



भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

EAD-4/ADJ/BS/DS/OW/18492/7/2018

June 29, 2018

By SPAD

1. Transgene Biotek Ltd. Plot 68, 69 & 70, IDA Bollaram Medak – 502 325	2. Shri K Koteswar Rao Plot No. 364, Raod No. 25/A, Jubilee Hills, Hyderabad- 500 038
3. Shri Soma Sekhar Marthi H No. 1-2-699, Flat No. 205, Parkview Apartments, Adikmet, Vidyanagar, Hyderabad – 500 044	4. Shri Narayana Murthy Pentya Flat No. 104, B – Block, Bhavya's Anandam Apartments, Nizampet Road, KPHB, Hyderabad – 500 044
5. Sristek Consulting Pvt. Ltd. (Now known as Srkstek Clinical Research Solutions Ltd.) DLF Cyber City, Block – 3, 8 th Floor, Gachibowli Village, Serilingampally Mandal, Hyderabad 500 048	6. Shri Deepak Mishra 96/84, Old Ganesh Ganj, Lucknow
7. Shri Sampath Kumar Meesala Plot No. 60, Flat No. 501, Jyothi Homes, Srinagar Colony, Hyderabad – 500 073	

Notice under Rule 4(1) of SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 and Rule 4(1) of SCR (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 2005 in the matter of Transgene Biotek Ltd.

1. Securities and Exchange Board of India (hereinafter referred to as SEBI) initiated adjudication proceedings and appointed the undersigned as the Adjudicating Officer under Section 19 read with Section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") and Rule 3 of SEBI (Procedure for

सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बांद्रा कुर्ला कॉम्प्लेक्स, बांद्रा (पूर्व), मुंबई - 400 051.
दूरभाष : 2644 9950 / 4045 9950 (आई.बी.आर.एस.), 2644 9000 / 4045 9000 फैक्स : 2644 9019 से 2644 9022 वेब : www.sebi.gov.in

SEBI Bhavan, Plot No. C4-A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.
Tel.: 2644 9950 / 4045 9950 (IVRS), 2644 9000 / 4045 9000 Fax : 2644 9019 to 2644 9022 Web : www.sebi.gov.in



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Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "the Rules") and Section 23-I of Securities Contract (Regulation) Act, 1956 (hereinafter referred to SCRA) and Rule 3 of Securities Contract (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as "SCR Rules") to inquire and adjudge

- 1.1. under Sections 15 HA and 15 HB of the SEBI Act and Section 23 E and 23H of the SCRA, the alleged violation of Section 12A(a), 12A(b) and 12A(c) of SEBI Act 1992 read with Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(f),(k)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as PFUTP Regulations) and Section 21 of SCRA read with Clause 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) read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as PIT Regulations, 2015) By Transgene Biotek Ltd. (hereinafter referred to as Noticee No. 1)
- 1.2. under Section 15 HA of the SEBI Act, the alleged violation of Section 12A(a), 12A(b) and 12A(c) of SEBI Act 1992 read with Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(f),(k)(r) of PFUTP Regulations by Shri K Koteswara Rao, Shri Soma Sekhar Marthi, Shri Narayana Murthi Pentyala (hereinafter referred to as Noticee Nos. 2 to 4, respectively)
- 1.3. under Section 15 HA of the SEBI Act, the alleged violation of Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 read with Regulation 3(a), 3(b), 3(c), 3(d), 4(1) of PFUTP Regulations by Srstek Consulting Pvt. Ltd. (Now known as Srstek Clinical Research Solutions Ltd.), Shri Deepal Mishra and Shri



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Sampath Kumar Meesala (hereinafter referred to as Noticee Nos. 5 to 7, respectively)

in the matter of issue of Global Depository Receipts (GDRs) by Transgene Biotek Ltd. during February 01, 2011 to June 30, 2013 (hereinafter referred to as Investigation Period). (copy of the Communication dated May 22, 2018 appointing the undersigned as the Adjudicating Officer is enclosed at Annexure 1)

2. It was observed that the funds raised through the GDR issues were siphoned off/diverted through layered transactions involving various entities. It is further alleged that the Noticee failed to make adequate timely disclosures to the stock exchanges as well as other regulatory authorities in respect of GDR issues. The facts of the case and allegations thereof are the following:
3. On February 22, 2011, Noticee No. 1 had issued 25,00,000 GDRs @ US\$9.2 per GDR (hereinafter referred to as "first issue") and again on October 03, 2011 it had issued 25,00,000 GDRs @ US\$7 per GDR (hereinafter referred to as "second issue"). Thus, total 50,00,000 GDRs were issued in the said GDR issues of Noticee No. 1. These GDR issues were purportedly to raise capital from overseas market, inter alia, for expansion of its present business activities.



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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		



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4. Noticee No. 1 had raised US\$23 million through first issue and US\$17.5 million through second issue of GDRs. Thus, total US\$40.5 million were raised by Noticee No. 1 through aforesaid GDR issues and were deposited in the bank account of Noticee No. 1 held in Investec Bank, Switzerland.
5. The lead manager to the two GDR issues of Noticee No. 1 was Fundabilis GmbH (Fundabilis). Details of the original allottees was sought from Fundabilis, however, no reply was received from them. Original subscribers in the GDR issues of Noticee No. 1 in Feb 2011 and Oct 2011 (as per letter of Noticee No. 1 dated August 21, 2013 (placed at Annexure-2) were as follows:

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Sl. No.	Name of the Allottee	Address of the Allottee	No. of DRs Allotted
1st GDR			
1	Calixis AG	Derrier Salmir Hunziker, Dufourstrasse 101, 8008 Zurich	8,33,333
2	Likan AG	Laupenring 125, 4054 Basel	8,33,334
3	Meafin GmbH	Bellariastrasse 38, 8038 Zurich	8,33,334
Total			25,00,000
2nd GDR			
1	Abides GmbH	Sandbuckstrasse 23, 8173 Neerach, Switzerland	6,25,000
2	Satchmo Ltd	Vanterpool Plaza, 2nd Floor, Wickhams Cay 1, P.O. Box 873, Road Town Tortola, BVI	6,25,000
3	Sensalis Ltd	Suite 205, Second Floor, Capital City, Independence Avenue, P.O. Box 903, Victoria Mahe, Republic of Seychelles	6,25,000
4	Likan AG	Baarerstrasse 137, CH-6302 ZUG, Switzerland	6,25,000
Total			25,00,000

6. Noticee No. 1 had granted Limited Power of Attorney (LPoA) to one Lok Teng Teng Dorothy (Dorothy) (as seen from account no. 020078 of Noticee No. 1 with Investec Bank (Switzerland) AG- Annexure -3), who was authorised to act as liaison officer between the client and the bank, to inform to the 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. It was observed that vide letter dated Feb 22, 2011 (i.e. date of 1st GDR issue), Noticee No. 1 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



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of Noticee No. 1 through various transactions by way of 'Stock exchange Sell' (as indicated in the Investec Bank account statement) of GDR. It was noted that such sell transactions of GDR were carried out pursuant to instructions sent by Dorothy to Investec Bank. Leman Diversified Fund (Leman) vide its letter dated Nov 13, 2017 received through e-mail (Annexure- 4) and Sparrow Asia Diversified Opportunities Fund (Sparrow) vide its letter dated Nov 13, 2017 received through e-mail (Annexure-5) had also confirmed the aforesaid purchases of the GDRs of Noticee No. 1. 9

8. It was observed that vide letter dated Oct 03, 2011 (i.e. date of 2nd GDR issue), Noticee No. 1 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. It was noted that such sell transactions of GDR were carried out pursuant to instructions sent by Dora Loke. Leman vide its letter dated Nov 13, 2017 received through e-mail (Annexure-4), Sparrow vide its letter dated Nov 13, 2017 received through e-mail (Annexure-5) and Davos International Fund (Davos) vide its letter dated Nov 13, 2017 received through e-mail (Annexure-10 6) have also confirmed the aforesaid purchases of the GDRs of Noticee No. 1. Swift Payment/ Payment were received from Sparrow and Davos against purchase of GDRs.
9. From the above, it is alleged that in the 1st GDR issue, there was no subscription of GDRs and all the GDRs were sold by Noticee No. 1 through 'stock exchange sell' to Leman and Sparrow during Feb 23, 2011 to April 13, 2011, i.e. after the issue closure date Feb 22, 2011 as informed by the company. In the 2nd GDR issue, it is further alleged that, out of 25,00,000 GDRs, 8,33,333 GDRs were sold by Noticee No. 1 through 'stock exchange sell' to Leman, Sparrow and Davos during Oct 14, 2011 to Oct 20, 2011, i.e., after the issue closure date Oct 03, 2011 as informed by the company. The remaining 16,66,667 GDRs were purchased by Sparrow and



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Davos on Oct 07, 2011, i.e. after the issue closure date (Oct 03, 2011) and the payments were received by Noticee No. 1 (in its Investec Bank account) much later (during Nov 03, 2011 to Dec 29, 2011). Therefore, even in the 2nd GDR issue, there was no subscription of GDRs during the issue period as informed by the company. Even if it is considered that the said 16,66,667 GDRs were purchased by Sparrow and Davos by way of subscription in the 2nd GDR issue, these entities were different from the list of original subscribers/ allottees provided by the company. In view of the same, it is alleged that the list of GDR subscribers provided by the company vide its letter dated August 21, 2013 was incorrect.

10. Further, on analysis of the bank account no. 020078 of Noticee No. 1 with Investec Bank (Switzerland) AG, where proceeds of the two GDRs were deposited, it was observed that TBL received US\$ 23.032 million in its above Investec Bank account. It was observed that out of the \$23,032 million received by Noticee No. 1, in its Investec Bank Account, \$ 23 million were transferred to various entities i.e. Fundabilis (\$0.92million), SyMetric Sciences Inc.(Symetric) (\$4.5 million), Asia First Technologies Ltd. (AFTL) (\$16.98 million) and account of Noticee No. 1 in India (\$0.6 million).

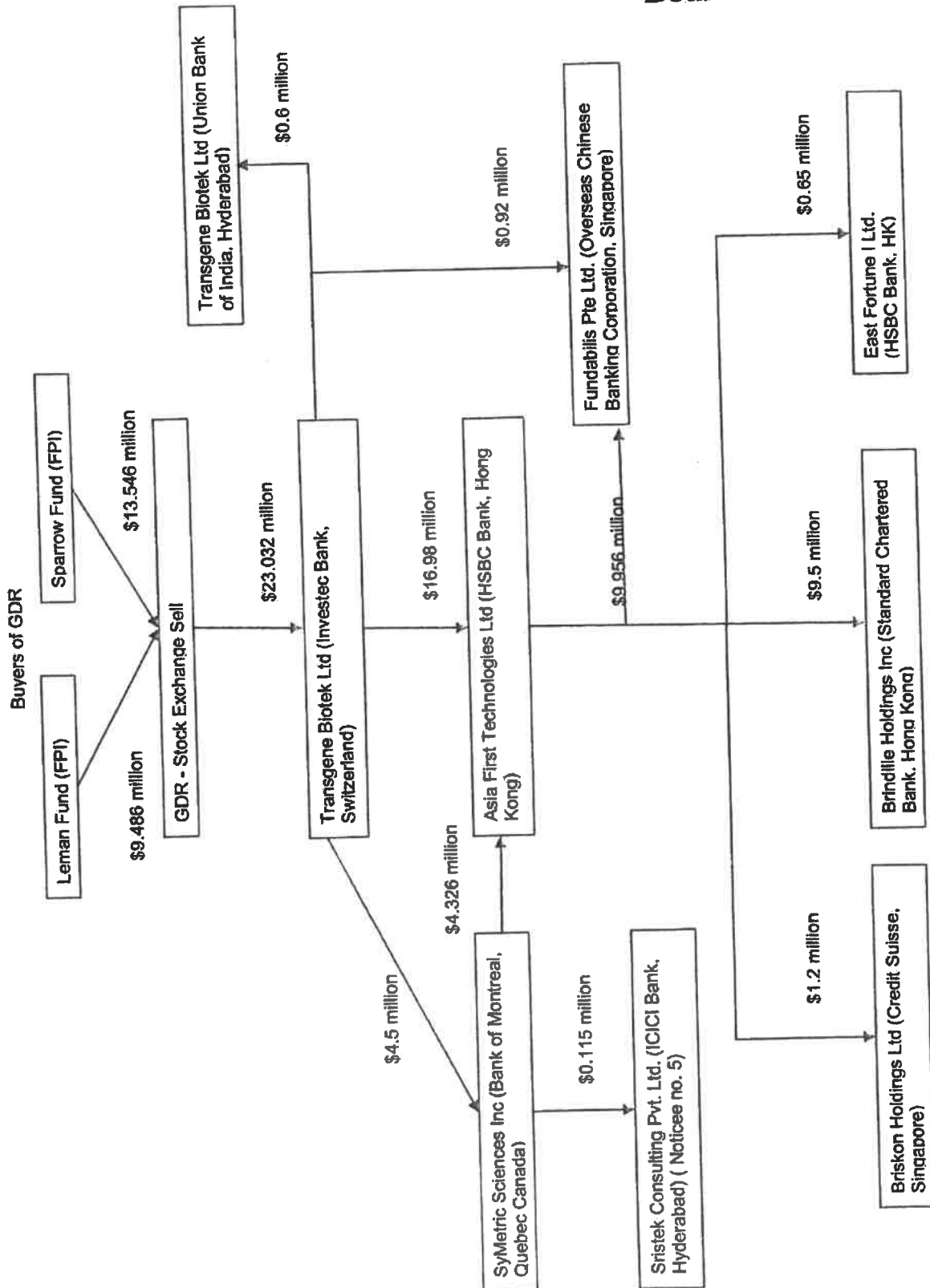
Diagram 1:- Following diagram depicts the fund flow from first GDR of TBL

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11. The details of the above account of Noticee No. 1 has been provided in the following table:

1st Layer of Fund Flow:

TBL Investec Bank, Switzerland AG (Account Number: 020078)						
Funds Received			Funds Transferred			
Date	Amount in USD	Entity Name (through stock sale)	Date	Amount in USD	Entity Name	Bank Account Details
24/02/2011	15,93,599	Sparrow	24/02/2011	6,00,000	Transgene Biotek Ltd. (Noticee no. 1)	Union Bank of India, Jubilee Hills Branch, Hyderabad 527601010033145
08/03/2011	19,95,079	Leman	28/02/2011	9,20,000	Fundabilis Pte Ltd.	Overseas-Chinese Banking Corporation, Singapore 503065377301
14/03/2011	49,79,997	Sparrow	08/03/2011	20,00,000	SyMetric Sciences Inc.	Bank of Montreal Quebec Branch 0166 4608-522
28/03/2011	44,82,637	Sparrow	14/03/2011	50,00,000	Asia First Technologies Ltd.	HSBC- HK Office CVC Branch) 808-835797-838
30/03/2011	24,90,007	Sparrow	28/03/2011	45,00,000		
06/04/2011	45,81,599	Leman	30/03/2011	25,00,000	SyMetric Sciences Inc.	Bank of Montreal Quebec Branch 0166 4608-522
14/04/2011	29,09,298	Leman	06/04/2011	45,00,000	Asia First Technologies Ltd.	HSBC- HK Office CVC Branch) 808-835797-838
			14/04/2011	29,80,000		
Total	2,30,32,216			2,30,00,000		

12. On analysis of the Bank statement of SyMetric (Annexure-7) it was observed that SyMetric received \$ 4.5 million of the GDR proceeds from TBL. Further, it also received \$0.210 million from Sristek Consulting Pvt. Ltd. (Sristek/Noticee no. 5) but transferred \$ 0.325 million back to Sristek. Thus, it transferred a net of \$ 0.115 million to Sristek out of the GDR proceeds. The remaining funds (i.e. approximately \$ 4.326



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million) received from GDR proceeds were transferred to Asia First Technologies Ltd. (AFTL). Details are as under:

2nd Layer of Fund Flow:

SyMetric Sciences Inc, Bank of Montreal Quebec Branch (Account Number 0166 4608-522)							
Funds Received			Funds Transferred				
Date	Amount in USD	Entity Name	Date	Amount in USD	Entity Name	Bank Account Details	
08/03/2011	20,00,000	TBL, Investec Bank	10/03/2011	75,000	Sristek Consulting Pvt. Ltd.	ICICI Bank - Kavuri Hills Branch Hyderabad India 112005000015	
30/03/2011	25,00,000		11/03/2011	13,36,800	Asia First Technologies Pvt. Ltd.	HSBC- HK Office CVC Branch) 808-835797-838	
27/04/2011	2,10,000	Srisktek Consulting Pvt. Ltd. (Noticee no. 5)	16/03/2011	5,60,000			
			01/04/2011	2,50,000	Sristek Consulting Pvt. Ltd. (Noticee no. 5)	ICICI Bank - Kavuri Hills Branch Hyderabad India 112005000015	
			08/04/2011	20,00,000			

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13. On analysis of bank statement of AFTL (Annexure -8), it was observed that AFTL received \$ 16.98 million of the GDR proceeds from TBL, Investec Bank. Further, it also received \$4.326 million from SyMetric which were in turn received from TBL from GDR proceeds. AFTL then transferred these funds to various entities i.e. Brindille Holdings Inc (\$ 9.5 million), Briskon Holdings Ltd. (\$1.2 million), Fundabilis (\$9.956 million) and East Fortune I Ltd. (0.65 million). The details are given as follows:



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Bank statement of AFTL

Asia First Technologies Ltd., HSBC- HK Office CVC Branch (Account Number 808-835797-838)						
Funds Received			Funds Transferred			
Date	Amount in USD	Entity Name	Date	Amount in USD	Entity Name	Bank Account Details
14/03/2011	13,36,759	SyMetric Sciences Inc	15/03/2011	50,00,000	Brindille Holdings Inc.	Standard Chartered Bank HK 40700794816
15/03/2011	49,99,984	TBL, Investec Bank	16/03/2011	12,00,000	Briskon Holdings Ltd.	Credit Suisse, Singapore 131899
17/03/2011	5,59,959	SyMetric Sciences Inc	22/03/2011	6,50,000	East Fortune 1 Ltd.	HSBC Bank HK 817-330798-838
29/03/2011	44,99,994	TBL, Investec Bank	30/03/2011	45,00,000	Brindille Holdings Inc.	Standard Chartered Bank HK 40700794816
07/04/2011	44,99,992		08/04/2011	45,00,000		
11/04/2011	19,99,957	SyMetric Sciences Inc	13/04/2011	20,42,602		
14/04/2011	1,99,962		15/04/2011	29,80,000	Fundabilis Pte Ltd.	Overseas- Chinese Banking Corporation, Singapore 503065377301
15/04/2011	29,79,992	TBL, Investec Bank	19/04/2011	2,00,000		
05/05/2011	2,29,962	SyMetric Sciences Inc	09/05/2011	2,34,000		
Total	2,13,06,561			2,13,06,602		

14. In the second GDR issue October 3, 2011, TBL received approximately \$ 17.5 million in its Investec Bank account, Switzerland AG (Account Number: 20078). Fund flow from second issue of GDR dated of TBL has been depicted in the following diagram:

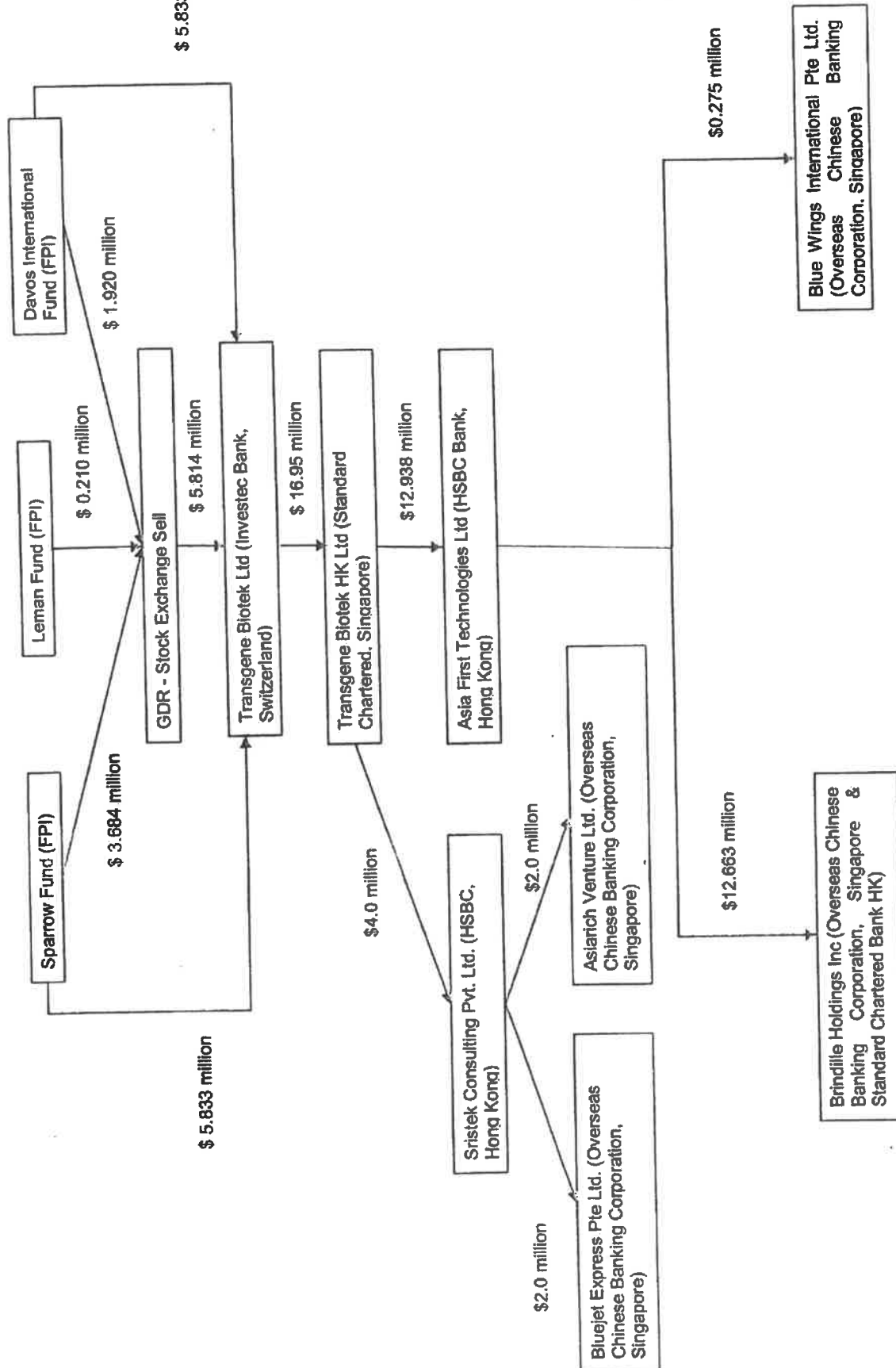
Diagram 2: Fund Flow



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Buyers of GDR





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15. It was observed that out of the \$17.48 million received by Noticee No. 1, in its Investec Bank Account, \$ 16.95 million were transferred to TBL HK Ltd., a wholly owned subsidiary of Noticee No. 1 incorporated in Hong Kong. Further, \$0.5 million was transferred to Fundabilis Pte Ltd.

1st Layer of Fund Flow:

TBL Investec Bank, Switzerland AG (Account Number: 20078)						
Funds Received			Funds Transferred			
Date	Amount in USD	Entity Name	Date	Amount in USD	Entity Name	Bank Account Details
17/10/2011	2,10,405	Leman*	21/10/2011	20,00,000	TBL HK Ltd.	Standard Chartered Bank, Singapore 0170517977
17/10/2011	3,45,290	Sparrow*	21/10/2011	5,00,000	Fundabilis Pte Ltd	Overseas-Chinese Banking Corporation, Singapore 503065377301
20/10/2011	19,20,187	Davos*	24/10/2011	30,00,000	TBL HK Ltd.	Standard Chartered Bank, Singapore 0170517977
20/10/2011	3,47,375	Sparrow*	04/11/2011	25,00,000		
21/10/2011	29,90,939	Sparrow*	17/11/2011	14,00,000		
03/11/2011	22,99,990	Sparrow	30/11/2011	19,00,000		
16/11/2011	14,00,000	Sparrow	06/12/2011	20,00,000		
28/11/2011	18,00,000	Davos	16/12/2011	18,50,000		
29/11/2011	1,00,000	Davos	20/12/2011	20,25,000		
02/12/2011	19,00,000	Davos	29/12/2011	2,77,000		
05/12/2011	1,00,000	Sparrow				
15/12/2011	18,00,000	Davos				
20/12/2011	20,33,341	Sparrow				
29/12/2011	2,33,338	Davos				
Total	1,74,80,865			1,74,52,000		

* received through stock exchange sell

16. On analysis of bank statement of TBL HK with Standard Chartered Bank, Singapore (Account Number: 0170517977) (Annexure- 9), it was observed that, out of the US\$ 16.95 million received by TBL HK from the proceeds of second tranche of GDR issued by TBL, it further transferred US\$12.938 million to AFTL. It also transferred US\$ 4 million to Sristek Consulting Pvt. Ltd.

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2nd Layer of Fund Flow:

TBL HK Standard Chartered Bank, Singapore (Account Number: 0170517977)						
Funds Received			Funds Transferred			
Date	Amount in USD	Entity Name	Date	Amount in USD	Entity Name	Bank Account Details
22/10/2011	19,99,992	TBL Investec Bank	24/10/2011	20,00,000	Asia First Technologies Pvt. Ltd.	HSBC- HK Office CVC Branch) 808-835797-838
25/10/2011	29,99,992		28/12/2011	30,00,000		
05/11/2011	24,99,992		09/11/2011	25,00,000		
17/11/2011	13,99,992		18/11/2011	13,98,000	Sristek Consulting Pvt. Ltd.	HSBC- HK Office CVC Branch) 848-140190-838
01/12/2011	18,99,992		02/12/2011	18,89,000		
07/12/2011	19,99,992		07/12/2011	20,00,000		
17/12/2011	18,49,992		16/12/2011	5,000	Asia First Technologies Pvt. Ltd.	HSBC- HK Office CVC Branch) 808-835797-838
21/12/2011	20,24,992		19/12/2011	18,50,000		
30/12/2011	2,76,992		22/12/2011	19,15,000		
			22/12/2011	1,10,000	Sristek Consulting Pvt. Ltd.	HSBC- HK Office CVC Branch) 848-140190-838
			30/12/2011	2,75,000	Asia First Technologies Pvt. Ltd.	HSBC- HK Office CVC Branch) 808-835797-838
Total	1,69,51,928			1,69,42,000		

17. On analysis of bank statement of AFTL Office CVC Branch (Account Number 808-835797-838) (Annexure-8), it was observed that out of the \$12.938 million received by AFTL from TBL HK, it transferred \$12.663 million to Brindille Holdings Inc. It also transferred \$0.275 million to Blue Wings International Pte Ltd.

3rd Layer of Fund Flow

Asia First Technologies Ltd., HSBC- HK Office CVC Branch (Account Number 808-835797-838)						
Funds Received			Funds Transferred			
Date	Amount in USD	Entity Name	Date	Amount in USD	Entity Name	Bank Account Details
24/10/2011	20,00,000	TBL HK	26/10/2011	20,00,000	Brindille Holdings Inc	Standard Chartered Bank HK 40700794816
28/10/2011	30,00,000		31/10/2011	30,00,000		
09/11/2011	25,00,000		11/11/2011	25,00,000		
18/11/2011	13,98,000		24/11/2011	13,98,000		
19/12/2011	18,50,000		21/12/2011	18,50,000		
22/12/2011	19,15,000		28/12/2011	19,15,442	Brindille Holdings Inc	Overseas- Chinese Banking Corporation, Singapore 503054900301

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30/12/2011	2,75,000		03/01/2012	2,75,000	Blue Wings International Pte Ltd	Overseas- Chinese Banking Corporation, Singapore 503087926301
Total	1,29,38,000			1,29,38,442		

18. On analysis of bank statement of Sristek, HSBC- HK Office CVC Branch (Account Number 848-140190-838) (Annexure-10)¹⁴, it was observed that out of the \$ 4.004 million received by Sristek, it transferred \$ 2 million each into the accounts of Bluejet Express Pte Ltd. and Asiarich Venture Ltd. Details of the same stated in the following table:

Bank Statement of Sristek

Sristek Consulting Pvt. Ltd., HSBC- HK Office CVC Branch (Account Number 848-140190-838)						
Funds Received			Funds Transferred			
Date	Amount in USD	Entity Name	Date	Amount in USD	Entity Name	Bank Account Details
02/12/2011	18,89,000	TBL HK	09/12/2011	20,00,000	Bluejet Express Pte Ltd	Overseas- Chinese Banking Corporation Singapore 503 087918 301
08/12/2011	20,00,000		29/12/2011	20,00,000	Asiarich Venture Ltd	Overseas- Chinese Banking Corporation Singapore 503087959301
16/12/2011	5,000					
22/12/2011	1,10,000					
Total	40,04,000			40,00,000		

Role of Noticee no. 1 and its Directors (Noticee no. 2, 3 and 4)

19. During the investigation, letters and summons were issued to the Noticee no.1. Noticee no. 1 replied through various letters dated August 21, 2013 (Annexure-2), April 18, 2014 (Annexure-11)¹⁵, June 24, 2014 (Annexure-12)¹⁶, July 14, 2014 (Annexure-13)¹⁷, July 28, 2014 (Annexure-14)¹⁸, August 11, 2014 (Annexure-15)¹⁹, March 16, 2015 (Annexure-16)²⁰, April 21, 2015 and August 12, 2015 (Annexure-17)²¹, letter dated August 21, 2015 (Annexure-18)²², letter dated December 23, 2015 (Annexure-19), December 31, 2015 (Annexure-20)²³, July 13, 2016 (Annexure-21)²⁴,
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September 22, 2016 (Annexure-²⁶22), March 9, 2017 and March 20, 2017 (Annexure-²⁷23), April 10, 2017(Annexure²⁸-24), November 13, 2017 and email dated Nov 25, 2017 (Annexure-25), March 2, 2018 and March 9, 2018 (Annexure-26).

20. Noticee no. 1 vide its letter dated June 24, 2014 had stated they were victim of GDR fraud and that they have informed Enforcement Directorate, Hyderabad. Noticee no. 1 further stated that they have filed an FIR at Bollaram Police Station on March 13, 2015 against Shri Nirmal Kotecha stating that Nirmal Kotecha and his team siphoned off \$ 38.4 million belonging to TBL by employing forged letters of instructions and using the forged signatures of Dr. Rao/ Noticee no. 2. In this regard, it is alleged that TBL in its replies prior to June 24, 2014 had never mentioned of any fraud being perpetrated on it. TBL did not disclose the same to Stock Exchange, and further failed to provide information pertaining to the purported fraud to SEBI for close to 15 months. However, on seeking confirmation on the above, Enforcement Directorate, Hyderabad vide its email dated January 12, 2018 (Annexure -27)³⁰ has clarified to SEBI that it has not received any complaint of Noticee no. 1 or 2. Further, ED had clarified that they had initiated investigation against Noticee no. 1 and others based on the specific information received from the Central Excise department, Hyderabad on April 08, 2013. Therefore, it is alleged that Noticee no. 1 had provided incorrect and misleading information.

21. Noticee no. 1 in its letter dated April 21, 2015 (Annexure-18) stated that it became aware of unauthorized transactions from its Investec Bank account, where the proceeds of GDR were placed, in May 2011. However, in the same letter Noticee no.1 had itself admitted the fact regarding alleged unauthorized transactions from its TBL HK account, where the proceeds of second tranche were transferred from Investec bank account, came to its knowledge in August, 2012.



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22. Based on above, it is alleged that Noticee No. 1 admittedly was not only aware and instrumental of the transfer of funds from its accounts, but was also attempting to cover-up/ withhold the same from SEBI and stock exchanges.
23. It is alleged that Noticee No. 1 in its Annual Reports for FYs 2010-11, 2011-12 and 2012-13 had shown that the funds from GDR were utilized to procure technology showing that the technology was received in its books of accounts.
24. Further, Noticee No. 1 had mentioned (letter dated December 31, 2015 of TBL containing a letter dated August 17, 2015 from Noticee. No. 1 to Investec bank) that no invoices were ever raised by the entities to whom the funds were transferred, to TBL or Transgene HK for issuance of alleged letters of instruction for effecting transfer of funds. Thus, it is alleged that information provided by TBL vide letter dated June 24, 2014 providing copies of invoices raised by AFTL and SyMetric were misleading and contradictory. Following table depicts the invoices and corresponding payments made by Noticee No. 1 through its account in Investec bank, where the proceeds of GDR were deposited.

Details of Invoices

AFTL			
Date of Invoice	Amount in Invoice (in USD)	Date of Payment	Amount Paid (in USD)
07/03/2011	5,000,000	14/03/2011	5,000,000
25/03/2011	4,500,000	28/03/2011	4,500,000
02/04/2011	4,500,000	06/04/2011	4,500,000
11/04/2011	2,980,000	14/04/2011	2,980,000
Total			16,980,000

SyMetric			
Date of Invoice	Amount in Invoice (in USD)	Date of Payment	Amount Paid (in USD)
05/03/2011	2,000,000	08/03/2011	2,000,000
24/03/2011	2,500,000	30/03/2011	2,500,000
Total			4,500,000

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25. It is observed that Noticee. No. 1 in its letter dated April 18, 2014 had furnished agreement made with AFTL dated March 07, 2011 for a total consideration of USD 30 million. However, it was observed that Noticee No. 1 had previously entered into an agreement with AFTL on January 07, 2011 for a total consideration of USD 16.98 million (Annexure-³²28) for the same scope of services. The said agreement dated January 07, 2011 was not provided by Noticee No. 1 to SEBI. Incidentally, the amount transferred from TBL to AFTL (during the months March-April 2011) out of the proceeds of first tranche of GDR is also USD 16.98 million.
26. It was further observed from the copy of an email dated September 10, 2011 (Annexure -29) that Shri Sampath Kumar Meesala/ Noticee no. 7/ beneficiary of AFTL provided revised agreement between Noticee no.1 and AFTL for signatures to an email id marked as paymentgateway65@gmail.com. He also continued to mention that invoices may be prepared as per the payment milestones. Further, another email dated September 13, 2011 (Annexure-³⁴30) from Noticee no. 3 to Noticee no. 7 to paymentgateway65@gmail.com provides the details of the invoices to be made i.e. dates (during March- April, 2011) and amounts in respect of AFTL. Thus, it is alleged that the invoices of AFTL dated March- April, 2011 for which payments were made in March- April 2011 itself, were only made in September, 2011 long after the payments were already made by TBL to AFTL. From the above it is alleged that the agreement dated March 07, 2011 to which Noticee no. 2 was signatory and the corresponding invoices w.r.t. AFTL, were created only in September, 2011.
27. It was observed that Noticee no. 1 vide its aforesaid letter dated July 14, 2014, among others, has stated that the payment transactions to AFTL out of the first tranche of GDR proceeds were done without their authorization. However, as seen from above, it is alleged that the director of TBL itself was providing details of invoices to be made at a later date. The agreement with AFTL was also signed much



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later in September, 2011, the signatory to which was Noticee no. 2. It is alleged that Noticee No. 1 actively participated in diversion of its own funds and attempted to legitimize the diversion through back-dated invoices and agreement.

28. It was further observed that the consideration amount to be paid by Noticee no.1 to AFTL was increased from USD 16.98 million in the first agreement dated Jan 07, 2011 to USD 30 million in the revised agreement dated March 07, 2011, without increasing the scope of services, which raises question on the genuineness of the said transaction between Noticee no. 1 and AFTL. Incidentally, in the month of October, 2011 (i.e. immediately after the revised agreement was actually signed) TBL came up with its second tranche of GDR issue. Out of the proceeds of the second tranche of GDR, a total of USD 12.938 million was transferred to AFTL. Thus, a total of USD 29.92 million (approx USD 30 million) was transferred to AFTL (through TBL or its subsidiary). From the above, it is alleged that the agreement was revised to increase the consideration value to USD 30 million so as to accommodate the additional funds to be transferred to AFTL out of second tranche of GDR issue of Noticee No. 1.
29. With regard to agreements of Noticee No. 1 with AFTL and SyMetric, following points may be noted:
- a. Officials/ directors of TBL never visited or contacted any person of either AFTL or SyMetric prior to the signing of agreements for a total consideration of USD 38.5 million, inspite of TBL's own annual turnover prior to the GDR issue being mere Rs. 3.98 crores for the FY 2009-10. In fact no due diligence was carried out by TBL with regard to the nature of business or financial soundness of either AFTL or SyMetric before transferring such huge amounts out of GDR proceeds to them. With regard to SyMetric, TBL
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has furnished profile of SyMetric stated by TBL to have been downloaded from its website. However the same is a print-out on plain paper and name of any website being source of such information is not given. TBL, a pharmaceutical company, admittedly relied on Nirmal Kotecha, who TBL stated to be a financial consultant, for identifying companies to source technology/ services. TBL has also submitted that Nirmal Kotecha had assured to refund back funds paid to AFTL and SyMetric in the event of failure to deliver the assured goals; however no written agreement or documentary evidence compensating to this effect has been produced by TBL. It is alleged that Noticee no. 1 dealt in the issuance of GDR for the sole purpose of siphoning the GDR proceeds.

- b. Further, the agreement was signed on behalf of AFTL by Dorothy. Dorothy was also the holder of limited power of attorney for the Noticee no.1's account in Investec Bank Switzerland which was signed in January 2011 i.e. much earlier to signing of agreement with AFTL. TBL in its reply dated November 13, 2017 has stated that Dorothy was part of secretarial and fiduciary services company which provides Nominee Director/ Shareholder/ Signatory services to several company. It was observed that these two firms (TBL and AFTL) were not part of the same group or under same management. Further, these two firms were entering into a commercial relationship which may or may not result in litigation/ disputes, in the face of which there could be a possible conflict of interest for the Services Company (TBL) and Lok Teng Teng Dorothy. The fact that TBL signed such an agreement with AFTL can only lead to the fact that TBL was very much aware of and part of understanding with AFTL to divert the funds out of GDR proceeds.
- c. It was observed that 57% of the total consideration, i.e. major portion was to be paid even prior to any technology transfer.
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- d. On perusal of agreement with SyMetric dated March 02, 2011, it was observed that one of the clause states that the advance payments made to SyMetric by TBL shall be treated as final payments when the final services of SyMetric and outcome are proven to the satisfaction of TBL. Thus, complete payments were to be made by Noticee no. 1 out of the GDR proceeds to SyMetric even before receiving any output/ services by Noticee no. 1 from SyMetric.
30. Based on the above, it is alleged that the agreements of Noticee No. 1 with AFTL and SyMetric are dubious in nature and have been created merely to legitimize the diverting of funds out of the GDR proceeds of TBL.
31. With regard to the disclosures regarding utilization of GDR proceeds in the Annual Reports, it was observed as under:
- a) In the Annual Report of Noticee No. 1 for FY 2010-11 (Relevant extracts at 36 Annexure-31), Noticee no 1 has disclosed the amount of US\$ 14 million transferred to AFTL and SyMetric (upto March 31, 2011) as advances for acquiring new drug technologies and getting clinical technology services from technology/strategic partners abroad.
- b) In the Annual Report of Noticee No. 1 for FY 2011-12 (Relevant extracts at 37 Annexure 32), Noticee no. 1 has disclosed the amount of US\$ 16.952 million transferred to AFTL and Sristek (out of 2nd tranche), through Transgene HK, as advances for acquiring new drug technologies and getting clinical technology services from technology/strategic partners abroad. It is alleged that though Noticee No. 1 admitted in its letter dated April 21, 2015 that it was total stranger with Sristek and it had no agreement or any understanding with Sristek, however, huge amounts were transferred to Sristek (through Transgene HK), and had been shown as advances in the Annual Reports for FYs 2011-12 and 2012-13.



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- c) In the Annual Report of Noticee No. 1 for FY 2012-13 (Relevant extracts at ३३ Annexure 33), gross block of Technology for Rs 93 crore (approx.) was added during the year under Fixed Assets, which TBL claimed to be against autoimmune diseases received from AFTL. Further, under the head 'Annexure referred to in 'Report on other legal and regulatory requirements' of Audit report of even date on the accounts of Noticee No. 1 for the year ended 31st March, 2013', at point 1.(b) (Page 25- Annexure 34), 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."

- d) The Annual Report of Noticee no. 1 for FY 2013-14 was signed on Dec 06, 2014, i.e. after the interim order dated Nov 20, 2014 in the matter. In this Annual Report, under the head 'Annexure referred to in 'Report on other legal and regulatory requirements' of Audit report of even date on the accounts of Noticee No. 1 for the year ended 31st March, 2014', at point 1.(b) (Page 22) (Annexure- 33), the following is mentioned:

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"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.



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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."

- e) Noticee No. 1 stated that several documents and technology components were handed over to Noticee No. 1 in early Jan 2013, and based on the study results provided to Noticee No. 1 earlier, it was felt that the process of handover of technology was successful for undertaking further studies towards its full effective intended usage and accordingly the same was recognized as asset during 2012-13. Noticee No. 1 had further submitted that after extensive in-house testing with results culminating in the year 2013-14, it was realized that the components handed over to the company did not comply with expected results and that more information seeking clarifications ought to be sought from AFTL. In light of that it was stated in the Annual Report for FY 2013-14 that certain balancing components are yet to be received.
- f) As per Annual Report of Noticee No. 1 for FY 2012-13, technology platform for developing several drugs against auto-immune diseases was acquired after vigorously assessing its utility for more than a year. It is alleged that the submission of Noticee No. 1 that after extensive in-house testing it was realized in the year 2013-14, that the components handed over to the company did not comply with expected results, is in contradiction to the said disclosure in Annual Report for FY 2012-13. The act of Noticee No. 1 in recognizing an asset (technology) without ensuring its viability, and then taking a U-turn on its recognition raises question on the actual receipt of technology in the first place.
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- g) Further, in this Annual Report, Noticee no.1 made 100% provision for the investment made in Transgene HK, and also 100% provision against amounts transferred to SyMetric (Relevant extracts at Annexure-32).
- h) In its letter dated March 02, 2018, Noticee No. 1 had stated that technology inputs were provided by AFTL at different points of time commencing from the year 2011 till the beginning of 2013. Also, as per letter dated April 05, 2012 from Noticee No. 1 to Dr John Joseph, Project Co-ordinator, AFTL (Annexure -33), Noticee No. 1 sought the detailed status on studies conducted by AFTL and the conclusion of studies.
- i) Noticee No. 1 vide letter dated April 21, 2015 stated that when the remaining assured technology was not delivered by AFTL, Noticee no. 2 addressed a letter dated April 14, 2012 to Dorothy inter alia seeking update on status of sending remaining aspects of technology transfer by AFTL. Noticee No. 1 has further submitted that despite this letter, no formal communication was forthcoming from Dorothy, and therefore Noticee no. 2 addressed another letter dated May 15, 2012 to Dorothy of Allshores, being signatory to the agreement on behalf of AFTL, stating that there has been an inordinate delay in receipt of technology on auto-immune diseases. It is alleged that the letters are contradictory on account of the reason that if Noticee No. 1 had received updates on the status of studies conducted by AFTL by April 24, 2012 itself, there would have been no occasion for it to write the letter dated May 15, 2012 to Ms Dorothy of Allshores, being signatory to the agreement on behalf of AFTL, stating that there has been an inordinate delay in receipt of technology on auto-immune diseases.
- j) Noticee No. 1 had stated that several documents and technology components were handed over to Noticee No. 1 in early Jan 2013, and based on the study
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results provided to Noticee No. 1 earlier, it was felt that the process of handover of technology was successful for undertaking further studies towards its full effective intended usage and accordingly the same was recognized as asset during 2012-13. Also, as per letter dated Jan 16, 2013 from Noticee no. 1 to Dr Joseph (with no further details of addressee mentioned) (Annexure-⁴⁴34), Noticee No. 1 has referred to addressee's team at AFTL and has inter alia mentioned the successful conclusion of Technology delivery to Transgene during the last 18 months or so.

Further, in the management representation letter dated Aug 15, 2013 from Noticee No. 1 to its then auditor Sarath & Associates (Annexure-⁴⁵35), TBL has stated that Technology worth Rs 93 crore (approx.) was added to the assets block during the year 2012-13.

These submissions/ letters of Noticee No. 1 were in contradiction to the letter dated April 06, 2013 purportedly written by TBL to Enforcement Directorate, Hyderabad *inter alia* mentioning that not much of technology got transferred so far, considering that in its letter dated 4 months later Noticee No. 1 has stated that technology has been received. Noticee No. 1 had itself admitted that the technology provided by AFTL never reached a stage of commercial production.

- k) It is alleged that prior to passing of the Interim Order dated Nov 20, 2014, amounts transferred to AFTL, SyMetric and Sristek were shown as advances in the Annual Reports. Even against the amounts transferred to AFTL from the 1st tranche of GDR issue, technology was shown as received in the Annual Report. It was only in the Annual Report for FY 2013-14, which was signed after the date of the aforesaid Interim order, that Noticee No. 1 mentioned that certain balancing components are yet to be received.



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- 1) From the above, it is alleged that the said technology was never received by Noticee No. 1, and the disclosure of receipt of technology from AFTL and disclosure of amounts transferred to SyMetric and (through Transgene HK) to AFTL and Sristek as Advances, was an attempt of Noticee No. 1 in legitimizing/ covering-up the funds diverted to AFTL, SyMetric and Sristek.
32. Noticee No. 1 had stated that acquiring technologies is a normal process undertaken by the company. It may be noted that agreements with AFTL and SyMetric for consideration of US\$ 30 million and US\$ 8.5 million respectively were material agreements for Noticee No. 1 whose turnover were only Rs 3.98 crore and Rs 10 crore for FYs 2009-10 and 2010-11 respectively. These agreements had a bearing on the operations / performance of the company, and ought to have been disclosed to the exchange and in the Annual Report. It is alleged that Noticee No. 1 had made an announcement at BSE on Nov 23, 2011 informing that the management of Noticee No. 1 has formalised the sale of technology of one of its bio-generic products for a total consideration of US\$5.0 million, however, Noticee No. 1 failed to disclose to BSE about the agreements for acquisition of technology/ services for larger consideration of US\$ 30 million and US\$ 8.5 million. It is stated that Noticee No. 1 vide its letter dated April 21, 2015 had claimed that information regarding such agreements were declared in the offer documents of GDRs, whereas it is alleged that details of these agreements were not disclosed in the offering circular for GDR issues.
33. Noticee No. 1 vide letter dated Aug 21, 2015, had submitted that on the advice of Nirmal Kotecha, a bank account was opened in the Hong Kong branch of Standard Chartered Bank in the name of Transgene HK with Ms Dorothy as the authorized signatory. However, vide letter dated Nov 13, 2017, Noticee no. 1 stated that it was not aware when the account of Transgene HK at Standard Chartered Bank, Singapore was opened by Allshores till the time of receiving Investec bank



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statement in Jan 2012. Therefore, Noticee No. 1 has submitted contradictory replies where on one hand it stated that on the advice of Nirmal Kotecha the said bank account was opened, on the other hand it has shown ignorance on the opening of that account.

34. It is alleged that Noticee no.1 concealed transfer of funds and provided contradictory information vide letter dated April 21, 2015 stating that fact regarding unauthorised transfer of funds from the bank account of Transgene HK (maintained with Standard Chartered, Singapore) to AFTL and Sristek from the proceeds of second issue of GDRs, came to the knowledge of TBL for the first time only in Aug 2012 when the copies of the audited balance sheet of Transgene HK for FY 2011-12 was forwarded to the company by Kishore Tapadia. Whereas, TBL vide letter dated April 10, 2017 stated that Noticee no.1/ Noticee no. 2 came to know about Sristek for the first time only after receiving the letters of instruction from Dorothy on Oct 27, 2013. Further, Noticee No. 1 vide its letter dated Nov 13, 2017 had that immediately after becoming aware of opening of account of Transgene HK in January, 2012, on TBL's persistent demand to show where the account of Transgene HK was opened, Kishore Tapadia finally arranged to send the operating account statement dated February 3, 2012 from Standard Chartered, Singapore. In view of the above it is alleged that TBL was aware of the fund transfers out of the account of Transgene HK in Feb 2012 itself as against their claim of having knowledge of the fund transfers only in Aug 2012 and Oct 2013.
35. Noticee No. 1 in its letter dated April 21, 2015 stated that it had relied on bank statements (of Investec bank account wherein the proceeds of GDR were placed) provided by Nirmal Kotecha/ Kishore Tapadia and therefore were unaware of transfer of funds from its bank account. In this regard the following may be noted:
- a. Noticee No. 1 with annual turnover of mere Rs. 3.98 crore for FY 2009-10 relied on other entities for monitoring its own bank account wherein it had placed USD 40.5 million raised.



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- b. For the purpose of audit for FY 2010-11, Sarath & Associates, then auditor of Noticee No. 1, wrote directly to Investec Bank on August 25, 2011, and was able to obtain the bank statements of TBL with Investec Bank 46 (Annexure-36). It appears that Noticee No. 1 had already authorized its Auditors to seek bank statements from Investec Bank.
- c. It was also noted, based on Noticee No. 1 letter dated April 21, 2015, that when Noticee No. 1 admittedly themselves contacted Investec Bank through email in October/ November 2013, Investec bank provided all relevant information as sought by Noticee No. 1.
36. It is alleged that Noticee no. 1 did not show any due diligence in monitoring its own account, wherein it had placed GDR proceeds which were multiple times of its annual turnover. Further, on its own accord relied on other entities for information, while a mere email to the bank could have provided them with all relevant information pertaining to the bank account. The contention that it was not aware of the fund transfer through its account appear to be afterthought.
37. Noticee No. 1 has stated that they were cheated by Nirmal Kotecha and Kishore Tapadia with regard to the entire GDR issues and diversion of the GDR proceeds. TBL has further failed to provide any documentary evidence to substantiate the role, if any, of Nirmal Kotecha and Kishore Tapadia in raising of GDRs, entering into agreements by Noticee No. 1 with various entities and subsequently diversion of the GDR proceeds. Noticee No. 1 has provided copies of three emails wherein the sender was Noticee no. 2 and recipient was Nirmal Kotecha, and not the other way round. While TBL has submitted vide letter dated Nov 13, 2017 that Nirmal Kotecha had assured to refund back funds paid to AFTL and SyMetric in the event of failure to deliver the assured goals, Noticee No. 1 has not provided any documentary evidence or any written agreement to this effect. In fact, vide summons dated November 03, 2017 and email dated November 22, 2017, copy of minutes of meeting purportedly held in August 2010 between TBL/promoters/directors and Nirmal Kotecha/ Kishore Tapadia, as referred to in the email dated Dec 18, 2012 purportedly sent by K K Rao to Nirmal Kotecha, was sought. However, again Noticee No. 1 failed to provide the same in its reply letter dated Nov 13, 2017 and e-mail



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dated Nov 25, 2017. In view of the alleged failure of Noticee No. 1 to provide any documentary evidence in respect of their allegations against Nirmal Kotecha/ Kishore Tapadia and their role in legitimizing/ covering-up the diverting of GDR proceeds as detailed above, the allegation of Noticee No. 1 that they were rather cheated upon by Nirmal Kotecha/ Kishore Tapadia is incorrect.

38. It is observed that Noticee No. 1 vide letter dated April 21, 2015 had informed that the remark made in the financial accounts for FY 2011-12 in respect of transfer of US\$ 16.952 million (through its subsidiary) was made under the reasonable belief that the company would be receiving the promised technologies from AFTL and SyMetric as per their agreements and the said transfer of funds effected by their agents Allshores. Whereas, based on bank statements of Noticee No. 1 HK (subsidiary) it was noted that the funds were actually transferred to AFTL and Sristek and not to SyMetric. As stated earlier there was no agreement of TBL/ TBL HK with Sristek. Thus, it is alleged that Noticee No. 1 has made incorrect statements to SEBI.
39. It is also alleged that, the list of GDR subscribers provided by the company vide its letter dated August 21, 2013 was incorrect. In the 1st GDR issue, there was no subscription of GDRs and all the GDRs were sold through 'stock exchange sell' (as indicated in the Investec bank account statement) during Feb 23, 2011 to April 13, 2011, i.e. after the issue closure date Feb 22, 2011 as informed by the company. Also, in the 2nd GDR issue, out of 25,00,000 GDRs, 8,33,333 GDRs were sold through 'stock exchange sell' during Oct 14, 2011 to Oct 20, 2011, i.e., after the issue closure date Oct 03, 2011 as informed by the company. The remaining 16,66,667 GDRs were purchased on Oct 07, 2011, i.e. after the issue closure date (Oct 03, 2011) and the payments were received by Noticee No. 1 (in its Investec Bank account) much later (during Nov 03, 2011 to Dec 29, 2011). Even in the 2nd GDR issue, there was no subscription of GDRs during the issue period informed by the company. It was however noted that Noticee No. 1 had made announcement at



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BSE on Feb 23, 2011 that the Board of Directors of the Company at its meeting held on February 22, 2011 has allotted 2,500,000 GDRs @ US\$ 9.2 per GDR aggregating to US\$ 23 million. Similarly, Noticee No. 1 had made announcement at BSE on Oct 04, 2011 that the Board of Directors of the Company at its meeting held on October 03, 2011, has allotted 2,500,000 GDRs @ US\$ 7 per GDR aggregating to US\$ 17.5 million. It is alleged that Noticee No. 1 made false disclosures to BSE regarding allotment of GDRs after the issue closure date, when there were no subscriptions till that date.

40. It was further observed from the copy of Certificate of Incorporation of Transgene Biotek HK Ltd (Annexure ⁴⁷-37), submitted by TBL letter dated April 21, 2015, that Transgene Biotek HK Ltd was incorporated in Hong Kong on August 30, 2011. Whereas it was noted that the announcement on setting up of wholly-owned subsidiary of TBL, Transgene Biotek HK Ltd was made on the BSE website only on September 22, 2011. In view of the above it is alleged that Noticee No. 1 L failed to immediately inform BSE regarding setting up of wholly owned subsidiary, as is required under Clause 36(7) of the Listing Agreement.
41. Noticee No. 1 had further stated that the fund transfer from the accounts of (TBL and TBL HK) with Investec Bank were effected based on the forged letters of Instructions of Noticee no.2. It was noted from the letters of Noticee No. 1 dated April 21, 2015 and Oct 30, 2017 that the letters of instructions were obtained by TBL from Investec Bank, Herman Chan CPA & Co (auditor of TBL HK) and Allshores through emails. Therefore, the letters of instruction in question in possession of Noticee no. 2 were printouts of these emails/ attachments and not originals. Further, amongst the various transactions from Investec Bank account of Noticee No. 1 to other entities, one transaction was towards account of Noticee No. 1 in India. The said transaction was transfer of USD 600,000 to TBL account in India (Union Bank of India, Jubilee Hills Branch A/c No: 527601010033145). As per TBL's handwriting expert's opinion dated September 15, 2016, the said transaction of USD 600,000 is



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also based on forged signature of Noticee no. 2. However, Noticee No. 1 vide its letter dated April 10, 2017 had inter-alia mentioned that funds from Investec bank account were transferred based on forged letters of instructions except for said transaction of USD 600,000 to Noticee No. 1 India account. There was contradiction in the averments of Noticee no. 1 and its own handwriting expert's opinion. It may also be noted that such sudden infusion of funds in its Bank account in India would have raised suspicion at Noticee no. 2 in case the signatures on letter of Instructions were forged. It was further observed from the e-mail dated September 13, 2011 of Noticee no. 3, Director of Noticee No. 1 and annual reports of Noticee No. 1 for FY 2010-11, 2011-12 and 2012-13 (wherein the amount transferred to AFTL, SyMetric, Sristek etc. were shown as advances/ technology) that Noticee No. 1 was aware that the funds were transferred to various entities and was attempting to legitimize the said transactions.

42. It is observed from the Board resolution dated February 18, 2011 (submitted by Noticee No. 1 vide its letter dated August 21, 2013) that Noticee no. 1 had authorized Noticee no. 2 to sign and execute all documents/ agreements/ papers/ forms including but not limited to the Deposit Agreement and Deed Poll related with the GDR issue of the Company on behalf of the Board of Directors of the company. And further vide board resolution dated Sep 30, 2011 (as informed by Noticee No. 1 vide its letter dated August 21, 2013) resolved that Noticee no. 2 and Noticee no. 4 were jointly and severally authorized to sign and execute all documents/ agreements/ papers/ forms including but not limited to the Supplemental Agreement related with the GDR issue of the Company on behalf of the Board of Directors of the company. Further, Annual Reports for FYs 2010-11 and 2011-12 of Noticee no.1 were signed on behalf of the Board of Directors by Noticee no.2 and Noticee no.4, and for FY 2012-13 by Noticee no.2 and Noticee no. 3. Further, Noticee no. 2, 3 and 4 were the members of Audit Committee of Noticee No. 1 for the year 2010-11, 2011-12 and 2012-13.



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43. In view of the above, it is alleged that the proceeds to the extent of USD 38.42 million (transferred to AFTL, SyMetric and Sristek) out of total amount of USD 40.5 million from the two GDR issues of TBL were not utilized for the purposes as stated in the Offering Circulars for the said issues. It is alleged that the said amount was diverted by Noticee. No.1 from its accounts (with Investec Bank, Switzerland and Standard Chartered Bank, Singapore) under the garb of advance/ consideration for technology/ service, which were not received by Noticee No. 1.

Conclusion:-

44. In view of the above, it is alleged that TBL/ Noticee no.1) and its directors K. Koteswara Rao (Noticee no.2), Soma Sekhar Marthi (Noticee no.3) and Narayana Murthy Pentyala (Noticee no.4) were involved in the diversion of the GDR proceeds and later legitimizing/ covering-up the same by 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 for FYs 2010-11, 2011-12 and 2012-13. It is further alleged that they also made false disclosures in the Annual Reports for FYs 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 Noticee No. 1 and to induce them to buy or sell shares of Noticee No. 1. In view of the above, it is alleged that Noticee No. 1 and its directors K. Koteswara Rao, Narayana Murthy Pentyala and Soma Sekhar Marthi have violated the provisions of Section 12A(a), 12A(b) and 12A(c) of SEBI Act 1992 read with Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(f),(k)(r) of SEBI (PFUTP) Regulations, 2003.

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45. Further, Noticee no. 1 also 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 the company. Also, Noticee no. 1 had 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, Noticee No. 1 had made delayed disclosure to BSE regarding setting up of wholly owned subsidiary. Disclosures made by Noticee no. 1 during the investigation period, as available on BSE website, are given at Annexure-⁴⁸38. It is therefore alleged that TBL also violated Clause 36 of the Listing Agreement and Regulation 12 (2) read with Schedule II to SEBI (PIT) Regulations, 1992.
46. In terms of Accounting Standard-1 of 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, as noted in this case, TBL failed to disclose material service agreements with AFTL and SyMetric and non-receipt of services as per service agreements in the Annual Reports for FY 2010-11 to FY 2012-13. In view of the above it is alleged 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 the company to mandatorily comply with all the Accounting Standards issued by ICAI from time to time.
47. As mentioned in the above paragraphs, the alleged violations are summarized as below:-
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Name of the Noticee	Violations
Transgene Biotek Ltd. (Noticee no. 1)	Section 12 A(a), 12A(b) and 12A(c) of SEBI Act, 1992 read with regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(f),(k)(r) of SEBI (PFUTP) Regulations, 2003. Section 21 of Securities Contracts (Regulation) Act, 1956 (SCRA) read with Clause 36 and 50 of Listing Agreement, and Regulation 12(2) read with Schedule II to SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015
K. Koteswara Rao (Noticee no. 2)	Section 12 A(a), 12A(b) and 12A(c) of SEBI Act, 1992 read with regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(f),(k)(r) of SEBI (PFUTP) Regulations, 2003.
Soma Sekhar Marthi (Noticee no. 3)	
Narayana Murthy Pentyala (Noticee no. 4)	

Role of Sristek Consulting Pvt. Ltd (Noticee no. 5)

48. It was observed that from the first tranche of GDR proceeds Noticee no. 5 received net USD 0.115 million in its ICICI Bank Hyderabad Branch account through SyMetric. Further, from the second tranche of GDR proceeds, it received USD 4.004 million in its HSBC Bank Hong Kong account through Transgene HK. The amount received in second tranche was further transferred to Bluejet Express Pte Ltd. and Asiarich Venture Ltd. (USD 2 million each). It was further observed that, Sampath Meesala (Noticee no.7) was the director of Sristek at the time of account opening of Noticee no. 5.
49. As per TBL's letter, there was no agreement of TBL with Sristek to provide any services by Sristek. Yet, Sristek received approximately 4 million USD from the



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proceeds of GDR through Transgene HK, and transferred the same to other entities. It is alleged that Sristek acted as a conduit in diverting GDR proceeds. It is further alleged that Sristek is common shareholder among SyMetric and AFTL. As mentioned in the previous paragraphs, both these entities entered into dubious agreements with TBL and acted as conduits in diverting GDR proceeds.

50. In view of the above, it is alleged that Noticee no. 5/ Sristek has aided and abetted TBL in diverting the proceeds of GDR. Sristek has therefore alleged to have violated the following provisions of law:

Name of the Noticee	Violations
Sristek Consulting Pvt. Ltd.(Noticee no. 5)	Sections 12A(a), 12A(b), 12A(c) of SEBI Act 1992 read with regulations 3(a), 3(b),3(c), 3(d), 4(1) of SEBI (PFUTP) Regulations, 2003

Role of Deepak Mishra (Noticee no. 6)

51. It was observed that TBL vide its letter dated April 21, 2015 stated that it had entered into agreement dated August 12, 2011 with Allshores for providing administrative and management services to TBL HK. The signatory to this agreement on behalf of Allshores was Dorothy. It was further observed on the basis of the documents provided by Swiss FINMA, Monetary Authority of Singapore (MAS) and SFC HK, that Allshores has managed accounts of TBL/ Transgene Biotek HK Ltd. in Investec Bank, Switzerland and Standard Chartered Bank, Singapore and also managed the accounts of AFTL's account in HSBC, Hong Kong.



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52. It was further observed from the relevant documents provided by MAS vide their letter dated March 02, 2018 (Annexure⁵³-39) under IOSCO MMoU, that, Allshores submitted that it was first contacted by Noticee no. 6/ Deepak Mishra whom Allshores liases with for the information needed to set up Transgene HK and its on-going activities. Noticee no. 6 coordinated the arrangement between Allshores and TBL, and all the requisite documents and signed documents of TBL were provided by him. Further it assisted in opening of account of TBL with Investec Bank. Noticee no. 6 was the point of contact for AFTL. It also stated that it has also liased with Noticee no. 7. Allshores had entered into an agreement dated Aug 12, 2011 with TBL to provide certain management and administrative services in relation to Transgene HK. Allshores had entered into an agreement dated July 26, 2010 with Ramesh Meesala, Sampath Kumar Meesala, Meesala Saibhakta Chalapathi Rao and Sun Mohan Reddy Gade to provide certain management and administrative services in relation to AFTL
53. From the email it was also observed that Allshores/ Lok Teng Teng Dorothy had received e-mails from e-mail Id paymentgateway65@gmail.com in regard to instructions to Investec Bank pertaining to TBL's account 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). The said emails contained copy of signed letters of instruction from TBL to Investec Bank. It is observed that Allshores had received instructions from the said e-mail Id paymentgateway65@gmail.com regarding transfer of funds from Transgene HK's account with Standard Chartered bank, Singapore to AFTL, Sristek and Blue Wings. It also contained copy of signed letters of instruction from TBL to Allshores in respect of transfers to AFTL and Sristek. Further, there were also instructions in e-mails for onward transfer from AFTL to Brindille and Blue Wings, and from Sristek to Bluejet and Asiarich. It was further observed from the email dated Nov 18, 2011 received from paymentgateway65@gmail.com to Allshores informing that blank signed



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instructions from Sristek for its HSBC, HK account were sent to Allshores. Further, it was observed from the email that Allshores had received instructions from the same e-mail id regarding transfer of funds from AFTL's account with HSBC, Hong Kong. It is also observed that instructions were also received from the said email id to Allshores to transfer funds from Fundabilis.

54. It was further observed 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. It was further observed that in respect of instructions pertaining to accounts of TBL and Transgene HK, the said e-mails also contained copy of signed letters of instruction from TBL to Investec Bank/ Allshores. Among these, there were two signed letters of instruction dated Feb 22, 2011 and Oct 03, 2011 from TBL to Investec Bank requesting to take delivery of GDRs in TBL's account. These two letters of instruction have been stated to be genuine with signature of Noticee no. 2. It was observed that instructions for transactions in the accounts of TBL and Transgene HK originated at the end of TBL itself, through physical signed letters of instruction. These letters of instruction were further transmitted to Allshores through the said e-mail id paymentgateway65@gmail.com. The above further corroborates the role of TBL in transfer of funds from its accounts (with Investec Bank and Standard Chartered Bank).
55. It was further observed that apart from transmitting signed letters of instruction from TBL, through this email id paymentgateway65@gmail.com, instructions were also given regarding sell orders of TBL GDRs and onward transfer of funds from AFTL and Sristek.
56. It was further observed from letter dated March 02, 2018 from MAS and the e-mail correspondences received along with the same, that the person sending such instructions from email id paymentgateway65@gmail.com was one Deepak Mishra (Noticee no.5) of Greenfield Advisory Pte Ltd. It was also noted from the account



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opening form of Funndabilis with OCBC Bank, Singapore (Annexure-41) as received from MAS, that its beneficial owner is Deepak Mishra.

57. It was also noted from e-mail correspondences dated April 07, 2011 that the said Deepak Mishra, through the said email id, had requested Dora Loke (from Allshores) to send an instruction to HSBC to transfer USD 4.5 million from AFTL to Fundabilis account and to ensure that the said transfer happens the next day itself. Subsequently, in another email of the same date (i.e., April 07, 2011), in regard to the said fund transfer, Deepak Mishra had written to Allshores that he has to invest money into Lombard next Tuesday so they need to get this done the next day itself.
58. In view of the above it is alleged that, Noticee no.6/ Deepak Mishra transmitted signed letters of instruction from TBL to Allshores, and also gave instructions to Allshores regarding sell orders of TBL GDRs and onward transfer of funds from AFTL and Sristek. Also, as noted above, paymentgateway65@gmail.com is the e-mail id to which Noticee no.7/ Sampath Kumar Meesala had sent the back-dated agreement between TBL and AFTL for signatures and Soma Sekhar Marthi (Director at TBL) had sent the details of the back-dated invoices to be made in respect of AFTL. In view of the above it is alleged that Deepak Mishra was involved in the 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. Deepak Mishra has therefore violated following provisions:

Name of the Noticee	Violations
Deepak Mishra (Noticee no. 6)	Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 read with regulation 3(a), 3(b), 3(c), 3(d), 4(1) of SEBI (PFUTP) Regulations, 2003



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Role of Sampath Kumar Meesala (Noticee no. 7)

59. It was observed that Noticee no. 7 was one of the directors of Noticee no. 5/ Sristek. Further, Noticee no. 7 was also one of the beneficial owners of AFTL. Noticee no. 7 is alleged to be associated/connected with AFTL, SyMetric and Sristek, who acted as conduits in diverting GDR proceeds of TBL.
60. It was also observed from the copy of an email dated September 10, 2011 (Annexure-27) obtained from Enforcement Directorate, Hyderabad that Noticee no. 7 provided revised agreement between TBL and AFTL for signatures to email id marked as paymentgateway65@gmail.com. Further, he 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 made i.e. dates (during March-April, 2011) and amounts in respect of AFTL. Therefore, the agreement dated March 07, 2011 between TBL and AFTL and the invoices of AFTL dated March- April, 2011, for which payments were made in March- April 2011 itself, were made in September, 2011 long after the payments were made by TBL to AFTL.
61. From the above, it is 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. Noticee no. 7 has therefore violated following provisions:.

Name of the Noticee	Violations
Sampath Kumar Meesala (Noticee no. 7)	Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 read with regulation 3(a), 3(b), 3(c), 3(d), 4(1) of SEBI (PFUTP) Regulations, 2003



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62. The provisions alleged to have been violated by Noticees are reproduced below:

SEBI ACT

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

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 recognized 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;***

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in 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***



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recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

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:—

...
(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;

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

...
(r) planting false or misleading news which may induce sale or purchase of securities.

SCRA

Conditions of 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.

LISTING AGREEMENT

Clause 50 of the listing agreement reads as follows:

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

Clause 36 of the Listing Agreement inter-alia states the following:



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"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."

PIT Regulations

12. Code of internal procedures and conduct for listed companies and other entities.

...

(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.

63. The aforementioned alleged violations, if established, make you liable for the monetary penalty under Sections 15 HA of SEBI Act and 23E of SCRA (in case of Noticee No. 1) and Section 15 HA (in case of Noticee Nos. 2 to 6) which are reproduced as under:

Penalty for fraudulent and unfair trade practices.

15HA.If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Penalty for contravention where no separate penalty has been provided.

15HB.Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall liable to a penalty which may extend to one crore rupees.



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Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.

Penalty for contravention where no separate penalty has been provided.

23H. Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

64. Noticees are, therefore, called upon to show cause as to why an inquiry should not be held against them in terms of Rule 4 of SEBI Adjudication Rules read with Section 15I of SEBI Act, 1956 and Rules 4 of the SCR Rules read with Section 23-I of SCRA and why penalty should not be imposed under Sections 15 HA and 15 HB of SEBI Act and Section 23E and 23H of SCRA for the alleged contravention of the provisions of SEBI Act, SCRA, PFUTP Regulations, PIT Regulations and Listing Agreement as aforesaid.
65. Noticees' reply, if any, should reach the undersigned, at the address given below within 14 days from the date of the receipt of this notice, failing which it shall be presumed that Noticees have no reply to submit and the matter would be further proceeded ex – parte.

Securities and Exchange Board of India

SEBI Bhavan, C4-A, 'G' Block,
Bandra Kurla Complex, Bandra (East)

Mumbai – 400 051



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66. Noticees are also advised to provide copies of your PAN and email id(s) and also to keep the undersigned informed about the change in their correspondence address, if any, till completion of the proceedings.

Biju. S
Adjudicating Officer

Encl: a/a