

**BEFORE THE ADJUDICATING OFFICER SECURITIES AND EXCHANGE BOARD
OF INDIA [ADJUDICATION ORDER NO. Order/KS/PP/2020-21/9485]**

**UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA
ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD
OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES
BY ADJUDICATING OFFICER) RULES, 1995**

In respect of:

Pradeep Soni

(Address: Shakti Bhavan, 14 – Ashok Marg,
Lucknow – 226001)

PAN: BATPS7344P

In the matter of U. P. Power Corporation Limited

BACKGROUND

1. Securities and Exchange Board of India (in short **SEBI**) carried out an examination to ascertain compliance status of U. P. Power Corporation Limited (**UPPCL**) with relevant provisions of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (in short **LODR Regulations**), whose non-convertible debentures (**NCDs**) are listed on Bombay Stock Exchange (BSE). During the examination, OD observed that the UPPCL did not make requisite disclosures under the provisions of Regulations 7(3), 9, 13(3), 13(4), 50(1), 50(2), 50(3), 52(1), 52(2), 52(4), 52(5), 52(7), 52(8), 53, 54(2), 57(1), 57(2), 60(2) & 62 of LODR Regulations and resultantly Mr. Pradeep Soni, compliance officer by not ensuring the conformity with regulatory provisions applicable to UPPCL did not comply with Regulation 6(2)(a) of LODR Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

2. As regards alleged non-compliances by UPPCL, SEBI had initiated adjudication proceedings against UPPCL and the compliance officer of UPPCL, Mr. Pradeep Soni (hereinafter referred to as '**Noticee**'). The competent authority *prima facie* being of the view that there are grounds to adjudicate upon the alleged violations, the undersigned has been appointed as Adjudicating Officer (in short **AO**) vide communique dated June 09, 2020, under Section 15-I of The Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **the SEBI Act**) r/w rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (in short **Adjudication Rules**) to inquire into and adjudge under Sections 15A(b) and 15HB of the SEBI Act, the alleged violations of provisions of LODR Regulations by UPPCL and Noticee as detailed in subsequent paras.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Show cause notice ref no. SEBI/HO/A&E/EAD-8/KS/AA/11912/ 1-2 / 2020 dated July 16, 2020 (**SCN**) was issued to UPPCL and the Noticee under rule 4 of the Adjudication Rules advising them to show cause as to why an inquiry should not be held against them and why penalty under Sections 15A(b) and 15HB of the SEBI Act be not imposed on them for the violations alleged and specified in the said SCN. The SCN was sent through digitally signed electronic mail (email) dated July 17, 2020. Copy of email is available on record.
4. The allegations in the SCN are given below in brief:
 1. *It is observed that UPPCL was incorporated on November 30, 1999 and is registered with RoC Kanpur and is primarily involved in the activity of supply of electricity in the state of Uttar Pradesh. From the information provided by BSE, it is observed that all NCDs issues by UPPCL are privately placed and listed on BSE. UPPCL*

has 32 different ISINs listed at BSE as on January 23, 2020. From analysis of the compliance status from BSE, comments of UPPCL and Debenture Trustee (Beacon Trusteeship Ltd.), SEBI observed certain non-compliances of LODR Regulations by UPPCL:

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2. It was observed that Regulation 6(2)(a) of the LODR Regulations requires the compliance officer to ensure conformity with regulatory provisions applicable to the listed entity. In view of the non-compliance of UPPCL with a large number of provisions of LODR Regulations, as brought out in the earlier paragraphs, observation w.r.t. Regulation 6(2)(a) of SEBI (LODR) Regulations, 2015 is as under:

Sl. No.	Regulation	Comments from UPPCL/ Compliance officer	Compliance Status based on information received from BSE/ Beacon Trusteeship Ltd./ UPPCL
1.	Regulation 6(2)(a) The compliance officer shall be responsible for ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.	The company is ensuring all the compliances as required in SEBI LODR Regulations, 2015, except preparation of half yearly accounts.	The company is not in compliance with various provisions of SEBI LODR Regulations, 2015. Status- Not Complied

3. It is observed that Noticee was the compliance officer of UPPCL at the relevant time. In view of the above, it is alleged that Noticee has violated the provisions of Regulation 6(2)(a) of the LODR Regulations. The text of the said provision is given below:

Compliance Officer and his Obligations.

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(2) The compliance officer of the listed entity shall be responsible for-

(a) ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.

4. The above mentioned alleged violations of Regulation 6(2)(a) of LODR Regulations, if proved, make Noticee liable for monetary penalty under the provisions of Section 15HB of the SEBI Act. The text of Section 15HB of the SEBI Act is as below:

SEBI Act

Penalty for contravention where no separate penalty has been provided.

15HB. Whoever fails to comply with any provision of this Act, the Rules or the Regulations made or directions issued by the Board thereunder 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.

5. Noticee vide letter dated July 31, 2020 replied to the SCN. Submissions made in the said reply are summarized as under:-

(i) All Directors in UPPCL and Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd. (UPRVUNL) are appointed by Govt. of Uttar Pradesh and Board of Directors comprises Chairman and Managing Director who are Officers of Indian Administrative Services (IAS). The whole time key Managerial Personal including Company Secretary is appointed through

prescribed interview process. However, in case of vacancy of Company Secretary arises and is not filled up in any company, for time being, a Company Secretary of other Company is engaged to look-after the secretarial work including conducting the meeting of Board of Directors in additional charge. For that additional work, he is not paid any remuneration / honorarium from that Company. The Company Secretary in additional charge being in part time assignment assists in company related matter.

(ii) That, Section 203 of Companies Act, 2013 provides as under:

(1) Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,-

(i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director

(ii) company secretary; and

(iii) Chief Financial Officer:

Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,-

(a) the articles of such a company provide otherwise: or

(b) the company does not carry multiple businesses:

Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.

(2) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration

(3) A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time:

(iii) Therefore, no individual can be appointed as whole time Company Secretary (key Managerial personnel) in more than one Company.

(iv) That the Noticee has joined the UPRVUNL on 16.10.2016 and has taken charge of Whole Company Secretary on 31.07.2017. Since 31.07.2017, the Noticee is working as Whole Time Company Secretary of UPRVUNL in full time employment.

(v) That the Noticee was invited first time in 129th Board Meeting of UPPCL held on 19.06.2017 and as the post of Company Secretary was vacant, the Noticee was engaged in additional work profile to assist in secretarial work for time being under interim arrangement by office order of UP Power Corporation Ltd. dated 08.08.2017. The Noticee looked after meeting related work of UPPCL as additional charge under interim arrangement from 1st August

2017 to 5th March, 2020. However it is pertinent to mention here that Noticee was never appointed as Whole Time Company Secretary and Compliance Officer in UPPCL.

6. Noticee vide hearing notice dated August 18, 2020 was granted a hearing opportunity on September 01, 2020. Noticee, however, requested for inspection of documents. Inspection was granted vide letter dated September 01, 2020. During the course of inspection on September 14, 2020 Noticee and his AR requested copies of all the annexures as mentioned in the SCN and accordingly the same were provided. Proceedings of inspection are on record. Noticee, vide letter dated September 16, 2020, had further requested to provide: *(i) the copy of Board Resolution under Section 203 of the Companies Act, 2013, where the undersigned was appointed as Company Secretary of UPPCL; (ii) the copy of the form DIR 12 which is required to be filed in Ministry of Corporate Affairs, Government of India as per provisions of Companies Act, 2013 where the information regarding appointment of Company Secretary is sent to RoC; (iii) reasons for relying upon email dated 21.01.2020 received from UPPCL (stating Noticee as a compliance officer / company secretary from August 01, 2017 till date of the email).* In this regard, vide email dated September 18, 2020 Noticee was informed that an opportunity of inspection of documents had been availed of by him on September 14, 2020. Further, referring to the observations of Hon'ble Securities Appellate Tribunal in its order dated February 12, 2020, in the matter of Shruti Vora vs. SEBI and order dated July 17, 2020, in the matter of Anant R. Sathe vs. SEBI, the Noticee was informed that all the documents that have been relied upon in respect of the allegation made against Noticee vide the SCN had already been provided to Noticee as Annexures enclosed therein and an inspection of the same had also been carried out by Noticee. In view of the opportunity of inspection of documents availed by Noticee on September 14, 2020, vide email dated

September 18, 2020 a final opportunity to submit additional reply, if any, by September 25, 2020 and an opportunity of hearing on October 1, 2020 at Securities and Exchange Board of India, Lucknow Local Office, 3rd Floor, Eldeco Corporate Chambers-11, Vibhuti Khand, Gomti Nagar, Lucknow- 226 010, Uttar Pradesh were granted. Further, in this regard UPPCL as a submission post its hearing, vide its letter and email both dated October 01, 2020, brought to the notice of undersigned that “ *Pradeep Soni (Noticee), company secretary of UPRVUNL was entrusted with additional charge to look after the conducting of Board meeting related work of the UPPCL till March 05, 2020. The Board of Directors in its meeting held on March 05, 2020 appointed Company Secretary as Compliance Officer. Copy of Board Resolution is enclosed with the reply. During the period under enquiry, the post of company secretary as well as compliance officer was vacant. Thus, there was no dedicated Compliance Officer under SEBI Laws which resulted in some delay in compliance* ”. The Noticee in his post hearing submission dated October 07, 2020 reiterating his earlier submissions, *interalia*, submitted as under-

(i) Acceptance letter issued by undersigned dated 10.08.2017 marked as Annexure – 3 against the Office Memorandum issued by the Managing Director, UPPCL on 08.08.2017, whereby the undersigned issued the acceptance for assisting in conducting the Board Meetings of UPPCL only ; (ii) Copy of Secretarial Audit Report for Financial Year 2018-19, 2017-18 and 2016-17 , whereas it was reported that the post of Company Secretary as well Compliance Officer was vacant during period under investigation, marked as Annexure – 4 ; (iii) Copy of Resolution passed by Board of Directors of UPPCL (as available at BSE Portal), whereas it was recorded that the post of Company Secretary and Compliance officer was filled up first time on 05.03.2020 marked as Annexure – 5. (iv) There is

no single document there in Annexures of SCN, whereas the undersigned has made any communication with BSE, UPPCL, SEBI in any capacity either as Company Secretary or Compliance Officer.

7. After taking into account, the allegations levelled in the SCN, reply to SCN and other material available on record and further ascertaining that inspection opportunity was also availed of by the Noticee as per his request, I hereby proceed to decide the case on merits.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

8. The issues arising for consideration in the instant proceedings before me are:-

Issue a. Whether the Noticee was the compliance officer of UPPCL and acted in violation of the provisions of Regulation 6(2)(a) of LODR Regulations?

Issue b. Do the violations, if any, on the part of the Noticee attracts monetary penalty under Section 15HB of the SEBI Act for the alleged violations by the Noticee?

Issue c. If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act r/w rule 5(2) of the Adjudication Rules?

9. Before proceeding further, I refer to Regulation 6(2)(a) of LODR Regulations which has allegedly been violated by the Noticee and hence the present proceedings. Text of the said provision is reproduced below for reference: -

6. Compliance Officer and his Obligations.

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(2) The compliance officer of the listed entity shall be responsible for-

(a) ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.

FINDINGS:

10. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I hereby record my findings as under:

Issue (a): Whether the Noticee was the compliance officer of UPPCL and acted in violation of the provisions of Regulation 6(2)(a) of LODR Regulations?

11. It is observed that NCDs issued by UPPCL are privately placed and are listed on BSE. As per Regulation 3 of LODR Regulations, LODR Regulations are applicable to the listed entity that has listed any of the designated securities as specified under Regulation 3. Non-convertible debt securities are one such securities covered under Regulation 3 of LODR Regulations. Hence the department of SEBI has ascertained non-compliance by UPPCL with certain post issue and continuous listing obligations as provided under Chapter III and V of LODR Regulations.

12. It is alleged in the SCN that Noticee was the compliance officer of UPPCL at the relevant time as mentioned in subsequent paragraph. The compliance officer of the listed entity has the responsibility to ensure conformity with the regulatory provisions as applicable to the listed entity as per the provisions of law. It is alleged

that Noticee has failed in his responsibility to ensure conformity with the regulatory provisions of LODR Regulations as applicable to UPPCL. Thus, Noticee has alleged to have violated Regulation 6(2)(a) of the LODR Regulations.

13. Before moving forward, I note that the alleged violations in the SCN pertain to the period 2017-2019 and part of 2019-20. The Noticee is alleged to be the compliance officer of UPPCL at the relevant point in time and has allegedly been held responsible for non – compliance with certain provisions of LODR Regulations. However, I note from the submissions made by the Noticee that he was the Company Secretary of Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited (**UPRVUNL**) and holding additional charge in UPPCL under interim arrangement from 1st August 2017 to 5th March, 2020. In this regard the Noticee has referred to an Office Memorandum dated August 08, 2017 and has submitted a copy of the letter dated August 10, 2017 addressed to the Managing Director of UPPCL accepting additional charge of secretarial work relating to Meetings of UPPCL. The Noticee has also relied upon certain other documents such as secretarial audit report in order to buttress his stand that UPPCL had not appointed a company secretary during the financial years 2016-17, 2017-18 and 2018-19. The Noticee has also submitted a copy of the Board resolution dated March 05, 2020 for appointment of Ms. Niharika Gupta as the company secretary of UPPCL. I further note the submission of the Noticee that he had never signed the compliance report under LODR Regulations.

14. In order to re-confirm the above facts, during the hearing of UPPCL, the entity (UPPCL) was advised to confirm the role assigned to the Noticee (i.e. Shri Pradeep

Soni). I note from the post hearing email submissions of UPPCL dated October 01, 2020 whereby it has been stated that (i) *the Noticee, Company Secretary of U.P. Rajya Vidyut Utpadan Nigam Limited was entrusted with additional charge to look after the conducting of Board Meeting related work of the Company till 05.03.2020;* (ii) *the Board of Directors in its Meeting held on 05.03.2020 appointed Company Secretary as Compliance Officer;* (iii) *During the period under your enquiry, the post of Company Secretary as well as Compliance Officer was vacant. Thus there was no dedicated Compliance Officer under SEBI Laws, rules and Regulations which resulted in some delay in Compliances.* In view of the above, I observe that the alleged violation against the Noticee i.e Shri Pradeep Soni in the SCN does not stand established. As a consequence, issues (b) and (c) do not merit any consideration.

ORDER

15. In view of the above paragraphs, I hereby dispose of the Adjudication Proceedings initiated against the Noticee vide SCN dated July 16, 2020 without imposing any monetary penalty.

Place: Mumbai

Date: October 28, 2020

**K SARAVANAN
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER**