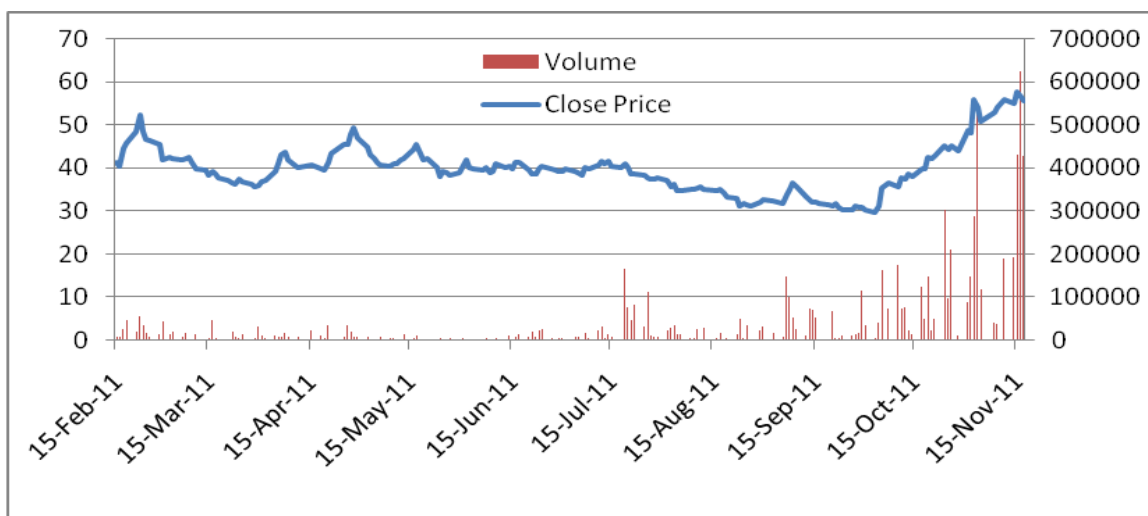


SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

DIRECTIONS UNDER SECTIONS 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF TRANSGENE BIOTEK LIMITED.

1. The Securities and Exchange Board of India (hereinafter referred to as 'SEBI') received certain complaints alleging, *inter alia*, fraud in Global Depository Receipts (hereinafter referred to as 'GDRs') issued by Transgene Biotek Limited (hereinafter referred to as '*Transgene*') and misutilization of the proceeds thereof. SEBI initiated preliminary inquiry in the matter from the angle of impact of allegation in the complaints on Indian securities market and interests of investors in securities in India. It was, *inter alia*, noted that:
 - a) On February 22, 2011, *Transgene* had issued 25,00,000 GDRs @ US\$9.2 per GDR (herein after referred to as "first issue") and again on October 03, 2011 it had issued 25,00,000 GDRs @ US\$7 per GDR (hereinafter referred to as "second issue"). Thus, total 50,00,000 GDRs were issued in the said GDR issues of *Transgene*.
 - b) *Transgene* had raised US\$23 million through first issue and US\$17.5 million through second issue of GDRs. Thus, total US\$40.5 million were raised by *Transgene* through aforesaid GDR issues and were deposited in the bank account of *Transgene* (account number - 020078) held in Investec Bank, Switzerland.
 - c) These GDR issues were purportedly to raise capital from overseas market, *inter alia*, for expansion of its present business activities.
 - d) There was a price rise from ₹44.65 per share to ₹52.25 per share during the period February 17, 2011 to February 22, 2011 (i.e., the period post announcement of first GDR issue). Similarly, there was a sharp price rise from ₹30.30 per share to ₹57.65 per share during the period September 30, 2011 to November 15, 2011 (i.e., the period post announcement of second GDR issue). The price volume chart for the aforesaid period is as following:-



2. From the copies of bank statements provided by *Transgene* and schedule of payments submitted by *Transgene* vide its letter dated June 24, 2014, it was observed that US\$29.92 million had been paid by *Transgene* to an entity, viz; Asia First Technologies Ltd, Hong Kong (hereinafter referred to as 'AFTL') out of the GDR issue proceeds of US\$40.5 million as detailed below:-

- a) **Fund transfer from GDR proceeds of the first issue-** US\$17 million were transferred out of the proceeds of the first GDR issue through the bank account of *Transgene* held in Investec Bank, Switzerland to AFTL as described in the following table :-

Date of Transfer	Amount (in US\$ million)
March 14, 2011	5.00
March 28, 2011	4.50
April 06, 2011	4.50
April 14, 2011	3.00
TOTAL	17.00

- b) **Fund transfer from GDR proceeds of the second issue** - US\$12.92 million were transferred to AFTL out of proceeds of the second GDR issue through the bank account of 'Transgene Biotech HK Limited, Hong Kong (hereinafter referred to as 'Transgene HK') a subsidiary of *Transgene* held in Standard Chartered Bank as described in the following table:-

Date of Transfer	Amount (in US\$ million)
Oct 24, 2011	2.00
Oct 28, 2011	3.00
Nov 09, 2011	2.50
Nov 18, 2011	1.39
Dec 19, 2011	1.85
Dec 22, 2011	1.91
Dec 30, 2011	0.27
TOTAL	12.92

3. From the bank statements and schedule of payments provided by *Transgene*, it was observed that US\$4.5 million were transferred by *Transgene* to SyMetric Sciences Inc., Canada (hereinafter referred to as 'SyMetric') from the proceeds of first issue as described in the following table:

Date of Transfer	Amount (in US\$ million)
March 08, 2011	2
March 30, 2011	2.5
TOTAL	4.5

4. From the bank statements of Transgene HK (account number 01-7-051797-7 - Standard Chartered Bank) and schedule of payments provided by *Transgene*, it was observed that an amount of US\$4 million had been transferred from Transgene HK to an entity named Sristek from the proceeds of second issue as detailed below:

Date of Transfer	Amount (in US\$ million)
December 02, 2011	1.889
December 07, 2011	2.000
December 16, 2011	0.005
December 22, 2011	0.110
TOTAL	4.0

5. Thus, it was observed that from the GDR proceeds of first issue (i.e. US\$23 million), US\$17 million was transferred to AFIL and US\$4.5 million was transferred to SyMetric. Further, from the GDR proceeds of second issue (i.e. US\$17.5 million), US\$12.92 million was transferred to AFIL and US\$4 million was transferred to Sristek.

6. During preliminary inquiry, *Transgene* vide its letter dated April 18, 2014 submitted that the aforesaid fund transfers were in terms of the service agreements which it had entered into with AFTL and SyMetric. It had also provided copies of such service agreements. From the service agreement dated March 07, 2011 between *Transgene* and AFTL, it was observed that the said agreement was to provide drug technology for auto immune diseases and train *Transgene* personnel for a consideration of US\$30 million. The payments were to be made as per the progress made in transfer of technology to *Transgene* as per the said service agreement. As per Schedule 1 appended to this service agreement the payments were to be made by *Transgene* to AFTL as under:-

On signing the agreement	17% of total cost
Providing Technology Identification	15% of total cost
Completion of Feasibility study	15% of total cost)
Technology specific documentation	10% of total cost
Technology transfer	18% of total cost
Technology transfer and completion of training	25% of total cost

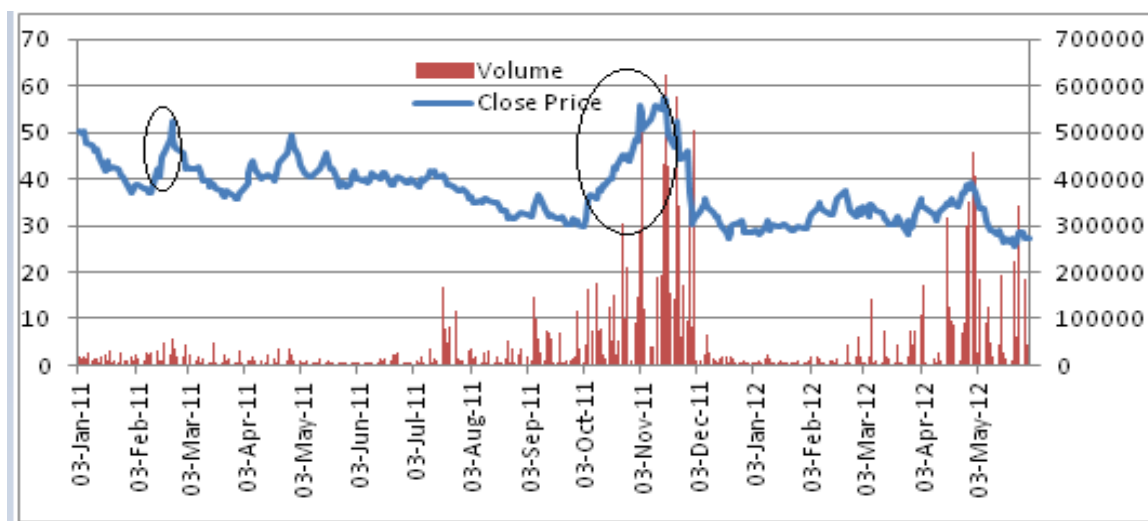
7. From the service agreement dated March 02, 2011 between *Transgene* and SyMetric, it was observed that the said agreement was to provide consulting, organizing and management services to *Transgene* relating to pre-clinical study, data management and statistics. The consideration for these services as per this agreement was US\$8.5 million.
8. In order to verify whether the technology has actually been transferred from AFTL to *Transgene* in terms of the service agreement between them, the annual report of *Transgene* for the financial year 2011-12 was examined. It was noted that on page 40 of the said annual report, under the head “Notes Forming Part of the Accounts” following disclosure on utilisation of GDR proceeds of second issue was made:-

“During the year the company has issued 25,00,000 GDR on 3rd October, 2011, where one GDR represents 10 equity shares of ₹10 each of the company. The company has received in aggregate US\$ 1,75,00,000 equivalent to ₹86.50 crores..... Out of net proceeds, an amount of US\$1,69,52,000 equivalent to ₹86,72,04,988 has been paid as advances for acquiring new drug technologies and getting clinical technology services from technology/strategic partners abroad, through the wholly owned subsidiary Company, M/s Transgene Biotech HK Limited, Hong Kong.”

9. In this case, it is noted that, as against the cost of US\$30 million stipulated in the service agreement dated March 07, 2011 with AFTL, *Transgene* had transferred US\$ 29.92 million to AFTL from March 14, 2011 to December 30, 2011 out of the total GDR proceeds of US\$ 40.50 million. As per the said service agreement, the full cost stipulated therein could be paid only on technology transfer and completion of training. Thus, in this case the US\$29.92 million could be paid by *Transgene* if it had received the purported technology and services of training before or on the date of payment. However, from the balance sheet for the financial year 2011-12 of *Transgene*, it was observed that apparently there was no addition of assets of the kind purportedly acquired by transferring the GDR proceeds. Thus, the disclosure in annual report claiming that *Transgene* had made payment out of GDR proceeds was false and misleading. The aforesaid annual report was signed by Mr. K. Koteswara Rao, Chairman and Managing Director (CMD) and Mr. Narayana Murthy Pentyala, Director of *Transgene*.
10. When explanation was sought from *Transgene* in this regard, its CMD, Mr. K. Koteswara Rao vide letter dated June 24, 2014, sent a vague and cryptic reply mentioning "not applicable". In view of such response, *Transgene* was again advised to explain the reason for mentioning "not applicable" and also the purpose and basis for fund transfer of US\$4 million to Sristek. Mr. K. Koteswara Rao, CMD of *Transgene*, vide his letter dated July 14, 2014, submitted that transfer of technology and training obligations were not adhered to by AFTL as per the service agreement. It was further submitted in that letter that the fund transfer to AFTL and Sristek were undertaken without prior intimation to *Transgene* and without approval or authorization from him. It was further stated that the management of *Transgene* has initiated a vigorous exercise several months ago to identify and unearth the mechanism of such unauthorized transfer of funds. Mr. K. Koteswara Rao, CMD of *Transgene*, further stated that an entity named Allshore Fiduciary Services, Singapore, was appointed to manage the activities of *Transgene* HK who might have transferred the funds without any prior intimation to *Transgene* and without approval or authorization of its CMD. Thus, admittedly, the GDR proceeds as detailed above were transferred by *Transgene* for undisclosed purposes. It is also noted that on the one hand, the CMD of *Transgene* had confirmed the disclosures of the annual report with regard to the transfer of GDR proceeds of second issue which was apparently false and misleading, on the other hand during inquiry he has feigned ignorance about transfer of GDR proceeds for undisclosed purposes. In view of the same, it is *prima facie* found that he had attempted to cover up the probable plan, device and artifice of transferring the GDR proceeds for the purposes other than informed to the shareholders.
11. It was also noted that there was an article titled "Whiff of GDR scam at *Transgene* Biotek" in the Financial Express dated December 04, 2012, where investors, *inter alia*, raised

questions whether the technology transfer has actually taken place. In this regard, *Transgene* had sent a clarification dated December 05, 2012 to this article to Bombay Stock Exchange (BSE), clarifying that *Transgene* would continue to inform its shareholders through BSE at different and important stages of product or technology developments and it had informed its shareholders through annual reports and through reports to BSE at various points of time about the receipt of funds and their utilization. This claim of *Transgene* that it had informed its shareholders about the utilization of GDR proceeds is apparently false and misleading, as *Transgene* had never informed its shareholders that the technology transfer from AFTL to *Transgene* never took place for which US\$29.92 million were transferred to them from the proceeds of GDRs.

12. In view of the above observations, I *prima facie* find that the GDR proceeds as described above were transferred by *Transgene*, directly or indirectly, through subsidiary for undisclosed and ulterior purposes under the garb of consideration for technology transfer and for other reasons. It is relevant to mention here that *Transgene* and its directors had deliberately shown a rosy picture to the investors in Indian securities market by making GDR issue and then making false and misleading disclosures about the utilization of the GDR proceeds. Further, *prima facie*, they actively concealed the fact that the *Transgene* had never received the technology and other purportedly agreed services from the entities to whom the GDR proceeds were transferred. In my view, had the technology been received, it would have added value to *Transgene* and in turn to its shareholders. Further, the false and misleading disclosures and active concealment of material information as *prima facie* found in this case had potential to influence the investment decisions of the investors in shares of *Transgene* and to induce them to buy or sell its shares.
13. It is noted that on February 17, 2011 i.e. when the first GDR issue was announced, the closing price of scrip of *Transgene* was ₹44.65 per share. It went as high as up to ₹52.25 per share on February 22, 2011 subsequent to this announcement. During the same period, the percentage increase in daily average volume as compare to previous comparative period was around 138%. Similarly, on the date of announcement of second GDR issue on September 30, 2011, the closing price of the scrip was ₹30.30 per share. Since then the price of the scrip was continuously increasing and it reached ₹57.65 per share on November 15, 2011 which was an all time closing high price of the scrip during the financial year (2011-12). The daily average volume in the scrip after the announcement of second GDR issue till November 15, 2011 increased around 227% as compared to the month of September 2011. The price volume graph for the relevant period is as follows:-



14. It is noted that even though GDR proceeds were transferred by *Transgene* without there being technology transfer to it the price of the scrip remained at a commensurate level and it had fallen sharply after April 2012 i.e. much after the transfer of GDR proceeds, when FIIs / Sub Accounts started selling shares (cancelled GDRs) and finally reached to ₹5.00 per share on November 16, 2012. Had the information about non-receipt of technology in spite of transfer of GDR proceeds been disclosed, being a price sensitive information, it would have had immediate negative impact on the price and volume of the scrip. This information would have helped the investors in taking informed decision regarding entry or exit. Considering these facts and circumstances, I am of the *prima facie* view that *Transgene* and its Promoters / Directors tried to maintain / manipulate the share price of *Transgene* by concealing the aforesaid material information from its shareholders.
15. I, *prima facie*, further find that *Transgene* has, apart from concealing the material information about transfer of GDR proceeds for undisclosed / ulterior purposes and making false and misleading disclosures as discussed hereinabove, time and again gave inaccurate and misleading information to the market. In this regard, I note that as per clause 36 of the listing agreement entered into with stock exchanges, it is incumbent on the companies to inform the stock exchange(s) price sensitive information such as the ones observed in the present case like entering into service agreements, non-receipt of services as per service agreements etc. that has a bearing on the operations / performance of the company. The submission of *Transgene* that the non-disclosure would have created panic or fear in the minds of shareholders cannot be accepted since in a disclosure based regime, the non-disclosure of material and price sensitive information as obligated by the Listing Agreement and Prohibition of Insider Trading Regulations, 1992 (PIT Regulations) would not only defeat the objective of regulations but would also adversely prejudice the interests of

investors in securities market. Every listed company is obliged to promptly disseminate price sensitive information irrespective of its impact on the price of the scrip. The disclosure based regime is neutral to the direction of price movement. In view of the above, I, *prima facie*, observe that *Transgene* had failed to inform the stock exchange, in turn, its shareholders and the market as whole such vital information concerning the operations of the company. For the aforesaid reasons, I, *prima facie*, find that *Transgene* has violated clause 36 of the Listing Agreement and also has violated regulations 12 (1) and 12 (2) read with Schedule II to SEBI Prohibition of Insider Trading Regulations, 1992.

16. Apart from the above, in the facts and circumstances of this case, I *prima facie* find that the aforesaid facts *prima facie* indicate that the acts, omissions and concealment of *Transgene* and its Promoters/Directors were 'fraudulent' as defined in regulation 2(1)(c) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (PFUTP Regulations) which reads as under:-

Definition of “fraud” – Regulation 2(1)(c).

(c) “fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent;

(7) deceptive behaviour by a person depriving another of informed consent or full participation;

(8) a false statement made without reasonable ground for believing it to be true;

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And “fraudulent” shall be construed accordingly;

.....”

17. In this case, the conduct of CMD of *Transgene* is unbecoming. He being in charge of affairs of *Transgene* and having signed and authorized the disclosures cannot feign ignorance about the transfer of GDR proceeds as discussed hereinabove. It is intriguing to note that he has

not only feigned ignorance but has also attempted to cover up the entire plan, device and artifice employed in this case by *Transgene* and its promoters/directors. If at all unauthorized fund transfer had taken place, as claimed by him, it is not clear as to what prevented him to take suitable corrective steps in that regard and make true, fair and adequate disclosures about utilization of the GDR proceeds. Not only this, he even tried to mislead the inquiry and gave cryptic and vague reply when explanation was sought. Considering all these facts and circumstances, I *prima facie* find that CMD of *Transgene* was actively involved in the entire episode apart from failing to observe his fiduciary duties towards *Transgene* and its shareholders.

18. Considering the foregoing facts and circumstances of the matter, I, *prima facie*, find that the other entities involved in the transfer and receipt of funds are in complicity with *Transgene* and its promoters/directors in the design to defraud the investors. I am of the considered view that *Transgene* and its promoters/directors have violated provisions of Regulations 3(a), (c) and (d) read with 4(1) and 4 (2) (f) of SEBI (Prohibition of Fraudulent And Unfair Trade Practices) Regulations, 2003 as well as section 12A (b) and (c) of SEBI Act, 1992.
19. It may be pertinent to note here that one of the basic premise that underlies the integrity of securities market is that the participants conform to standards of transparency, good governance and ethical behavior prescribed in securities laws and do not resort to fraudulent activities. In this case, the conduct of the promoters / directors, as brought out above is in violation of this basic premise. I further note that the aforesaid acts and omissions on the part of the promoters / directors and the consequences thereof also raise the concerns about the non-observance of the principles of corporate governance and negligence on the part of the board of directors of *Transgene* in discharging their fiduciary duties. To this end, the Companies Act, the SEBI (Prohibition of Insider Trading) Regulations, 1992 and the Listing Agreement provide various provisions to ensure equal treatment of shareholders and management in the listed companies. The disclosure of material and price sensitive information serves as a tool for ensuring good management and governance of listed companies.
20. I am of the view that while in the facts and circumstances of this case, there is a need for a detailed investigation in the entire GDR issues of *Transgene* till the end utilization of the funds, including the role, if any, of allottees of the GDRs, role, if any, of FIIs / Sub Accounts in cancellation of GDRs and subsequent selling thereof along with the role of AFTL, SyMetric, Sristek and Allshore Fiduciary Services, I find it necessary to intervene in this matter to safeguard the interest of the retail shareholders of *Transgene* and protect the integrity of the securities market. I am convinced that this is also a case where, pending

investigation, effective and expeditious action is required to be taken to prevent any further harm to investors and to thwart any further device, scheme or artifice, which are *prima facie* fraudulent and unfair, of *Transgene* and its promoters/ directors. In my view, therefore, in the facts and circumstances of this case an urgent preventive and remedial action needs to be taken by way of *ad interim ex -parte* order.

21. I, therefore, in order to protect the interest of investors and the integrity of the securities market, in exercise of the powers conferred upon me by virtue of Section 19 read with Sections 11(1), 11(4) and 11B of the SEBI Act, 1992, pending detailed investigation that is directed to be completed expeditiously, hereby issue the following directions, by way of this *ad-interim ex-parte* order:

- a) The following entities are restrained from accessing the securities market and further prohibited from buying, selling or dealing in securities in any manner whatsoever, till further directions.

Sr. No.	Name	PAN
1.	Shri K. Koteswara Rao (Promoter and Chairman cum Managing Director)	AHOPK5487E
2.	Shri Prashant Kumar Ghosh (Director)	AAEPG2319Q
3.	Shri Soma Sekhar Marthi (Director)	ACAPM9616N
4.	Shri Narayana Murthy Pentyala (Director)	ANDPP4186A
5.	Smt K Nirmala Rao (Promoter)	ALCPK1645A
6.	Shri K Srinivas (Promoter)	AMDPK2242F

- b) I hereby further direct *Transgene* not to issue equity shares or any other instrument convertible into equity shares or any other security till further orders.

- c) The Stock Exchanges and the Depositories are directed to ensure that the above directions are strictly enforced.

22. This order shall come into force with immediate effect.

Sd/-

DATE: November 20, 2014

PLACE: Mumbai

RAJEEV KUMAR AGARWAL

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA