

**Deputy General Manager
Corporation Finance Department
Division of Issues & Listing I**

**CFD/DIL/IG/SM/ /06
January 20, 2006**

**S.K Poddar, Secretary.
Upper Ganges Sugar & Industries Limited
9/1, R.N Mukerjee Road,
5th Floor,
Kolkata- 700 001**

Dear Sir,

Sub: Request for No Action Letter in relation to the proposed Rights issue of Upper Ganges Sugar & Industries Limited (UGSIL). under Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 for guidance.

- 1.0 Please refer your letter dated August 31, 2005 and Dec 21 2005 seeking "No-Action Letter" under the captioned scheme.
- 2.0 It is inter alia, submitted by you, vide letters under reference, that –
 - a. Upper Ganges Sugar & Industries Limited proposes to make a Rights Issue of equity shares.
 - b. Presently a scheme of arrangement has been filed with the High Courts at Kolkata & Allahabad on 21st March 2005 and 12th April 2005 to demerge the existing sugar division of New India Sugar Mills Limited (NISML) in to UGSIL.
 - c. The scheme has been approved by the concerned stock exchanges as per provisions of clause 24(f) of the listing agreement. In consideration of the proposed demerger, UGSIL is to issue and allot its equity shares to the shareholders of NISML as per the entitlement ratio specified in the scheme.
 - d. You have sought a no-action letter under the SEBI (Informal Guidance) Guidelines 2003 regarding the simultaneous filing of the draft letter of offer for the proposed rights issue and approval of the scheme for demerger in the manner proposed in your letter.
- 3.0 In your letter dated 31st August 2005 you have suggested and proposed inter alia the following:
 - a. The filing of the draft letter of offer for the proposed rights issue of equity shares by UGSIL will run parallel to the approval of the scheme by the High Courts.

- b. If the scheme gets approved by High Courts between the date of filing the draft letter of offer with SEBI and listing of the proposed rights equity shares of UGSIL, the allotment of the equity shares pursuant to the scheme will be made only after the listing of the proposed rights equity shares with the stock exchanges.
- c. Further you have proposed that the scheme shall provide that in case of any change in the capital structure of UGSIL, by way of rights issue of equity shares of UGSIL, prior to effective date, the entitlement of the equity shareholders of NSIML to receive the equity shares of UGSIL in exchange of their respective shares as stated in the scheme becoming effective shall be adjusted appropriately by the board of directors of UGSIL in consultation with an independent valuer, after taking in to consideration the proportion in which the equity share capital of UGSIL including premium, if any, shall change upon such rights issue of equity shares of UGSIL. Thus modifying the entitlement ratio of the existing scheme to reflect the proposed rights entitlement so as to benefit the shareholders of NISML.
- d. You have also submitted to make suitable disclosures in the draft letter of offer as to be compliant with clause 2.46.2 of Annexure III of SEBI observations which reads as *"Additionally, the offer document shall contain a specific disclosure, as a note to capital structure, as to the proposal , intention, negotiations, consideration of the company to alter the capital structure by way of split /consolidation of the denomination of the shares, or issue of shares on a preferential basis or issue of bonus or rights or further public issue of shares or any other securities, within a period of 6 months from the date of opening the present issue"*
- e. You have submitted that *"If the scheme gets approved by High Courts between the date of filing the draft letter of offer with SEBI and listing of the proposed rights equity shares of UGSIL, the allotment of the equity shares pursuant to the scheme will be made only after the listing of the proposed rights equity shares with the stock exchanges."*

4.0 Without necessarily agreeing with your analysis, our comments are as under-

- a. As per clause 8.7.1 of SEBI Disclosure and Investor Protection Guidelines 2000, *"No company shall make any further issue of capital in any manner whether byway of issue of bonus shares, preferential allotment, rights issue or public issue or otherwise, during the period commencing from the submission of offer document to the Board on behalf of the company for public or rights issues, till the securities referred to in the said offer document have been listed or application moneys refunded on account of non-listing or under subscription, etc."*

5.0 In view of the above submissions and undertakings made by you, this division would not recommend any action if the proposed rights issue is made, subject to complying with the following requirements:

- i. The relevant High Court may be informed about the rights issue before proceeding with the same.
 - ii. If the scheme gets approved by High Courts between the date of filing the draft letter of offer with SEBI and listing of the proposed rights equity shares of UGSIL, the allotment of the equity shares pursuant to the scheme will be made only after the listing of the proposed rights issue equity shares with the stock exchanges.
 - iii. The company UGSIL shall include a specific disclosure in the letter of offer as per clause 2.46.2 of Annexure III of SEBI Observations.
 - iv. Additionally, UGSIL has to disclose in the draft letter of offer, all possible implications of the scheme, on the company, including on its financials.
- 5.1 We also advise you to ensure compliance with all other proposals suggested by you as per your letters dated 31 August 2005 and December 21 2005.
- 6.0 This position is based on the representations and submissions made to the Division in your letters under reference. Different facts or conditions might require a different result. This letter expresses the Division's position on applicability of Explanations to Clause 8.7.1 of the SEBI (DIP) Guidelines, 2000 only in the instant case. It does not express decision of the Board on the questions presented. This guidance is based on the law existing as on December 31, 2005.
- 7.0 As regards your request for confidentiality under Clause 11 of the Informal Guidance Scheme, you are advised that in terms of said clause 11 of the Scheme, your request shall receive confidential treatment for a period of time not exceeding 90 days from the date of this letter.
- 8.0 You may note that the above views are expressed only with respect to the clarification sought on the applicability of SEBI (Disclosure and Investor Protection) Guidelines 2000 and do not affect the applicability of any other law or requirements.

Yours faithfully,

Neelam Bhardwaj