BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION Order/AA/DA/2021-22/13813-13815]

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) RULES, 1995.

In respect of

1.	**Ms. Rekha M. Jain**	**(PAN- AADPJ8462C)**
2.	**Ms. Bhavika Jain**	**(PAN- AFAPB0985N)**
3.	**Ms. Khushbu Jain**	**(PAN- AJGPK8356G)**

In the matter of Upasana Finance Limited.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') examined the draft offer document (DLoF) filed by Mr. T. Devanathan Yadav (Acquirer) to acquire 11,12,300 equity shares of Rs.10/- each representing 26% of the paid-up and voting equity share capital of Upasana Finance Limited (hereinafter referred to as "the Company") for cash at a price of Rs. 47/- per Equity Share. It was observed that, the promoters of the company namely Mrs. Rekha M. Jain (Noticee No.1), Ms. Bhavika Jain (Noticee No.2) and Ms. Khushbu Jain (Noticee No.3) (hereinafter collectively referred as "the Noticees" or in their respective noticee numbers) had failed to comply with the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as Takeover Regulations, 2011).

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI appointed the undersigned as an Adjudicating Officer vide Order dated 27.07.2021 under section 15-I read with Section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as SEBI Act) to inquire into and adjudicate under Section 15 A(b) of the SEBI Act, the alleged violations/non-compliance of the provisions of Takeover Regulations, 2011 by the noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Show Cause Notices (hereinafter referred to as "SCNs") no. SRO/OW/P/AO/AA/18523/2021 dated August 09, 2021 were issued to the Noticees under Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 to show cause as to why an inquiry should not be initiated against the noticees and why penalty, if any, should not be imposed on them for the violations alleged in the SCNs.

4. The details in respect of the violations by the noticees as alleged in the SCNs are as follows:

5. SEBI, while examining the DLoF filed by the acquirer has observed that there were eight (8) instances of delayed compliance of Regulation 29(2) read with Regulation 29(3) of the Takeover Regulations, 2011 on the part of the noticees.

   The details of the delay in the disclosures are as follows:

Sr. No.	Name of the Entity	Percentage of shares held before	Change in Percentage of shareh	Percentage of shares held after	Regulation / Sub-regul	Date of transaction when Regulation was	Due date for compliance as per the	Actual date of compliance	Delay, if any, (no. of days)

		transaction	olding (%)	transaction	ations	triggered	Regulations		
1	Rekha Jain	74.93	(2.64%)	72.28	29(2)	10.04.18	12.04.18	07.03.2019	206
2	Rekha Jain	72.28	(2.39%)	69.89	29(2)	17.04.18	19.04.18	07.03.2019	201
3	Rekha Jain & Bhavika Jain	69.89	(2.19%)	67.7	29(2)	02.05.18	04.05.18	07.03.2019	191
4	Rekha Jain	67.7	(2.26%)	65.45	29(2)	08.05.18	10.05.18	07.03.2019	188
5	Rekha Jain & Bhavika Jain	65.45	(2.13%)	63.32	29(2)	15.06.18	19.06.18	07.03.2019	161
6	Rekha Jain	63.32	(2.11%)	61.21	29(2)	26.11.18	28.11.18	07.03.2019	64
7	Rekha Jain	61.2	(3.47%)	57.73	29(2)	10.12.18	12.12.18	07.03.2019	64
8	Rekha Jain	57.73	(2.33%)	55.4	29(2)	14.12.18	18.12.18	07.03.2019	50

6. The SCNs were delivered to the noticees on August 13, 2021. The noticees, vide letter dated August 31, 2021 have requested for additional time of two weeks for filing the reply to the SCNs. The requests of the noticees were acceded to and were granted time till September 20, 2021 for filing their replies. The same was

intimated to the noticees vide email dated September 03, 2021. The Noticees have submitted their replies dated September 07, 2021 vide email dated September 20, 2021.

7. The replies dated September 07, 2021 (received vide email dated September 20, 2021) as submitted on behalf of each of the noticees are as follows:

Reply of Noticee No.1

i. *I deny any violation of any applicable laws.*

ii. *Upasana Finance Limited has been regularly filing its shareholding pattern with BSE. The fact of my disposal of equity shares of the Company is very well reflected in the shareholding pattern for the respective quarter. The BSE website is in public domain and anybody can access the information. There was no malafide intention of not making the disclosure.*

iii. *There has been no material trading in the company and the non-disclosure of the acquisition of my shares, if any in the specified regulation had not negatively impacted the investor. I would like to state that under given circumstances the monitoring of the transaction has not been hampered.*

iv. *Further, upon coming to knowledge, I have immediately filed the disclosure with BSE Limited. The said disclosure is available on BSE website which is in public domain. This can be verified online.*

v. *I was totally unaware that such disclosure was required to be made. Hence the violation, even if it is deemed so, was totally unintentional with no harm to any stakeholders.*

Under the above circumstances, I submit as under:

a. *I did not have any intention to conceal any information and nor concealed any information.*

b. *No unfair advantage or gain has occurred to me and no harm or loss was caused to any retail investors.*
c. *No mischief is sought to be played by me.*
d. *I deny of any violations.*

Reply of Noticee No. 2

i. *I deny any violation of any applicable laws.*

ii. *As can be clearly seen from the demat statement provided by Central Depository Services (I) Ltd. ('CDSL'), the total sale transaction that I have undertaken is of 9,900 shares equivalent to 0.23% of the total paid up capital of the Company and a buy transaction of 27700 shares equivalent to 0.65% of the total paid up capital of the Company.*

iii. *Apart from the above, I have not undertaken any transaction during the period under consideration.*

iv. *As per Regulation 29(2) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) regulations, 2011:*

Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

v. *The Regulation clearly states that the disclosure needs to be given in case there has been a change in the holding since the last disclosure. Further, it states that the quantum of change has to exceed 2% (two Percent).*

vi. *It is clearly evident from the CDSL statements enclosed in Annexure III along with your Notice, that I have not undertaken any transaction beyond the said quantum of 2%. In fact, it is not even 1% of the total paid up capital of the Company, during the review period. Hence, by no stretch of imagination it is to be construed that I should be held non-compliant for non-disclosure. The Regulation does not mandate me to undertake disclosure compliance since I have not undertaken any transaction beyond the limits stated therein.*

vii. *Whether read in parts or as a whole, Regulation 29(2) of SAST Regulations clearly mandates only that person who is causing the change in holding by undertaking the transaction beyond the limits stated therein should undertake the filing of disclosures as specified therein.*

viii. *I cannot be held responsible for delay of disclosures of transactions not undertaken by me, as the same is not applicable to me.*

ix. *No mischief is sought to be played by me*

Reply of Noticee No. 3

i. *I deny any violation of any applicable laws.*

ii. *As can be clearly seen from the demat statement provided by Central Depository Services (I) Ltd. ('CDSL'), I have not undertaken any transaction during the period under review. My holding in Upsasana Finance ltd is 10,00,000 shares as on April 1, 2018 and has continued to be the same as on September 30, 2018.*

iii. *Further, I cannot be held responsible for non-disclosures of transactions not undertaken by me.*

iv. *As per Regulation 29(2) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) regulations, 2011:*

Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in *shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.*

v. *The Regulation clearly states that the disclosure needs to be given in case there has been a change in the holding since the last disclosure. It is clearly evident from the CDSL statements enclosed in Annexure III alongwith your Notice, that I have not undertaken any transaction during the review period. Hence, by no stretch of imagination it is to be construed that I should held non-compliant for transactions undertaken by other members of promoter / promoter group / persons acting in concert. The Regulation does not mandate me to undertake disclosure compliance since I have not undertaken any transaction.*

vi. *Whether read in parts or as a whole, Regulation 29(2) of SAST Regulations clearly mandates only that person who is causing the change in holding by undertaking the transaction to make the disclosure specified therein.*

vii. *No mischief is sought to be played by me.*

viii. *I deny all the allegations*

8. After considering the replies as detailed above, I have decided to inquire into the violations alleged against the noticees. Accordingly, vide email dated September 21, 2021 the noticees were granted an opportunity of personal hearing through audio-visual mode on October 06, 2021. Accordingly, the personal hearing was conducted through audio-visual mode on October 06, 2021.

9. On October 06, 2021, the Authorised Representative (AR) appeared on behalf of the noticees and reiterated the submissions made in their replies dated September 07, 2021 filed in the matter. The AR has further undertaken to file additional written

submissions (both on the points of facts and law) in the matter by October 18, 2021. Subsequently, vide emails dated October 18, 2021, the noticees have submitted that, they reiterate their earlier submissions and requested to drop the proceedings against them in the matter.

CONSIDERATION OF ISSUES AND FINDINGS

10. I have carefully considered the allegations levelled against the noticees, the oral and written submissions made on behalf of the noticees and the material available on record. I note that, the noticees are alleged to have violated Regulation 29(2) and 29(3) of the takeover Regulations, 2011. The issues that arise for consideration in the present case are as follows:

a) Whether the Noticees have violated Regulation 29(2) read with Regulation 29(3) of Takeover Regulations, 2011?

b) Does the violation, if any, on the part of the Noticees attract monetary penalty under Section 15 A (b) of the SEBI Act?

c) If so, what would be the monetary penalty that can be imposed on the Noticees.

11. Before proceeding further, it will be appropriate to refer the relevant provisions under the Takeover Regulations 2011, alleged to have been violated by the Noticees. The text of the alleged provisions are as under:

Regulation 29(2) of the Takeover Regulations:

Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below *five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.*

Regulation 29(2) of the Takeover Regulations:

The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two workingdays of the receipt of intimation of allotment of shares, or the acquisition or the disposal of shares or voting rights in the target company to,—

(a)every stock exchange where the shares of the target company are listed; and

(b)the target company at its registered office.

12. I have observed from the DLoF that the noticees are part of the promoter group of the company. I observe from the shareholding pattern as available on the website of BSE Limited that the noticees were holding 74.93% of shareholding in the target company as on March 2018. I note that there were 8 instances where the percentage of shareholding of the noticees have changed in excess of 2% of the total shareholding in the company.

13. I have noted that the noticees have not made the disclosures as required as per the above referred regulations within the stipulated time. However, the said disclosures have been made with certain delay. The details of such delayed disclosures are given below:

Sr. No.	Name of the Entity	Percentage of shares held before	Change in Percentage of shareholding (%)	Percentage of shares held after transaction	Regulation / Sub-regulations	Date of transaction when Regulation was triggered	Due date for compliance as per the	Actual date of compliance	Delay, if any, (no. of days)

		transaction					Regulations		
1	Rekha Jain	74.93	(2.64%)	72.28	29(2)	10.04.18	12.04.18	07.03.2019	206
2	Rekha Jain	72.28	(2.39%)	69.89	29(2)	17.04.18	19.04.18	07.03.2019	201
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8	Rekha Jain	57.73	(2.33%)	55.4	29(2)	14.12.18	18.12.18	07.03.2019	50

14. I note that, Noticee no. 1 in her reply has stated that, she was totally unaware that such disclosure was required to be made. Noticee no.1 has further stated that, upon coming to knowledge, she had immediately filed the disclosure with BSE Limited.

15. I observe that, disclosures in respect of any company has been made mandatory for the protection of the investors so as to enable them to take suitable informed investment decisions. The objective behind such requirement is that, the investing public shall not be deprived of any vital information in respect of their investments in the securities market. Further, it is a well settled principle of law that, ignorance of law cannot be considered as an excuse. Therefore the submission of the noticee no.1 that, she was unaware of such disclosure cannot be acceded to.

16. In this regard I place reliance on Hon'ble SAT's judgment dated October 14,2014 in the matter of Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014), in which, Hon'ble SAT observed that ".......... *obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly, argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures.".*

17. As detailed above, noticee no1. has not complied with the regulatory requirement as mandated under Regulations 29(2) and 29(3) of the Takeover Regulations, 2011 within the stipulated time. I therefore hold that, noticee no. 1 has violated Regulations 29(2) and 29(3) of the Takeover Regulations, 2011.

18. Noticees nos. 2 and 3 have submitted that, they have not undertaken any transaction during the review period and therefore, it is to be construed that they should not be held non-compliant for transactions undertaken by other members of promoter / promoter group / persons acting in concert. The Regulation does not mandate them to undertake disclosure compliance since they have not undertaken any transaction which has triggered the compliance of the Takeover Regulations, 2011.

19. I note from the DLoF that all the noticees are part of the promoter group of the target company. Regulation 2 (q) (2) (iv) of the Takeover Regulations, 2011, reads as under:

(q) "persons acting in concert" means,—

(2)…

(iv) promoters and members of the promoter group;

20. In view of this, Noticees no.1, 2 and 3 are members of the promoter group, and hence they are persons acting in concert within the above mentioned definition in respect of the target company.

21. Further, reference is drawn to the order dated 20.11.2015 passed by the Hon'ble SAT in the matter of *Mr. Gopalakrishnan Raman & Ors Vs. SEBI*, wherein the Hon'ble SAT has held that, "… *If the promoters of a listed company are individual promoters then the obligation is on the individual promoters and in case there is a 'promoter group' then the promoter group is required to make yearly disclosure. If the promoter group fails to disclose the shares or voting rights held by the promoters in the promoter group as also their PAC's within the time stipulated under the Takeover Regulations, then, penalty is imposable on the promoter group and the said penalty would be recoverable jointly and severally from the promoters in the promoter group who held shares or voting rights in the Target Company with their PAC's*.

22. As detailed above, the noticees are persons acting in concert and therefore the liability to make the disclosure is applicable to all the persons who are acting in concert irrespective of their individual transactions. I, therefore, hold that, the noticees no. 2 and 3 along with noticee no.1 have failed to comply with the

regulatory requirement as mandated under Regulations 29(2) and 29(3) of the Takeover Regulations, 2011 within the stipulated time.

23. In the matter of Milan Mahendra Securities Pvt. Ltd. Vs SEBI (Appeal No. 66 of 2003) –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*."

24. In view of the above, I find that Noticees no. 1, 2 and 3 have violated Regulation 29(2) read with Regulation 29(3) of the Takeover Regulations, 2011 for which they are liable for monetary penalty under Section 15 A (b) of the SEBI Act, which reads as under:

15A. Penalty for failure to furnish information, return, etc. - *If any person, who is required under this Act or any rules or regulations made thereunder,- ….. (b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;*

25. Section 15J of SEBI Act prescribes the factors to be considered by the Adjudicating Officer while adjudging the penalty, which reads as under:

"15J** - **Factors to be taken into account by the adjudicating officer:
While adjudging quantum of penalty under section 15-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.”

26. The Hon’ble Supreme Court, in the matter of SEBI v. Shri Ram Mutual Fund [2006] 68 SCL 216(SC), inter alia, held: *“once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow.”*

27. I observe that, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the defaults cannot be computed.

ORDER

28. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15-I (2) of the SEBI Act read with Rule 5 of the said Rules, I hereby impose the following penalty on the Noticees:

Noticee	Violation	Penal Provision(s)	Penalty (Rs.)
Ms. Rekha M Jain Ms. Bhavika Jain Ms. Khushbu Jain	Regulation 29(2) read with Regulation 29(3) of the Takeover Regulations, 2011	Section 15A(b) of the SEBI Act, 1992	Rs. 2,00,000/- (Rs. Two Lakh Only) jointly and severally.

29. In my view, the above said penalty is commensurate with the violation/s committed by the Noticees in this case. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favor of “SEBI -Penalties Remittable to Government of India”, payable at Mumbai,

OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

30. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given below) shall be forwarded to The Division Chief, Enforcement Department (EFD-DRA IV), Securities and Exchange Board of India, SEBI Bhavan II, Plot No. C-7, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

1. Case Name:	
2. Name of the payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment if made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlemet amount and legal charges along with order details)	

31. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to, recovery proceedings may be initiated under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

32. In terms of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, copies of this order are sent to the Noticees and also to Securities and Exchange Board of India.

Date: October 21, 2021 **Dr. ANITHA ANOOP**

Place: Mumbai **ADJUDICATING OFFICER**