BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. PM/NR/2020-21/10368

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

In respect of:

Nandanvan Commercial Pvt., Ltd.,
(PAN: AABCN4876H)

In the matter of Urja Global Ltd.,

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as ***"SEBI"***) conducted investigation into the trading activities of certain entities in the scrip of Urja Global Ltd., (hereinafter referred to as ***"UGL" / "Company"***) for the period October 1, 2010 to March 21, 2011 (hereinafter referred to as ***"Investigation Period"***). The investigation revealed that Nandanvan Commercial Pvt., Ltd., *(hereinafter referred to as "**Noticee**"),* one of the Promoters of UGL had transferred 6,00,000 shares of UGL through off-market to Chetan Dogra, without receipt of consideration and thereby violated the provisions of Section 16 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as ***"SCRA"***) read with SEBI Notification G.S.R 219 (E) dated March 2, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned has been appointed as Adjudicating Officer, vide Order dated May 18, 2017 under Sub-section (1) of Section 23-I of SCRA and Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 *(hereinafter referred to as* ***"SCR***

Adjudication Rules") to inquire into and adjudge the alleged violations committed by the Noticee, under Section 23H of SCRA.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice (hereinafter referred to as "SCN") bearing ref. no. EAD/ADJ/PM/AA/OW/29517/2017 dated November 24, 2017 was sent to the Noticee under Rule 4 of SCR Adjudication Rules to show cause as to why an inquiry be not held against it in terms of Rule 4 of the SCR Adjudication Rules and penalty be not imposed under section 23H of SCRA for the violations alleged to have been committed by it. The SCN sent by Speed Post returned undelivered. Thereafter, in terms of Rule 7(b) of SCR Adjudication Rules, the SCN along with the annexures mentioned therein were sent to the Noticee on December 15, 2020 through digitally signed email at the Noticee's Email IDs: corporateserviced@yahoo.com ;nandanvancpl@gmail.com; I note that the SCN sent through Email at one of the Noticee's Email IDs viz., corporateserviced@yahoo.com bounced. However, the SCN was duly served on the Noticee's another Email ID viz., nandanvancpl@gmail.com, since the Email did not bounce.

4. Vide the aforesaid Email dated December 15, 2020, the Noticee was given one more opportunity to file its reply to the charges alleged in the SCN by December 29, 2020, besides providing it with an opportunity of personal hearing on January 5, 2021. In view of Covid-19 Pandemic, the hearing was scheduled through videoconference on WebEx platform. The link for joining the hearing through videoconference on Webex platform along with the login credentials were sent to the Noticee through email on January 4, 2021. However, I note that the Noticee did not attend the hearing.

5. The Noticee vide email dated January 13, 2021 requested for one more opportunity of hearing, since the earlier opportunity accorded on January 5, 2020 could not be availed by it in view of illness of its Authorised

Representative. Accordingly, as requested by the Noticee, one more opportunity of hearing was provided to the Noticee on February 5, 2021, which was communicated vide Email dated February 1, 2021. Vide the said Email dated February 1, 2021, the Noticee was informed to provide the details of the person/s who is/are going to attend the hearing scheduled on February 5, 2021 so as to send the Webex link along with the login credentials, by February 4, 2021. I note that the Noticee did not respond to the Email dated February 1, 2021. Therefore, the hearing scheduled on February 5, 2021 could not be conducted due to non-furnishing of information by the Noticee. Thereafter, the Noticee was given final opportunity of hearing on February 9, 2021, which was communicated vide Email dated February 5, 2021. Vide the aforesaid Email dated February 5, 2021, the Noticee was informed that since it failed to furnish the details of the person/s who is/are going to attend the hearing earlier, the Webex link along with login credentials were mailed to it on February 5, 2021 at the Noticee's Email ID: nandanvancpl@gmail.com. I note that the Noticee did not appear for the hearing scheduled on February 9, 2021.

6. I note from the above sequence of events that the Noticee despite providing with three opportunities of hearing, failed to avail the same. In view of the above, I am of the opinion that the SCN and the notices of hearing was duly served on the Noticee, yet the Noticee failed to submit its reply and also failed to avail the opportunity of hearing. I am of the view that principles of natural justice have been duly followed in the matter by providing sufficient opportunities to the Noticees to furnish it's reply and to avail the opportunity of hearing.

7. In this context, I would like to rely upon the observations of The Hon'ble Securities Appellate Tribunal (SAT) in the matter of Classic Credit Ltd., vs. SEBI (Appeal 68 of 2003 decided on December 08, 2006) wherein the Hon'ble SAT, inter alia, observed that - *"............ the appellants did not file any reply to the second show-cause notice. This being so, it has to be*

presumed that the charges alleged against them in the show-cause notice were admitted by them".

8. The Hon'ble SAT has again in the matter of Sanjay Kumar Tayal & Others vs SEBI (Appeal 68 of 2013 decided on February 11, 2014), interalia, observed that – *"………………As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices……………".*

9. In view of the above observations of the Hon'ble SAT and considering that no request has been received from the Noticee seeking more time for filing written reply or for personal hearing, I find no useful purpose would be achieved by granting any more opportunity of personal hearing to the Noticee, hence, I proceed to deal with matter ex-parte, based on materials available on record.

CONSIDERATION OF ISSUES

10. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against Noticee is that it had carried out transfer of shares through off-market without receipt of consideration. After perusal of the material available on record, I have the following issues for consideration, viz.,

    (I) Whether the Noticee has violated the provisions of Section 16 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March 02, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956.

(II) Does the violation, if any, attract monetary penalty under Section 23H of SCRA?

(III) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 23J of SCRA?

ISSUE-I: Whether the Noticee has violated the provisions of Section 16 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March 02, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956.

11. Before moving forward, it is pertinent to refer to the relevant provisions of SCRA and SEBI Notification dated March 2, 2000, which reads as under:

Section 2 (i) of SCRA
In this Act, unless the context otherwise requires,—
spot delivery contract" means a contract which provides for,-
(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;
(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository

Section 13 of SCRA
If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area that it is necessary so to do, it may, by notification in the Official Gazette, declared this section to apply to such State or States or area and thereupon every contract in such State or States or area which is entered into after the date of the notification otherwise than between members of a recognised stock exchange or recognised stock exchanges in such State or States or area or through or with such member shall be illegal.

Section 16 of SCRA
If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security

specified in the notification except to the extent and in the manner, if any, specified therein.

Section 18 of SCRA
Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.

SEBI Notification G.S.R 219(E) dated March 2, 2000
"In exercise of the powers conferred by sub-section (1) of section 16 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), read with Government of India Notification No. S.O. 573(E), dated 30th July, 1992, (See [1992] 75 Comp Cas (St.) 216.) and Notification No. 183(E), dated 1st March, 2000, (See page 53 supra.) issued under section 29A of the said Act, the Securities and Exchange Board of India (hereinafter referred to as "the Board") being of the opinion that it is necessary to prevent undesirable speculation in securities in the whole of India, hereby declare that no person in the territory to which the said Act extends, shall, save with the permission of the Board, enter into any contract for sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under the said Act or the Securities and Exchange Board of India Act, 1992 (15 of 1992), and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognised stock exchange

Provided that any contracts for sale or purchase of Government securities, gold related securities, money market securities and ready forward contracts in debt securities entered into on the recognised stock exchange shall be entered into in accordance with-

(a) the rules or regulations or the bye-laws made under the Securities Contracts (Regulation) Act, 1956 (42 of 1956), or the Securities and Exchange Board of India Act, 1992 (15 of 1992), or the directions issued by the Securities and Exchange Board of India under the said Acts;

(b) the rules made or guidelines or directions issued under the Reserve Bank of India Act, 1934 (2 of 1934), or the Banking Regulation Act, 1949 (10 of 1949) or the Foreign Exchange Regulation Act, 1973 (46 of 1973), by the Reserve Bank of India;

(c) the provisions contained in the notifications issued by the Reserve Bank of India under the Securities Contracts (Regulation) Act, 1956 (42 of 1956)

12. I note form the records that the Noticee was one of the Promoters of UGL. From the off–market data analysis, it is noted that the Noticee had transferred

6,00,000 shares of UGL to Chetan Dogra. The details of off-market transfers done by the Noticee are furnished hereunder:

Sl. No.	Date of transaction	Name of the Entity/ Individual who had transferred the shares	Name of the Noticee who received the shares	Rate (in ₹) at which the shares were sold (transferred)	No. of shares transferred	Amount in ₹
1	**06/09/2010**	**Nandanvan Commercial Pvt., Ltd.,**	**Chetan Dogra**	**75**	**2,50,000**	**1,87,50,000**
2	**13/09/2010**			**100**	**3,50,000**	**3,50,00,000**
Total					**6,00,000**	**5,37,50,000**

13. I note from the above table that that the Noticee had transferred 2,50,000 shares and 3,50,000 (*totalling 6,00,000 shares*) to Chetan Dogra on September 6, 2010 and September 13, 2010 respectively. As per the above table, the Noticee was to receive an amount of ₹5,37,50,000/- from Chetan Dogra towards consideration for sale of 6,00,000 shares. Further, I note from the records that there was no agreement entered into by the Noticee with Chetan Dogra. I also note from the records that the Noticee had received two cheques dated September 6, 2010 and September 30, 2010 from Chetan Dogra drawn on HDFC Bank, Mumbai branch for an amount of ₹1,87,50,000 and ₹3,50,00,000 respectively, which were subsequently returned by the Bank due to insufficient balance on December 4, 2010. As per the extant statutory provisions governing dealing in securities which happens outside the market platform of a recognized stock exchange, the settlement relating to such transfer of securities and the payment of consideration required to be made against such transfer, shall have to be either on the same day or at the most next day. It is pertinent to note that the in respect of the off-market transaction dated September 13, 2010, the Noticee received a cheque from Chetan Dogra on September 30, 2020, which is after a delay of 17days from the date of transaction, which was subsequently dis-honoured by the Bank due to insufficient balance. I also note that in respect of the off-market

transaction dated September 6, 2010, the Noticee had presented the cheque for realisation which was dis-honoured by the Bank due to insufficient funds on December 4, 2010. Thus, it is seen that the Noticee did not receive any consideration from Chetan Dogra towards sale of 6,00,000 shares of UGL in off-market.

14. I am of the view that for off-market transaction to be executed successfully, the buyer and seller should know each other and subsequently negotiate the price and quantity of the shares to be transacted. It is pertinent to note that the value of the off-market transactions done by the Noticee is substantial, yet the Noticee failed to enter into any agreement with the entities. In the instant case, the Noticee being a Promoter of UGL had transferred 6,00,000 shares worth ₹5,37,50,000/- without receipt of any consideration and without entering into any agreement Thus, I note that the Noticee had admittedly sold 6,00,000 shares to Chetan Dogra without consideration.

15. For the sake of assumption, if the Noticee gave the shares as loan to Chetan Dogra then it should have followed the procedure as laid down in the Depositories Act, 1996 and SEBI (Depositories and Depository Participants) Regulations, 1996 along with the relevant Bye-laws prescribed by the Depositories. However, in the instant case, I note that the Noticee followed no such procedure. I also note from the records that pursuant to receipt of shares in off-market from the Noticee, Chetan Dogra has further sold in the market.

16. Another significant factor to be noted is that the shares were transferred to the demat account of Chetan Dogra, which implies transfer of beneficial ownership of the shares. The transfer of beneficial ownership comes along with the rights and liabilities attached to the ownership of shares. The conduct of the parties, which is important in any transaction, establishes that there was a transfer of the shares. The conduct of the parties and nature of the transactions establishes that the Noticee had entered into a transaction

in off-market, without receipt of consideration, which is in contravention of the provisions relating to spot delivery contracts.

17. In this regard, I would like to draw reference to Section 16 of SCRA, which provides that if the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified therein. Sub section of section 16 declares that all contracts in contravention of the provisions of sub section (1) entered into after the date of the notification issued thereunder shall be illegal. The central Government had issued a notification in the year 1969, and thereafter SEBI issued a similar Notification on March 2, 2000 in exercise of its delegated authority under section 16 of SCRA prohibiting any person in the territory of India to enter into any contract for sale or purchase of securities other than spot delivery or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under SCRA or the Act and the Rules and Regulations made there under and Rules, Regulations and Bye laws of a recognized stock exchange. In other words, the prohibition contained in the Notification means that no security could be traded in an off market transaction except by way of spot delivery contract as defined in section 2(i) of SCRA. Further this was made applicable to the whole of India vide notification dated SO 3644 dated November 29, 1962.

18. As per SEBI Notification G.S.R 219(E) dated 2nd March, 2000 no person in the territory to which SCRA extends, shall, save with the permission of SEBI, enter into any contract for sale or purchase of securities other than such spot Delivery contract or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under the said SCRA or the SEBI Act and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognized stock exchange.

19. In terms of Section 13 of SCRA, any transactions in securities in an area other than between the members of a recognized stock exchange or through or with such member will be illegal, except spot delivery contracts. In the instant case, I note that the transactions carried out by the Noticee are not spot delivery contract.

20. The Hon'ble Securities Appellate Tribunal in its order dated July 17, 2007 in the matter of Alok Kehtan Vs. SEBI, Appeal No. 55 of 2007, upheld that:

"………..it is clear that the appellant sold his unlisted shares on 25.08.1999 in an off market transaction and received the sale consideration of ₹22,50,000/- only in January, 2000 which is much beyond the time permitted by section 2(i) of the SCRA. Since the transaction was off market the contract for the sale of shares could only be by way of spot delivery in view of the restriction imposed by the Board under section 16 of SCRA which mandates that the sale consideration ought to have been received either on the same day of the transaction or on the following day. It is, thus, clear that the sale of shares by the appellant on 25.08.1999 in the off market transaction is violative of the restriction imposed under section 16 read with section 2(i) of SCRA."

21. If the facts of the present case are tested with the touchstone of the observations made by the Hon'ble SAT, it is evident that the 6,00,000 shares sold by the Noticee to Chetan Dogra in off-market deal i.e., outside the stock exchange mechanism, against no consideration is not in conformity with the provisions of section 2(i) of SCRA. Therefore, I am of the view that the said transactions are illegal, void and a nullity and consequently in contravention of SEBI Notification G.S.R 219(E) dated March 2, 2000 and provisions of Section 13, 16 and 18 of SCRA.

22. Consequently, I hold that the allegation of violation of the provisions of Section 16 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March 02, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956 by the Noticee stands established.

ISSUE – II: Does the violation, if any, attract monetary penalty under Section 23H of SCRA?

23. It is established from the foregoing paragraphs that the Noticee had carried out transfer of shares through off-market without receipt of consideration and thereby violated the provisions of Section 16 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March 2, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956. Since the aforesaid violations stands established against the Noticee, the Noticee is liable for monetary penalty under Section 23H of SCRA.

24. The provisions of Section 23H of SCRA are reproduced hereunder.

Section 23H of SCRA - Penalty for contravention where no separate penalty has been provided.

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 shall not be less than one lakh rupees but which may extend to one crore rupees.

ISSUE – III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 23J of SCRA?

25. While determining the quantum of monetary penalty under Section 23H of SCRA, I have considered the factors stipulated in Section 23J of SCRA, which reads as under:

Section 23J of SCRA - Factors to be taken into account by the Adjudicating Officer

While adjudging quantum of penalty under section 23-I (SCRA), 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.*

26. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticee as a result of default.

27. However, I find that the Noticee had carried out off-market transfer of 6,00,000 shares, without receipt of consideration to Chetan Dogra, who upon receipt of shares have sold the shares in the market. Considering the large number of shares involved in such dubious deals and that the shares were sold outside the mechanism of stock exchange in contravention of the provisions of the Law, I am of the view that the Noticee should be penalised suitably for the said acts of omissions and commissions.

ORDER

28. In view of the foregoing, after taking into consideration all the facts and circumstances and in exercise of power conferred upon me under Section 23I of SCRA read with Rule 5 of SCR Adjudication Rules, I hereby impose a penalty of ₹10,00,000/- (Rupees Ten lakhs only) on the Noticee i.e., Nandanvan Commercial Pvt., Ltd., under Section 23H of SCRA.

29. The said penalty imposed on the Noticee, as mentioned above is commensurate with the violation committed by the Noticee and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.

30. The Noticee shall remit / pay the said amount of penalty within 45 days from the date 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 online payment facility available on the SEBI website www.sebi.gov.in on the following path by clicking on the payment link. ENFORCEMENT → Orders → Orders of AO → PAY NOW

31. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-II, SEBI, in the format as given in table below:

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

32. In terms of Rule 6 of the SCR Adjudication Rules, copies of this order are sent to the Noticee and to SEBI.

Date: February 10, 2021
Place: Mumbai

PRASANTA MAHAPATRA
ADJUDICATING OFFICER