BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. PM/NR/2020-21/10277

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:

Shree Sudharshan Castings Pvt., Ltd.,
(PAN: AADCS9429B)

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 Shree Sudharshan Castings Pvt., Ltd., *(hereinafter referred to as "**Noticee**")* had transferred 2,20,000 shares of UGL through off-market to Chetan Dogra and Daffodil Tradex Pvt., Ltd., *(Chetan Dogra is one of the Directors)* in a series of transactions, 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/29525/2017 dated November 24, 2017 was served on 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.

4. The Noticee vide its letter dated June 29, 2019 submitted its reply, which is summarized hereunder:

   (a) It is submitted that the shares were transferred in the normal course of business and there was no malafide intention behind the said off-market transfer of shares.

   (b) It is stated that we have no relationship of ay soft with Chetan Dogra Group, save and except a business transaction for sale of shares of UGL through off-market.

   (c) Pursuant to the transaction, Chetan Dogra of Chetan Dogra Group on behalf of himself and also representing Daffodil Tradex Pvt., Ltd., had agreed to make the payment on transfer of 2,20,000 shares as per agreed terms and conditions. Little did we know that it was merely a false assurance with the ulterior motive of fraudulently getting the shares transferred from us without any consideration.

   (d) It is a well settled principle of the Indian Contracts Act, 1872 that a contract binds two or more parties to perform their part of the contract. Each party to the contract is obligated to carry out its part of the contract as per the agreed terms and conditions and that we performed our part of contractual obligation by transferring the shares, whereas Chetan Dogra failed to perform his part of the contract by not paying us the

money and played a deceit upon us, thereby resulting in breach of contract.

(e) *It is further submitted that on account of breach of contract by Chetan Dogra, we preferred a complaint in the Chief Metropolitan Magistrate, Kolkata against Daffodil Tradex Pvt., Ltd., and Chetan Dogra for fraudulent transfer of shares and non-payment.*

(f) *It is stated that in the entire course, we have been a victim rather than a defaulter. Therefore, SEBI's allegation that we have done an invalid off-market transaction is baseless and fails to consider the true facts of the case.*

(g) *We have complied with the provisions of the SCRA by fulfilling our contractual obligation and therefore no penalty may be levied upon us.*

5. In the interest of natural justice and in terms of the provisions of Rule 4(3) of SCR Adjudication Rules, the Noticee was given an opportunity of personal hearing on December 16, 2020 which was communicated vide Email dated December 9, 2020 to the Noticee's Email ID: shreesudharshan2015@gmail.com, sent through digitally signed Email, in terms of the provisions of Rule 7(b) of the SCR Adjudication Rules. I note that the Email sent to the Noticee did not bounce. 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 December 15, 2020. However, I note that the Noticee did not attend the hearing.

6. In view of the above, I am of the opinion that the notice of hearing was duly served on the Noticee, yet the Noticee failed to avail the opportunity of hearing. Therefore, I am of the view that principles of natural justice have been duly followed in the matter and accordingly, I am inclined to decide the matter while taking into consideration the reply furnished by the Noticee.

CONSIDERATION OF ISSUES

8. 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.

9. 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)

10. From the off–market data analysis, it is noted that the Noticee had transferred 2,20,000 shares of UGL to Chetan Dogra and Daffodil Tradex Pvt., Ltd., The details of off-market transfers done by the Noticee are furnished hereunder:

Sl. No.	Date of transaction	Name of the Entity/ Individual to whom shares were transferred by the Noticee	Rate (in ₹) at which the shares were sold (transferred)	No. of shares transferred	Amount in ₹	Payment received Yes/No
1.	08/10/2010	Daffodil Tradex Pvt., Ltd.,	105.30/-	50,000	52,65,000	No
2.	11/10/2010	Daffodil Tradex Pvt., Ltd.,	110.55/-	45,000	49,74,750	No
3	12/10/2010	Daffodil Tradex Pvt., Ltd.,	113.90/-	5,000	5,69,500	No
4	11/11/2010	Chetan Dogra	171.00/-	1,20,000	2,05,20,000	No
Total				**2,20,000**	**3,13,29,250**	**No**

11. I note from the above table that it is an admitted fact that the Noticee had transferred 2,20,000 shares to Chetan Dogra and Daffodil Tradex Pvt., Ltd., between October and November, 2010, which is not disputed by the Noticee. As per the above table, the Noticee was to receive an amount of ₹3,13,29,250/- from Chetan Dogra and Daffodil Tradex Pvt., Ltd., towards consideration for sale of 2,20,000 shares. Further, I note from the records and from the submissions made by the Noticee that there is no agreement entered into by the Noticee with Chetan Dogra and Daffodil Tradex Pvt., Ltd., I also note that there is nothing on record evidencing issue of cheques by

Chetan Dogra and Daffodil Trades Pvt., Ltd., to the Noticee towards the consideration for sale of shares in off-market. 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 and failed to obtain any consideration for the same. In the instant case, the Noticee without receipt of any consideration and without entering into any agreement had transferred 2,20,000 shares worth ₹3,13,29,250/- Thus, I note that the Noticee had admittedly transferred 2,20,00 shares to the aforesaid entities, without consideration. Therefore, the claim of the Noticee that the off-market transactions entered into by it with Chetan Dogra and Daffodil Tradex Pvt., Ltd., were in the nature of normal course of business and that it has no relationship with Chetan Dogra, is devoid of any merit.

12. I note that off-market transfer of shares leads to change in beneficial ownership. For the sake of assumption, if the Noticee gave the shares as loan to Chetan Dogra and Daffodil Tradex Pvt., Ltd., 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 and Daffodil Tradex Pvt., Ltd., have further sold in the market. In view of the above, I am not inclined to consider the off-market transfers were done in the normal course of business, but meant for other purposes.

13. Another significant factor to be noted is that the shares were transferred to the demat account of Chetan Dogra and Daffodil Tradex Pvt., Ltd., 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.

14. 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.

15. 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.

16. 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.

17. 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."

18. 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 2,20,000 shares sold by the Noticee to Chetan Dogra and Daffodil Tradex Pvt., Ltd., 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.

19. 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?

20. 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.

21. 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?

22. 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.

23. 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.

24. However, I find that the Noticee had carried out off-market transfer of 2,20,000 shares, without receipt of consideration to Chetan Dogra and Daffodil Tradex Pvt., 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

25. 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., Shree Sudharshan Castings Pvt., Ltd., under Section 23H of SCRA.

26. 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.

27. 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

28. 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

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

Date: February 3, 2021 **PRASANTA MAHAPATRA**

Place: Mumbai **ADJUDICATING OFFICER**