

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PG/AK/AO-27/2013]

**UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF
INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR
HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING
OFFICER) RULES, 1995**

In respect of

Eswaran Annamalai

(PAN No. AGNPA7213J)

In the matter of M/s Gemini Communication Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in respect of buying, selling and dealing in the shares of M/s Gemini Communication Limited (hereafter referred to as “**GCL**”/“**Company**”), during the period from January 01, 2007 to April 30, 2008 (hereinafter referred to as “**Investigation Period**”). The shares of GCL are listed on the Bombay Stock Exchange (hereinafter referred to as “**BSE**”) and National Stock Exchange (hereinafter referred to as “**NSE**”)

2. The findings of the investigation led to the allegation that Shri Eswaran Annamalai, Director of GCL (hereinafter referred to as '**Noticee**') had violated the provisions of clauses 3.2-2 and 3.2-5 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I read with regulation 12(1) of SEBI (Prohibition of Insider trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations**") and consequently liable for monetary penalty under section 15HB of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**").

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Parag Basu had been appointed as Adjudicating Officer, vide order dated April 17, 2012, under section 15 SEBI Act and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Rules**") to enquire into and adjudge under section 15HB of SEBI Act for the alleged violations of clauses 3.2-2 and 3.2-5 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I read with regulation 12(1) of PIT Regulations by the Noticee.. Consequently, upon transfer of Shri Parag Basu, the undersigned has been appointed as Adjudicating Officer vide order dated August 16, 2012 to enquire and adjudge the matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. EAD-5/PG/AK/2633/2013 dated January 30, 2013 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed on him under section 15HB of SEBI Act for the alleged violation specified in the said SCN.

5. It was alleged in the SCN that the Noticee had violated clauses 3.2-2 and 3.2-5 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I read with regulation 12(1) of PIT Regulations by trading in the shares of GCL on 10.04.2007, 12.04.2007 and 13.04.2007 during the prohibitory period (i.e. trading window closure period). The trading window was closed i.e. from 9:00 am on 09.04.2007 to 9:00 am on 18.04.2007 on account of grant of order worth ₹ 57.60 crore from Punjab Schools III Phase ICT project.
6. It is observed from the documents available on record that the Noticee had not submitted the reply to abovementioned SCN. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on March 15, 2013 at Securities and Exchange Board of India, Southern Regional Office, Chennai, vide notice dated March 05, 2013. Noticee appeared for the hearing and stated as under:

"While I was a director with Gemini Communication Ltd. (GCL) I had started another company under the name of Estrat Logistics Pvt. Ltd. To start the business of the new company I sold certain all my shares of GCL. I am submitting copy of my bank statement and copy of my demat statement in support of my contention. I was not aware that at that time the trading window was closed. I have no further submissions to make."

CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the present case are :
- a. Whether there is any violation of clauses 3.2-2 and 3.2-5 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I read with

regulation 12(1) of PIT Regulations by the Noticee?

- b. Does the violation, if any, attract monetary penalty under section 15HB of the SEBI Act?
- c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

10. Before moving forward, it would be pertinent to refer to the relevant provisions of PIT Regulations, which read as under:-

[SCHEDULE I

[Under regulation 12(1)]

PART A

***MODEL CODE OF CONDUCT FOR PREVENTION OF
INSIDER TRADING FOR LISTED COMPANIES***

"3.2 Trading window

3.2-1.....

3.2-2 *When the trading window is closed, the employees/directors shall not trade in the company's securities in such period.*

3.2-3.....

3.2-4.....

3.2-5 *All directors/officers/designated employees of the company shall conduct all their dealings in the securities of the Company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when trading window*

is closed, as referred to in para 3.2.3 or during any other period as may be specified by the Company from time to time."

11. Regulation 12(1) of PIT Regulations deals with the code of internal procedures and conduct for listed companies and other entities which include intermediaries, self-regulatory organisations, recognised stock exchanges and clearing house or corporation, public financial institutions, professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc, assisting or advising listed companies. The regulations require, inter alia, listed companies to frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations.

12. Clause 3.2-2 of Code of Conduct specified under Part A of Schedule I of the PIT Regulations states that, the employees/directors shall not trade in the company's securities when the trading window is closed. Clause 3.2-5 of Code of Conduct specified under Part A of Schedule I of the PIT Regulations states that all the directors/officers/designated employees of the company shall conduct all their dealings in the securities of the company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when the trading window is closed which is explained under clause 3.2-3 of the Code of Conduct specified under Part A of Schedule I of the PIT Regulations or during any other period as may be specified by the company from time to time.

Findings

13. Upon perusal of the documents available on record and submissions made by the Noticee and charges thereof, I find that the prohibitory period was notified by GCL vide letter dated April 08, 2007 from 9:00 am on 09.04.2007 to 9:00 am on 18.04.2007 on account of grant of order worth ` 57.60 crore from Punjab Schools III Phase ICT.
14. From the trade and order log of GCL, I find that during the investigation period the Noticee had sold the shares of GCL on 4 trading days, out of which 3 trading days i.e. 10.04.2007, 12.04.2007 and 13.04.2007 fall under the prohibitory period. Details of the Noticee's sale transactions are as under:

Date	Buy	Sell (no. of shares)
April 10, 2007	-	180
April 12, 2007	-	200
April 13, 2007	-	200
June 05, 2007	-	800
Total	Nil	1,380

15. From the above I find that Noticee had sold 580 shares of GCL during the prohibitory period on 10.04.2007, 12.04.2007 and 13.04.2007. The prohibitory period was from 9:00 am on 09.04.2007 to 9:00 am on 18.04.2007. The company should have had adequate mechanism in place for timely communication of information regarding trading window closure to all its directors/ officers and designated employees.

It is for the company to ensure this and it cannot be a valid defence of the Noticee that he was not aware of trading window closure. Further, to state that he needed money for starting a new business is also not a valid reason for breach. I am therefore of the view that the Noticee by selling the shares during the prohibitory period has violated clauses 3.2-2 and 3.2-5 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I read with regulation 12(1) of PIT Regulations.

16. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216 (SC) held that "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow*".

17. As the violation of clauses 3.2-2 and 3.2-5 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I read with regulation 12(1) of PIT Regulations has been established, I hold that the Noticee is liable for monetary penalty under section 15HB of SEBI Act, which reads as under:-

15HB. Penalty for contravention where no separate penalty has been provided:-
Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

18. While determining the quantum of penalty under section 15HB of the SEBI Act, it is important to consider the factors stipulated in section

15J of SEBI Act, which reads as under:-

“15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

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

19. From the material available on record, the quantum of gain made by the Noticee is not ascertainable. Further, the loss caused to the investors is also not ascertainable. However, the Noticee has traded during the UPSI period when this information was not in the knowledge of the general investors. Thus, the Noticee was at an advantageous position vis-à-vis the general investors. Such conduct is violative of the PIT Regulations. I find that the Noticee has sold 580 shares in 3 transactions conducted during the prohibitory period which is not a very large quantity.

ORDER

20. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹ 50,000/- (Rupees fifty thousand only) under section 15HB on the Noticee, Eswaran Annamalai for violation of clauses 3.2-2 and 3.2-5 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I read with regulation 12(1) of PIT Regulations. In my opinion this

penalty shall be commensurate with the violations committed by him.

21. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to The Chief General Manager, Investigations Department - ID 5, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

22. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **March 28, 2013**
Place: **Mumbai**

Piyoosh Gupta
Adjudicating Officer