

Dr. Kalyan B. Goswami
Executive Director



Ref. NSAI/2016/0133

Date : 09-11-2016

Ms. Madhvi Kataria
Deputy Executive Director
American Chamber of commerce in India
PHD House, 4th Floor
4/2 , Siri Institutional Area
August Kranti Marg
New Delhi – 110016, India

AMERICAN CHAMBER OF COMMERCE IN INDIA
PHD House, 4th Floor, 4/2, Siri Institutional Area
August Kranti Marg
New Delhi-110 016, India, Tel.: 91-11-26525203
E-mail: amcham@amchamindia.com
Website : www.amchamindia.com

Dear Ms. Kataria,

This has reference to your letter dated 19-08-2016, addressed to Mr. Ramesh Abhishek, Secretary, Department of Industrial Policy and Promotion (DIPP), Government of India, New Delhi.

National Seed of India (NSAI) is an Apex organisation, representing various seed companies in India and is having 366 members out of which, presently only around 50 seed companies are in cotton seed business, thanks to highly restrictive policy of Monsanto. (We will explain this in later paragraphs).

The vision of NSAI is to create a dynamic, innovative and internationally competitive, research based industry producing high performance, high quality seeds and planting material, which benefit farmers and significantly contribute to the sustainable growth of Indian agriculture. NSAI is also working towards the responsible use of biotechnology for modernising Indian agriculture and enhancing the livelihood of Indian farmers. NSAI is also engaged in activities such as increasing the general awareness about crop biotechnology amongst the many stake-holders, technology upgradation and **engaging in a continuous dialogue with the regulators for establishment of a transparent, fair and equitable regulatory system.**

From your letter we understand that you allowed yourself to be carried away by misinformation and false propaganda unleashed by the vested interest. In this background it is necessary to inform you certain pertinent facts. Perhaps you are also not aware from 2002 to 2005 Monsanto has fixed his trait fee arbitrarily and unilaterally as high as Rs.1200/- to Rs.1250/- for 450g seed, sufficient for half an acre due to which the cotton seed prices have gone up as high as Rs.1700/- to 1800/- from Rs.350/- to Rs.450/-, and the then Agriculture Minister of Government of Andhra Pradesh termed the said trait value as day-light robbery. Copy of news clipping is enclosed herewith. In this background, the then Government of Andhra Pradesh, failing to convince Monsanto to make its trait value reasonable and affordable to the farmers, had to approach Hon'ble MRTP Commission and some of the other States and farmers Associations also lodged complaints with the Hon'ble MRTP Commission. The details are given in the later paragraphs.

We may inform you that, despite reduction of trait fee by several State Governments under their respective state enactments, Monsanto collected much higher trait fee than what is fixed by the State Governments and thereby the seed companies incurred loss as they could not recover the lower trait value as fixed by the Government from the farmers. If you please take an unbiased view of the whole matter, you will understand the predicament of seed companies caught between the Bt trait provider and State Government's price regulations. The price fixation was introduced by the State Governments only to control trait value and in the process it is the seed companies, which have greatly suffered. There was

never price fixation of seeds and presently also there is no price fixation of seeds of any other crop. It is only thanks to Monsanto whether it is Government of India or State Governments had to introduce price regulation regime.

We assume that you did not even study the agreements, entered by Monsanto with Indian seed companies 14-15 years back and again in 2015, then you would have understood, how unfair and one-sided with onerous terms and conditions, Monsanto's agreements are with the Indian seed companies. These agreements levy prohibitive licence fee of rupees 50 lakhs, besides payment of exorbitant trait value, unilaterally and arbitrarily fixed by Monsanto alone on sale of Bt cotton seeds. By using these agreements, Monsanto has decimated the Indian seed industry and effectively killed competition to its technology. **Please do read the agreements**, we will provide copies of the same, if Monsanto is fighting shy to share the same with you. Monsanto is singularly responsible for blocking the entry and growth of other technologies in India. . Out of more than 250 seed companies, which were in cotton seed business before the advent of Monsanto with its Bt trait in India, now at present only around 50 seed companies are left in cotton seed business. Is it a progress that several companies had closed down, due to Monsanto's monopoly! Even seed companies in public sector and cooperative sector had to close down their cotton seed business, because of stringent clauses in the agreements to access Bt trait. Furthermore the public research system in cotton crop has come to a grinding halt due to restriction in accessing the Bt traits and the high cost. Who are the losers? The poor farmers of this country! The situation has come to such a pass that the farmers have now become totally dependent on private companies' seeds for their requirements every year. Gone are the days, when they used to save, sow and re-sow their own farm saved seeds 3-4 season, as Monsanto has effectively prevented this by restricting the use of Bt trait only in hybrids and not in the varieties. The farmers have been badly hit because of public sector research becoming redundant in the last 15 years and also not being able to use their own farm saved seeds, they were forced to purchase hybrid Bt cotton seeds from the private seed companies at high cost every year. The cost of seed had gone as high as Rs.1800/- per packet of 450g Bt cotton seed (sufficient for 0.202 hect.) due to arbitrarily fixed exorbitant trait value of Rs.1250/- by Monsanto. Naturally, there was hue and cry from the farmers and also their organizations against the high cost of Bt cotton seed. As Monsanto was unwilling to reduce the trait value, certain State Governments intervened in the matter by filing Reference before the Hon'ble Monopolies and Restrictive Trade Practices Commission (MRTPC), which ruled that Monsanto's agreements are restrictive and anti-competitive and asked Monsanto to fix trait value at par with neighbouring country China, which was determined as Rs.40/- for 450g of Bt cotton seeds. However, making mockery of MRTPC order, Monsanto reduced a paltry amount of Rs.20/- and revised the trait value from Rs.900/- to 880/-. Thereby, the State Governments fixed the maximum sale price at Rs.750/- for 450g hybrid Bt cotton seeds **inclusive of trait value** for the year 2006. Monsanto approached Hon'ble Supreme Court challenging the above price fixation by the State Governments and failing to get any relief from the Hon'ble Supreme Court, entered into Settlement and Release of Claims Agreement with seed companies in January 2007 fixing the trait value at Rs.150/-, bringing it down from Rs.880/-, An order from the highest Court was required to make Monsanto charge a reasonable trait value.

Thereafter, Monsanto introduced second generation Bt trait and unilaterally fixed higher trait value for the second generation Bt trait. To overcome a constant problem from Monsanto, the Government of Andhra Pradesh brought in state legislation primarily to control trait value. Other states followed suit with similar legislations in their states. Monsanto made seed companies and the Association to challenge the states legislations, duly financing the cost of litigations. The seed companies were under such control of

Monsanto due to stringent clauses in the agreements that they had no choice but to sub-serve Monsanto's interests.

Several writ petitions, filed by Monsanto are pending in different courts from 2007 onwards. The seed industry has suffered very badly due to Monsanto's price war with the governments. As a seed industry association, NSAI cannot be a mute spectator and had to take up the issue at the highest level, so as to stem the rot, that has set in due to exploitative policies of Monsanto.

Similarly it is the responsibility of the Government to ensure that the law of land is respected by corporate sector and that they conduct their business within the boundaries of the law of the land.

In this situation, it is gratifying to note that the Hon'ble Competition Commission of India (CCI) is seized of the matter and has also ordered investigation by its Director General into the affairs of Monsanto. However Monsanto is afraid of facing investigation and is trying hard, by abusing the process of law, to avoid investigation as long as possible. If Monsanto is as fair as you claim it is, it should not have been afraid of facing CCI investigation. In fact, it should have used this as an opportunity to face investigation and come clean.

NSAI strongly feels that rule of law should prevail in the Bt cotton seed business and all manipulations and illegal activities of any company have to come to an end. NSAI is also of the view that the statutory rights available to all the stakeholders have to be respected and protected. Please note that the Indian IPR laws are different from USA's IPR laws. In USA, plants and seeds are patentable. In India the legislators kept seeds, plants and varieties, including transgenic varieties containing Bt trait, out of the purview of the Patents Act. (Please see section 3(h) and 3(j) of the Patents Act.) For the benefit of a better clarity in the subject matter, we enclose herewith certain documentary evidence from the files of 2002 of Department of Industrial Policy and Promotion (DIPP) o, wherein the DIPP, who is the author of the Patent (Amendment) Act, 2002, has unambiguously clarified that seeds, plants and varieties including transgenic varieties are not covered by the Patents Act and, hence, production and sale of transgenic seeds does not amount to infringement under Patent Act. Monsanto is aware of this position, particularly because they got the patents in India after they surrendered the claims directed to plants and seeds. This association has got this documentary proof also. Yet Monsanto is unabashedly spreading false and fraudulent information. In the meetings, convened by the Ministry of Agriculture, the officials of the Indian Patent Office have also unequivocally stated the above position.

Under Indian IPR regime, seeds, plants and varieties including transgenic varieties, like present Bt cotton, get protection under the Protection of Plant Varieties and Farmers' Rights Act, 2001 (PPVFR Act). PPVFR Act is a balanced legislation, which protects the interest of all stakeholders like, seed companies (breeders), Bt trait provider and the farmers. The Bt trait provider has the right under the PPVFR Act to claim benefit on using its Bt trait by a breeder in development of a variety/hybrid and commercializing it. Monsanto does not want to make claims of benefit sharing to the statutory authority, the PPVFR Authority, as required under section 26 of the PPVFR Act, and it wants to fix its own trait value, which Indian law does not permit. It is also necessary to mention here that the Patents Act and the PPVFR Act are both TRIPs compliant. Thereby, your contention that Monsanto has patent rights on seeds, plants and varieties is not correct, as per Indian IPR enactments. Monsanto is entitled to claim benefit sharing under section 26 of the PPV&FR Act, and PPV&FR Act would decide eligibility and determination of benefit sharing under section

30 of the PPVFR Act, any person may use any variety registered or otherwise for conducting experimental research or for creating new varieties without any authorization or agreement. Hence, there is no need for any agreement, as provided under the draft guidelines mentioned in your letter, for accessing Bt trait under section 30 of the PPVFR Act, 2001.

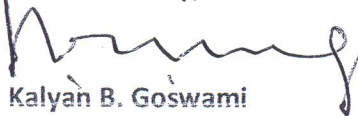
Monsanto, being fully aware of Indian IPR laws, manipulated the regulatory system and got imposition of "requirement of No Objection Certificate (NOC) from the Bt trait provider" by the regulatory bodies for giving bio-safety clearance and approval and also imposition of requirement of approval for each of the Hybrids despite containing approved Bt event. This forced the seed companies to approach Monsanto, who made seed companies to sign one-sided agreements with onerous terms and conditions to give NOC. This is how Monsanto established its monopoly in cotton seed business. And through these agreements could amass rupees 6000 crores as trait value, collected from the farmers through the seed companies and not because of any patent rights. However, Monsanto was misleading the country with its false claims of patent rights on Bt seeds and plants. It is recently that Patent Attorneys, engaged by us, with their research and analysis, exposed the false and fraudulent claims of patent rights on seeds by Monsanto. Monsanto has signed the agreements with misrepresentations and false claims of patent rights on seeds, plants and varieties. On this ground, these agreements are liable to be declared as void by any competent court of law. And that day is not far off.

We have given all the above facts a bit in detail, so that you understand the issue in right perspective and help Indian seed industry by making Monsanto does its business in accordance with law of the land.

Monsanto is playing all sorts of games. It is trying hard to split the Indian seed industry and its association and is prepared to do anything or to go any extent to prevent rule of law. Whereas our association NSAI is striving to ensure that rule of law prevails.

Thanking you,

Yours sincerely,



Kalyan B. Goswami

Encl: As above