**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. EAD/SR/SM/AO/106/2018-19/2399]**

**UNDER SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005**

**In respect of**

**Unjha Formulations Limited**

(Address- Khali Char Rasta,
State Highway, Sidhpur – 384151)

**In the matter of Unjha Formulations Limited**

## FACTS OF THE CASE IN BRIEF

1. A department of Securities and Exchange Board of India (**SEBI**) (hereinafter referred to as **OD**) has examined the alleged irregularity in the scrip of Unjha Formulations Limited (hereinafter referred to as **UFL/Company**) and into possible violations of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as **SCRA, 1956)** and various rules and Regulations made thereunder. OD observed that UFL was listed at Bombay Stock Exchange **(BSE)** and Ahmedabad Stock Exchange **(ASE)** at the time of alleged violation. The said examination, revealed that Unjha Formulations Limited (hereinafter referred to as **Noticee)** filed incorrect shareholding pattern with the BSE for the quarter ending March 2012 and hence violated the provisions of section 21 of SCRA, 1956, Clause 35 of Equity Listing Agreement read with (r/w) regulations 31(1) and 103 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as **LODR Regulations, 2015**).

## APPOINTMENT OF ADJUDICATING OFFICER

2. Based on the said examinations, OD of SEBI initiated Adjudication Proceedings against the Noticee and appointed Mr. Nagendraa Parakh as Adjudicating Officer, under section section 23-I of the SCRA, 1956 and rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as **Adjudication Rules, 2005**) to inquire into and adjudge

under the provisions of section 23A(a) of the SCRA, 1956 for the violation of provisions of section 21 of SCRA, 1956, clause 35 of Equity Listing Agreement r/w regulations 31(1) and 103 of LODR Regulations, 2015 for filing incorrect shareholding pattern with the BSE for the quarter ending March 2012. Subsequently, the matter was transferred to me and I was appointed as the Adjudicating Officer by the Competent Authority vide order dated July 10, 2017.

## SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A show cause notice no. EAD/AO-SR/SJ/20973/2017 dated September 04, 2017 (hereinafter referred to as **SCN**) was issued to the Noticee under rule 4 of the Adjudication Rules, 2005 to show cause as to why an inquiry should not be held against it and why penalty under section 23A(a) of SCRA, 1956 be not imposed on it for the violations alleged and specified in the said SCN. The SCN was sent through the speed post acknowledgment due and the same has been received by the Noticee as seen from record.

4. It was alleged in the said SCN that Late Shri Shambhubhai A Patel, Chairman cum Managing Director and one of the promoters of the Noticee expired on January 19, 2012 and his shareholding to the extent of 2,01,300 shares in the company was transferred to Ms. Jashodaben Shambhubhai Patel, a nominee of late Shri Shambhubhai A Patel on March 30, 2012. IA observed that Ms. Jashodaben Shambhubhai Patel is also one of the promoters of the Noticee and has two demat accounts. It is alleged that as on March 31, 2012, Ms. Jashodaben Shambhubhai Patel held in total 7,39,800 shares of the Noticee. Out of 7,39,800 shares, Ms. Jashodaben Shambhubhai Patel held 4,48,500 shares of the Noticee in one demat account with Beneficiary Ownership (BO) ID – 10172368 and 2,91,300 shares of the Noticee in another demat account with BO ID – 10772976. The Noticee had shown Ms. Jashodaben Shambhubhai Patel held just 4,48,500 shares of the Noticee in the shareholding pattern filed by it with the BSE for the quarter ending March 2012. The Noticee failed to show 2,91,300 shares of the Noticee held by her in another demat account with BO ID - 10772976 in the shareholding pattern filed by the Noticee with BSE for the quarter ending March 2012. It is therefore, alleged that Noticee has failed to file correct shareholding of Ms. Jashodaben Shambhubhai Patel in the shareholding pattern filed by it with BSE for the

quarter ending March 2012 and therefore, has violated section 21 of SCRA, 1956 and clause 35 of the Equity Listing Agreement r/w regulations 31(1) and 103 of the LODR Regulations, 2015.

5. The Noticee was given time to make submissions against the SCN. The Noticee vide its letter September 27, 2017 requested to provide the copy of investigation report, statements etc. to be able provide reply to the SCN. Vide letter dated November 06, 2017 Noticee was requested to inspect the document in coordination with Enforcement Department of SEBI. Accordingly, Enforcement Department advised the Noticee to inspect the documents on November 28, 2017. However, Enforcement Department vide its e-mail dated December 11, 2017 informed that Noticee vide its letter dated November 23, 2017 informed that it had requested to provide certain documents followed by inspection of documents. Accordingly, vide letter dated December 19, 2017, Noticee was provided the documents which have been relied by the undersigned and directed the Noticee to submit reply to the said SCN within 15 days of the receipt of the letter. Vide letter dated January 04, 2018 Noticee submitted its reply to the said SCN.

6. I granted an opportunity of personal hearing to the Noticee on February 27, 2018 vide hearing notices dated February 08, 2018. The said hearing notice was sent though SPAD and the same was delivered as seen from available record. The Noticee vide its letter dated February 16, 2018 requested to postpone the hearing scheduled on February 28, 2018. Vide hearing notice dated November 16, 2018, Noticee was advised to attend the hearing on November 29, 2018 and in this regard, Noticee requested to postpone the hearing to December 10, 2018 and same was acceded to. Authorized representatives (ARs) attended the hearing on behalf of the Noticee on December 10, 2018 and reiterated the submissions made earlier. Also the ARs submitted additional information during the proceedings of hearing. Hearing minutes are on record. The summary of the Noticees' submissions made in the replies dated September 27, 2017, January 04, 2018 and November 13, 2018 are as follows:

a) *Shri Shambhubhai Patel, one of the promoter of the Noticee died on January 19, 2012 and his holding of 2,01,300 shares of the company were transmitted to his wife, Mrs. Jashodaben Shambhubhai Patel, who is one of the promoter of the Noticee. Mrs. Jashodaben Shambhubhai Patel has two demat accounts i.e.*

*IN300982-10172368 and IN300982-10772976. The said shares were credited in the demat account of IN300982-10772976.*

b) *The Company has neither any control nor have any information regarding the said transmission of shares till either the shareholder communicates or the RTA communicates. It has been the system and practice put in place whereby the Depository maintains records of Beneficiary Account and provides to the RTA on regular and periodical basis. In turn RTA prepares and maintains record and provides the company in the format prescribed by Exchange /SEBI/MCA.*

c) *Noticee received the statement of holding as on March 31, 2012 from its RTA in the prescribed format and the same was filed with BSE and ASE. In this regard, BSE sought clarification on May 29, 2012 regarding the change in promoter's shareholding and accordingly we verified the record and found that the shareholding of Mrs. Jashodaben Shambhubhai Patel lying in the account of IN300982-10772976 were shown in the public category. The Noticee drawn in attention of its RTA and received the shareholding pattern and filed the same in the quarter ended June 30, 2012. Hence the mistake was rectified in the next quarter.*

7. Further, upon amendment of penalty provision from section 23A(a) of SCRA, 1956 to sections 23H of SCRA, 1956, Corrigendum to SCN (hereinafter referred to as SSCN) was issued to the Noticee vide notice no. SEBI/HO/EAD/E&AO/SR/SM/OW/3440/1/ 2019 dated February 04, 2019 through SPAD. The said Notice has delivered to the Noticee as seen from the available record. In the said SSCN, it was stated that in the SCN dated April 10, 2018, the Noticee has "*violated the provisions of section 21 of SCRA, 1956, clause 35 of Equity Listing Agreement r/w regulations 31(1) and 103 of LODR Regulations, 2015 to be adjudged under the provision of section 23A(a) of the SCRA, 1956. However, the competent authority has approved the amendment of alleged penalty provisions from 23A(a) of the SCRA, 1956 to section 23H of the SCRA, 1956 for the said alleged violations.---------- Noticee is hereby advised to read the penalty section as section 23H of SCRA, 1956 instead of section 23A(a) of SCRA, 1956 which is mentioned in the aforementioned SCN dated September 04, 2017*." The Noticee was given fifteen days' time to make submissions and also provided final opportunity of hearing on February 27, 2019. However, the Noticee neither replied to the said SSCN nor attended the personal hearing on February 27, 2018.

8. I have carefully perused the charges made against the Noticee as mentioned in the SCN, reply of the Noticee to SCN and the documents available on record. After taking into account, the allegations levelled in the SCN, reply received from the Noticee and

other evidences/materials available on record, I hereby, proceed to decide the case on merit.

**CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS**

9. I have carefully perused the charges levelled against the Noticees in the SCN, its reply and the material documents available on record. In the instant matter, the following issues arise for consideration and determination:-

   a. **Whether the Noticee has violated the provisions of section 21 of SCRA, 1956, clause 35 of Equity Listing Agreement r/w regulations 31(1) and 103 of LODR Regulations, 2015?**
   b. **Do the violations, if any, on the part of the Noticee attract monetary penalty under section 23H of SCRA, 1956 for the alleged violations by the Noticee?**
   c. **If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in section 23J of the SCRA, 1956 read with rule 5(2) of the Adjudication Rules, 2005?**

10. Before proceeding further, I would like to refer to the relevant provisions of section 21 of SCRA, 1956 and clause 35 of the Equity Listing Agreement r/w regulations 31(1) and 103 of the LODR Regulations, 2015 are reproduced as under:-

***SCRA, 1956***

***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***

***35.*** *The issuer company agrees to file with the exchange the following details, separately for each class of equity shares / security in the formats specified in this clause, in compliance with the following timelines, namely:-*

*(a) One day prior to listing of its securities on the stock exchanges.*

*(b) On a quarterly basis, within 21 days from the end of each quarter.*

*(c) Within 10 days of any capital restructuring of the company resulting in a change exceeding +/-2% of the total paid-up share capital*

*"regarding statement showing shareholding pattern of securities among other things"*

***LODR Regulations, 2015***

***Holding of specified securities and shareholding pattern.***

***31****. (1) The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by the Board from time to time within the following timelines –*

*(a) one day prior to listing of its securities on the stock exchange(s);*
*(b) on a quarterly basis, within twenty one days from the end of each quarter; and,*
*(c) within ten days of any capital restructuring of the listed entity resulting in a change exceeding two per cent of the total paid-up share capital:*
*Provided that in case of listed entities which have listed their specified securities on SME Exchange, the above statements shall be submitted on a half yearly basis within twenty one days from the end of each half year.*

***Repeal and Savings***

***103. (1)*** *On and from the commencement of these regulations, all circulars stipulating or modifying the provisions of the listing agreements including those specified in Schedule X, shall stand rescinded.*

*(2) Notwithstanding such rescission, anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in sub-regulation (1) or the Listing Agreements, entered into between stock exchange(s) and listed entity, in force prior to the commencement of these regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations.*

**FINDINGS:**

11. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I hereby record my findings as under:

**Issue (a): Whether the Noticee has violated the provisions of section 21 of SCRA, 1956, clause 35 of Equity Listing Agreement r/w regulations 31(1) and 103 of LODR Regulations, 2015?**

a) On perusal of the available record, I observed that there is no dispute that Mr. Shambhubhai A Patel, one of the Promoters of the Noticee (UFL) expired on January 19, 2012 and his shareholding in the company of 2,01,300 shares were transmitted to the demat account of Ms. Jashodaben Shambhubhai Patel, on March 30, 2012. Ms. Jashodaben Shambhubhai Patel is the wife of Mr. Shambhubhai A Patel and also one of the promoter of the Company (UFL). I also find that the said transmission of shares of UFL were from the demat account of late Shambhubhai A Patel to the demat account of the Ms. Jashodaben Shambhubhai Patel.

b) It is also observed that Ms. Jashodaben Shambhubhai Patel has two demat accounts. It is noted that as on March 31, 2012, Ms. Jashodaben Shambhubhai Patel held in total 7,39,800 shares of the Noticee in her two demat accounts. Out of

7,39,800 shares, Ms. Jashodaben Shambhubhai Patel held 4,48,500 shares of the Noticee in one demat account and 2,91,300 shares of the Noticee in another demat.

c) As seen from the available record, the Noticee had shown Ms. Jashodaben Shambhubhai Patel held just 4,48,500 shares of the Noticee in the shareholding pattern filed by it with the BSE for the quarter ending March 2012 and failed to show 2,91,300 shares of the Noticee held by her in another demat account in the shareholding pattern filed by the Noticee with BSE for the quarter ending March 2012. In this regard, Noticee admitted that the holding of shares of Mrs. Jashodaben Shambhubhai Patel lying in the account of IN300982-10772976 was not included in the promoter category which shows that it had filed the wrong information to BSE and the same was corrected in the quarter ending June 2012. Further, Noticcee replied that the information received from the RTA was filed in BSE and it has neither any control nor have any information regarding the said transmission of shares till either the shareholder communicates or the RTA communicates to Noticee. However, reply of the Noticee is not acceptable to me for the reason that onus lies on the Noticee to check the details of information submitted by RTA and file the correct information to BSE as also information regarding death of Chaiman cum Managing Director would surely have been known to the Noticee. It is the responsibility of the Noticee to check the correctness of the information submitted by other entities and provide the correct disclosure to BSE, as the said informations become public through the platform of BSE.

d) I find that the Noticee is a listed company and was under an obligation in terms of section 21 of SCRA, 1956 to comply with the conditions of Listing Agreement. Specifically, Clause 35 of Listing Agreement mandates the listed companies to file inter alia its shareholding pattern including the shareholding of its promoters, with the exchanges on a quarterly basis. Needless to say, the Noticee was required to make true and correct disclosure regarding shareholding pattern. Periodic disclosures under Clause 35 of the listing agreement serve a very important purpose of informing the market and the investors about the shareholding of the company i.e. names and holdings of the promoters and significant shareholders. The shareholding and names of promoters and significant shareholders form a very important criterion for the public to make their investment decisions.

e) In view of the above, I am of the view that Noticee has failed to file correct shareholding of Ms. Jashodaben Shambhubhai Patel in the shareholding pattern filed by it with BSE for the quarter ending March 2012. Therefore, I conclude that the Noticee violated the provision of section 21 of SCRA, 1956 and clause 35 of the Equity Listing Agreement r/w regulations 31(1) and 103 of the LODR Regulations, 2015 and the allegation against the Noticee in the said SCN, thus stands established.

12. **Issue (b): Do the violations, if any, on the part of the Noticee attracts monetary penalty under section 23H of SCRA, 1956 for the alleged violations by the Noticee?**

After taking into account the aforesaid entire facts / circumstance of the case, I am of the view that the violations of the provision of section 21 of SCRA, 1956 and clause 35 of the Equity Listing Agreement r/w regulations 31(1) and 103 of the LODR Regulations, 2015 by the Noticee attracts the imposition of monetary penalties upon the Noticee under section 23H of SCRA, 1956. The text of the said penalty provisions of section 23H of SCRA, 1956 at the time of commission of the alleged violation are reproduced below:

***SCRA, 1956***
***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.*

13. **Issue (c): If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in section 23J of the SCRA, 1956 read with rule 5(2) of the Adjudication Rules, 2005?**

a) While determining the quantum of penalty under sections 23H of the SCRA, 1956, it is important to consider the factors stipulated in section 23J of the SCRA, 1956 read with Rule 5 (2) of the Adjudication Rules, which reads as under:-

***SCRA, 1956***
***23J*** *"Factors to be taken into account by the adjudicating officer-*
*While adjudging quantum of penalty under section 23 I, the adjudicating officer shall have due regard to the following factors, namely:-*

*(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
*(b) the amount of loss caused to an investor or group of investors as a result of the default;*
*(c) the repetitive nature of the default."*

b) I observe, that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors due to such wrong disclosures. From the documents available on record, it is noted that the failure is not repetitive. However, it would be appropriate to refer to the observations made by the Hon'ble SAT in the matter of Akriti Global Traders Ltd. Vs. SEBI (Appeal No. 78 of 2014) decided on September 30, 2014 :- *"…penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay."* In Appeal No. 66 of 2003 -Milan Mahendra Securities Pvt. Ltd. Vs. SEBI–the Hon'ble SAT has observed that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*

c) I conclude that the aforementioned violation of provisions of section 21 of SCRA, 1956 and clause 35 of the Equity Listing Agreement r/w regulations 31(1) and 103 of the LODR Regulations, 2015 attracts monetary penalty.Therefore, taking into consideration the facts/circumstance of the case and the above case laws, I am of the view that the Noticee is liable for a monetary penalty of Rs. 1,00,000/- (Rupees one Lakh only) for violating the said provisions of SCRA, 1956 and Equity Listing agreement.

**ORDER**

14. In exercise of the powers conferred under section 23-I of the SCRA, 1956 and rule 5 of the Adjudication Rules, 2005, I hereby imposed a penalty of Rs. 1,00,000/- (Rupees one Lakh only) on the Noticee viz. Ujha Formulations Limited under section 23H of SCRA, 1956 for the violation of the provision of section 21 of SCRA, 1956 and clause 35 of the Equity Listing Agreement r/w regulations 31(1) and 103 of the LODR Regulations, 2015. I am of the view that the said penalty is commensurate with the defaults committed by the Noticee.

15. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI – Penalties Remittable to Government of India", payable at Mumbai, or through e-payment facility into Bank Account the details of which are given below:

| **Account No. for remittance of penalties levied by Adjudication Officer** | |
|---|---|
| Bank Name | State Bank of India |
| Branch | Bandra-Kurla Complex |
| RTGS Code | SBIN0004380 |
| Beneficiary Name | SEBI – Penalties Remittable To Government of India |
| Beneficiary A/c No. | 31465271959 |

16. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID : tad@sebi.gov.in

| Date | Department of SEBI | Name of Intermediary/ Other Entities | Type of Intermediary | SEBI Registration Number (if any) | PAN | Amount (in Rs.) | Purpose of Payment (including the period for which payment was made e.g. quarterly, annually) | Bank name and Account number from which payment is remitted | UTR No |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |

17. In terms of the rule 6 of the Adjudication Rules, 2005, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

**Date: March 18, 2019** **SANGEETA RATHOD**

**Place: Mumbai** **ADJUDICATING OFFICER**