BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/PM-NK/AO/79/2018-19]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of

UP State Industrial Development Corporation Limited

In the matter of Modipon Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an examination of the periodical shareholding documents filed by Modipon Limited (hereinafter referred to as 'Company' / 'Modipon'), a company listed on the BSE Limited (hereinafter referred to as 'BSE') with the stock exchange (BSE Limited), for the probable violation of the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the 'SAST Regulations') by its promoters; namely:

Sl. No.	Noticee Name	Sl. No.	Noticee Name
1	Daisy Investment Private Limited	9	Ms. Aditee Modi,
2	Ashoka Mercantile Limited	10	Ms. Ruchika Modi,
3	Modi Intercontinental Private Limited	11	Smt. Ginni Devi Modi
4	Status Mark Finvest Limited	12	Dr. D.K. Modi
5	Dr. M.K. Modi,	13	Ms. Renu Modi
6	Dr. M.K. Modi HUF	14	Transnational Growth Private Limited
7	Ms. Veena Modi	15	Modi Spinning and Weaving Mills Co. Limited

8	Mr. Manish Kumar Modi	16	UP State Industrial Development Corporation Limited
17	Modi Industries Limited		

2. It was alleged that some of the promoter group entities had acquired shares of Modipon but failed to comply with the requirements of the provisions of Regulation 11 (2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997.

3. It was alleged that Daisy Investment Private Limited, one of the promoter group entities acquired 100000 shares of Modipon Limited on September 11, 2009 which represented approximately 1.28% of the total paid up equity share capital of the company (Modipon). It was also observed that another promoter group entity, Ashoka Mercantile Limited acquired 49950 (0.63%) shares and 48802 (0.62%) shares of Modipon Limited on October 14, 2009 and October 23, 2009 respectively. The above acquisition of shares of Modipon by Ashoka Mercantile Limited represented approximately 1.25% of the total paid up equity share capital of the company (Modipon). SEBI felt that the promoters (along with the acquirers who were part of the promoter group) are deemed to be persons acting in concert (PACs) with regard to the above acquisition by Daisy Investment Private Limited and Ashoka Mercantile Limited.

4. Therefore, it was alleged that the above acquisition of shares of Modipon required the abovementioned two entities, namely Daisy Investment Private Limited and Ashoka Mercantile Limited along with its PACs to make public announcements in accordance with Regulation 11 (2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997. It was alleged that the aforesaid entities failed to make the public announcements in respect of the aforesaid acquisition thereby violating Regulation 11 (2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997.

APPOINTMENT OF ADJUDICATING OFFICER

5. Mr. D. Sura Reddy was appointed as the Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by

Adjudicating Officer) Rules, 1995 (hereinafter referred to as the **'Adjudication Rules'**) to inquire into and adjudge under section 15H (ii) of the SEBI Act, 1992 for the alleged violations of provisions of Regulation 11 (2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as the SEBI (SAST) Regulations, 1997or the Takeover Regulations, 1997) by the Noticees. Subsequently, I was appointed as the Adjudicating Officer in place of Mr. D. Sura Reddy in the present matter vide order dated March 27, 2018.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. Show Cause Notices (hereinafter referred to as "SCN") EAD-2/RG/14618/2014 Dated May 20, 2014 was interalia issued to UP State Industrial Development Corporation Limited (hereinafter referred to as 'UPSIDC) under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15H(ii) of the SEBI Act, 1992 for the alleged violations specified in the SCN. It was alleged in the SCN that the Noticee as a PAC with Daisy Investment Private Limited and Ashoka Mercantile Limited had violated Regulation 11(2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997. Copies of the documents relied upon in the SCN were provided to the Noticee along with the SCN.

7. It may be noted that SCN, EAD-2/RG/14598/2014 dated May 20, 2014 was issued to Smt. Ginni Devi Modi in respect of which it was brought to my notice during the present proceedings in February 2019 that she had passed away in the year 2008. Therefore, a separate order abating the said Noticee was passed in February 2019.

8. It is to be noted that SCNs were also issued to In respect of another 13 Noticees namely Modi Intercontinental Private Limited (EAD-2/RG/14615/2014 Dated May 20, 2014), Status Mark Finvest Limited (EAD-2/RG/14621/2014 Dated May 20, 2014), Dr. M.K. Modi (EAD-2/RG/14600/2014 Dated May 20, 2014), Dr. M.K. Modi HUF (EAD-2/RG/14602/2014 Dated May 20, 2014), Ms. Veena Modi (EAD-2/RG/14603/2014 Dated May 20, 2014), Mr. Manish Kumar Modi (EAD-2/RG/14605/2014 Dated May 20, 2014), Ms. Aditee Modi (EAD-2/RG/14609/2014 Dated May 20, 2014), Ms. Ruchika Modi (EAD-2/RG/14606/2014 Dated May 20, 2014), Dr. D.K. Modi (EAD-2/RG/14607/2014 Dated

May 20, 2014), Ms. Renu Modi (EAD-2/RG/14613/2014 Dated May 20, 2014), Transnational Growth Private Limited (EAD-2/RG/14614/2014 Dated May 20, 2014), Modi Spinning and Weaving Mills Co. Limited (EAD-2/RG/14617/2014 Dated May 20, 2014) and Modi Industries Limited (EAD-2/RG/14619/2014 Dated May 20, 2014) which have been disposed of vide order dated March 22, 2019. Further, Show Cause Notices, EAD-2/RG/14596/2014 dated May 20, 2014 issued to Daisy Investment Private Limited and SCN no. EAD-2/RG/14597/2014 dated May 20, 2014 issued to Ashoka Mercantile Limited shall be separately dealt with later.

9. An opportunity of personal hearing was granted to the Noticees on October 9, 2015 vide letter dated September 22, 2015. Further, after I was appointed as the Adjudicating Officer in the present matter another opportunity of personal hearing was granted to the Noticees vide letter dated January 3, 2019.

CONSIDERATION OF ISSUES AND FINDINGS

10. I have carefully perused the charges levelled against the Noticees in the SCN and the material/documents available on record. The issues that arise for consideration in the present case are:

    1) *Whether the Noticee was part of the Promoters Group and under obligation to make disclosures in respect of the acquisition made by other promoter group entities? And Whether the Noticees has violated provisions of Regulation 11 (2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997?*

    2) *Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15H (ii) of the Securities and Exchange Board of India Act, 1992?*

    3) *If yes, then what would be the monetary penalty that can be imposed upon the Noticees, taking into consideration the factors mentioned in Section 23 J of the SEBI Act,1992?*

11. Before moving forward, it is pertinent to refer to the relevant provisions of the Regulation 11 (2) of (Substantial Acquisition Of Shares And Takeovers) Regulations, 1997 which reads as under:-

SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997:

Consolidation of holdings.

11(2) No acquirer, who together with persons acting in concert with him holds, fifty-five per cent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through [or with] persons acting in concert with him any additional shares [entitling him to exercise voting rights] or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:

Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures 'seventy-five per cent (75%)', the words and figures 'ninety per cent (90%)' were substituted.]

[Provided further that such acquirer may, [notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11,] without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him up to five per cent. (5%) voting rights in the target company subject to the following:-

(i) the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buyback of shares by the target company;

(ii) the post-acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five per cent.(75%).

.

Issue 1) – Whether the Noticee was part of the Promoters Group and under obligation to make disclosures in respect of the acquisition made by other promoter group entities? And whether the Noticee has violated the

provisions of Regulation 11 (2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997?

12. I note from the material available on record that shareholding of the Promoters and Promoters Group in Modipon Limited was 66.44% at the end of the quarter ending on June 30, 2009 which included 16.61% in respect of UP State Industrial Corporation of India. The above shareholding was between 55% and 75% as envisaged in Regulation 11 (2) of the SEBI (SAST) regulations 1997. I note from the material available on record that Modipon Limited was promoted jointly by R.B.S. Gujar Mal Modi Bros. and Private Limited (Modi Family) and Rohm & Hass (an American company) in the year 1965 and the shares of the company was listed on the stock exchange, BSE Limited (BSE) in the year 1969. I find from the Prospectus of Modipon Limited issued at the time of the IPO (Initial Public Offer) that UP State Industrial Development Corporation Limited (UPSIDC) was underwriter in respect of 588000 shares of Modipon Limited offered to the public in the IPO. I find that the acquisition of shares were consequent to the underwriting obligation of UPSIDC and not as promoters/ promoters group.

13. I find from the material available on record that until September 2008, UPSIDC was shown in the category of Public shareholders as Central/State Government Shareholders. However, as per the shareholding pattern for the quarter ending December 2008 submitted to the stock exchange (BSE), UPSIDC was erroneously included in the category of promoters and promoter group. I note that the above has been rectified in the shareholding pattern filed with the stock exchange for the quarter ending December 2017.

14. As mentioned in the above Paragraphs, UPSIDC has been erroneously/wrongly categorised as Promoters/Promoter Group entity which was rectified later. Further, no material/ documents/evidence is available on record to suggest the contrary. In view of the above, I am of the considered view that UPSIDC is not a promoter or part of the promoter group of Modipon Limited.

15. In view of the abovementioned facts, I am of the considered view that UPSIDC is not a promoter group entity and therefore not required to make disclosures in respect of the acquisitions made by certain promoter group entities. Therefore, UPSIDC has not violated the provisions of Regulation 11(2) of the SEBI (SAST) Regulations, 1997.

16. Since it is concluded that the Noticee (UPSIDC) has not violated the provisions Regulation 11(2) of the SEBI (SAST) Regulations, 1997, the issues as mentioned in 2) and 3) of Para 10 require no consideration.

ORDER

17. For the aforesaid reasons, I hereby dispose of the Show Cause Notice EAD-2/RG/14618/2014 Dated May 20, 2014 issued to UP State Industrial Development Corporation Limited without imposition of any penalty.

18. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the present address of the Noticee available with SEBI and also to SEBI.

Date: March 28, 2019
Place: Mumbai

Prasanta Mahapatra
Adjudicating Officer