BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/MC/HP/2022-23/16204]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of –

Usher Agro Limited (PAN: AAACU1095N) having address at - 212, Laxmi Plaza, Laxmi Industrial Estate, New Link Road, Andheri (West), Mumbai - 400053

In the matter of Usher Agro Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated adjudication proceedings under Section 15A(b) and 15HB of SEBI Act, 1992 (hereinafter referred to as, '**SEBI Act**') against Usher Agro Limited (hereinafter referred to as, '**Noticee/UAL/Company/You**') for alleged violation of provisions of Regulation 6(1), 7(3), 9, 13(1), 13(3), 13(4), 32, 50(1), 50(2), 50(3), 51, 52(4), 52(5), 53, 54(1), 54(2), 55, 56, 57(1), 57(2), 58, 59, 60(1) and 60(2) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as, '**LODR Regulations**').

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI appointed Shri B.J. Dilip as Adjudicating Officer under Section15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and

Imposing Penalties) Rules, 1995 (hereinafter be referred to as the '**Adjudication Rules**'), vide order dated December 09, 2020 to inquire into and adjudge under Section 15A(b) and 15HB of SEBI Act the aforesaid alleged violation against the Noticee. Subsequently, the undersigned was appointed as Adjudicating Officer (hereinafter be referred to as, '**AO**') vide order dated December 29, 2020. The appointment of the AO was communicated *vide* order dated December 31, 2020.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/HP/11937/2021 dated June 10, 2021 (hereinafter referred to as '**SCN**'), was issued to the Noticee in terms of Rule 4 (1) of Adjudication Rules read with Section 15-I of the SEBI Act to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee in terms of Section 15A(b) and 15HB of SEBI Act for the aforesaid alleged violations.

4. The allegations levelled against the Noticee in the SCN are summarized as below:

Background of the Company

5. Company was incorporated on June 20, 1996. It is registered with RoC-Mumbai and primarily involved in growing of crops, market gardening, and horticulture.

Analysis of alleged violation of LODR Regulations

6. SEBI received a reference dated October 11, 2017 and April 11, 2018 from IDBI Trusteeship Services Limited (**DT/ITSL**), regarding non-availability of information with respect to payment of interest due on October 10, 2017 and April 10, 2018 by UAL. It was observed that UAL had defaulted on its payment obligations on October 10, 2016.

7. UAL had issued Non-Convertible Debentures (NCDs) and it is listed only on BSE. Both equity and debt securities of UAL are listed on stock exchange. Examination was carried out to ascertain compliance status of UAL with relevant provisions of LODR Regulations for the financial year 2016-17. BSE vide emails dated January 14, 2020, January 16, 2020, February 24, 2020, June 09, 2020, June 15, 2020 and July 08, 2020 BSE provided compliance status. From the information provided by BSE, the details of the NCDs issued by UAL are as under:

Whether equity is listed or not	Yes
Debt - Privately placed/ Public issue	Privately placed
ISIN	INE235G08016
Date of Issuance (Allotment)	23-Dec-2015
Date of Maturity	22-May-2021
Frequency of Interest Payment	Half Yearly
Amount of NCDs issued (Rs. in Cr.)	50.32
Amount of NCDs outstanding	50.32
No. of Investors	1
Details of Investors, such as Name, Amount invested etc.	NEDERLANDSE FINANCIERINGS - MAATSCHAPPIJ VOOR ONTWIKKELINGSLANDEN N.V.(FPI)
Date of Insolvency Proceedings initiated, in case of company is under Insolvency	March 21, 2018

8. Vide email dated November 11, 2019, information/clarification was sought from the company with respect to compliance with LODR Regulations. Reminders were also sent on November 19, 2019 and November 22, 2019. However, no response has been received from the company.

9. BSE was also asked to seek information from the company. BSE informed that, it sought information from the company, but did not receive any response from the company.

10. DT was asked to provide the compliance status of the Noticee with the relevant provisions of LODR regulations. Reply of DT was received on December 23, 2019.

11. It was observed that NCLT, Mumbai vide its order dated March 07, 2019 had approved the initiation of Liquidation process against UAL. Further, BSE informed that the trading in UAL has been suspended with effect from April 01, 2019 to avoid market complications.

12. After considering the compliance status received from BSE and ITSL, the alleged violations of relevant provisions of LODR Regulations are as under:

Regulation 6(1) of LODR Regulations:

Regulation 6(1) requires listed entity to appoint qualified company secretary as compliance officer. BSE has informed that during FY 2016-17, company has intimated about resignation of Ms. Sarika Singh, company secretary and compliance officer of the company with effect from October 7, 2016. On the basis of information provided by BSE, it was observed that the Noticee has not appointed compliance officer after the resignation of Ms. Sarika Singh. Therefore, it was alleged that Noticee has not complied with Regulation 6(1) of LODR Regulations.

Regulation 7(3) of LODR Regulations:

Regulation 7(3) requires listed entity to submit compliance certificate to stock exchange signed by the Compliance Officer and representative of the share transfer agent within one month of end of each half of financial year regarding maintenance of all activities in relation to both physical and electronic share transfer facility either in house or by registrar to an issue and share transfer agent registered with SEBI. BSE has informed that during FY 2016-17, the company has not submitted the information under this regulation. Therefore, it was alleged that Noticee has not complied with Regulation 7(3) of LODR Regulations.

Regulation 9 of LODR Regulations:

Regulation 9 requires that listed entity should have a policy for preservation of documents, approved by its board of directors. It was observed that the Noticee has not provided any information with respect to compliance of this regulation. Therefore, it was alleged that Noticee has not complied with Regulation 9 of LODR Regulations.

Regulation 13(1) of LODR Regulations:

Regulation 13(1) requires the listed entity to ensure that adequate steps are taken for expeditious redressal of investor complaint. It was observed that the Noticee has not provided any information with respect to compliance of this regulation. Therefore, it was alleged that Noticee has not complied with Regulation 13(1) of LODR Regulations.

Regulation 13(3) of LODR Regulations:

Regulation 13(3) requires the listed entity to submit the statement on shareholder' complaints on quarterly basis within 21 days of end of quarter to stock exchange. BSE has informed that during the FY 2016-17, the company has submitted the statement for quarter ended June 30, 2016, September 30, 2016, December 31, 2016 (with delay of 7 days) and March 31, 2017. On the basis of information provided by BSE, it was observed that the Noticee has submitted the statement of complaints for all 4 quarters during the examination period. However, Noticee has submitted the statement of complaints for quarter ended December 31, 2016 with delay of 7 days. Therefore, it was alleged that Noticee has not complied with Regulation 13(3) of LODR Regulations.

Regulation 13(4) of LODR Regulations:

Regulation 13(4) requires that the statement as specified in regulation 13(3) shall be placed, on quarterly basis, before the board of directors of listed entity. It was observed that the Noticee has not provided any information with respect to compliance of this regulation. Therefore, it was alleged that Noticee has not complied with Regulation 13(4) of LODR Regulations.

Regulation 32 of LODR Regulations:

Regulation 32 requires submission of a statement indicating material deviations, if any, in the use of proceeds along with the half yearly financial results. Based on information provided by BSE, it was observed that the Noticee has not submitted the information under this regulation. Therefore, it was alleged that Noticee has not complied with Regulation 32 of LODR Regulations.

Regulation 50(1) of LODR Regulations:

Regulation 50(1) requires prior intimation to the stock exchange(s) at least eleven working days before the date on and from which the interest on debentures and bonds, and redemption amount of redeemable shares or of debentures and bonds shall be payable. Based on information provided by BSE, it was observed that the Noticee has not complied with this regulation. Therefore, it was alleged that Noticee has not complied with Regulation 50(1) of LODR Regulations.

Regulation 50(2) of LODR Regulations:

Regulation 50(2) requires intimation to the stock exchange(s), its intention to raise funds through new non-convertible debt securities or non-convertible redeemable preference shares it proposes to list either through a public issue or on private placement basis, prior to issuance of such securities. Based on information provided by BSE, it was observed that the Noticee has not made any intimation to stock exchange under this regulation. Therefore, it was alleged that Noticee has not complied with Regulation 50(2) of LODR Regulations.

Regulation 50(3) of LODR Regulations:

Regulation 50(3) requires a listed entity to intimate the stock exchange(s), at least two working days in advance, regarding the meeting of its board of directors, at which the recommendation or declaration of issue of non-convertible debt securities or any other matter affecting the rights or interests of holders of non-convertible debt securities or non-convertible redeemable preference shares is proposed to be considered. Based on information provided by BSE, it was observed that the Noticee has not made any intimation to stock exchange under this regulation. Therefore, it was alleged that Noticee has not complied with Regulation 50(3) of LODR Regulations.

Regulation 51 of LODR Regulations:

Regulation 51 of LODR Regulations requires a listed entity to promptly inform the stock exchange of all information or any action that shall affect payment of interest or redemption of NCDs. Based on information provided by BSE, it was observed that the Noticee has not made any intimation to stock exchange during FY 2016-17 under this regulation. Therefore, it was alleged that Noticee has not complied with Regulation 51 of LODR Regulations.

Regulation 52(4) of LODR Regulations:

Regulation 52(4) of LODR Regulations requires disclosure of line items prescribed under the said Regulation along with the half yearly / annual financial results. It was observed from the information provided by BSE that Noticee has not complied with this regulation. Therefore, it was alleged that Noticee has not complied with Regulation 52(4) of LODR Regulations.

Regulation 52(5) of LODR Regulations:

Regulation 52(5) of LODR Regulations requires submission of a Certificate signed by the Debenture Trustee taking note of the contents prescribed under regulation 52(4). It was observed from the information provided by BSE that Noticee has not submitted the information under this regulation. Therefore, it was alleged that Noticee has not complied with Regulation 52(5) of LODR Regulations.

Regulation 53 of LODR Regulations:

Regulation 53 of LODR Regulations requires that annual report of the listed entity shall include audited financial statements, cash flow statement, auditor’s report, director's report, details of debenture trustees, related party disclosures. It was observed that the Noticee has not provided any information with respect to compliance of this regulation. Therefore, it was alleged that Noticee has not complied with Regulation 53 of LODR Regulations.

Regulation 54(1) and 54(2) of LODR Regulations:

Regulation 54(1) and 54(2) of LODR Regulations requires that listed entity shall maintain hundred percent asset cover to discharge the principal amount at all times for NCDs and disclosure to the stock exchange in quarterly, half-yearly, year-to-date and annual financial statements as applicable, the extent and nature of security created and maintained with respect to its secured listed NCDs. It was observed from the information provided by BSE that Noticee has not complied with these regulations. Therefore, it was alleged that Noticee has not complied with Regulation 54(1) and 54(2) of LODR Regulations.

Regulation 55 of LODR Regulations:

Regulation 55 of LODR Regulations requires review of credit rating at least once a year. It was observed that the Noticee has not provided any information with respect to compliance of this regulation. Therefore, it was alleged that Noticee has not complied with Regulation 55 of LODR Regulations.

Regulation 56 of LODR Regulations:

Regulation 56 of LODR Regulations requires a listed entity to submit certain documents such as annual report, certification on utilization of funds, change in credit rating, half yearly assets cover certificate, copy of notices, resolutions etc. to debenture trustee. Debenture trustee *vide* email dated December 23, 2019 informed that the Noticee has not complied with this regulation for March 2017. Therefore, it was alleged that Noticee has not complied with Regulation 56 of LODR Regulations.

Regulation 57(1) of LODR Regulations:

Regulation 57(1) requires that the listed entity shall submit a certificate to the stock exchange within two days of the interest or principal or both becoming due that it has made timely payment of interests or principal obligations or both in respect of the non-convertible debt securities. BSE has informed that the Noticee has not complied with this regulation. Therefore, it was alleged that Noticee has violated the Regulation 57(1) of LODR Regulations.

Regulation 57(2) of LODR Regulations:

Regulation 57(2) requires a listed entity to provide an undertaking to the stock exchange(s) on annual basis stating that all documents and intimations required to be submitted to Debenture Trustees in terms of Trust Deed and SEBI (ILDS) Regulations, 2008, have been complied with. It was observed from the information provided by BSE that Noticee has not complied with this regulation. Therefore, it was alleged that Noticee has violated the Regulation 57(2) of LODR Regulations.

Regulation 58 of LODR Regulations:

Regulation 58 requires listed entity to provide hard copies of Annual Reports to holders of NCDs, who requested for the same, notices of meetings etc. In this regard, company has not provided any information. Therefore, it was alleged that Noticee has violated the Regulation 58 of LODR Regulations.

Regulation 59 of LODR Regulations:

Regulation 59 requires listed entity to take prior approval for any material modification in the structure of NCDs/NCRPs. In this regard, company has not provided any information. Therefore, it was alleged that Noticee has violated the Regulation 59 of LODR Regulations.

Regulation 60(1) of LODR Regulations:

Regulation 60(1) requires the listed entity to fix a record date for the purpose of payment of interest, dividend and payment of redemption or repayment amount or for such other purpose as specified by the stock exchange. It was observed from the information provided by BSE that Noticee has not complied with this regulation. Therefore, it was alleged that Noticee has not complied with Regulation 60(1) of LODR Regulations.

Regulation 60(2) of LODR Regulations:

Regulation 60(2) requires submission of the Notice of record date in advance of at least seven working days for the purpose of payment of interest or redemption amount. It was observed from the information provided by BSE that Noticee has not complied with this regulation. Therefore, it was alleged that Noticee has violated the Regulation 60(2) of LODR Regulations.

13. In view of the above, it was alleged that Noticee has violated provisions of Regulation 6(1), 7(3), 9, 13(1), 13(3), 13(4), 32, 50(1), 50(2), 50(3), 51, 52(4), 52(5), 53, 54(1), 54(2), 55, 56, 57(1), 57(2), 58, 59, 60(1) and 60(2) of LODR Regulations.

14. The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under Section 15A(b) and 15HB of SEBI Act.

15. SCN was served to the Noticee through its email address i.e. irp.usheragro@in.ey.com. The email to the Noticee did not bounce back. In the interest of justice, an opportunity of personal hearing through video conferencing was provided to the Noticee on January 21, 2022 vide Hearing Notice dated December 30, 2021. The Hearing Notice has been sent to the Noticee through the same email address. The Noticee neither appeared on the scheduled date of hearing nor any reply to the SCN received from the Noticee.

17. I note that through the SCN and Hearing Notice, the Noticee was advised to furnish its reply, if any, within stipulated time, failing which, it shall be presumed that the Noticee has no reply to submit and the matter will be proceeded with on the basis of the material available on record.

18. As sufficient opportunity was given to the Noticee to submit reply and no response was received from it, the adjudication proceeding against the Noticee is undertaken ex-parte on the basis of material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

19. The issues that arise for consideration in the instant matter are:

Issue No. I Whether the Noticee is in violation of provisions of Regulation 6(1), 7(3), 9, 13(1), 13(3), 13(4), 32, 50(1), 50(2), 50(3), 51, 52(4), 52(5), 53, 54(1), 54(2), 55, 56, 57(1), 57(2), 58, 59, 60(1) and 60(2) of LODR Regulations

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A(b) and 15HB of the SEBI Act.

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

Issue No. I **Whether the Noticee is in violation of provisions of Regulation 6(1), 7(3), 9, 13(1), 13(3), 13(4), 32, 50(1), 50(2), 50(3), 51, 52(4), 52(5), 53, 54(1), 54(2), 55, 56, 57(1), 57(2), 58, 59, 60(1) and 60(2) of LODR Regulations**

20. Before proceeding with issue on merits, I take note that the corporate insolvency resolution process (CIRP) was initiated against the Noticee and vide order of Hon'ble NCLT, Mumbai dated 21.02.2018, petition under Section 7 of IBC was admitted and Resolution Professional was appointed. Vide order dated 21.03.2018, moratorium was declared by Hon'ble NCLT, Mumbai. Vide an Order dated March 07, 2019, Hon'ble NCLT, Mumbai while considering the application filed by Krishna Chamadia (the Resolution Professional of the Noticee) under Section 33 of the IBC 2016, ordered that the Corporate Debtor (the Noticee) is liquidated in the manner as laid down in the chapter by issuing a Public Notice and also appointed the Resolution Professional as a Liquidator of the Noticee.

21. Hon'ble NCLT, Mumbai also *inter-alia* mentioned in the Order that since this liquidation order has been passed, subject to Section 52 of the IBC, 2016, no suit or other legal proceedings shall be instituted by or against the Noticee.

22. In this regard, Section 33(5) of IBC provides as follows:

"33(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:
Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority"

23. I note that the violations alleged in the SCN pertain to the period of 2016-17 and 2017-18, which is immediately preceding the period of CIRP. The SCN was issued on 10.06.2021, subsequent to completion of the CIRP and appointment of Liquidator vide order of Hon'ble NCLT, Mumbai dated 07.03.2019. The liquidator issued public notice on 12.03.2019 inviting stakeholders to submit claims by 06.04.2019.

24. In view of Section 33(5) of IBC, which states that when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor, I am of the view that the present proceedings against the Noticee are not maintainable and therefore, cannot be proceeded with. In this regard, I also place reliance on the order of WTM, SEBI in the matter of Camson Bio Technologies Limited dated 22.06.2021.

25. In view of the above, the allegations against the Noticee are not established, and hence issues II and III do not merit consideration

ORDER

26. In the light of the findings noted hereinabove, the adjudication proceedings initiated against the Noticee vide SCN dated June 10, 2021 are disposed of.

27. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: April 27, 2022	**MANINDER CHEEMA**
PLACE: MUMBAI	**ADJUDICATING OFFICER**