

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

IN THE MATTER OF GENOMICS BIOTECH LTD.

In respect of Genomics Biotech Ltd., Mr. Shiv Kumar Gupta and Mr. Vivek Gupta,

ORDER

Under Section 11 of the Securities and Exchange Board of India Act, 1992 read with Regulation 11 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigation into the buying, selling and dealings in the scrip of Genomics Biotech Ltd. (hereinafter referred to as 'GBL') (earlier known as Abner Pharmaceuticals Ltd.) for the period of July, 2001 to December, 2001, *inter alia* to ascertain any violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulation, 1995 (hereinafter referred to as 'PFUTP Regulations'). During the relevant period the scrip of GBL was listed on Delhi Stock Exchange (hereinafter referred to as 'DSE') and Bombay Stock Exchange (hereinafter referred to as 'BSE').
2. Investigation was initiated pursuant to the receipt of a letter from Crime Branch, New Delhi dated April 24, 2003, seeking clarification in a FIR dated December 01, 2001. The basis of said FIR was the complaint of Mr. Vivek Gupta S/o Mr. Shiv Kumar Gupta (hereinafter referred to as 'S.K. Gupta'), Managing Director, GBL, made to the Hauz Khas, Police Station on November 07, 2001, against Mr. Vijay Jhindal, Mr. J.P. Madan and others for cheating and misappropriation of amount to the tune of Rs.1 crore. The said complaint states that in order to raise funds, Vivek Gupta approached Vijay Jhindal who was dealing in the sale and purchase of shares. Vivek Gupta thereafter had entered into a Memorandum of Understanding (hereinafter referred to as 'MoU') with Vijay Jhindal on July 3, 2001, which was signed by J.P. Madan, stated to be an employee of Vijay Jhindal. As per the terms of MoU, Vivek Gupta handed over

slips of 20 lakh shares of GBL to Madan on July 04, 2001 and Vijay Jhindal handed him a cheque dated July 05, 2001 for Rs.5 lakh. Further, as per the assurance, Vijay Jhindal was supposed to give Rs.20 lakh within 10 days of the transfer of the aforesaid shares i.e. on July 14, 2001. When Vivek Gupta approached Vijay Jhindal for the aforesaid payment after a lapse of 10 days of the transfer of shares, he refused to pay him. Vivek Gupta stated in his complaint that the shares were worth Rs.1 crore and Vijay Jhindal was supposed to sell them at Rs.7.15 per share. As per the terms of MoU, the sale proceeds of the said shares were to be shared by Madan and Vivek Gupta in the ratio of 50:50.

3. The initial investigations revealed that the average daily volume in the scrip of GBL during the relevant period was 1,56,568 shares. During the year 2001, the highest price of the scrip was Rs.7.70 as on May 21, 2001 i.e. much before the date of MoU. However, on July 03, 2001, i.e. the date of signing of the MoU between Vivek Gupta and J.P. Madan, the price of the scrip was Rs.3.30 only. The price of the scrip increased from Rs.3.25 as on July 04, 2001 to Rs.4.65 as on July 18, 2001. The price of the scrip then fell to Rs.1.65 by December 31, 2001. It was further revealed that entities associated with Vivek Gupta (i.e. Stallone Trading Pvt. Ltd. and Crust Trading Pvt. Ltd.) had received shares in off-market.
4. In the meantime, GBL on the behest of its managing director, S.K. Gupta had swapped its 50 lakh shares with 1 crore shares of Lord Krishna Infotech Ltd. (hereinafter referred to as 'LKIL') (a company under the control of the promoters of GBL) in the ratio of 1:2 (i.e. one shares of GBL against two shares of LKIL). Pursuant to this, GBL approached DSE and BSE for listing of the said 50 lakh shares. However, its request for listing of said shares was declined. Against this, GBL preferred an appeal before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT'). SAT upon considering the whole facts of the case and the sinister motives of GBL and LKIL held that GBL had not acted in transparent manner. Hon'ble SAT while dismissing the appeal of GBL had observed that the matter is a fit case where SEBI should investigate

into the affairs of GBL and proceed against it in accordance with law. Upon this reference and specific observation of Hon'ble SAT, the matter pertaining to allotment of shares to LKIL by GBL on swap basis was also brought under the purview of investigation.

5. On completion of investigation, SEBI *inter alia* issued a common show cause notice dated October 22, 2007 (hereinafter referred to as 'SCN') to GBL, Mr. S.K. Gupta and Mr. Vivek Gupta (hereinafter all collectively referred to as 'noticees') under Sections 11, 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulation 2003. The SCN alleged that the noticees namely GBL and S.K. Gupta had defrauded the shareholders by making allotment in a fraudulent manner to LKIL without disclosing the interest of the company. Various misleading newspaper reports were also issued to generate the interest in the shares of GBL. Further, Vivek Gupta transferred shares of GBL in off market to certain entities, which in turn had resulted in cross deals and reversal of trades. All this was in violation of provisions of Regulation 3, 4(a), (b), (c), (d), (e), 5(a), (b) and 6 (a) of the PFUTP Regulations since repealed read as corresponding provisions of Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a), (b), (g), (f), (k) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003. It was also alleged that noticees namely GBL and S.K. Gupta have violated SEBI Cir. No. SMDRP/POLICY/CIR-8/99 dated April 26, 1999 and Guideline 13.1A (v) of SEBI (DIP) Guidelines, 2000.
6. Noticees replied to the SCN, through their advocate vide letter received by SEBI on December 07, 2007. Before proceeding further in the matter, an opportunity of personal hearing was granted to the noticees on November 20, 2009. However, the hearing notices were returned undelivered from the noticees. To proceed with the matter, SEBI issued a press notification in the local and national daily newspapers intimating the entities therein about the hearing. However, on the date fixed no one appeared for personal hearing.

Taking note of this, I am compelled to proceed with the matter *ex-parte*, on the basis of material available on record, having complied with the principles of natural justice as against the noticees.

7. I have carefully considered the SCN, reply of the noticees and material available on record. The contentions of noticees in their replies, in brief, are:

- The field of business of GBL right from the beginning was manufacturing of pharmaceuticals and there was no change in business activity. GBL proposed to specialize in manufacture of biological and non-biological drugs.
- The details about the allotment on preferential basis including relationship of directors of GBL with directors of LKIL were fully discussed and declared in Annual General Meeting. No shareholder took objection to the same.
- The valuation of shares made and basis of allotment were real and rational. The valuation and report of auditor appointed by BSE is incorrect.
- Transaction with Vijay Jhindal was a real transaction regarding a real sale of the shares of GBL and intention was to effect transfer of beneficial ownership of shares.
- No intention to create misleading appearance of trading.
- Vivek Gupta had no connection with Stallone Trading Pvt. Ltd. and Crust Trading Pvt. Ltd.
- Reports in the newspaper were not at the instance of noticees and these were not containing any false statement.

8. I note that the MoU, as discussed earlier, has not been executed between Vivek Gupta and Vijay Jhindal. The MoU refers to some shares but there is no indication that the shares referred to are those of GBL. Further, the said document does not bear any date. The parties to the MoU are referred by the initials viz. Sh. VG. and Sh. JP. There is also no reference to place of residence or any other characteristic that would establish the identity of parties.

9. As regards the contention of noticees that Vivek Gupta had no connection with Stallone Trading Pvt. Ltd. and Crust Trading Pvt. Ltd., I note that Vivek Gupta in his complaint to police dated November 07, 2001, made on the letter head of Stallone Trading Pvt. Ltd. had stated that he was the authorized representative of Crust Trading Pvt. Ltd. and Stallone Trading Pvt. Ltd. It is further seen from the said complaint that he handed over slips of 20 lakh shares of GBL to Vijay Jindal, belonging to his companies i.e., Crust Trading Pvt. Ltd. and Stallone Trading Pvt. Ltd. I note that when the trading details of the companies namely Stallone Trading Pvt. Ltd. and Crust Trading Pvt. Ltd. were asked Vivek Gupta replied these have ceased to be companies under the amnesty scheme of Registrar of Companies and further he was not in any way connected to these companies and GBL. Vivek Gupta also submitted that he is engaged in the profession of financial consultancy independently. From the aforesaid discussion, it is noted that time and again Vivek Gupta has changed his version which are self contradictory. Taking note of this, the argument of noticees that Vivek Gupta had no connection with Stallone Trading Pvt. Ltd. and Crust Trading Pvt. Ltd. appear to be weak.

10. Considering these, the issues arises for my consideration are:

- a. Whether GBL and S.K. Gupta defrauded the shareholders of GBL by allotting shares to LKIL in fraudulent manner?
- b. Whether SEBI circular dated April 26, 1999 was violated?
- c. Whether GBL issued misleading reports for generating interest in the scrip?

My findings on these issues are as under:

11. **Whether GBL and S.K. Gupta defrauded the shareholders of GBL by allotting shares to LKIL in fraudulent manner?**

- a. I refer to the discussion in earlier part of the order that GBL swapped its 50 lakh shares with 1 crore shares of LKIL, in the ratio of 1:2. GBL allotted these 50 lakh shares of Rs.10 each to LKIL at a premium of Rs.10 and in return had accepted 1 crore shares of LKIL on swap basis in the Annual General Meeting

held on December 31, 2001. I note that pursuant to swapping, GBL approached DSE for listing of these 50 lakh shares allotted to LKIL. DSE inspected the premises of LKIL and found that the company is non-existing as the address stated was an open piece of land with debris lying thereon. Upon this the listing application of GBL was closed by DSE. Thereafter, GBL made another application dated February 16, 2002, for listing of the said 50 lakh shares at BSE. BSE appointed an independent auditor for providing opinion on fairness of the valuation and the resultant swap ratio. The independent auditor recommended the swap ratio of 2:35. When GBL was confronted with this report of independent auditors of BSE, it vaguely replied. Thereafter, the request of listing of the additional 50 lakh shares of GBL was declined. Against this decision of BSE, GBL approached to Hon'ble SAT. SAT while listening to the arguments, observed that by not adopting the fair swap ratio, GBL and its managing director had diluted the net worth of GBL which amounts to fraud on the shareholders. Hon'ble SAT also observed that S.K. Gupta had not even disclosed to the shareholders of GBL about his relationship with the directors and the shareholders of LKIL.

- b. I have seen the extracts of the minutes of the Annual General Meeting held on December 31, 2001, and note that GBL had not disclosed the interest of S.K. Gupta in LKIL and the identity of promoters/ directors/ shareholders of LKIL to its shareholders. The interest as revealed later on was that two of the sons of S.K. Gupta, two of his daughter-in-laws and his grandson were the shareholders of LKIL. Their shareholding in LKIL were as under:

- i. Each daughter-in-laws were holding 25% shares in LKIL.
- ii. Grandson was holding 10% shares in LKIL.

Further, Ms. Tarang Gupta, daughter-in-law of S.K. Gupta was the signatory to the Memorandum and Articles of Association of LKIL. Ms. Rachna Gupta, another daughter-in-law of S.K. Gupta was also one of the director of LKIL. All these details, goes to show that LKIL was a family concern of GBL and the same was not disclosed in the Annual General Meeting held December 31,

2001, to the shareholders, in clear violation of SEBI Disclosure and Investor Protection Guidelines 13.1A (v).

- c. I note that S.K. Gupta by the above discussed swapping arrangement had diluted the net worth of GBL which amounts to fraud on the shareholders of the company as the worth of shares held by shareholders was diluted. Such conduct of GBL and its promoter in not disclosing their interest in LKIL to its shareholders, has played a fraud upon them and violative of provisions of Regulation 6(a) of PFUTP Regulations.

12. Whether SEBI circular dated April 26, 1999 was violated?

- a. I note that GBL had changed its name from Abner Pharmaceuticals Ltd. in February, 2001, for reflecting the field of biological technology in which the company was proposing to specialize after gaining expertise in the manufacture of biological and non-biological drugs. It has been alleged that GBL had not shown any income/ turnover under separate heading from the activity of biological technology or from the manufacture of biological drugs. I note the contention of noticees that they had not changed the field of business and hence not violated the SEBI Cir. No. SMDRP/POLICY/CIR-8/99 dated April 26, 1999.
- b. I have seen the said circular and note that the same applies to companies who have changed their names suggesting new line of business. I observe from the thirteenth annual report of GBL, for the year 1999-2000 that its name was changed to reflect the field of biological technology in the manufacture of biological and non-biological drugs.
- c. Taking note of this and the material available on record, it can not be said that GBL ventured into an altogether new line of business, as the same still relates to manufacturing of drugs. In view of this, I am inclined to give benefit of doubt to noticee on this count.

13. Whether GBL issued misleading reports for generating interest in the scrip?

- a. I have seen that during the relevant period, various newspaper reports were published quoting S.K. Gupta and Sachin Gupta (son of S.K. Gupta), Compliance Officer, GBL, indicating the entry of the company in the field of biotechnology and giving rosy picture about the future of company.
- b. I observe that the reports like installation of DNA sequencing machine and negotiation with New York based firm for marketing of GBL's genetic drugs in India etc. were baseless. From the independent auditors report of BSE, it has been revealed that GBL was not engaged in any manufacturing activity and the sales were generated out of trading activity.
- c. I note that these were the reports of newspaper made on the interviews of S.K. Gupta and Sachin Gupta pursuant to the change of name of company. In light of the facts and circumstances of the case, it can be said that these interviews were misleading in nature and made solely to generate the interest in the scrip of GBL and for attracting the gullible investors in violation of provisions of Regulation 5(a) and (b) of PFUTP Regulations.

- 14.** I note that vide letter dated February 05, 2008, S.K. Gupta informed SEBI that Mr. Vivek Gupta had expired on January 06, 2008. A copy of death certificate dated February 05, 2008 was also enclosed for reference and record with the said letter of S.K. Gupta. I am of the view that since the proceedings were initiated against the alleged personal acts of omission and commission of a person who is no more alive to face the penalty, the present proceedings against Late Mr. Vivek Gupta are liable to be abated without going into merit of the case. Hence, the present proceedings against Late Mr. Vivek Gupta stands abated.

15. In view of the above, I find that the noticees namely GBL and S.K. Gupta are guilty of violating provision of Regulation 5(a),(b) and 6(a) of PFUTP Regulations and Guideline 13.1A (v) of SEBI (DIP) Guidelines, 2000.
16. Therefore, taking into consideration the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 19 of the SEBI Act, 1992 read with Section 11, 11B and 11(4) thereof and Regulation 11 and 13 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, do hereby restrain Genomics Biotech Ltd. and Mr. S.K. Gupta from buying, selling or dealing in securities market whatsoever or accessing the securities market, directly or indirectly, for a period of two years from the date of this order.
17. The stock exchanges are hereby directed to permit the respective members to square off their existing open positions, if any, at the earliest in Futures and Options segment.
18. This order shall be served on all recognized stock exchanges and depositories to ensure that the noticees as named above are not allowed to undertake transactions as prohibited in Para 16 above.
19. This order shall come into force with immediate effect.

DATE : 13/AUG/2010
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA