

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. PKB/AO- 42/2011]**

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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  
Gennex Laboratories Ltd.  
And its directors:  
Vinod Baid  
U.C. Bhandari  
Y. Ravinder Reddy  
Kishore Jhunjhunwala**

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**BRIEF FACTS OF THE CASE**

1. Investigation into the affairs relating to buying and selling or dealing in the shares of Gennex Laboratories Limited (hereinafter referred to as 'Noticee -1' or 'GLL' or 'the company') was made to ascertain whether any provision of the SEBI Act, 1992 and various rules and regulations made there under have been violated. The main focus of the investigation was to ascertain whether there was any violation of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 during the period of April 30, 2007 to November 18, 2008 (hereinafter referred to as the 'Investigation Period').
2. GLL was incorporated in 1985 as a private limited company and became public limited in 1994. It was originally promoted by Pharmasia Ltd. Later, Mr. Vinod Baid & Associates acquired a controlling stake in 1994 for setting up facilities for manufacture of Bulk Drugs and Drug Intermediates. It came out with public issue of 14, 00,000 equity shares of Rs. 10 each aggregating to Rs. 1.40 Crore in

February 1996. The name of the company was changed to Gennex Laboratories Ltd. w.e.f. September 19, 2007.

3. During the period of Investigation, the Directors of the company were Shri Vinod Baid – Chairman ('Noticee -2'), Shri U. C. Bhandari ('Noticee-3'), Shri Y. Ravinder Reddy ('Noticee - 4') and Shri Kishore Jhunjunwala ('Noticee-5').
4. During April 2007–December 2007, it is noted that the shareholding of promoters have changed from 54, 42,836 shares (53.62% of the paid up capital) to 25, 08,800 shares (24.72%) which includes 25 lakh shares pledged with Bank of India. Thus, there is change of 29,34,036 shares (28.90%) wherein all the promoters except Vinod Baid, L Lalitha, L Vithal Rao and Prudential Investments Ltd. had sold/transferred their shares. As per shareholding pattern, the major selling promoters were Mercury Fund Management Company Ltd. (hereinafter referred to as 'MFMCL') (16, 36,036 shares) and Roopshri Finvest (3, 32,000 shares). During the period of investigation i.e. April 30, 2007 – November 18, 2008, MFMCL had sold 29, 94,394 shares and Roopshri sold 9, 08,025 shares. On analyzing the demat statement of MFMCL, it was noted that 2,95,300 shares were received in off market from another promoter Prudential Stocks & Securities Limited (client ID 14872936) since November 10, 2007. From these shares, only 34,700 shares were sold in the market during November 12-29, 2007 and balance 2, 60,600 shares were transferred to his another BO ID 1201090001221636. It is also observed that MFMCL had received 9, 60, 000 shares in off market on July 04, 2007 from Vinod Baid, CMD of GLL. However, Roopshri was holding 3, 32,000 shares as on April 1, 2007 and its purchase and sale were 6, 09,556 shares and 9, 08,025 shares respectively.
5. As per shareholding pattern for quarter ended June 2007, Vinod Baid was holding 9, 64, 800 shares (9.51% of the equity capital). Vinod Baid transferred 9,60,000 shares (9.46% of the equity capital) to MFMCL on July 04, 2007, and thus, Vinod Baid was required to disclose this transfer under Regulation 13(4) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992. On the other hand, Mercury was required to submit the disclosure under Regulation 7(1) of SEBI (SAST) Regulations, 1997 as well as Regulation 13(1) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992. The company in turn was required to disclose to

the stock exchanges under Regulation 13(6) of SEBI (PIT) Regulations, 1992 and Regulation 7(3) of SEBI (SAST) Regulations, 1997. The company had allegedly not informed SEBI about any disclosure either under SEBI (SAST) Regulations, 1997 or SEBI (PIT) Regulations. Further, BSE has informed that during January 2007 – December 2008, it had received only one disclosure under SEBI (SAST) Regulations on 31.10.08 given by Religare Securities Ltd. and no disclosure under SEBI (PIT) Regulations.

6. GLL had made certain corporate announcements during the investigation period, some of which were not implemented. It is noted that on July 4, 2007, immediately before the corporate announcement about investment proposal, MFMCL had received 9.60 lakh shares in off market from the promoter of GLL i.e. Vinod Baid and sold 9, 30,850 shares during July 5,2007 to August 22,2007. The price rise during this period was from Rs. 24.10 to Rs. 26.55. It is observed that the promoter has transferred the shares in off market to erstwhile promoter (MFMCL) which in turn sold them in the market taking advantage of the positive announcement by the Company which was never implemented and the Company had also not informed the stock exchanges about subsequent implementation status. It is indicative of the fact that the Company had planted a false announcement about the aforesaid investment proposal and Vinod Baid had sold his 9.60 lakh shares through MFMCL. MFMCL had facilitated Vinod Baid in off loading the shares of GLL in the market. This act of the company, Vinod Baid & MFMCL could have been an artifice/device to defraud the investors in the market by presenting the company as a lucrative investing option on account of proposed foreign investors. Thus, they might have acted together to play fraud on innocent investors. In view of the same, it was of utmost importance to SEBI to be able to procure information about the corporate announcements and subsequent transfer of shares.
7. Summons were thereby issued to GLL to provide information. It has been alleged that GLL did not comply with the summons. It has been observed that Vinod Baid was the CMD and Shri U. C. Bhandari, Y. Ravinder Reddy and Kishore Jhunhunwala were the Directors of Gennex Laboratories Ltd. and were responsible for conduct of the business of the Company. According to Section 27 of the SEBI Act, 1992, *"Where an offence under this Act has been committed by a*

*company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly."*

8. In view of the aforesaid, it was alleged that the Company, Gennex Laboratories Ltd. and its directors, Vinod Baid, U. C. Bhandari, Y. Ravinder Reddy and Kishore Jhunhunwala violated the provisions of Sections 11 C (2), 11C (3) read with 11 C(6) of the SEBI Act, 1992.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

9. The undersigned was appointed as Adjudicating Officer ('AO') vide order dated March 29, 2011 under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred as 'Rules') to enquire into and adjudge upon the alleged violations committed by the noticee under section 15 A (a) of the SEBI Act, 1992.

#### **SHOW CAUSE NOTICE, REPLIES AND HEARING**

10. A show cause notice (SCN) dated May 23, 2011 was issued to the Noticees. GLL, vide its letter dated June 7, 2011, submitted its reply to the SCN and the same has been elaborately dealt with while arriving at the findings in the subsequent paragraphs. The Directors did not file individual replies to the SCN.
11. Vide letters of inquiry dated July 6, 2011, GLL and its Directors were given an opportunity to be heard before the undersigned on July 21, 2011. Noticee -3, Noticee - 4 and Noticee - 5 submitted letters dated July 20, 2011 wherein they stated that since they were independent, non-executive directors, they were not involved in the day-to-day functioning of GLL and had therefore not been in a position to comply with the summons.
12. Mr. KVLN Bhaswanth, Chief Operating Officer of GLL, attended the hearing along with Mr. Vinod Baid, Chairman and Director of GLL. Mr. Bhaswanth submitted that the officer dealing with the matter had left the service of the

company and he was not fully aware about the matter and hence the summons could not be complied with. In any case, the non-compliance was not intentional but could be because of a lack of understanding. He also submitted that Noticee – 2 (Vinod Baid) was the Chairman of the Board and was not involved in the day-to-day functioning of GLL. The company was managed by independent team of staff members headed by Mr. Gopal Krishnan, Executive Director (not board member) and assisted by COO Mr. KVLN Bhaswanth and other staff members. It was reiterated that Noticee-3, Noticee-4 and Noticee-5 were independent directors on the Board and were not involved in day to day management.

### **ISSUES FOR CONSIDERATION**

13. On perusal of the SCN, Noticees' submissions and other material available on record, I have the following Issues for consideration, viz.,

- Whether the Noticees violated the provisions of Sections 11C (2) and 11C (3) read with 11 C (6) of the SEBI Act, 1992?
- Whether the Noticees are liable for monetary penalty under Section 15A (a) of SEBI Act, 1992?
- If found guilty, what should be the quantum of penalty imposed upon the Noticees in accordance with the principles of Section 15 J of the SEBI Act?

### **FINDINGS**

14. On careful perusal of the material available on record, I proceed to discuss the Issues for Consideration and my findings are recorded as under:

***ISSUE 1: Whether the noticee violated the provisions of Sections 11C (2) and 11C (3) read with 11 C (6) of the SEBI Act, 1992?***

15. I observe that summons dated April 26, 2010 were issued to the company to provide the following information:

- a. *"The company has incurred profits for quarters ending June 2007 to December 2007 but incurred loss for quarter ended March 2008. What were the reasons for sudden loss in quarter ended March 2008 despite profits in preceding three quarters?"*
- b. *When & how Mercury Fund Management Pvt. Ltd. become the promoter of GLL? When & how it ceases to be promoter of GLL? Why 9.60 Lakh shares were transferred by Shri Vinod Baid, Chairman to MFMPL on July 4, 2007 in off market? Whether consideration was paid and received by the respective entities? Please provide a copy of bank statement of the said entity evidencing payment & receipt of funds?*
- c. *Whether the aforesaid transfer on July 4, 2007 was transfer between promoters inter-se? If yes, whether a report is filed in this regard for claiming exemption u/s 3(4) of SEBI (Takeovers) Regulations, 1997?*
- d. *Copy of disclosures made by promoters etc. to the company as well as by the company to the stock exchange during April 01, 2007 to December 31, 2008 under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and SEBI (Prohibition of Insider Trading) Regulations, 1992.*
- e. *The company in its board meeting on Aug 26, 2008 has unanimously decided to make an offer for purchase of 51% Stake in Ammana Bio Pharma Ltd and authorized the Managing Director of the Company to enter into necessary Shareholders Agreement with them for acquisition of said stake. The company is advised to submit the implementation status of this offer.*
- f. *Details of bank a/c's maintained by the company during January 01,2007 – December 31,2008.*
- g. *Copy of PAN Card of the company."*

16. Vide letter dated May 5, 2010, the Company submitted a partial reply to the summons wherein it stated that losses in quarter ended March 2008 was due to sluggish market conditions – both domestic & international. The company confirmed about complying with SEBI (SAST) Regulations & SEBI (PIT) Regulations but without supporting documents. The Company was evasive about the transaction between MFMCL and Vinod Baid and did not reply to all the questions asked.

17. In view of the incomplete information submitted by the Company, summons dated May 20, 2010 were issued to the Company in continuation of the previous summons, to provide the following information:

*"Please note that this is in continuation to our earlier summons dated April 26,2010 seeking specific information in the matter of Gennex Laboratories Ltd. Vide reply dated May 5,2010, some information was provided by the company but specific reply to the following queries is still to be given:*

- a. Has Mercury Fund Management Co Ltd. become the promoter of GLL due to common director Shri Kishore Jhunjhunwala? If yes, when Kishore Jhunjhunwala was appointed as director of GLL and also when he ceases to be director of GLL.*
- b. Has Mercury Fund Management Co Ltd. ceases to be the promoter of GLL once Shri Kishore Jhunjhunwala ceases to be director of GLL?*
- c. The company has informed about compliance of SEBI (SAST) Regulations, 1997 and SEBI (PIT) Regulations, 1992 as and when required. However, it may be noted that the information sought vide aforesaid summons was specific regarding the disclosures made by promoters etc. to the company as well as by the company to the stock exchange under the aforesaid regulations during April 01, 2007 to December 31, 2008 under SEBI.*

*In view of the above, the company is advised to inform whether the disclosures were filed with the company for the following transactions:*

- 1. The shareholding of Shri Vinod Baid is changed from 4800 shares (0.05% of the paid up capital) in March 2007 to 964800 shares (9.51% of the paid up capital) in June 2007 and require disclosure under Regulation 7(1) of SEBI (SAST) Regulations, 1997 as well as Regulation 13(1) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992.*
- 2. Shri Vinod Baid transferred 9.60 Lakh shares to Mercury Fund Management Co Ltd. on July 4, 2007. This transaction requires disclosure by Shri Vinod Baid under Regulation 13(3) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992. Similarly, Mercury Fund Management Co Ltd. was also required to disclose under Regulation 7(1) of SEBI (SAST) Regulations,*

*1997 as well as Regulation 13(1) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992.*

3. *Mercury Fund Management Co Ltd. was holding 16,36,036 shares (16.12% of the equity capital) for quarter ended March 2007 and it reduced to 1,19,086 shares (1.17% of the equity capital) for quarter ended June 2007. This change in shareholding is required to be disclosed under Regulation 13(3) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992.*

*The company is advised to inform whether the disclosures, as stated above, were made to the company by the respective entities and in turn, the same disclosures were made by the company to the stock exchanges. If yes, copy of the said disclosures with the acknowledgement proof may be provided.*

- d. *Copy of bank a/c's statements maintained by the company with State Bank of Hyderabad during January 01, 2007 – December 31, 2008.*

18. Vide letter dated May 25, 2010, the Company asked for additional time of 3-4 weeks for filing reply to the summons. SEBI, vide letter dated May 26, 2010, advised the company to file reply to the aforesaid summons by June 7, 2010. Vide letter dated June 7, 2010, the Company submitted that it would file the desired information to SEBI by June 25, 2010. However, SEBI was not in receipt of any reply from the Company.

19. Noticee-1, the company, vide reply dated June 7, 2011 submitted that it had furnished relevant information as sought for by the Board vide its summons dated April 26, 2010, May 20, 2010 and May 26, 2010 (letter). However, it had noticed in the SCN that SEBI required specific information as to some queries as notified in page 8 of the Notice and therefore submitted the same as annexure to the reply. However I find that the information now also being submitted is not complete information as it has not provided the information on all the points raised in the summons.

20. During the course of the hearing, it was pointed out to Noticee-1 that the specific queries as laid down in the SCN were only a reproduction of the questions asked vide summons dated May 20, 2010, which the company had failed to comply



with. Summons dated May 20, 2010 was absolutely unambiguous about the information required from the company.

21. Noticee-1 submitted that it could not comply with the summons because the officer dealing with the matter had left the service of the company and the COO was not fully aware of the matter. The company submitted that this non-compliance with the summons was not intentional and could have been because of a lack of understanding. This contention of Noticee-1 cannot be accepted.
22. It was also submitted by the four directors that they were independent and non-executive directors who were not involved in the day -to-day management of the company and were therefore not in a position to comply with the summons. Mr. U. C. Bhandari, Mr. Y. Ravinder Reddy and Mr. Kishore Jhunjhunwala, in their replies dated July 20, 2011 have stated that they was non-executive directors and in the said capacity, their role in the management of the affairs of the company was very limited, more so in matters relating to transfer/sale/purchase of shares between the company and other entities and vice versa. During the course of the hearing, the Chief Operating Officer of the company also confirmed the submissions of the directors and stated that Mr. Vinod Baid was the Chairman of the Board and not involved in day to day functioning of the company. The company was managed by independent team of staff members headed by Mr. Gopal Krishnan, Executive Director (not the board member) assisted by COO Shri KVLN Bhaswanth and other staff members. Mr. Ravinder Reddy, Mr. Kishore Jhunjhunwala and Mr. U. C. Bhandari were the independent directors on the Board and were not involved in day to day management. I find that there is no evidence on record to suggest that these directors were involved in the day to day activities of the company. I therefore tend to give benefit of doubt to the Directors and I do not find Noticee-2, Noticee-3, Noticee-4 and Noticee-5 guilty of violating the provisions of Sections 11C (2) and 11C (3) read with 11 C (6) of the SEBI Act, 1992.
23. From the above discussion, I find that Noticee-1, Gennex Laboratories Ltd. did not comply with the summons dated May 20, 2010 and therefore violated the provisions of Sections 11C (2) and 11C (3) read with 11 C (6) of the SEBI Act, 1992.

***Issue 2: Whether the Noticees are liable for monetary penalty under Section 15A (a) of SEBI Act, 1992?***

24. The allegations against Noticee-2, Noticee-3, Noticee-4 and Noticee-5 have not been established and they are therefore not liable for penalty under Section 15 A (a) of the SEBI Act of 1992.
25. Since the violation of the alleged provisions of law has been established in respect of Noticee-1, I believe that this is a fit case to impose monetary penalty under Section 15 A (a) of the SEBI Act, 1992, which reads as under:

***Penalty for failure to furnish information, return, etc.***

***15A.*** If any person, who is required under this Act or any rules or regulations made thereunder, –

*(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;*

***ISSUE 3: What should be the quantum of penalty imposed upon the Noticee in accordance with the principles of Section 15 J of the SEBI Act?***

26. While imposing monetary penalty 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.”*

27. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the default. Further, the amount of loss caused to an investor or group of investors also cannot be quantified on the basis of the available facts and data. However, such non-cooperation with investigative authorities leads to delay in the unraveling of unfair market practices, which results in the erosion of investor confidence in the market.
28. In the foregoing paragraphs it is now established that Noticee-1, Gennex Laboratories Ltd., failed to provide necessary information to the Investigating Authority of SEBI in response to the summons issued in terms of Section 11(3) of the SEBI Act, 1992. The said information was very relevant and important in the whole investigation process. It is noted that the company had made certain announcements which did not materialise but had lead to a rise in the price of its shares. During this period of price-rise, it was observed that promoter entities had offloaded their shares in the market. By not providing this crucial information which could have unraveled serious manipulative or fraudulent practices on the part of the company or entities related to it, Noticee-1 seriously crippled the investigative process. In this regard, I refer to the observation of the Hon'ble Securities Appellate Tribunal in Appeal No. 184 of 2010 (Mr. Jalaj Batra vs. SEBI, decided on 06-12-2010); wherein it was held that - "*.....Having regard to the circumstances of this case, we are more than satisfied that the summons had in fact been received by the appellant and that he failed to respond to the same. We have observed time and again that it is of utmost importance that market players like the appellant should fully cooperate with the investigations that are carried out by the Board, the watchdog of the securities market. If market players and intermediaries avoid appearing before the investigating officer or furnish the necessary information sought from them, the Board as a market regulator will not be able to carry out its statutory functions and duties of protecting the integrity of the securities market and the investigations would be grossly hampered. Non co-operation with the market regulator has to be viewed seriously. We do not know what else would have come to light if the appellant had appeared before the investigating officer or if he had furnished the requisite information that was sought from him.....*" Thereby, it is established beyond doubt that Noticee-1 tried to elude the Investigating Authority, which hampered the investigation process. Considering the facts and circumstances of the case and the violation committed by Noitcee-1, I am of the view that imposing a penalty of Rs. 10, 00,000/- (Rs.

Ten Lakhs only) on Gennex Laboratories Ltd. would be commensurate with the violation of Section 11C (2) and 11C (3) read with Section 11 C (6) of the SEBI Act by Noticee-1.

**ORDER:**

29. Considering the facts and circumstances of the case, in terms of the provision of Section 15A (a) of SEBI Act and Rule 5(1) of the Rules, I hereby impose a penalty of Rs. 10, 00,000/- (Rupees Ten Lakhs only) on Gennex Laboratories Ltd. for non compliance of summons issued by Investigation Authority.
30. The penalty shall be paid by way of demand draft drawn 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 shall be forwarded to Shri Ashish Kumar, DGM, Investigation Department, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
31. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this order are sent to the noticee and also to Securities and Exchange Board of India.

**Date: July 29, 2011**

**Place: Mumbai**

**P. K. Bindlish**

**Adjudicating Officer**