

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No.172 of 2011

Date of Decision: 22.11.2011

Gennex Laboratories Ltd.
'Akash Ganga', 144, IV Floor,
Srinagar Colony, Hyderabad – 500 073.

..... Appellant

Versus

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

.....Respondent

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

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

CORAM : P.K. Malhotra, Member
S.S.N. Moorthy, Member

Per : S.S.N. Moorthy, Member

This appeal is directed against the levy of penalty under section 15A (a) of the Securities and Exchange Board of India Act, 1992 read with Rule 5(1) thereunder. The adjudicating officer imposed a penalty of ` 10 lacs on the appellant for non compliance to summons issued by the investigating officer.

2. The appellant is a listed company engaged in the business of setting up facilities for manufacturing of bulk drugs and drug intermediaries. Investigations were conducted to ascertain whether there was any violation by the appellant company with regard to the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 and Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. In the course of investigations, the appellant was called upon to furnish certain information relevant to the enquiry being conducted by the investigating officer. On 26th April, 2010 a summons was issued to the appellant to furnish certain information annexed thereto. The appellant complied with the summons partially. Another summons was issued on

20th May, 2010 since the response to the earlier summons was not complete and satisfactory. By way of the summons issued on 20th May, 2010 the investigating officer called upon the appellant to furnish certain details which were in amplification of the details originally asked for and also some additional information. It is an admitted fact that summons dated 20th May, 2010 was not responded to. The appellant sought some time to respond to the summons to furnish the relevant details, but failed to furnish the details asked for.

3. From the above facts it would emerge that the appellant partially complied with the first summons issued by the investigating officer whereas there was non compliance to the second summons issued by him. This factual position remains undisputed.

4. We have heard the learned counsel for the parties who took us through the records of the case. According to the learned counsel for the appellant a major part of the information sought by the respondent was not in the possession of the appellant and the investigating officer also had probably knowledge about it. It is also submitted that the concerned officers dealing with the relevant subject matter were not available and the independent directors were not in charge of the day to day administration of the affairs of the company. The learned counsel appearing for the respondent defended the impugned order holding that non compliance to summons issued by a statutory authority is a serious violation and exemplary penalty is called for in such a case.

5. On a consideration of the rival contentions we are of the view that the conduct of the appellant in so far as it relates to non compliance to summons cannot be taken lightly. This Tribunal has taken a consistent stand in several appeals that non compliance to summons and consequent non furnishing of information hampers investigation by statutory authorities and it acts as a severe handicap in arriving at just and reasonable conclusion by the statutory authorities within a reasonable period of time. In the present case also the factum of non compliance to summons remains undisputed. When confronted with the above factual position the learned counsel for the appellant pleaded for reduction of the penalty imposed as, according to him, the penalty of ` 10 lacs in the facts and circumstances of the case is highly excessive. He drew our attention to a few orders passed by the adjudicating officer where penalty of even ` 50,000 has been imposed in cases of non compliance to summons. According to him, the present case

calls for considerable reduction in penalty since convincing explanation has been provided to the investigating officer with regard to the reasons for non compliance to summons.

6. It is true that penalty under section 15 A (a) of the Securities and Exchange Board of India Act 1992 spans over a broad spectrum from ` 1 lac for each day of failure to ` 1 crore whichever is less. Penalty provisions cannot be straight jacketed in respect of quantum since the statutory authority has to take into account facts and circumstances of each case and gravity of the violation committed. In the present case there were a few mitigating circumstances like the non availability of officers dealing with the subject and non possession of some of the information by the appellant. Be that as it may, the failure to comply with the summons issued by the investigating officer persists. Taking into account the gravity of the violation and the facts and circumstances of the present case we reduce the penalty to ` 5 lacs.

Appeal is partly allowed. No order as to costs.

Sd/-
P.K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

22.11.2011

Prepared and compared by
RHN

