

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. PKB/AO- 43 /2011]**

**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
Vinod Baid**

**In the Matter of
Gennex Laboratories Ltd.**

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 '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, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and SEBI (Prohibition of Insider Trading) Regulations, 1992 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. Shri Vinod Baid (hereinafter referred to as 'the Noticee') was the Chairman and Promoter of the Company.
4. During April 2007–December 2007, it is noted that the shareholding of promoters had 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 the Noticee, 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. ('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 the Noticee. 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, the Noticee was holding 9, 64,800 shares (9.51% of the equity capital). The Noticee transferred 9,60,000 shares (9.46% of the equity capital) to MFMCL on July 04,2007, and thus, was required to disclose this transfer under Regulation 13(4) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992. Further, BSE has informed that during January 2007 – December 2008, it has 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 has received 9.60 lakh shares in off market from the promoter of GLL

i.e. the Noticee 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 Noticee had 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 the Noticee had sold his 9.60 lakh shares through MFMCL. MFMCL had facilitated the Noticee in off loading the shares of GLL in the market. This act of the company, the Noticee & 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 transfer of shares between the Noticee and MFMCL and disclosures supposed to be made in that regard.

7. Summons were issued to the Noticee to provide information with regard to his dealings in the scrip of the company and the disclosures made by him in that regard. It has been alleged that the Noticee did not comply with the summons.
8. In view of the aforesaid, it was alleged that the Noticee violated the provisions of Regulation 13 (4) read with Regulation 13 (5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 and 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 sections 15 A (a) and 15 A (b) 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 Noticee and was sent to both his Andhra Pradesh address as well as Kolkata address Both the SCNs were duly delivered and the proof of delivery is available on record. The Noticee, vide letter dated June 11, 2011, submitted his reply to the SCN and the same has been elaborately dealt with while arriving at the findings in the subsequent paragraphs.
11. The Noticee was granted an opportunity to be heard before the undersigned on July 21, 2011. The Noticee attended the hearing and stated that he had not received the summons dated May 20, 2010 as it was addressed to the address of the company in Andhra Pradesh. The earlier summons dated April 20, 2010 had been received by him to which he had duly replied vide letter dated May 3, 2010. The Noticee admitted that he had not made disclosures under the Insider Trading Regulations because he thought that the disclosures under the Takeover Regulations would suffice.

ISSUES FOR CONSIDERATION

12. On perusal of the SCN, Noticee's submissions and other material available on record, I have the following Issues for consideration, viz.,
- Whether the Noticee violated the provisions of Regulation 13 (4) read with Regulation 13 (5) of SEBI (Prohibition of Insider Trading) Regulations, 1992?
 - Whether the Noticee violated the provisions of Sections 11C (2) and 11C (3) read with 11 C (6) of the SEBI Act, 1992?
 - Whether the Noticee is liable for monetary penalty under Section 15A (a) and 15 A (b) of SEBI Act, 1992?
 - If found guilty, what should be the quantum of penalty imposed upon the Noticee in accordance with the principles of Section 15 J of the SEBI Act?

FINDINGS

13. 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 Regulation 13 (4) read with Regulation 13 (5) of SEBI (Prohibition of Insider Trading) Regulations, 1992?

14. It is alleged that the Noticee violated the provisions of Regulation 13 (4) read with Regulation 13 (5) of SEBI (Prohibition of Insider Trading) Regulations, 1992, which read as below:

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed company

Continual disclosure

13 (4) Any person who is a director or officer of a listed company, shall disclose to the company in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 working days of:

- (a) the receipts of intimation of allotment of shares, or*
- (b) the acquisition or sale of shares or voting rights, as the case may be.*

15. It has been mentioned that as per shareholding pattern for quarter ended June 2007, the Noticee was holding 9, 64,800 shares (9.51% of the equity capital) of the company. The Noticee transferred 9,60,000 shares (9.46% of the equity capital) to MFMCL on July 04,2007, and thus, was required to disclose this transfer under Regulation 13(4) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992 as the Noticee was the Chairman of the company. I find that the Noticee has himself admitted during the course of the hearing that he had not filed disclosures under Regulations 13 (4) read with 13 (5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 because he thought that it was sufficient to make disclosures under the Takeover Regulations. The Notice's contention is not acceptable. The entire disclosure regime is meant to facilitate the free flow of

information in the market and to maintain transparency so that the acts of individuals do not expose the market to risks. Therefore, taking a casual or negligent approach to question of disclosures is not just improper but a breach of law that needs to be dealt with seriously. I find the Noticee guilty for the violation of under Regulations 13 (4) read with 13 (5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992.

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?

16. It is alleged that the Noticee violated the provisions of Sections 11 C (2), 11C (3) read with 11 C(6) of the SEBI Act, 1992, which read as below:

Investigation

11 C (2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

(6) If any person fails without reasonable cause or refuses—

(a) to produce to the Investigating Authority or any person authorised by it in this behalf any book, register, other document and record which is his duty under sub-section (2) or sub-section (3) to produce; or

(b) to furnish any information which is his duty under sub-section (3) to furnish; or

(c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or

(d) to sign the notes of any examination referred to in sub-section (7),

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.

17. Summons dated April 26, 2010 was issued to the Noticee to provide the following information:

- a. *"Why 9.60 Lakh shares were transferred by you to MF MPL on July 4, 2007 in off market? Whether consideration was received by you for this transaction? Please provide a copy of bank statement evidencing receipt of funds?"*
- b. *Whether the aforesaid transfer on July 4, 2007 was transfer between promoters inter-se, as mentioned in SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997?*
- c. *Copy of disclosures made by you to the company as well as 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.*
- d. *Details of bank a/c's maintained by you during January 01, 2007 – December 31, 2008.*
- e. *Copy of PAN Card."*

18. Vide letter dated May 3, 2010, the Noticee replied that the shares were transferred as security in connection with financial assistance extended by MF MCL and proper consideration was received. He also stated that MF MCL was not a promoter of the Company and that the transfer of shares was not between promoters inter-se. He stated that all requisite disclosures under the Takeover Regulations were made but did not provide copies of these disclosures as demanded by SEBI. The Noticee also provided the details of the banking account held by him during the period January 2007 to December 2008.

19. In view of the incomplete information submitted by the Noticee, summons dated May 20, 2010 were issued to the Noticee 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 3, 2010, some information was provided by the company but specific reply to the following queries is still to be given:

- a. *Copy of bank statement evidencing receipt of funds for the consideration received after transfer to 9.60 Lakh shares to MF MPL on July 4, 2007 in off market?*

- b. Your shareholding was 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. Also inform the details of the entities from whom 9.60 lakhs shares were received. Whether those shares, at the time of receipt, were in physical mode or demat mode?*
- c. You transferred 9.60 Lakh shares to Mercury Fund Management Co Ltd. on July 4, 2007. This transaction requires disclosure by you under Regulation 13(3) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992.*

Please inform whether the aforesaid disclosures (b & c) were made to GLL as well as stock exchange. If yes, copy of the said disclosures with the acknowledgement proof may be provided.

- d. Copy of bank a/c's statement maintained with ABN AMRO Bank, Kolkata during January 01, 2007 – December 31, 2008."*

20. The proof of delivery of both the summons is available on record. However, no reply was received from the Noticee to the summons dated May 20, 2010.

21. The Noticee, in his reply dated June 11, 2011, has submitted that he had responded to SEBI's summons dated April 20, 2010 vide letter dated May 3, 2010 and thereafter he had received no communication from SEBI and that if he had been required to submit further information, he would have complied. During the course of the hearing, the Noticee submitted that he resided in Kolkata and the summons had been sent to him at the company's Andhra Pradesh address and therefore he hadn't received it.

22. I observe that the first summons dated April 20, 2010 was sent to the Noticee through the company at its Andhra Pradesh, i.e. Sy No. 133, Bollaram, Jinnaram Mandal, Medak – 502325, Andhra Pradesh. This was duly received by the Noticee and he submitted his reply also vide letter dated May 3, 2010. Incidentally, this reply was sent from the Andhra Pradesh address only. As the information was found incomplete, the second summons was also sent to the Noticee through the company at the same address to which the first summons

was sent and reply was received. The Noticee claims to have not received the summons, even though the proof of delivery of the same to the company is available on record.

23. The Noticee claims that he had not received the second summons dated May 20, 2010 as he resides in Kolkata and the summons was sent to the address of the company at Andhra Pradesh. I note that the earlier summons was also received at the address of the company at Andhra Pradesh which was duly received by the Noticee and replied from there only. I also note that the Noticee was the Chairman of the company and it is hard to believe that the company would not have placed the summons addressed before their Chairman for compliance, while it had placed the earlier summons before the Chairman for compliance. I also find that the Noticee has not brought any evidence on record to suggest that how company had dealt with the summons issued to him at the address of the company. Keeping all this in view, I find it difficult to accept the explanation of the Noticee that he had not received the summons dated May 20, 2010.

24. Besides, I find that the Noticee has not submitted the following information as required vide summons dated April 20, 2010, receipt of which is not in dispute:

(a) Copies of the disclosures made by the Noticee to the company and the Stock Exchange between April 1, 2007 to December 31, 2008 under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. In his reply, the Noticee merely stated that he had complied with the disclosure requirements under SEBI (SAST) Regulations but did not provide the details of them or the copies thereof as required.

(b) Copies of the disclosures made by the Noticee to the company and the Stock Exchange between April 1, 2007 to December 31, 2008 under SEBI (Prohibition of Insider Trading) Regulations, 1992. Neither did the Noticee state whether he had complied with the disclosure requirements under SEBI (PIT) Regulations, nor did he provide copies thereof.

- (c) Copy of bank statement evidencing receipt of funds for consideration received by MFMCL for transfer of 9.60 lakh shares to MFMCL, which was not provided by the Noticee.

25. I observe that the essence of the information required from the Noticee was not provided because the Noticee merely made unsubstantiated statements which were not supplemented by documentary evidence, as required by SEBI. In the absence of the same, it was not possible to verify the claims of the Noticee regarding disclosures made by him and consideration received by him for the transfer of shares. In order to acquire this specific information that was not provided by the Noticee, summons dated May 20, 2011 was issued to the Noticee which was not responded to by the Noticee. Therefore, it is evident that the Noticee did not comply completely with the summons dated April 20, 2010 and did not comply at all with the summons dated May 20, 2011.

26. In view of the above, I find the Noticee guilty of violating the provisions of Sections 11C (2) and 11C (3) read with 11 C (6) of the SEBI Act, 1992.

ISSUE 3: Whether the Noticee is liable for monetary penalty under Section 15A (a) and 15 A (b) of SEBI Act, 1992?

27. The Noticee has been found guilty of violating the provisions of Regulations 13 (4) read with 13 (5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 and Sections 11C (2) and 11C (3) read with 11 C (6) of the SEBI Act, 1992 and is therefore liable for penalty under Section 15 A (a) and 15 A (b) of the SEBI Act, 1992, which read as below:

15A. Penalty for failure to furnish information, return, etc. - 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;*
- (b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, 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 4: What should be the quantum of penalty imposed upon the Noticee in accordance with the principles of Section 15 J of the SEBI Act?

28. 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.”*

29. 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, non-compliance with SEBI's disclosure regime and 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. In the foregoing paragraphs it is now established that the Noticee, Vinod Baid, failed to make requisite disclosures under the Insider Trading Regulations and thereby compromised the integrity of the securities market. The Noticee also failed to provide complete 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 such as the Noticee 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, the Noticee seriously crippled the investigative process. Thereby, it is established beyond doubt that Noticee tried to elude the Investigating Authority, which hampered the investigation 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.....”

30. The Noticee, vide his reply dated June 11, 2011 and during the course of the hearing held on July 21, 2011, has stated his willingness to provide the information required by SEBI. However, the information the Noticee is now willing to provide is not relevant for the present proceedings.

31. Considering the facts and circumstances of the case and the violations committed by Noticee, I am of the view that imposing a penalty of Rs. 2, 00,000/- (Rs. Two Lakhs only) on Vinod Baid under Section 15 A (a) and a penalty of Rs. 1, 00,000/- (Rs. One Lakh Only) under Section 15 A (b) would be commensurate with the violations of Sections 11C (2) and 11C (3) read with Section 11 C (6) of the SEBI Act and Regulations 13 (4) read with 13 (5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 respectively by the Noticee.

ORDER:

32. Considering the facts and circumstances of the case, in terms of the provisions of Section 15A (a) and 15 A (b) of SEBI Act and Rule 5(1) of the Rules, I hereby impose a penalty of Rs. 2, 00,000/- (Rs. Two Lakhs only) under Section 15 A (a) and a penalty of Rs. 1, 00,000/- (Rs. One Lakh Only) under Section 15 A (b), i.e. a total penalty of Rs. 3, 00,000/- (Rupees Three Lakhs only) on Vinod Baid for violating the provisions of Sections 11C (2) and 11C (3) read with Section 11 C (6) of the SEBI Act and Regulations 13 (4) read with 13 (5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992.

33. 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.
34. 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: August 9, 2011

Place: Mumbai

P. K. Bindlish
Adjudicating Officer