

## Money matters: Monsanto, Indigenous companies spar on Bt cotton trait value

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From its very beginning, the Bt cotton technology in India has been at the heart of controversies mostly due to allegations leveled by activists. The interesting part this time around, however, is that the companies that were once on the same side of technology transfer partnership, are now battling it out openly. So is this the end of the bonhomie or matter will be resolved? We take a look.

It all started when the group of eight companies; Prabhat Agri Biotech, Ajeet Seeds Limited, Kaveri Seeds, Ankur Seeds, Nuziveedu Seeds, Green Gold Seeds, Ram Agrigenetics and Amar Biotech decided not to pay trait value fixed over the transfer of Bt technology to Monsanto. Decision was based on their belief that earlier contract with Monsanto was no longer viable given the third party intervention in form of respective state governments who had issued price control orders. In the meantime, Monsanto India's joint venture, Mahyco-Monsanto Biotech (MMB) which of course wasn't amused at the developments, filed an arbitration petition before the Mumbai High Court for the alleged breach of contracts resulting in around Rs 400 crore payment dues.

In response, the seed companies too filed a counter affidavit mentioning the fact that payment of approximately Rs 1,300 crore has been already made to MMB for trait value since the year 2010. In fact, going a step further the companies have reportedly asked for a money back. As per a source, these companies had made a request to the MMB to reconsider the trait value fixed earlier and look into accounts from 2010 onwards as in between the price orders were determined by the state governments.

According to National Seeds Association of India, Monsanto did not adhere to the government orders. "Since 2010, the state governments have been specifying trait values (royalty) in their price orders as Rs 50/- for BG I and Rs 90/- for BG II. Since the year 2011, government of Maharashtra has considered the trait value as Rs 20/- for both BG I and BG II. In the year 2015, Telengana state government considered the trait value as Rs 10/- for BG I and Rs. 50/- for BG II. Going by the provisions of the legislations, the stakeholders that are the seed companies and the technology provider have no option except to follow the orders, as they were not set aside by the hon'ble courts, though there were stay orders in some states. On account of the pending litigations, in anticipation of favorable ruling the licensee seed companies deposited to MMB trait

value (royalty) at higher rates than what was indicated in the state government price orders from 2010," said Dr Kalyan Goswami, executive director, NSAI.

Monsanto spokesperson in his reply to the BioSpectrum was very critical of the companies. In his words, "Out of 49 licensee seed companies, a small group of 9 licensees have willfully breached legally binding and extensively negotiated license agreements by refusing to pay the agreed technology fee despite continuing to profit by using our technologies. These limited number of the licensee seed companies have sought to unilaterally reduce the trait value payable under the agreements on the basis of an erroneous interpretation of applicable law. Following our discussions with such companies, several have withdrawn their contentions and agreed to pay the contractually agreed trait value."

BioSpectrum's repeated follow ups to the Indian companies for individual responses remained unanswered. The Association of Biotechnology Led Enterprises-Agriculture Group (ABLE-AG) too declined to comment on the issue.

### **No meeting ground?**

While the companies say that they were willing to talk to Monsanto but the latter chose the litigation over talks, the technology giant says it was compelled into such action due to non cooperation from the seed companies. As per Monsanto it had immediately communicated to each of them for meeting individually to understand the reasons but that was refused by them as they wanted a collective meeting.

"We as a group of seed companies wrote to MBB requesting for a joint meeting but it approached the court under section 9 of the Arbitration Act alleging the breach of contracts," an earlier media report had quoted Mr G V Bhaskar Rao, chairman and managing director of Kaveri Seeds, one of the companies. He also hinted at the readiness of seed companies for a long legal battle in case Monsanto doesn't agree to the demands.

On being asked why Monsanto chose not to speak to these companies, its spokesperson mentioned, "All of them refused and stubbornly insisted that they will only meet collectively and only to negotiate a downward revision of the trait value. Regrettably, a few, while continuing to use MMB's technologies, have refused to pay the technology fee or trait value despite having already collected the full sales price amounts from farmers. They have intentionally withheld large sums of trait value and ignored our repeated pleas to abide by the license agreements many of which have been executed only a few months ago. It is due to these dire circumstances and in the absence of any other alternatives that MMB has been compelled to approach the Mumbai High Court for appropriate reliefs."

### **Will the govt step in?**

The seed companies maintain that the issue has ceased to be as a private contract between the technology provider and the licensee as soon as the governments intervened and started fixing the trait value and the sale price of cotton seed in the country.

NSAI believes that to ensure harmony and growth of seed sector and to create a competitive business environment, regulation by the ministry of agriculture in the licensing conditions including trait values (royalty) is highly essential. "Industry wants from ministry to intervene through the provisions available in the Patent Act or the Competition Act or the Environment Protection Act (Rules of GM Crops) to create the required harmonious environment," mentioned their statement.

On the other hand, the Monsanto spokesperson refused to accept that the government intervention in the fixing of prices really nullified the contract as claimed by companies. He explained: "No laws including the state price control laws provide for the fixation of trait value. The Government of Telangana sought vide a government order dated May 11, 2015 to fix not only the MSPs for cotton seeds for 2015-16, but also the trait value payable to MMB by its sub-licensees. However, the High Court for the States of Andhra Pradesh and Telangana immediately issued an interim order staying the operation of the government order insofar as it sought to fix trait value. The High Court of Andhra Pradesh has also issued several other orders indicating that the state government does not have the power to fix trait value."

### **Way forward**

MMB says that the vast majority of the licensee seed companies continue to enjoy a constructive business relationship built on mutual trust and respect. At the same time, irrespective of the battle they are fighting in court, the seed companies too seem to be willing to enter into discussions. Given this only positive angle to this complicate story, the industry associations on both sides must take a lead and bring the warring sides to negotiating table.

From the past experiences it is clear that the mistrust will lead to further deepen this wedge which is not so good news for Indian agriculture sector in general and wider agri- biotech in particular. Given the larger stakes involving seed industry, and

farming community, the harmonious collaborative efforts between technology developer and seed companies is very important.

### **Timeline of Bt cotton technology in India**

**2002:** Bollgard cotton became the first biotech crop technology approved for commercialization in India in More than 6 million farmers adopted the technology on their farms.

**2003:** Monsanto introduced a second-generation trait product in cotton with Bollgard® II insect-protected cotton in The product provides farmers with the same benefits as the original Bollgard product, as well as expanded protection against other cotton pests.

**2006:** Monsanto becomes the first agriculture company to introduce a stacked second-generation product, launching Bollgard II with Roundup Ready Flex cotton. The product provides farmers with the same benefits as Bollgard II, as well as the flexits Roundup Ready Flex technology. Bollgard® II -a double-gene technology-was approved by the Genetic Engineering Approval Committee.

**2006:** MMB, a 50:50 joint venture between Mahyco and Monsanto sub-licensed the Bollgard II and Bollgard technologies to more than 30 Indian seed companies. Each Indian seed company has introduced the Bollgard technology into their own germplasm. Indian farmers now have a choice of over 300 Bt cotton hybrid seeds. Bollgard is used by more than 6 million Indian farmers.

### **BT economics cocktail involves executive and judiciary**

There has been gap between the government-determined trait value and the Monsanto determined trait value. According to available data, until 2014, the seed companies have paid Rs 122.96 per packet for Bollgard (BG) 1 and Rs 183.46 per packet for Bollgard 2 technologies towards the trait value to Monsanto. That was even as the governments of Telangana, Andhra Pradesh, Maharashtra and Karnataka continued to fix trait value and the sale price of cotton seed on their own terms. The trait value charged by MMBL was as high as Rs 1,200 per packet in 2005 before the state governments had entered the scene.

Earlier Maharashtra government, which had fixed the trait value component at just Rs 20 per packet for both the technologies, also got a stay order vacated in a related case heard in Mumbai High Court. The state government had also reduced the sale price of 450 gram packet to Rs 830 this year from Rs 930 in 2014.

Since 2010, the state governments have been specifying trait values or royalty in their price orders as Rs 50 for BG1 and Rs 90 for BG 2. Since the year 2011, the Maharashtra government has considered the trait value as Rs 20 for both BG1 and BG 2. In 2015, Telangana government has considered the trait value as Rs 10 for BG1 and Rs 50 for BG 2.

The state governments did not revise the prices annually even to cover the inflation in the costs of production. While the cost of production went up year after year due to the high inflation, the MRP remained stagnant between 2006 to 2010 and again between 2011 to 2015. Thus in the last 10 years, only once the state governments enhanced the seed prices. While seed industry was expecting for price increase after four years, the Maharashtra Government reduced the sale price of Bt cotton seed by Rs 100/- in 2015. To compound the problems, the state governments never considered the contractual obligations between the MMB and the licensee seed companies and considered trait values (royalty), as they deemed appropriate. Since the price orders of the state governments are backed by legislations, the seed companies have no option but to accept the orders and follow them. Several writ petitions were filed by seed companies across the cotton growing states, which could not give any relief.