

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO- 10/2012]

**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

MAVI INVESTMENT FUND LTD.

In the matter of GE Capital Transportation Financial Service Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted investigation in trading in the scrip of GE Capital Transportation Financial Service Limited (hereinafter referred to as '**GCL**') for the period June 20, 2008 to July 23, 2008 (hereinafter referred to as '**investigation period**'). The shares of GCL were listed at Bombay Stock Exchange (hereinafter referred to as '**BSE**') and Calcutta Stock Exchange Association Limited (hereinafter referred to as '**CSE**'). It was observed that during the investigation period the price of the scrip went up from ₹ 47.60 on June 20, 2008 to ₹ 105.40 on July 21, 2008 and close at ₹ 104.15 on July 23, 2008 during the investigation period.
2. On June 27, 2008, GCL made a corporate announcement regarding the proposed delisting of its shares from BSE, received from its Mauritius based promoter GE Capital Mauritius Investment Company Ltd (hereinafter referred to as '**GECMIC**') on the same day. GECMIC was holding approximately 77.33% of the total share capital of GCL and offered to acquire remaining public shareholding in accordance with SEBI (Delisting of Securities) Guidelines 2003.

3. Investigation prima facie observed that MAVI Investment Fund Ltd (hereinafter referred to as '**Noticee**') a registered sub-account of FII M.M. Warburg Bank, bought shares on June 25, 2008 which was before the date of intimation (i.e. June 27, 2008) to BSE of voluntary delisting offer and sold shares on July 07, 2008 and July 08, 2008 which was after the above corporate announcement. Investigation prima facie observed that Noticee was connected to Shri. Ashraf Ramtoola (hereinafter referred to as '**Shri. Ashraf**') who was the director of GECMIC and was alleged to be part of the preliminary discussion of the delisting offer by GECMIC and thus was aware of the unpublished price sensitive information. He was also a director of International Management (Mauritius) Ltd (hereinafter referred to as '**IMM**'), which was Company Secretary of GECMIC and also the Company Secretary of Noticee and provided administrative services to it. It was also observed that Shri. Ashraf was earlier a director of the Noticee from June 05, 2005 to February 24, 2006. Connection was also observed through his contact phone number in Mauritius which as provided by GCL to SEBI was the same as one appearing on the Noticee's letter head. During the investigation period the scrip was trading on BSE at ₹ 70.25 on June 27, 2008 and subsequently the price of the scrip had gone up and touched a high of ₹ 105 on July 23, 2008. Noticee traded only on the above three days during the period January 01, 2008 to December 31, 2008.
4. It was alleged that by virtue of Noticee's connection with Shri. Ashraf, Noticee was in possession of the unpublished price sensitive information and was therefore an 'Insider' as defined under Regulation 2 (e) of PIT Regulation. It was further alleged that the trading carried by the Noticee and the corporate announcement made by GCL indicated that Noticee had traded when in possession of the unpublished price sensitive information. It was therefore alleged that Noticee had contravened provisions of Regulation 3(i), 3(ii) and 4 of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**').

5. Consequently, the Noticee was liable for monetary penalty under section 15G of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

6. The undersigned was appointed as Adjudicating Officer vide order dated March 25, 2010 under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules**') to inquire into and adjudge the alleged violations of SEBI Act and SEBI PIT Regulations committed by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

7. Show Cause Notice No. EAD-6/BM/DJ/9829/2010 dated June 24, 2010 (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 held and penalty be not imposed under section 15G of SEBI Act for the alleged violation specified in the said SCN. The said SCN was delivered and acknowledged by the Noticee. Noticee vide letter dated August 5, 2010 denied all the charges leveled against him and submitted *inter alia* the following:
- a) *That MAVI is a company incorporated in accordance with the laws of Mauritius; the company secretary of MAVI is IMM, which is also a company incorporated in accordance with the laws of Mauritius.*
 - b) *The trades in GCL were done on the basis of investment recommendations of Mr. Michel Eric Widmer, a director of Monterosa Asset Management Ltd. ('MAM'), acting on behalf of MAM.*
 - c) *The investment recommendations provided by MAM to buy the scrip GCL on June 25, 2008 and sell the scrip GCL on 7th and 8th July 2008 were provided to the Board of Directors of MAVI on the basis of fundamental and technical stock*

analysis, based on these investment recommendations, the Board of MAVI gave its consent and sell the scrip respectively.

- d) The trade orders were forwarded to the duly empanelled broker (Stewart & Mackertich Wealth Management Ltd.) through MAM's contractual facilitator company Monterosa Transaction Support Service Pvt. Ltd. ('MTSS'). The persons liaising with the broker on behalf of MTSS and placing orders on behalf of MAVI were Mr. Kenneth Lacerda and Mr. Manish Rathi of MTSS.*
- e) That MAVI does not fall within the definition of 'insider' as defined in Regulation 2(e) of SEBI PIT Regulations in as much as MAVI did not have access to unpublished price sensitive information regarding GCL. Admittedly MAVI is not connected to GCL in any manner as alleged.*
- f) That Mr. Ashraf was not a director of MAVI or MTSS at the relevant time. We reproduce what appears on the top of the letter head of MAVI:
"Mavi Investment Fund Ltd.
c/o International Management (Mauritius) Ltd.
Les Cascades, Edith Cavell Street, Port Louis, Mauritius
Tel : (230) 212 9800"*
- g) That IMM provides administrative and company secretarial services, including registered office address, to various companies incorporated in Mauritius. IMM is the Company Secretary of MAVI and provides certain administrative and company secretarial services to MAVI that is why the registered office address of MAVI shows the same address as for IMM as a "care of" registered office address.*
- h) That Mr. Ashraf is a director of IMM and the phone number in question is the main switchboard number of IMM, which is externally communicated on standard basis. This is the reason why MAVI and Mr. Ashraf have the same phone number.*
- i) That on the basis of an admitted position that (i) Mr. Ashraf is a director of IMM and (ii) that IMM provides company secretarial and administrative services to MAVI, you have sought to allege that "Mr. Ashraf is a direct link between you*

(MAVI) and GECMIC" and that "by virtue of your connection with Mr. Ashraf, you were in possession of unpublished price sensitive information".

- j) That the allegation is untenable. We deny the allegation in totality. There is no such "direct link" between MAVI and Mr. Ashraf, and in the circumstances, there is no question of MAVI having such a "connection with Mr. Ashraf" or having "possession of unpublished price sensitive information as alleged".*
- k) That MAVI was not aware of the corporate announcement made by GCL to the Bombay Stock Exchange.*
- l) We deny that Mr. Ashraf is a "direct link" between MAVI and GECMIC and that Mr. Ashraf is a "connected person" in terms of Regulation 2(c)(i) and (ii) of the PIT Regulations.*
- m) That MAVI is not aware as to when and how Mr. Ashraf came to know about the proposed voluntary delisting of GCL and cannot comment upon the same. It is immaterial for MAVI as to whether Mr. Ashraf was in possession of unpublished price sensitive information regarding GCL in as much as Mr. Ashraf had nothing to do with MAVI's decision to buy / sell shares of GCL.*
- n) That it is correct that MAVI purchased 89,297 shares of GCL on 25th June 2008 and sold 89,297 shares of GCL on 7th July and 8th July 2008 through the broker Stewart & Mackertich Wealth Management Ltd.*
- o) It is correct that MAVI only traded in GCL on three days viz 25th June, 7th July and 8th July, 2008.*
- p) That investigation has apparently shown that Mr. Ashraf was a director of GECMIC and of IMM at the relevant time. SEBI has erroneously concluded that MAVI was in possession of unpublished price sensitive information regarding GCL simply because Mr. Ashraf is a director in IMM which is a company that provides secretarial and administrative services to MAVI.*

8. In the interest of natural justice an opportunity of hearing was provided to the Noticee on October 25, 2010 vide hearing notice dated October 8, 2010. Noticee vide letter dated October 22, 2010 sought for an adjournment. Vide hearing notice

dated November 15, 2010 another opportunity of personal hearing was provided on December 14, 2011. Ms. Tushna Thapliyal (Advocate), Khaitan & Co, Authorized Representative appeared on behalf of the Noticee and reiterated the submissions given in the reply to the SCN and *inter alia* submitted following:

- a) *That reply dated August 5, 2010 may be considered as the final submission to the SCN.*
- b) *That Mauritius law allows companies to provide company secretary services and IMM provides the services from inception June 2005.*

Noticee sought time for submitting further submissions and the same was provided to them.

9. Vide letter dated December 23, 2010, Noticee in addition to its earlier submissions inter-alia made further following submissions:

- a) *That Securities (Collective Investment Scheme and closed-end Funds) Regulations of Mauritius requires that MAVI has adequate investment management and/or advisory functions in place. MAVI is a professionally self-managed fund company and has mandate Monterosa Asset Management Ltd. ("MAM") as dedicated and exclusive investment advisor.*
- b) *MAVI operates and places its listed trades at the Indian Stock Exchanges through its properly empanelled brokers. In 2008, MAVI was working together with 17 duly empanelled and SEBI approves brokers.*
- c) *That MAVI particularly focuses on the small and mid cap segment in the Indian market. This segment comprises of lesser known companies and the scrip traded is usually undervalued. The trading volumes in these scrips are normally also lower. As a mutual investment fund, MAVI's business is to identify investment opportunities with high return potential. This is why small and mid-cap segment is highly attractive to an investment fund like MAVI.*
- d) *GCL is a GE company which is engaged in the business of providing finance for purchase of trucks and vehicles. The GCL scrip falls within the small and mid-cap*

segment at the Indian stock exchange. Mr. Michael Widmer, director of MAM, was closely watching the scrip for few days already and would have done a fundamental stock analysis of the price movements prevailing. As per his thorough analysis, the scrip was undervalued and accordingly, he recommended a transaction in this scrip. According to Mr. Widmer's assessment, there was upward movement in the scrip which indicated a strong buy signal by June 21st. the trade eventually materialized on June 25th.

e) That MAVI made similar transactions (short-term trades) in similar small and mid-cap scrips during the period June-July 2008.

10. Thereafter vide letter dated January 28, 2011, Noticee inter-alia made following further submissions:

- a) That JM financial Services Pvt. Ltd. is a duly empanelled broker of MAVI since 2006.*
- b) That IMM is not an employee of MAVI. It provides company secretary service to MAVI in a professional capacity in terms of the administrative agreement. The relationship between IMM and MAVI is contractual and not an employer-employee relationship.*
- c) That the funds to buy shares of the GCL scrip were orderly debited from MAVI's INR bank account Nr. 0545699-02-0 held with Deutsche Bank AG, Mumbai. The wiring process was following normal bank transaction procedures. The same applied for creating the money received from the subsequent sale of the GCL scrip.*

CONSIDERATION OF ISSUES AND FINDINGS

11. I have carefully examined the documents available on record. The allegations against the Noticee are as follows:

- i. Shri. Ashraf is a direct link between Noticee and GECMIC and is a connected person in terms of Regulation 2(c) (i) & (ii) of PIT Regulation. Further Ashraf was in possession of the unpublished price sensitive information.
 - ii. Noticee by virtue of its connection with Shri. Ashraf was in possession of unpublished price sensitive information and was insider as defined under Regulation 2(e) of PIT Regulations.
 - iii. Noticee traded in the scrip of GCL while in possession of unpublished price sensitive information and thereby violated provisions of Regulation 3(i), 3(ii) and 4 of PIT Regulations.
12. In view of the above it was alleged that the Noticee violated the provisions of Regulation 3(i) & (ii) and 4 of PIT Regulations.
13. Before moving forward, it will be appropriate to refer to the relevant provisions of Regulation 2(c) (i) & (ii), 2(e), 3(i) & (ii) and 4 of PIT Regulations, which reads as under:

Definitions.

2. *In these regulations, unless the context otherwise requires :—*

(c) “connected person” means any person who—

(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act or

(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.

(e) “insider” means any person who, is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or who has received or has had access to such unpublished price sensitive information;

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 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 :*

Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.

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.***

14. The issues that arise for consideration in the present case are:

- i. Whether Noticee is an ‘insider’ as defined under Regulation 2(e) of PIT Regulations and had access to the unpublished price sensitive information?
- ii. Whether Noticee was connected to Shri. Ashraf in terms of the definition of Regulation 2(c) (i) & (ii) of the PIT Regulations.
- iii. Whether Noticee traded in the scrip of GCL while in possession of unpublished price sensitive information and contravened the provisions of Regulation 3(i), (ii) and 4 of PIT Regulations.

- iv. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15G of SEBI Act?
- v. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act?

FINDINGS:

15. I now proceed with the alleged violations of PIT Regulations.

- i. GCL made a corporate announcement on June 27, 2008, regarding the proposed delisting of its shares from BSE, received from its GECMIC on the same day. GECMIC was holding approximately 77.33% of the total share capital of GCL and offered to acquire remaining public shareholding in accordance with SEBI Delisting of Securities) Guidelines 2003. J. M Finanacial Consultants Pvt. Ltd (hereinafter refered to as J M Finanacial) was engaged by GECMIC to render services as its executive financial advisor for delisting of GCL from BSE. The major intimations made by GCL to the stock exchange during the investigation period and till the shares were delisted were as follows:
 - a) **June 27, 2008:** GCL intimated BSE regarding receipt of a letter dated June 27, 2008 from its promoter, (GECMIC) to commence voluntary delisting of equity shares of GCL from BSE, provided price payable per equity share does not exceed ₹ 110. GECMIC has also requested the Board of Directors (hereinafter referred to as 'BoD') of GCL to convene a meeting of shareholders to seek approval for the proposed delisting offer.
 - b) **June 27, 2008:** GCL intimated BSE regarding the resolutions passed by the BoD of GCL on June 27, 2008 wherein it was decided to place the delisting offer before the shareholders for their consideration and consent by way of postal ballot. Further, in supersession of the resolution dated September 7, 2007, decided to withdraw the proposed right issue and withdraw the draft Letter of Offer dated December 27, 2007 filed with SEBI/BSE.

- c) **July 31, 2008:** GCL intimated BSE of the result of postal ballot where shareholders have among others, granted approval to GECMIC to undertake voluntary delisting of the shares from BSE.
- d) **August 06, 2008:** JM Financial Consultants Pvt. Ltd. intimated BSE regarding the publication of the delisting offer on August 6, 2008 in “Business Standard” and “Pratahkal” and appointment of JM Financial Services Pvt. Ltd by the acquirer GECMIC as the broker for the purpose of Reverse Book Building process.
- e) **August 06, 2008:** JM Financial intimated BSE regarding the floor price of ₹ 66.80 for the delisting offer, calculated as the average of weekly high and low of closing prices on BSE during 26 weeks preceding the date of Public Announcement.
- f) **August 25, 2008:** JM Financial intimated BSE regarding acceptance by GECMIC of the discovered price of ₹ 110 established by reverse book building process (August 18, 2008 to August 21, 2008) for shareholders holding shares in demat form. Further, GECMIC offered the exit price of ₹ 110 to shareholders holding shares in physical form during 15 days period between August 27, 2008 and September 10, 2008.
- g) **September 17, 2008:** GCL intimated BSE pursuant to Regulation 13(6) of SEBI PIT Regulations for relevant disclosures under Regulation 13(3) by GECMIC for acquisition of 22,20,687 shares in demat form on September 10, 2008 tendered during bidding process.
- h) **September 23, 2008:** GCL requested BSE to take necessary action to delist the share from BSE since delisting offer has been completed successfully.
- i) **October 01, 2008:** GCL intimated BSE pursuant to Regulation 13(6) of SEBI PIT Regulations for relevant disclosures under Regulation 13(3) by GECMIC for acquisition of additional 395,329 shares on September 22, 2008 and 54,065 shares on September 23, 2008.

j) **October 22, 2008:** Public Announcement by GCL regarding discontinuation of trading of the equity shares of GCL on BSE w.e.f. October 15, 2008 and delisting of GCL from BSE w.e.f. October 22, 2008.

ii. It was observed that on 27/06/2008 the scrip was trading on BSE at ₹.70.25 and subsequently, the price of GCL went up and touched a high of ₹.105 on 23/07/2008.

iii. During investigation GCL submitted the chronology of events which culminated in the decision of making the delisting offer by GECMIC as follows:

June 17, 2008 to June 27, 2008	Preliminary discussions by members of BoD of GECMIC, General Counsel and VP (Marketing Communication) of GE Commercial Finance Asia with the Managers to the offer and legal advisors on regulatory procedure and other matters.
June 25, 2008	Circulation of agenda for the proposed delisting of GCL to the Board of GECMIC.
June 27, 2008	Resolution passed by BoD of GECMIC to make voluntary delisting offer.
	Intimation by GECMIC to BoD of GCL expressing its intension to make the voluntary delisting offer.
	Circular resolution passed by BoD of GCL to seek consent of shareholders of GCL for the proposed voluntary delisting offer.
	Intimation by GCL to BSE regarding receipt of intimation from GECMIC expressing its intension to make voluntary delisting offer.
	Intimation by GCL to BSE on circular resolution passed by BoD of GCL on June 27, 2008 regarding voluntary delisting offer.
July 31, 2008	Resolution passed by shareholders of GCL by way of postal ballot approving voluntary delisting offer.
	Intimation by GCL to BSE on results of postal ballot resolution approving voluntary delisting offer.
August 06, 2008	Public announcement for delisting offer by Manager to the Offer, J M Financial Consultants Pvt. Ltd on behalf of GECMIC
	Intimation by J M Financial Consultants Pvt. Ltd to BSE on public announcement.

As submitted by the company GCL John Flannery, Anita Gidumal, Luchmee Arunachalam and the Noticee were the directors of GECMIC involved in the delisting offer. IMM was the company secretary of GECMIC and Noticee was also the one of the directors of IMM.

- iv. Further J.M. Financial also submitted the chronology of events which culminated in the decision making of the delisting offer by GECMIC as given below:

Date	Event	Venue
17/06/2008 to 27/06/2008	Preliminary discussions on regulatory procedure and other matters (No agenda was circulated prior to these discussions)	Virtual (discussion held by telephonic calls & e-mails)
25/06/2008	Circulation of notice for the proposed meeting of BoD of GECMIC.	Virtual
27/06/2008	Circulation of agenda for the proposed delisting of GCL to the Board of GECMIC.	Virtual (agenda circulated by e-mails)
	Resolution passed by the BoD of GECMIC to make voluntary delisting offer to the shareholders of GCL.	Virtual (circular resolution without any physical meeting)
	Intimation by GECMIC to BoD of GCL expressing its intention to make voluntary delisting offer.	Intimation provided by way of fax & e-mail
	Resolution passed by BoD of GCL to seek consent of shareholders of GCL for the proposed voluntary delisting offer.	Virtual (resolution passed by way of a circular resolution)
	Intimation by GCL to BSE regarding receipt of intimation from GECMIC expressing its intension to make voluntary delisting offer.	Virtual (by way of a fax and letter by post)
	Intimation by GCL to BSE on circular resolution passed by BoD of GCL on June 27, 2008 regarding voluntary delisting offer.	Virtual (by way of a fax and letter by post)
31/07/2008	Resolution passed by shareholders of GCL approving the voluntary delisting offer.	Virtual (resolution passed by shareholders by way of a postal ballot)
	Intimation by GCL to BSE on results of the postal ballot resolution approving the voluntary delisting offer.	Virtual (by way of a fax and letter by post)
06/08/2008	Public announcement for delisting offer by manager to the offer, JM Financial on behalf of GECMIC.	Virtual (Advertisement in the newspapers)
	Intimation by JM Financial to BSE on the public announcement	Virtual (Filing a copy of announcement with BSE)

- v. It was therefore observed that Shri. Ashraf was involved in the preliminary discussion relating to the proposed voluntary delisting between 17/06/2008 to 27/06/2008 and in between on 25/06/2008 a notice was circulated to him in his capacity of director of GECMIC for the proposed meeting of Board of Directors of GECMIC in this regard. From the submissions of the GCL and J M Financial that

Shri. Ashraf had access to the unpublished price sensitive information being part of the preliminary discussion to the delisting offer before it was made public, it was therefore alleged that Shri. Ashraf was in possession of the unpublished price sensitive information.

vi. On analysis of the net buyers position prior to the announcement of delisting offer and net sellers after the announcement investigation observed that Noticee was alleged to be connected to Shri. Ashraf and traded before and after the corporate announcement. Investigation observed connection of Noticee with Shri. Ashraf as follows:

- a) Shri. Ashraf the director of GECMIC and also a director of IMM, Company Secretary of GECMIC.
- b) IMM is also the Company Secretary of the Noticee, since its inception on June 5, 2005 and was acting as company secretary, fund administrator and bank signatory.
- c) Shri. Ashraf was earlier a Director of the Noticee from June 5, 2005 to February 24, 2006.
- d) The contact phone number of Shri. Ashraf in Mauritius as provided by GCL to SEBI is +230 2129800 which is the same as appearing in one of the letter head of the Noticee.
- e) The Noticee bought and sold shares prior to and after the unpublished price sensitive information through the broker Stewart & Mackertich Wealth Management Limited as follows:

Bought (Shares)	Date	Price (₹)	Sold (Shares)	Date	Price (₹)
89,297	25/06/08	60.61	10,000	07/07/08	94.00
			79,297	08/07/08	93.08
89297			89297		

- vii. It was observed that during 01/01/2008 to 31/12/2008 Noticee traded in the captioned scrip only on three days i.e. during the investigation period.
- viii. It was therefore alleged that Shri. Ashraf is a direct link between Noticee and GECMIC and is a connected person in terms of Regulation 2(c) (i) & (ii) of PIT Regulation and by virtue of connection with Shri. Ashraf, Noticee was in possession of unpublished price sensitive information and was insider as defined under Regulation 2(e) of PIT Regulations and traded in the scrip of GCL while in possession of unpublished price sensitive information.
- ix. I note that once the information of delisting became public information the price of the shares of GCL increased from ₹.70.25 on June 27, 2008 to ₹.105 on July 23, 2008 on BSE. Thus the information was price sensitive. However I note that it has not been disputed by Noticee that the subject information "proposed delisting of shares from BSE" is price sensitive information.
- x. I would now proceed with the issue whether Shri. Ashraf was connected to the Noticee. From the documents available on record it is observed that Shri. Ashraf was the director of GECMIC and also a director of IMM, Company Secretary of GECMIC. IMM is also the Company Secretary of the Noticee, since its inception on June 5, 2005 and was acting as company secretary, fund administrator and bank signatory. Shri. Ashraf was earlier a director of the Noticee from June 5, 2005 to February 24, 2006. The contact phone number of Shri. Ashraf in Mauritius as provided by GCL to SEBI is +230 2129800 which is the same as appearing in one of the letter head of the Noticee.
- xi. Noticee in its reply has submitted that Shri. Ashraf was not a director of the Noticee or MTSS at the relevant time. Noticee claimed that there is no such "direct link" between Noticee and Shri. Ashraf and there is no question of Noticee having such a "connection with Shri. Ashraf" or having "possession of unpublished price sensitive information as alleged".

xii. Investigation has observed that the Noticee is connected to Shri. Ashraf on basis of the following:

- Shri. Ashraf is the director of GECMIC and IMM.
- IMM is the company secretary of GECMIC and Noticee
- Shri. Ashraf was the director of Noticee during 2005.
- The contact phone number of Shri. Ashraf in Mauritius is same as that of the Noticee.

xiii. I find that Shri. Ashraf was a director of the Noticee in 2005 however he was not a director of Noticee when the instant transactions happened in 2008. Further being a director of IMM who is engaged in professional capacity to Noticee and GECMIC does not bring out any connection with Noticee and Shri. Ashraf. However, on perusal of the reply submitted by Shri. Ashraf and the Noticee it is observed that during June-July 2008 he was acting as authorized signatory/bank account signatory for Noticee though was not involved in carrying on day to day business of the Noticee. Noticee has submitted that IMM is the Company Secretary of Noticee and provides certain administrative and company secretarial services to the Noticee that is why the registered office address of the Noticee shows the same address as for IMM as a "care of" registered office address. Noticee further submitted that Shri. Ashraf is a director of IMM and the phone number in question is the main switchboard number of IMM, which is externally communicated on standard basis. Therefore Noticee and Shri. Ashraf have the same phone number. It is observed that Shri. Ashraf was the authorized signatory to the bank account for Noticee. Even though he is not involved in the day to day activities his involvement as authorized signatory itself proves that he is related/known to the Noticee as bank account signatory of any company plays a pivotal role as he would be a man of confidence to sign for the company and has to be aware of the activities of the company.

xiv. The next issue to be addressed is whether Noticee, by virtue of its connection with Shri. Ashraf, was in possession of the unpublished price sensitive information and was therefore an insider as defined under 2(e) of PIT Regulations and whether Noticee traded in the scrip of GCL while in possession of unpublished price sensitive information and contravened the provisions of Regulation 3(i), (ii) and 4 of PIT Regulations. The first question required to be answered whether Shri. Ashraf was privy to unpublished price sensitive information before it was made public and an insider.

xv. Investigations observed that Ashraf was present in the preliminary discussions for the proposed delisting of the shares of GCL. Ashraf in his reply to the SCN submitted that it was not involved in the preliminary discussions and was aware of the information only on June 25, 2008 in the evening at 17.05 hrs when the email for the board meeting to be held on June 27, 2008 was sent to him.

xvi. It was observed from the annexure of letter dated June 26, 2009 of J M Financial that preliminary discussions were held by way of telephonic calls and emails. Therefore details along with documentary evidences with regard to presence of Noticee in the preliminary discussions of de-listing offer were sought from JM Financial vide letter dated March 24, 2011. JM Financial vide letter dated March 30, 2011 submitted the details of certain correspondence exchanged between JM Financial, representatives of GE Group and their legal advisor that culminated in making a draft reply to the SEBI's query raised during the investigation. They further stated that:

- *That the chronology of events leading to the decision of making the delisting offer to the shareholders of GCL by its promoter, GECMIC was based on the information available with us and as provided by representatives of the GE Group.*

Vide letter dated April 1, 2011, JM Financial was again required to submit the documentary evidence, i.e. telephone records and emails, which were exchanged between specifically the instant Noticee and other directors of board of GECMIC between June 17, 2008 and June 27, 2008. Vide letter dated April 7, 2011, JM Financial submitted that:

- *That we were not privy to all communications (including telephonic calls and emails) within the GE Group relating to the delisting offer including between members of GE other than the team we interacted with. Consequently, on receipt of the letter dated June 16, 2009 from SEBI we sought information as required for the SEBI Reply from the representatives of the GE Group and their legal advisor. Hence the content of Annexure I to the SEBI Reply including the name of Mr. Ramtoola in the preliminary discussions on the regulatory and other matters relating to the proposed voluntary delisting by way of telephonic calls and emails from June 17, 2008 to June 27, 2008, was also based on the confirmation provided by representatives of the GE Group and their legal advisors.*

xvii. On perusal of the information submitted by GCL during the investigation vide latter dated January 30, 2009 I find from the name, address and telephone numbers of the employees of GECMIC involved in the proposed delisting offer, the name of Noticee was mentioned. Therefore, vide letter dated June 6, 2011 documentary evidence i.e. telephonic records, emails etc was sought from GCL to show that Noticee was present in the preliminary discussions. GCL failed to provide documentary evidence and vide letter dated July 1, 2011 submitted that:

- *Noticee was not participant to the discussions on regulatory procedure for delisting offer, however being a director on the board of directors of GECMIC was sent a notice (by way of email) dated June 25, 2008 of a proposed meeting of the board of directors of GECMIC on June 27, 2008, requesting for his availability.*

The contrarian facts submitted by J M Financial and GCL was thereafter provided to the investigation department for seeking its comments with a view to also provide further documentary evidence, if any, with regard to the evidence of Noticee's presence in the preliminary discussions. The investigation department submitted the copy of the letter dated January 30, 2009 received from GCL along with the annexure showing the names of the directors who were in the preliminary discussions, copy of the letter dated June 26, 2009 and the details of relationship of Shri. Ashraf with the Noticee. However, the Investigation department could not produce any fresh evidence/documentary or corroborative evidence demonstrating the noticees presence in the preliminary discussion. GCL was also confronted with two different versions of submissions made by them vide letters dated January 30, 2009 in which name of the Noticee was mentioned as one of the director who was involved in the delisting offer and July 1, 2011 in which GCL submitted that Noticee was not participant to the discussions on regulatory procedure for delisting offer. GCL vide letter dated September 15, 2011 submitted that:

- a) While providing the chronology as is customary, we clubbed the dates for each type of activity that took place until the public announcement of the delisting offer. In the chronological description of events, GCL had indicated that between June 17 and June 27, 2008, preliminary discussions by the members of the board of members of the board of GECMIC (which include Shri. Ashraf), Geoff Culbert, Stephanie Ban and advisor took place. While Shri. Ashraf may have been informed about the delisting proposal only on June 27, 2008 when detailed agenda was sent out but since this was also the part of the preliminary discussion leading up to the delisting we included this as part of this activity in the chronology.*
- b) Pursuant to further correspondence and in particular letter dated February 19, 2010 we made further inquiry internally to ascertain whether Shri. Ashraf was invited to any internal meetings held between June 17 to June*

25, 2008. From the documents and information available with us and given the fact that a number of employees who were involved have left the organization, to the best of our knowledge Shri. Ashraf was not a participant to the discussions or invited to meetings prior to notice (by way of email) dated June 25, 2008 of a proposed meeting of the board of directors of GECMIC on June 27, 2008, requesting his availability.

xviii. Shri. Ashraf submitted that he was not involved in the preliminary discussions and was aware of the information only on June 25, 2008 in the evening at 17.05 hrs when the email for the board meeting to be held on June 27, 2008 was sent to him.

xix. From the submissions made by GCL and JM Financial during investigation it was observed that Shri. Ashraf was present in the preliminary discussions for the proposed delisting of the shares of GCL. From the submissions made by Shri. Ashraf, GCL, J M Financial during the proceedings I note that:

- a) There is no evidence to suggest beyond surmises that Shri. Ashraf was a part of the preliminary discussion from June 17 2008 to June 24, 2008. As per available information it can be deduced that Shri. Ashraf received the information for the proposed delisting offer on June 25, 2008 in the evening at 17:05 hrs and therefore was aware of the information on June 25, 2008 evening onwards and thus was in possession of the price sensitive information.
- b) It is observed that the meeting of the board of directors was held on June 27, 2008 and the information was disseminated to BSE on June 27, 2008.

Thus, I find that Shri. Ashraf was privy to unpublished price sensitive information before it was made public and was an insider.

xx. I would now discuss whether Noticee is an insider and was there flow of unpublished price sensitive information from Shri. Ashraf to the Noticee and whether Noticee traded on the basis of that information. Regulation 2(e) of PIT Regulations states *“insider” as any person who, is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or who has received or has had access to such unpublished price sensitive information.* As per Regulation 3(i) *No insider shall either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information.* Regulation 3(ii) states that *no insider shall communicate 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.*

xxi. While it has already been established that Shri. Ashraf was an insider and was in possession of the unpublished price sensitive information, I observe that the information was received by him at 17.05 hrs on June 25, 2008 and Noticee traded in the scrip on June 25, 2008 from 10.00 hrs to 15.17 hrs i.e. much before the information was received by Shri. Ashraf. Noticee in its reply has submitted that according to Mr. Widmer's assessment the scrip was undervalued and accordingly, he recommended a transaction in this scrip. According to assessment, there was upward movement in the scrip which indicated a strong buy signal by June 21st. the trade eventually materialized on June 25th. Investigation does not mention any specific direct documentary evidence on record to show that Noticee received the price sensitive information regarding the proposed voluntary delisting offer by GECMIC for GCL shares before the information was made public on 27/06/2008. While it has been established that Noticee was connected/related to Shri. Ashraf there is nothing on record before

me to establish that the unpublished price sensitive information was communicated to the Noticee by Shri. Ashraf and that Noticee is an insider.

While there is too much of a coincidences which gives a doubt in my mind that the Noticee traded in the scrip only during the period of unpublished price sensitive information and was closely related to Shri. Ashraf, however, given the above I am inclined to give benefit of doubt to the Noticee for want of conclusive evidence and conclude that the violation of Regulation 3 (i) (ii) of PIT does not stand established. Consequently the violation of Regulation 4 of PIT does not stand.

ORDER

16. Considering the facts and circumstances of the case, I do not find the instant matter fit for imposition of penalty in terms of Section 15G of SEBI Act and dispose of the proceeding accordingly.

17. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: **February 8, 2012**

Place: **Mumbai**

BARNALI MUJHERJEE

ADJUDICATING OFFICER