

WTM/AB/EFD-1/DRA-4/18/2019-20

SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: ANANTA BARUA, WHOLE TIME MEMBER
FINAL ORDER

**Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act,
1992 in the matter of Transgene Biotech Limited**

In respect of:

Noticee No.	Name of the Noticee	PAN/DIN/CIN/Passport No. of Noticee
1.	Transgene Biotech Limited	AABCT3840P
2.	Mr. K. Koteswara Rao	AHOPK5487E
3.	Mr. Soma Sekhar Marthi	ACAPM9616N
4.	Mr. Narayana Murthy Pentyala	ANBPP4186A
5.	Sristek Consulting Pvt. Ltd. (now known as Sristek Clinical Research Solutions Limited)	U74900TG2002PLC039366
6.	Mr. Deepak Mishra	Z1794060
7.	Mr. Sampath Kumar Meesala	AIIPM9512D

The aforesaid entities are hereinafter referred to individually by their respective names/Noticee numbers and collectively as “the Noticees”.

BACKGROUND:

1. Based on receipts of certain complaints alleging, *inter alia*, fraud in Global Depository Receipts (hereinafter referred to as “**GDR**”) issue of Transgene Biotech Ltd. (hereinafter also referred to as “**TBL**”/“**the Company**”), Securities and Exchange Board of India (hereinafter referred to as “**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.

2. On the basis of finding of preliminary examination, an ex parte ad interim order dated November 20, 2014 was passed by SEBI, pending investigation in the matter, directing TBL to not to issue equity shares or any other instrument convertible into equity shares or any other security till further orders and restraining Noticee no. 2, Noticee no. 3, Noticee no. 4, Shri Prashant Kumar Ghosh, Smt. K Nirmala Rao and Shri K Srinivas, from accessing the securities market and further prohibited them from buying, selling or dealing in securities in any manner whatsoever, till further directions. Thereafter, after hearing the noticees to the aforesaid ex parte interim order, an order dated March 09, 2016 was passed by SEBI whereby confirming the directions contained in the aforesaid ex parte interim order.
3. The aforesaid confirmatory order dated March 09, 2016 was challenged before Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as "**Hon'ble SAT**") by filing six separate appeals being SAT Appeal No. 164 -169 of 2016. The said six appeals were disposed of by the Hon'ble SAT vide order dated August 17, 2017. Extract of para 4 of the said order is reproduced hereunder:

".....4. Accordingly, without going into the merits, we dispose of these appeals by directing SEBI to complete the investigation by December, 2017 and if deemed fit issue show-cause notice by 31st December, 2017. ..."
4. Thereafter, as investigation could not completed by December 31, 2017, SEBI filed miscellaneous application in the aforesaid disposed of appeals before Hon'ble SAT, seeking extension of time in the matter. Hon'ble SAT vide its order dated January 18, 2018 disposed of the aforesaid miscellaneous applications by directing completion of the investigations and issuance of Show Cause Notice, by April 30, 2018.
5. On completion of investigation in the matter, a Show Cause Notice dated April 26, 2018 (hereinafter referred to as "**SCN**") was issued to the Noticees alleging therein the violations as follows:
 - (i) Noticee no. 1 was alleged to have violated Section 12A(a), (b) & (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") read with Regulations 3(a), (b), (c) & (d) and 4(1), (2)(f), (k) & (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations,

2003 (hereinafter referred to as "**PFUTP Regulations**"), Section 21 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCRA**") read with Clauses 36 and 50 of Listing Agreement and Regulation 12(2) read with Schedule II to SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations, 2012**") read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 1995 (hereinafter referred to as "**PIT Regulations, 2015**"); and

- (ii) Noticee no. 2 to 4 were alleged to have violated Section 12A(a), (b) & (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d) and 4(1), (2)(f), (k) & (r) of PFUTP Regulations.
- (iii) Noticee no. 5 to 7 were alleged to have violated Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

6. SCN called upon the Noticees to show cause as to why suitable directions under Sections 11(1), 11B and 11(4) of the SEBI Act, 1992 should not be issued against them. Noticees were advised to file their reply, within twenty one days from the receipt of SCN and also to indicate to avail opportunity of personal hearing, if so desired. Documents relied upon in the SCN were also annexed to the said SCN. The details of documents annexed with SCN are as under:

Sr. No.	Document	Annexure to SCN
1.	Copy of TBL's letter dated August 21, 2013 to SEBI	1
2.	Copy of TBL's account with Investec Bank	2
3.	Copy of Leman's letter dated November 13, 2017 (through email) to SEBI	3
4.	Copy of Sparrow's letter dated November 13, 2017 (through email) to SEBI	4
5.	Copy of Davos International Ltd.'s letter dated November 13, 2017 to SEBI	5
6.	Copy of Bank statement of Symetric with Bank of Montreal	6
7.	Copy of Bank statement of AFTL with HSBC	7
8.	Copy of Bank Statement of TBL HK Ltd. with Standard Chartered Bank, Singapore	8
9.	Copy of Bank Statement of Sristek with HSBC	9
10.	Copy of Letter dated April 18, 2014 from TBL to SEBI	10

11.	Copy of Letter dated June 24, 2014 from TBL to SEBI	11
12.	Copy of Letter dated July 14, 2014 from TBL to SEBI	12
13.	Copy of Letter dated July 28, 2014 from TBL to SEBI	13
14.	Copy of Letter dated August 11, 2014 from TBL to SEBI	14
15.	Copy of Letter dated March 16, 2015 from TBL to SEBI	15
16.	Copy of Letter dated April 21, 2015 and August 12, 2015 from TBL to SEBI	16
17.	Copy of Letter dated August 21, 2015 from TBL to SEBI	17
18.	Copy of Letter dated December 23, 2015 on behalf of TBL to SEBI	18
19.	Copy of Letter dated December 31, 2015 on behalf of TBL to SEBI	19
20.	Copy of Letter dated July 13, 2016 from TBL to SEBI	20
21.	Copy of Letter dated September 22, 2016 on behalf of TBL to SEBI	21
22.	Copy of Letter dated March 9, 2017 and March 20, 2017 from TBL to SEBI	22
23.	Copy of Letter dated April 10, 2017 from TBL to SEBI	23
24.	Copy of Letter dated November 13, 2017 and email dated November 25, 2017 from TBL to SEBI	24
25.	Copy of Letter dated March 2, 2018 and March 9, 2018 from TBL to SEBI	25
26.	Copy of Email dated January 12, 2018 from ED to SEBI	26
27.	Letters – Agreement dated 7 th January , 2011 entered into between TBL and AFIL	27
28.	Copy of Email dated September 10, 2011 from Noticee No. 7	28
29.	Copy of Email dated September 13, 2011 of Noticee No. 3	29
30.	Copy of Relevant extracts of Annual Report of TBL for FY 2010-11	30
31.	Copy of Relevant extracts of Annual Report of TBL for FY 2011-12	31
32.	Copy of page 22 of Annual Report of TBL	32
33.	Copy of Relevant extracts (from Annual Report of TBL for 2013-14)	33
34.	Copy of Letter dated April 5, 2012 of TBL to Dr. John Joseph (Project Coordinator), AFIL	34
35.	Copy of Letter dated January 16, 2013 of TBL to Dr. John Joseph (Project Coordinator), AFIL	35
36.	Copy of Letter dated August 15, 2013 of TBL to M/s. Sarath & Associates, Auditors	36
37.	Copy of Bank statement of TBL of the Bank account held with Investec Bank	37
38.	Copy of Certificate of Incorporation of TBL HK Ltd.	38
39.	Copy of Disclosures made by TBL on BSE website	39
40.	Copy of MAS letter dated March 2, 2018 to SEBI	40
41.	Copy of Account opening form of Fundabilis	41

7. Some notable facts, as stated in the SCN are as under:

7.1 The investigation period was from February 01, 2011 to June 30, 2013. However, wherever deemed necessary, investigation made reference to events happening outside this period.

7.2 TBL was incorporated as a private limited Company in March 1990 and was converted into a public limited Company in November 1990. TBL is engaged in the research and development and manufacture of medical reagents, both chemical and immuno-diagnostic reagents for the qualitative and quantitative estimation of bio-chemical parameters and diagnosis of diseases respectively. The registered office of TBL is at Plot No. 68, 69 & 70, Anrich Indl Area, IDA Bollaram, Medak, Telangana. The shares of TBL are listed at BSE. During investigation period, the directors of TBL were, - Dr. K. Koteswara Rao- Chairman & Managing Director (Noticee no. 2), Mr. Soma Sekhar Marthi- Independent Director (Noticee no. 3), Mr. Narayana Murthy Pentyala - Executive Director (Noticee no. 4) and P.K. Ghosh.

7.3 The face value of shares of TBL during the entire investigation period was Rs. 10 per share. Prior to issue of shares on account of GDR issue, the total number of shares of TBL was 1,57,70,000. The price of scrip of TBL increased from Rs. 38.10 per share on February 1, 2011 to Rs. 62.5 per share on November 16, 2011. Subsequently, the price of the scrip fell to Rs. 2.83 per share by the end of investigation period. The scrip closed at Rs. 2.10 per share on March 21, 2018 at BSE.

7.4 On February 22, 2011, TBL allotted 25,00,000 GDRs (1 GDR representing 10 shares) in the first tranche (hereinafter referred to as “**1st GDR issue**”). Thereafter, on October 03, 2011, TBL allotted 25,00,000 GDRs (1 GDR representing 10 shares) in the second tranche (hereinafter referred to as “**2nd GDR issue**”). The details of the same are summarized in the table below:

Details of GDR issues

Particulars	1st GDR Issue	2nd GDR Issue
GDR Opening and closing Date	February 22, 2011 - February 22, 2011	October 03, 2011 - October 03, 2011
No of GDRs and Underlying shares Issued	25,00,000 GDRs for 2,50,00,000 shares	25,00,000 GDRs for 2,50,00,000 shares
GDR to underlying Shares ratio	1:10	1:10

Capital Raised via GDRs	US\$ 23 million	US\$ 17.5 million
Market Cap at the time of GDR Issuance	Rs 82.4 crore (approx.) (on Feb 22, 2011)	Rs 121.5 crore (approx.) (on Oct 03, 2011) (including shares on account of 1st GDR)
No. of Equity shares prior to GDR Issue	1,57,70,000 shares	4,07,70,000 shares (including shares on account of 1st GDR)
Ratio of equity issued through GDRs to equity shares prior to GDR issue	1.59	0.61
GDR Issue Price	US\$ 9.2 per GDR/ Rs 416.53 per GDR*	US\$ 7 per GDR/ Rs 345.135 per GDR#
(Closing) Share Price on Issue Date at BSE	Rs 52.25	Rs 29.8
Lead Manager	Fundabilis GmbH Munstergasse 12 8001 Zurich, Switzerland	Fundabilis GmbH Munstergasse 12 8001 Zurich, Switzerland
International Bank Account Number of TBL where the GDR proceeds were initially deposited	A/c no. 020078 Investec Specialist Private Bank Investec Bank (Switzerland) AG Loewenstasse 29, 8001 Zurich	A/c no. 020078 Investec Specialist Private Bank Investec Bank (Switzerland) AG Loewenstasse 29, 8001 Zurich
Overseas Depository	The Bank of New York Mellon	The Bank of New York Mellon
* US\$ - INR rate of 45.275 on Feb 22, 2011		# US\$ - INR rate of 49.305 on Oct 03, 2011

7.5 TBL had granted Limited Power of Attorney (LPoA) to one Ms. Lok Teng Teng Dorothy (hereinafter referred to as “**Ms. Dorothy**”) who was authorised to act as liaison officer between the client and the Investec Bank (Switzerland) AG (hereinafter referred to as “**Investec Bank**”), to inform to Investec Bank any instructions given by the client to purchase and/or sell securities, etc. and to instruct the bank to make or hold investments in the bank's name as nominee with any third party, etc.

7.6 Vide letter dated February 22, 2011 i.e. the date of 1st GDR issue, TBL had requested Investec Bank to take delivery of 25,00,000 GDRs in their account no. 020078. Subsequently, amounts were credited in the said account of TBL through various transactions by way of 'Stock exchange Sell' of GDR. Such sell transactions of GDR were carried out pursuant to instructions sent by Ms. Dorothy to Investec Bank.

7.7 Vide another letter dated October 03, 2011 i.e. the date of 2nd GDR issue, TBL had requested Investec Bank to take delivery of 25,00,000 GDRs in their account no. 20078. Subsequently, amounts were credited in the said account of TBL through various transactions. Such sell transactions of GDR were carried out pursuant to instructions sent by Ms. Dorothy.

7.8 In the 1st GDR issue, TBL received US\$23.032 million in its Investec Bank account as proceeds of GDR sale. It was observed that out of the \$23.032 million received by TBL, in its Investec Bank Account, \$23 million were transferred to various entities i.e. Fundabilis Pte Ltd. (hereinafter referred to as “**Funadabilis**”) (\$0.92million), SyMetric Sciences Inc. (hereinafter referred to as “**Symetric**”) (\$4.5 million) and Asia First Technologies Ltd. (hereinafter referred to as “**AFTL**”) (\$16.98 million) and account of TBL in India (\$0.6 million). AFTL has further transferred \$ 9.956 million to Fundabilis.

7.9 In the 2nd GDR issue made on October 3, 2011, TBL received approximately \$ 17.5 million in its Investec Bank account, as proceeds of GDR sale, out of which \$ 16.95 million were transferred to Transgene Biotech HK Ltd. (hereinafter referred to as “**TBL HK Ltd.**”) and \$.5 million were transferred to Funadabilis. Thereafter, out of \$ 16.95 million received by TBL HK Ltd. were transferred to Sristek Consulting Pvt. Ltd. (hereinafter referred to as “**Sristek**”) (\$4.0 million) which were further transferred by it to Bluejet Express Pte Ltd. (hereinafter referred to as “**Bluejet**”) (\$ 2 million) and Asiarich Venture Ltd. (hereinafter referred to as “**Asiarich**”) (\$ 2 million). Remaining \$ 12.938 were transferred by TBL HK Ltd. to AFTL which further transferred this amount to Brindille Holdings Inc. (hereinafter referred to as “**Brindille**”) (\$ 12.663 million) and Blue Wings International Pte Ltd. (hereinafter referred to as “**Blue Wings**”) (\$ 0.275 million).

7.10 In the 1st GDR issue, there was no subscription of GDRs and all the GDRs were sold by TBL through 'stock exchange sell' to two entities namely, Leman Fund (hereinafter referred to as “**Leman**”) and Sparrow Fund (hereinafter referred to as “**Sparrow**”) during February 23, 2011 to April 13, 2011, i.e. after the 1st GDR issue closure date February 22, 2011.

7.11 In the 2nd GDR issue, out of 25,00,000 GDRs, 8,33,333 GDRs were sold by TBL through 'stock exchange sell' to the three entities namely, Leman, Sparrow and Davos International Fund (hereinafter referred to as “**Davos**”) during October 14, 2011 to October 20, 2011, i.e., after the 2nd GDR issue closure date October 03, 2011. The remaining 16,66,667 GDRs were purchased by Sparrow and Davos on October 07, 2011, i.e. after the 2nd GDR issue closure date (October 03, 2011) and the payments were received by TBL, in its account held with Investec Bank, much later (during November 03, 2011 to December 29, 2011).

7.12 During the investigation information was also sought from the Enforcement Directorate, Hyderabad (hereinafter referred to as “ED”) and the same was taken into account by the investigating authority regarding various facts of the matter.

8. In view of the aforesaid facts, SCN alleged that Noticee no. 1 to 4 had devised a scheme under which Noticee no. 1 made two GDR issues, the proceeds of which were diverted by them and, subsequently, involved in covering up of diversion of GDR issues' proceeds by legitimizing the same through back-dated agreement/invoices, concealing/making false statements in regard to utilization of GDR proceeds/non-receipt of technology and services in the Annual Reports of TBL for the financial years 2010-11, 2011-12 and 2012-13. It has also been alleged in the SCN that Noticee no. 1 to 4 made false disclosures in the Annual Reports for financial years 2010-11, 2011-12 and 2012-13 regarding funds transferred to AFTL, Symetric and Sristek which were shown as Advances/Technology (in fixed assets). Such false and misleading disclosures and active concealment of material information had potential to influence the investment decisions of the investors in shares of TBL and to induce them to buy or sell shares of TBL. SCN further alleged that Noticee no. 1 failed to inform the stock exchange of price sensitive information regarding entering into material service agreements, non-receipt of services as per service agreements that had a bearing on the operations/performance of TBL. It has also been alleged in the SCN that Noticee no. 1 made false announcements at BSE regarding allotment of GDRs after the issue closure date, when there were no subscriptions till that date, thus deliberately showing a rosy picture to the investors in Indian securities market. Further, allegation is that Noticee no. 1 made delayed disclosure to BSE regarding setting up of wholly owned subsidiary i.e. TBL HK Ltd. which is in violation of Section 21 of SCRA, 1956 read with Clause 36(7) of the Listing Agreement. It has been further alleged in the SCN that in terms of Accounting Standard-1 laid down by the Institute of Chartered Accountants of India (ICAI), financial statements should disclose all "material" items, i.e. items the knowledge of which might influence the decisions of the user of the financial statements. However, Noticee no. 1 failed to disclose material service agreements with AFTL and Symetric and non-receipt of services as per service agreements in the Annual Reports for the financial years 2010-11 to 2012-13. Thus, SCN alleges that Noticee no. 1 did not comply with Accounting Standard - 1 which is violation of Section 21 of SCRA,

1956 read with Clause 50 of the Listing Agreement, which requires a listed company to mandatorily comply with all the Accounting Standards issued by ICAI from time to time.

9. Regarding the role of Noticee no. 5 and Noticee no. 7 in the aforesaid scheme of Noticee no. 1, it has been alleged in the SCN that Noticee no. 5 received \$ 0.115 million and \$ 4.004 million from the proceeds of 1st GDR issue and 2nd GDR issue, respectively. Noticee no. 5 is common shareholder between Symetric and AFTL, the two entities who entered into dubious agreements with TBL. Thus, SCN alleges that Noticee no. 5 acted as a conduit in diverting GDR proceeds and hence, Noticee no. 5 aided and abetted TBL in diverting the proceeds of two GDR issues.
10. Regarding role of Noticee no. 6, SCN has noted that Noticee no. 6 had provided all the information to Allshores for setting up of TBL HK Ltd. and also coordinated the arrangement between Allshores and TBL, and provided all the requisite documents and signed documents of TBL. Noticee no. 6 through email Id paymentgateway65@gmail.com provided instructions from TBL to Allshores in respect of requests to take delivery of GDRs in TBL's Investec Bank account, sell orders for TBL GDRs, transfer of GDRs, fund transfers from TBL's account (including closure), fund transfer from TBL HK Ltd.'s account to AFTL, Sristek and Blue Wings. There were also instructions in e-mails sent from the said email Id, for onward transfer of amounts from AFTL to Brindille and Blue Wings, and from Sristek to Bluejet and Asiarich. Instructions were also received from the said email id to Allshores to transfer funds from Fundabilis whose beneficial owner was Noticee no. 6. It was also noted that it is the same e-mail Id to which Noticee no. 3 had sent the details of the back-dated invoices to be made in respect of AFTL. In view of the aforesaid facts, SCN alleged that Noticee no. 6 was involved in the entire scheme of diverting of the GDR proceeds of TBL and later legitimizing it through back-dated agreement and invoices, and hence, aided and abetted TBL in diverting the proceeds of GDR issues.
11. Regarding role of Noticee no. 7, SCN has noted that Noticee no. 7 was the director of Noticee no. 5 and was also one of the beneficial owners of AFTL. Noticee no. 7 was associated/connected with AFTL, Symetric and Sristek, who acted as conduits in diverting GDR proceeds of TBL. Noticee no. 7 provided revised agreement between TBL and AFTL

for signatures to email id marked as paymentgateway65@gmail.com. Further, Noticee no. 7 also continued to mention that invoices may be prepared as per the payment milestones. It was further observed that Noticee no. 7 received email dated September 13, 2011 from Noticee no. 3 which contained the details of the invoices to be raised with back dating made (during March- April, 2011) in respect of amounts already transferred to AFTL and Symetric in March-April, 2011. In view of these facts, SCN alleged that Noticee no.7 was involved in the entire scheme of diversion of the GDR proceeds of TBL and later legitimizing it through back-dated agreement and invoices, and hence, aided and abetted TBL in diverting the proceeds of GDR issues.

REPLIES AND HEARING:

12. The aforesaid SCN was served upon all the Noticees except Noticee no. 5 and Noticee no. 7. Noticee no.1 vide its letter dated May 17, 2018 requested for four weeks' time for filing reply. Subsequently, a reply dated June 04, 2018 was received on behalf of Noticee no. 1 to 4. Also Noticee no. 3 and Noticee no.4 filed their separate replies both dated June 06, 2018, apart from denying the allegations made against them, requested to consider the reply filed by Noticee no. 1 and 4 on June 04, 2018. The SCN sent to Noticee No. 5 and 7 were returned undelivered and it was also not possible to serve the SCN by making affixture as these Noticees had vacated the premises.
13. The SCN sent to Noticee No. 6 had returned undelivered and, thereafter, attempts were made to serve the SCN by making affixture at the address of Noticee No. 6 on August 28, 2018. Subsequently, a letter dated November 05, 2018 was received from Alliance Law on behalf of Noticee no. 5 with a request to keep the proceeding in abeyance since Noticee no. 6 was out of India. Vide another letter dated December 14, 2018 request was made on behalf of Noticee no. 6, for four weeks' time for filing reply. However, reply dated April 18, 2019, on behalf of Noticee no. 6, was submitted during the course of hearing held on April 22, 2019.
14. In compliance with the principles of natural justice, the Noticees were provided an opportunity of personal hearing and for this purpose January 17, 2019 was fixed as date of hearing. The hearing notice was served upon all the Noticees except Noticee no. 5 and Noticee no. 7.

15. The hearing notice to Noticee no. 5 and Noticee no. 7 was served through newspaper publication made on January 08, 2019 in Times of India, Hyderabad (English edition), Daily Hindi Milap, Hyderabad (Hindi edition) and in Sakshi (Telugu edition). Vide said newspaper publication, the Noticee no. 5 and Noticee no. 7 were advised to collect a copy of the SCN from SEBI and appear for availing the opportunity of hearing on January 17, 2019. However, the Noticee no. 5 and Noticee no. 7 neither approached SEBI for collecting the copy of SCN nor appeared for hearing nor filed any reply to the SCN.
16. On January 17, 2019, the hearing was adjourned to January 28, 2019 and then, based on request received from Noticee no. 1 to 4, the hearing was again rescheduled to February 04, 2019 when Mr. Laxman Sidhu Shetty, Advocate appeared for the Noticee no. 1 to 4 and made his submissions. The Noticees nos. 2 and 3 were also present during the course of hearing. After completion of hearing, Mr. Laxman Sidhu Shetty, Advocate made a request for seeking further documents from SEBI and also to file additional reply which was allowed. Noticee no. 6, vide letters dated February 19, 2019 and March 13, 2019 requested to fix the hearing in the month of May, 2019. However, the same was not allowed and hearing was fixed on April 22, 2019 when Mr. Tanmayi Rajadhyaksha, Advocate and Ms. Aparna Wagle, Advocate appeared on behalf of Noticee no. 5 and made submissions. They also submitted a reply dated April 18, 2019 on behalf of Noticee no. 6, during the course of hearing.
17. Mr. Laxman Sidhu Shetty, Advocate representing Noticee no. 1 to 4, vide letter dated February 25, 2019, stated that their clients had filed preliminary reply to the SCN, vide their letter dated June 04, 2018. Further, referring to the submissions made during the hearing held on February 04, 2019, Mr. Laxman Sidhu Shetty, Advocate stated that Ld. Whole Time Member had allowed seeking such relevant documents which are relied upon in the SCN issued by SEBI but not provided to the Noticees for the purpose of preparation of a detailed reply. In this context, the Advocate of TBL vide aforesaid letter referred to twelve correspondences made by SEBI with various entities and authorities, apparently made during the course of investigation which were referred to in the SCN, and stated that some of the documents relied upon therein are only the replies received from various

entities/authorities and that the same did not include the letters addressed by SEBI to such entity/authority and, therefore, exact nature of information cannot be deciphered correctly. In this background, Mr. Laxman Sidhu Shetty, Advocate vide aforesaid letter dated February 25, 2019 requested for providing copies of the following documents (highlighted in bold) :

- a. Letter No. ENF/FOR/2017/0037 dated 02.03.2018 from 'Monetary Singapore Authority' (Annexure 40) which apparently has been in reply to the **SEBI's letter dated 15.12.2017.**
- b. Letter dated 13.11.2013 from M/s Leman Diversified Fund, Mauritius to SEBI (Annexure 3) in response to **SEBI's letter No. IVD/ID5/SM/MJ/TBL/26323/1/2017 dated 27.10.2017.**
- c. Letter dated 13.11.2013 from M/s Sparrow Asia Diversified Opportunities Fund, Mauritius to SEBI (Annexure 4) in response to **SEBI's letter No. IVD/ID5/SM/MJ/TBL/26325/1/2017 dated 27.10.2017.**
- d. Letter dated 13.11.2013 from M/s Davos International Fund, Mauritius to SEBI (Annexure-V) in response to **SEBI's letter No. IVD/ID5/SM/MJ/TBL/26320/1/2017 dated 27.10.2017.**

18. In addition to the above, Mr. Laxman Sidhu Shetty, Advocate vide aforesaid letter dated February 25, 2019, referring to a letter dated February 02, 2017 received by TBL from FINMA (Banking and Financing Regulatory Authority of Switzerland) seeking the permission of TBL for providing information relating to TBL, to SEBI, also requested for the letters issued by SEBI to FINMA calling for the details. In the said letter, Mr. Laxman Sidhu Shetty, Advocate requested for suitable response in the matter and further stated that they will deal with the matter further on receipt of the disposal of their request.

19. Another letter (undated) was received by SEBI from TBL, on May 17, 2019, with a request to provide the aforesaid documents as sought by Mr. Laxman Sidhu Shetty, Advocate vide his letter dated February 25, 2019. I note that SEBI vide an email dated May 21, 2019 responded to Mr. Laxman Sidhu Shetty, Advocate stating that, *'Your letter with respect to the captioned subject matter was examined. Please note that, the specific and relevant documents pertaining to*

the captioned proceedings have already been provided and flagged as part of the SCN. The SCN relies on the documents already provided to you. I note that during the course of hearing held on February 04, 2019, Mr. Laxman Sidhu Shetty, Advocate appearing for Noticee no. 1 to 4 had sought to file an additional reply, however, no additional reply or response has been received from the Noticee No. 1 to 4 after communication made by SEBI vide Email dated May 21, 2019.

20. The major contentions/ submissions made by Noticees no. 1 to 4 vide their aforesaid replies and during the course of hearings, are summarized as under:

20.1 TBL is victim of fraud and forgery committed by Mr. Nirmal Kotecha and his associates which was revealed with extensive evidence gathered by Noticee no. 2. The idea to raise funds through GDR issue was a commercial decision and there was no ulterior motive to make any undue gain out of the same. The promoters or directors have neither received GDR proceeds nor misappropriated them.

20.2 In the year 2009-10, the management come across one Mr. Nirmala Kotecha who made tall claims of having a large network of contacts with various entities and individuals to source technologies and also to facilitate TBL's requirements in getting pre-clinical and clinical studies conducted abroad. The Company had no exposure to the international intermediaries, banking houses, foreign government procedures or GDR procedures. Therefore, the management believed Mr. Nirmal Kotecha to be true and that they could not visualize in all their wisdom about his real character and conduct.

20.3 Mr. Nirmal Kotecha and his accomplices orchestrated the *modus operandi* of the issue of GDRs and all the agencies, intermediaries, investors, banks, technology transfer companies, etc., were brought in by him and that the management of TBL were neither informed nor knew nor had any dealings with them. The same fact was also admitted by Mr. Nirmal Kotecha during his confessions with the ED.

20.4 After getting suspicion of fraud committed by Mr. Nirmal Kotecha, emails dated November 09, 2012 and December 18, 2012 were sent to Mr. Nirmal Kotecha with a

copy to his associate Mr. Kishore Tapadia to return the money promised by him. Subsequently, a letter was sent to ED dated 6th April 2013 bringing out the fraud played by Mr. Nirmal Kotecha in respect of GDR issue of TBL.

20.5 TBL did not make any attempts to show any rosy picture at any point of time but at the same time enough thought was given to make sure that unsubstantiated actions or events were not reported prematurely keeping the interests of shareholders at heart.

20.6 The GDR proceeds were put in by the entities belonging to Mr. Nirmal Kotecha and his accomplices and the same were routed back to the said entities without the knowledge of TBL or its Promoters and Directors. The monies had never come into the Company or even into the country. The same was also confirmed.

20.7 Allegation that promoters and directors siphoning proceeds of the GDRs into their hands or under their control is a gross injustice to the efforts made in unearthing fraud committed on the Company and hardships faced by the management.

20.8 Ms. Dorothy has misused the LPoA and gave instructions to Investec Bank to sell the GDRs without any authority received from TBL. Neither the Company nor its directors had issued any instructions either to the bank or to Ms. Dorothy.

20.9 Noticee no. 2 lodged a complaint with Singapore Police on 4th November, 2016 alleging fraud played in respect of its GDR issue. There were no instructions given by Noticee no. 2 or any Director of Noticee no. 1 to Ms. Dorothy to sell GDRs to any entity including Leman Diversified, Sparrow Asia or Davos International.

20.10 Lead managers Fundabilis GmbH, Investec Bank, Ms. Dorothy, so called allottees and Mr. Nirmal Kotecha and his associates have connived with each other to defraud TBL and were successful to that extent.

20.11 The transfer of GDR funds from the account of Company in Investec Bank to the various entities was observed only from the statement of account received from

Investec Bank. However, these payments were not authorized by TBL or any of its Directors.

20.12 In the case of TBL HK Ltd. and its account managed by Allshores, the names of payees i.e., AFTL and Sristek were revealed only when the audited Balance Sheet of TBL HK Ltd. was received in August, 2012 for the purposes of auditing of TBL.

20.13 The Noticee no. 2 informed Hong Kong Police about the fraud played by Ms. Dorothy, AFTL and Sristek requesting them to investigate and identify the final beneficiary of the illegally transferred funds from the accounts of TBL and TBL HK Ltd. into the accounts of AFTL and Sristek at HSBC Hong Kong.

20.14 Noticee no. 2 filed an FIR with Bollaram Police in March, 2015 seeking their help in investigating the fraud played by Mr. Nirmal Kotecha and his coterie and also, sought their help in recovering the monies lost by Noticee no. 1.

20.15 The utilization of GDR proceeds reported in balance sheet for the financial years 2010-11, 2011-12 and 2012-13 as advances towards acquiring technology.

20.16 It is denied that there was any valid agreement dated January 07, 2011 with AFTL. The said agreement comprising of nine pages but none of the pages were signed except the last page while the agreement dated March 07, 2011 sent by TBL to SEBI was signed by the Noticee no.2 on each page and these facts prove that the agreement dated January 07, 2011 was a manipulated and doctored document by the person/organization who sent the same to SEBI.

20.17 The original invoices were raised before making the payment in March, 2011. However, due to certain corrections were to be made, Noticee no. 7 promised to send the corrected invoices. As the same were not forthcoming till September, 2011, the party was advised to send corrected invoices once again.

20.18 Transfer of funds to various entities from the accounts of TBL and TBL HK Ltd.

- was carried out using forged letters of instruction by Ms. Dorothy and Investec Bank both acting under the advice of Mr. Nirmal Kotecha who were all appointed by him and Fundabilis GmbH.
- 20.19 The information on Symetric was provided by Mr. Nirmal Kotecha and Mr. Kishore Tapadia and verified by going through their website which was running at that time.
- 20.20 The agreement with AFTL and Symetricik also provided default clause and clauses enabling refund of amounts in the event of failure or default.
- 20.21 Regarding the allegation of relationship with Ms. Dorothy and her dual role in signing on behalf of AFTL after signing as LPOA, TBL was not aware of, at that point in time that she would be the same person signing on behalf of AFTL also.
- 20.22 The condition to make payment of 57% before actual transfer of technology was based on special circumstance of transfer of new technology. It was the matter of understanding between the parties to arrive at milestone payments accordingly.
- 20.23 Though TBL HK Ltd. is a subsidiary of TBL, strictly, it was not under direct control of TBL. The Subsidiary was created as per the advice of Mr. Nirmal Kotecha who had stated that it was a part of the scheme of GDR issue to facilitate smooth conduct of the GDR issue, collection of proceeds, transfer of monies and transfer of technologies, etc.
- 20.24 The technology was recognised as an asset and recorded in the books of account as per the advice of auditors for the year 2012-13 and continued beyond that period till it was noticed that some critical components were missing.
- 20.25 Noticees no. 1-4 denied the allegation that amounts transferred to AFTL, Symetric and Sristek were shown as advances in the Annual Reports prior to passing of the interim order dated November 20, 2014. Passing of interim order has no relevance to

the already ongoing and extensive investigation taken up by the Noticee no. 2.

20.26 The agreements with AFTL and Symetric have come into existence after the offering circular as such the above arrangement not to be disclosed and signing such agreement was in the normal course of business. Further, in case of AFTL and Symetric, the technology and services offered were still uncertain and, therefore, it was not informed to BSE at that stage.

20.27 The statements made by Noticees were not an afterthought while it could have been alleged that better due diligence should have been exercised in dealing with Mr. Nirmal Kotecha.

20.28 For monitoring the bank account, TBL was in touch with Mr. Nirmal Kotecha and his accomplice.

20.29 Despite the Order dated August 17, 2017 by the Hon'ble SAT, SEBI ignored the evidence of ED nailing the involvement of Mr. Nirmal Kotecha who organized the entire fraudulent GDR scheme.

20.30 The Noticee no. 2 came to know through the documents received from FINMA in February, 2017 about the extent of unauthorized sale of GDRs by Allshores through Investec Bank to three entities namely Sparrow Asia, Leman Diversified and Davos International, all located at the same address in Mauritius.

20.31 The confirmation of incorporation of TBL HK Ltd. was received, with some delay, in September, 2011 from Mr. Nirmal Kotecha and then it was intimated to BSE.

20.32 Ignoring all the voluminous evidence showing the fraud committed by Mr. Nirmal Kotecha with their accomplice, accusing Noticee no. 2 to 4 of diversion of GDR proceeds under the garb of advance / consideration for technology/service is travesty of justice and also appear to be shielding the guilty and punishing the victims.

20.33 The Noticee no. 3 and Noticee no. 4, vide their said separate letters, both dated Jun 06, 2018, mentioned that in the year 2010-11 there was a discussion in the meeting of the Board of Director of TBL about fund requirement of the Company for acquiring technology in the field related to activities of the Company. The Board of Director acted bona fide but, for the fraud played and misrepresentation given by Mr. Nirmal Kotecha and his team, the Company would have been in enviable position.

21. Noticee no. 6 vide his reply dated April 18, 2019 made following submissions:

21.1 The Noticee was acting as an agent to Sristek Consulting Pvt. Ltd. and entities instructed by Sristek in connection with setting up various subsidiaries of Sristek. Sristek was owned and controlled by one Mr. Nirmal Kotecha.

21.2 He had no connection whatsoever with TBL and its promoters or directors.

21.3 During the commencement of the assignment, a group email id (paymentgateway65@gmail.com) was created which was accessible to the person associated with the assignment i.e. Mr. Shilpi Chowdhry, Mr. Nirmal Kotecha, Noticee and Allshores.

21.4 The instructions to be addressed to Allshores were drafts saved in the folders of (paymentgateway65@gmail.com) which were prepared by the office of Mr. Nirmal Kotecha and the Noticee no. 6 was required to issue the same to Allshores.

21.5 The Noticee was wrongly shown as director of Fundabilis and it was holding one share of Mr. Nirmal Kotecha as his nominee and that Mr. Nirmal Kotecha was the real beneficiary. The said holding of one share as a nominee was pursuant to declaration of trust deed dated June 30, 2010 in terms of which the Noticee was not entitled to transfer, deal with or dispose of the said share and was bound to give account of dividend and profits to Mr. Nirmal Kotecha.

CONSIDERATION OF ISSUES:

22. I have perused the SCN dated April 26, 2018, the replies dated June 04, 2018 received on behalf of Noticee no. 1 to 4, separate replies dated June 06, 2018, filed by Noticee no. 3 and Noticee no. 4, reply dated April 18, 2019 filed on behalf of Noticee no. 6 along with its annexures. The question now arises as to whether, as alleged in the SCN, the Noticees have violated the provisions of SEBI Act, 1992, provisions of PFUTP Regulations, Section 21 of SCRA read with Clause 36 and 50 of Listing Agreement, Regulation 12(2) read with Schedule II to PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.
23. Before proceeding further, it would be appropriate to reproduce the relevant extract of the provisions of law which are alleged to have been violated by the Noticees, in the aforesaid SCN. The relevant extract of these provisions is as under:

Relevant extract of SEBI Act, 1992:

“Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

Section 12A: No person shall directly or indirectly

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;.....”*

Relevant extract of PFUTP Regulations:

“Regulation 3. Prohibition of certain dealings in securities

No person shall directly or indirectly,-

- (a) buy, sell or otherwise deal in the 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 there under;*
- (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 there under.*

Regulation 4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
- (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:—*
 - (a).....*
 - (b).....*
 - ...*

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(g)...

(h)...

.....

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

(l).....

(m).....

.....

(r) Planting false or misleading news which may induce sale or purchase of securities;

.....”

Relevant extract of provisions of SCRA:

“Conditions for listing.

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.”

Relevant extract of provisions of Listing Agreement:

Clause 36

“36. Apart from complying with all specific requirements as above, the Company will keep the Exchange informed of events such as strikes, lock-outs, closure on account of power cuts, etc. both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the shareholders and the public to appraise the position of the Company and to avoid the establishment of a false market in its securities. In addition, the Company will furnish to the Exchange on request such information concerning the Company as the Exchange may reasonably require. The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company as well as price sensitive information. The material events may be events such as:

(1).....

(2).....

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(7) *Any other information having bearing on the operation/performance of the company as well as price sensitive information, which includes but not restricted to;*

i) Issue of any class of securities.

ii) Acquisition, merger, de-merger, amalgamation, restructuring, scheme of arrangement, spin off or selling divisions of the company, etc.

iii) Change in market lot of the company's shares, sub-division of equity shares of company.

iv) Voluntary delisting by the company from the stock exchange(s).

v) Forfeiture of shares.

vi) Any action, which will result in alteration in, the terms regarding redemption/cancellation/retirement in whole or in part of any securities issued by the company.

vii) Information regarding opening, closing of status of ADR, GDR, or any other class of securities to be issued abroad.

viii) Cancellation of dividend/ rights/ bonus, etc.

The above information should be made public immediately."

Clause 50

"50. The company will mandatorily comply with all the Accounting Standards issued by Institute of Chartered Accountants of India (ICAI) from time to time."

Relevant extract of provisions of PIT Regulations, 1992

"Code of internal procedures and conduct for listed companies and other entities

Regulation 12 (1)

(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

Schedule II

2.0 Prompt disclosure of price sensitive information

2.1 Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.”

Relevant extract of provisions of PIT Regulations, 2015

“Repeal and Savings.

“12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

(2) Notwithstanding any such repeal, -

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and.....”

Consideration of submissions of Noticee no. 1 to 4:

24. I have considered SCN, replies filed by Noticee no. 1 to 4, jointly and by Noticee no. 3 and 4, separately, also and the submissions advanced before me during the hearing. Noticee no. 1 to 4 have not denied the making of said two GDR issues by Noticee no. 1 and transfer of proceeds of two GDR issues to various entities, as brought out in the SCN. However, they have claimed that as per the advice of Mr. Nirmal Kotecha, TBL floated a subsidiary in Hong Kong and entered into agreement with AFTL and Symetric for purchase of technology/services. Thus, it has been contended by the Noticees concerned that whole scheme of GDR issue and diversion of GDR proceeds was done on the behest of one Mr. Nirmal Kotecha and his associates who have defrauded them. It has been submitted that TBL

had filed an FIR with Bollaram Police Station, Hyderabad, a complaint with ED, and complaint with Hong Kong Police. I do not find merit in such submissions. I note that TBL has made two GDR issues in the year 2011 for a total amount of \$ 40.5 million, through approval of its board of directors and the proceeds of two GDR issues were also received in its account held with Investec Bank. It is the issuer of the GDRs who is mainly responsible for the issue made by it and it can not escape such liability contending that it was done at the behest of third persons.

25. Regarding FIR stated to be filed at Bollaram Police Station. I note that the GDR issues were made in the year 2011 and TBL was aware of transfer of GDR proceeds in May, 2011 itself, however, the FIR before Bollaram Police Station, Hyderabad was filed after a lapse of a period of four years. TBL has also not furnished any information about further proceedings on the said FIR, like filing of chargesheet by the authorities, etc. despite the lapse of a period of more than 4 years since filing of FIR. It is noted that the FIR filed by TBL at Bollaram Police Station was closed by Police for lack of evidence as recorded in the order dated April 28, 2016 passed by the Hon'ble High Court of Hyderabad in Criminal Petition No. 6664 of 2016 filed by Mr. Nirmal Kotecha to quash the proceedings against him in Crime No. 28 of 2015 on the file of the Bollaram Police Station, Hyderabad. Regarding alleged complaint made by Noticees concerned to ED, I note that ED, in its email dated January 12, 2018 sent to SEBI, has denied receipt of any complaint from TBL. Regarding complaint made to Hong Kong, Police, Noticees concerned have not provided the development of investigation proceedings, if any, initiated on the basis of the complaint filed by TBL in the year 2016 like filing of charge sheet or taking of any further step by Hong Kong Police, etc. Hence, the contention of the Noticees concerned that whole scheme of GDR issue and diversion of GDR proceeds was done on the behest of one Mr. Nirmal Kotecha and his associates, is not tenable.

26. In respect of allegation of diversion of GDR issue proceeds and subsequent cover thereof, the Noticees concerned have submitted that TBL had entered into agreements with AFTL and Symetric on March 07, 2011 and March 02, 2011, respectively, for availing certain services and technology. It is claimed that under these agreements, TBL was required to give to Symetric and AFTL, \$ 8.5 million and \$ 30 million, respectively. In this regard, SCN has noted that TBL had already entered into an agreement with AFTL on January 07, 2011 for a total consideration

of USD 16.98 million, for the same scope of services, which was transferred to AFIL out of the proceeds of 1st GDR issue. This agreement dated January 07, 2011 was not disclosed by TBL to SEBI. Certain observations regarding these stated agreements are as under:

- i. These agreements do not bear the seal of either of the party companies to the agreements, i.e. TBL, AFIL and Symetric.
- ii. There is no board resolution, of either of the company party to the respective agreements, annexed to such agreements, indicating authorization to execute such agreements or to show that the signatories were authorized to sign such agreements.
- iii. These agreements do not contain signature of any witnesses.
- iv. There is no document on record to indicate that officials/directors of TBL had ever visited or contacted any person of either AFIL or Symetric prior to the signing of agreements.
- v. Ms. Dorothy, who was already holding LPoA of TBL for managing its account with Investec Bank., signed the agreement on behalf of AFIL also.
- vi. These agreements provide for arbitration/filing of suit for damages, in case of dispute between the parties, however, TBL has not initiated any such arbitration/suit for damages, for non-receipt of services/technology for which the agreements were stated to be signed.
- vii. Agreement dated January 07, 2011 entered by TBL with AFIL was for providing certain services and technologies to TBL in consideration of \$16.98 million and providing for advance payment of 80% of the consideration to AFIL. Said agreement was revised in the month of September, 2011 with back dating to March 07, 2011 wherein the consideration value was increased to \$ 30 million and making provision for advance payment of 57% of the consideration value of \$ 30 million (i.e. issue proceeds from both the GDR issues). The said agreement was created to legitimize the diversion of proceeds of 2nd GDR issue also, as a consideration towards receipt of services/technology by TBL.
- viii. Email dated September 10, 2011 sent by Noticee No. 7 to paymentgateway65@gmail.com seeking signature of TBL and AFIL on the draft agreement, indicates that the agreement dated March 07, 2011 was signed in September, 2011 (with back dating) and also the invoice, for the payment alleged to

be made under said agreement, were created sometime in September, 2011 for the payment already made to AFTL and Symetric in March – April, 2011.

27. All the aforesaid facts shows that these stated agreements were created primarily to cover-up the scheme to divert the proceeds of two GDR issues and TBL was part of the fraudulent scheme of issue of GDRs, diversion of the proceeds of the two GDR issues and subsequent cover up of these diversion of funds by creating agreements which were not even properly executed. Assuming submissions of Noticees concerned regarding entering into agreements with AFTL and Symetric are correct, then TBL ought to have disclosed the details of its agreement with AFTL and Symetric to the BSE. But it has failed to do so.
28. SCN further alleges that misleading announcement was made by TBL to BSE on February 23, 2011 in respect of its 1st GDR issue stating that the Board of Directors of the Company at its meeting held on February 22, 2011 has allotted 2,500,000 GDRs at a price of \$ 9.2 per GDR aggregating to \$ 23 million. Similarly, misleading announcement was again made by TBL in respect of its 2nd GDR issue to BSE on October 04, 2011 stating that the Board of Directors of the Company at its meeting held on October 03, 2011, has allotted 2,500,000 GDRs at the price of \$ 7 per GDR aggregating to US\$ 17.5 million. TBL vide its reply dated June 04, 2018 has denied the allegation and submitted that the disclosures were made based on the information provided by Mr. Nirmal Kotecha which was stated to have been confessed by him in the statement made before ED. It was also submitted that after consistent efforts of Noticee no. 2, they came to know only in February, 2017 that the GDRs were sold through Investec Bank. In this regard, I note that 1st GDR issue made by TBL on February 22, 2011 was not subscribed and instead sold through 'stock exchange sale' during February 23, 2011 to April 13, 2011 i.e. after closure of issue on February 22, 2011. Similarly, 2nd GDR issue made on October 03, 2011 was also not subscribed and the same was also sold through 'stock exchange sale' during October 14, 2011 to October 20, 2011 i.e. after closure of issue on October 03, 2011. Therefore, there are false disclosures by TBL to the stock exchange. The explanation given by TBL by shifting the culpability on some other third person to avoid the liability for making wrongfully announcement to BSE, is not tenable. It is the responsibility of issuer/listed company to verify the genuineness of the information being provided to the stock

exchange and it cannot be an excuse that the same was based on the information provided by another person/entity.

29. SCN further alleges that prior to passing of the Interim Order dated November 20, 2014 by SEBI, TBL in the Annual Reports for the financial years 2010-11, 2011-12 and 2012-13 showed amounts transferred to AFTL, Symetric and Sristek as advances for receipt of technology. Whereas, in the Annual Report for financial year 2013-14, it was mentioned that certain balancing components are yet to be received. The said technology was never received by TBL and the disclosure of receipt of technology from AFTL and disclosure of amounts transferred by TBL and TBL HK Ltd. to Symetric, AFTL and Sristek were shown as advances in the Annual Reports for the financial years 2010-11, 2011-12 and 2012-13, in an attempt to cover-up the diversion of GDR proceeds. I note that in the annual report for the year ended 31st March, 2013, the following is mentioned:

“As per the information and explanations given to us, the Company had carried out the physical verification of the Fixed Assets during the year under review and we have been informed that such verification did not reveal any material discrepancies.”

In the annual report for the financial order 2013-14, TBL made the following statement:

“As per the information and explanations given to us, the fixed assets have been physically verified by the management during the year. In case of Technology item, we have been informed that certain balancing components are yet to be received without which the technology is incomplete for the full effective intended usage. Subject to this, the other fixed assets have been physically verified by the management and this revealed no material discrepancies.

The Company had carried out the physical verification of the Fixed Assets during the year under review and we have been informed that such verification did not reveal any material discrepancies.”

30. As can be noted from the above, Annual Report 2012-13 clearly reflects that TBL had carried out the physical verification of the Fixed Assets which did not reveal any material discrepancies. However, in the Annual Report 2013-14, TBL has mentioned that certain

balancing components were yet to be received without which the technology was incomplete for the full effective intended usage. Thus, statements made in the aforesaid Annual Reports for the financial years 2010-11, 2011-12 and 2012-13, were false and the persons/investors acting on the basis of disclosures made in the Annual Reports for the financial years 2010-11, 2011-12 and 2012-13, were got misled by such disclosures made in annual reports.

31. SCN further alleges that TBL made delayed disclosure regarding incorporation of its subsidiary TBL HK Ltd. In this regard, Noticees concerned in their reply dated June 04, 2018 has submitted that the disclosure was made by TBL upon receipt of the information in this regard from Mr. Nirmal Kotecha. Noticees concerned have furnished a certificate of incorporation of TBL HK Ltd. I note that certificate of incorporation of a company come to be issued after execution and signing by the promoter/authorized person of holding company, of various constitutional documents (viz: memorandum of association/article of association) of the company, to be incorporated. I note that for setting up a subsidiary, TBL would also have subscribed to the capital of the TBL HK Ltd. as it was to be wholly owned subsidiary of TBL. Thus, to contend that TBL became aware of incorporation of TBL HK Ltd. only upon receipt of information in this regard from third party has no merit. It is TBL which has set up such wholly owned subsidiary and thus responsible to inform the same to stock exchange within the time. I note that the subsidiary of TBL i.e. TBL HK Ltd was incorporated in Hong Kong on August 30, 2011 only whereas the same was informed to BSE website only on September 22, 2011. Therefore, there was delay in making of material disclosure by the TBL to stock exchange regarding incorporation of its subsidiary.

32. It would be appropriate to refer to the order of the Hon'ble SAT dated October 25, 2016 in ***Appeal No. 126 of 2013 (Pan Asia Advisors Limited vs. SEBI)*** wherein, while interpreting the expression 'fraud' under the PFUTP Regulations, Hon'ble SAT observed as under:

"From the aforesaid definition (of 'fraud') it is absolutely clear that if a person by his act either directly or indirectly causes the investors in the securities market in India to believe in something which is not true and thereby induces the investors in India to deal in securities, then that person is said to have committed fraud on the investors in India. In such a case, action can be taken under the PFUTP Regulations against the person committing the fraud, irrespective of the fact any investor has actually

become a victim of such fraud or not. In other words, under the PFUTP Regulations, SEBI is empowered to take action against any person if his act constitutes fraud on the securities market, even though no investor has actually become a victim of such fraud. In fact, object of framing PFUTP Regulations is to prevent fraud being committed on the investors dealing in the securities market and not to take action only after the investors have become victims of such fraud.”

33. I further rely on the judgment of Hon’ble Supreme Court in the case of **SEBI Vs. Rakhi Trading Pvt. Ltd., (2018) 13 SCC 753**, holding that Regulation 4(1) of PFUTP Regulations in clear and unmistakable terms has provided that “no person shall indulge in a fraudulent or an unfair trade practice in securities” and while referring to its own judgment in the case of **SEBI Vs. Shri Kanaiyalal Baldevbhai Patel and Ors., (2017) 15 SCC 1**, Hon’ble Supreme Court further held as under:

“31. Although unfair trade practice has not been defined under the regulation, various other legislations in India have defined the concept of unfair trade practice in different contexts. A clear cut generalized definition of the ‘unfair trade practice’ may not be possible to be culled out from the aforesaid definitions. Broadly trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions. It is to be noted that unfair trade practices are not subject to a single definition; rather it requires adjudication on case to case basis. Whether an act or practice is unfair is to be determined by all the facts and circumstances surrounding the transaction. In the context of this regulation a trade practice may be unfair, if the conduct undermines the good faith dealings involved in the transaction. Moreover the concept of ‘unfairness’ appears to be broader than and includes the concept of ‘deception’ or ‘fraud’

.....

35. Having regard to the fact that the dealings in the stock exchange are governed by the principles of fair play and transparency, one does not have to labour much on the meaning of unfair trade practices in securities. Contextually and in simple words, it means a practice which does not conform to the fair and transparent principles of trades in the stock market.....”

34. In the matter of Kanaiyalal Baldevbhai Patel (*Supra*), the Hon’ble Supreme Court further observed as under:

“.....

5. if Regulation 2(c) of the 2003 Regulations was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or not, by any person while dealing in securities to induce another person to deal in securities would amount to a fraudulent act. The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities”

.....”

35. In view of the above observations made by the Hon’ble Supreme Court, I find that an act would amount to fraudulent act irrespective of fact whether it is carried out in a deceitful manner or not, by any person while dealing in securities to induce another person to deal in securities.

36. I find that Noticee no. 1 had devised a fraudulent scheme under which Noticee no. 1 made two GDR issues, the proceeds of which were diverted by them in contrary to the utilization of GDR proceeds stated in the offering circular. Such scheme involved legitimizing covering up of diversion of GDR issues’ proceeds by legitimizing/facilitating the same through back-dated agreement/invoices, concealing/making false statements in regard to utilization of GDR proceeds/non-receipt of technology and services in the Annual Reports of TBL for the financial years 2010-11, 2011-12 and 2012-13. As a part of said fraudulent scheme, Noticee no. 1 failed to inform the stock exchange of price sensitive information regarding entering into material service agreements, non–receipt of technology/services as per agreements, made false announcements at BSE regarding allotment of GDRs after the issue closure date, made delayed disclosure to BSE regarding setting up of wholly owned subsidiary i.e. TBL HK Ltd., failed to disclose material service agreements with AFTL and Symetric and non-receipt of services as per service agreements in the Annual Reports for the financial years 2010-11 to 2012-13. Such making of GDR issues with the objective of diverting the proceeds of such GDR issues and related false and misleading disclosures and active concealment of material information, had potential to influence the investment decisions of the investors in shares of TBL and to induce them to buy or sell shares of TBL. Therefore, I find that Noticee No. 1

has violated Section 12A(a), (b) & (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d) and 4(1), (2)(f), (k) & (r) of PFUTP Regulations, Section 21 of SCRA read with Clauses 36 and 50 of Listing Agreement and Regulation 12(2) read with Schedule II to PIT Regulations, 2012 read with Regulation 12 PIT Regulations, 2015..

37. In respect of allegation against Noticee no. 2 to 4, I note that as per as per Board resolution dated February 18, 2011 and Sep 30, 2011, the Noticee no. 2 (for 1st GDR issue), and Noticee Nos. 2 and. 4, jointly and severally (for 2nd GDR issue) were authorized to sign and execute all documents/agreements/papers/forms related with the GDR issues. As brought out on record, the Annual Reports for financial years 2010-11 and 2011-12 of TBL were signed by Noticee no. 2 and Noticee no. 4, and for the financial year 2012-13 by Noticee no. 2 and Noticee no. 3. The Noticee Nos. 2, 3 and 4 were also the members of Audit Committee of TBL during 2010-13. The Noticee no. 2 to 4 have not denied being director of TBL during the relevant period. The Noticee no. 3 vide its letter dated June 06, 2018 has stated that he had joined the Board of Director as Independent Director w.e.f. November 19, 1998 and that his role was limited to advising the Company on secretarial matters. It was also submitted that he has resigned as director w.e.f. December 31, 2014. I, however, note that he was the director at the relevant period of time and resignation after that period will have no bearing in his role and responsibility during the course of his directorship at the relevant period of time especially in view of the fact that he was also the member of the audit committee of TBL. The Noticee no. 2 being the MD and Noticee no. 4 being Whole Time Director were in charge of day to day affairs of the Company and was accountable for management and affairs of the Company. These Noticees were in the driving seat of the Company and, therefore, required to act with due care and diligence in respect of GDR issues.

38. In respect of submission made by Noticee no. 3 that he had joined the Board of Director as Independent Director. I note that his the role was akin to trustees of stake holders and in such capacity, it was expected from him to take all such steps and measures necessary in furtherance of the interest of shareholders and to demonstrate highest standards of governance. He has neither made any submission nor brought any material on record that he has raised query on the manner in which GDR issue was dealt by the TBL. Instead, as noted above, he was making communication with Noticee no. 7, in respect of back dating of invoices.

39. In respect of liability of directors, in the matter of **N. Narayanan v. Adjudicating Officer, SEBI (2013) 12 SCC 152**, Hon'ble Supreme Court, has observed as under:

“33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.”

40. Considering the role played by Noticee no. 2 to 4 in the present matter, I find that Noticee no. 2 to 4 have been part of the fraudulent scheme for which Noticee no. 1 has already been found to be guilty in the previous paras. Thus, I find that Noticee no. 2 to 4 have violated the provisions of Section 12 A (a), (b) and (c) of SEBI Act, 1992 read with regulation 3(a), 3(b), 3(c), 3(d), 4(1) of PFUTP Regulations, as alleged in the SCN.

Consideration of submissions of Noticee no. 5 and 7:

41. The SCN has noted that Noticee no. 5 (Sristek) has received \$ 0.115 million (from 1st GDR issue) in its ICICI Bank Hyderabad Branch account through Symetric and \$ 4.004 million in its HSBC Bank Hong Kong account through TBL HK Ltd. (from 2nd GDR issue). The SCN has also noted that Sristek has further transferred to Bluejet and Asiarich (\$ 2 million each). Noticee no. 7 (Mr. Sampath Meesala) was the director of Sristek at the time of account opening of Noticee no. 5.
42. It is noted in the SCN that TBL had no agreement with Sristek to provide any kind of services by Sristek but still Sristek received an approximately 4 million \$ from the proceeds of GDR issues, through TBL HK Ltd., and transferred the same to other entities. As per SCN, Sristek

is common shareholder among Symetric and AFIL which had entered into dubious agreements with TBL and it acted as conduits in diverting GDR proceeds. Further, Noticee no. 7 was found to be one of the directors of Noticee no. 5 and was also one of the beneficial owners of AFIL. The SCN noted that Noticee no. 7 was associated/connected with AFIL, Symetric and Sristek and acted as conduits in diverting proceeds of GDR issues of TBL. Accordingly, SCN alleged that Noticee no. 5 and Noticee no. 7 acted as a conduit in diverting GDR proceeds and, thus, aided and abetted TBL in diverting the proceeds of GDR.

43. As mentioned above, SCN and the hearing notice was served upon the Noticee no. 5 and 7 through newspaper publication made on January 08, 2019. I note that the Noticee no. 5 and 7 neither turn up for hearing nor filed any reply. Considering the overall fraudulent scheme devised by the Noticees and the material available on record regarding the receipt of part of GDR proceeds by Noticee no. 5 of which Noticee no. 7 was a director, I find that notice no. 5 and 7 acted as conduit in diverting the GDR proceeds and has thus aided and abetted Noticee No. 1 in its fraudulent scheme. I, therefore, find that the Noticee no. 5 and 7 have violated the provisions of Section 12 A(a), (b) and (c) of SEBI Act, 1992 read with regulation 3(a), 3(b), 3(c), 3(d) and 4(1) of SEBI (PFUTP) Regulations, as alleged in the SCN.

Consideration of submissions of Noticee no. 6:

44. The SCN notes that Noticee no. 6 had contacted Allshores (which was providing administrative and management services to TBL HK Ltd.) for setting up of TBL HK Ltd., coordinated between Allshores and TBL, provided all the signed documents of TBL and other requisite documents. He also assisted in opening of account of TBL with Investec Bank wherein proceeds of GDR issues were kept and was also point of contact for AFIL to which proceeds of GDR issue were diverted. The SCN further notes that the Noticee no. 6 was operating an email id paymentgateway65@gmail.com from where Ms. Dorothy (from Allshores) had received e-mails forwarding TBL's letter dated Feb 22, 2011 and Oct 03, 2011 (stated to be genuine letter of TBL) containing TBL's requests to Investec Bank to take delivery of GDRs in TBL's Investec Bank account, sell orders for GDRs, transfer of GDRs, fund transfers from TBL's account (including closure). The said emails contained copy of signed letters of instruction from TBL to Investec Bank. Allshores had also received instructions

from the said e-mail Id paymentgateway65@gmail.com regarding transfer of funds from TBL HK Ltd.'s account with Standard Chartered Bank, Singapore to AF'IL, Sristek and Blue Wings. It also contained copy of signed letters of instruction from TBL to Allshores in respect of transfers to AF'IL and Sristek and also for onward transfer from AF'IL to Brindille and Blue Wings, and from Sristek to Bluejet and Asiarich. It was further noted that it was the same email Id to which Noticee no. 7 had sent the back-dated agreement between TBL and AF'IL for signatures, and Noticee no. 3 had also sent the details of the back-dated invoices to be made in respect of AF'IL. The SCN also noted from the e-mail correspondences dated April 07, 2011, that Noticee no. 6 had requested Ms. Dorothy (from Allshores) to send an instruction to HSBC to transfer \$ 4.5 million from AF'IL to Fundabilis. Further, as per, account opening form of Fundabilis with OCBC Bank, Singapore, its beneficial owner was Noticee no. 6 itself. Based on these facts, the SCN has alleged that Noticee no. 6 was involved in the entire scheme of diverting of the GDR proceeds and later legitimizing and, thereby aided and abetted TBL in diverting the GDR proceeds.

45. I have considered the submissions of Noticee no. 6 made vide reply dated April 18, 2019 and the submissions made during the course of hearing held on April 22, 2019. The Noticee has contended that he was coordinating and managing secretarial work for Sristek which was controlled by Mr. Nirmal Kotecha. However, on perusal of the documents enclosed, in this regard, as Exhibit - I to his reply, I note that the same is merely a diagram of shareholding of Sristek drawn on plain paper and such a diagram is not sufficient to agree with the contention of Noticee no. 6. The Noticee no. 6 has further contended that he had no connection whatsoever with TBL and its promoters or directors. I, however, note from the email copies enclosed along with MAS letter dated March 02, 2018 that Noticee no. 6 through email id paymentgateway65@gmail.com had forwarded TBL's letter dated Feb 22, 2011 and Oct 03, 2011 (stated to be genuine letter of TBL) to Allshores containing TBL's requests to Investec Bank to take delivery of GDRs in TBL's Investec Bank account, sell orders for GDRs, transfer of GDRs, fund transfers from TBL's account (including closure). As such, I am not inclined to accept the claim of Noticee no. 6 that he had no connection with TBL.

46. The Noticee no. 6 has further claimed that the said email Id was accessible to other persons also and that he was sending the instructions to be addressed to Allshores, as per drafts saved

in the folders of (paymentgateway65@gmail.com) which were prepared by the office of Mr. Nirmal Kotecha. From the documents enclosed as Exhibit –III to the reply of Noticee no. 6, it appears that emails were also sent by Ms. Dorothy (from Allshores), using the said email Id. However, on perusal of the emails enclosed with MAS letter dated March 02, 2018, as sent from the aforesaid email Id, I note that emails were sent by Noticee no. 6, as indicated by the name of sender of the email, forwarding instruction letters of TBL. As noted above, the Noticee no. 6 had forwarded TBL's letter dated February 22, 2011 and October 03, 2011 containing TBL's requests to Investec Bank to take delivery of GDRs in TBL's Investec Bank account, sell orders for GDRs, transfer of GDRs, transfers of funds from TBL's account. The contentions raised by the Noticee no. 6 that the email sent by him were drafted by others is unbelievable since contents of most of those emails are not more than one line. I find that the Noticee no. 6 send emails from the aforesaid email Id and therefore, he is responsible for such emails and consequences thereof. The present contention of Noticee no. 6 is without supported by any evidence and is made just to shift his liability. Thus, I note that Noticee no. 6 was in contact with TBL and was also issuing the instruction to Allshores on behalf of TBL for transfer of funds from TBL HK Ltd. to AFTL, Sristek and to other entities.

47. Further, in respect of allegation made in the SCN that Noticee no. 6 had requested Ms. Dorothy (from Allshores) to send an instruction to HSBC to transfer \$ 4.5 million from AFTL to Fundabilis, the Noticee no. 6 has contended that it was holding one share of Mr. Nirmal Kotecha, as his nominee, pursuant to declaration of trust deed dated June 30, 2010 and that Mr. Nirmal Kotecha was the real beneficiary. I have perused the copy of said trust deed submitted by Noticee no. 6 as Exhibit – VI to his reply. I note that the said trust deed is merely a single page letter titled 'declaration of trust' which was signed by Noticee no. 6 only. There was not even counter sign by alleged beneficiary nor was the same stamped or notarized. Thus, it is difficult to rely upon the submission made by Noticee no. 6 that he was holding as a nominee or that he was not the beneficiary of Fundabilis. The Noticee no. 6 has also not denied that Fundabilis has received proceeds from two GDR issues of TBL.

48. In view of the above, I find that Noticee no. 6 was involved in the scheme of diversion of GDR proceeds by facilitating the issuance of GDR of TBL and also in transfer of GDR proceeds from TBL and TBL HK to various entities. Noticee no. 6 also facilitated fraudulent

scheme of Noticee no. 1 by facilitating the legitimization of said diversion of GDR issue proceeds through back-dated agreement and invoices and hence, aided and abetted TBL in diverting the proceeds of GDR issues. I note that the Noticee no. 6 was not only involved in aiding TBL in facilitating GDR issue and diversion of GDR proceeds but he was also a major beneficiary from the GDR proceeds of TBL. I note that above act of Noticee no. 6 has resulted in 'fraud' as defined under the PFUTP Regulations, 2003. Thus, I find that the Noticee no. 6 has violated the provisions of Section 12 A(a), (b) and (c) of SEBI Act, 1992 read with regulation 3(a), 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations, as alleged in the SCN.

DIRECTIONS:

49. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992, hereby direct as under:

- a. Transgene Biotech Limited (Noticee no. 1) shall continue to pursue the measures to recall the outstanding amount of \$ 38.5 million and bring the money back into TBL's bank account in India within a period of one year from the date of this order. It is clarified that Noticee Nos. 2, 4 and all other present directors of TBL shall ensure the compliance of this direction by TBL, and furnish a Certificate from a peer reviewed Chartered Accountant of ICAI along with necessary documentary evidences to SEBI, certifying the compliance of this direction.
- b. In continuation with the directions issued vide interim order dated November 20, 2014 as confirmed by the order dated March 09, 2016, Transgene Biotech Limited (Noticee no. 1) shall continue to be restrained from accessing the securities market and be further prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, till compliance with direction contained in para 49 (a) above and thereafter for an additional period of two years from the date of bringing back the money as directed in para 49 (a) above. During the period of restraint, the existing holding of securities (including units of mutual funds) of Noticee no. 1 shall also remain frozen.

- c. The Noticee no. 2, Noticee no. 3 and Noticee no. 4 shall continue to be restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of five years from the date of the interim order passed in the matter. During the period of restraint, the existing holding of securities (including units of mutual funds) of these Noticees shall also remain frozen.
- d. The Noticee no. 5, Noticee no. 6 and Noticee no. 7 are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of three years from the date of this order. During the period of restraint, the existing holding of securities (including units of mutual funds) of these Noticees shall also remain frozen.

50. This Order shall come into force with immediate effect.

51. A copy of this Order shall be forwarded to the Noticees, recognized stock exchanges, depositories and Registrars and Transfer Agents (RTA) of mutual funds for information and necessary action.

52. A copy of this order may also be sent to the RBI, Enforcement Directorate and Ministry of Corporate Affairs for information and necessary action.

Place: Mumbai

Date: August 28, 2019

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA