

ORDER UNDER SECTION 23 I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 4 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005 IN THE MATTER OF ADJUDICATION PROCEEDINGS AGAINST USHA IRON AND FERRO METALS CORPORATION LIMITED.

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') vide order dated September 05, 2007 initiated adjudication proceedings against the Usha Iron and Ferro Metals Corporation Limited (hereinafter referred to as 'the noticee') and I was appointed as the Adjudicating Officer to inquire into and adjudge under Section 23I read with Section 23E of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as 'SCRA') the violation of Section 21 of SCRA alleged to have been committed by the noticee on account its failure to comply with provisions of the listing agreement with the Stock Exchanges.

FACTS OF THE CASE

2. SEBI vide circular SEBI/CFD/DIL/CG/1/2004/12/10 dated October 29, 2004 had directed the Stock Exchanges to amend the listing agreement by replacing the existing Clause 49 with the revised Clause 49. The listed companies were required to comply with the requirements of the revised Clause 49 and also to submit a quarterly compliance report to the Stock Exchanges within 15 days from the end of every quarter in terms of the said circular.

3. The noticee is a company and its shares are listed on stock exchanges at Bombay Stock Exchange Limited, Mumbai and the National Stock Exchange of India Limited, Mumbai.
4. It is alleged that the noticee failed to submit quarterly compliance report for the quarters ended March 2006, June 2006, September 2006, December 2006 and March 2007 to the Bombay Stock Exchange Limited, and the National Stock Exchange of India Limited.
5. In view of the alleged failure on the part of the noticee to comply with the provisions of Clause 49 of the listing agreement, adjudication proceedings were initiated in terms of provisions of Section 23 I of the SCRA.

NOTICE AND REPLY

6. A Show Cause Notice (hereinafter referred to as 'SCN') A&E/BS/CG 13/2007 dated September 28, 2007 was issued to the noticee in terms of the provisions of Rule 4 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as the Rules), requiring the noticee to show cause as to why an inquiry should not be held for the violation alleged to have been committed by it. As the said notice was returned undelivered, the notice was affixed at the address of the noticee in terms of the provisions of the Rules. No reply of the noticee has been received from the noticee. Considering the facts of the case, it was decided to conduct an inquiry in the matter.
7. An opportunity of being heard was granted to the noticee on March 13, 2009. Advocate Sanjay Agarwal appeared on behalf of the noticee and submitted that noticee has not received the said SCN. Accordingly copy of the SCN was provided to Advocate Sanjay Agarwal and the date of next hearing was scheduled on March 26, 2009. The representative undertook to file the reply on behalf of the noticee.

8. On March 26, 2009, Shri V.B. Sharma, Advocate and Shri S.S. Agarwal, Advocate appeared on behalf of the noticee submitted that noticee has couriered the reply to SCN to the Advocate and the same will be delivered within two days. With regard to the alleged violations, Advocate V. B. Sharma submitted that he has no further submissions to make in this matter. In this regard, though the noticee undertook to file reply before March 30, 2009, no such reply has been received till date. The noticee has been granted sufficient opportunities to file reply and make submissions. In the absence of any proof or proper reply submitted by the noticee, the inquiry is proceeded on the basis of evidence available on record.

CONSIDERATION OF EVIDENCE

9. I have taken into consideration the facts and circumstances of the case, and the material available on record.

Section 21 of the Securities Contracts (Regulation) Act, 1956 provides the following:

“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.]”

10. The noticee is alleged to have violated Clause 49 of the listing agreement with the Stock Exchanges. The text of the said clauses state the following:

“49. Corporate Governance

The company agrees to comply with the following provisions:

VI REPORT ON CORPORATE GOVERNANCE

- i. There shall be a separate section on Corporate Governance in the Annual reports of the company, with a detailed compliance report on Corporate Governance. Non compliance of any mandatory requirement of this clause with reasons thereof and the extent to which the non-mandatory requirement have been adopted should be specifically highlighted. The suggested list of items to be included in this report is given in Annexure IC and list of non mandatory requirements is given in Annexure ID.
- ii. The companies shall submit a quarterly compliance report to the stock exchanges within 15 days from the close of the quarter as per the format given in Annexure IB. The report shall be signed either by the Compliance Officer or the Chief Executive Officer of the company. “

11. It is noted that the noticee has not submitted any proof rebutting the allegation that it failed to submit quarterly compliance reports for the quarters ended March 2006, June 2006, September 2006, December 2006 and March 2007 to the Bombay Stock Exchange Limited and the National Stock Exchange of India Limited.

12. It is noted that despite many opportunities granted to the noticee, it failed to file any reply to the SCN. Further, it is pertinent to note that the Stock Exchanges have already stated that the noticee failed to submit quarterly reports to the Stock Exchanges. In view of the same, on the basis of the evidence available on record it is evident that the noticee failed to submit the quarterly reports to the Stock Exchanges.

13. In view of the facts and circumstances of the case as detailed in the preceding paragraphs, it is concluded that the noticee failed to submit quarterly reports in terms of the provision of Clause 49 of the Listing Agreement. In view of the same the noticee violated the provisions of Section 21 of SCRA. The said violation attracts penalty under Section 23E of the Securities Contracts (Regulation) Act, 1956 which reads as under:

“ 23E. If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or

delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.”

14. In this regard, it is noted that no quantifiable figures are available with regard to the following factors enumerated under Section 23 J of the SCRA such as the amount of disproportionate gain made as a result of the default, and the amount of loss caused to the investors . However, it is pertinent to note that the failure on the part of the noticee in filing the report was observed for five quarters and hence the violation is repetitive in nature. The failure on the part of the noticee to file the quarterly reports had been observed on five instances in respect of the quarters ended March 2006, June 2006, September 2006, December 2006 and March 2007. In view of the same, in terms of the provisions of Section 23E of the Securities Contracts (Regulation) Act, 1956, I impose a penalty of Rupees Five Lakh (Rs 5,00,000/-) on Usha Iron and Ferro Metals Corporation Limited.
15. The Penalty shall be paid by the noticee by way of demand draft drawn in favour of “SEBI – Penalties Remittable to Government of India” payable at Mumbai within 45 days of receipt of this order. The Demand draft shall be forwarded to the General Manager, Corporation Finance Department – Division of Issues and Listing, Securities and Exchange Board of India, ‘SEBI Bhavan’, Plot No.C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (East), Mumbai 400051.
16. In terms of the provisions of Rule 4 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 copies of this order are sent to the noticee and to the Securities and Exchange Board of India.

PLACE : MUMBAI

BIJU. S

DATE : April 27, 2009

ADJUDICATING OFFICER