was provided with UPSI is a totally baseless allegation and devoid of any merit.

4.4.9. The notice is surprisingly silent about the co-relation and relevance of future visit of Nirav Modi to a particular branch of PNB and its relation to fall in share price of GGL by 8.4% on February 06, 2018 and selling of shares of GGL by the Noticee No.2. How the future visit of Nirav Modi to a PNB branch can bring down shares of GGL is not elaborated anywhere in the SCN. Without this basic fact the allegation has no leg to stand.

4.4.10. At the cost of repetition the Noticee No.2 wants to strongly refuse that he had wrongfully avoided the losses. It is a fact that many an investors had sold and purchased shares of GGL during the month of December 2017 and January 2018. The Noticee No.2, along with other investors of preferential warrants, sold the shares when he found that it was the right moment for selling the same. He had no inclination that Noticee No.1 was indulged in committing fraud upon PNB with some of employees of the Bank. Had he knew about the activities of Mehul Choksi, he would not have signed the agreement of taking over Tatva Project from Gitanajali Infra development Co. in the month of January 2018. As per the chronology provided at page 17 of the SCN, PNB came to know about the fraud for the first time on 17.01. 2018 and the First FIR was filed with CBI on 31.01. 2018. The Table 4 at the page no. 26 of the SCN mentions that it was 05. 02. 2018, when the news regarding fraud in PNB and linking it with Mehul Choksi was mentioned for the first time. It is unimaginable that Noticee No.2 had information about the fraud of Mehul Choksi in the month of December,

2017. He would like to reiterate that he had no information from any source about fraud played or to be played by Mehul Choksi or Nirav Modi respectively, that no information was shared with him by Mehul Choksi about activities of Nirav of GGL, that to sell the shares was a pure business decision and was not caused by receipt of any information from any source.

4.4.11. Laxmi Infra development Ltd. where the Noticee No.2 is a director has filed a complaint with the Police against Mehul Choksi, once it became clear that he had deceived the LDIL. Economic Offences Wing of Bombay Police has registered a FIR in the case based on the complaint of the Noticee No.2 (copy of the complaint and FIR are enclosed As Annexure A & B).

5. As per Paragraph No. F of the SCN the Noticee No.2 had failed to make timely disclosure to the exchange about the sale of shares to the Company and the Exchange under Regulation 29(2)r.w. Regulation 29(3)of the SAST Regulations, 2011.

5.1. Noticee No.2 admits that inadvertently he had failed to inform the Exchange about sale of shares as desired by above Rules. However, he had informed GGL about the sale. A letter dated addressed to GGL proves that GGL had information about the transaction.

5.2. As stated earlier the Noticee No.2 is a foreign national and is not well versed with Indian Laws. Had he been advised by the person handling his portfolio about providing information about sale of shares to Exchange in stipulated time, he would have definitely done it. He was under the bonafide belief that only GGL had to be informed. There is no doubt that a technical and procedural infringement has taken place. But, it was unintentional and not deliberate. It is the first unintentional mistake by the Noticee No.2 .

.....”

9. The Noticee no. 2 in his written submissions dated November 26, 2021 and during the personal hearing on November 12, 2021, made *inter alia* the following submissions:

“.....

As per Paragraph No. F of the SCN my client had failed to make timely disclosure to the exchange about the sale of shares to the Exchange under Regulation 29(2) r.w. Regulation 29(3) of the SAST Regulation.(paragraph F, pages 18 & 19 of the SCN – points no. 31,32).

4.1. It is a fact that immediately after selling the shares in the month of December, 2017 my client had not informed the exchanges about sale of shares. But on 18.11.2021, he informed the Stock Exchange also about the disposal of shares.

4.2. As per the prevalent law at the time of sale of the shares i.e. December, 2017 he was not supposed to inform the Stock Exchange about disposal of shares. In support of the said argument, I would like to rely upon the Adjudication Order No. Order/PM/SM/2021-22/ 11347 passed u/s. 15 I of the SEBI Act,1992 r.w.s.5 of the SEBI (Procedure for holding Inquiry and

imposing penalties) Rules,1995, in respect of Shri Shah Ramesh Himmatlal in the matter of Gitanjali Gems Ltd. In his order, dated 16.04.2021,the Id. Adjudicating Officer had, on pages 9-10 of the order, held that obligation to make disclosure with prescribed time limit under regulation 29 (2)/r.w.29(3)of SAST Regulation,2011 was only in relation to acquisition of shares and not for the disposal of shares, that the word disposal was inserted in regulations 29(3)of the SAST Regulation,2011 by an amendment effected from September, 2018,that in that matter the alleged violations were failure to make disclosure with the time limit for the disposal of shares, that regulation 29(3)of the SAST Regulation,2011 does not contemplate any obligation of time limit to disclose sale of shares during he alleged violation, the question of discharging the obligation arising under obligation arising under regulation 29(2)/r.w.29(3)of SAST Regulation,2011 did not arise at all for the alleged transactions made on November 24,2017 and November 27,2017.

.....

5.1 Paragraphs 19 to 26.5 of the SCN (pages 8-15)deal with the alleged insider trading by my client. The Id. I O had held that the noticee no.2 was share holder of Joyce Trading Pvt. Ltd.(JTPL, that he had acquired 68,24,227 warrants of GGL through preferential allotment, that initial payment of Rs.12.35 crores was made by him by obtaining a loan from Eternity Jewels -a GGL entity, that the noticee no. 2 stated that the he had taken a loan from Eternity Jewels in the year 2015,that my client had not provided any document to show that loan was taken from Eternity Jewels, that the noticee no.2 did not provide details of any collateral given in lieu of the loan, purpose of the loan taken, terms and conditions of the loan, any communication from the Eternity Jewels, that the submission of my client about taking loan could not be accepted. He also held that Notice No.1 had provided fund to noticee no.2 for acquisition of 68,24,226 shares of GGL.

5.1.1.In this regard I would like to mention that loan was a genuine business transaction there was no layering of money by MCC. While recording the statement of Jitendra Mahajan the Assistant Director of Enforcement Directorate, Mumbai specifically asked Jitendra Mahajan about “ loan” advanced by MCC. In response to the said question no.2 of the AD, Jitendra Mahajan admitted that a loan was advanced to my client by MCC. This clearly proves that it was a normal business transaction and that the statements of Jitendra Mahajan do not prove anything that can be held against my client.

I would also like to mention that a detailed explanation has been filed by me about the loan in my earlier written submission.

5.2. The Id. I O further observed that the noticee no. 2 was a director in M/s. Laxmi Infra Developers Ltd.(LIDL) which had relationship with Gitanjali Infratech Ltd., that the noticee no.2

was a close associate of noticee no.1. In this regard I would like to mention that my client is not a director of LDIL- he is a shareholder of the company, that he was not a close associate of MCC. My client had only business relationship with MCC.

.....

5.8. The argument of the Id. IO that MCC had provided price sensitive information to my client suffers from another very patent flaw. It goes beyond human intelligence that a person who had invested Rs. 49 crores in the shares of GGL did not pick up the hint of fraud committed by MCC and allowed LDIL, a company where he is a shareholder, to make further investment in MCC group of companies in the month of January 2018. If the theory propounded by the Id. IO is to be believed one has to believe that Noticee No. 2 is too naïve who could not pick up any hint about wrong doings of MCC and that even after having knowledge of the fact about fraud committed by MCC he did not alert the Directors of LDIL. This goes against normal human behavior. No prudent person will allow a company where he is a shareholder to invest in a project left incomplete by a fraudster.

5.9. Like all other person my client came to know about the fraud committed by MCC through newspapers only not before it. When LDIL found that MCC had cheated it, it lodged a police complaint. After investigating the charges, the Economic Wing of Mumbai Police filed a charge sheet before the Addl. CMM, 47th Court, Mumbai. The Hon'ble Court has taken cognizance of the crime and has issued a Non bailable warrant against MCC. These events clearly prove that LDIL and my client were deceived by MCC and there was no passing of insider information to Noticee No. 2 by MCC.

.....”

Consideration of Submissions and findings thereon: -

10. The main allegation against Noticees is of violation of Regulation 3(1) and 4(1) of PIT Regulations, 2015 and Section 12A(d) and (e) of the SEBI Act, 1992. These provisions as existed at the relevant time, are provided as under:

Relevant extract of provisions of SEBI Act, 1992:

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

12A. No person shall directly or indirectly—

(a).....

(b).....

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

Communication or procurement of unpublished price sensitive information.

3(1) No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

NOTE:

This provision is intended to cast an obligation on all insiders who are essentially persons in possession of unpublished price sensitive information to handle such information with care and to deal with the information with them when transacting their business strictly on a need-to-know basis. It is also intended to lead to organisations developing practices based on need-to-know principles for treatment of information in their possession.

Trading when in possession of unpublished price sensitive information.

4.(1) No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:

.....
NOTE: When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession. The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the regulation. He traded when in possession of unpublished price sensitive information is what would need to be demonstrated at the outset to bring a charge. Once this is established, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition.

(2) In the case of connected persons the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the Board.

.....”

11. From the above, it is noted that Section 12A(d) of SEBI Act, 1992, provides that no person shall directly or indirectly indulge in insider trading. This clause also seeks to prohibit any assistance/aiding of insider trading, by any person either directly or indirectly. Section 12A(e) provides that no person shall directly or indirectly deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder. As mentioned above, the regulation referred to in Section 12A(e) is PIT Regulations, 2015. Therefore, once a person is found to be in violation of PIT Regulations, 2015, it leads to violation of Regulation 12A(d) and (e) of SEBI Act, 1992, also. Regulation 3(1) provides that no insider shall communicate, provide, or allow access to any UPSI, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations. The Note appended to Regulation 3(1) provides that the provision intends to cast an obligation on all insiders in possession of UPSI to handle such information with care and to deal with the information with them when transacting their business strictly on a need-to-know basis. Regulation 4(1) as existing at relevant time provides that no insider shall trade in the securities of a company when in possession of unpublished price sensitive information. Further, Regulation 4(2) provides that if the “insider”, as envisaged under Regulation 4(1), is a connected person then the onus of establishing that he was not in possession of UPSI, shall be on such connected persons and in other cases, the onus would be on the SEBI. The Note appended to Regulation 4(1) clarifies that when a person trades in securities when in possession of UPSI, his trades would be presumed to have been motivated by the knowledge and awareness of such UPSI in his possession. The Note further provides that once it is found that an insider being connected person has traded then reasons for which he traded or the purposes to which he applied the proceeds of transactions are immaterial to contend that his trades were not on the basis of UPSI. Proviso to Regulation 4(1) provides that despite presence of all the ingredients of Regulation 4(1) of PIT Regulation, 2015, the insider may prove his innocence by demonstrating the circumstances including those

which are mentioned in the said proviso. The Note to Regulation 4(1) states that once it is established that an insider traded when in possession of UPSI, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition.

12. In the following paras, I would be examining whether the ingredients of Regulations 3(1) and 4(1) of PIT Regulations, 2015 are present in the case of the Noticees, as in the SCN, there is allegation of violation of Regulations 3(1) and 4(1) of PIT Regulations, 2015, by these Noticees. If it is found that the Noticees have violated Regulations 3(1) and 4(1) of PIT Regulations, 2015, it would also lead to the violation of Section 12A (d) and (e) of the SEBI Act, 1992.

Whether there was a UPSI?

13. The definition of UPSI prescribed under Regulation 2(1)(n) of PIT Regulations, 2015, is as follows:

"unpublished price sensitive information" means any information relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

- (i) financial results*
- (ii) dividends*
- (iii) change in capital structure*
- (iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions*
- (v) changes in key managerial personnel; and*
- (vi) material events in accordance with the listing agreement.*

Further, Regulation 2(1)(e) of the PIT Regulations, 2015 defines “generally available information” as follows:

(e)"generally available information" means information that is accessible to the public on a non-discriminatory basis;

14. Regarding identification of UPSI, SCN states that as per the preliminary investigation reports of PNB dated January 25, 2018, February 03, 2018, February 12, 2018 and March 27, 2018, the following is observed:
 - a. Entities belonging to the Nirav Modi Group and the Gitanjali Group were assisted in the fraudulent issuance of LOUs by an employee of PNB, Mr. Gokulnath Shetty, Deputy Manager, who had retired from the services of PNB on May 31, 2017.
 - b. On January 16, 2018, firms belonging to the Nirav Modi Group approached the PNB branch at Brady House, Mumbai, and requested for buyers' credit to make payment to overseas suppliers. As the firms had no sanctioned limits in their names and contended that they were availing buyers' credit for years without sanctioned limit and without providing upfront 100% cash margin, preliminary investigation into the issuance of fraudulent Letters of Undertaking (LOUs) on behalf of these firms was carried out by PNB. This incident also triggered an investigation into the issuance of fraudulent LOUs to certain entities belonging to the Gitanjali Group.
 - c. Investigation revealed that buyers' credit availed against these fraudulent LOUs were adjusted by raising fresh buyers' credit against fraudulent issue of LOUs again. Thus, some of the buyers' credit were rolled over again and again. It was observed from the SWIFT messaging system that the unauthorized transactions were authorized in the system by the aforesaid Mr. Shetty.
 - d. LOUs were utilized by Gitanjali Group entities from March 17, 2015, till May 31, 2017. As on February 03, 2018, LOUs issued by PNB on behalf of Gitanjali Group entities, including GGL, in March 2017, were maturing in February 2018.
15. On the basis of aforesaid observations, SCN alleged that fraudulent LOUs were issued on behalf of entities belonging to the Gitanjali Group, including GGL, and that these LOUs

would mature in February 2018, wherein the Gitanjali Group would then have to repay the amount. The Gitanjali Group was aware of this liability. It is also alleged in the SCN that these entities were aware of the retirement of Mr. Shetty, employee of PNB who had assisted Gitanjali Group in issuance and roll over of these fraudulent LOUs relating to suspected fraud of 280.70 crores. Thus, coming into public domain of the information regarding the fraudulent LOUs issued by Gitanjali Group, was a price sensitive information pertaining to GGL.

16. SCN further states that a fraud, involving similar *modus operandi*, had already occurred in Indian Overseas Bank in August 2016 and was already being investigated by the Central Bureau of Investigation (CBI). The details of this event, including the investigation by the CBI, were already in public domain since August 2016.
17. SCN alleges that post May 31, 2017, i.e., after the retirement of Mr. Shetty, the Gitanjali Group entities were reasonably aware and conscious of the increased probability of the following events happening:
 - (v) Reconciliation of the SWIFT messages may take place, which would reveal the issuance of fraudulent LOUs on behalf of Gitanjali Group entities.
 - (vi) Fraudulent nature of LOUs to Gitanjali Group may get exposed, which would lead to an examination by PNB and possible subsequent investigations by various law enforcement agencies, including the CBI, as was done the case in Indian Overseas Bank.
 - (vii) The examination by PNB and any/ or other law enforcement agency into the transactions of GGL would have to be disclosed to the public by PNB as it is a material event and PNB is a listed entity. I note that the disclosure of suspected fraud of Rs. 280.70 crores involving issuance of fraudulent LOUs to Gitanjali Group and PNB Group on February 05, 2018 affected the price of PNB as the closing price of PNB scrip on February 06, 2018 fell to Rs. 160.45 from Rs. 163.40 on the previous day.

(viii) The employee of PNB who takes over the roles of Mr. Shetty after his retirement may not assist Gitanajli Group in the same manner for issuance of fresh LOUs for availing buyer's credit, as done by Mr. Shetty.

18. SCN states that PNB made an announcement on February 05, 2018, regarding a suspected fraud involving Rs. 280.70 crore, based on a preliminary investigation report. On the same day, it was reported in the media that the CBI had booked Mr. Mehul Chinubhai Choksi (who was promoter and Managing Director of GGL) among others, for allegedly cheating PNB for over Rs. 280.70 crore. Pursuant to the disclosure of suspected fraud of 280.70 crores by PNB and media reports, the following effect was observed on the price of the scrip of GGL:

Table 1

(Details of effect on the price of GGL scrip after UPSI became generally available)

Date	Closing Price (in Rs.)	Event	Remarks, if any
05-Feb-18	60.1	PNB disclosed details of a fraud of Rs. 280 crores. News report on same date stating that CBI has booked, amongst others, Mr. Mehul Chinubhai Choksi, MD of GGL.	Both events have occurred after close of trading
06-Feb-18	55.05 (on BSE) 54.90 (on NSE)	Nil	Closing price of GGL dropped by 8.4%
07-Feb-18	55.1	GGL provided clarification that Mehul Chinubhai Choksi had no relation with the entities mentioned in the news article	Event has occurred after close of trading
08-Feb-18	56.15	Intimation that Board meeting of GGL will be held of 14/02/2018	-
09-Feb-18	58.7	-	-
12-Feb-18	62.85	-	-
13-Feb-18	-	Intimation that Board meeting is postponed.	-
14-Feb-18	58.6	PNB further disclosed information of fraudulent and unauthorized transactions worth USD 1771.69 million. Article in Business Standard quoting "Big jewellers Gitanjali, Ginni, Nakshatra under scanner".	PNB disclosure during start of trading
15-Feb-18	46.9	Clarification sought from GGL on news article	During trading hours

19. SCN alleges that information of increased probability of detection and disclosure of fraudulent LOUs issued to Gitanjali Group and Nirav Modi Group in relation to suspected fraud of Rs. 280.70 crores at PNB was not "generally available information" in terms of Regulation 2(1)(e) of the PIT 2015, as it was known to the Gitanjali Group entities, the employees of PNB involved in the fraud and those investigating the fraud. In view of the above, the following is alleged as UPSI:

“Any Information related to the scenario of high probability of detection of the fraudulent transactions involving LOUs issued by PNB on behalf of the Gitanjali Group, leading to such information coming into the public domain.”

20. On perusal of the aforesaid allegation made in the SCN regarding the UPSI, I note that an employee of PNB i.e. Gokulnath Shetty had assisted Nirav Modi and Mehul Choksi in issuance of LoUs to Nirav Modi Group and Gitanjali Group in a fraudulent manner. The Gitanjali Group and Nirav Modi Group were periodically visiting the PNB's Brady Branch, Mumbai where Gokulnath Shetty was assisting them in issuance/ renewal of fraudulent LOUs from 2015 to 2017 on behalf of Gitanjali Group and from 2011 to 2017 on behalf of Nirav Modi Group. The details of some of the fraudulent LOUs issued on behalf of Gitanjali Group are shown in Table 2. The *modus operandi* of issuing fraudulent LOUs is provided in the preliminary investigation report dated February 12, 2018 of PNB (enclosed as Annexure A to the SCN) as follows:

“Modus Operandi

For LOUs- To avail buyers' credit facility, a company arranges for acceptance of commercial terms from overseas bank. mainly Indian banks at overseas centers. Based on the confirmation so received, the branch in India on the request of the company {applicant} issue Letter of Undertaking (LOU) through SWIFT message to overseas funding bank. For a genuine trade transaction, the bank in India holds all documents of import and declaration by Importer including commercial acceptance from the overseas bank. This transaction is entered into bank's trade module of centralized banking system (CBS) as foreign letter of guarantee. On entering into trade module of CBS, the system generates reference no. and liability is created in the system. This reference no. is quoted to the overseas banker for all purposes in the SWIFT system.

However, in the present case the conniving officer did not obtain any documents required by the law and also did not make any entry in the trade finance module of the bank's CBS system to avoid detection. Funds received under buyers' credit from overseas banks were credited to Nostro account of the bank and subsequently utilized as per direction given by the conniving officer to repay imports/earlier buyers' credit used by the firms."

21. As per the final investigation report dated March 27, 2018 of PNB, fraudulent LOUs amounting to Rs. 3011.39 crore and Rs. 6498.18 crore issued on behalf of Gitanjali Group and Nirav Modi group, respectively, were outstanding. I note that as per the Annual Report of GGL for FY 2016-17, consolidated profit after tax and before other comprehensive income for GGL was Rs.166.83 crore and the paid-up capital of GGL after conversion of warrants issued on preferential basis in 2015 was Rs 118.61 crores. Considering the magnitude of the fraud in comparison with the profits and paid capital of GGL, I find that the information pertaining to outstanding LOUs amounting to Rs. 3011.39 crore issued fraudulently on behalf of Gitanjali Group by PNB was a material event and also a price sensitive information with respect to GGL. I also find that the *modus operandi* and the magnitude of the fraud on PNB was known to the Gitanjali Group and Nirav Modi Group entities. I note from the preliminary report dated February 12, 2018 of PNB that some of the LOUs issued on behalf of Gitanjali Group were maturing on February 09, 2018 when Gitanjali Group would have to repay the amount. It was a fraud which was being carried out in a clandestine manner, there were chances of it being exposed anytime to the public which would have impacted the price of GGL. Thus, as alleged in the SCN, any Information related to the scenario of high probability of detection of the fraudulent transactions involving LOUs issued by PNB on behalf of the Gitanjali Group and their magnitude, leading to such information coming into the public domain, is UPSI. I further note that the UPSI was disclosed in public domain on February 05, 2018 when PNB based on its preliminary investigation report made an announcement regarding suspected fraud of Rs. 280.70 crores and on the same day, it was reported in the media that CBI has booked Noticee no.1, Promoter and Managing Director of GGL, among others, for allegedly cheating PNB for over Rs. 280.70 crores. I note from the investigation report of PNB dated February 12, 2018 (enclosed as Annexure A to the

SCN) that the announcement regarding suspected fraud of 280.70 crores on February 05, 2018 was made by PNB after detection of 8 fraudulent LOUs amounting to Rs 280.70 crore issued on behalf of Nirav Modi Group which matured on January 25, 2018. These LOUs being the first to mature were identified in the first go as fraudulent transaction. Although, PNB's announcement and media reports indicated suspected fraud of Rs. 280.70 crores, the actual magnitude of fraud at PNB was known to Nirav Modi group and Gitanjali Group i.e. outstanding LOUs amounting to Rs. 3011.39 crore and Rs. 6498.18 issued fraudulently by PNB on behalf of Gitanjali Group and Nirav Modi group, respectively. Therefore, with respect to GGL, any facts which would have led to exposure of fraudulent LOUs issued by PNB on behalf of Gitanjali Group and the magnitude of such fraudulent LOUs, in public domain, was UPSI. Thus, I find that the following facts and circumstances were UPS as they create high probability of detection and exposure of fraudulent LOUs, issued by PNB on behalf of GGL group and PNB Group, in public domain:

- (i) The magnitude of fraudulent LOUs issued on behalf of Nirav Modi Group and Gitanjali Group i.e. outstanding LOUs amounting to Rs. 3011.39 crore and Rs. 6498.18 issued fraudulently by PNB on behalf of Gitanjali Group and Nirav Modi group, respectively.
- (ii) Maturing of LOUs issued fraudulently by PNB on behalf of Nirav Modi Group and Gitanjali Group on January 25, 2018 and February 09, 2018, respectively.
- (iii) Retirement of Mr. Gokul Nath Shetty, the employee who assisted Nirav Modi Group and Gitanjali Group in issuance of fraudulent LOUs.
- (iv) Increased probability of reconciliation of the SWIFT messages at PNB after retirement of Mr. Gokulnath Shetty.
- (v) Considering the modus operandi and magnitude of the fraud at PNB i.e. outstanding LOUs amounting to Rs. 3011.39 crore and Rs. 6498.18 issued

fraudulently by PNB on behalf of Gitanjali Group and Nirav Modi group, respectively, without obtaining the documents required under law, the fraud at PNB would automatically be detected and exposed in public domain as the employee of PNB who would take over the role of Mr. Gokulnath Shetty after his retirement may not assist Gitanjali Group and Nirav Modi Group in fresh issuance/roll-over of LOUs of such magnitude.

- (vi) Detection of fraudulent nature of LOUs issued to Gitanjali Group at PNB would lead to an examination by PNB and possible subsequent investigations by various law enforcement agencies, including the CBI, as was done in the case of Indian Overseas Bank involving fraud of Rs 299 crores.
- (vii) Examination by PNB and any/ or other law enforcement agency into the transactions of GGL would have to be disclosed to the public by PNB as it is a material event and PNB is a listed entity.

22. I find that the above UPSI came into existence on May 31, 2017, on the retirement of PNB's employee i.e. Mr. Gokulnath Shetty who assisted in issuance of fraudulent LOUs to Gitanjali Group and Nirav Modi group, respectively. Retirement of Mr. Gokulnath Shetty was one of the fact which made the exposure of fraud in public domain, imminent or in other words UPSI came into existence. The said UPSI became generally available on February 05, 2018 i.e. the day on which the information relating to suspected fraud of Rs 280.70 crores at PNB due to issuance of fraudulent LOUs to Nirav Modi Group and Gitanjali Group was disclosed to Stock Exchanges and published in media reports. Therefore, period of UPSI is taken from May 31, 2017 i.e. date when Shri Shetty employee of PNB retired after which the fraud relating to total outstanding LOUs of Rs. 9509.57 crore with respect to Gitanjali Group and Nirav Modi group would come to be disclosed to February 05, 2018 when the information of suspected fraud of over Rs 280.70 crores at PNB due to issuance of fraudulent LOUs to Nirav Modi Group and Gitanjali Group was disclosed in public domain. The above-mentioned information cannot be considered as "generally available information" in terms of Regulation 2(1)(e) of the

PIT Regulations, 2015, as it would only be known to those persons who were involved in the fraudulent transactions and were aware of the magnitude of the fraud i.e. total outstanding LOUs amounting to Rs. 9509.57 crore fraudulently issued by PNB or were involved in internal investigation of fraud at PNB. I note that the price of the scrip of GGL dropped by 8.4% after the information relating to suspected fraud involving Rs 280.70 crores in PNB and the booking of Noticee no.1, Managing Director and Promoter of GGL by CBI for the said fraud was made public. Thus, the said information was likely to materially affect the price of the securities of GGL and in fact materially affected the price of GGL shares, on becoming generally available. I further note that when the full magnitude of fraudulent transactions at PNB involving Gitanjali Group and Nirav Modi Group was disclosed by PNB to the stock exchanges on February 14, 2018, the closing price of GGL fell to Rs. 46.9 on February 15, 2018 from the closing price of Rs. 58.6 on February 14, 2018 (refer Table 1 above).

23. Therefore, from paragraphs 20 to 22, I find that the UPSI involved in the present case was directly relating to the company and its securities, was not generally available and was likely to affect the price of the securities and therefore, satisfies the conditions to be termed as UPSI under Regulation 2(1)(n) of the PIT Regulations, 2015.
24. As regards UPSI, Noticee no. 2 has contended that there is no co-relation and relevance of future visit of Nirav Modi Group to a particular branch of PNB with the fall in share price of GGL by 8.4% on February 06, 2018 and selling of shares of GGL by the Noticee No.2. Moreover, how the future visit of Nirav Modi Group to a PNB branch can bring down shares of GGL is not elaborated anywhere in the SCN. Noticee no. 2 also contended that information about Nirav Modi Group visiting PNB's Brady Branch in near future does not fall in any of the categories of UPSI mentioned in Regulation 2(1)(n) of PIT Regulations, 2015.
25. As discussed above, in the present case, any facts which would have led to the exposure of fraudulent issuance of LOUs to Gitanajli Group and its magnitude in the public domain was UPSI. As per the investigation report dated February 12, 2018 provided by PNB, the

LOUs issued to Nirav Modi Group were maturing in February, 2018. Therefore, it was likely that the said group would visit PNB for renewal of these LOUs in January, 2018. The Nirav Modi Group did, in fact, visit the Brady House branch of PNB on January 16, 2018 and the said visit further crystallised the UPSI i.e. the detection and exposure of fraudulent issuance of LOUs to Gitanjali Group and its magnitude in the public domain. As both Nirav Modi Group and Gitanjali Group got fraudulent LOUs issued without providing upfront 100% cash margin from the same branch of PNB with the help of same employee of PNB, I find that the detection and exposure of fraudulent LOUs to Nirav Modi group would lead to detection and exposure of fraudulent LOUs issued to Gitanjali Group in public domain and such an exposure would materially impact the price of GGL.

26. As regards, the contention of Noticee no. 2 that information about Nirav Modi Group visiting the PNB's Brady branch in near future does not fall in any of the categories of UPSI mentioned in Regulation 2(1)(n) of PIT Regulations, 2015, I find that the said information in itself may not qualify as UPSI, however, this information coupled with other facts such as maturing of LOUs issued to Nirav Modi Group in February, 2018 and the involvement of the same employee of PNB in issuance of fraudulent LOUs to both Nirav Modi Group and Gitanjali Group who had retired from PNB, would have led to detection and exposure of fraudulent issuance of LOUs to Gitanjali Group and its magnitude in the public domain and affected the price of GGL as explained above.

Whether Noticees are insiders?

27. Before dealing with the question as to whether the Noticees are insiders or not, would be appropriate to refer to the relevant definitions in this regard. Relevant extract of such definitions is reproduced hereunder:

Regulation 2(1)

".....

(g) "insider" means any person who is: i)

a connected person; or

ii) in possession of or having access to unpublished price sensitive information;

NOTE: Since “generally available information” is defined, it is intended that anyone in possession of or having access to unpublished price sensitive information should be considered an “insider” regardless of how one came in possession of or had access to such information. Various circumstances are provided for such a person to demonstrate that he has not indulged in insider trading. Therefore, this definition is intended to bring within its reach any person who is in receipt of or has access to unpublished price sensitive information. The onus of showing that a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person levelling the charge after which the person who has traded when in possession of or having access to unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances.”

Further, “Connected person” is defined as follows:

Regulation 2(1)(d)

"connected person" means,-

- (i) any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.
- (ii).....

NOTE: It is intended that a connected person is one who has a connection with the company that is expected to put him in possession of unpublished price sensitive information. Immediate relatives and other categories of persons specified above are also presumed to be connected persons but such a presumption is a deeming legal fiction and is rebuttable. This definition is also intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations. It is intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information.”

28. In terms of aforesaid definition of insider, a person can be termed as an insider if he is either (i) a connected person [Regulation 2(1)(g)(i)]; or (ii) in possession of or having access to UPSI [Regulation 2(1)(g)(ii)]. Regarding the status of Noticees, as insider, I note that the SCN alleges that Noticee no. 1 is an insider in terms of Regulation 2(1)(g)(i) read with 2(1)(d)(i) and Regulation 2(1)(g)(ii) of PIT Regulations, 2015. Further, Noticee no. 2 is alleged to be an insider in terms of Regulation 2(1)(g)(i) read with 2(1)(d)(i) of PIT Regulations, 2015.
29. SCN alleges that Noticee no. 1 being the Managing Director of GGL, controls the Gitanjali Group entities and holds a position in these entities that allows him direct access to the UPSI. Therefore, Noticee no. 1 is alleged to be a 'connected person' in terms of Regulation 2(1)(d)(i) of PIT Regulations, 2015. I note that as per Regulation 2(1)(d)(i) of PIT Regulations, 2015, a 'connected person' is any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity and such association allows or is reasonably expected to allow the said person, direct or indirect, access to UPSI. I note that as per the Annual Report of GGL for FY 2016-17, as on March 31, 2017, Noticee no. 1 is a majority shareholder holding 26.09% share capital of GGL out of which 21.42% shares were pledged/encumbered. I further note from the Annual Report that Gitanjali Group entities i.e. Gili India Ltd. and Nakshatra Brands Ltd. are entities controlled by GGL as they are its direct subsidiaries. In the present case, Noticee no. 1 being the major shareholder, promoter and Managing Director of GGL is responsible for day to day operations of GGL and is thus directly associated with Gitanjali Group. This association allows Noticee no.1 direct access to UPSI i.e. any facts which would have led to exposure of fraudulent LOUs issued by PNB on behalf of Gitanjali Group and the magnitude of such fraudulent LOUs i.e outstanding LOUS amounting to 3011.39 crore, in public domain. Therefore, I find that Noticee no.1 being the major shareholder, promoter and Managing Director of GGL had access to UPSI and is a 'connected person' in terms of Regulation 2(1)(d)(i) of PIT Regulations, 2015 and hence an insider with respect to GGL in terms of Regulation 2(1)(g)(i) of the PIT Regulations, 2015.

30. The SCN also alleges that Noticee no. 1 is an insider in terms of Regulation 2(1)(g)(ii) of PIT Regulations, 2015. I note that Noticee no. 1 was aware of the following facts which are UPSI in the present case:

- (i) Post retirement of Mr. Shetty, reconciliation of the SWIFT messages at PNB would be carried out which would reveal the issuance of fraudulent LOUs on behalf of Gitanjali Group entities.
- (ii) The employee of PNB who takes over the roles of Mr. Shetty after his retirement may not assist them in the same manner for issuance of fresh LOUs for availing buyer's credit, as done by Mr. Shetty.
- (iii) Detection of fraudulent nature of LOUs to Gitanjali Group at PNB would lead to an examination by PNB and possible subsequent investigations by various law enforcement agencies, including the CBI, as was done the case in Indian Overseas Bank.
- (iv) Examination by PNB and any/ or other law enforcement agency into the transactions of GGL would have to be disclosed to the public by PNB as it is a material event and PNB is a listed entity.

31. I also note that as per the final investigation report dated March 27, 2018 on suspected fraud by Nirav Modi group and Gitanjali Group provided by PNB, Gitanjali Group had availed 376 fraudulent LOUs amounting to Rs. 5822.02 crore from March 17, 2015 to May 31, 2017. I note that PNB's preliminary report dated January 23, 2018 on suspected fraud by Nirav Modi group and Gitanjali Group provides details of some LOUs issued fraudulently on behalf of Gitanjali Group entities. The details of LOUs as provided in the preliminary report dated January 23, 2018 of PNB are reproduced below:

Table 2

(Details of LOUs provided in the preliminary report dated January 23, 2018 of PNB)

LOU date	Name of Financing Bank	Our Party	Value Date	Amount (in USD)		Due Date
				Principal	Interest	
15.03.2017	Bol-Antwerp	GGL	15.03.2017	3001380.00		04.03.2018
15.03.2017	Bol-Antwerp	GGL	15.03.2017	3002270.00		04.03.2018
15.03.2017	Bol-Antwerp	GGL	15.03.2017	2000521.00		04.03.2018
15.03.2017	Bol-Antwerp	GGL	15.03.2017	2000844.00		04.03.2018
16.03.2017	Bol-Antwerp	GILI INDIA	16.03.3017	2002589.00		04.03.2018
16.03.2017	Bol-Antwerp	GILI INDIA	16.03.3017	2001263.00		04.03.2018
16.03.2017	Bol-Antwerp	NAKSHATRA BRAND	16.03.3017	3003706.00		04.03.2018
16.03.2017	Bol-Antwerp	NAKSHATRA BRAND	16.03.3017	3003891.00		04.03.2018
18.03.2017	Bol-Antwerp	GILI INDIA	18.03.2017	3002152.00		03.03.2018
18.03.2017	Bol-Antwerp	GGL	18.03.2017	3003922.00		03.03.2018
18.03.2017	Bol-Antwerp	GILI INDIA	18.03.2017	2002274.00		03.03.2018
18.03.2017	Bol-Antwerp	GILI INDIA	18.03.2017	3008517.00		03.03.2018
18.03.2017	Bol-Antwerp	GGL	18.03.2017	3003526.00		03.03.2018
20.03.2017	Bol-Antwerp	GILI INDIA	20.03.2017	3002257.00		03.03.2018
20.03.2017	Bol-Antwerp	NAKSHATRA BRAND	20.03.2017	3003225.00		03.03.2018

Final Order in the matter of Gitanjali Gems Limited

20.03.2017	Bol-Antwerp	NAKSHATRA BRAND	20.03.2017	3004250.00		03.03.2018
20.03.2017	Bol-Antwerp	GGL	20.03.2017	3001941.00		03.03.2018
20.03.2017	Bol-Antwerp	GGL	21.03.2017	3002217.00		03.03.2018
21.03.2017	Bol-Antwerp	GGL	21.03.2017	2002228.00		03.03.2018
21.03.2017	Bol-Antwerp	GGL	21.03.2017	2002385.00		03.03.2018
21.03.2017	Bol-Antwerp	GILI INDIA	21.03.2017	2998032.00		03.03.2018
21.03.2017	Bol-Antwerp	NAKSHATRA BRAND	21.03.2017	3078336.00		03.03.2018
21.03.2017	Bol-Antwerp	NAKSHATRA BRAND	21.03.2017	3005997.00		03.03.2018
21.03.2017	Bol-Antwerp	GGL	21.03.2017	2000729.00		03.03.2018
21.03.2017	Bol-Antwerp	GGL	21.03.2017	2001326.00		03.03.2018
21.03.2017	Bol-Antwerp	GGL	21.03.2017	2998638.00		03.03.2018
21.03.2017	Bol-Antwerp	GILI INDIA	21.03.2017	2002648.00		03.03.2018
21.03.2017	Bol-Antwerp	GILI INDIA	22.03.2017	2999553.00		03.03.2018
22.03.2017	Bol-Antwerp	NAKSHATRA BRAND	22.03.2017	1999485.00		13.03.2018
22.03.2017	Bol-Antwerp	GILI INDIA	22.03.2017	1998150.00		13.03.2018
22.03.2017	Bol-Antwerp	NAKSHATRA BRAND	22.03.2017	2011656.00		08.03.2018
22.03.2017	Bol-Antwerp	GILI INDIA	22.03.2017	2006959.00		08.03.2018
22.03.2017	Bol-Antwerp	GILI INDIA	22.03.2017	1912372.00		08.03.2018

Final Order in the matter of Gitanjali Gems Limited

22.03.2017	Bol-Antwerp	GGL	22.03.2017	1999171.00		08.03.2018
22.03.2017	Bol-Antwerp	GGL	22.03.2017	1999630.00		08.03.2018
22.03.2017	Bol-Antwerp	GILI INDIA	22.03.2017	2999654.00		08.03.2018
22.03.2017	Bol-Antwerp	GGL	22.03.2017	2999690.00		13.03.2018
22.03.2017	Bol-Antwerp	GGL	22.03.2017	2999173.00		13.03.2018
22.03.2017	Bol-Antwerp	NAKSHATRA BRAND	22.03.2017	2999522.00		13.03.2018
22.03.2017	Bol-Antwerp	GILI INDIA	22.03.2017	2998922.00		13.03.2018
22.03.2017	Bol-Antwerp	NAKSHATRA BRAND	25.04.2017	2018061.00		08.03.2018
25.04.2017	Bol-Antwerp	GGL	25.04.2017	4998166.00		20.04.2018
25.04.2017	Bol-Antwerp	GGL	25.04.2017	4998479.00		20.04.2018
25.04.2017	Bol-Antwerp	GGL	25.04.2017	5000636.00		20.04.2018
25.04.2017	Bol-Antwerp	GGL	25.04.2017	4998371.00		20.04.2018
25.04.2017	Bol-Antwerp	GGL	25.04.2017	4998399.00		20.04.2018
25.04.2017	Bol-Antwerp	GGL	25.04.2017	5005122.00		20.04.2018
25.04.2017	Bol-Antwerp	GILI India	27.04.2017	4998372.00		20.04.2018
26.04.2017	Allahabad Bank, HK	GGL	27.04.2017	4998404.00		19.04.2018
26.04.2017	Allahabad Bank, HK	GGL	27.04.2017	4998129.00		19.04.2018
26.04.2017	Allahabad Bank, HK	NAKSHATRA BRANDS	27.04.2017	4998343.00		19.04.2018

25.04.2017	Axis Bank, HK	GILI INDIA LTD	25.04.2017	5000577.00		19.04.2018
25.04.2017	Axis Bank, HK	GGL	25.04.2017	9998193.00		19.04.2018
02.05.2017	Axis Bank, HK	GGL	02.05.2017	30987649.00		20.04.2018
20.04.2017	Axis Bank, HK	GGL	20.04.2017	230667231.00		05.04.2018
24.04.2017	Axis Bank, HK	GGL	24.04.2017	20006361.00		15.04.2018
25.04.2017	Axis Bank, HK	GGL	25.04.2017	20125639.00		16.04.2018

Table 2 above provides the details of some of the LOUs issued on behalf of Gitanjali Group. I note that although the maturity date of LOUs mentioned above was in March and April, 2018, as per the investigation report dated February 12, 2018 provided by PNB (enclosed as Annexure A of the SCN), some of the fraudulent LOUs issued on behalf of Gitanjali Group were also maturing on 09 February, 2018. The said investigation report also provides that 8 fraudulent LOUs issued on behalf of Nirav Modi Group matured on January 25, 2018. These LOUs being the first to mature were initially identified as fraudulent transaction. The first Fraud Monitoring Return (FMR) was reported to RBI on January 29, 2018 and corresponding FIR registered with CBI on January 31, 2018. The FIR covered LOUs matured on January 25, 2018 amounting to Rs 280.70 crores. Subsequently, on February 05, 2018, PNB made an announcement to the stock exchanges regarding a suspected fraud involving Rs 280.70 crores and on the same day it was reported in the media that CBI has booked Noticee no.1 for allegedly cheating PNB for over 280.70 crores.

32. From the above, I note that Gitanjali Group entities frequently availed the services of PNB's Brady Branch at Mumbai for issuance of fraudulent LOUs on their behalf. In view of the same, I find that Noticee no. 1 being the promoter, Managing Director and major shareholder of GGL in control of Gitanjali Group who was involved in day to day management and administration of Gitanjali Group was aware of the fraudulent LOUs

issued on behalf of Gitanjali Group, their due dates for maturity/renewal and the retirement of Mr. Gokulnath Shetty, who assisted Gitanjali Group in issuance of fraudulent LOUs from PNB during 2015-17. I note that some of the LOUs issued to Gitanjali Group were due for maturity on February 09, 2018. Accordingly, in view of the retirement of Mr. Gokulnath Shetty and the fact that maturity of some of the fraudulent LOUs issued on behalf of Gitanjali Group was beginning on February 09, 2018, I find that Noticee no. 1 was aware that these fraudulent transactions will be detected and exposed in public domain as and when they reach their maturity date due to non-payment by Gitanjali Group or refusal for renewal of LOUs by the new employee replacing Mr. Gokkulkunath Shetty at PNB.

33. In addition to the facts narrated in paragraphs 31 and 32 above which demonstrate that Noticee no. 1 was in possession of or having access to UPSI and thus an insider with the meaning of Regulation 2(1)(g)(ii), the SCN further imputes possession of UPSI by Noticee no. 1 because of the following facts:

- (i) Noticee no. 1 is the maternal uncle of Mr. Nirav Modi and as both are involved in the diamond and jewellery business, they would be in close contact with each other.
- (ii) Both Nirav Modi group and Gitanjali Group have been using the same branch of PNB i.e., the Brady House branch, for the issuance of the fraudulent LOUs.
- (iii) Similarly, both groups have been assisted in this act by the same PNB employee viz., Mr. Gokulnath Shetty.
- (iv) The Nirav Modi Group did, in fact, visit the Brady House branch of PNB on January 16, 2018.

34. In the present case, as noted in paragraph 31 above, the maturity date of 8 fraudulent LOUs issued on behalf of Nirav Modi Group was on January 25, 2018. Since both Nirav Modi Group and Gitanjali Group has got fraudulent LOUs issued from the same branch of PNB with the help of same employee of PNB, this fact coupled with the close connection between Mehul Chouksi and Nirav Modi indicated that the detection of

fraudulent LOUs issued to PNB group on the maturity date i.e January 25, 2018 would also lead to detection of fraudulent LOUs issued to Gitanjali Group. Thus, I find that due to the same *modus operandi* involved in issuance of fraudulent LOUs to PNB group and Gitanjali Group, the fate of Gitanjali Group was likely to be the same as the fate of Nirav Modi group with respect to detection and exposure of fraudulent LOUs to these groups. In view of the above, I find that Noticee no. 1 was aware of the fraudulent LOUs being issued on behalf of Nirav Modi Group and Gitanjali Group and the fact that the fate of these two groups are intermingled with respect to detection and exposure of fraudulent LOUs in the public domain as and when the fraudulent LOUs would mature. Therefore, I find that Noticee no. 1 was in possession of UPSI regarding the imminent exposure of fraudulent issuance of LOUs to Gitanjali Group by PNB and its magnitude in the public domain. Thus, Noticee no. 1 was in possession of UPSI by the virtue of the above stated facts and hence an insider with respect to GGL in terms of Regulation 2(1)(g)(ii) of PIT Regulations, 2015.

35. Thus, in view of the discussion in paragraph 28 to 34 above, I find that Noticee no.1 is a “connected person” in terms of Regulation 2(1)(d)(i) of PIT Regulations, 2015 and hence an insider in terms of Regulation 2(1)(g)(i) of the PIT Regulations, 2015. Further Noticee no. 1 was also an insider in terms of Regulation 2(1)(g)(ii) being in possession of UPSI.
36. As regards Noticee no. 2, SCN alleges that Noticee no. 2 is a “connected person” in terms of Regulation 2(1)(d)(i) of PIT Regulations, 2015 and thereby is an insider in terms of Regulation 2(1)(g)(i) of the PIT Regulations, 2015. SCN alleges that Noticee no. 2 has a connection with GGL through one of its promoter group company Joyce Trading Private Limited (JTPL) and Noticee no. 2 is a close associate of Noticee no.1. The close association of Noticee no. 2 with Noticee no. 1 is based on two facts, firstly, Noticee no. 1 and Noticee no. 2 both are shareholders of JTPL, a promoter group company of GGL and, secondly, Noticee no. 1 funded initial payment of Preferential allotment of GGL warrants to Noticee no. 2. SCN further alleges that by virtue of his close association with Noticee no. 1, Noticee no. 2 was in frequent communication with him and therefore, Noticee No. 1 is reasonably expected to have allowed Noticee No. 2 access to the UPSI.

37. **Noticee no. 2 is associated with GGL through JTPL:** I note that the SCN alleges that Noticee no. 2 is connected to GGL through JTPL due to the following:

37.1. I note that JTPL is a promoter group company of GGL which was earlier known as Gitanjali Capital Ltd. The SCN observes that both Noticee no. 1 and Noticee no. 2 are shareholders in JTPL and as per the data available on Ministry of Corporate Affairs, most of the directors of JTPL are relatives of Noticee no. 2. In addition to this, I note that as per the financial statements of GGL for FY 2016-17, JTPL is disclosed as a company under common control of Key Managerial Persons of GGL which includes Noticee no. 1. The details of directors and shareholders of JTPL during the UPSI period are as follows:

Table 3
(Shareholders of JTPL as per the details provided by depositories)

As on June 30, 2017		As on December 01, 2017 & December 31, 2017	
Shareholder	Number of shares (%)	Shareholder	Number of shares (%)
Chunibhai Haribhai Gajera	204000 (17.2%)	Rakesh Girdharlal Gajera	204000 (17.2%)
Mehul C Choksi	979940 (82.8%)	Mehul C Choksi	979940 (82.8%)
Total	1183940 (100%)	Total	1183940 (100%)

Table 4
(Directors of JTPL as per MCA website)

Directors	Begin date	End date
Ashokkumar Haribhai Gajera	08/09/2016	12/03/2019
Chunibhai Haribhai Gajera	08/09/2016	12/03/2019
Vasantbhai Haribhai Gajera	08/09/2016	12/03/2019
Mitesh Chunilal Gajera	08/09/2016	17/03/2020
Aniyath Shivraman Nair	23/02/2011	27/08/2018
Bakulbhai Haribhai Gajera	08/09/2016	12/03/2019

37.2. Here it is relevant to refer to Noticee no. 2's submission in relation to his shareholding in

JTPL. Noticee no.2 vide reply dated August 20, 2021 has submitted as follows:

“With regard to Joyce Trading Pvt. Ltd. (JTPL) the notice would like to state that there was a proposal for sale of property to Gitanjali which required common directors and shareholders to transfer the said property, for the said reason noticee and others were made shareholders and directors of Joyce Trading Pvt. Ltd. But, finally nothing materialized and the said property is still with the noticee. Not a single paise was paid or received by anyone in the alleged transaction. So, the proposed transaction of JTPL does not prove anything.”

I note that Noticee no. 2 has stated that his shareholding in JTPL was due to a proposal for sale of property to GGL which required common directors and shareholders in JTPL and GGL. The proposed transaction did not materialize and therefore, it does not prove anything. In this regard, I find that the arrangement between Noticee no. 2, JTPL and GGL, because of which Noticee no. 2 was made shareholders in JTPL, further indicates that there was a contractual/business relationship of Noticee no. 2 with GGL.

38. **Noticee no. 2 had a close association with Noticee no. 1 i.e. Promoter and M.D of GGL:** I note that the SCN alleges that Noticee no. 2 close associate of Noticee no. 1 due to the following:

A. Close association due to shareholding in JTPL:

- 38.1. From paragraphs 37.1 and 37.2 above, I note that Noticee no. 2 had close association with Noticee no. 1 through JTPL due to the following:

- i. JTPL is controlled by KMPs of GGL. As per the Annual Report for FY 2016-17 of GGL, there are 6 KMPs of GGL namely, Mr. Mehul Choksi (Noticee no.1), Ms. Pankhuri Warange (Company Secretary), Mr. Chandrakan Karkare (CFO), Mr. Dhanesh B. Sheth (Director), Mr. S Krishnan (Director), Ms. Nazura Muhammad Ajaney (Director);
- ii. Both Noticee no. 1 and 2 are shareholders in JTPL. As per the information provided by depository, Noticee no. 1 and holds 979940 shares (82.8%) and Noticee no. 2

holds 204000 shares (17.2%) of JTPL

- iii. Almost all the directors of JTPL are relatives of Noticee no. 2; and
- iv. Noticee no. 2 was in a contractual/business relationship with GGL through JTPL both of which are controlled by Noticee no. 1.

B. Close association due to receiving funding from Noticee no. 1 for subscribing the Preferential allotment of GGL warrants:

38.2. I note that GGL in 2015 issued and allotted warrants convertible into equity shares on preferential basis. The object of the issue was to mobilise funds to meet the long-term financial requirements, working capital requirements and general corporate purposes. The maximum number of warrants to be allotted on preferential basis were 2,38,05,296 out of which 68,24,227 warrants were allotted to Noticee no. 2. The remaining warrants were allotted to four entities namely, Mr. Chaitya Shah and Mr. Ramesh Shah who were allotted 68,24,227 warrants each, and M/s Vespera Fund Limited and M/s Marshal Global Capital Fund Limited who were allotted 16,00,000 warrants each. Details of allotment of GGL shares to Noticee no. 2 after conversion of warrants and payment of remaining consideration are as below:

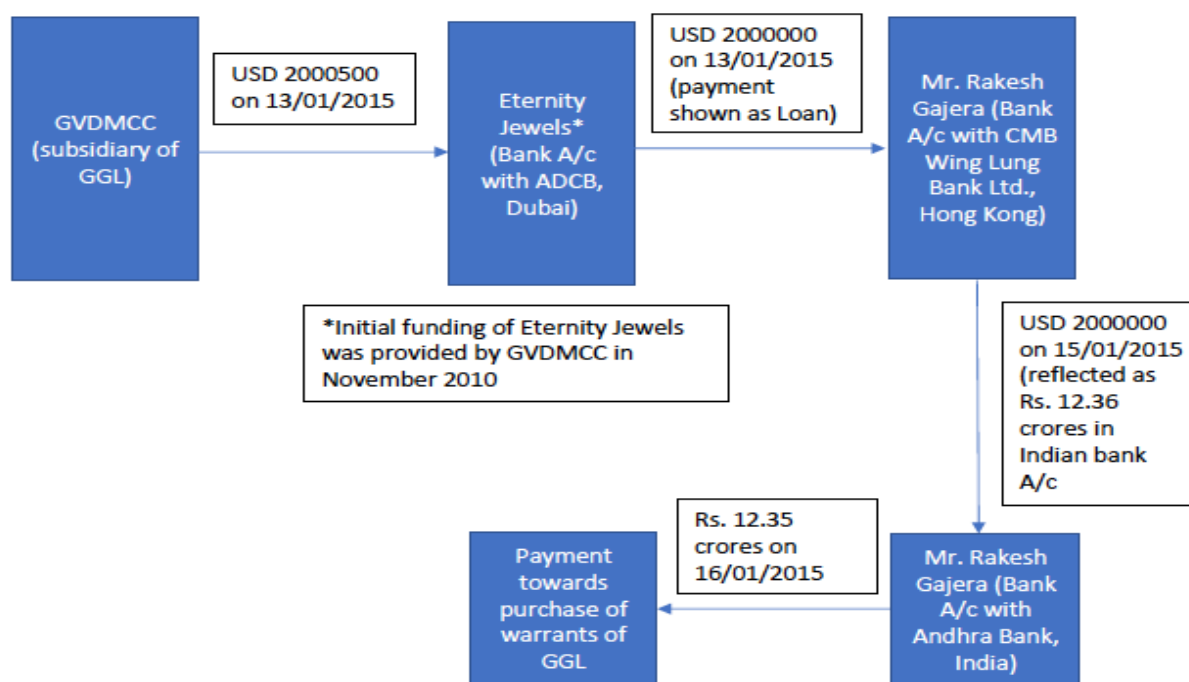
Table 5
(Allotment of GGL shares to Noticee no. 2)

Date	Instrument	Number	Consideration	Lock-in
22/01/2015	Warrants	68,24,227	Rs. 12.35 crores (25% of total consideration was to be paid upfront)	-
25/05/2016	Shares	24,36,376	Against receipt of remaining 75% i.e., Rs. 37.05 crores	Under lock-in till Sep 01, 2017
09/08/2016	Shares	43,87,850		Under lock-in till Dec 01, 2017
	Shares allotted in 2016	68,24,226	Rs. 49.4 crores	

I note that the purpose of preferential allotment of GGL warrants in 2015 was mobilisation

of funds to meet the long-term financial requirements, working capital requirements and general corporate purposes of the Company. I further note that any preferential allotment is made mainly to promoters, their relatives, associates through negotiations and Noticee no. 2 was one of the 5 allottees in the preferential allotment of GGL's warrants in 2015. Therefore, I find that the very fact that Noticee no. 2 was one of the 5 preferential allottees clearly indicates that Noticee no. 2 was associated with the Company.

38.3. I further note that the source of the initial payment of Rs. 12.35 crores made by Noticee No. 2 for acquiring warrants of GGL in 2015, was Gitanjali Venture DMCC (hereinafter referred to as "GVDMCC"), a 100% subsidiary of GGL. The pictorial representation of the fund trail for initial payment of Rs 12.35 crores made by Noticee no. 2 for allotment of warrants of GGL is provided in the SCN as follows:



38.4. I note that Noticee no. 2 has not denied that he received funds amounting to Rs 12.35 crores from Eternity Jewels and the fact that these funds were received in the account of Eternity Jewels from GVDMCC, a 100% subsidiary of GGL. What Noticee no. 2 has contended is that the fund received from Eternity Jewels are received as a business loan. Noticee no. 2 vide his reply dated August 20, 2021 has submitted that as regards, the

fund transfer, he has informed the Directorate of Enforcement that the funds of approximately Rs. 12 crores were transferred to Noticee no. 2 from Eternity Jewels as a business loan at the rate of 4 % per annum for a period of 5 years and the same is yet to be repaid to Eternity Jewels. Noticee no. 2 has also submitted that as per the statement of Shri Jitendra Mahajan, an employee of GVDMCC, recorded by the Enforcement Directorate officials on June 20, 2018, the funds received by Noticee no. 2 from Eternity Jewels was a loan.

38.5. I note that Noticee no. 2 has not provided any documents such as loan agreement, terms of loan and purpose of loan in support of his submission that the funds of Rs 12.35 crore received from GVDMCC (100% subsidiary of GGL) through Eternity Jewels was a loan. Noticee no. 2's submission before Enforcement Directorate that the funds of Rs 12.35 crores received from Eternity Jewels was a loan without providing any supporting documents does not prove that the said funds were actually transferred to him as a loan. I further note that Noticee no. 2 has also not provided any evidence to show that he paid any periodical interest on the loan of Rs 12.35 crores or that the said funds were ever returned to Eternity Jewels or that Eternity Jewels made any efforts for recovery or repayment of loan from Noticee no. 2. I further note that as per the KYC form, the nature of activity for the bank account of Eternity Jewels with ADCB Bank, Dubai is shown as 'Payment to Suppliers' and 'Payment from Clients' whereas Noticee no. 2 has claimed that he received the said funds from Eternity Jewels as a loan. I note that Eternity Jewels is in jewelry trading business and not in the business of providing loans. Considering the fact that the bank account of Eternity Jewels with ADCB Bank, Dubai was meant for accepting payments from clients and making payments to suppliers in relation to jewelry trading business and Noticee no. 2 has not submitted that he received funds from the ADCB Bank account of Eternity Jewels as a supplier, it is clear that the amount of Rs. 12.35 crores was not transferred to Noticee no. 2 in ordinary course of business. In view of the above discussion, I find that the submission of Noticee no. 2 that the funds of Rs 12.35 crores were received from Eternity Jewels as a loan is not acceptable.

38.6. I note from the fund flow chart that the entire funds of Rs 12.35 crore received by Noticee

no. 2 were immediately utilised for making initial payment for allotment of GGL warrants on January 16, 2015. In view of the above, I find that the funds were transferred to Noticee no. 2 not as a loan but for the purpose of funding subscription of the warrants of GGL. Since GVDMCC is a 100% subsidiary of GGL which is controlled by Noticee no. 1 i.e. the Promoter and Managing Director of GGL, I find that Noticee no. 1 provided funds to Noticee no.2 through GVDMCC and Eternity Jewels for the purpose of funding the subscription of the warrants of GGL by Noticee no. 2. Here, it is relevant to note the statement recording of an employee of GGL, Mr. Vipul Chitalia before the Enforcement Directorate. During the statement recording, Mr. Vipul Chitalia who is a co-accused in the Enforcement Directorate's charge sheet in connection with PNB fraud, had stated that the source of funds for the investments made by Noticee no. 2 in GGL belonged to Noticee no. 1. I also note that Mr. Jitendra Mahajan, an employee of GVDMCC vide email dated June 15, 2020 submitted that both GVDMCC (wholly owned subsidiary of GGL) and Eternity Jewels are controlled by Noticee no. 1. Moreover, Ms. Pankhuri Warange, company secretary of GGL vide email dated March 25, 2020 has submitted that Noticee no.1 and Noticee no. 2 were friends. In view of the above, I find that Noticee no. 1 had provided funds, through layers of entities viz., GVDMCC and Eternity Jewels, to Noticee no. 2 for the purpose of funding the initial payment for subscribing 68,24,226 warrants of GGL by Noticee no. 2. I also find that such transfer of funds from Noticee no. 1 to Noticee no. 2 for subscription of 68,24,226 warrants of GGL on a preferential basis shows that the Noticees are close associates.

39. In view of the discussion at paragraphs 37 and 38 above, I find that Noticee no. 1 and 2 were close associates which indicates that there was frequent communication between the two Noticees. Moreover, in view of the frequent communication and connections observed between the Noticees and the fact that Noticee no.1 provided funds to Noticee no. 2 for subscription of GGL warrants in 2015, I find that the association between the two Noticees was such that Noticee no. 1 is reasonably expected to allow Noticee no. 2 access to UPSI. Therefore, I find that Noticee no. 2 is associated with GGL due to frequent communication with Noticee no. 1 i.e., Promoter and Managing Director of GGL. Due to this association, I find that Noticee no. 1 is a "connected person" in terms of

Regulation 2(1)(d)(i) of PIT Regulations, 2015 and hence an 'insider' in terms of 2(1)(g)(i) of PIT Regulations, 2015.

40. Noticee no. 2 vide his written submissions dated November 26, 2021 has submitted that there were 4 other preferential allottees who sold the shares of GGL during November-December, 2017 and none of them have been charged with insider trading. In this regard, I note that in the present case, Investigating Authority identified following criteria to determine the persons who might be having access to UPSI,

- (i) PNB official who were examining the case of suspected fraud of PNB;
- (ii) Persons who were charged as accused by CBI and ED;
- (iii) Persons whose names appeared in CBI and ED charge sheet; and
- (iv) Non-individual entities who were directly or indirectly controlled by Noticee no. 1.

The preferential allottees other than Noticee no. 2 did not fall in any of the aforesaid criteria and were therefore not considered insiders in the present case. Moreover, the proceedings before me are *qua* Noticee no. 1 and Noticee no. 2, the scope of the current proceedings is to determine the sustainability of alleged violations against Noticee no. 1 and Noticee no. 2. Therefore, the contention of the Noticee no. 2 that none of the other preferential allottees have been charged of insider trading, is not tenable.

Whether Noticees have traded in the securities of GGL when in possession of UPSI?

41. The next question to be determined is whether the Noticees being insiders of the Company-GGL, traded in its securities while in possession of UPSI. SCN alleges that Noticee No. 2 have traded in the scrip of GGL as follows:

Table 6
(Trading details of Noticee no. 2 in the scrip of GGL)

Date	Buy Quantity	Buy Value	Sell Quantity	Sell Value (in Rs)
Prior to UPSI Period (01.03.2017-30.05.2017)				
No trades				

Date	Buy Quantity	Buy Value	Sell Quantity	Sell Value (in Rs)
During UPSI Period (31.05.2017-05.02.2018)				
01-Dec-17	0	0	18,01,376	14,79,24,531
05-Dec-17	0	0	20,00,000	15,80,03,504
06-Dec-17	0	0	5,00,000	3,85,00,000
07-Dec-17	0	0	10,00,000	7,67,50,000
08-Dec-17	0	0	10,00,150	7,53,86,332
14-Dec-17	0	0	5,22,700	3,63,27,650
			68,24,226	53,28,92,017
Post UPSI Period (06.02.2018-30.04.2018)				
No trades				

42. As regards Noticee no.1, SCN alleges that Noticee no. 1 has traded in the scrip of GGL through the account of Noticee no. 2 during the UPSI period and when both the Noticees were in possession of the UPSI. I note that Noticee no. 1 has not traded in the shares of GGL in his trading account during the UPSI period. I further note that as per the Annual Report of GGL for FY 2016-17, as on March 31, 2017, Noticee no. 1 was holding 26.09% share capital of GGL out of which 21.42% shares were pledged/encumbered.
43. I note that in paragraph 26.3 of the SCN, it is alleged that Noticee no. 1, by virtue of being an insider and having traded in the scrip of GGL, through the trading account of Noticee no. 2, when in possession of UPSI, has engaged in insider trading in the scrip of GGL. However, I note that the SCN has not brought out any relevant facts and evidences that indicate that Noticee no. 1 traded through the account of Noticee no. 2. Moreover, I note that there is nothing available on record to show that the sale proceeds of GGL shares were transferred to Noticee no. 1 by Noticee no. 2. Therefore, in absence of any evidence that proves that Noticee no. 1 traded in the shares of GGL through the trading account of Noticee no. 2 while in possession of UPSI, I find that the allegation of engaging in insider trading in the securities of GGL through the trading account of Noticee no. 2 against Noticee no. 1 does not stand established.

44. SCN alleges that Noticee no. 2 sold 68,24,226 shares of GGL from December 01-14, 2017.i.e. during the UPSI period, when in possession of UPSI.
45. Noticee no. 2 has not denied his aforesaid trades as alleged in the SCN. What Noticee No. 2 has contended is that the trades are not on the basis of UPSI. To substantiate his contention, he has submitted that firstly, he was not in possession of UPSI, secondly, that he sold the shares of GGL in December, 2017 after the lock-in period for his GGL shares was over and thirdly, that the disposal of GGL shares by him in December, 2017 was a normal business transaction.
46. As regards, the contention of Noticee no. 2 that he was not in possession of UPSI and that no supporting evidence has been referred in the SCN indicating that Noticee No.1 passed on UPSI to Noticee no. 2, it is relevant to note the trading pattern of Noticee No. 2, wherein Noticee no. 2 has not traded in any other scrip during three months prior to UPSI period, during the UPSI period and three months after UPSI period i.e., in the period March 01, 2017 to April 30, 2018. Further, the trading account of Noticee no. 2 was opened a day before the sale of GGL shares only for the purpose of selling those shares during the UPSI Period. I find that timing of opening of trading account by Noticee no. 2, trading pattern of Noticee no. 2 during, pre, post UPSI period and close association of Noticee no. 2 with Noticee no. 1, gives rise to a reasonable inference that Noticee no. 2 traded in the scrip of GGL on the basis of UPSI which was communicated by Noticee no. 1 to Noticee no. 2. I note that the SCN refers to the email dated March 25, 2020 (enclosed as Annexure L to the SCN) submitted by the company secretary of GGL, Pankhuri Warange wherein it is mentioned that Noticee no.1 and Noticee no. 2 were friends. SCN also refers to the statement of recording of an employee of GGL, Mr. Vipul Chitalia before the Enforcement Directorate. During the statement recording, Mr. Vipul Chitalia who is a co-accused in the Enforcement Directorate's charge sheet in connection with PNB fraud, had stated that the source of funds for the investments made by Noticee no. 2 in GGL shares belonged to Noticee no. 1. SCN also refers to the email dated June 15, 2020 (enclosed as Annexure M to the SCN) submitted by an employee of GVD MCC, Mr.

Jitendra Mahajan to SEBI wherein it is mentioned that both GVDMCC (wholly owned subsidiary of GGL) and Eternity Jewels i.e. entities through which Noticee no. 1 transferred funds to Noticee no. 2 for the purpose of subscribing to the preferential allotment of GGL warrants in 2015, are controlled by Noticee no. 1. I find that the above statements made by the employees of GGL, GVDMCC (100% subsidiary of GGL) and the company secretary of GGL corroborates the finding that Noticee no. 2 was associated with GGL and was in frequent communication with Noticee no. 1 which leads to the inference that Noticee no. 1 is reasonably expected to have allowed Noticee no. 2 access to UPSI. Accordingly, I find that the contention of Noticee no. 2 that he was not in possession of UPSI and that no supporting evidence has been referred in the SCN indicating that Noticee No.1 passed on UPSI to Noticee no. 2 is not tenable.

47. As regards the second contention of the Noticee no. 2 that he sold the shares of GGL after the lock-in period for his shareholding in GGL was over, I note that the lock-in period for GGL shares held by Noticee no. 2 was as follows:

Table 7
(Lock-in period of GGL shares for Noticee no. 2)

Date of allotment	Number	Lock-in
25/05/2016	24,36,376	Under lock-in till September 01, 2017
09/08/2016	43,87,850	Under lock-in till December 01, 2017
	68,24,226	

From the above, I note that Noticee no. 2 was holding 24,36,376 shares of GGL from September 01, 2017 without any lock-in and Noticee no. 2 did not sell these shares until December 01, 2017. Therefore, the contention of the Noticee no. 2 that his GGL shares after the lock-in period was over is not tenable.

48. As regards, the submission of Noticee no. 2 that his trades in the shares of GGL were normal sale transactions, I note that Noticee no. 2 has not traded in any other scrip during three months prior to UPSI period, during the UPSI period and three months after UPSI period i.e., in the period March 01, 2017 to April 30, 2018. I further note that Noticee no. 2 opened his trading account on November 29, 2017 just before selling his entire

shareholding in GGL. The above facts and circumstances lead to a reasonable inference that the trades executed by Noticee no. 2 in GGL shares in December, 2017 were not normal sale transactions.

49. I note that sale transactions were executed by Noticee no. 2 in December, 2017 close to the maturity date of fraudulent LOUs issued by PNB on behalf of Gitanjali Group and Nirav Modi Group as there was a high probability of detection and exposure of these fraudulent LOUs in the public domain close to their maturity date. As provided in paragraph 31 above, some of the fraudulent LOUs issued to Nirav Modi Group and Gitanjali Group were maturing on January 25, 2018 and February 09, 2018, respectively. This coupled with the fact that Nirav Modi Group would be visiting PNB for fresh issuance or rollover of existing LOUs before January 25, 2018 when some of the fraudulent LOUs issued to Nirav Modi Group were maturing, created high probability of detection and exposure of the fraudulent LOUs issued by PNB on behalf of Nirav Modi Group and Gitanjali Group in the public domain. More so because Mr. Gokulnath Shetty, the employee who assisted both Nirav Modi Group and Gitanjali Group in issuance of fraudulent LOUs had retired from PNB and the new employee who takes over the role of Mr. Gokulnath Shetty at PNB may not assist Nirav Modi Group and Gitanjali Group in fresh issuance/rollover of fraudulent LOUs by authorizing the unauthorized transactions in SWIFT messaging system as done by his predecessor. Furthermore, the fraudulent LOUs issued on behalf of Nirav Modi Group and Gitanjali Group would also be detected and exposed automatically on the maturity date due to non-payment of the outstanding amount by the Nirav Modi Group and Gitanjali Group. Here, I note that the information relating to fraudulent LOUs issued on behalf of Gitanjali Group and Nirav Modi group by PNB was in fact disclosed in the public domain on February 05, 2018 close to the maturity date of the fraudulent LOUs issued to Gitanjali Group on February 09, 2018 and Nirav Modi Group on January 25, 2018.
50. In light of the above, I find that the primary basis for sale of shares by Noticee no. 2 was the UPSI relating to the fraudulent LOUs issued on behalf of Gitanjali Group i.e. outstanding LOUs amounting to Rs. 3011.39 crore and its imminent exposure in the

public domain. Thus, I find that Noticee no. 2 being an insider with respect to GGL was aware of the magnitude of the fraudulent LOUs issued on behalf of Gitanjali Group, their maturity date and the abovementioned circumstances which made their exposure in public domain imminent. I further find that Noticee no. 2 sold his entire shareholding in GGL in December, 2017 before the maturity date of fraudulent LOUs issued on behalf of Nirav Modi Group and Gitanjali Group on January 25, 2018 and February 09, 2018, respectively, to avoid losses due to crash in the price of GGL upon detection and exposure of fraudulent LOUs on their maturity date in the public domain.

51. Noticee no. 2 vide his written submissions dated November 26, 2021 has submitted that from the month of August, 2017, Noticee no. 1 was trying to sell a housing project 'Tatva Project' from Gitanjali Infra Development Co. (wholly owned subsidiary of GGL) to one of the companies in which the Noticee no. 2 was a shareholder i.e. Laxmi Infra Development Ltd (hereinafter referred to as 'LIDL'). The agreement to sell the said housing project took place in the month of January, 2018. Noticee no. 2 has submitted that if he had the knowledge of fraud committed by Noticee no.1 and GGL then he would have alerted the directors of LIDL and as a prudent person and shareholder he would not have allowed LIDL to invest in a project left incomplete by a fraudster. Noticee no. 2 also submitted that LIDL has also filed an FIR against Noticee no. 1 regarding this fraud. In this regard, I find that the fact that LIDL entered into an agreement for purchasing a housing project from Gitanjali Infra Development Co. in January, 2018 does not prove that Noticee no. 2 did not have access to UPSI while disposing off GGL shares in December, 2017. The agreement to sell a housing project between Gitanjali Infra Development Co. and LIDL neither exposed Noticee no. 2 nor LIDL to the price risk of GGL shares as the price of these shares were expected to fall after the UPSI became generally available. Therefore, I find that facts relating to LIDL entering into an agreement for purchasing a housing project from Gitanjali Infra Development Co. are not relevant for the purpose of contending that Noticee no. 2 did not have access to UPSI and that he did not trade in the shares of GGL on the basis of UPSI relating to the fraudulent issuance of LOUs to GGL and its disclosure in public domain.

52. Under Regulation 4(1) of PIT Regulations, 2015 when a person trades in securities when in possession of UPSI, his trades would be presumed to have been motivated by the knowledge and awareness of such UPSI in his possession. Once it is found that an insider being connected person has traded then reasons for which he traded are immaterial to contend that his trades were not on the basis of UPSI. Proviso to Regulation 4(1) provides that despite presence of all the ingredients of Regulation 4(1) of PIT Regulation, 2015, the insider may prove his innocence by demonstrating the circumstances including those which are mentioned in the said proviso. The Note to Regulation 4(1) states that once it is established that an insider traded when in possession of UPSI, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition. In the present case, I find that Noticee no. 2 has not demonstrated any circumstances that prove his innocence and have not provided any reasonable explanation for trading in the share of GGL during the UPSI period. Thus, I find that Noticee no. 2 traded in the securities of GGL when in possession UPSI and thus, have violated provision of Regulation 4(1) of PIT Regulations, 2015. Accordingly, Noticee 2 has also violated provisions of Section 12A(d) and (e) of SEBI Act, 1992.
53. I note that the SCN has alleged that UPSI came to be communicated to Noticee no. 2 from Noticee no. 1. As discussed in paragraph 39 above, Noticee no. 2 has been found to have access to UPSI by the virtue of his frequent communication with Noticee no.1. Noticee no. 1 and Noticee no. 2 are found to be close associates due to their association through JTPL and the transfer of Rs.12.35 crores from an entity controlled by Noticee no. 1 to Noticee no. 2 for funding the upfront payment of Rs 12.35 crores required by Noticee no. 2 for subscribing to GGL warrants in the preferential allotment of warrants by GGL in 2015. These warrants were converted to 68,24,227 equity shares by Noticee no. 1 accounting for 5.75% shares of the total share capital of GGL.
54. I note that there are no trades by Noticee No. 2 in any other scrip during three months prior to UPSI period, during the UPSI period and three months after UPSI period i.e., in the period March 01, 2017 to April 30, 2018. Further, the trading account of Noticee no.

2 was opened on November 29, 2017 just before the sale of GGL shares only for the purpose of selling those shares during the UPSI Period. All these facts and circumstances clearly indicate that Noticee no. 2 traded in the shares of GGL in the month of December, 2017 while in possession of UPSI and that Noticee no. 1 had communicated the UPSI to Noticee no. 2. I note that in order to prove a particular fact, an evidence can either be direct or circumstantial. In this regard, it may be relevant to refer to the observations made by the Hon'ble Supreme Court in SEBI Vs. Kishore R Ajmera and Others MANU/SC/0212/2016, which has been cited with approval by the Hon'ble Supreme Court in the matter of Chintalapati Srinivasa Raju v. SEBI, (2018) 7 SCC 443 (Para 26), as under:

“26. It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion.”

55. In view of the close association and frequent communication between Noticee no. 1 and 2 coupled with the trading behavior of Noticee no. 2 as discussed above, it is clear that Noticee no. 1 communicated UPSI to Noticee no. 2 who sold his entire shareholding of 5.75% in GGL in December, 2017 with the intention of avoiding loss ahead of any event which may lead to disclosure of fraudulent issuance of LOUs to Gitanjali Group and its magnitude in public domain. Thus, I find that Noticee no. 1 has violated provision of Regulation 3(1) of PIT Regulations, 2015 which prohibits the communication of any UPSI by an insider. I note that Noticee no. 1 has also violated the provision of Section 12A(e) of SEBI Act, 1992 which provides that no person shall communicate material or non-public information to any other person, in a manner which is in contravention of the provisions of the SEBI Act, 1992 or the rules or the regulations made thereunder.

56. I note that the SCN alleges that Noticee no. 1 and Noticee no. 2 wrongfully avoided loss by selling the shares of GGL during the UPSI period, as follows:

Table 8
(Wrongfully avoided loss by Noticee no. 2)

Sell Quantity(A)	Sale Value (in Rs) (B)*	Notional Sell Value (in Rs) C=A x Closing price** on Feb 06, 2018)	Loss wrongfully avoided (in Rs) (D=B-C)
68,24,226	53,28,92,017	37,46,50,007	15,82,42,010

* Sale took place between December 01-14, 2017, and this is the total sale value.

** Closing price of GGL on February 06, 2018, on NSE was Rs 54.90. Announcement was made on February 5, 2018, after trading hours.

As discussed in paragraph 43 above, the allegation of trading in the securities of GGL while in possession of UPSI is not established against Noticee no.1. Therefore, I find that the allegation of wrongfully avoiding loss by selling the shares of GGL during the UPSI period is also not established against Noticee no.1. The shares of GGL were sold by Noticee no. 2 while in possession of UPSI and the loss avoided by him due to sale of his GGL shares cannot be attributed to Noticee no. 1. As regards, the magnitude of wrongfully avoided loss, I note that there was a negative impact on the scrip of GGL when the UPSI was disclosed in public domain on February 05, 2018. Accordingly, the closing price of GGL for the next trading day after the end of the UPSI period, i.e. February 06, 2018 is used for calculation of the wrongfully avoided loss in the SCN. The wrongfully avoided loss is calculated by deducting the notional sale value of shares on February 06, 2018 when the price of the GGL shares was impacted due to disclosure of UPSI in the public domain from the total consideration received by Noticee no. 2 upon sale of GGL shares in December, 2017. I note that Noticee no. 2 has not disputed the method of calculation of wrongfully loss avoided by the SCN, nor has he disputed the amount of Rs. 15,82,42,010/- arrived by the SCN after applying the aforesaid method.

57. In view of the violation of provision of Regulation 3(1) of PIT Regulations, 2015 which prohibits the communication of any UPSI by an insider and violation of provision of Section 12A(e) of SEBI Act, 1992, as noted above, I find that Noticee no. 1 is liable for issuance of appropriate directions for debarment from accessing the securities market and dealing in securities and for imposition of monetary penalty.
58. In view of the violation of the provisions provision of Regulation 4(1) of PIT Regulations, 2015 and Section 12A(d) and (e) of SEBI Act, 1992, as noted above, I find that the Noticee no. 2 is liable for issuance of appropriate directions for debarment from accessing the securities market and dealing in securities and for imposition of monetary penalty. Further, I find that directions under Section 11B(1) of the SEBI Act, 1992 be issued against the Noticee no. 2 to disgorge an amount of Rs.15,82,42,010/-.

Disclosure violations by Noticee no. 2

59. The SCN alleges that Noticee no. 2 violated provisions of Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011 as he held more than 5% of the total share capital of GGL during the quarter ending September, 2017 and failed to make disclosure of more than two percent change in his shareholding in GGL to the stock exchanges in December, 2017.
60. I note that Noticee no. 2 was holding 68,24,226 shares of GGL which, as on quarter ending September 2017, accounted for 5.75% of the total share capital of GGL. Noticee No. 2 sold his entire shareholding in December 2017, and thereby, the change in his shareholding exceeded 2% of the total shareholding of GGL which the Noticee no. 2 was required to disclose to the target company (i.e. GGL) and the stock exchanges, in terms Regulation 29(2) of the SAST Regulations, 2011. The SCN alleges that Noticee no. 2 though made disclosure to GGL, however, he failed to make the required disclosures relating to the disposal of his entire shareholding in GGL shares to the stock exchanges in terms of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations, 2011.
61. The relevant regulations of SAST Regulations, 2011 as existed at the relevant time are

reproduced below:

Disclosure of acquisition and disposal.

29 (2) Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition or voting rights in the target company to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

62. Noticee no. 2 vide his written submissions dated November 26, 2011, submitted that he did not make disclosures regarding sale of GGL shares in December, 2017 to the Stock exchanges immediately but on November 18, 2021. Noticee no. 2 has further submitted that Regulation 29(3) of SAST Regulations, 2011 at the relevant time did not contemplate any time limit for disclosure of sale of shares. At that time the timeline of two working days under Regulation 29(3) of SAST Regulations, 2011 was provided only in relation to acquisition of shares/voting rights and not for the disposal of shares. Noticee no. 2 has contended that the requirement to make disclosure within two days of disposal of shares was introduced under Regulation 29(3) when the words 'disposal of shares' were inserted in Regulations 29(3) of the SAST Regulations, 2011 by an amendment effected from September, 2018. In support of his contention, Noticee no. 2 relied on the Adjudication Order dated April 16, 2021 passed in respect of Shri Shah Ramesh Himatlal in the same matter of Gitanjali Gems Ltd. In this order, the transaction in question was also sale of shares made in November, 2017 and the disclosure of transactions was made on March 03, 2021 to the stock exchanges. The Adjudicating Officer held that regulation 29(3) of the SAST Regulations, 2011 as existing at the relevant time did not contemplate any obligation of time limit to disclose sale of shares and the question of discharging the

obligation arising under Regulation 29(2) read with 29(3) of SAST Regulations, 2011 did not arise at all for the transactions made on November 24, 2017 and November 27, 2017. Noticee no. 2 has submitted that the facts of his case are identical to the facts of the case considered in Adjudication Order dated April 16, 2021 and therefore, the allegation of violating Regulation 29(2) read with 29(3) of SAST Regulations, 2011 may be dropped against him.

63. I note that Regulation 29(3) of SAST Regulations, 2011 as reproduced in the SCN provide the amended provisions of Regulation 29(3) and not the provisions as applicable at the relevant time when Noticee no.2 sold his GGL shares i.e. December, 2017. I further note that Noticee no. 2 made disclosure regarding disposal of GGL shares in December, 2017 to the stock exchanges on November 18, 2021 with a delay of almost 4 years. I note that the words 'disposal of shares' were inserted in Regulation 29(3) of the SAST Regulations, 2011 by an amendment with effect from September 11, 2018 and therefore, in December, 2017 when Noticee no. 2 sold his entire shareholding of 5.75% in GGL, there was no timeline prescribed for disclosing disposal of shares under Regulation 29(3) of SAST Regulations, 2011. As regards the issue of disclosure of disposal of shares within 2 working days, I note the finding of Hon'ble Securities Appellate Tribunal, Mumbai in the case of Mr. Ravi Mohan & Ors. Vs. SEBI (Appeal no. 97 of 2014) decided on December 16, 2015 on the issue of disclosure of sale of shares under the *pari materia* provisions under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (since rescinded). The relevant extract of the order in Mr. Ravi Mohan & Ors. Vs. SEBI is reproduced below:

".....when the Takeover Regulations, 1997 provides that the disclosure obligation specified under regulation 7(1A) has to be discharged in the manner specified under regulation 7(1A) read with regulation 7(2) and regulation 7(2) does not provide for disclosure in relation to sale of shares in excess of the limits prescribed under regulation 7(1A), SEBI is not justified in holding that the appellants by failing to make disclosure of sale covered under regulation 7(1A) within the stipulated time, have violated regulation 7(1A) with regulation 7(2) of the Takeover Regulations, 1997. Consequently, SEBI is not justified in imposing penalty on the appellants."

The aforesaid order passed in Ravi Mohan has been followed by Hon'ble SAT in Mr. Rakesh Kathotia Vs. SEBI (Appeal no. 7 of 2016 decided on May 27, 2019 and Shilpa Amit Kotia & Ors Vs. SEBI (Appeal no. 309 of 2017) decided on July 02, 2019.

64. Therefore, in view of the abovementioned decisions of Hon'ble SAT, I find that since Regulation 29(3) at the relevant time of sale of shares in December, 2017 did not contemplate any time limit for disclosure relating to sale of shares covered under Regulation 29(2) of SAST Regulations, 2011, Noticee no. 2 cannot be said to have violated provisions of Regulation 29(2) within the time stipulated under Regulation 29(3) of SAST Regulations, 2011. In view of the above, I find that the violation of provision of Regulations 29(2) read with 29(3) of SAST Regulations, 2011 against Noticee no. 2 is not established.

Non-compliance of summons issued by SEBI to Noticee no. 1:

65. The SCN also alleges that Noticee no.1 failed to comply with the following summons issued by SEBI:

Table 9
(Summon and reminders issued to Noticee no. 1)

	Summon Date	Reminder 1	Reminder 2	Reminder 3	Reminder 4	Reminder 5
Dates	20/03/2020	24/04/2020	18/05/2020	15/06/2020	October 28, 2020	December 04, 2020
Mode of communication	Physical letter and email	Email	Email	Email	Physical letter and email	Email

SCN provides that summons sent through physical letters to Noticee no. 1 returned undelivered; however, the summons sent through emails at email IDs mehulchoksi55@gmail.com, mehul@gitanjaligroup.com and gitanjalipromoter@gmail.com and these emails did not bounce back. Noticee no. 1 has not provided any response to the above-mentioned summons.

66. In view of the above, I note that Noticee no. 1 did not furnish the information/documents, etc. sought by IA under the SEBI Act, 1992 despite issuing 5 reminders for responding to the summons issued on March 20, 2020 as mentioned above. Thus, I find that Noticee no. 1 failed to furnish the information required under the SEBI Act, 1992 and has thereby hampered the process of investigation leading to violation of Section 11C(3) of the SEBI Act, 1992 and is liable for monetary penalty under Section 15A(a) of the SEBI Act, 1992.
67. I note that violations committed by the Noticees also renders them liable for imposition of penalty under Section 15G read with Section 11B(2) of SEBI Act, 1992, which provide as under:

SEBI Act, 1992:

“Penalty for insider trading.

15G. If any insider who,—

- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or
- (ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
- (iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,

shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.”

“Power to issue directions and levy penalty.

11B(1) Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,—

- (i) in the interest of investors, or orderly development of securities market; or
- (ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or
- (iii) to secure the proper management of any such intermediary or person, it may issue such directions,—
 - (a) to any person or class of persons referred to in section 12, or associated with the securities market; or
 - (b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

Explanation.— For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

(2) Without prejudice to the provisions contained in sub-section (1), sub-section (4A) of section 11 and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.”

68. In the previous paragraph 53 to 55, it has been shown that Noticee no. 1 was found to have communicated UPSI to Noticee no. 2 without any underlying legal obligation or any legitimate purpose and accordingly violated Regulation 3(1) of PIT Regulations, 2015. Therefore, I find that Noticee no. 1 is liable for issuance of appropriate directions for debarment from accessing the securities market and dealing in securities, under Section 11B(1) of SEBI Act, 1992 and for imposition of appropriate penalty under Section 11B(2) read with Regulation 15G(i) of PIT Regulations, 2015.
69. In the previous paragraphs 50 to 52, it has been shown that Noticee no. 2 has traded when in possession of UPSI and that Noticee no. 2 has not been able to prove his innocence by demonstrating circumstances given under provisions for Regulation 4(1) of PIT Regulations, 2015. Therefore, as per the Note to Regulation 4(1) there is a presumption that his trades were on the basis of UPSI. Not only this, it has been shown that Noticee no. 2 has traded on the basis of UPSI and wrongfully avoided loss of Rs. 15,82,42,010/- in paragraph 56 above. Accordingly, Noticee no. 2 has violated provisions of Regulation 4(1) of the PIT Regulations, 2015 and Sections 12A(d) and 12A(e) of the SEBI Act, 1992. Therefore, I find that Noticee no. 2 is liable for issuance of appropriate directions for debarment from accessing the securities market and dealing in securities, and liable for issuance of appropriate directions for disgorgement, under Section 11B(1) of SEBI Act, 1992 and for imposition of penalty under Section 11B(2) read with Regulation 15G(ii) of PIT Regulations, 2015.
70. I note that in terms of Section 15J of the SEBI Act, 1992, while determining the quantum

of penalty under Section 15J of SEBI Act, 1992, Board is required to have due regard to the following factors, namely: -

- (i) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (ii) the amount of loss caused to an investor or group of investors as a result of the default;
- (iii) the repetitive nature of the default.

71. In the instant case, I find that for the unlawful loss avoided by Noticee no. 2, for his impugned trades during UPSI period, appropriate directions of disgorgement of loss avoided are being issued. I note that show cause notice does not bring out any loss caused to any specific investor or a group of investors, as a result of violations committed by Noticee no. 2 with respect to UPSI. I note that Noticee no. 1 was found to have communicated UPSI to Noticee no. 2 without any underlying legal obligation or any legitimate purpose. I also note that there is no material available on record to indicate that the violations committed by Noticee no. 1 to 2 are repetitive in nature.

Directions and Monetary Penalties:

72. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) of SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992 and the Rules, hereby direct as under:

- (i) The Noticee no. 2 is directed to disgorge a sum of Rs.15,82,42,010/- (Rupees fifteen crore eighty two lakh forty two thousand ten only) and the same shall be credited into the Investor Protection and Education Fund (IPEF) referred to in Section 11(5) of the SEBI Act, 1992;
- (ii) Noticee no. 1 and 2 are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 1 year, from the date of this order;

- (iii) Noticee no. 1 and 2 are restrained from buying, selling or otherwise dealing in securities of GGL, directly or indirectly, in any manner, whatsoever, for a period of 2 years, from the date of this order;
- (iv) During the period of restraint, the existing holding of securities including units of mutual funds of the Noticee no. 1 and 2 shall also remain frozen. However, the obligation of the Noticees, restrained/prohibited by this Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, are allowed to be discharged, irrespective of the restraint/prohibition imposed by this Order. Further, all open positions, if any, of the Noticees, restrained/prohibited in the present Order, in the F&O segment of the recognised stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.
- (v) Noticee no.1 and 2 are hereby imposed with following penalties:

Noticee No.	Name of Noticees	Provisions under which penalty imposed	Penalty Amount (In Rupees)
1	Mr. Mehul Chinubhai Choksi	Section 15G(ii) of SEBI Act, 1992. Section 15A(a) of SEBI Act, 1992.	1 Crore 50 Lakh
Total			1.5 Crore
2	Mr. Rajendra Girdharlal Gajera	Section 15G(i) of SEBI Act, 1992.	1 Crore

- (vi) The Noticees shall remit / pay the said amount of penalties within 45 days from the date of receipt of this order. The Noticees shall remit / pay the said amount of penalties through either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path,

by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the said Noticees may contact the support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to "The Division Chief, IVD/ID3, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051" and also to e-mail id:- tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount/ legal charges along with order details).	

73. This Order shall come into force with immediate effect.

74. This Order shall be served on all Recognized Stock Exchanges, Depositories and Registrar and Share Transfer Agents and Banks to ensure necessary compliance.

Place: Mumbai
Date: January 31, 2022

Sd/
ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA