GAMMON INFRASTRUCTURE PROJECTS LIMITED

July 14, 2016

To
The Listing Department
National Stock Exchange of India Limited
Exchange Plaza, C-1, Block –G,
Bandra - Kurla Complex, Bandra (E),
Mumbai – 400051

Dear Sir/Madam,

Ref: Your email dated July 14, 2016 requiring news clarification

Sub: Clarification

In response to your email dated July 14, 2016, we are enclosing herewith copy of the Securities and Exchange Board of India (SEBI) order WTM/SR/EFD/DRA-IV/36/07/2016 dated July 13, 2016 as downloaded from the official website of SEBI passed in respect of Mr. Abhijit Rajan, ex-Chairman and Managing Director of the Company which is self - explanatory.

For Gammon Infrastructure Projects Limited

Renuka Matkari
Company Secretary

Corporate Office : Orbit Plaza, 5th Floor, Plot No. 952/954, New Prabhadevi Road, Prabhadevi, Mumbai - 400 025, INDIA
Tel. : 91 - 22 - 6748 7200 • Fax : 91 - 22 - 6748 7201• E-mail : info@gammoninfra.com
Website : www.gammoninfra.com • CIN : L45203MH2001PLC131728
Registered Office : Gammon House, Veer Savarkar Marg, Prabhadevi, Mumbai - 400 025. INDIA.

WTM/SR/EFD/DRA–IV/36/07/2016

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

AND

REGULATION 11 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992 READ WITH THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015.

IN THE MATTER OF –

1. **SHRI ABHIJIT RAJAN [PAN: AAEPR0342J].**
2. **CONSOLIDATED INFRASTRUCTURE COMPANY PRIVATE LIMITED [PAN: AACCC6756C].**
3. **SHRI INDRU B. HINGORANI [PAN: AAAPH5679L].**
4. **SHRI KIRAN INDRU HINGORANI [PAN: AAAPH4604F].**

Background –

1.1 Securities and Exchange Board of India ("**SEBI**") conducted a preliminary inquiry regarding trading in the scrip of Gammon Infrastructure Projects Limited ("**GIPL**") for the period from August 1– September 30, 2013, pursuant to receipt of an input from the National Stock Exchange of India Limited ("**NSE**") concerning the possibility of certain clients having traded in the said script on the basis of unpublished price sensitive information ("**UPSI**").

1.2 The *prima facie* findings of the preliminary inquiry are reproduced as under –

i. GIPL is an infrastructure project development company (incorporated on April 23, 2001, as Gammon Infrastructure Projects and Investments Limited and subsequently renamed as Gammon Infrastructure Projects Limited on April 1, 2002).

ii. The shareholding pattern in GIPL for the quarters ending June 2013; September 2013 and December 2013 [Source–Bombay Stock Exchange ("**BSE**") website], were as follows –

	June 2013			**September 2013**			**December 2013**		
	No. of Shareholders	No. of Shares	%	No. of Shareholders	No. of Shares	%	No. of Shareholders	No. of Shares	%
Promoter	2	550400000	74.98	2	550400000	74.98	2	550400000	74.98
Non–Promoter	38364	183626438	25.02	37996	183626438	25.02	37625	183626438	25.02
Total	38366	734026438	100	37998	734026438	100	37627	734026438	100

iii. At the relevant time, GIPL was promoted by Gammon India Limited ("**GIL**") [71.93%] and Gactel Turnkey Projects Limited (subsidiary of GIL) [3.05%].

iv. Shri Abhijit Rajan was the Chairman and Managing Director ("**CMD**") of GIPL till September 20, 2013, when he resigned from the post of CMD. However, Shri Abhijit Rajan continued to be on the Board of GIPL even after the said resignation.

v. In the year 2012, –

- GIPL was awarded a road project by National Highways Authority of India ("**NHAI**") in Andhra Pradesh ("**GIPL Project**"). The total cost of the GIPL Project as per NHAI Concession Agreement was ₹1648 Crores. GIPL set up a special purpose vehicle ("**SPV**") called Vijayawada Gundugolanu Road Project Private Limited ("**VGRPPL**") to undertake work under the GIPL Project.
- Simplex Infrastructure Limited ("**Simplex**") was awarded a road project by NHAI in Jharkhand and West Bengal ("**Simplex Project**"). The total cost of the Simplex Project as per NHAI Concession Agreement was ₹940 Crores. Simplex set up an SPV called Maa Durga Expressways Private Limited ("**MDEPL**") to undertake work under the Simplex Project.

vi. On April 26, 2012, GIPL entered into two Shareholders Agreements ("**SHA**") with Simplex pursuant to which –

- GIPL would invest in MDEPL for the Simplex Project;
- Simplex would invest in VGRPPL for the GIPL Project;
- As a result of the aforementioned, GIPL and Simplex would hold 49% equity interest in the other's project.

vii. On August 9, 2013, the Board of Directors of GIPL passed a resolution authorizing the termination of the SHAs entered into between GIPL and Simplex.

viii. On August 22, 2013, Shri Abhijit Rajan sold approximately 144 Lakh shares held by him in GIPL (representing 70.56% of his shareholding in that company as on August 22, 2013) for an aggregate value of approximately ₹10.28 Crores.

ix. The trade volume of Shri Abhijit Rajan in the scrip of GIPL on August 22, 2013, is provided below –

Stock Exchange	No. of Shares Sold By Shri Abhijit Rajan
BSE	7229985
NSE	7150000
	14381246

x. On August 30, 2013, the Termination Agreements entered into between GIPL and Simplex were signed by the aforesaid entities.

xi. On September 3, 2013, GIPL made a disclosure to the Stock Exchanges i.e. National Stock Exchange of India ("**NSE**") & BSE, regarding termination of the aforementioned SHAs dated April 26, 2012, with Simplex.

xii. Vide e–mails dated June 21, 2014 and June 27, 2014, GIPL informed SEBI that telephonic discussions between the senior management of GIPL and Simplex regarding termination of the aforementioned SHAs, had commenced during the second week of July 2013. GIPL also forwarded copies of several e–mails/correspondences from July 29, 2013 to August 28, 2013 exchanged in connection with termination of the SHAs, wherein it was observed that communication regarding modifications in the draft Termination Agreement had continued between GIPL and Simplex upto August 9, 2013 i.e. date of Board meeting where a decision for termination of SHAs was taken. Further, vide the e–mail dated June 21, 2014, GIPL forwarded extracts of minutes of the Board Meeting of August 9, 2013, confirming that Shri Abhijit Rajan attended and chaired the said meeting.

xiii. It was *prima facie* concluded that –

- The UPSI i.e. termination of the SHAs dated April 26, 2012, entered into between GIPL and Simplex, came into existence during the second week of July 2013 and remained unpublished till September 3, 2013 i.e. date on which the said information was disclosed by GIPL to NSE & BSE.
- As the CMD of GIPL, Shri Abhijit Rajan was reasonably expected to have had access to the UPSI from the second week of July 2013. In any case, Shri Abhijit Rajan came in possession of the UPSI *at least* on August 9, 2013, when the Board of Directors of GIPL approved termination of SHAs.
- The sale of shares in GIPL, by Shri Abhijit Rajan on August 22, 2013, was on the basis of UPSI i.e. termination of the SHAs dated April 26, 2012, entered into between GIPL and Simplex, which was later published on September 3, 2013.

xiv. Shri Abhijit Rajan therefore, engaged in insider trading which is prohibited under the SEBI Act, 1992 ("**SEBI Act**") and the SEBI (Prohibition of Insider Trading) Regulations, 1992 ("**PIT Regulations, 1992**").

Ad Interim Ex Parte Order dated July 17, 2014 –

1.3 Pursuant to completion of the aforementioned preliminary inquiry, the following directions were issued vide SEBI's *Ad Interim Ex Parte Order dated July 17, 2014* ("**Interim Order**") –

"8. … I prima-facie find that Mr Abhijit Rajan, being an 'insider', had access to the 'unpublished price sensitive information' and was in possession of the same and he dealt in the shares of GIPL on the basis of the said 'unpublished price sensitive information' and has, thus, violated provisions of Section 12A(d) and (e) of the SEBI Act and Regulation 3(i) read with Regulation 4 of the PIT Regulations, 1992 …

…

11. In view of the foregoing, I am of the prima facie view that this is a fit case where pending investigation, urgent action is required to be taken by way of an ad interim ex -parte order. Therefore, in order to protect the interest of investors and the integrity of the securities market, I, in exercise of the powers conferred upon me under Section 19 read with Section 11(1), Section 11(4) and Section 11B of the SEBI Act, pending investigation in the matter, hereby restrain Mr Abhijit Rajan (PAN- AAEPR0342J) from buying, selling or dealing in securities and accessing the securities markets, either directly or indirectly, in any manner whatsoever, till further directions.

…

13. Mr Abhijit Rajan may file his reply, if any, to SEBI within 21 days from the date of receipt of this order and, if he so desires, avail an opportunity of personal hearing on a date, place and time fixed in that regard by Securities and Exchange Board of India."

Confirmatory Order dated March 23, 2015 –

1.4 Subsequent to Shri Abhijit Rajan being granted an opportunity of personal hearing in accordance with paragraph 13 of the Interim Order, the following directions were issued vide SEBI's *Order dated March 23, 2015* ("**Confirmatory Order**") –

"21. I, therefore, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B of the SEBI Act read with Section 19 thereof, hereby confirm the directions issued in respect of Mr. Abhijit Rajan vide Ad-Interim Ex-Parte Order dated July 17, 2014 …"

Securities Appellate Tribunal's Order dated February 4, 2016 –

1.5 Shri Abhijit Rajan challenged the abovementioned Confirmatory Order before the Hon'ble Securities Appellate Tribunal ("**SAT**") in *Appeal no. 326 of 2015*. The Hon'ble SAT disposed of the aforesaid Appeal vide an Order dated February 4, 2016, with the following directions –

"2. Counsel for SEBI, on instruction, states that investigation in the present case is complete and the SEBI would issue a show–cause notice to the Appellant within a period of two months from today and pass final order thereon within a period of two months from the date of the Appellant filing a reply to the show–cause notice. The statements made by the Counsel for SEBI is accepted.
3. … Counsel for the Appellant seeks to withdraw the appeal …
4. Accordingly, appeal is allowed to be withdrawn …"

SEBI's Order dated March 21, 2016 –

1.6 Subsequent to completion of Investigation, the following directions were issued vide SEBI's Order dated March 21, 2016, against Shri Abhijit Rajan; Consolidated Infrastructure Company Private Limited ("**CICPL**") and its Directors i.e. Shri Kiran Indru Hingorani and Shri Indru B. Hingorani –

"10. The investigation has also observed that by indulging in 'insider trading' and sold shares while in possession of UPSI, Mr. Abhijit Rajan and CICPL had averted losses. …
11. Considering that Mr. Abhijit Rajan and CICPL connived with each other in furtherance of the common intention of indulging in the scheme of Insider Trading and thereby averting losses, it is pertinent to make Abhijit Rajan, CICPL and its directors, jointly and severally, liable for the undue profits made by Mr. Abhijit Rajan and CICPL by trading in the scrip of GIPL on the basis of UPSI.
12. With the initiation of investigation and quasi-judicial proceedings, it is possible that Mr. Abhijit Rajan, CICPL and its Directors, Mr. Kiran Hingorani and Mr. Indru Hingorani may divert the unlawful gains (subject to the adjudication of the allegation on the merits in the final order), which may result in defeating the effective implementation of the direction of disgorgement, if any to be passed after adjudication on merits. Non-interference by the Regulator at this stage would therefore result in irreparable injury to interests of the securities market and the investors. It therefore becomes necessary for SEBI to take urgent steps of impounding and retaining the proceeds (unlawful gains) allegedly made by the above Noticees, by way of an interim measure. Considering the facts and circumstances of the case, the balance of convenience lies in favour of SEBI.
…

14. Accordingly, as an interim measure, an Ad-Interim Ex-Parte Order for impounding such alleged gains under Section 11(4)(d) of the SEBI Act needs to be issued against the 4 Noticees tabulated below.

Sr. No.	***Name***	***Permanent Account Number***
1.	*Abhijit Rajan*	*AAEPR0342J*
2.	*Consolidated Infrastructure Company Pvt. Ltd.*	*AACCC6756C*
3.	*Indru B. Hingorani*	*AAAPH5679L*
4.	*Kiran Indru Hingorani*	*AAAPH4604F*

15. In view of the foregoing, in order to protect the interest and the integrity of the securities market, I, in exercise of the powers conferred upon me by virtue of Section 19 read with Sections 11(1), 11(4)(d) and 11B of the SEBI Act, 1992, hereby order to impound the alleged unlawful gains of a sum of ***₹1,44,37,670/-*** *(alleged gain of ₹1,10,23,658 + interest of ₹34,14,012 from August 23, 2013 upto March 21, 2016), jointly and severally from the persons/entity tabulated in the paragraph above."*

1.7 In compliance with paragraph 15 of the abovementioned Order, Shri Abhijit Rajan informed SEBI (vide letter dated April 14, 2016) that he had deposited an amount of approximately ₹1.09 Crores in an account *'SEBI Escrow A/c Abhijit Rajan (A/c No. 50330382173)'* with Allahabad Bank. Similarly, vide letter dated April 15, 2016, CICPL informed SEBI that it had deposited an amount of approximately ₹35.24 Lakhs in an account *'SEBI Escrow A/c Consolidated Infrastructure Co. Pvt. Ltd. (A/c No. 50330378961)'* with Allahabad Bank.

Show Cause Notice dated March 29, 2016 –

2.1 During the intervening period, SEBI issued a Show Cause Notice ("**SCN**") dated March 29, 2016, to Shri Abhijit Rajan; CICPL and its Directors i.e. Shri Kiran Indru Hingorani and Shri Indru B. Hingorani, calling upon the said entities to show cause as to why suitable directions under Sections 11(4) and 11B of the SEBI Act including disgorgement of gains, should not be passed against them for the alleged violations of the PIT Regulations, 1992 read with the Insider Trading Regulations, 2015 ("**PIT Regulations, 2015**").

2.2 The SCN *inter alia* stated –

i. SEBI initiated investigations with regard to suspected insider trading in the scrip of GIPL. The period of investigation was from July 1, 2013 to September 30, 2013 ("**Investigation Period**").

ii. As per the details submitted by GIPL vide letter dated September 18, 2014 and e-mail dated August 4, 2015, a chronology of events related to the corporate announcement "*Termination of SHAs with Simplex*" reveals as under:

DATE	EVENT	PARTICIPANTS
Second Week of July 2013	Telephonic discussion. Termination of the tie–up between Simplex and GIPL.	i. Mr. K.K. Mohanty, MD (GIPL) and ii. Mr. Rajiv Mundhra, MD, Simplex.
July 29, 2013 – August 28, 2013	E–mails exchanged between GIPL and Simplex culminating in the finalization of the termination terms and a decision to execute the Termination Agreement on August 30, 2013.	i. Mr. K.K. Mohanty MD (GIPL) ii. Mr. Atulesh Sharma (Technical Head, GIPL) iii. Pravin Satpute (Project Coordinator GIPL) iv. Neeraj Vijay Head–Roads, GIPL v. Mr. Prakash Naik, Head Legal, GIPL) vi. Mr. Rajeev Mundra (MD, Simplex) vii. Mr. Salil Chakrvarty, (Director–Maa Durga) viii. Mr. Kunj Rajgaria (Manager–Finance, Simplex) ix. Mr. Atindra Basu (Director–Maa Durga).
August 7, 2013	Circulation of Agenda for Board meeting to be held on August 9, 2013. Agenda included item "*Disassociation with Simplex Infrastructure in Vijayawada Gundugolanu Project and Maa Durga Project.*"	Agenda circulated to Board of Directors.
August 9, 2013	**Meeting of Board of Directors. Approval taken to terminate the two SHAs with Simplex.**	**Directors of GIPL**
August 30, 2013	Execution of Termination. Two Agreements signed.	i. Mr. Salil Chakravarty (Director–Maa Durga) ii. Mr. Neeraj Vijay (Head–Roads, GIPL).
September 3, 2013	Intimation to Stock Exchange.	i. Mr. Sathis Chandran (Company Secretary, GIPL). Information made public on ➢ BSE website at 1:05pm and ➢ NSE website at 2:40pm.

iii. GIPL in its letter dated September 18, 2014, had submitted that termination of the tie–up between GIPL and Simplex *was the only major corporate development*. Further, as per the Code of Conduct of GIPL framed under PIT Regulations, 1992, *inter alia "any significant changes in policies, plans or operations of the company"* is a deemed *price sensitive information*. Hence, it is revealed that the corporate announcement dated September 3, 2013, pertaining to termination of tie–up with Simplex was a *price sensitive information*.

PERIOD OF UPSI	Second Week of July 2013 i.e. July 8, 2013 – September 2, 2013. The *price sensitive information* came into existence during the second week of July, 2013, wherein through telephonic discussions, the termination of the tie–up between Simplex and GIPL, was discussed. However, since no exact date was provided by GIPL, UPSI was taken to have existed since the first day of the second week of July, 2013 i.e. July 8, 2013.
PSI PUBLICATION DATE	September 3, 2013

iv. The trading details of Shri Abhijit Rajan and CICPL before and during the Investigation Period, are given below –

Before UPSI Period (July 1, 2013 to July 7, 2013)				
Client Name	**Buy Quantity**	**Sell Quantity**	**Sell Date**	**Net**
Abhijit Rajan	0	0	NA	0
CICPL	0	0	NA	0
Total	0	0	NA	0

During the UPSI Period (July 8, 2013 to September 2, 2013)				
Client Name	**Buy Quantity**	**Sell Quantity**	**Sell Date**	**Net**
Abhijit Rajan	0	14381246	August 22, 2013	–14381846
CICPL	0	2856618	August 6, 2013	–2856618
Total	**0**	17238464	**NA**	–17238464

After UPSI Period (September 3, 2013 to September 30, 2013)				
Client Name	**Buy Quantity**	**Sell Quantity**	**Sell Date**	**Net**
Abhijit Rajan	0	0	NA	0
CICPL	0	0	NA	0
Total	0	0	NA	0

v. The following table brings out the losses that were averted by Shri Abhijit Rajan and CICPL by virtue of indulging in insider trading –

NAME	NO OF SHARES SOLD (X)	WT. AVERAGE PRICE (₹)	TOTAL SALE VALUE (₹) (A)	WT. AVG. CLOSING PRICE ON 4.09.2013 (₹) (Y)	APPROX. SALE VALUE AS ON 4.09.2013 (₹) (B)=(Y)*(X)	LOSS AVOIDED (₹) (A)-(B)
Abhijit Rajan	14381246	7.14	102740533.50	6.56	94407,599	8332934.50
CICPL	2856618	7.51	21466740.50	6.57	18776017	2690723.50
Total	**17237864**	**7.21**	**124207274.00**	**6.56**	**113183616**	**11023658.00**

vi. Shri Abhijit Rajan had sold approximately 144 Lakh shares of GIPL (1.95% of the total shareholding of GIPL) on a single day i.e. August 22, 2013, which was during the UPSI period (Investigation Period). Shri Abhijit Rajan did not sell any shares before or after the UPSI period. By virtue of being the CMD of GIPL, Shri Abhijit Rajan was surely aware that the information pertaining to termination of SHAs entered into between GIPL and Simplex was a *price sensitive information*. Further, he had also participated in the Board Meeting held on August 9, 2013, wherein the termination of SHAs was discussed and approved. Summons were issued to Shri Abhijit Rajan on November 17, 2014; November 24, 2014 and December 1, 2014, seeking an explanation/rationale for his transactions in the scrip of GIPL, relationship with other suspected entities and passing on information pertaining to termination of SHAs. Shri Abhijit Rajan replied to the summons vide letter dated December 5, 2014, stating that since he needed to infuse funds in GIL, the parent company of GIPL as part of a Corporate Debt Restructuring ("**CDR**") Scheme, he had entered into transactions in the scrip of GIPL. The *price sensitive information* was made public on September 3, 2013. Shri Abhijit Rajan could have sold shares on any day after September 4, 2013, if there was indeed any urgency to infuse funds. Therefore, it was alleged that Shri Abhijit Rajan sold the shares prior to the announcement of termination of SHAs being made public on September 3, 2013, to avoid any loss that may arise on account of possible adverse impact of the announcement on the price of the scrip of GIPL.

vii. CICPL sold approximately 28.57 Lakh shares during the UPSI period. In its letter dated September 2, 2015, CICPL stated that they were introduced to Shri Abhijit Rajan around August, 2013. CICPL had acquired several properties from Shri Abhijit Rajan for an aggregate consideration of approximately ₹5.15 Crores on August 28, 2013. However, neither Shri Abhijit Rajan nor CICPL showed any kind of urgency to register the sale of those properties. The demat

statements of CICPL notes that the shares of GIPL in CDSL were pledged with India Infoline Finance Ltd. in 2011 and again in 2012 and CICPL decided to un-pledge and sell shares of GIPL. In view of the trading pattern of CICPL and its own admission that it was connected to Shri Abhijit Rajan, and in view of its business relationship with Shri Abhijit Rajan as evidenced from the aforementioned property transactions, in terms of Regulation 2(c)(ii) of PIT Regulations, 1992, CICPL is a '*connected person*' to GIPL and may *reasonably be expected to have an access to unpublished price sensitive information in relation to GIPL*. Shri Abhijit Rajan had communicated the UPSI pertaining to termination of agreement entered into between GIPL with Simplex and CICPL had traded in the scrip while in possession of UPSI. In view of the same, CICPL is an '*insider*' to the information pertaining to termination of SHAs entered into between GIPL and Simplex.

2.3 The charges levelled against the aforesaid entities in the SCN are as under:

i. Shri Abhijit Rajan violated Regulation 3(i) of the PIT Regulations, 1992 read with Regulation 12(2) of the PIT Regulations, 2015, as he was alleged to have sold shares of GIPL on August 22, 2013, while in possession of UPSI i.e. termination of SHAs entered into between GIPL and Simplex. Shri Abhijit Rajan avoided any potential loss by trading while in possession of the said UPSI.
ii. Shri Abhijit Rajan violated Regulation 3(ii) of the PIT Regulations, 1992 read with Regulation 12(2) of the PIT Regulations, 2015, as he allegedly passed on the said UPSI to CICPL.
iii. CICPL and its Directors i.e. Shri Kiran Indru Hingorani and Shri Indru B. Hingorani, violated Regulation 3(i) and 3(ii) read with Regulation 4 of the PIT, 1992 read with Regulation 12(2) of PIT Regulations, 2015, as they allegedly traded in the scrip of GIPL while in possession of the said UPSI. CICPL and its Directors avoided any potential loss by trading while in possession of the said UPSI.
iv. CICPL violated Regulation 3A of the PIT Regulations, 1992 read with Regulation 12(2) of the PIT Regulations, 2015, as it was alleged to have traded in the shares of another company while in possession of the said UPSI.
v. By virtue of trading of CICPL while in possession of UPSI,CICPL and its Directors i.e. Shri Kiran Indru Hingorani and Shri Indru B. Hingorani, violated Section 12A(d) and (e) of the SEBI Act.

Proceedings pursuant to the Show Cause Notice dated March 29, 2016 –

3.1 Replies to the SCN were made as under –

i. Shri Abhijit Rajan filed his reply vide letter dated April 22, 2016;
ii. CICPL and its Directors i.e. Shri Kiran Indru Hingorani and Shri Indru B. Hingorani, filed their reply vide letter dated May 24, 2016.

3.2 In conformity with the principles of natural justice, an opportunity of personal hearing was granted as under –

i. To Shri Abhijit Rajan on May 12, 2016;
ii. To CICPL and its Directors i.e. Shri Kiran Indru Hingorani and Shri Indru B. Hingorani, on May 27, 2016.

3.3.1 For the hearing held on May 12, 2016, Shri Abhijit Rajan appeared before me through his Advocates. During the aforementioned hearing, Shri Abhijit Rajan was directed to submit the following information, viz. –

i. Explanation for the source of funds indicated at paragraph 12.1 of the SCN i.e. details of amounts infused by Shri Abhijit Rajan in GIL, the parent company of GIPL, as part of the CDR Scheme.

3.3.2 Shri Abhijit Rajan submitted the abovementioned information alongwith written submissions vide letter dated May 16, 2016.

3.4.1 For the hearing held on May 27, 2016, CICPL and its Directors appeared before me through their Advocates. During the aforementioned hearing, CICPL and its Directors were directed to submit the following information, viz. –

i. How in a short period (i.e. less than a month's time) CICPL was able to conclude all the real estate transaction of agricultural properties with Shri Abhijit Rajan, CMD of GIPL?
ii. What were the reasons for (a) not registering one property even after payment of full consideration and (b) delay of four months for registration of two other properties?

iii. Why CICPL chose to sell the shares of GIPL from the group of securities pledged with India Infoline Finance Limited ("**IIFL Finance**")?
iv. The prices at which all the shares pledged with IIFL were acquired?
v. Balance Sheet and Cash Flow Statement of CICPL for the last three years i.e. March 31, 2013 to March 31, 2015.

3.4.2 Vide letter dated June 1, 2016, CICPL and its Directors submitted only partial information alongwith written submissions. CICPL and its Directors have failed to submit the information at paragraph 3.4.1(v) i.e. Balance Sheet and Cash Flow Statement of CICPL for the last three years i.e. March 31, 2013 to March 31, 2015, till date.

Securities Appellate Tribunal's Order dated June 23, 2016 –

3.5 Vide a *Miscellaneous Application no. 129 of 2016* filed before the Hon'ble SAT in *Appeal no. 326 of 2015,* SEBI sought extension of time to pass the Final Order as directed vide the Hon'ble SAT Order dated February 4, 2016 [paragraph 1.6 of this Order]. The Hon'ble SAT disposed of the aforesaid Application vide an Order dated June 23, 2016, with the following directions –

"1. … Counsel for SEBI states that in view of the delay in receiving the written submissions, SEBI may be permitted to pass final order on or before 13th July, 2016.
2. In view of the aforesaid statement, which is accepted, SEBI is permitted to pass final order on or before 13th July, 2016.
3. It is made clear that if the final order is not passed and communicated to the Respondent-Original Appellant by 13th July, 2016, the order passed by SEBI on July 17, 2014 shall come to an end forthwith without reference to this Tribunal."

Consideration of Issues –

4.1 I have considered the Interim and Confirmatory Orders; the SEBI Order dated March 21, 2016; the SCN dated March 29, 2016; replies/submissions made by Shri Abhijit Rajan; CICPL and its Directors; additional submissions (both written and oral) made by them during the personal hearing before me alongwith the documents submitted by them and all other relevant material available on record. In light of the same, I shall now proceed to deal with the merits of the case.

4.2 The issues for determination in the instant proceedings are as under –

i. *Whether the information regarding the termination of SHAs entered into between GIPL and Simplex, was a price sensitive information?*
ii. *Whether Shri Abhijit Rajan comes under the definition of 'insider' as per Regulation 2(e)(i) of the PIT Regulations, 1992?*
iii. *Whether the trades executed by Shri Abhijit Rajan in the scrip of GIPL during the Investigation Period were done while in possession of UPSI i.e. the termination of SHAs entered into between GIPL and Simplex? By doing so, whether Shri Abhijit Rajan avoided any potential loss?*
iv. *Whether CICPL is a connected person to GIPL (through Shri Abhijit Rajan) in terms of Regulation 2(c)(ii) of the PIT Regulations, 1992? Whether Shri Abhijit Rajan communicated the price sensitive information regarding termination of SHAs entered into between GIPL and Simplex, CICPL? Whether the trades executed by CICPL in the scrip of GIPL during the Investigation Period were done while in possession of UPSI? By doing so, whether CICPL avoided any potential loss?*

4.3 Before I proceed to deal with the charges contained in the SCN, the relevant legal provisions, the contravention of which have been alleged in the instant proceedings, are reproduced below –

PIT Regulations, 1992

Regulation 2(c)(ii)

(c) "Connected person" means any person who –

…

(ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company:
Explanation: – For the purpose of clause (c), the words "connected person" shall mean any person who is a connected person six months prior to an act of insider trading;

Regulation 3(i)

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

3. *No insider shall—*

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information;

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

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

Violation of provisions relating to insider trading.

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

SEBI ACT

Section 12A(d) & (e)

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

(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;

4.4 The aforementioned provisions of the PIT Regulations, 1992, were repealed by the PIT Regulations, 2015. However, as per Regulation 12(2)(a) of the PIT Regulations, 2015, *the previous operation of the PIT Regulations, 1992 or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed*. Further, as per Regulation 12(2)(b) of the PIT Regulations, 2015, *anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show cause notice issued under the repealed provisions of PIT Regulations, 1992, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of PIT Regulations, 2015 (i.e. Regulation 12 of the PIT Regulations, 2015).*

5.1 ***Whether the information regarding the termination of SHAs entered into between GIPL and Simplex, was a price sensitive information?***

5.1.1 ***Allegations contained in the SCN*** **–** As per the SCN, it has been alleged that the Corporate Announcement dated September 3, 2013, pertaining to termination of tie–up entered into between GIPL and Simplex was a *price sensitive information.*

5.1.2 ***Shri Abhijit Rajan's replies to the allegations contained in the SCN –*** Vide letter dated May 24, 2016 and also through oral submissions made during the hearing held on May 16, 2016, Shri Abhijit Rajan made the following submissions –

i. "The SCN does not crystallize the exact date on which the so called UPSI came into existence. It blithely assumes that the UPSI came into existence in the first day of the second week of July 2013 when officials of GIPL and Simplex had preliminary discussions on termination of the SHAs. That assumption is erroneous as it is an admitted position that the decision to terminate the SHAs was taken much later by the Board of GIPL on August 9, 2013. It is this date, when the concrete decision was taken that ought to be relevant for when the information came into existence, particularly in the absence of any allegation, much less, evidence about the decision being assured even before being formally taken.

ii. The SCN does not set out any material or basis for alleging that the information relating to the termination of the SHAs was UPSI, apart from a statement that it involved a significant change in plans or operations of GIPL. It is respectfully submitted that such information was not UPSI.

iii. It would be incumbent on SEBI to establish that the information in question, if published, would materially impact the price of the securities. What such impact would be, should be spelt out. If there has been a sale of securities that is alleged to be insider trading, SEBI should be able to show that the information in possession during the sale would have had an adverse impact on price of securities upon publication of the information. No such evidence has been adduced in the SCN. The SCN simply assumes that the termination of SHAs involved a significant change in policies, plans or operations of the company and would per se render the information price sensitive. SEBI does not set out how the information in question had a material bearing on the price of the shares of GIPL, when such re-alignments for an infrastructure company are in ordinary course of business. [Gujarat NRE Mineral Resources Limited vs. SEBI (Order dated November 18, 2011); Anil Harish vs. SEBI (Order dated June 22, 2012)]

iv. In the instant case, the termination of the SHAs had two consequences: (i) it resulted in GIPL acquiring exclusive control of the larger project worth ₹1648 Crores and (ii) GIPL exited Simplex's project of ₹940 Crores in which GIPL had invested only ₹4.9 Crores i.e. just 0.5% of the value of Simplex's project. This sum of ₹4.9 Crores represented less than 0.05% of GIPL's order book value as at the end of August

2013 and only around 0.7% of its turnover for the year ending March 31, 2013. GIPL's exclusive control over its own project meant that the benefits from the project would accrue exclusively to GIPL. These are hardly capable of being regarded as material exposures by any reasonable man. Therefore, the termination of the SHAs cannot be regarded as information adverse to GIPL, much less, even material to GIPL.

v. *GIPL itself did not regard the information as being price sensitive and therefore, did not close the trading window. The SCN selectively relies on a letter from GIPL dated September 18, 2014 and refers to the termination of the SHAs as a major corporate development to support its allegation that the termination of the SHAs was UPSI. In fact, GIPL in response to SEBI's query on date of closure of the trading window under GIPL's Insider Code, replied that "The Company did not close the trading window for the corporate announcement on September 3, 2013, as it was not price sensitive information as per our Insider Trading Code.*

vi. *The Compliance Office of GIPL, who is entrusted with the responsibility of implementing GIPL's Insider Code, had vide an email dated July 22, 2013, convening the Board Meeting on August 9, 2013, clearly specified that the prohibition on trading in securities will commence on August 4, 2013 and end on August 10, 2013 (both days inclusive). … It is therefore, clear that GIPL did not regard the information relating to termination of SHAs as UPSI.*

vii. *… That the Compliance Officer granted pre–clearance for the trades in question itself indicates that the fact of termination of the SHAs was not considered by GIPL to be price sensitive.*

viii. *Moreover, Simplex, a listed company itself has not disclosed termination of the SHAs to the stock exchanges. This also clearly shows that the information relating to termination of the SHAs was not price sensitive information.*

ix. *The restraints imposed on me since July 2014 continue to be in force. … It would be unjust and inequitable for SEBI to persist with the proceedings under Sections 11 and 11B of the SEBI Act and for the existing restraints against me to be continued. It is therefore, submitted that the proceedings ought to be dropped and SEBI may refer the matter for adjudication, so a detailed fact finding process can take place and the Adjudication Officer can arrive at an informed view of the matter.*

x. *It is an established principle, recognised by the Hon'ble Supreme Court in Gorkha Security Services vs. Govt. of NCT of Delhi & Ors and the Hon'ble SAT in Royal Twinkle Star Club Private Ltd. vs. SEBI (decision of February 3, 2016) that a show cause notice ought to clearly specify the nature of the direction proposed to be taken against a noticee and that failure to do so would be a violation of the principles of natural justice."*

5.1.3 ***CICPL's replies to the allegations contained in the SCN –*** Vide letter dated May 24, 2016 and also through oral submissions made during the hearing held on May 27, 2016, CICPL made the following submissions –

i. "At the threshold, a foundational element for a charge of insider trading to be levelled is that there has to be UPSI i.e. information that can be said to have a material impact on the price of the securities, if published. That foundational element, as is evident from the SCN itself, is absent. As borne out by the price movement of the scrip on September 3, 2013, when the purported UPSI was published there was in fact a negligible increase in the price by 10 paise followed by a decline of 0.30 paise, which can by no stretch be considered material. CICPL adopts the arguments made by Mr. Rajan in this regard."

Findings –

5.1.4 As stated earlier at paragraph 1.2(v)–(vi), GIPL was awarded a road project in Andhra Pradesh in the year 2012, by NHAI, for a total cost of ₹1648 Crores. Similarly, in that same year, Simplex was awarded a road project by NHAI in Jharkhand and West Bengal for a total cost of ₹940 Crores. On April 26, 2012, GIPL entered into two Shareholders Agreements ("**SHA**") with Simplex pursuant to which –

- GIPL would invest in MDEPL for the Simplex Project;
- Simplex would invest in VGRPPL for the GIPL Project;
- As a result of the aforementioned, GIPL and Simplex would hold 49% equity interest in the other's project.

5.1.5 On August 9, 2013, the Board of Directors of GIPL passed a resolution authorizing the termination of the SHAs entered into between GIPL and Simplex. On September 3, 2013, GIPL made a disclosure to NSE & BSE, regarding the termination of the aforementioned SHAs (dated April 26, 2012), with Simplex.

5.1.6 As per the details submitted by GIPL vide letter dated September 18, 2014 and e-mail dated August 4, 2015, the chronology of events related to the corporate announcement "*Termination of SHAs with Simplex"* is provided as under –

DATE	EVENT
Second Week of July 2013	Telephonic discussion. Termination of the tie–up between Simplex and GIPL.
July 29, 2013 – August 28, 2013	E–mails exchanged between GIPL and Simplex culminating in the finalization of the termination terms and a decision to execute the Termination Agreement on August 30, 2013.
August 7, 2013	Circulation of Agenda for Board meeting to be held on August 9, 2013. Agenda included item "*Disassociation with Simplex Infrastructure in Vijayawada Gundugolanu Project and Maa Durga Project.*"
August 9, 2013	**Meeting of Board of Directors. Approval taken to terminate the two SHAs with Simplex.**
August 30, 2013	Execution of Termination. Two Agreements signed.
September 3, 2013	Intimation to Stock Exchange. Information made public on ➢ BSE website at 1:05pm and ➢ NSE website at 2:40pm.

5.1.7 As observed from the SCN, the announcement relating to termination of SHAs and the resultant price/volume impact is provided as under –

<table>
<tr><th>Date and Time of Announcement</th><th>Corporate Announcement</th><th>Price Impact/ Shares Traded</th><th>Remarks</th></tr>
<tr><td>3.09.2013</td><td>GIPL intimated NSE & BSE of the termination of SHAs entered into between GIPL and Simplex.</td><td>
<table>
<tr><td>3.09.2013</td><td>O</td><td>H</td><td>L</td><td>C</td></tr>
<tr><td>NSE (₹)</td><td>6.7</td><td>6.9</td><td>6.6</td><td>6.8</td></tr>
<tr><td>BSE (₹)</td><td>6.65</td><td>6.85</td><td>6.55</td><td>6.78</td></tr>
<tr><td>NSE</td><td colspan="2">Volume</td><td colspan="2">40572</td></tr>
<tr><td>BSE</td><td colspan="2">Volume</td><td colspan="2">15413</td></tr>
</table>
<table>
<tr><td>4.09.2013</td><td>O</td><td>H</td><td>L</td><td>C</td></tr>
<tr><td>NSE (₹)</td><td>6.8</td><td>7.5</td><td>5.55</td><td>6.5</td></tr>
<tr><td>BSE (₹)</td><td>6.5</td><td>6.85</td><td>6.05</td><td>6.63</td></tr>
<tr><td>NSE</td><td colspan="2">Volume</td><td colspan="2">72549</td></tr>
<tr><td>BSE</td><td colspan="2">Volume</td><td colspan="2">23647</td></tr>
</table>
</td><td>On the day of the announcement, the scrip closed marginally higher at ₹6.8 (increase of ₹0.10) on NSE. On the subsequent day i.e. 4.09.2013, the closed price of the scrip fell to ₹6.5 (decrease of ₹0.30 on previous close). There was also an intraday low of ₹5.55 on NSE. The volume of shares traded on NSE and BSE increased on the day subsequent to announcement.</td></tr>
</table>

5.1.8 In terms of clause (vii) of the Explanation to Regulation 2(ha) of PIT Regulations, 1992, which is reproduced as under, any information pertaining to *significant changes in policies, plans or operations of the company, which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company,* shall be deemed to be *price sensitive information.* –

*"**Price sensitive information**" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.*

Explanation –

The following shall be deemed to be price sensitive information –

i. periodical financial results of the company;

ii. intended declaration of dividends (both interim and final);

iii. issue of securities or buy-back of securities;

iv. any major expansion plans or execution of new projects.

v. amalgamation, mergers or takeovers;

vi. disposal of the whole or substantial part of the undertaking;

vii. and significant changes in policies, plans or operations of the company.

5.1.9 As per the definition of "*price sensitive information*" under the PIT Regulations, 1992, the key element of the information is its *likely* impact and not the actual movement of the price of the scrip. In this context, we may also refer to the observations of Hon'ble SAT in the matter of *Rajiv B. Gandhi & Others vs. SEBI* (Order dated May 9, 2008), –

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

5.1.10 Shri Abhijit Rajan has contended that *GIPL had invested only ₹4.9 Crores i.e. just 0.5% of the value of Simplex's project. This sum of ₹4.9 Crores represented less than 0.05% of GIPL's order book value as at the end of August 2013 and only around 0.7% of its turnover for the year ending March 31, 2013. GIPL's exclusive control over its own project meant that the benefits from the project would accrue exclusively to GIPL. Therefore, the termination of the SHAs cannot be regarded as information adverse to GIPL, much less, even material to GIPL.*

I find that the aforesaid comparison of the investment by GIPL in Simplex *vis-à-vis* its turnover for the year ending March 31, 2013 and its order book value as on August 31, 2013, is neither appropriate nor correct. On the contrary, a more reasonable comparison would be the turnover expected from the Simplex Project *vis-à-vis* turnover for the year ending March 31, 2013.

5.1.11 Shri Abhijit Rajan has also contended that the *termination of the SHAs had two consequences: (i) it resulted in GIPL acquiring exclusive control of the larger project worth ₹1648 Crores (through acquisition of a further 49% equity interest from Simplex) and (ii) GIPL exited Simplex's project of ₹940 Crores.* Shri Abhijit Rajan has also submitted that the development resulting from the termination of SHAs rather than being a negative, may have been beneficial to GIPL since it acquired 100% equity interest in the GIPL Project. Further, during the personal hearing before me, Shri Abhijit Rajan submitted that the GIPL Project worth ₹1648 Crores was indeed operational at the relevant time as opposed to the Simplex Project, which was yet to take off. The price movement in the scrip of GIPL

showed a small increase of ₹0.10 paise (refer to table at paragraph 5.1.8 at page 19). If the price movement in the scrip of GIPL for September 4, 2013, is considered, a decrease of ₹0.30 paise (refer to table at paragraph 5.1.8 at page 19) is observed.

5.1.12 In the context of aforementioned submission, the following two scenarios on account of termination of SHAs would be possible –

i. The cancellation of GIPL's association with the Simplex Project (through termination of SHAs) resulted in a net change of approximately 4.1% on the said order book value [after accounting for equity interest held by GIPL (49%) and Simplex (51%) in the Simplex Project at 50%, respectively i.e. (₹940 Crores ÷ 2) ÷ ₹11400 Crores x 100].

ii. In order to examine the combined impact on account of termination of the SHAs, it is important to look at the net difference between the investment in GIPL and Simplex Projects. The net difference in the GIPL and Simplex Project is approximately **₹354 Crores** i.e. **(₹1648 Crores ÷ 2)** (*after accounting for equity interest held by GIPL (51%) and Simplex (49%) in the GIPL Project at 50%, respectively*) **– (₹940 Crores ÷ 2)** (*after accounting for equity interest held by GIPL (49%) and Simplex (51%) in the Simplex Project at 50%, respectively*). The aforesaid amount of ₹354 Crores when viewed in light of GIPL's order book value (total estimated road portfolio) as at the end of March 31, 2013 i.e. ₹11400 Crores (Source–GIPL's Annual Report for the year ending March 31, 2013), showed a change of 3.1% in the said order book value.

5.1.13 As can be seen from the abovementioned scenarios, the impact on the order book value (total estimated road portfolio) of GIPL on account of termination of SHAs ranged from 3.1% to 4.1% depending upon the manner in which one would look at the picture. And whichever, one looks at the picture, the impact of the termination of the Agreements cannot be considered insignificant. I, therefore, find that the information regarding termination of SHAs entered into between GIPL and Simplex does amount to be a deemed *price sensitive information* in terms of Regulation 2(ha)(vii) of the PIT Regulations, 1992.

5.1.14 Shri Abhijit Rajan has contended that the SCN assumes that the *price sensitive information* came into existence on the first day of the second week of July 2013 and the aforesaid assumption is erroneous since the decision to terminate the SHAs was taken much later by the Board of GIPL on August 9, 2013. I find that since the transactions in the scrip of GIPL were carried out by Shri Abhijit Rajan on August 22, 2013, the position regarding *price sensitive information* does not change

even if the date is considered as August 9, 2013 and the *price sensitive information* was revealed to the market only on September 3, 2013. Further, as borne out from paragraph 5.1.9, it is evident that the *price sensitive information* did come into existence during the second week of July, 2013, during which period the termination of the tie–up between Simplex and GIPL, was discussed. As the CMD of GIPL, Shri Abhijit Rajan would surely have been aware of the aforesaid discussion. Since no exact date was provided by GIPL, the UPSI is deemed by SEBI to have existed since the first day of the second week of July, 2013 i.e. July 8, 2013.

6.1 *Whether Shri Abhijit Rajan comes under the definition of 'insider' as per Regulation 2(e)(i) of the PIT Regulations, 1992?*

***Findings* –**

6.1.1 Shri Abhijit Rajan was the CMD of GIPL during the Investigation Period. A meeting of the Board of Directors of GIPL was held on August 9, 2013, wherein a resolution authorizing the termination of the SHAs entered into between GIPL and Simplex, was passed. The said meeting was admittedly attended by GIPL's CMD i.e. Shri Abhijit Rajan. It is therefore clear that Shri Abhijit Rajan was privy to the aforesaid UPSI regarding termination of the SHAs entered into between GIPL and Simplex. This fact has also not been disputed by Shri Abhijit Rajan.

6.1.2 As per Regulation 2(e)(i) of the Insider Regulations, 1992, *'insider'* means *"any person who, is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of company."*

6.1.3 In view of the preceding paragraphs, I find that Shri Abhijit Rajan is indeed covered under the definition of *'insider'* in terms of Regulation 2(e)(i) of Insider Regulations, 1992.

7.1 Whether the trades executed by Shri Abhijit Rajan in the scrip of GIPL during the Investigation Period were done while in possession of UPSI i.e. the termination of SHAs entered into between GIPL and Simplex? By doing so, whether Shri Abhijit Rajan avoided any potential loss?

7.1.1 ***Allegations contained in the SCN –*** As per the SCN, it has been alleged that Shri Abhijit Rajan had sold approximately 144 Lakh shares of GIPL (1.95% of the total shareholding) on a single day i.e. August 22, 2013, which was during the UPSI period. Shri Abhijit Rajan did not sell any shares before or after the UPSI period. By virtue of being the CMD of GIPL, Shri Abhijit Rajan was aware of the information pertaining to termination of SHAs entered into between GIPL and Simplex, which was a *price sensitive information*. Further, he had also participated in the Board Meeting held on August 9, 2013, wherein the termination of SHAs was discussed and approved. Therefore, it was alleged that Shri Abhijit Rajan had sold the shares prior to the announcement of termination of SHAs being made public on September 3, 2013, to avoid any loss that may arise on account of possible adverse impact of the announcement on the price of the scrip of GIPL.

7.1.2 ***Shri Abhijit Rajan's replies to the allegations contained in the SCN –*** Vide his reply to the SCN and also through oral submissions, Shri Abhijit Rajan made the following submissions –

i. "(The SCN) does not deal with the material fact that I undertook the Sale Transaction to meet my funding obligations under a corporate debt restructuring scheme involving GIPL's listed parent company, GIL, of which I was a Promoter.

ii. In March 2013, GIL with 37500 public shareholders, had a substantial debt burden of upto ₹14000 Crores owed to leading public financial institutions. As GIL's financial position was precarious and it was on the verge of bankruptcy, there was a possibility of lenders invoking provisions of SARFAESI Act, 2002 and declaring GIL a non–performing asset. Such a course of action would have been detrimental to the interests of all the stakeholders of GIL and GIPL, especially the public shareholders of the two companies since it would have entailed change in management of GIL and GIPL and assets of GIL being sold to recover dues owed to its creditors.

iii. Accordingly, GIL proposed a debt restructuring package to its lenders in March 2013 under the aegis of the guidelines issued by the RBI. … On June 29, 2013, the Empowered Group of Lenders … approved the debt restructuring proposal (CDR Scheme) subject to GIL and its Promoters complying with certain conditions. …

iv. The CDR Scheme envisaged that ₹100 Crores would be infused by the Promoters of GIL. The CDR Scheme provided that this amount was to be infused into GIL in two tranches: (i) ₹50 Crores before

implementation of the CDR package i.e. signing of the Master Restructuring Agreement (MRA) and (ii) ₹50 Crores on or before 120 days from the date of the Letter of Approval from the lenders.

v. *In this backdrop, I respectfully submit*
   i. *The Sale Transaction was motivated by a compelling and emergent need, and for a transaction, SEBI has itself acknowledged was beneficial to the investors and the securities market;*
   ii. *The Sale Transaction was not motivated by possession of UPSI;*
   iii. *The termination of the SHAs was not in the nature of price sensitive information and this too, if at all, for reasons explained below, was not adverse news at all, and so, I made no unlawful gain.*
   iv. *I did not communicate UPSI to third parties.*
   v. *No regulatory intervention under Sections 11 and 11B is warranted; and*
   vi. *The SCN is flawed as it does not clearly specify the action it proposes to take.*

vi. *The SCN alleges that the proceeds of the Sale Transaction were transferred to GIL as late as on September 17, 2013, which is erroneous and reflects complete non–application of mind. The proceeds of the Sale Transaction were transferred on August 31, 2013, and this is also borne out by my bank statements. The funds infused on September 17, 2013, are not at all connected with the Sale Transaction. On this ground alone, the charges in the SCN are not sustainable.*

vii. *There was a compelling urgency to undertake the Sale Transaction as the MRA between GIL and its creditors was originally scheduled to be executed on August 22, 2013. … It is not in dispute that the proceeds of the sale in their entirety were transferred to GIL. Had I not infused the funds, GIL would have gone into bankruptcy. This would have adversely affected and prejudiced the interests not only of the shareholders of GIL also the shareholders of GIPL, itself a listed company with 41200 public shareholders.*

viii. *The termination of the SHAs had a negligible impact on the price of GIPL's shares. The impact, if any on the price, was positive, as the termination was beneficial to the interests of GIPL. As a result of termination of the SHAs, GIPL acquired complete ownership of VGRPPL. … In these circumstances, if the motivation for the Sale Transaction was UPSI relating to the termination of the SHAs, I ought to have bought shares of GIPL and not sold them. This would have been the common and expected course of human conduct. [Mrs. Chandrakala vs. SEBI (Appeal no. 209 of 2011) – "…where an entity is privy to unpublished price sensitive information it will tend to purchase shares and not sell the shares prior to the unpublished price sensitive information becoming public if the information is positive. … A person who is in possession of unpublished price sensitive information which, on becoming public is likely to cause a positive impact on the price of the scrip, would only buy shares and would not sell the shares before the unpublished price sensitive information becomes public and would immediately offload the shares post the information becoming public.]*

ix. *My trading was contrary to the positive nature of the information which establishes that the charge that the Sale Transaction was motivated by possession of UPSI is untenable.*

x. *… I liquidated approximately 70% of my holding in GIPL on a single day. This clearly evidences that the motivation behind and the result of the Sale Transaction was not the gaining of any unfair advantage. As stated above, the motivation for the sale was to raise funds to bring them into GIPL in terms of the CDR Scheme and to bail out GIPL … For the foregoing reasons, I, therefore, deny that I have unlawfully avoided a loss of ₹83.33 Lakhs or that such sum represents an 'illegitimate gain' made by me.*

xi. *Rajan, in fact, sought pre–clearance for the Sale Transactions as it exceeded the ₹5 Lakhs threshold under GIPL Code. The pre–clearance was sought and approved because the trading window was not shut and Rajan did not have any price sensitive information in his possession.*

xii. *In any case, that the proof of the pudding is in the eating was demonstrated when the information about terminating the relationship with Simplex was actually announced. When actually published at 13:05 hours on September 3, 2013, the price of GIPL shares in fact closed higher and that too by a mere 10 paise demonstrating the accuracy of the assertion that the information was not material.*

xiii. *In Para 14 of the SCN where SEBI has computed the alleged averting of losses by Rajan, SEBI has deliberately and wrongly taken the closing price of the next day viz. September 4, 2013 (instead of the closing price on September 3, 2013) since that was around 30 paise lower than the closing price on September 3, 2013. By simply adding one extra day, SEBI has been able to choose a price of ₹6.5 per share instead of ₹6.8 per share and that too to enable the computation of a wider difference from the ₹7.14 per share at which Rajan had sold his shares in a compliant manner. By this simple shifting by one day (one wonders why not by two days or three days–all of which would be irrelevant in any case since the market closes only at 1530 hours while the news is said to have come out at 1305 hours), SEBI has attempted to compute a greater size of loss being allegedly averted.*

xiv. *A question was raised … at the hearing (on May 12, 2016), as to how Rajan had assumed that implementation of the CDR Package is synonymous with the execution of the MRA. The CDR Master Circular of 2012 envisages a time bound process for execution of the MRA. This Circular clarifies that the CDR Package is only treated as implemented inter alia upon (i) promoter's contribution being brought in and (ii) MRA being executed. The relevant clause is extracted below:*

10.9 The CDR package could be treated as implemented by a lender if the following conditions are fulfilled: … (ii) Promoters' contribution to the extent envisaged in the package had been brought in and (iii) MRA was executed binding the lender(s) and the company for compliance of all terms and conditions of the approved package.

xv. *The MRA was first scheduled to be signed on August 22, 2013 and then got postponed twice to September 6, 2013 and September 20, 2013 and eventually got signed on September 24, 2013. Email correspondence to demonstrate this is annexed … All of this could have been scrutinized by SEBI since the passing of the Ex Parte Order on July 17, 2014 and it had two years to do so. Now that there are clear and evident answers to every charge leveled on a purportedly 'prima facie' basis, every explanation is being second–*

guessed with the restraint on dealing securities and accessing capital markets being continued against the Noticees."

***Findings* –**

7.1.3 On a perusal of the SCN, it is clear that the charges levied against Shri Abhijit Rajan was on the following basis –

i. The disclosure of termination of SHAs would have an adverse impact on the price of GIPL's shares.
ii. The trades in the scrip of GIPL were executed by Shri Abhijit Rajan for avoiding any potential loss that may have resulted from the public disclosure of termination of SHAs.
iii. There was no compelling urgency for Shri Abhijit Rajan to execute the said trades in the scrip of GIPL.
iv. Shri Abhijit Rajan had executed trades in the scrip of GIPL while in possession and on the basis of UPSI.

7.1.4 It is noted that on September 3, 2013 i.e. immediately after disclosure of termination of SHAs entered into between GIPL and Simplex, the price movement in the scrip of GIPL showed a small increase of ₹0.10 paise (refer to table at paragraph 5.1.8 at page 19). On September 4, 2013, a decrease of ₹0.30 paise (refer to table at paragraph 5.1.8 at page 19) is observed in the price movement in the scrip of GIPL.

7.1.5 The loss avoided by Shri Abhijit Rajan as stated in the SCN, is detailed below –

NAME	NO OF SHARES SOLD (X)	WT. AVERAGE PRICE (₹)	TOTAL SALE VALUE (₹) (A)	WT. AVG. CLOSING PRICE ON 4.09.2013 (₹) (Y)	APPROX. SALE VALUE AS ON 4.09.2013 (₹) (B)=(Y)*(X)	LOSS AVOIDED (₹) (A)-(B)
Abhijit Rajan	14381246	7.14	102740533.50	6.56	94407599	8332934.50

7.1.6 The trades by Shri Abhijit Rajan in the scrip of GIPL were executed on August 22, 2013 i.e. during the period when the *price sensitive information* regarding termination of SHAs entered into between GIPL and Simplex, was in existence. The aforesaid trades were also executed prior to the disclosure

to the Stock Exchanges on September 3, 2013, of the said *price sensitive information*. From the aforesaid, it is evident that the trades executed by Shri Abhijit Rajan in the scrip of GIPL were done while in possession of UPSI i.e. termination of the SHAs entered into between GIPL and Simplex.

7.1.7 The SCN alleges that since the proceeds of the Sale Transaction were transferred to GIL as late as on September 17, 2013, Shri Abhijit Rajan could have sold shares on any day after September 4, 2013 i.e. 24 hours after the *price sensitive information* was made public through disclosure to NSE and BSE, if there was indeed any urgency to infuse funds. The SCN also alleges that Shri Abhijit Rajan sold the shares prior to such disclosure so as to avoid any loss that may arise on account of the possible adverse impact of such announcement on the price of the scrip of GIPL.

7.1.8 In his written submissions dated May 16, 2016 (subsequent to the personal hearing before me), Shri Abhijit Rajan submitted – *"The net sale proceeds from the Sale Transaction (trades executed in the scrip of GIPL) on the BSE and NSE was approximately ₹5.07 Crores and ₹5.18 Crores, respectively, totalling approximately ₹10.25 Crores as evident from the Contract notes issued by the broker."* Further, Shri Abhijit Rajan submitted that the *CDR Master Circular of 2012* clarifies that CDR Package is only treated as implemented *inter alia* upon (i) Promoter's contribution being brought in and (ii) MRA being executed.

7.1.9 I note that the SCN records the fact that Shri Abhijit Rajan had submitted that the rationale for trading in GIPL was the requirement for infusing funds in GIL on account of the CDR Scheme. The SCN also records that the following amounts were infused in GIL –

Name of Entity	Date of Amount Infusion	Amount (₹ in Crores)
Abhijit Rajan	24.06.2013	5.00
Pacific Energy Pvt. Ltd.	28.06.2013	6.00
Abhijit Rajan	13.07.2013	5.00
Abhijit Rajan	02.08.2013	5.00
Abhijit Rajan	10.08.2013	7.00
Abhijit Rajan	14.08.2013	0.50
Abhijit Rajan	31.08.2013	10.00
Abhijit Rajan	17.09.2013	8.00
TOTAL		46.50

7.1.10 From the above, it is observed that the total amount of funds infused by Shri Abhijit Rajan in GIL was ₹40.50 Crores (₹6 Crores was infused by Pacific Energy Pvt. Ltd., another Promoter entity of GIL). It is pertinent to note that the aforementioned funds were infused by him in a relatively short period of three months i.e. from June 24, 2013–September 17, 2013. More specifically, the bank

account statement of Shri Abhijit Rajan (Account no. 20000835962 with Allahabad Bank), shows that there was a transfer of ₹10 Crores on August 31, 2013, from Shri Abhijit Rajan to GIL. The aforesaid transfer of funds on August 31, 2013, does appear to have been for meeting the requirement of bringing in the Promoter's contribution for implementation of the CDR Package in respect of GIL. In view of the aforesaid, the trades executed by Shri Abhijit Rajan in the scrip of GIPL, although done while in possession of and on the basis of the UPSI, also appear to have been necessitated on account of the requirement for infusion of funds towards implementation of the CDR Package of GIL.

As a result of the said transactions, Shri Abhijit Rajan avoided loss amounting to approximately ₹84 Lakhs.

7.1.11 The SCN states that CICPL had acquired several properties from Shri Abhijit Rajan for an aggregate consideration of ₹5.15 Crores on August 28, 2013, details of which are provided below –

Nature of Property	Value (₹ in Crores)	Date of Payment	Date of Agreement	Date of Registration of Sale
Agricultural Land – Village Kale, District – Pune	0.90	28.08.2013	28.08.2013	Not Yet Registered
Agricultural Land – Village Kolgaon, District – Raigad	1.10	28.08.2013	28.08.2013	20.12.2013
Agricultural Land – Village Kolgaon, District – Raigad	2.40	28.08.2013	28.08.2013	20.12.2013
Flat at Four Bungalows, Andheri, Mumbai	0.75	28.08.2013	28.08.2013	19.09.2013
Total	**5.15**			

7.1.12 Shri Abhijit Rajan was the CMD of GIPL. The contention raised by Shri Abhijit Rajan that he had traded on the basis of permission obtained from the Compliance Officer of GIPL cannot be accepted considering the fact that the trades in the scrip of GIPL were executed prior to the information regarding termination of SHAs having been made public through disclosure to BSE & NSE. The point remains that being the CMD of GIPL, it was not proper on his part to have undertaken the sale transaction in the scrip of GIPL. Having said this, however, the trades executed by him in the scrip of GIPL do appear to have been executed for meeting the requirement of Promoter's contribution as per the CDR Scheme for GIL. Further, the proceeds of trades from the said transactions also appear to have been transferred to GIL as borne out from the bank statements submitted by him. The fact that Shri Abhijit Rajan also sold some of his properties (as detailed at

paragraphs 7.1.11–7.1.12) does lend credence to his contention that the sale transaction was only to infuse funds in GIL, which was necessitated on account of the CDR Scheme. Even accepting that the transactions entered into by Shri Abhijit Rajan in the scrip of GIPL were the result of a legitimate requirement to infuse funds in GIL, the fact however, remains that such transactions were in breach of law, however necessary and bonafide his requirement was.

8.1 Whether CICPL is a connected person to GIPL (through Shri Abhijit Rajan) in terms of Regulation 2(c)(ii) of the PIT Regulations, 1992? Whether Shri Abhijit Rajan communicated the price sensitive information regarding termination of SHAs entered into between GIPL and Simplex, CICPL? Whether the trades executed by CICPL in the scrip of GIPL during the Investigation Period were done while in possession of UPSI? By doing so, whether CICPL avoided any potential loss?

8.1.1 ***Allegations contained in the SCN*** **–** As per the SCN, it has been alleged that CICPL was admittedly connected to Shri Abhijit Rajan since CICPL was introduced to him sometime during August 2013 and also had business relationship with Shri Abhijit Rajan on account of several property transactions. Based on details such as date of Agreement for Sale and date of registration of the properties, neither Shri Abhijit Rajan nor CICPL had shown any kind of urgency to register the sale and further, one of the properties sold was yet to be registered even after two years of entering into the Agreement for Sale. In view of the aforesaid, CICPL was a connected person to GIPL (through Shri Abhijit Rajan) in terms of Regulation 2(c)(ii) of the PIT Regulations, 1992, and *may reasonably be expected to have an access to the UPSI*. It was therefore, alleged that CICPL was an *'insider'* to the *price sensitive information* pertaining to termination of the SHAs entered into between GIPL and Simplex. As a result, it was alleged that CICPL sold shares of GIPL while in possession of UPSI, which it had access to as a connected person to GIPL. The SCN also alleges that since Shri Abhijit Rajan was connected to CICPL, it indicated that Shri Abhijit Rajan communicated the UPSI pertaining to termination of SHAs entered into between GIPL with Simplex and as a result, violated Regulation 3(ii) of the PIT Regulations, 1992 read with Regulation 12(2) of the PIT Regulations, 2015 and Section 12A(e) of the SEBI Act.

8.1.2 ***Shri Abhijit Rajan's replies to the allegations contained in the SCN –*** Vide his reply to the SCN and also through oral submissions, Shri Abhijit Rajan made the following submissions –

i. "I had sold my immoveable properties to CICPL for an aggregate consideration of ₹5.15 Crores in order to raise funds for purposes of the CDR Scheme. Merely because I entered into a commercial transaction with CICPL, it cannot be alleged that CICPL was a 'connected person' under the PIT Regulations. A connected person is one who has professional or business relationship with the listed company by virtue of which he is reasonably expected to have access to UPSI in relation to such company. The SCN does not set out how CICPL is at all connected to GIPL and there is no admission by CICPL that it is connected with me, as wrongly alleged."

8.1.3 ***CICPL's replies to the allegations contained in the SCN –*** Vide their reply to the SCN and also through oral submissions made during the hearing, CICPL made the following submissions –

i. "The Noticees are not 'connected persons' to GIPL and did not have access to UPSI, as wrongly alleged.
ii. The Sale Transaction i.e. sale of 28,56,618 shares of GIPL by CICPL on August 6, 2013 for an aggregate consideration of ₹2.14 Crores, was undertaken for clearing a margin shortfall owed to a RBI registered Non–Banking Finance Company.
iii. The Sale Transaction took place prior to the alleged UPSI actually coming into existence.
iv. CICPL did not procure any UPSI from Abhijit Rajan;
v. The Sale Transaction did not result in CICPL making any unlawful gains or wrongfully avoiding any losses; and
vi. CICPL's actions in clearing a margin shortfall in fact is in the interests of the securities market.
vii. It has been wrongly stated in the SCN that CICPL by "its own admission" stated "that it is connected to Mr. Abhijit Rajan and in view of its business relationship with Mr. Abhijit Rajan as evidenced from the abovementioned property transactions in terms of Regulation 2(c)(ii) of the PIT Regulations, 1992, CICPL is a connected person to GIPL and may reasonably be expected to have an access to unpublished price sensitive information in relation to GIPL."
viii. In the present case, it is an undisputed position that the Sale Transaction was executed on August 6, 2013. CICPL entered into agreements to sell for acquiring certain immovable properties of Mr. Abhijit Rajan much later i.e. on August 28, 2013 and paid the purchase consideration on that date.
ix. It is therefore, clear that the trades preceded the alleged 'business relationship' of CICPL with Mr. Abhijit Rajan, which is fatal to SEBI's case since the alleged connection, if at all, came into existence only after the trade in question.

x. *The SCN has completely overlooked this critical aspect. When a charge of insider trading is levelled against a 'connected person', it would have to be established by SEBI inter alia that the connection reasonably affords access to UPSI. Therefore, it would obviously follow that the 'connection' or access to UPSI must be shown to exist either at the time of the impugned trade or should have existed for a period of six months prior to such trade.*

xi. *Since none of these conditions have been met, the question of the Noticees being 'connected persons' does not arise. The charges against the Noticees must therefore be dropped solely on this basis.*

xii. *In the present case, CICPL cannot therefore be considered an 'insider' as*

   a. *It is not in fact a connected person to GIPL, and*
   b. *There is absolutely no material on record that would even hint at CICPL having received or had access to UPSI concerning GIPL.*

xiii. *CICPL had obtained loans from IIFL Finance, a Non–Banking Finance Company registered with the RBI. Under the terms of the Master Financing Agreement, CICPL had pledged shares of GIPL held by it as collateral and was to maintain a minimum margin to account for any possible fall in the value of the securities that were pledged.*

xiv. *IIFL Finance vide its letter dated July 30, 2013, informed CICPL that there was a margin shortfall of ₹2.55 Crores and called upon CICPL to clear the shortfall amount by a deposit of funds equivalent to this amount by August 7, 2013.*

xv. *The Sale Transaction was undertaken to raise funds to meet a margin shortfall that CICPL was supposed to clear by August 7, 2013.*

xvi. *CICPL's decision to sell shares of GIPL was driven by commercial considerations and like any investor in the stock market, it was based on publicly available information that outlook for companies in the infrastructure sector was negative. In fact, research analysts at the relevant time had indicated that these companies are likely to default on their bank debt obligations and lenders might approve forced debt restructuring packages. A reference is made to the publicly available research report of Fitch Group's Indian arm – India Ratings & Research dated February 1, 2013. In fact, GIL … had posted a huge loss for the first time for the financial year end March 31, 2013 of approximately ₹445 Crores and had huge debts owed to banks. CICPL, as a company who has been trading in the securities market for over 8 years, was aware that GIL was in the process of a debt restructuring scheme. The market was well aware that GIL had announced on March 13, 2013, that it was examining a debt restructuring proposal. It would therefore be reasonable for CICPL to assume these are adverse events and would have a negative impact on its subsidiary, GIPL.*

xvii. *In the present case, the SCN does not even attempt to set out how CICIPL at all could have been aware of the termination of the SHA. The Sale Transaction therefore, cannot be held to have taken place in the period of UPSI.*

xviii. It would lead to absurd consequences if every person who has purchased property from someone would be treated as having received insider information in relation to all the companies in which the seller of the property has an interest.

xix. … The real estate transactions in question were finalized based on meetings in person and oral discussions between the Noticees and Mr. Rajan. Mr. Rajan informed the Noticees that he was in dire need of funds and was keen to receive full consideration upfront upon conclusion of the agreement to sell and in return offered the Noticees the properties at an attractive rate. Therefore, it was a good investment opportunity of CICPL.

xx. Section 23 of the Registration Act, 1908, allows parties to register a sale deed within 4 months of execution. All the Sale Deeds were registered within that time period.

xxi. It is submitted that the Sale Deed that has not yet been registered is for land, a part of which is a private forest under the Maharashtra Private Forest Act, 1975, for which necessary permissions were required, in order for the sale deed to be registered. In this regard, a reference may be made to Clause (iii) of the Agreement to sell dated August 28, 2013, which provides that 'the Vendor has informed the Purchaser that the 7/12 extract has the remark of Private Forest which is under the Maharashtra Private Forests Act of 1975 and the Vendor shall assist the Purchaser in making application(s) and necessary permissions.' As the requisite permissions have not been obtained, the sale deed is yet to be registered."

***Findings* –**

8.1.4 The SCN states –

i. CICPL had sold approximately 28.57 Lakh shares on August 6, 2013 i.e. during the UPSI period.

ii. CICPL had acquired several properties from Shri Abhijit Rajan for an aggregate consideration of ₹5.15 Crores on August 28, 2013, details of which are provided below –

Nature of Property	Value (₹ in Crores)	Date of Payment	Date of Agreement	Date of Registration of Sale
Agricultural Land – Village Kale, District – Pune	0.90	28.08.2013	28.08.2013	Not Yet Registered
Agricultural Land – Village Kolgaon, District – Raigad	1.10	28.08.2013	28.08.2013	20.12.2013
Agricultural Land – Village Kolgaon, District – Raigad	2.40	28.08.2013	28.08.2013	20.12.2013
Flat at Four Bungalows, Andheri, Mumbai	0.75	28.08.2013	28.08.2013	19.09.2013
Total	**5.15**			

iii. The loss avoided by CICPL is detailed below –

NAME	NO OF SHARES SOLD (X)	WT. AVERAGE PRICE (₹)	TOTAL SALE VALUE (₹) (A)	WT. AVG. CLOSING PRICE ON 4.09.2013 (₹) (Y)	APPROX. SALE VALUE AS ON 4.09.2013 (₹) (B)=(Y)*(X)	LOSS AVOIDED (₹) (A)-(B)
CICPL	2856618	7.51	21466740.50	6.57	18776017	2690723.50

8.1.5 The SCN alleges that CICPL was a connected person to GIPL (through Shri Abhijit Rajan) in terms of Regulation 2(c)(ii) of the PIT Regulations, 1992, which states –

'Connected person' includes *"any person who holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company."*
Explanation: the words 'connected person' shall mean "any person who is a connected person six months prior to an act of insider trading."

8.1.6 I note that the SCN makes a specific reference to Regulation 2(c)(ii) of the PIT Regulations, 1992, while alleging connection of CICPL and GIPL (through Shri Abhijit Rajan). However, in addition to the aforesaid provision, the SCN also alleges that Shri Abhijit Rajan communicated the UPSI

to CICPL and as a result, violated Regulation 3(ii) of the PIT Regulations, 1992 read with Regulation 12(2) of the PIT Regulations, 2015 and Section 12A(e) of the SEBI Act.

8.1.7 I find that the trades in the instant proceedings i.e. sale of approximately 28.57 Lakh shares of GIPL for an aggregate consideration of approximately ₹2.14 Crores, were executed by CICPL on August 6, 2013. Further, I find that CICPL entered into Agreements for acquiring immovable properties of Shri Abhijit Rajan on August 28, 2013 and also paid the purchase consideration on that date.

8.1.8 CICPL has submitted that it *"had obtained loans from IIFL Finance, a Non–Banking Finance Company registered with the RBI. Under the terms of the Master Financing Agreement, CICPL had pledged shares of GIPL held by it as collateral and was to maintain a minimum margin to account for any possible fall in the value of the securities that were pledged. IIFL Finance vide its letter dated July 30, 2013, informed CICPL that there was a margin shortfall of ₹2.55 Crores and called upon CICPL to clear the shortfall amount by a deposit of funds equivalent to this amount by August 7, 2013. The Sale Transaction was undertaken to raise funds to meet a margin shortfall that CICPL was supposed to clear by August 7, 2013."* Further, during the personal hearing before me, CICPL was asked to explain as to why it chose to sell only the shares of GIPL and not any of the other securities pledged with IIFL Finance. Vide their written submissions, CICPL *inter alia* stated that the value of shares of GIPL pledged with IIFL Finance was closest in value to the margin shortfall that CICPL was required to fund. Further, CICPL has further stated that the shares of GIPL were acquired by CICPL in the IPO at a price of around ₹167 per share (in 2008) and had subsequently dropped to around ₹6 per share around the time of the sale transaction and therefore, a sale of GIPL shares was the obvious choice to generate proceeds that were commensurate to the margin shortfall. In this context, I note –

i. From the letter dated July 30, 2013 (addressed to CICPL by IIFL Finance), it is observed that as on that date, there was a net outstanding loan of approximately ₹16.98 Crores under the account *M/s Consolidated Infrastructure Co. Pvt. Ltd.* It is also observed that the net margin shortfall was approximately ₹2.55 Crores and accordingly, CICPL was requested to arranged for the aforesaid funds by August 7, 2013, failing which, IIFL Finance would be entitled to exercise all its rights over the collateral.

ii. As per details submitted by CICPL, it is observed that the schedule of listed securities pledged with IIFL Finance was as under –

Scrip Name	Total Quantity	CLS Price (₹)	Total Value (₹)
HDFC Bank	56750	625.35	35488613
Gammon Infrastructure Projects Limited	2856618	8.35	23852760
TVS Finance	85000	24.60	2091000
L&T	849.90	849.90	54053640
Cipla	408.70	408.70	30652500
Reliance	857.35	857.35	17147000
HDFC	807.85	807.85	19388400
Sadbhav	71	71.00	106500000
Total			**289173913**

iii. The trades executed by CICPL in the scrip of GIPL occurred on August 6, 2013 and the amount/value of the said trades was approximately ₹2.14 Crores. The aforesaid trades when viewed in light the letter dated July 30, 2013 and also the schedule of listed securities pledged by CICPL with IIFL Finance, does appear to support the submission that the same were executed to clear the margin shortfall.

8.1.9 As contended by CICPL, *"Section 23 of the Registration Act, 1908, allows parties to register a sale deed within 4 months of execution. All the Sale Deeds were registered within that time period. Sale Deed that has not yet been registered is for land, a part of which is a private forest under the Maharashtra Private Forest Act, 1975, for which necessary permissions were required, in order for the sale deed to be registered. In this regard, a reference may be made to Clause (iii) of the Agreement to sell dated August 28, 2013, which provides that 'the Vendor has informed the Purchaser that the 7/12 extract has the remark of Private Forest which is under the Maharashtra Private Forests Act of 1975 and the Vendor shall assist the Purchaser in making application(s) and necessary permissions.' As the requisite permissions have not been obtained, the sale deed is yet to be registered."* The SCN states that neither Shri Abhijit Rajan nor CICPL showed any kind of urgency to register the sale of properties and further, one of the properties sold was yet to be registered even after two years of entering into the Agreement for Sale. I find that the Sale Deed for 3 of the 4 properties were registered within a period of four months from the date of execution of Agreement for sale and in respect of the property where sale has not yet been registered, the same appears to be on account of CICPL not having obtained the requisite permission in accordance with the Maharashtra Private Forest Act, 1975.

8.1.10 In the instant proceedings, CICPL and its Directors, have been able to substantiate their contention with adequate evidence that the sale of GIPL shares were executed to clear the margin

shortfall. As stated earlier, the letter dated July 30, 2013 (addressed to CICPL by IIFL Finance), clearly stated that the net margin shortfall was approximately ₹2.55 Crores and accordingly, CICPL was required to arrange for the aforesaid funds by August 7, 2013. Hence the action of selling the shares appear to be pursuant to the demand made by IIFL Finance. Further, the property transactions entered into between CICPL and Shri Abhijit Rajan were registered within the permissible statutory limit permitted by law. While it is possible that discussions in respect of the property transactions entered into between CICPL and Shri Abhijit Rajan may have been happening a few months prior to the impugned trades, no material evidence has been placed before me in the instant proceedings in support of such negotiations actually taking place prior to the execution of said trades. In the aforementioned context, the allegations against CICPL and its Directors as contained in the SCN, are not supported by any material evidence. On the other hand, CICPL and its Directors have substantiated their contention regarding the need for urgent sale of GIPL shares with the support of documentary evidence.

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

Quantification of unlawful gains or avoidance of loss by Shri Abhijit Rajan.

9.1 In his submissions, Shri Abhijit Rajan has contended *"SEBI has deliberately and wrongly taken the closing price of the next day viz. September 4, 2013 (instead of the closing price on September 3, 2013) since that was around 30 paise lower than the closing price on September 3, 2013. By simply adding one extra day, SEBI has been able to choose a price of ₹6.5 per share instead of ₹6.8 per share and that too to enable the computation of a wider difference from the ₹7.14 per share at which Rajan had sold his shares in a compliant manner. By this simple shifting by one day, SEBI has attempted to compute a greater size of loss being allegedly averted."*

9.2 The loss avoided by Shri Abhijit Rajan as stated in the SCN, is detailed below –

NAME	NO OF SHARES SOLD (X)	WT. AVERAGE PRICE (₹)	TOTAL SALE VALUE (₹) (A)	WT. AVG. CLOSING PRICE ON 4.09.2013 (₹) (Y)	APPROX. SALE VALUE AS ON 4.09.2013 (₹) (B)=(Y)*(X)	LOSS AVOIDED (₹) (A)-(B)
Abhijit Rajan	14381246	7.14	102740533.50	6.56	94407599	8332934.50

9.3 I note that the *price sensitive information* regarding termination of SHAs entered into between GIPL and Simplex was made public on the BSE website at 1:05pm and on the NSE website at 2:40pm. In view of the same, I find no merit in Shri Abhijit Rajan's submission since the very next day price was taken as the basis for calculation of the loss avoided.

Order –

10.1 In the instant proceedings, Shri Abhijit Rajan was *restrained from buying, selling or dealing in securities and accessing the securities markets, either directly or indirectly, in any manner whatsoever, till further directions* vide the Interim Order dated July 17, 2014 and the said directions were confirmed vide the Confirmatory Order dated March 23, 2015. This restraint against Shri Abhijit Rajan continues to be in operation till date. Shri Abhijit Rajan has already undergone a restraint from July 17, 2014 till date i.e. a period of almost 2 years. It is noted that SEBI has already initiated Adjudication Proceedings *inter alia* against Shri Abhijit Rajan in respect of the same violations alleged in the instant proceedings. This being the factual position, I am of the view that no further restraint is required to be imposed on Shri Abhijit Rajan on account of the reasons detailed in the preceding paragraphs. However, it is made clear that the Adjudicating Officer shall independently verify the facts and arrive at findings including quantum of penalty, if any, without being influenced by the observations recorded in this Order.

10.2 I note that vide the Order dated March 21, 2016, SEBI directed the impounding of an amount of ₹1,44,37,670, jointly and severally, from Shri Abhijit Rajan; CICPL and its Directors i.e. Shri Kiran Indru Hingorani and Shri Indru B. Hingorani. I note that the aforesaid Order was necessitated for preventing diversion of unlawful gains (which was subject to determination on merits in the instant proceedings), which may have resulted in defeating the effective implementation of the direction of disgorgement, if any to be passed after such determination.

As noted in the aforesaid Order, non-interference by SEBI at that stage would have caused irreparable injury to interests of the securities market and the investors. In compliance with the aforesaid Order, Shri Abhijit Rajan had deposited an amount of ₹1.09 Crores in an account *'SEBI Escrow A/c Abhijit Rajan (A/c No. 50330382173)'* with Allahabad Bank. Similarly, CICPL had deposited an amount of ₹35.24 Lakhs in an account *'SEBI Escrow A/c Consolidated Infrastructure Co. Pvt. Ltd. (A/c No. 50330378961)'* with Allahabad Bank.

10.3 Having regard to the above discussion, I, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act read with Sections 11 and 11B of the SEBI Act read with PIT Regulations, 1992 and PIT Regulations, 2015, hereby direct as follows –

i. The SCN dated March 29, 2016, issued against Shri Abhijit Rajan, is disposed of without any further directions. On and from the date of operation of this Order, the directions issued vide the Interim Order dated July 17, 2014 read with the Confirmatory Order dated March 23, 2015, will not continue further against Shri Abhijit Rajan.

ii. In view of the findings against Shri Abhijit Rajan in the instant proceedings in respect of the violations alleged in the SCN, he becomes liable for disgorging the amount of unlawful gains. Accordingly, Allahabad Bank, wherein the amount of ₹1.09 Crores was deposited by Shri Abhijit Rajan in an account *'SEBI Escrow A/c Abhijit Rajan (A/c No. 50330382173)'*, shall transfer the said amount within a period of 10 days to SEBI.

iii. The SCN dated March 29, 2016, issued against CICPL and its Directors i.e. Shri Kiran Indru Hingorani and Shri Indru B. Hingorani, is disposed of without any directions.

iv. Allahabad Bank shall release the amount of ₹35.24 Lakhs, which was deposited by CICPL and its Directors i.e. Shri Kiran Indru Hingorani and Shri Indru B. Hingorani, in an account *'SEBI Escrow A/c Consolidated Infrastructure Co. Pvt. Ltd. (A/c No. 50330378961)',* in view of the findings against the said entities in the instant proceedings.

10.4 This Order shall come into force with immediate effect.

10.5 This Order shall be served on all Recognized Stock Exchanges and Depositories and also Allahabad Bank to ensure necessary compliance.

Place: Mumbai
Date: July 13, 2016

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA