BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing: 13.02.2014
Date of Decision: 25.02.2014

Appeal No. 3 of 2014

Mr. Vinod Baid
Akash Ganga, 4th Floor,
Plot #144, Srinagar Colony,
Hyderabad – 500 073. …… Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

And

Appeal No. 195 of 2013

Gennex Laboratories Ltd.
Akash Ganga, 3rd Floor,
Plot 144, Srinagar Colony,
Hyderabad 500 073. …… Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

Mr. P. N. Modi, Senior Advocate with Mr. Ranjit Bhonsale, Mr. Ravichandra Hegde, Mr. Abhishek Venkataraman and Mr. Janmali Manikala, Advocates for the Appellant in Appeal No. 3 of 2014.

Mr. P. N. Modi, Senior Advocate with Mr. Ranjit Bhonsale, Mr. Joby Mathew and Mr. Deepak Dhane, Advocates for the Appellant in Appeal No. 195 of 2013.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mihir Mody, Mr. Pratham V. Masurekar, Advocates for the Respondent in both appeals.

CORAM : Justice J. P. Devadhar, Presiding Officer
Jog Singh, Member

Per : Jog Singh

The present Appeals No.3 of 2014 and No.195 of 2013 have been filed by Mr. Vinod Baid and Gennex Laboratories Limited ("GLL") respectively against order dated September 13, 2013 ("Impugned Order") passed under Section 19 read with Sections 11 and 11 B of the SEBI Act read with provisions of Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (for short "FUTP Regulations") restraining GLL and Mr. Vinod Baid from accessing the securities market and also prohibiting them from buying, selling and otherwise dealing in the securities market, directly or indirectly, in any manner for a period of three years from the date of the Impugned Order.

2. Briefly stated the facts of the case are that GLL was incorporated in 1985 as a private limited company and later converted into a public limited in 1994. Originally promoted by Pharmasia Limited as Prudential Pharmaceuticals Limited ("PPL"), Mr. Vinod Baid acquired a controlling stake in GLL in 1994. PPL's name was changed to GLL on September 19, 2007. Mr. Baid was the chairman and promoter of GLL at the relevant time. GLL's shares are listed on the Bombay Stock Exchange, the Hyderabad Stock Exchange, the Calcutta Stock Exchange and the Ahmedabad Stock Exchange.

3. An investigation was conducted by the respondent into the affairs of GLL, based on which a show cause notice dated May 9, 2012 ("SCN") was sent to GLL, Mr. Baid and the other directors of GLL. The SCN alleged that Bank of India was shown as a promoter in the shareholding pattern of the

company, instead of showing Premier Fiscal Services Pvt. Ltd. as a shareholder. 25,00,000 shares of GLL were pledged with the Bank of India. False corporate announcements by GLL were made which were not implemented with respect to Innovesco PTE Singapore ("Innovesco") on July 5, 2007 and July 16, 2007 regarding a proposal sent to GLL by Innovesco that it would invest in GLL and that the board of GLL had given its in-principle approval; and Ammana Bio Pharma Ltd. ("Ammana") on August 27, 2008 stating that the board of GLL had decided to purchase 51% stake in Ammana, and that these false announcements were made in order to create artificial volume in the scrip of the company which enabled Mr. Baid to offload 9.60 lac shares through off market transactions on July 4, 2007 to Mercury Fund Management Company Limited (MFMCL), which, in turn, sold 13,77,044 shares at inflated prices to innocent investors. The SCN alleged that in doing so, GLL along with its directors had contravened provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(2)(r) of the FUTP Regulations. Mr. Baid was said to have colluded with MFMCL and defrauded investors in contravention of sections 12A(a), (b), (c) of the SEBI Act read with Regulation 3 of the FUTP Regulations. Accordingly, after granting personal hearing to the appellants, the Impugned Order came to be passed on September 13, 2013.

4. Mr. Modi, learned senior counsel for Mr. Baid submits that Mr. Baid was not involved in the day to day management and activities of the company which was entrusted to an independent staff headed by Mr. T.M. Gopalkrishnan. Simply because he had some sub-committees and attended board meetings and annual general meetings regularly does not lead to the conclusion that he was in charge of daily management. Similarly, purely on the basis of the fact that Mr. Baid met Mr. Arun Jain, Innovesco's Chairman, in Singapore regarding the investment proposal, it cannot be said that Mr. Baid

was in control of GLL's regular functioning. Moreover, the Impugned Order was passed with respect to Mr. Baid and GLL alone, all the other directors being let off on the ground that they were not responsible for the day to day working of the company.

5. It is submitted by Mr. Modi that the announcements made with respect to Innovesco were not misleading or false and that they were not implemented allegedly because Innovesco withdrew its offer since the valuation price of the shares, as submitted by the chartered accountants hired for this purpose, was higher than what Innovesco had anticipated. Similarly, the transactions with Ammano were not successful because Ammano failed to comply with certain legal requirements.

6. The off-market transfer of shares to MFMCL by Mr. Baid was not connected to the corporate announcements in any manner. Further, since the corporate announcements were not motivated by any malafide intention, there is allegedly no question of the announcements being made to prop up the price of shares and create an artificial volume. It is submitted that neither Mr. Baid nor the company can be held accountable for the acts of MFMCL, since there is no finding or allegation that MFMCL was a front company or acting at the behest of the appellants. The respondent cannot claim that there was collusion between the appellants and MFMCL purely on the basis of the fact that there was a common director on the board of MFMCL and GLL.

7. GLL's case in brief is that the respondent has not demonstrated that the price of the scrip went up only when the corporate announcements were made. Had the appellants intended to create any sort of false market for the scrip it would not have implemented any of the announcements. It is an admitted position that two out of the five announcements were in fact implemented.

The respondent cannot conclude that the announcements were false merely on the ground that the volume of trades was high when these announcements were made.

8. It is Mr. Modi's submission that there was no sustained upward movement in the price of the scrip of GLL owing to the said announcements. Even though, it is a matter of record that a few announcements were not implemented and their non-implementation not informed to the public, such non-implementation could be owing to various factors and does not necessarily lead to the conclusion that the announcements were false with the goal of creating an artificial volume in the said scrip. Moreover, the announcements made on July 5, 2007 and July 16, 2007 did not have any positive impact on the price of the scrip.

9. GLL submits that it was not aware of any transaction between MFMCL and Mr. Baid. Moreover, between April 30, 2007 and July 3, 2007, prior to GLL's first announcement, MFMCL had sold 16,17,350 shares of GLL. Therefore, MFMCL was already holding shares of GLL before any corporate announcements were made by GLL. The respondent's case that Mr. Baid transferred 9.60 lac shares on July 4, 2007 to MFMCL at an inflated price is irrelevant considering the fact that MFMCL sold only 13,77,044 shares without accounting for the rest. Further, GLL submits that the non-implementation of the corporate announcements in question was not informed to the BSE and the public owing to the inexperience of the secretarial staff of GLL.

10. We shall now deal with the submissions of the respondent. The learned senior counsel, Mr. Shiraz Rustomjee on behalf of the respondent submits that Mr. Baid, being in charge of day to day management of the company along

with having a fiduciary duty towards the company and its shareholders, is responsible for the acts and omissions of the company. GLL made several public announcements which were left unimplemented, nor was this information made available to the public through the BSE. A corporate announcement made on July 5, 2007 regarding the investment and management proposal received from Innovesco Pte. Ltd., Singapore for Bio-tech products. Further, another announcement was made on July 16, 2007 informing the public that the board of GLL had given its in-principle approval to this proposed investment. The respondent submits that these announcements undoubtedly had an impact on the price of the scrip which is evident in the figures.

11. It is submitted by the respondent that Mr. Baid has failed to establish the claim that the 9.60 lac shares were transferred through off-market transactions as security for the financial assistance provided by MFMCL as per their agreement. Moreover, no disclosure was made to the public when Innovesco withdrew its investment and management proposal. On the basis of undisputed facts and figures, the respondent submits that the said corporate announcements successfully maintained the price of the scrip so as to facilitate Mr. Baid's endeavour to off load 9.60 lac shares at an inflated price.

12. The respondent further submits that GLL made the corporate announcement made by GLL on August 27, 2008 regarding the decision to make an offer for purchase of 51% stake in Ammana Bio Pharma Ltd. The price of the scrip was affected by this announcement as well, reaching a high of Rs. 48 and closing at Rs. 45.05. This again was left unimplemented by GLL without the public being informed of such price sensitive information through

the BSE. GLL's preceding conduct left little doubt that the company never intended to implement this announcement.

13. Mr. Rustomjee, learned senior counsel, therefore, submits that false announcements were planted by GLL without any intention of ever acting upon them so as to create a false market for the scrip which, in turn, enabled Mr. Baid to offload his shares at inflated prices.

14. We have heard the learned senior counsel for both parties at length and perused the appeals alongwith documents attached thereto. Before dealing with the contentions of both parties, we find it pertinent to reproduce the provisions of law that GLL and Mr. Baid stand accused of violating.

> "3. No person shall directly or indirectly –
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> (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."
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> "4(2). Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely :-
>
> (r) planting false or misleading news which may induce sale or purchase of securities.

15. As far as the charge with respect to Bank of India being shown as one of the promoters in the shareholding pattern goes, the Impugned Order notes that the disclosure was a mistake made by the company and gives the benefit of the

doubt to GLL. This charge is, therefore, dropped. With respect to the charge regarding GLL not having appointed a common agency to deal with the share registry work at the single point, the Impugned Order exonerates GLL on basis of the fact that GLL had appointed CIL to handle the share registry work, however, due to certain issues having arisen between GLL and CIL, GLL ended up committing the said default. This default being technical in nature, the Impugned Order drops this charge as well.

16. After a thorough perusal of the all the documents and other records put before us, the following undisputed facts come to light.

1. Out of the five corporate announcements made by GLL, only the ones made on August 29, 2007 and September 4, 2007 regarding the preferential allotment of shares and warrants to Silver Golden Property Develop Fin Investment Ltd. and Carwin Mercantiles (P) Ltd. were implemented, but announcements made on July 5, 2007; July 16, 2007; and August 27, 2008 were not implemented.
2. Further, their non-implementation was not announced to the BSE and the public.
3. Mr. Vinod Baid transferred through off market transactions 9.60 lac shares which were held by him in GLL to MFMCL. Following this transaction, MFMCL sold 9,30,850 shares on the stock exchange between July 5, 2007 to August 22, 2007, which is the period in which the relevant corporate announcements were made by GLL.
4. Innovesco communicated the withdrawal of its offer to invest in GLL on November 14, 2007, by then MFMLC had already succeeded in offloading the shares, transferred to it by Mr. Baid, in the market.

5. No disclosure was made by GLL to the BSE about the withdrawal of the offer to invest by Innovesco.

17. From the facts as laid out above, we note that through off market transactions shares of GLL were transferred by Mr. Baid to MFMCL on July 4, 2007. Immediately thereafter on July 5, 2007, a corporate announcement was made by GLL regarding the investment proposal received from Innovesco. It is a matter of record that on July 5, 2007 the scrip of GLL opened at Rs. 24.10 and reached Rs. 25.65. MFMCL on the same day sold 2,00,000 shares of GLL on the market. There was a further spike in the price in the days to follow. On July 16, 2007, GLL made another announcement regarding in-principle approval having been obtained by the board of GLL regarding Innovesco's investment proposal. On this day, the price opened at Rs. 28 and went up to Rs. 28.85. In the meanwhile, as the price of the scrip went up steadily, MFMCL unloaded 11,77,044 shares on the market between July 6, 2007 and August 19, 2008 when the price was in the range of Rs. 24.10 to Rs. 31.35. From these facts, it is more than just a plausible scenario that Mr. Baid and MFMCL were acting in collusion with each other and that they cleverly succeeded in creating a false market for the shares of GLL thereby duping investors into purchasing shares, the prices of which were artificially hiked. We, therefore, do not feel inclined to interfere with the impugned order in any manner.

18. We now turn to another facet of this matter. The appellants' guilt is clearly discernible in their actions when after deciding not to go ahead with the Innovesco proposal, they failed to intimate the stock exchange and, by extension, the public. No one can doubt GLL's apprehension with regard to such a disclosure as it would indubitably lead to the price of its shares

plummeting, a risk that no company would want to take in the absence of regulations such as the FUTP Regulations. Moreover, GLL seems to have developed a pattern to ensure that the price of its scrip would continue to soar. It is seen from the record that on August 27, 2008 another announcement was made with respect to Ammana which GLL failed to see through yet again. This announcement had ramifications in the form of the price of the scrip going up once again while reaching a high of Rs. 48 on the very same day which saw 246 trades being executed. Such repetitive nature of defaults can hardly be left unpunished.

19. Lastly, we also note that it was indeed imperative on the part of Appellants that action in the form of a corporate announcement was taken as soon as it became clear that neither the Innovesco declaration nor the Ammana declaration was about to see fruition. This not having been done, we must uphold the Impugned Order with respect to both appellants. In this regard, the feeble contention raised by the appellants that it was due to the inexperience of the concerned officials of the appellants' establishment is untenable and is liable to be rejected in the facts and circumstances of the case as enumerated hereinabove.

The appeals, being bereft of any merit, are hereby dismissed with no order as to costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

25.02.2014
Prepared and compared by
PTM