

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. BM/AO- 09/2012]**

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**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

**Shri. Ashraf Ramtoola**

In the matter of GE Capital Transportation Financial Service Limited

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**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 Shri. Ashraf Ramtoola (hereinafter referred to as the **'Noticee'**) was the director of GECMIC and was part of the preliminary discussion of the delisting offer by GECMIC. Investigation observed that MAVI Investment Fund Ltd (hereinafter referred to as **'MAVI'**), 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 MAVI was connected to the Noticee as 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 MAVI and provided administrative services to it. Further the Noticee was earlier a director of MAVI from June 05, 2005 to February 24, 2006. 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. MAVI traded only on the above three days during the period January 01, 2008 to December 31, 2008.
4. It was alleged that Noticee being a director of GECMIC and IMM is a 'connected person' as defined under Regulation 2(c) (i) & (ii) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **'PIT Regulations'**) and an 'insider' as defined under Regulation 2(e) of PIT Regulations and had access to the unpublished price sensitive information. It was further alleged that Noticee being an insider and connected to MAVI had communicated the unpublished price sensitive information to MAVI who traded when in possession of the information and thereby contravened the provisions of Regulation 3(ii) and 4 of PIT Regulations. It was also alleged that the Noticee made wrong submissions to GCL on January 30, 2009 by stating that he has no relation whatsoever with MAVI.
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/4818/2010 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 6, 2010 denied all the charges leveled against him and *inter alia* submitted the following:

- a) *That GECMIC appointed IMM to provide management company services. As GECMIC was availing management company services offered by IMM, GECMIC is permitted to use the office address of IMM as a 'care of' address in Mauritius.*
- b) *That MAVI appointed IMM to provide management company services in 2005. As MAVI was availing management company services offered by IMM, MAVI is permitted to use the office address of IMM as 'care of' address in Mauritius. MAVI is only one of the many clients of IMM to which IMM was providing management company services. I was not involved in carrying out day to day business of MAVI. Other than providing authorized signatory services to MAVI on an administrative basis, I have no other role in the day to day management of MAVI and/or in the way MAVI carries on business. I am not party to any decision making on investments by MAVI. I was a director of MAVI for the period June 5, 2005 to February 24, 2006. Since February 24, 2006 I have not been a director of MAVI.*

c) *That the board meeting of GECMIC with respect to the delisting of shares in GCL was held on June 27, 2008 and notice of meeting and agenda for the meeting was circulated on June 25, 2008. No meeting regarding this matter was held prior to this date and I did not participate in any preliminary discussions on this subject between June 17, 2008 until the date of the board meeting. The notice of meeting and the agenda was circulated around evening time on June 25, 2008. I would have received the agenda dated June 25, 2008 in the evening in Mauritius. I would have read the agenda of the board meeting on June 25, 2008 in the evening. To this extent I admit that I was only in possession of 'price sensitive information' from June 25, 2008 evening till June 27, 2008 when the information was publicly released to the Stock Exchange by GCL. That the shares of GCL were purchased by MAVI on June 15, 2008 and assuming that this could only be done during normal trading hours on the Stock Exchange. MAVI would have completed the trades on June 25, 2008 by the time I would have received and read the agenda for the board meeting of GECMIC which was in the evening in June 25, 2008.*

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 email 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, but Noticee again sought for an adjournment. Final opportunity of hearing was provided to the Noticee on January 14, 2011 vide hearing notice dated December 21, 2011. Shri. Janak Dwarkadas, Senior Counsel, Shri. Rohan Rajadhyaksha, Shri. Aditya Khanna I/B M/s Lex Alliance, 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 the allegation in question being the alleged knowledge of Noticee with regard to proposed delisting of GCL. What is required to be established is that knowledge of this fact, being 'unpublished price sensitive information', was available with Noticee at the relevant time.*

- b) That the alleged 'direct link between GECMIC and MAVI', sought to be established by the commonality of the role played by IMM, viz that of providing management company services, cannot by itself lead to this illogical conclusion, unless and until it is established by necessary evidence that the same was firstly available with Noticee.*
- c) That it is well established that even where a quasi-judiciary authority is required to form an opinion subjectively, the subjective satisfaction must nevertheless be based on objective facts.*
- d) That the proposal of delisting though under contemplation of GE top management/ GECMIC level, to which Noticee was not a party, was sought to be brought to the attention of the board of directors of GECMIC for the first time by the agenda which was circulated on June 25, 2008 evening. The agenda for the board meeting came to be received by Noticee after trading hours on BSE and after the purchase in question had already been made by MAVI.*
- e) That under PIT Regulations the phrase 'connected' qualifies the persons who are connected with the listing company in respect of which the alleged insider trading has taken place. Thus, 'connected to MAVI' is not a relevant factor and does not attract PIT Regulations.*

9. During the personal hearing, Noticee was given a copy of the document given by JM Financial, Manager to the de-listing offer pertaining to the preliminary discussion held between June 17, 2008 and June 27, 2008 wherein Noticee was mentioned as one of the director of GECMIC present in the preliminary discussions. Noticee was given time to offer comments and to submit further written submissions. For replying to the aforesaid, Noticee sought extension of time to file the reply which was provided to him. Vide email dated April 7, 2011, Noticee requested for the correspondences made with JM Financial about the chronology of events prepared by them and their response for his record. A copy of the response of JM Financial was sent to the Noticee vide letter dated April 19, 2011.

10. Vide letter dated May 12, 2011, Noticee in addition to his earlier submissions made further following submissions:

- a) *That relying upon information provided by GCL and JM Financial, SEBI has alleged that Noticee was part of the preliminary discussions which took place at senior management level in GE prior to June 25, 2008 and allegedly communicated price sensitive information to MAVI.*
- b) *That Noticee has categorically stated in his reply dated August 6, 2010 that while there may have been discussions over phone/ email at GE senior management level, Noticee was not privy to these discussions. Noticee did not have access to the price sensitive information and did not communicate the alleged price sensitive information to MAVI.*
- c) *That on June 25, 2008 evening (17:05 hours), Noticee received by email notice of a board meeting to be held on June 27, 2008 between 9:30 am and 10 am through conference call; no agenda was attached to this notice.*
- d) *That on June 26, 2008 at about 11 pm (23:16 hours), another email was sent to Noticee with the papers for the board meeting. The papers comprised of two draft letters to be sent by GECMIC to GCL and draft resolutions to be passed by GECMIC board.*
- e) *That on June 27, 2008 at 9:26 am, a third email was sent to the Noticee attaching the agenda for the board meeting.*
- f) *That the board meeting GECMIC was held on June 27, 2008 in the usual way in which GE group conducts board meetings i.e. through conference call with all directors/ attendees calling in at a fixed dial in phone number. On June 27, 2008, Noticee first called in to the dial-in number at 9:32 am, and was requested to call back after 15 minutes. Noticee called in again at 9:48 am and the call went in for about 15 minutes. The board meeting on June 27, 2008 lasted 15 minutes.*
- g) *That at the board meeting on June 27, 2008, appropriate resolutions were passed for voluntary delisting of GCL and related matters.*
- h) *That on perusal of the emails dated June 27, June 26, June 27, 2008 indicated that the emails were sent by Ms. Luchmee Arunachalam, full time employee cum director of GECMIC and addressed to the directors of GECMIC and other personnel/ employees of*

*other GE Group companies viz. Mr. Amit Gupta, Mr. K Radhakrishnan, Mr. Suresh Krishnan, Mr. Geoff Culbert, Mr. Matt Cribbins and Mr. Sandeep Beri.*

- i) That on perusal of the minutes of the board meeting held on June 27, 2008 shows that three directors were present (Luchmee Arunachalam, Ashraf, Noufail Manjoo) and two directors participated through tele-conference. Apart from the GECMIC directors, Mr. Radhakrishnan, Mr. Suresh Krishnan and Mr. Geoff Culbert also participated in the board meeting through tele-conference from India and Tokyo respectively.*
- j) That Ms. Luchmee Arunachalam was closely involved in the delisting process of GCL on behalf of GECMIC and was coordinating with GCL/ other GE group companies.*
- k) That SEBI relied upon information provided by GCL and JM Financial, merchant banker appointed by GCL for the delisting. It appears that the information sought from GCL/ JM Financial was a description of events in chronological order which culminated in the delisting offer by GECMIC.*
- l) That according to GCL, 2 persons from GE group were involved in the preliminary discussions during the period June 17-27, 2008 viz Mr. Geoff Culbert and Mr. Stephanie Ban. However according to JM Financial 23 personnel/ employees of GE group were involved in the preliminary discussions during June 17-27, 2008. The list of 23 persons named by JM Financial include Mr. Geoff Culbert and Mr. Stephanie Ban and GE employees and personnel; based in New Delhi, Tokyo, Hong Kong, Singapore, Mauritius from various GE group companies such as GE Commercial Finance, Asia, GE Commercial Finance, India, GCL, GE Capital Service India and GE India.*
- m) That it appears that JM Financial has without application of mind named 23 personnel/ employees of GE group when GCL is categorically naming only two persons.*
- n) Neither GCL nor JM Financial have given exact dates and timings of the alleged discussions which took place by phone/ email over a period of 10 days (between June 17 and June 27, 2008) and who were the various persons involved in the discussions on the respective days.*

- o) That there is a contradiction between the information provided by GCL and JM Financial on this crucial fact as to who was involved in the preliminary discussions in the period June 17-27, 2008.*
- p) That neither GCL nor JM Financial has indicated which of the GECMIC directors were allegedly involved in the preliminary discussions in the period June 17-27, 2008 and/or their specific role/s.*
- q) That JM Financial has erred in stating that there was no physical meeting on June 27, 2008 and that the board resolution was passed by 'circular resolution'. As stated above the board meeting on June 27, 2008 took place through conference call with the directors/ attendees calling in to specific US phone number (001)(210)301-3788. Various other GE personnel also participated in the board meeting and answered the question raised by the directors.*

11. Vide letter dated August 6, 2011, Noticee reiterated the same submissions as mentioned in his earlier reply dated May 12, 2011.

### **CONSIDERATION OF ISSUES AND FINDINGS**

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

- i. Noticee being a director of GECMIC and IMM is a 'connected person' as defined under Regulation 2(c) (i) & (ii) of the SEBI PIT Regulations and an 'insider' as defined under Regulation 2(e) of PIT Regulations and had access to the unpublished price sensitive information.
- ii. Noticee was the direct link between GECMIC and MAVI and thus was connected to MAVI in terms of the definition of Regulation 2(c) (i) & (ii) of the SEBI PIT Regulations.
- iii. Noticee being an insider and connected to MAVI had communicated the unpublished price sensitive information to MAVI who traded when in possession of the information and thereby contravened the provisions of Regulation 3(ii) and 4 of PIT Regulations.



iv. Noticee made wrong submissions to GCL on January 30, 2009 by stating that he has no relation whatsoever with MAVI.

13. In view of the above it was alleged that the Noticee violated the provisions of Regulation 3(ii) and 4 of PIT Regulations.

14. Before moving forward, it will be appropriate to refer to the relevant provisions of Regulation 2(c), 2(e), 3(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, (i) 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 (ii) 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—***

*(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.***

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

- i. Whether Noticee is a 'connected person' as defined under Regulation 2(c) (i) & (ii) of the SEBI PIT Regulations and 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 MAVI in terms of the definition of Regulation 2(c) (i) & (ii) of the SEBI PIT Regulations.
- iii. Whether Noticee communicated the unpublished price sensitive information to MAVI and contravened the provisions of Regulation 3(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:**

16. 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:

<b>Date</b>	<b>Event</b>	<b>Venue</b>
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 from the submissions of the GCL and J M Financial that Noticee had access to the unpublished price sensitive information being part of the preliminary discussion to the delisting offer before it was made public.

vi. On analysis of the net buyers position prior to the announcement of delisting offer and net sellers after the announcement investigation observed that MAVI a registered sub-account of FII M.M. Warburg Bank and connected to the Noticee, traded before and after the corporate announcement. Investigation observed connection of Noticee with MAVI as follows:

a) Noticee the director of GECMIC and also a director of IMM, Company Secretary of GECMIC.

- b) IMM is also the Company Secretary of MAVI, a registered sub-account of FII M.M. Warburg Bank, since its inception on June 5, 2005 and was acting as company secretary, fund administrator and bank signatory.
- c) Noticee was earlier a Director of MAVI from June 5, 2005 to February 24, 2006.
- d) The contact phone number of the Noticee in Mauritius as provided by GCL to SEBI is +230 2129800 which is the same as appearing in one of the letter head of MAVI.

However during investigation GCL submitted that the Noticee had confirmed that he does not have any connection with MAVI. It was therefore alleged that the Noticee made wrong submissions by stating that he had no relation whatsoever with MAVI.

- vii. It was observed that MAVI bought and sold shares prior to and after the unpublished price sensitive information through the broker Stewart & Mackertich Wealth Management Limited as follows:

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

- viii. It was observed that during 01/01/2008 to 31/12/2008 MAVI traded in the captioned scrip only on three days i.e. during the investigation period.

- ix. It was therefore alleged that the Noticee being director of GECMIC and IMM was connected person as defined under Regulation 2(c) (i) & (ii) and an insider as defined under Regulation 2(e) of SEBI PIT and had access to the unpublished price sensitive information. Further it was alleged that being an insider and connected to MAVI communicated the unpublished price sensitive information to MAVI who traded when in possession of the information.

- x. 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.
- xi. I would now proceed with the issue whether Noticee was in possession or was privy to this un-published price sensitive information. Investigations observed that the Noticee was present in the preliminary discussions for the proposed delisting of the shares of GCL. Noticee in his reply to the SCN and during the hearing 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.
- xii. 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.*

xiii. 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 a

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 the Noticee with MAVI. 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 Ashraf Ramtoola), Geoff Culbert, Stephanie Ban and advisor took place. While Ashraf Ramtoola 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 Ashraf Ramtoola 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 Ashraf Ramtoola 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.*

xiv. Subsequently, SEBI supplied a copy of the letter from GECMIC to JM Financial stating that it was appointed as investment banker vide letter of agreement dated June 24, 2008. I note from the agreement supplied along with the letter of GECMIC that it has been signed by GECMIC but does not bear the signatures of JM Financial. GCL was then advised to provide a copy of the letter of agreement between JM Financial and GECMIC and also copy of the board proposal for appointing JM Financial as an investment banker to the delisting offer alongwith the names of the persons who were signatories to the said proposal. GCL vide letter dated September 15, 2011 submitted copy of the agreement dated June 30, 2008. Vide letter dated August 23, 2011, GECMIC was also advised to provide a copy of the agreement entered into between GECMIC and JM Financial and copy of board proposal for appointing JM Financial as an investment banker to the delisting offer along with the names of the persons who were signatories to the said proposal. However, no reply is received from GECMIC. A reminder email was sent to GECMIC and a copy to GE Capital India asking the same information as mentioned in letter dated August 23, 2011. Vide email date October 17, 2011. GE Capital India on behalf of GECMIC submitted following:

*a) Letter agreement dated June 24, 2008:*

*Upon receipt of your email, we have checked our records. It appears that engagement letter between GECMIC and JM Financial was dated June 30, 2008 and it was signed and accepted by authorized signatory of GECMIC on July 30, 2008. From our records it appears that as part of "Preliminary Discussions" the negotiation between GE and JM Financial for terms of engagement of JM Financial had commenced prior to Board meeting, however the engagement letter was finally issued after the Board Meeting held on June 27, 2008. As per information and documents available with us there was no other engagement letter of 24 June 2008*

*issued to JM Financial and therefore the date mentioned in the Indemnity Letter annexed in your email under reply seems incorrect and possibly was a typographical error. We have checked our records too and the Indemnity Letter forming part of the final Engagement Letter of June 30, 2008 available with us also carries the same typographical error.*

*b) Copy of the board proposal for appointing JM Financial as an investment banker to the delisting offer:*

*We invite reference to our letter of September 5, 2011 under cover of which we had inter alia submitted to you copy of the Engagement letter and the extract of the Board Resolution of GECMIC dated June 27, 2008. We state and clarify once again that at the Board meeting of GECMIC held on June 27, 2008 the proposal for voluntary delisting offer to acquire additional shares of GECTFS and to delist the shares of the Company was approved by the Board of GECMIC. At this board meeting authority was also granted to Directors of GECMIC, Mr. Kanwarpal Singh Bindra, Mr. Suresh Krishnan, Mr. Shardul Shroff and Ms Akila Agarwal to represent GECMIC for all matters relating to the Delisting Offer which inter alia included appointment of manager to the Delisting Offer. Pursuant to the above authority, JM Financial Consultants Private Limited was appointed Managers to the Delisting Offer and appointment letter was accepted by Mr. Suresh Krishnan on behalf of GECMIC. Mr. Suresh Krishnan was the CFO of GE Capital India at the relevant time and had negotiated the contract of appointment of JM Financial on behalf of GE & GECMIC. A copy of the Engagement Letter dated June 30, 2008 enclosed.*

*c) Names of the persons who were signatories to the said proposal:*

*Please refer to point b) above for our response to this query. As was mentioned during our earlier discussions and correspondence, we submit once again that since this delisting matter relates to prior period and further in view of most of the key personnel of GE who were handling this matter currently not being in employment of*

*GE, our response to your query are based on documents and information currently available on our record.*

xv. On perusal of copy of the engagement letter dated June 30, 2008 signed by JM Financial and GECMIC I observe that it is mentioned "*Pursuant to the recent discussions*". The letter does not contain any date when the discussion was held and does not contain the signature of the Noticee. However, notwithstanding the above even if it is presumed for a moment that JM Financial was appointed on June 24, 2008, GCL in its letter has indicated the name of the persons who were involved in the appointment wherein I note the name of the Noticee does not appear. While the letter of engagement being disputed and the purported "*typographical error*" as explanation put forth by the GCL is shrouded under mystery and cannot stand the test of evidence in itself as it appears to me to be tainted, the investigations have not been provided any other countervailing evidence on this aspect. Hence from the documents available it cannot be conclusively arrived at that the Noticee was included in the discussion for appointment of the investment banker on June 24, 2008.

xvi. Noticee in his reply has claimed that he was not in possession of the unpublished price sensitive information when MAVI traded in the shares of GCL on June 25, 2008 and further claimed that he is not the direct link between GECMIC and MAVI which was sought to be established by the commonality of the role played by IMM. With regard to the first claim of Noticee I note from the declaration dated January 30, 2009 made by Noticee which reads as follows:

➤ *I also confirm that I have not disclosed or transmitted any unpublished information to any one pertaining to delisting of equity shares of GE Capital Transportation Financial Services Limited from Bombay Stock Exchange that was provided to me of which I came across in any manner except in the course of discharge of my official duty.*

From the aforesaid declaration it appeared that Noticee was in possession of unpublished price sensitive information before the board agenda was circulated. Comments were sought from the Noticee vide email dated June 6, 2011 on the aforesaid declaration. Noticee vide letter dated June 29, 2011 inter alia submitted that:

- *That the declaration does not indicate that I was in possession of unpublished price sensitive information before the board agenda was circulated.*
- *I deny that I was in possession of unpublished price sensitive information before the board agenda was circulated.*
- *That the emails dated June 25, June 26, June 27, 2008 and telephonic records of June 27, 2008 clearly establish that I was first informed about the delisting when I read the board papers and agenda which would have been on June 27, 2008 morning prior to the board meeting.*

xvii. From the submissions made by the Noticee, GCL, J M Financial during the proceedings I observe as follows:

- a) There is no evidence to suggest beyond surmises that the Noticee was part of the preliminary discussion from June 17 2008 to June 24, 2008. As per available information it can be deduced that Noticee 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 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. Hence the Noticee had received or had access to the unpublished price sensitive information before it was made public.

In view of the Noticee having access to the unpublished price sensitive information he

can be determined to be an insider in terms of Regulation 2(e)(ii) of PIT.

xviii. Investigation observed that the Noticee was a connected person as per Regulation 2c(i) and (ii) of PIT. It is observed that the Noticee was not a director of GCL or was officer, employee of GCL or involved in any professional business relationship with GCL and hence does not fall under the definition of 'connected person' as per the aforesaid Regulation.

xix. I now discuss the alleged violation of the Noticee of Regulation 3(ii) of PIT. As per Regulation 3(ii) *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.*

Here the issue arises as to whether the Noticee communicated the unpublished price sensitive information to MAVI. Investigation has observed that the Noticee is connected to MAVI on basis of the following:

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

In view of the above and being insider it has been alleged that the Noticee has communicated the unpublished price sensitive information to MAVI.

The Noticee was a director of MAVI in 2005 however he was not a director of MAVI when the instant transactions happened in 2008. Further being a director of IMM who is engaged in professional capacity to MAVI and GECMIC does not bring out any connection with the Noticee and MAVI. However on perusal of the reply submitted by the Noticee it is observed that during June-July 2008 Noticee was acting as authorized

signatory/bank account signatory for MAVI though was not involved in carrying on day today business of MAVI. With regard to the phone no Noticee has stated that MAVI uses the address of IMM at Mauritius as a “care of” address and so MAVI has the same phone number as the Noticee and other employees /personnel of IMM. It is observed that the Noticee was the authorized signatory to the bank account for MAVI. Even though he is not involved in the day today activities his involvement as authorized signatory itself proves that he is related/known to MAVI 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.

xx. While it has already been established that Noticee was an insider and was in possession of the unpublished price sensitive information, I observe that the information was received by the Noticee at 17.05 hrs on June 25, 2008 and MAVI 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 the Noticee. Further investigation does not mention any specific direct documentary evidence on record to show that MAVI 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. Thus there is nothing on record before me to establish that the unpublished price sensitive information was communicated by the Noticee.

xxi. While there is some doubt in my mind about the convenient coincidences and circumstances, given the above, I am inclined to grant a benefit of doubt to the Noticee and conclude that the violation of Regulation 3(ii) of PIT does not stand established for want of conclusive evidence. Consequently the violation of Regulation 4 of PIT does not stand.



## **ORDER**

1. 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.
2. 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**