BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. VSS/AO-09/2008]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of

K Srinivas

(PAN. AMDPK2242F)

FACTS OF THE CASE IN BRIEF

1. The shares of Transgene Biotek Limited (hereinafter referred to as **"TBL/ company"**) are listed on Bombay Stock Exchange (hereinafter referred to as **"BSE"**) and Hyderabad Stock Exchange (hereinafter referred to as **"HSE"**). SEBI conducted an investigation into the affairs relating to buying and selling and dealing in the shares of TBL. The investigation covered the period from November 26, 2005 to December 21, 2005. During the said investigation period, the shares of TBL were traded at BSE only.

2. The investigation conducted by SEBI revealed that Mr. K Srinivas (hereinafter referred to as **"Noticee"**) had not made disclosures in respect of certain transactions in the prescribed form to the company. The details in this regard are given below: -

    a. In June 2006, Mr. K Srinivas sold 11,12,000 shares (7.40% of the paid up capital of TBL) to his father Dr. K Koteswara Rao, Promoter cum Chairman and Managing Director of TBL, in off market.

    b. Mr. K Srinivas informed the company about the sale of shares under SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to

as **"SEBI (PIT)"**) but the disclosure was not made in Form C as required under regulation 13(3) read with regulation 13(5) of SEBI (PIT).

3. Since the Noticee has failed to make necessary disclosures in accordance with regulations 13(3) read with 13(5) of SEBI (PIT) it was alleged that the Noticee had violated the provisions of the said regulations and therefore, liable for monetary penalty under section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

4. Mr. Piyoosh Gupta was appointed as Adjudicating Officer, vide order dated August 3, 2007 under section 15 I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the **'Rules'**) to inquire into and adjudge under section 15A(b) of the SEBI Act the alleged violation of regulation 13(3) read with regulation 13(5) of SEBI (PIT).

5. Consequent upon the transfer of Mr. Piyoosh Gupta, the undersigned was appointed as the Adjudicating Officer vide order dated November 19, 2007.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. Show Cause Notice (hereinafter referred to as "**SCN**") dated January 4, 2008 was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be initiated against him and penalty be not imposed under section 15A(b) of SEBI Act for his failure to comply with the provisions of regulations 13(3) read with 13(5) of SEBI (PIT).

7. The Noticee replied vide letter dated February 9, 2008. The submissions of the Noticee, *inter alia*, are as under:

   - It had already been submitted in our correspondence to the Bombay Stock Exchange Limited and Securities and Exchange Board of India that I had informed the Company on 5th July 2006 as per regulation 13(3) read with 13(5) of SEBI (PIT) regarding acquisition of 11,12,000 Equity Shares by my father Dr. K Koteswara Rao from me in the prescribed format viz., form C. Further, it was also submitted by the Company viz., TBL that the same had

been informed as per regulation 13(6) to the BSE vide their letter dated 5th July 2006. It may kindly be noted that due to the transfer of 11,12,000 Equity shares from me to my father, the total shareholding of our family in the company has not undergone any change.

- It is submitted that the transfer has taken place within the family to facilitate certain family issues since the relationship between the transferor and the transferee is that of a father and son as rightly noted in your notice referred to above. Further, it may kindly be noted that no single share out of the 11,12,000 shares has been sold till date.

- It may kindly be noted that there has been no jeopardy in the performance of the company nor the interests of the shareholders. It may also be kindly noted that there has been no consideration in buying or selling of those shares between us due to the relationship of father and son to this day. Not even a single share from those shares have been disposed off or traded in the markets till today. Therefore, the subject of a gain or a loss either to me or to my father or to the shareholders at large never arose which forms the crux of the insider trading.

8. In the interest of natural justice and in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on April 29, 2008 vide notice dated April 15, 2008. Mr. S S Marthi appeared on behalf of the Noticee and submitted, *inter alia*, as under:

   - It was only a transfer and not a sale. The transfer was made from son i.e. Mr. K Srinivas to his father, Dr. Koteswara Rao. There was no consideration involved in this transaction. It may please be seen from the transfer deed that there was no consideration specified in the transfer deed. With this transaction, the total shareholding of the family has not undergone any change. These shares are still with Dr. Koteswara Rao and have not been traded in the market.

   - It is submitted that the Form C containing the complete details was enclosed along with the letter dated July 5, 2006, although specific mention to that effect has not been made in the covering letter. It is also submitted that a copy of the letter dated July 5, 2006 along with the copy of Form C (enclosure

to the said letter) was submitted to the Investigating Authority of SEBI (hereinafter referred to as **"IA"**)earlier.

9. In order to ascertain the veracity of the aforesaid claim of the Noticee, a notice dated May 23, 2006 was issued under rule 6 of the Rules to IA advising the IA to confirm whether the IA had received the copy of the letter dated July 5, 2006 and copy of Form C claimed to have been submitted by the Noticee. The IA, vide letter dated May 26, 2008 confirmed that the copy of Form C was not received by SEBI along with the copy of the letter dated July 5, 2006. In view of the contradicting claims, the Noticee was advised vide notice dated May 27, 2008 to furnish documentary evidence in support of his contention of having submitted a copy of Form C to the IA. The Noticee, vide letter dated June 11, 2008 reiterated his earlier contention and further stated that TBL, vide its letter dated March 7, 2007 had submitted a copy of Form C along with a copy of his letter dated July 5, 2006 to the IA. The Noticee has enclosed a copy of the letter dated March 7, 2007 of TBL.

CONSIDERATION OF ISSUES AND FINDINGS

10. I have carefully perused the written and oral submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :

    (i) Whether the Noticee informed the company in the prescribed format (Form C) regarding the transfer of 11,12,000 shares as required under regulation 13(3) read with regulation 13(5) of SEBI (PIT)?

    (ii) Does the non-compliance, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of SEBI Act?

    (iii) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

11. Before moving forward, it will be appropriate to refer to the relevant provisions of SEBI (PIT), which reads as under:

    13(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting

rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation (1); and such change exceeds 2% of total shareholding or voting rights in the company.

13(5) The disclosures made in sub-regulations (3) and (4) shall be made within 4 working days of:

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

12. There is no dispute on the fact that the Noticee had informed the company vide letter dated July 5, 2006 regarding the transfer of 11,12,000 shares to his father, Dr. K Koteswara Rao, Promoter-cum-Chairman and Managing Director of TBL.

13. In terms of regulation 13(3) read with 13(5) of SEBI (PIT), any person who holds more than 5% of shares or voting rights in a listed company is required to disclose to the company the number of shares or voting rights held and change in shareholding or voting rights under 2 circumstances as detailed below:

    a) If such change results in shareholding falling below 5%:
    b) If there has been change in such holdings from the last disclosure made under regulation 13(1) or under regulation 13(3) and such change exceeds 2% of total shareholding or voting rights in the company.

14. The disclosure is required to be made in Form C. The following details are contained in Form C :

    a) Name and address of the shareholders
    b) Shareholding prior to acquisition/sale
    c) No. and % of shares /voting rights acquired/sold
    d) Receipt of allotment advice/acquisition of shares/sale of shares
    e) Date of intimation to company
    f) Mode of acquisition on (market purchase/public/rights/preferential offer, etc.
    g) No. and % of shares /voting rights post acquisition/sale
    h) Trading member through whom the trade was executed with SEBI registration No. of the trading member

i) Exchange on which the trade was executed
j) Buy quantity
k) Buy value
l) Sell Quantity
m) Sell value

15. It is not in dispute that the Noticee was holding more than 5% of the voting capital of TBL and transferred 11,12,000 shares representing 7.4% of the voting capital of TBL to his father on June 28, 2006 and therefore, attracted the provisions of regulations 13(3) and 13(5) of SEBI (PIT) and ought to have disclosed the details of the transaction in Form C to TBL, to be compliant with the said regulations.

16. From the documents available on record, I find that the Noticee has communicated to TBL vide his letter dated July 5, 2006 regarding the sale/transfer of 11,12,000 shares of TBL to his father Dr. K Koteswara Rao. The content of the said letter is reproduced hereunder:

> *"This is to inform you that 11,12,000 Equity Shares of Rs.10/- each held by me in M/S Transgene Biotek Limited have been transferred to my father Dr. K Koteswara Rao, promoter of the company, through transfer of physical shares.*
>
> *I am furnishing this information as per the disclosure requirement under the SEBI (Prohibition of Insider Trading) Regulations, 1992."*

17. Further, I find that the Noticee has not furnished any documentary evidence in support of his contention of having submitted the Form C, along with the letter dated July 5, 2006, to TBL as well as to SEBI. I have perused the copy of letter dated March 7, 2007 of TBL addressed to SEBI, relied upon by the Noticee in support of his contention. TBL, in the said letter, while confirming the status of compliance of the Noticee with regard to SEBI (PIT), has stated as under:

> *We would like to submit that Dr K Koteswara Rao has already made disclosures to the company under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1992, and SEBI (Prohibition of Insider Trading) Regulations 1992 and similarly Sri K Srinivas (Person acting in concert) has made disclosure under SEBI (Prohibition of Insider Trading) Regulations, 1992. …..…*

18. On a careful reading of the above, I find that TBL has not categorically mentioned that the Noticee has submitted Form C to TBL. It has merely stated that the Noticee has made disclosure under SEBI (PIT). I am, therefore, not inclined to accept the contention of the Noticee. Accordingly, I hold that the Noticee failed to make the disclosure in Form C.

19. The next issue for consideration is to see whether the disclosure made vide letter dated July 05, 2006 is adequate in the absence of Form C.

20. As detailed above and as per Form C, the Noticee ought to have made disclosures with regard to (a) name and address, (b) shareholding prior to sale, (c) number and percentage of shares/voting rights sold, (d) number and percentage of shares/voting rights post-sale, (e) trading member through whom the sale was executed with SEBI registration number of the trading member, (f) sale quantity and (g) sale value. As against this, the letter of the Noticee dated July 05, 2006 contains disclosures with regard to name of the seller, name of the buyer, number of shares and face value of shares sold. It does not contain other important details, such as, shareholding of the Noticee - pre and post sale, percentage of shares/voting rights sold, sale price, mode of sale, i.e. through stock exchange or off-market, etc.

21. The object of the SEBI (PIT) mandating disclosure of acquisitions beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. In terms of regulation 13(3) of SEBI (PIT) disclosure is required to be made to the company. "Disclose to the company" is the clue. "Disclose" according to Websters Encyclopedic Dictionary means - to make known, reveal or uncover – to cause to appear, allow to be seen, lay open to view. According to Blacks Law Dictionary "Disclosure" means – act of disclosing, revelation, the impartation of that which is secret or not fully understood. Disclose is to expose to review or knowledge anything, which before was secret, hidden or concealed. Thus, the requirement is that complete information should reach the person to whom it is meant. The obligation does not end by simply furnishing a part of the information through a letter when specific format for disclosure of full and complete information is prescribed for the purpose. The fact that complete information should be disclosed to the company is also evident from the provisions of regulation 13(6) of SEBI (PIT) which casts

an obligation on the company to disclose to the stock exchanges within 5 days of receipt of information from the person. Failure to disclose full details on the specific aspects provided in the regulation cannot be considered as trivial or of no consequence to be overlooked.

22. In view of the above, I am not inclined to view that the disclosure made by the Noticee vide letter dated July 05, 2006 is sufficient compliance with the requirements of provisions of regulations 13(3) and 13(5) of SEBI (PIT). Accordingly, I hold that the Noticee has violated the provisions of the said regulations.

23. The next issue for consideration is as to whether failure on the part of the Noticee to comply with the provisions of SEBI (PIT) attracts monetary penalty under section 15A(b) of SEBI Act, and if so, what would be the monetary penalty that can be imposed on the Noticee.

24. The provisions of section 15 A (b) of SEBI Act is reproduced here under :

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made there under,-*

(a) ……

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

(c) ……

25. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)* held that once the violation of statutory regulations is established, imposition of penalty becomes *sine qua non* of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow.

26. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15A(b) of the SEBI Act.

27. While determining the quantum of monetary penalty under section 15A (b), I have considered the factors stipulated in section 15J of SEBI Act, which reads as under:-

> ***"15J - Factors to be taken into account by the adjudicating officer***
> *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
> *(b) the amount of loss caused to an investor or group of investors as a result of the default;*
> *(c) the repetitive nature of the default."*

ORDER

28. After taking into consideration all the facts and circumstances of the case and material available on record, I hereby impose a monetary penalty of Rs.25,000/- (Rupees Twenty five thousand only) on the Noticee which will be commensurate with the default committed by him.

29. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI- Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft shall be forwarded to Ms. Barnali Mukherjee, Deputy General Manager, Investigation Department - Division – ID8, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai–400 051.

30. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **June 24, 2008** **V.S.SUNDARESAN**
Place: **Mumbai** **ADJUDICATING OFFICER**