IN THE SECURITIES APPELLATE TRIBUNAL AT MUMBAI

DATED THIS THE 30TH DAY OF APRIL 2025

CORAM: Justice P. S. Dinesh Kumar, Presiding Officer
Ms. Meera Swarup, Technical Member
Dr. Dheeraj Bhatnagar, Technical Member

Appeal No. 351 of 2022

Between

Rakesh Girdharlal Gajera
Through his Constituted Attorney
Mr. Mitesh Gajera
Plot No 4, BMC Industrial Estate,
Sai Nagar, M.G. Cross Rd. No. 1,
Kandivali (W),
Mumbai – 400067. …. Appellant

By Mr. P. N. Modi, Senior Advocate with Mr. Neville Lashkari, Mr. Prakash Shah, Advocates and CA Kushal Shah, Authorised Representative i/b Prakash Shah and Associates for the Appellant.

And

Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …. Respondent

By Mr. Shiraz Rustomjee, Senior Advocate with Mr. Prateek Pai, Mr. Mihir Mody, Mr. Yash Sutaria, Mr. Tushar Bansode, Advocates i/b. K Ashar & Co. for the Respondent.

THIS APPEAL IS FILED UNDER SECTION 15T OF SEBI ACT, 1992 TO SET ASIDE ORDER DATED JANUARY 31, 2022 (EX-A) PASSED BY WTM, SEBI.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDERS ON MARCH 3, 2025, COMING ON FOR PRONOUCEMENT OF ORDER THIS 30TH DAY OF APRIL 2025, THE TRIBUNAL MADE THE FOLLOWING:

O R D E R

[Per: Dr. Dheeraj Bhatnagar, Technical Member]

This appeal is directed against the impugned order dated January 31, 2022 passed by the WTM[1] of SEBI[2] holding the appellant guilty of 'insider trading' in the scrip of GGL[3] in violation of Sections 12A(d) and 12A(e) of the SEBI Act[4] and Regulation 4(1) of the PIT Regulations[5], the

[1] WTM – Whole Time Member
[2] SEBI- Securities & Exchange Board of India
[3] GGL - Gitanjali Gems Ltd.
[4] SEBI Act - Securities and Exchange Board of India Act, 1992
[5] PIT Regulations, 2015 – Securities & Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015

following directions have been issued in the impugned order against the appellant under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) of the SEBI Act :-

(a) To disgorge a sum of Rs.15,82,42,010/- being unlawful avoidance of loss through insider trading.

(b) Restraining the appellant from the securities market and further prohibiting him from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market, in any manner, for a period of 1 year.

(c) Restraining the appellant from buying, selling or otherwise dealing in securities of GGL, in any manner, for a period of 2 years.

(d) Imposing a penalty of Rs. 1 Crore under Section 15G(i) of the SEBI Act.

2. Brief facts of the case are as under :-

(i) Appellant is a high net-worth citizen of Belgium. His main business is trading in diamonds and manufacture of jewellery.

(ii) GGL, an Indian company is promoted by Mr. Mehul Choksi (Noticee No. 1), which is listed on both BSE[6] and NSE[7].

(iii) Nirav Modi group and Mehul Choksi group including GGL, both were suspected of beneficiary of fraudulent issue of Letter of Undertakings (LOUs) by Punjab National Bank, Brady House branch, Mumbai (also referred as 'PNB'), amounting to Rs. 280.70 Crores.

(iv) Allegedly, Mr. Gokulnath Shetty an employee of the PNB, facilitated issue of fraudulent LOUs. Mr. Shetty was scheduled to superannuate on May 31, 2017. On the same day, certain media reports stated that CBI had booked Nirav Modi and Noticee No. 1 (Mr. Mehul Choksi) in connection with the aforesaid fraud.

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[6] BSE – BSE Ltd.
[7] NSE – National Stock Exchange of India Ltd.

(v) In 2015, GGL had issued and allotted 2,38,05,296 convertible warrants to 5 parties including the appellant. Out of this, 68,24,227 warrants were issued to the appellant for Rs. 49.4 crores. For this purpose, Gitanjali Venture DMCC ("GVDMCC") through Eternity Jewels (100% subsidiary of GGL) advanced a loan of Rs. 12.35 crore to the appellant. The balance amount of Rs. 37 crore was paid by the appellant from his own sources. These warrants were eventually converted into shares of GGL with a lock-in period of 18 months, ending in September 2017 and December 2017, respectively.

(vi) Appellant and Mr. Mehul Choksi had business connection and both were shareholders in a Nirav Modi Group company, namely, JTPL[8].

(vii) On February 5, 2018, Punjab National Bank, on the basis of its preliminary investigation report made an announcement to the exchanges announcing suspected fraud of Rs. 280.70 crores in respect of

[8] JTPL – Joyce Trading Pvt. Ltd.

fraudulent LOUs issued to GGL. Just a day after the said announcement by PNB i.e. on February 6, 2018, the closing price of GGL fell down by 8.4% as compared to the previous day.

(viii) SEBI conducted an investigation in the scrip of GGL for the period starting from May 31, 2017 and ending on February 5, 2018 ("Investigation Period") to ascertain whether there was any violation of the provisions of the PIT Regulations and SEBI Act. It was noted that during December 1, 2017 to December 14, 2017, appellant had sold 68,24,226 shares of GGL held by him.

(vx) As per the impugned order, it is alleged that the sale of shares in December 2017 by the appellant was based on Unpublished Price Sensitive Information ("UPSI") of *'high probability of detection of fraud upon retirement of Mr. Shetty'*. The said UPSI was held to have come into existence on May 31, 2017, on the date of retirement of Mr. Gokulnath Shetty as his

retirement resulted in increased probability that the fraud would be discovered.

(x) On July 15, 2021, SEBI issued a show cause notice to the appellant, to which he filed his reply on August 20, 2021. Thereafter, on January 31, 2022, the impugned order has been passed by WTM.

3. Before us, Mr. P.N. Modi, learned senior advocate for the appellant and Mr. Shiraz Rustomjee, learned senior advocate for the respondent have made detailed submissions.

4. The learned senior advocate for the appellant handed detailed written submissions.

4.1 Mr. Modi submitted that the information of fraud of similar nature in other banks was in public domain long before the trading by the appellants in December 2017. He referred to the findings in para (vii) at page 5 of the impugned order, stating that a fraud with similar modus operandi was earlier found in Indian Overseas Bank (IOB),

which was in the public domain since August 2016. He further submitted that impugned order also states that fraud in PNB itself was going on since May 17, 2015, and that such information regarding PNB fraud could also have become public knowledge any day. Hence, such information regarding fraudulent LOUs of PNB cannot be held as UPSI.

4.2 He submitted that even if it is assumed that Noticee No. 1 (Mehul Choksi) would have shared UPSI in the nature of "high probability of the detection of fraud", there is no reason why he would not have communicated it to the appellant prior to May 31, 2017, since fraudulent LOUs were issued in favour of GGL as early as in March 17, 2015, as reported in the investigation report of PNB. Therefore, there was no UPSI in the nature of "high probability of the detection of fraud" that came into existence on May 31, 2017.

4.3 Mr. Modi further submitted that the WTM has erred in considering the commencement of the UPSI period from May 31, 2017 i.e. when Mr. Gokulnath Shetty, retired. It was not possible for the Appellant based in Belgium to know about

Mr. Shetty and his connivance with Nirav Modi group in issuance of fraudulent LOUs.

4.3.1 He further submitted that the fraudulent issue of LOUs came into light only on January 16, 2018 when firms belonging to Nirav Modi Group approached the PNB for buyer's credit. Thus, it is incorrect to hold that UPSI started from May 31, 2017. He contended that it is an admitted fact that Mr. Nirav Modi had visited PNB's Brady House branch, Mumbai and it is mentioned in the impugned order that this information does not fall in any of the categories of UPSI. It was submitted that UPSI, if any, would have been considered to be in existence from February, 2018 when LOUs issued to Nirav Modi Group were about to mature and not from the date of Mr. Shetty's retirement.

4.3.2 He submitted that the information of Nirav Modi's visit to the PNB for issuance of fresh LOUs in January 2018, is of no consequence as the shares were sold in December, 2017. He further contended that the SEBI itself has observed that officials of Nirav Modi Group periodically visited the

PNB, therefore, the same cannot be considered to be a UPSI. Further, appellant had no knowledge of Mr. Nirav Modi visiting a PNB branch in near future. He contended that the impugned order is silent on the correlation and relevance of a future visit of Mr. Nirav Modi to a particular branch of PNB to fall in share price of GGL by 8.4% on February 6, 2018 and selling of shares of GGL by the appellant.

4.3.3 He also submitted that there were other investors who had purchased the convertible warrants and sold the shares after conversion. However, yet only appellant is held guilty of violation.

4.4.1 With respect to the findings regarding the connection between Noticee No. 1 (Mr. Mehul Choksi) and the appellant, the learned advocate submitted that it was only a '*business connection'* based on their shareholdings in JTPL, a promoter company of GGL. With regard to JTPL, he submitted that there was a proposal for sale of a real estate project, which required common directors and shareholders, due to which the appellant and others were made

shareholders and directors of JTPL. The transfer could not materialize and the property is still in possession of the appellant/JTPL.

4.4.2 With regard to the other ground for holding a connection between the appellant with Noticee No. 1 (Mr. Mehul Choksi) based on the funding of initial payment of Rs.12.35 crores for acquisition of warrants of GGL, through its subsidiaries GVDMCC and “Eternity Jewels”, the learned Senior advocate submitted that the amount was received in 2015 as a loan from the “Eternity Jewels”, which can be corroborated from the statement of Shri. Jitendra Mahajan recorded on June 20, 2018 under Section 50 of Prevention of Money Laundering Act, 2002 (“PMLA”) by the Enforcement Directorate officials. It was submitted that the said Loan transaction was a commercial transaction and was not sufficient to establish “connection” between the appellant and Noticee No.1 (Mr. Mehul Choksi). The appellant mobilised significant own funds of Rs. 37 crore towards making full consideration for acquiring convertible warrants of GGL.

4.4.3 Learned advocate further submitted that the appellant had applied for allotment of warrants in GGL in 2015 due to its sound financial health and the same is purely a commercial transaction. He further pointed out that the loan was advanced to the appellant in January 2015, whereas as per the impugned order, the alleged UPSI came into existence on May 31, 2017. He further contended that he received no preferential treatment from GGL as there were four other preferential allottees.

4.4.4 He submitted that under Regulation 2(1)(d)(i) of the PIT Regulations, 2015 the '*connection'* has to be in the previous 6 months. There is no finding with regard to "frequent communications" during 6 months prior to the sale of shares and is merely an assumption made by the adjudicating Authority. Therefore, the appellant was not '*connected to'* Noticee No. 1 in terms of PIT Regulations.

The learned senior advocate referred to the definition of "connected persons" under Regulation 2(1)(d)(i) of the PIT

Regulations, 2015 and submitted that there has to be a direct or indirect association with the Company, in the manner mentioned in the definition i.e. frequent communication with the officers of the company, etc. He further submitted that under regulation 2(1)(f) of the PIT Regulations, 2015, mere existence of relationship is not sufficient to term a person as an "immediate relative" unless there is financial dependence and/or consultation in financial matters. Common directorships and communication is not sufficient to establish connections.

4.4.5 He also submitted that funds amounting to Rs 12.35 crores received by the appellant as loan was a pure commercial transaction and that it cannot be a ground for establishing "*Connection*" between the appellant and Noticee No. 1. To support his contentions, he referred to this Hon'ble Tribunal's order in the matter of ***Umang Dhanuka and Ors. Vs SEBI***[9] ***(Appeal No. 102 of 2020).***

> *"37. Insofar as the Dhanuka Family is concerned we are satisfied that the finding that the said*

[9] Appeal No. 102 of 2020

appellants were in close proximity with the Company is based on surmises and conjectures. It has come on record that there was business dealings between the Company namely, Bihariji in which loans were taken from the Company at a higher rate of interest. Further, having a business connection with the Company does not mean that there were part of the scheme of manipulating the price or they were part of some collusion which in any case is not the finding given by the WTM. The only charge is that being connected through this loan transaction the Dhanuka family is guilty of violation of regulations 3& 4 of the PFUTP Regulations which is perverse."

"38. We are of the view that there is no connection between the appellants and the Company, or its promoters, directors or promoter entities. The appellants invested their own funds and were not funded by anyone else nor there is any finding that the profits earned by the appellants were shared with anyone else either with the Company or its directors or with noticee no. 9 or with the six entities. We further find that there is no connection rather there is not even a thread of evidence to show any connection between the appellants and the counter party who bought the shares from the appellants."

4.5 Referring to the findings in para 46 of the impugned order, learned senior advocate submitted that the Ld. WTM has erred in concluding that Noticee No. 1 (Mr. Choksi) had passed on the alleged UPSI to the appellant, without any evidence of such communication. The impugned order

incorrectly assumes communication based on the "trading pattern" of the appellant and trading pattern alone cannot lead to inference of communication of the alleged UPSI to the appellant.

4.5.1 The finding that the appellant and Mr. Choksi were friends is merely based on an e-mail of the Company Secretary of GGL wherein he made a completely baseless statement. Moreover, any person perpetrating such a huge fraud will not communicate it in public.

4.5.2 Mr. Modi also submitted that the impugned order has not mentioned as to when Mr. Mehul Choksi may have communicated the alleged UPSI to the appellant. As recorded in the impugned order, the UPSI came into existence on May 31, 2017 i.e. the expected date of retirement of Mr. Gokulnath Shetty. If the UPSI was then communicated to the appellant, obviously he would have immediately sold the shares as the lock-in period for the first tranche of share would have expired on September 1, 2017. However, the

appellant has made the first sale on December 1, 2017, which proves that no such UPSI was ever communicated to him.

4.6 The Ld. senior advocate further submitted that the appellant sold all his shares of GGL within 6 days from December 1, 2017 to December 14, 2017 as his brother Mr. Jatin Girdharlal Gajera was in dire need of funds for expansion of business. Appellant transferred the funds amounting to Rs. 53 Crores to this brother through RTGS on December 15, 2017, December 22, 2017 and December 29, 2017, by way of gift.

4.7 Mr. Modi further submitted that the entire matter is based on the allegation that Noticee No. 1 (Mr. Mehul Choksi) had passed on information to the appellant that Nirav Modi had a reason to approach the same Brady House branch of PNB for fresh issuance of LOUs. He argued that it was not unusual, as it is observed in Para No. 20 of the impugned order that Nirav Modi periodically visited the PNB Brady House branch at Mumbai. He argued that even if it is assumed that Noticee No. 1 passed information to appellant,

this information is of no use for holding or selling the shares of GGL.

5. In response, Mr. Shiraz Rustomjee, learned senior advocate made detailed submissions. He submitted that in the present case, the UPSI is the *'high probability of fraud relating to fraudulent issue of LOUs to Gitanjali Group becoming public'*. Countering the argument of the appellant that it would not be possible for the appellant to know when the employee of PNB Mr. Gokulnath Shetty had to retire, he submitted that the appellant had close relations and was in frequent communication with Noticee No. 1 (Mr. Mehul Choksi). The SCN and the impugned order provide clear reasons to hold that UPSI arose on May 31, 2017 and refuted that the UPSI could have arisen only on February 5, 2018.

5.1 Mr. Rustomjee submitted that it is an admitted fact that both the Nirav Modi Group and Gitanjali Group were using the same branch of PNB for issuance of fraudulent LOUs and were assisted by the same employee of the Bank, i.e., Mr. Gokulnath Shetty. Further, the visit of Nirav Modi

Group to Brady House Branch of PNB is relevant as the LOUs issued to Nirav Modi Group and Gitanjali Group were due for maturity on January 25, 2018 and February 9, 2018. Therefore, it was likely that the said group would visit PNB for renewal of LOUs in January 2018, which was correct, as they actually visited that branch on January 16, 2018.

5.2 The UPSI was not solely based on the visit of Nirav Modi Group to PNB bank but it is the identified on the basis of totality of circumstances that increased the probability of detection of the fraud and its exposure in the public domain.

5.3 He submitted that in para 40 of the impugned order, it has been rightly concluded that the other preferential allottees did not fall within the criteria used to determine who might have access to the UPSI.

5.4 The learned advocate for the respondent also submitted that both the Noticee No. 1 (Mr. Choksi) and the appellant were shareholders in JTPL and most of the directors in JTPL are relatives of the appellant. He further submitted that as per

the financial statements of GGL for FY 2016-17, JTPL is disclosed as a company under common control of Key Managerial Person of GGL, which includes Noticee No. 1. As regards the contention of the appellant regarding proposal of sale of property, it was submitted that the said transfer never materialized. He submitted that the arrangement between the appellant, JTPL and GGL amounts to contractual/ business relationship.

5.5 Responding to appellant's plea that the funds received by appellant were in the nature of loan, Mr. Rustomjee denied that the funds received by appellant from GVDMCC (100% subsidiary of GGL) through Eternity Jewels was a loan. In this regard, he submitted that the appellant has failed to provide any documents such as loan agreements, terms of loan and purpose of loan in support of his submissions. He submitted that the appellant has not provided any evidence of the repayment of interest or loan to Eternity Jewels. He further submitted that the Eternity Jewels was in the business of trading in jewellery and was not a loan provider.

Moreover, as per the KYC of the bank accounts of Eternity jewels with ADCB bank, Dubai, this account was meant for making payment to suppliers and accepting payments from clients. He also submitted that one Mr. Vipul Chitalia an employee of GGL who is also a co-accused in PNB case stated before the Enforcement Directorate that the source of funds of the investment made by the appellant in GGL was Noticee No. 1 (Mr. Choksi).

5.6 Learned senior advocate refuted the appellant's submission that the appellant invested in GGL because of its sound health. He further submitted that the common directorship and communication was not the only basis for concluding that the appellant and Noticee No. 1 were *connected* and close associates. He further submitted that the basis of connection between the appellant and Noticee No. 1 is the shareholding of both the appellant and Noticee No. 1 (Mr. Choksi) in JTPL, which is the promoter company of GGL. The appellant was in a contractual/Business

relationship with GGL through JTPL, both of which are controlled by Mr. Mehul Choksi.

5.7 With respect to appellant's submission that he sold the shares of GGL because his brother was in dire need of funds for his business expansion, the learned advocate for the respondent submitted that the same is inconsistent with the rationale provided by the appellant in his e-mail dated February 24, 2020 to SEBI, wherein he informed that he sold the shares of GGL to minimize the loses as the price of the scrip was continuously falling.

5.8 With respect to the co-relation between the visit of Nirav Modi Group to Brady House branch of PNB and the fall in the share price of GGL on February 6, 2018, the learned advocate for the SEBI submitted that as per the Preliminary Investigation Report of February 12, 2018 provided by PNB, the LOUs issued to Nirav Modi Group were maturing in February 2018, and 8 LOUs had already matured on January 25, 2018. Therefore, it was likely that the said group would have visited PNB for renewal of LOUs in January 2018. The

said visit further crystallized the UPSI as GGL was also availing the services of Brady House branch of PNB for issuance of fraudulent LOUs.

6. We have carefully considered the facts of the case in the light of the rival submissions made before us. In order to decide the appeal, we frame the following questions :-

A. Whether it can be held that on the date of retirement of Mr. Gokulnath Shetty, there came into existence, the UPSI being '*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'*?

B. Whether the appellant can be held as a '*connected person*' within the meaning of regulation 2 (1)(d)(i) of PIT with GGL?

C. Whether it can be held that there was communication of UPSI by Noticee No. 1 with Noticee No. 2?

D. **Whether the trading of GGL shares by the appellant was guided by the UPSI?**

6.1 We now deal with these questions as under:

A. Whether it can be held that on the date of retirement of Mr. Gokulnath Shetty, there came into existence the UPSI being '*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'?*

6.2 We find that the learned WTM has held that the aforesaid UPSI came into existence only on May 31, 2017, on retirement of Mr. Gokulnath Shetty from his full-time job in PNB. Allegedly it was Mr. Shetty who, bypassing the bank's processes, sent SWIFT messages to overseas banks fraudulently extending LOUs to Nirav Modi group and Gitanjali group by PNB Brady House branch. When their terms were getting over, these LOUs were rolled over by Mr.

Shetty. Since this arrangement would not have lasted after his retirement, it was held that there was high probability of detection of this fraud after May 31, 2017.

6.3 Further, the Ld. WTM noted that since both Nirav Modi Group and Gitanjali Group got fraudulent LOUs issued from the same branch of PNB with the help of same employee of PNB, and there was close connection between Mehul Choksi and Nirav Modi, being uncle and nephew, which indicated that the detection of fraudulent LOUs issued to Nirav Modi group on the maturity date of LOUs i.e. January 25, 2018 would also lead to detection of fraudulent LOUs issued to Gitanjali Group. He accordingly held that due to this, the fate of Gitanjali Group was likely to be the same as that of Nirav Modi group and therefore, Noticee No. 1 was in possession of UPSI regarding the imminent exposure of fraudulent issuance of LOUs to Gitanjali Group in public domain. Hence, Noticee No. 1 was held to be in possession of UPSI and an *insider* with respect to GGL.

6.4. We note that the Ld. WTM has deemed the scenario of *"high probability of detection of fraudulent transaction"* as the INFORMATION, which he as well held as UPSI. However, in our considered view mere '*probability about any fact or event'* is a subjective notion, which implies that the information relating to the facts is not absolutely certain, hence, such an information based on mere probability of occurrence of an uncertain event cannot be treated as *concrete* or *credible*.

6.4.1 The Cambridge dictionary defines the term *Information* as under:

> *"news, facts, or knowledge: an important piece of information"*

The Merrium-Webster dictionary defines the term *Information* as under:

> *"1. a.(1): knowledge obtained from investigation, study, or instruction.*
> *(2): INTELLIGENCE, NEWS.*
> *(3) : FACTS, DATA*
>
> *b : the attribute inherent in and communicated by one of two or more alternative sequences or arrangements of something (such as*

nucleotides in DNA or binary digits in a computer program) that produce specific effects

c (1) : a signal or character (as in a communication system or computer) representing data

(2) : something (such as a message, experimental data, or a picture) which justifies change in a construct (such as a plan or theory) that represents physical or mental experience or another construct

d: a quantitative measure of the content of information

2.: the communication or reception of knowledge or intelligence

3.: the act of informing against a person

4: a formal accusation of a crime made by a prosecuting officer as distinguished from an indictment presented by a grand jury.”

6.5 In our considered view, the *probability of detection of fraud* on the happening of certain uncertain events, cannot be treated as a *concrete* or *credible* Information for the purpose of PIT Regulations. We note that the GGL has not made any entry of such an information as UPSI in the Structured Digital Data base (SDD) in terms of Regulations 5C and the

respondent has not charged the company in this regard. Further, in terms of Principle-1 of schedule A of PIT Regulations, such a suspicion of high probability cannot be held as *Credible* or *concrete* Information.

6.6 With regard to commencement of the UPSI period from May 31, 2017, it cannot be held that the probability of detection of fraud was high only on or after the date of retirement of Mr. Shetty. In our view, such a probability was equally high considering that Mr. Shetty was liable for transfer from that position, which is likely in a Public Sector Bank, considering their transfer policy and administrative grounds. Further, PSBs have their own surveillance mechanism and checks in the form of annual audit or vigilance inspections, which could have exposed the fraud even prior to Mr. Shetty's retirement on May 31, 2017. Moreover, there is a possibility that like Mr. Shetty, his successor could also have followed the same path to facilitate roll over of LOUs for both groups.

6.7. In view of this, the presumption of high probability of detection of fraud consequent upon certain event (superannuation of Mr. Shetty) cannot be held as an Information *per se*, which could be treated as UPSI under the PIT regulations. In view of this, we decide this question in ***Negative.***

B. Whether the appellant can be held as a '*connected person*' within the meaning of regulation 2(1)(d)(i) of PIT with GGL?

7. We note that the Ld. WTM has held the appellant as a *'connected person'* with a connection with the company (GGL) that is expected to put him in possession of/ having access to UPSI by virtue of,-

(i) frequent communication with Noticee No. 1.

(ii) due to Noticee No. 1 and. 2 being close associates, having association through their shareholding in GGL's group company, JTPL and transfer of an amount of Rs.12.35 crores by GVDMCC, a subsidiary of GGL

through Eternity jewels, an entity controlled by Noticee No. 1 to Noticee No. 2 for funding the upfront payment for subscribing to GGL warrants in 2015.

7.1 In terms of the PIT Regulations, the term "connected person" has been defined as under:

"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.

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".

7.2 We find that the appellant is a national and resident of Belgium, while the noticee No. 1 was a resident of India during the inspection period. No specific evidence of any communication has been brought on record to suggest their frequent communication.

Secondly, Ld. WTM has questioned the veracity of loan of Rs 12.5 cr. alleging that there are no documentary evidence or details of collaterals etc. regarding the loan carrying 4% interest rate. However, no adverse inference of this finding was drawn. If the said loan was not treated as genuine, it implies that the said amount is rather own money of Noticee No. 1. However, in the impugned order, Noticee No. 1 has been specifically exonerated with regard to the allegation made in the show cause notice of having indirectly traded through the account of appellant, which would have been the case, since the said amount of Rs. 12.5 cr. was held to be not a loan from noticee No. 1. Moreover, the Ld. WTM has not taken note of the fact that the appellant has made the

balance payment of Rs 37.03 cr. for subscribing to warrants of GGL from own sources.

7.3 With regard to the finding of shareholding by both the noticees in the GGL group company, JTPL, we find that the appellant is holding 17.2% shares of JTPL (earlier held by his father) and five of the Gajera family members are directors in the said company. The explanation of the appellant that this arrangement was resorted to for executing a deal for sale of immovable property, was not accepted by the Ld. WTM.

7.4 In our considered view, the fact of two unrelated parties sitting in different geographies deciding to enter into a real estate transaction and earlier extending a concessional loan by Noticee No. 1 to appellant, shows a definite ‘business connection’ between the two, albeit limited to these activities. The two sides are undisputedly not partners in the main business of GGL of export of diamond/jewelary, for which the fraudulent LOUs were issued.

7.5 However, here the moot question is whether based on such limited '*business connection'* alone, can it be held that the *connection* of the appellant with the company GGL is such that is expected to put him in possession of UPSI?

In our considered view, appellant is not a partner in the core business of GGL of export of diamond/ Jewellary. The appellant is only a shareholder with 5.75% stake in GGL and not a director therein. Under the circumstances, there is no reason why the Noticee No.1 would have divulged the secret information relating to the fraud committed on PNB by him and his nephew regarding issue of LOUs for exports to an unrelated party based in Belgium, which could have pre-disposed exposure of the fraud by GGL group and Nirav Modi group, which was well concealed till then. This could have rather put them at risk of legal actions by various Government agencies.

7.6 In view of this, we hold that though the appellant had a business relationship with the company, the same is not reasonably expected to allow him access to UPSI. Hence,

the appellant cannot be treated as 'connected person' under Regulation 2(1)(g)(i). In view of this, we decide this question in ***negative***.

C. Whether there was any communication of UPSI by Noticee No. 1 with Noticee No. 2?

8.1 The Ld. WTM alleges that the noticee No. 1 violated Regulation 3(1) of PIT Regulations, 2015 by sharing UPSI about high probability of detection of fraud with appellant to help the latter avoiding losses in future, as and when such information would have become generally available.

8.2 We note that while putting himself and the entire GGL and Nirav Modi groups at risk by sharing the hitherto secret information of fraud committed by them on PNB, the alleged tipper himself did not dispose of his own significant 26.09% shareholding in GGL (including 21.42% pledged shares), while allegedly sharing the information with the appellant intending to help the tiper avoiding future losses.

Moreover, it was not reasonable to furnish this tip to the appellant, as any off-loading by the appellant of his 5.75% significant shareholding in GGL could have hampered the share price of GGL due to huge supply in the market. This would have been against the financial interests of the noticee No. 1 and other promoters of GGL, who continued to hold shares in GGL.

8.3 We also find merit in the submission of Mr. Modi that the alleged sharing of UPSI to appellant goes beyond human intelligence since despite the alleged sharing of information of fraud by the fraudster himself, how could the appellant allow his group company Lakshmi Infra Development (LIDL), in which he is a shareholder, to make further investment in companies of noticee No. 1 in January 2018, after he came to know about the fraud. In view of the above, *preponderance of probabilities* suggests that there is no reasonable ground to assume that the noticee No. 1 may have shared UPSI with the appellant. Undisputedly, the Ld. WTM has not brought on record any evidence which may suggest

that the said UPSI was actually communicated, directly or indirectly, by the noticee No.1 to appellant. Hence, there is no case for holding appellant as an insider under Regulation 2(1)(g)(ii) either.

8.4 In view of the above, we decide this question in ***Negative***.

D. Whether the trading of GGL shares by the appellant was guided by the UPSI?

9. Ld. WTM held that since the appellant was a *connected person*, he had access to UPSI. Based on these findings, he held that the trading by the appellant in the shares of GGL in December 2017 were guided by such UPSI.

9.2 As we have noted that the tipper Noticee No. 1 himself has not traded in the shares of GGL during the UPSI period despite holding 26.09% share capital of GGL, which should have been the case, considering the allegation that the sharing of UPSI with the appellant was for avoiding losses on such UPSI becoming public knowledge. Moreover, not acceding

with the SCN, Ld. WTM has held that Noticee No. 1 has traded in the scrip of GGL through the account of Noticee No. 2 during the UPSI period. Notably, this was when both the noticees were allegedly in possession of the UPSI.

9.3 The Ld. WTM has relied upon observations made with regard to the trading behavior, stating that apart from the trading in GGL in December 2017, the appellant has not traded in any other scrips during the UPSI period, 3 months prior to it and 3 months after the UPSI period ended. Further, the trading account of noticee No. 2 was opened a day before the sale of GGL shares, allegedly for the purpose of selling GGL shares during the UPSI Period.

However, in our considered view, this observation in itself has no evidentiary value on the facts of the case, as evidently the appellant is a Belgium national, who admittedly got trading account opened prior to impugned sale. There is no evidence on record to suggest that the appellant was ever engaged in regular trading of shares in India, even prior to 3

months anterior to commencement of UPSI period, that could allow any meaningful inference to be drawn in the matter.

9.4 The appellant has submitted that trading by appellant was not exceptional since even other investors of GGL had sold and purchased shares of GGL during the month of December 2017 and January 2018. Further, he and other investors of preferential warrants of GGL, sold the shares when they found that it was the right moment for selling the same. We find merit in the plea, since at the time of such sale**,** there was rise in market price, as evident by profit of 3.88% earned by the appellant.

9.5 Furthermore, we find sound reasoning in the argument of the appellant that had he known about the fraud, subsequent to such information, he would not have signed the agreement of taking over Tatva Project by one of the companies in which he was a shareholder i.e. 'LIDL' from Gitanajali Infra development Co. in the month of January 2018.

9.6 In view of this, we find no merit in the allegation that the trading by appellant was guided by the access to UPSI. In view of this, we decide this question too in ***negative***.

10. In view of the above, the following:

ORDER

(i) The appeal is allowed.

(ii) No costs.

Justice P. S. Dinesh Kumar
Presiding Officer

Ms. Meera Swarup
Technical Member

Dr. Dheeraj Bhatnagar
Technical Member

30.04.2025
PTM