

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. PKB/AO- 49 /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
Mercury Fund Management Co. Ltd.**

**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 ₹ 10 each aggregating to ₹ 1.40 Crore in February 1996. The name of the company was changed to Gennex Laboratories Ltd. w.e.f. September 19, 2007.

Page 1 of 21

3. Mercury Fund Management Co. Ltd. (hereinafter referred to as 'the Noticee' or 'MFMCL') was the 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 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 the Noticee (16, 36,036 shares) and Roopshri Finvest (3, 32,000 shares). During the period of investigation i.e. April 30, 2007 – November 18, 2008, the Noticee had sold 29, 94,394 shares and Roopshri sold 9, 08,025 shares. On analyzing the demat statement of the Noticee, 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 the Noticee had received 9, 60, 000 shares in off market on July 04, 2007 from Vinod Baid. 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 the Noticee on July 04, 2007. The Noticee 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. 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. Similarly, as per shareholding pattern for quarter ended March 2007, the Noticee (promoter) was holding 16, 36,036 (16.12% of the equity capital) and it reduced to

1, 19,086 shares (1.17% of the equity capital) for quarter ended June 2007. This change in shareholding was required to be disclosed under Regulation 13(3) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992 but no disclosures were observed, as stated in preceding para.

7. The Noticee received shares in off market from Shri Vinod Baid on July 4, 2007. However, as per shareholding pattern on June 30, 2007, the Noticee was not shown as promoter entity. Thus, on the date of aforesaid off market transfer, only transferor (Shri Vinod Baid) was the promoter whereas the transferee (the Noticee) was non promoter. Since the shares were transferred from a promoter entity to a non promoter entity, Regulation 3(1) (e) of SEBI (SAST) Regulations, 1997 is not applicable.
8. Further, aforesaid transfer on June 14, 2006 shows that the Noticee had acquired shares above 15% of the equity capital without making an open offer under Regulation 10 of SEBI (SAST) Regulations, 1997.
9. 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, the Noticee has 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 ₹ 24.10 to ₹ 26.55. It is observed that Vinod Baid had transferred the shares in off market to erstwhile promoter, the Noticee, 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 the Noticee. The Noticee had facilitated Vinod Baid in off loading the shares of GLL in the market. This act of the company, the Noticee & Vinod Baid is alleged to 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, were alleged to

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 Vinod Baid and the Noticee and disclosures supposed to be made in that regard.

10. Summons were issued to the Noticee to provide information with regard to its dealings in the scrip of the company and the disclosures made by it in that regard. It has been alleged that the Noticee did not comply with the summons.
11. In view of the aforesaid, it was alleged that the Noticee violated the provisions of Section 12 A (a), (b) & (c) of the SEBI Act, 1992 read with Regulation 3 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('FUTP Regulations'), Regulations 7 (1) and 10 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ('SAST Regulations'), Regulations 13(1) and 13 (3) of SEBI (Prohibition of Insider Trading) Regulations, 1992 ('PIT Regulations') and Sections 11 C (2), 11C (3) read with 11 C(6) of the SEBI Act, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

12. 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 Section 15 H, 15 HA, 15 A (a) and 15 A (b) of the SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLIES AND HEARING

13. A show cause notice (SCN) dated May 23, 2011 was issued to the Noticee. The SCN was duly delivered and the proof of delivery is available on record. The Noticee, vide letter dated June 13, 2011, submitted his reply to the SCN in which it barely stated that it had provided information to SEBI as and when required and did not deal with all the allegations made out in the SCN.

14. After considering the submissions of the Noticee, I considered it appropriate to conduct an enquiry. Accordingly, the Noticee was granted an opportunity to be heard before the undersigned on July 21, 2011. The Noticee did not attend the hearing, nor did it communicate with SEBI in any manner regarding the same. To meet the ends of justice and to adhere to the principles of natural justice, the Noticee was provided another opportunity to appear before the undersigned on August 12, 2011. The Noticee, vide letter dated August 10, 2011, requested to be granted a hearing at SEBI's Kolkata office. The request was considered and accordingly, the Noticee was granted a hearing at Kolkata on September 6, 2011. Vide letter dated September 6, 2011, the Noticee expressed its inability to attend the hearing because the person authorised to attend the hearing was unwell and would join office fifteen days later. The Noticee's plea was once more accepted and the fourth opportunity of hearing was scheduled at Kolkata on September 29, 2011. Vide letter dated September 27, 2011, the Noticee stated that the person looking after the assignment was out of town and requested to be given a hearing in the second week of October. In spite of the obvious delaying tactics employed by the Noticee, the undersigned granted it a fifth opportunity of being heard on October 13, 2011, in the interests of natural justice. The hearing was attended by Mr. Sandeep Kumar Daga, Authorised Representative of the Noticee. During the course of hearing the charges contained in the SCN were explained to the representative of the Noticee and was also informed that its reply dated June 13, 2011 does not cover all the allegations made against the Noticee. Accordingly, the Noticee was asked to make submissions on all the allegations made against the Noticee. However, the representative of the Noticee maintained that he has nothing to add to the submissions made earlier. I note from the above that the Noticee has been given sufficient opportunities to present its case and principles of natural justice have been complied with in all respects. Hence I proceed with this enquiry on the basis of the material available on record.

ISSUES FOR CONSIDERATION

15. 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 Regulations 7 (1) and 10 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ('SAST Regulations'), Regulations 13(1) and 13 (3) of SEBI (Prohibition of Insider Trading) Regulations, 1992 ('PIT Regulations')?
- Whether the Noticee violated the provisions of Section 12 A (a), (b) & (c) of the SEBI Act, 1992 read with Regulation 3 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('FUTP Regulations')?
- 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 15 H, 15 HA, 15 A (a) and 15 A (b) of the 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

16. 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 Regulations 7 (1) and 10 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ('SAST Regulations'), Regulations 13(1) and 13 (3) of SEBI (Prohibition of Insider Trading) Regulations, 1992 ('PIT Regulations')?

17. It is alleged that the Noticee violated the provisions of Regulations 7 (1) and 10 of SAST Regulations and Regulations 13(1) and 13 (3) of PIT Regulations, which read as below:

Acquisition of 5 per cent and more shares or voting rights of a company

7. (1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his

shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

Acquisition of fifteen per cent or more of the shares or voting rights of any company

10. No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure

13. (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 4 working days of : –

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

Continual disclosure

(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

18. 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 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 the Noticee (16, 36,036 shares) and Roopshri Finvest (3, 32,000 shares). During the period of investigation i.e. April 30, 2007 – November 18, 2008, the Noticee had sold 29, 94,394 shares and Roopshri sold 9, 08,025 shares. On analyzing the demat statement of the Noticee, it was noted that 2,95,300 shares were received in off market from another promoter Prudential Stocks & Securities Limited ('PSSL') (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 the Noticee had received 9, 60, 000 shares in off market on July 04, 2007 from Shri Vinod Baid, CMD of GLL. 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.

19. 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 the Noticee on July 04, 2007. The Noticee 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. 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.
20. Similarly, as per shareholding pattern for quarter ended March 2007, the Noticee (promoter) was holding 16, 36,036 (16.12% of the equity capital) 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 but no disclosures were observed, as stated in preceding para.
21. On perusal of shareholding pattern of GLL, it is observed that the shareholding of the Noticee was under the Promoters Holding during the quarter ending June 2006 and it was so included till March 2007. For the quarter ending June 2007 the shareholding of the Noticee was shown under the head ‘Non-Promoter Holding’. The shareholding of the Noticee, during these quarters, was as under:

	June 2006	September 2006	December 2006	March 2007
Total Shares Held by the Noticee	20,00,536	20,00,536	19,96,536	16,36,036
Capital of the Company	1,01,50,300	1,01,50,300	1,01,50,300	1,01,50,300
% of	19.71	19.71	19.67	16.12

capital held by the Noticee				
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22. From the perusal of the transaction statement of the Noticee (client ID 10018449) with DP MLB Securities Ltd. (DP ID: IN 302654) from the period from 1st April 2006 to 30th April, 2007, it is noted that the Noticee received 9,336 shares of the company on 7/6/2006. The Noticee further received 20, 02,700 shares on 14/6/2006, taking its total holding to 20, 12,036 shares which was 19.82% of the total capital of the company. As the holding of the Noticee has increased more than 5% the Noticee was required to make disclosures under Regulation 7 (1) of SEBI (SAST) Regulations, 1997 and Regulation 13 (1) of SEBI (PIT) Regulations 1992.
23. Further, aforesaid transfer on June 14, 2006 shows that the Noticee had acquired shares above 15% of the equity capital without making an open offer under Regulation 10 of SEBI (SAST) Regulations, 1997.
24. The Noticee has nowhere denied the allegations levelled against it and has placed nothing on record to refute the allegation that it had not made the disclosures or open offer as mentioned above. 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. Moreover, not making an open offer under Regulation 10 of SAST Regulations is a serious breach of law that deprives investors of their right to exit a company upon substantial takeover of the shares of the same.
25. In view of the above, I find the Noticee guilty for the violation of under Regulations 7 (1) and 10 of SAST Regulations and Regulations 13(1) and 13 (3) of PIT Regulations.

ISSUE 2: Whether the Noticee violated the provisions of Section 12 A (a), (b) & (c) of the SEBI Act, 1992 read with Regulation 3 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('FUTP Regulations')?

26. It is alleged that the Noticee violated the provisions of Section 12 A (a), (b) & (c) of the SEBI Act, 1992 read with Regulation 3 of FUTP Regulations, which read as below:

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

12A. No person shall directly or indirectly –

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

Prohibition of certain dealings in securities

3. No person shall directly or indirectly –

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.*

27. It has been observed that GLL made following corporate announcements during the investigation period:

Date	News	Price movement in the scrip	Trading by MFMP	Status

05.07.07 (1:22:31 P.M.)	Informed BSE about board meeting on July 16,2007 to discuss about the investment & management participation proposal received from the INNOVESCO PTE LTD, Singapore and the financial arrangement to be made for the proposed Bio-tech Products.	On July 5,2007, the scrip opened at ` 24.10, lower than previous day's close of ` 24.45 and reached till ` 25.65 with 253 trades. The last trade before this announcement was executed at ` 24.20 and first trade after announcement was at ` 24.45. During July 6,2007 to July 13,2007, the price has moved from ` 26.15 to ` 29.95 in 1506 trades.	During 30.04.07 - 03.07.07, MFMCL has purchased 2055 shares and sold 16,17,350 shares. On 05.07.07, the total trading was 3,42,912 shares and it sold 2 Lakh shares. During 06.07.07 to 12.07.07, it sold 2 Lakh shares	Not implemented
16.07.07 (6:10:26 P.M)	Informed BSE about in-principle approval of the investment and management proposals from Mr. Arun Jain, Chairman of Innovesco Group of Companies, Singapore and his Associates and decision to allot 30% of the expanded Equity capital of GLL to Mr. Arun Jain & his Associates and/or their SPV in India on preferential basis at a price to be determined after receipt of the valuation report. The statutory auditor, M/s. Laxmi Niwas & Jain, was appointed for valuation of the business of the Company and to determine the quantum of investment to be brought in by M/s. Arun Jain & Associates.	The price of the scrip opened at ` 28.00 on July 16,2007 (1.23% lower than the previous close price of ` 28.35) and reached till `28.85 with 72 trades during the day. On July 17,2007, the price opened at ` 28.95 and fell down to ` 27.10	MFMCL sold 55000 shares and counterparties were scattered. Total trading was 83,574 shares. During 17.07.07 to 22.08.07, it purchased 5350 shares and sold 5,30,850 shares	Not implemented

29.08.07(1 :35:02 PM)	Informed BSE about Board meeting on September 04, 2007 to consider the allotment of 2500000 equity shares and issue of 25,00,000 equity warrants as under: <i>Silver Golden Property Develop Fin Investment Ltd, Mumbai. – 1500000 shares and 2500000 warrants</i> <i>Carwin Mercantiles (P) Ltd, Kolkata – 1000000 shares</i>	The scrip opened at ` 27.70 on August 29,2007 (prev. day cl. price ` 27.50) and fell down to ` 27.35. There were 36 trades during the day.	MFMCCL had not traded on this date.	Implemented
04.09.07(3 :08:51 PM)	Informed BSE about approval of above decision.	The scrip opened at ` 31.35 (4.85% higher than the prev. cl. price of ` 29.90) and same was the closing price. There were 22 trades during the day. Similarly on 05.09.07, the scrip opened at ` 32.90 and remain the price of the day with 28 trades.	MFMCCL had not traded on this date. Subsequently during 07.09.07 to 19.08.08, it purchased 65,153 shares and sold 3,91,194 shares.	Implemented
27.08.08(1 1:12:43 AM)	Informed BSE that in Board meeting held on Aug 26, 2008, it was 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 scrip opened at ` 46.25 on August 27,2007 (prev. cl. price ` 46.40), reached till ` 48.00 and closed at ` 45.05. There were 246 trades during the day.	MFMCCL had not traded on this date & subsequently till the end of investigation period.	Not implemented

28. From the above, it is observed that the company had implemented the corporate announcement of preferential allotment of shares and warrants to Silver Golden Property Develop Fin Investment Ltd. and Carwin Mercantiles (P) Ltd. only,

whereas remaining three announcements were not implemented. When the company was asked for the implementation status of these corporate announcements, it was informed that the proposed investment by Mr. Arun Jain did not take place as proposed and deal with Ammana Bio Pharma Limited could not be executed as Ammana did not comply with the relevant requirements.

29. It is noted that on July 4, 2007, immediately before the corporate announcement about investment proposal, the Noticee had received 9.60 lakh shares in off market from the promoter of GLL i.e. Shri Vinod Baid and sold in the market 9,30,850 shares during July 5, 2007 to August 22, 2007. The price rise during this period was from ₹ 24.10 to ₹ 26.55. It is observed that the promoter had transferred the shares in off market to erstwhile promoter (the Noticee) who in turn had sold them in the market taking advantage of the positive announcement by the company which was never implemented. I also note that the company has also not informed subsequently to the stock exchanges that these announcements had not been implemented, giving credence to the allegation that these announcements were made just to facilitate offloading the shares of the promoters of the company through the Noticee.

30. When Vinod Baid & the Noticee were asked to provide the reasons of off market transfer and consideration involved, it was informed by Shri Vinod Baid that the shares were transferred as security in connection with the financial assistance given by the Noticee & proper consideration was received whereas the Noticee stated that Shri Vinod Baid approached them for loan against shares and on the basis of agreement entered between them, the shares were transferred to their a/c and sold by them through broker in the market. But no copy of agreement was provided to SEBI by any of them despite being asked specifically.

31. From the above, I note that the company had planted these false positive announcements to facilitate the offloading of the shares by its promoter, Vinod Baid, through the Noticee. The Noticee has evidently facilitated Vinod Baid in off loading the shares of GLL in the market. This act of the company, Vinod Baid & the Noticee appears to be an artifice/device to defraud the investors in the

market by presenting the company as a lucrative investing option. Thus, the Noticee acted as a facilitator and together with Vinod Baid and the Company, played fraud upon innocent investors.

32. In view of the above, I find the Noticee guilty of violating the provisions of Section 12 A (a), (b) & (c) of the SEBI Act, 1992 read with Regulation 3 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

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

33. It is alleged that the Noticee violated the provisions of Sections 11C (2) and 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.

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

- (a) When & how MFMCL 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 MFMPPL on July 4, 2007 in off market? Whether consideration was paid and received by the respective entities? Please provide a copy of bank statement evidencing payment of funds?*
- (b) 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?*
- (c) Copy of disclosures made by the company, 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.*

35. Vide letter dated May 3, 2010, the Noticee replied that GLL was not promoted by them and they were classified as PAC due to common director Shri Kishore Jhunjhunwala. Shri Vinod Baid approached them for loan against shares and thus, 9.60 lakh shares were transferred to them on July 4, 2007. The loan was released and shares were sold in the market. The relevant disclosure was also made under SEBI (SAST) Regulations, 1997 and photocopy of the disclosure without acknowledgement of the Company was enclosed. But no supporting documents were provided by the Noticee regarding loan against shares.

36. 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:

- a. *Copy of bank statement evidencing payment of funds for receiving 9.60 Lakh shares from Shri Vinod Baid on July 4, 2007 in off market. Also provide a copy of the agreement entered into between Mercury & Vinod Baid.*
- b. *It is observed that as shareholding pattern ended on June 2006, Mercury holds 20, 00,536 shares (19.71% of the equity capital) whereas there appears to nil holding in quarter ended on March 2006. Please confirm whether Mercury has complied with the requirement of open offer, as per Regulation 10 of SEBI (SAST) Regulations, 1997. If yes, when the open offer was made and the details thereof. Also inform the details of the entities from whom 20, 00,536 shares were received. Whether those shares, at the time of receipt, were in physical mode or demat mode?*
- c. *It is also observed that shareholding of Mercury has changed from 19, 99,536 shares (19.67% of the equity capital) in quarter ending December 2006 to 16, 36,036 shares (16.12 of the equity capital) in quarter ending March 2007. Please confirm whether necessary disclosure was made under Regulation 13(3) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992. If yes, provide acknowledged copy of the said disclosure.*
- d. *Acknowledged copy of letter dated July 4, 2007. Further, the company was holding 16, 36,036 shares (16.12% of the equity capital) for quarter ended March 2007 and it was 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. Please inform whether the aforesaid disclosures were made to GLL as well as stock exchange. If yes, copy of the said disclosures with the acknowledgement proof may be provided.*
- e. *Copy of bank statement for a/c no. 165684 maintained with ABN AMRO Bank for the period January 01, 2007 – December 31, 2008.*

37. The Noticee, vide letter dated May 25, 2010, requested an extension of two weeks' time to file reply in the matter because the concerned person was on leave

and was expected to join in the first week of June, 2010. However, even after the completion of two weeks, no reply was forthcoming from the Noticee.

38. There is no dispute about receipt of both the summons. However, no reply was received from the Noticee to the summons dated May 20, 2010.

39. The Noticee, in his reply dated June 13, 2011, has submitted that it had provided information to SEBI as and when required. This submission cannot be accepted because it is evident from the material on record that the Noticee did not submit a complete reply to the first summons and did not reply at all to the second summons.

40. 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 it and the supposed agreement entered into by it with Vinod Baid. In order to acquire this specific information that was not provided by the Noticee, summons dated May 20, 2010 was issued to the Noticee. The Noticee has not provided the information/ documents sought by the above said summons despite receiving the same and intimating that the information would be provided after two weeks. Therefore, it is evident that the Noticee did not comply completely with the summons dated April 26, 2010 and did not comply at all with the summons dated May 20, 2010.

41. 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 4: Whether the Noticee is liable for penalty under Section 15 H, 15 HA, 15 A (a) and 15 A (b) of the SEBI Act, 1992?

42. The Noticee has been found guilty of violating the provisions of Regulations 7 (1) and 10 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, Regulations 13(1) and 13 (3) of SEBI (Prohibition of Insider Trading)

Regulations 1992, Section 12 A (a), (b) & (c) of the SEBI Act, 1992 read with Regulation 3 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 and Sections 11 C (2), 11C (3) read with 11 C(6) of the SEBI Act, 1992, 1992 and is therefore liable for penalty under Sections 15 H, 15 HA, 15 A (a) and 15 A (b) of the SEBI Act, 1992, which read as below:

Penalty for non-disclosure of acquisition of shares and takeovers

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

(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or

(ii) make a public announcement to acquire shares at a minimum price; or

(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or

(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer,]

he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

Penalty for fraudulent and unfair trade practices

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

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

43. 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."

44. 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, Mercury Fund Management Co. Ltd., failed to make requisite disclosures under the Takeover Regulations and Insider Trading Regulations and thereby compromised the integrity of the securities market. The Noticee also failed to make an open offer in accordance with the provisions of the Takeover Regulations. The Hon'ble Securities Appellate Tribunal in the matter of Mr. Ranjan Verghese Vs. Securities Exchange Board of India in the Appeal No. 177 of 2009 dated April 08, 2010 has observed that *"The fact that the appellants acting in concert with each other had made the acquisitions which triggered the Takeover Code, it was incumbent upon them to make a public announcement which, admittedly, they have failed to do so. This failure has seriously prejudiced the public investors/ shareholders of the company who have been deprived of their valuable right to exit by offering their shares to the acquirer. We cannot lose sight of the fact that one of the primary objects of the Takeover Code is to allow the public shareholders an exit route when the target company is either taken over by an acquirer or an acquirer makes a substantial acquisition therein. Since the public shareholders were deprived of this valuable right, we do not think that this is a fit case where penalty should be reduced."* Therefore, the violation of the Noticee constitutes a serious breach of law.

45. 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 facilitated the offloading of 9, 30, 850 shares of the promoters 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....."*

46. Considering the facts and circumstances of the case and the violations committed by Noticee, I am of the view that imposing a penalty of ₹ 10, 00,000/- (Rs. Ten Lakhs only) under Section 15 H (ii), a penalty of ₹ 2, 00,000/- (Rs. Two Lakhs Only) under Section 15 A (a), a penalty of ₹ 5, 00,000/- (Rs. Five Lakhs Only) under Section 15 A (b) read with Section 15 H (i) and a penalty of ₹ 10,00,000/- (Rs. Ten Lakhs Only) under Section 15 HA on Mercury Fund Management Co. Ltd. would be commensurate with the violations of Regulation 10 of SAST Regulations, Sections 11 C (2), 11C (3) read with 11 C(6) of the SEBI Act, Regulation 7 (1) of the SAST Regulations, Regulations 13(1) and 13 (3) of PIT Regulations and Section 12 A (a), (b) & (c) of the SEBI Act, 1992 read with Regulation 3 of FUTP Regulations respectively by the Noticee.

ORDER:

47. Considering the facts and circumstances of the case, in terms of the provisions of Sections 15 H, 15 HA, 15 A (a) and 15 A (b) of the SEBI Act, 1992 and Rule 5(1) of the Rules, I hereby impose a penalty of ₹ 10, 00,000/- (Rs. Ten Lakhs only) under Section 15 H (ii), a penalty of ₹ 2, 00,000/- (Rs. Two Lakhs Only) under Section 15 A (a), a penalty of ₹ 5, 00,000/- (Rs. Five Lakhs Only) under Section 15 A (b) read with Section 15 H (i) and a penalty of ₹ 10, 00,000/- (Rs. Ten Lakhs Only) under Section 15 HA on Mercury Fund Management Co. Ltd. i.e. a total penalty of ₹ 27,00,000 (Rs. Twenty Seven Lakhs Only) for violating the provisions of Regulation 10 of SAST Regulations, Sections 11 C (2), 11C (3) read with 11 C(6) of the SEBI Act, Regulation 7 (1) of the SAST Regulations, Regulations 13(1) and 13 (3) of PIT Regulations and Section 12 A (a), (b) & (c) of the SEBI Act, 1992 read with Regulation 3 of FUTP Regulations.
48. 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.
49. 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: October 21, 2011

Place: Mumbai

P. K. Bindlish

Adjudicating Officer