

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 135 of 2012

Date of decision: 04.09.2012

Prudential Stock & Securities Limited
C/o. Newman Business Centre, 3,
Old Court House Street,
Kolkata – 700 009.

.....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. Vinay Chauhan, Advocate with Mr. Deepak Dhane, Advocate for the Appellant.

Mr. Prateek Seksaria, Advocate with Ms. Harshada Nagare, Advocate for the Respondent.

CORAM : P. K. Malhotra, Member & Presiding Officer (*Offg.*)
S. S. N. Moorthy, Member

Per : P. K. Malhotra

The appellant before us is a company engaged in the business of investing in shares of listed and unlisted companies. It is also registered with the Securities and Exchange Board of India (the Board).

2. The Board carried out investigation in the dealings of shares of M/s. Gennex Laboratories Ltd. (the company) to ascertain whether any provision of the Securities and Exchange Board of India Act, 1992 (the Act) or the rules and the regulations made thereunder were violated. It noticed that during the period April 2007 to December 2007, shareholding of promoters changed from 53.62 per cent to 24.72 per cent of the paid up capital resulting in change of shareholding to

the extent of 28.90 per cent. It happened because all the promoters except Vinod Baid, L. Lalitha, L. Vithal Rao and Prudential Investments Ltd. had sold or transferred their shares. The major selling promoter entities were Mercury Fund Management Company Ltd. and Roopshri Finvest. The appellant, who is not a promoter entity of the company, had sold 9,336 shares on June 7, 2006 and 20,02,700 shares on June 14, 2006 in off market to Mercury Fund Management Co. Ltd. Prior to this, the appellant had received 20,00,000 shares of the company from M/s. Global Telenet Ltd. on May 3, 2006 in off market transaction. As the appellant was not a promoter group entity, the benefit of exemption under regulation 3(1)(e) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 was not available to him. Therefore, while acquiring 20,00,000 shares on May 3, 2006, which is 19.70 per cent of the capital of the company, the appellant was required to make disclosure under regulation 7(1) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (for short the takeover code) and regulation 13(1) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (for short insider regulations). It was also required to make open offer under regulation 10 of the takeover code. When it transferred 20,02,700 shares to Mercury Fund Management Co. Ltd. on June 14, 2006, it again failed to make disclosure under regulation 13(3) of the insider trading regulations. Therefore, it is alleged that the appellant violated the provisions of regulation 7(1) and 10 of the takeover code and regulations 13(1) and 13(3) of the insider regulations. The appellant is also alleged to have violated Section 11C(2), 11C(3) read with Section 11(6) of the Act and Section 13 of the Securities Contracts (Regulation) Act, 1956 as it failed to respond to the summons and provide details of the acquisition and transfer of shares in off market transactions.

3. A show cause notice under regulation 4(1) of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 was issued to the appellant on May 23, 2011.

A cryptic reply dated June 13, 2011 was filed by the appellant stating that information has been provided to the Board and further information required will be provided. On affording opportunities of personal hearing granted to the appellant, the representative of the appellant appeared before the adjudicating officer and stated that he had nothing to add to the submissions made earlier. After considering the material available on record, the adjudicating officer passed an order on October 21, 2011 holding the appellant guilty of violating the provisions of the Act and regulations and imposed penalty as under:

Sr. No.	Provision of Act/Regulation violated	Section under which penalty imposed	Amt. of Penalty
1.	Regulation 10 of Takeover Code	15H(ii) of SEBI Act	10,00,000
2.	Section 11C(2), 11C(3) read with 11(6) of SEBI Act	15A(a) of SEBI Act	2,00,000
3.	Regulation 7(1) of Takeover Code and Regulations 13(1) and 13(3) of Insider Trading Regulation	15A(b) read with 15H(i) of SEBI Act	3,00,000
4.	Section 13 of Securities Contracts (Regulation) Act	Section 23H of SC(R) Act	2,00,000
		Total Penalty	17,00,000

4. We have heard Mr. Vinay Chauhan, learned counsel for the appellant and Mr. Prateek Seksaria, learned counsel for the respondent Board who have also taken us through the record. After hearing the counsel and perusing the records, we find that the appellant has not denied the acquisition and disposal of shares as stated above. It is also a matter of record that the appellant is not a member of the promoter group of the company and hence not covered under the exempted category under regulation 3(1) of the takeover code. It was, therefore, obligatory on its part to make necessary disclosures and make open offer to the shareholders as envisaged under the takeover code and the insider regulations. There is no material on record to show that on receipt of summons from the Board, the appellant provided the desired information. Therefore, we cannot find any fault with the conclusions arrived at by the adjudicating officer in the impugned order.

5. Learned counsel for the appellant raised two other issues. One relates to the procedural aspect. It was pointed out by him that the show cause notice as well as the impugned order talks about the inquiry held under Rule 5 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995. Under these rules, inquiry can be held in respect of violations alleged to have been committed either of the provisions of the SEBI Act or the regulations made thereunder. However, while holding inquiry under these rules, the Board has also held him guilty of violating Section 13 of the Securities Contracts (Regulation) Act, 1956 also for which separate rules are in existence. The case of the appellant is that if violation of Section 13 of Securities Contracts (Regulation) Act is also alleged, the Board should have instituted separate inquiry proceedings under the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005. According to learned counsel for the appellant, holding of inquiry under the inquiry procedure of 1995 under the SEBI Act in respect of violations alleged to have been committed under Securities Contracts (Regulation) Act has vitiated the proceedings. Technically, learned counsel for the appellant may be right. However, we are of the view that this fact alone will not vitiate the proceedings in the case under consideration. It is not his case that either in the show cause notice or in the impugned order, the appellant was not informed about the charges under the Securities Contracts (Regulation) Act. Further, he has not taken any objection to conduct the inquiry in accordance with the procedure laid down under the inquiry procedure of 1995 rules. In any case, this is only a procedural aspect and the inquiry procedure as laid down in the rules of 1995 under the SEBI Act and under rules of 2005 of Securities Contracts (Regulation) Act is the same. No prejudice has been caused to the appellant by not mentioning the Rules of 2005 either in the show cause notice or in the impugned order. Full opportunity was given to the appellant to present his case in

respect of violations alleged under the Securities Contract (Regulation) Act. The appellant, therefore, does not deserve any relief on this count.

6. The other issue raised by learned counsel for the appellant was that keeping in view the violations alleged, the penalty is on the higher side. Since the alleged violations have not impacted the market and interest of share holders is not affected, a lenient view may be taken and the penalty amount may be reduced. We are not convinced with this argument either. While deciding the quantum of penalty, the adjudicating officer has given due consideration to the factors stipulated in Section 15J of the Act and has imposed penalty within the limits prescribed under the relevant sections which prescribe penalty. We also notice that the appellant has not been cooperative. Neither it submitted a proper reply to the show cause notice nor did it respond to the summons issued by the Board. In the facts and circumstances of the case, no interference is called for even on the quantum of penalty imposed by the adjudicating officer.

In the result, we uphold the order passed by the adjudicating officer and dismiss the appeal with no order as to costs.

Sd/-
P. K. Malhotra
Member &
Presiding Officer (*Offg.*)

Sd/-
S. S. N. Moorthy
Member

04.09.2012
Prepared & Compared by
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