WTM/SM/CFD/DCR2/2/2020–21

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

UNDER SECTION 11(1) AND 11B OF THE SEBI ACT READ WITH REGULATION 25A OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (DELISTING OF EQUITY SHARES) REGULATIONS, 2009.

In the matter of Delisting of Equity Shares of The United Provinces Sugar Company Ltd.

BACKGROUND

1) The United Provinces Sugar Company Limited (hereinafter referred to as "**TUPSCL/Applicant/the *Company***") is a public limited company incorporated on September 10, 1924 having its registered Office at Chartered Bank Building, 1st Floor, 4, Netaji Subhash Road, Kolkata, West Bengal 700001. The Corporate Identification Number of the *Company* is L40100WB1924PLC004929. The equity shares of the *Company* are listed on The Calcutta Stock Exchange Limited (hereinafter referred to as "**CSE**") for more than 40 years.

2) In order to ensure maintaining sufficient float in a listed entity, provisions of Securities Contracts (Regulations) Rules, 1957 (hereinafter referred to as "**SCRR**") prescribes the minimum holding to be held and rest with public. The threshold for such minimum public shareholdings has been amended from time to time and as per last amendment brought in the SCRR, the minimum public shareholding as mandated in terms of rule 19 (2) (b) of SCRR is 25 % of the total shareholding.

3) Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received an application dated August 26, 2020 (hereinafter referred to as "**Application**") under regulation 25A of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 (hereinafter referred to as "**Delisting Regulations**") from *TUPSCL* seeking exemption from the requirements of complying with Minimum Public Shareholding ("MPS") norms as mandated under rule 19 (2) (b) of SCRR and further from the provisions of regulation 27(3)(d) of the Delisting Regulations. The Applicant also provided additional information/clarifications vide its letters dated October 06, 2020 and October 28, 2020 in this regard.

4) Vide the Application and subsequent submissions/clarifications, the *Company* has *inter alia* provided the following grounds for seeking the abovementioned exemptions:

a) The equity shares of the *Company* are listed on CSE for more than 40 years;
b) The *Company's* paid up share capital comprises of 25,50,000 equity shares. Out of these, 24,19,566 equity shares representing 94.88% are held by the promoters and the balance 1,30,434 shares representing 5.12% are held by 274 public shareholders as of June 30, 2020;
c) Out of the total 24,19,566 equity shares held by promoters and promoter group, 24,15,346 equity shares are held in dematerialized form, while 50,071 equity shares out of 1,30,434 equity shares held by public shareholders are held in dematerialized form;
d) As per the submissions made by the Merchant Banker to the delisting process, there is no change in the shareholding of the promoters and promoter group of the *Company* since 1997;
e) Since CSE is non-operational and there is lack of liquidity of equity shares of the *Company*, the investments of public shareholders had become illiquid. Delisting shall provide public shareholders an opportunity to liquidate their shares at a fair market value in terms of the formula prescribed under the Delisting Regulations and would be in the interest of shareholders of the *Company*;
f) As regards the step taken to comply with MPS requirement is concerned, the *Company* states that since CSE is non-operational and it is not listed on any nationwide stock exchange, there is no investor interest in the shares of the *Company* and hence, various methods prescribed by SEBI to achieve MPS compliance were not feasible. Further, due to lack of liquidity of the shares on CSE, it is not possible to reduce the shareholding of promoter and promoters' group from 94.88% to 75%;
g) Moreover, in terms of SEBI Circular No. CIR/MRD/DSA/18/2014 dated May 22, 2014, companies that are exclusively listed on derecognized/non-operational stock exchanges are permitted to voluntarily delist and pursuant to para 3(iii) of the said circular, requirements of MPS prescribed under rules 19(2)(b) and 19A of SCRR shall not be applicable to such companies;
h) The *Company* vide its letter dated October 06, 2020 has submitted that on the basis of past trends such as postal ballot and/or e-voting, the *Company* has observed that it has not received any communication at all from a large majority of the aforesaid public shareholders and accordingly they are highly unlikely to receive the required 90% consent from such public shareholders. The *Company* also confirmed that they shall comply with all the formalities of the Delisting Regulations from their end upon receipt of such exemption;
i) As on March 31, 2020, the *Company's* paid up share capital comprises 25,50,000 equity shares of face value of INR 10 each aggregating to INR 2,55,00,000/- and the networth of the *Company* is negative at INR **(37,24,90,600).** Hence, the *Company* is

eligible to follow regulation 27 as its paid up capital is less than INR 10 Crore and networth is less than the specified criteria of INR 25 Crore;

j) The *Company* understands that delisting of its equity shares is a practical move, financially.

k) In view of the above, the *Company* has sought the following exemptions to enable it to undertake proposed delisting in accordance with regulation 27 of Delisting Regulations:

   i. Exemption from Minimum Public Shareholding requirement- The *Company* has sought exemption from rules 19(2)(b) and 19A of SCRR, 1957 in terms of SEBI Circular No. CIR/MRD/DSA/18/2014 dated May 22, 2014; and

   ii. Exemption from written consent of ninety percent or more of public shareholders in terms of regulation 27(3)(d) of the Delisting Regulations.

CONSIDERATION

5) Before I proceed with my consideration, I find it appropriate to quote the relevant regulatory provisions of SCRR and Delisting Regulations for facility of reference:

Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009

"Delisting from only some of the recognised stock exchanges

6. A company may delist its equity shares from one or more recognised stock exchanges where they are listed and continue their listing on one or more other recognised stock exchanges, subject to the provisions of these regulations and subject to the following –

(a) .....,

***(b)** if after the proposed delisting, the equity shares do not remain listed on any recognised stock exchange having nationwide trading terminals, exit opportunity shall be given to all the public shareholders holding the equity shares sought to be delisted in accordance with Chapter IV.*

Conditions and procedure for delisting where exit opportunity is required

8 (1) ……..

***(1B)** The board of directors of the company while approving the proposal for delisting shall certify that:*

(i) the company is in compliance with the applicable provisions of securities laws;"

Power to relax strict enforcement of the regulations.

25A. (1) The Board may for reasons recorded in writing, grant relaxation from strict enforcement of any of the requirements of these regulations, if the Board is satisfied that the relaxation is in the interests of investors in securities and the securities market.

(2) For seeking exemption under sub-regulation (1), the promoter or the acquirer or the company shall file an application with the Board, supported by a duly sworn affidavit, giving details for seeking such exemption and the grounds on which the exemption has been sought.

Special provisions in case of small companies

27. (1) Equity shares of a company may be delisted from all the recognised stock exchanges where they are listed, without following the procedure in Chapter IV, if,-

a) the company has a paid up capital not exceeding ten crore rupees and net worth not exceeding twenty-five crore rupees as on the last date of preceding financial year;

b) the number of equity shares of the company traded on each such recognised stock exchange during the twelve calendar months immediately preceding the date of board meeting referred to in sub regulation (1B) of regulation 8 is less than ten per cent of the total number of shares of such company:

Provided that where the share capital of a particular class of shares of the company is not identical throughout such period, the weighted average of the shares of such class shall represent the total number of shares of such class of shares of the company; and

c) the company has not been suspended by any of the recognised stock exchanges having nation-wide trading terminals for any noncompliance in the preceding one year;

(2) [Deleted]

(3) A delisting of equity shares may be made under sub regulation (1) only if, in addition to fulfilment of the requirements of regulation 8, the following conditions are fulfilled: -

(a) the promoter appoints a merchant banker and decides an exit price in consultation with him;

(b) the exit price offered to the public shareholders shall not be less than the floor price determined in terms of sub-regulation (2) of regulation 15 of these regulations read with clause (e) of sub regulation (2) of regulation 8 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;

(c) the promoter writes individually to all public shareholders in the company informing them of his intention to get the equity shares delisted, indicating the exit price together with the justification therefore and seeking their consent for the proposal for delisting;

(d) the public shareholders, irrespective of their numbers, holding ninety percent or more of the public shareholding give their consent in writing to the proposal for delisting, and have consented either to sell their equity shares at the price offered by the promoter or to remain holders of the equity shares even if they are delisted;

(e) the promoter completes the process of inviting the positive consent and finalisation of the proposal for delisting of equity shares within seventy five working days of the first communication made under clause (c);

(f) the promoter makes payment of consideration in cash within fifteen working days from the date of expiry of seventy five working days stipulated in clause (e).

(4) The communication made to the public shareholders under clause (c) of sub-regulation (3) shall contain justification for the offer price with particular reference to the applicable parameters mentioned in

regulation 15 and specifically mention that consent or the proposal would include consent for dispensing with the exit price discovery through book building method.

(5) The concerned recognised stock exchange may delist such equity shares upon satisfying itself of compliance with this regulation."

Securities Contracts(Regulation) Rules, 1957

Requirements with respect to the listing of securities on a recognised stock exchange.

19. (1) ……..

***(7)** The Securities and Exchange Board of India may, at its own discretion or on the recommendation of a recognised stock exchange, waive or relax the strict enforcement of any or all of the requirements with respect to listing prescribed by these rules.*

6) I note that the issues for consideration before me in the present matter are whether a company can be exempted from minimum public shareholding requirement and also whether the requirement for receiving consent of the shareholders holding at least 90% of public shareholding of a company, as mandated under regulation 27(3)(d) of the Delisting Regulations, can be relaxed, given the facts and circumstances, in order to enable *TUPSCL* to seek voluntary delisting.

7) I have perused the material available on record and also have examined the scope of the powers of the Board i.e. SEBI under regulation 25A of the Delisting Regulations. I note that the said regulation 25A of the Delisting Regulations empowers the Board to accord relaxation from the strict compliance of the provisions of the Delisting Regulations, in the facts and circumstances so warrant, where an entity is unable to comply with certain specific procedural requirements due to *bonafide* reasons and where there is a case made out for non-applicability of the Delisting Regulations, for various reasons and such exemption is in the interest of the investors and the securities market.

8) In this regard, I note that the equity shares of the *Company* are listed on CSE for more than 40 years. Further, there is no change in the shareholding of the promoters and promoter group of the *Company* since 1997 and the shareholding of promoters and promoter group of the *Company* has remained at 94.88% for last 23 years. The *Company*, although being listed for more than 40 years, has continuously failed to comply with the MPS requirement. I note that the *Company* has sought relaxation from regulation 27(3)(d) of the Delisting Regulations and rules 19(2)(b) and 19A of SCRR, vide the extant Application.

9) As regards non-compliance with minimum public shareholding requirements, the Applicant has submitted that since CSE is non-operational and the *Company* is not listed on any nationwide stock exchange, there is no investor interest in the shares of the *Company* and hence, various methods prescribed by SEBI to achieve minimum public shareholding

compliance are not practically feasible to ensure compliance with the requirement of minimum public shareholding. Further, I note that SEBI Circular CIR/MRD/DSA/18/2014 dated May 22, 2014, *inter-alia*, exempted companies which were listed exclusively on de-recognized/non-operational stock exchanges from the requirements of MPS prescribed in rules 19(2)(b) and 19A of SCRR and Clause 40A of the Listing Agreement, for the purpose of enabling such companies to opt for voluntary delisting. I note that the spirit of the aforesaid circular is to facilitate voluntary delisting by companies that are listed exclusively on the non-operational stock exchanges. Also, regulation 19(7) of SCRR empowers SEBI, at its own discretion or on the recommendation of a recognised stock exchange, to waive or relax the strict enforcement of any or all of the requirements with respect to listing prescribed by SCRR.

10) In view of the above and considering the special circumstances of this case and the interest of the public shareholders of the *Company*, I deem it a fit case to relax the requirements of regulation 8(1B) (i) of Delisting Regulations, with respect to its compliance with minimum public shareholding requirement, as the *Company* is proposing to seek voluntary delisting of its equity shares.

11) I note that the *Company*, in its Application, has also sought exemption from regulation 27(3)(d) of the Delisting Regulations i.e., exemption from written consent of ninety percent or more of public shareholders. In this regard, I note that that the *Company* has submitted that on the basis of past trends, such as postal ballot and/or e-voting, the *Company* has observed that it has not received any communication at all from a large number or majority of the public shareholders and in such circumstances, the possibility of seeking/receiving the required ninety percentage or more consent from the public shareholders is very bleak. The *Company,* however*,* has also confirmed that it shall comply with all the formalities of the Delisting Regulations upon receipt of such exemption.

12) In order to undertake delisting under the relaxed framework provided in regulation 27 of Delisting Regulations, a company has to meet all the criteria specified therein, including that of the paid up share capital and net worth. I note that the purpose of the relaxed framework for delisting provided in regulation 27 is to enable small companies having lesser public shareholding to get delisted with minimum procedural formalities while ensuring adequate protection of the rights of public shareholders. In the extant case, the *Company* is listed only on CSE, where trading has not been operational for quite some time and the *Company* has little public shareholding i.e., 1,30,434 shares representing 5.12% held by only 274 public shareholders.

13) In the extant case, I note that the investments of the public shareholders in the *Company* have remained frozen and their exit opportunity has been denied for want of trading and liquidity in the shares. The *Company* seeks to provide exit to public shareholders in line with the

relaxed procedure prescribed under regulation 27 instead of the detailed procedure laid down in Chapter IV. In this regard, as noted above, there are only 274 shareholders in the public category holding 5.12 % shares. Considering the same, I am of the view that the detailed procedural requirements specified in Chapter IV including public announcement, escrow account, letter of offer etc., could be substituted in the extant case, with the relaxed procedural requirements specified in regulation 27, subject to additional safeguards, as deemed necessary to protect the interest of the investors. In my view, enabling delisting of the *Company*, albeit with some relaxations, would be in the overall interest of the public shareholders of the *Company*.

14) The Applicant is a company listed only on CSE for more than 40 years, and the shareholding of the promoters and promoter group of the *Company* has not changed for last 23 years i.e. since 1997. Promoter or Promoters group holdings in the *Company* has been 94.88% which indicates that the breach of the MPS requirement under rules 19 2 (b) of SCRR did not take place after the incorporation of the norms under the SCRR so as to impute any deliberate breach by the *Company*. In such a scenario, the public shareholders in the *Company* have been denied the benefit of listing, i.e. an opportunity to exit by liquidating their investments at a reasonable price. Further the fact that 274 shareholders holding 5.12% of the listed equity shares are basically the pubic category shareholder for the last so many years coupled with the undisputed fact that the issued equity capital of the *Company* is exclusively listed on a derecognized/non- operational stock exchange only and which has no nation- wide terminal. The submission of the Applicant that the methodology provided under the SCRR rules to achieve the MPS requirement is not practicable at this juncture appears to be a genuine explanation and deserves favorable attention applicable to the Applicant *Company* sound convincing.

15) Considering that the *Company* is not listed in any operational stock exchange having nationwide trading terminals, the extant proposal by the *Company* to voluntarily delist from CSE could probably be the only ray of hope to the public shareholders to liquidate their years old investment in the Applicant *Company*. While the *Company* has been non-compliant with the minimum public shareholding requirement for years, I strongly feel that such a non-compliance should not stand in the way of enabling public shareholders to liquidate their investments. Further, having regard to the facts and circumstances of the case at hand and the fact that the *Company* is listed only on a regional stock exchange having no nationwide terminals and has only 274 public shareholders, permitting the *Company* to follow the available applicable mode of delisting provided in regulation 27 of the Delisting Regulations with adequate safeguards, would serve the ends of justice and would be in the interest of all stakeholders concerned.

16) In view of the aforesaid and also taking into consideration the fact, that the Applicant has not been able to contact a majority of the public shareholders in the past through postal

ballot and/or e-voting, the *Company* appears to be not in a position to comply with the requirement under regulation 27(3)(d) of the Delisting Regulations. Hence, I deem this a fit case to relax the requirement under regulation 27 (3) (d) of Delisting Regulations.

ORDER

17) For the aforesaid reasons, in the interest of investors in securities market and in exercise of powers under sections 11(1) and 11B of the SEBI Act, 1992 and regulation 25A of the SEBI (Delisting of Equity Shares) Regulations, 2009, I find it appropriate to grant the Applicant relaxation from the applicability of regulation 27(3) (d) of the SEBI (Delisting of Equity Shares) Regulations, 2009, subject to the following conditions:
    (i) The Applicant shall ensure compliance with provisions of all other applicable laws including regulation 27(3)(c) of Delisting Regulations. Additionally, the Applicant shall cause to publish newspaper advertisement in at least one national newspaper in English and in the newspapers in local vernacular in each State where its public shareholders are residing, as per the addresses available in its records, announcing its delisting proposal within 30 days of this Order, and at least 10 days before the letter is sent to the public shareholders seeking their consent for the delisting proposal;
    (ii) The offer price shall be paid to tendering shareholders as provided in regulation 27(3)(f) of Delisting Regulations;
    (iii) As undertaken by the Applicant, pursuant to delisting of its equity shares, the promoters shall continue to accept shares tendered by any remaining public shareholder holding such equity shares, for upto a period of two years from the date of delisting, at the same price at which the earlier acceptance of shares was made and in a manner supported by bank record/audit trail of the payment;
    (iv) Subject to the above, the Applicant shall comply with all other conditions stipulated under regulation 27, including those pertaining to determination of the offer price as stipulated in Chapter VII of the SEBI (Delisting of Equity Shares) Regulations, 2009.

18) The above direction is without prejudice to the right of SEBI to take any other appropriate action for other non-compliances.

19) The Application dated August 26, 2020 along with related communications is accordingly disposed of.

-Sd-

DATE: December 21, 2020 **S. K. MOHANTY**

PLACE: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA