National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/59423	Date: November 17, 2023
Circular Ref. No: 236/2023	

To All NSE Members

Sub: **SEBI Order in the matter of Unimax Agrotech India Limited**

SEBI vide its Order no. WTM/ASB/NRO/NRO/29763/2023-24 dated November 17, 2023 has restrained the below mentioned Noticees from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities market, in any manner whatsoever, for a period beginning from the date of this Order till the expiry of 5 (five) years from the date of completion of refunds to investors, as directed in the SEBI Order.

Sr. No.	Name of Entity	PAN	CIN/DIN
1	Unimax Agrotech India Ltd	AABCU3804A	U74999UR2011PLC000033
2	Rajendra Singh	BQOPS0718L	02915095
3	Surender Kumar Sharma	COPPS8711H	05127341
4	Shashi Bhushan	ANVPB9445J	05127335
5	Sanjiv Kumar	BWLPK9982K	05127329
6	Anil Kumar Sagar	AYLPS2073A	05127321

Further, If the above entities have any open position in any exchange traded derivative contracts, as on the date of the order, they can close out / square off such open positions within 3 months from the date of this order or at the expiry of such contracts, whichever is earlier. The above entities, however, permitted to settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.

The detailed order is available on SEBI website. (https://www.sebi.gov.in/sebiweb/home).

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page at the below link:

https://www.nseindia.com/regulations/member-sebi-debarred-entities

National Stock Exchange of India

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to email us at dl-invsg-all@nse.co.in

For and on behalf of
National Stock Exchange of India Limited

Anand Jangir
Manager

ANNEXURE: SEBI Order in the matter of Unimax Agrotech India Limited

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

Under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992

In respect of:

SL. NO.	NOTICEE(S)	PAN	CIN/DIN
1.	Unimax Agrotech India Ltd.	AABCU3804A	U74999UR2011PLC000033
2.	Rajendra Singh	BQOPS0718L	02915095
3.	Surender Kumar Sharma	COPPS8711H	05127341
4.	Shashi Bhushan	ANVPB9445J	05127335
5.	Sanjiv Kumar	BWLPK9982K	05127329
6.	Anil Kumar Sagar	AYLPS2073A	05127321

(The aforesaid entities are hereinafter referred to by their respective names or Noticee number and collectively as "the Noticees".)

In the matter of Unimax Agrotech India Limited

Background:

1. Pursuant to receipt of complaints pertaining to the issuance of Redeemable Preference Shares (herinafter referred to as '**RPS'**) by Unimax Agrotech India Limited (herinafter referred to as '**UAIL'**/'**Company'**), Securities And Exchange Board Of India (herinafter referred to as '**SEBI'**) initiated an examination to ascertain whether there was any violation of the provisions of the Companies Act, 1956 with respect to issuance of RPS by the Company during FYs 2011-12, 2012-13 and 2013-14.

2. Upon examination of the information / documents obtained from the Ministry of Corporate Affairs (MCA) Website i.e. MCA 21 Portal, Registrar of Companies (RoC), Uttarakhand, complaints received and the documents enclosed therewith, the following was observed:

(a) UAIL (CIN: U74999UR2011PLC000033 / PAN: AABCU3804A) was incorporated on December 8, 2011 with the RoC, Uttarakhand, having its registered office at Ward No.-4, Opp.- Petrol Pump Gadarpur, Dineshpur, Udham Singh Nagar Uttarakhand -263160. As per Form 18, there was a change of registered office address with effect from 26/12/2011 to D1, D2-33, Pragati Vihar Gali, Hotel Silver Point, Rudrapur, Udham Singh Nagar, Uttarakhand - 263153. This was again changed on 05.10.2013 to Shop No. 1, 2 & 3, Second Floor, Business Plaza Rudrapur Udham Singh Nagar, Uttarakhand- 263153.

(b) The details of the directors during the period under examination were as follows:

Sr. No.	Name of Director	DIN	PAN	Date of Appointment	Date of Cessation
1	Rajendra Singh	02915095	BQOPS0718L	08.12.2011	-
2	Surender Kumar Sharma	05127341	COPPS8711H	08.12.2011	09.03.2015
3	Shashi Bhusan	05127335	ANVPB9445J	08.12.2011	08.08.2015
4	Sanjiv Kumar	05127329	BWLPK9982K	08.12.2011	25.04.2015
5	Anil Kumar Sagar	05127321	AYLPS2073A	08.12.2011	03.08.2015

(c) The details of issuances of RPS, as per the list of allottees available on MCA website, are given below.

Sl. No.	Date of Allotment	No. of Preference Shares allotted	No. of Allottees	Amount Raised (₹)
1	31.12.2011	1,15,000	71	11,50,000
2	20.01.2012	25,300	15	2,53,000
3	01.05.2012	63,800	67	6,38,000
4	28.05.2012	78,100	84	7,81,000
5	19.06.2012	1,64,800	92	16,48,000
6	17.08.2012	1,48,500	97	14,85,000
7	10.09.2012	67,900	39	6,79,000
8	08.10.2012	1,09,100	70	10,91,000
9	16.11.2012	1,81,800	61	18,18,000
10	24.12.2012	1,84,000	73	18,40,000
11	24.01.2013	4,00,650	218	40,06,500
12	22.02.2013	1,29,200	74	12,92,000

13	22.03.2013	1,45,350	74	14,53,500
14	17.04.2013	1,19,650	71	11,96,500
15	21.05.2013	1,47,650	59	14,76,500
16	17.06.2013	1,17,500	67	11,75,000
17	18.07.2013	2,51,800	127	25,18,000
18	12.09.2013	1,85,400	121	18,54,000
19	07.10.2013	91,000	58	9,10,000
20	21.10.2013	42,800	35	4,28,000
21	21.11.2013	80,300	30	8,03,000
22	20.12.2013	74,300	48	7,43,000
23	24.02.2014	1,44,200	52	14,42,000
24	01.03.2014	77,600	45	7,76,000
25	28.03.2014	88,600	40	8,86,000
26	31.03.2014	1,45,300	47	14,53,000
Total		**33,79,600**	**1,835**	**3,37,96,000**

3. From the above, it was noted that, as per the information available on MCA Website, UAIL had allotted RPS to 1835 investors during FYs 2011-12, 2012-13 and 2013-14 and mobilised funds amounting to Rs.3,37,96,000. Year wise summary of said allotments is provided below:

Financial Year	No. of allottees	Amount (₹)
2011-12	86	14,03,000
2012-13	949	1,67,32,000
2013-14	800	1,56,61,000
Total	**1,835**	**3,37,96,000**

4. It was *prima facie* observed that UAIL had issued RPS to more than 49 investors during each of the FYs 2011-12, 2012-13 and 2013-14, without complying with the provisions of Section 56(1), 56(3), 60 and 73 read with Section 67 of the Companies Act, 1956.

Show Cause Notice, Replies and Personal Hearings

5. In view of the above, a common show cause notice dated July 22, 2021 (**SCN**) was issued to the Company and its directors (Noticees) calling upon them to show cause as to why suitable directions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act, 1992 should not be issued against them for the alleged violations.

6. The SCN was sent to the Noticees through Speed Post. While the SCN was delivered to the Company (Noticee 1), Shri Surender Kumar Sharma (Noticee 3) and Shri Shashi Bhushan (Noticee 4), the SCN sent to Shri Sanjiv Kumar

(Noticee 5) and Shri Anil Kumar Sagar (Noticee 6) returned undelivered. The status of delivery of SCN to Shri Rajendra Singh (Noticee 2) could not be confirmed. Thereafter, attempts were made to serve the SCN on Shri Rajendra Singh (Noticee 2), Shri Sanjiv Kumar (Noticee 5) and Shri Anil Kumar Sagar (Noticee 6) through affixture at the last known address. However, their addresses could not be identified during the visits to their places. Subsequently, intimation regarding the SCN was published in the newspapers on October 05, 2023.

7. In the meantime, an envelope was received on May 25, 2022 from Shri Rajendra Singh (Noticee 2) through Speed Post, which merely contained a copy of Annual Return of the Company (Date of AGM: 30.09.2013) and a list of members of the Company as on 30.09.2013. The said list contained names of 723 persons and appeared to be incomplete (as the last page was number as '*Page 34 of 66*'). However, there was no covering letter found with the abovementioned documents.

8. Shri Shrendra Kumar Sharma (Noticee 3) and Shri Shashi Bhushan (Noticee 4) have filed their reposes to the SCN. They were granted an opportunity of personal hearing on June 22, 2022 and July 04, 2022 respectively, which was attended by them.

9. The Noticees 1, 2, 5 and 6 have failed to respond to the SCN in any manner whatsoever. The said Noticees were granted an opportunity of personal hearing on June 22, 2023. Attempt to serve the hearing notices for the same were unsuccessful. Later, another hearing was scheduled for the said Noticees on October 18, 2023. The hearing notices sent through speed post returned undelivered. Attempts to serve the notices through affixture were also not successful, as their addresses could not be identified. Subsequently, a notice regarding the hearing was published in the newspapers on October 05, 2023. However, none of the said Noticees appeared for the said hearing.

10. Vide letters dated September 27, 2023, Shri Surender Kumar Sharma (Noticee 3) and Shri Shashi Bhushan (Noticee 4) were advised to submit additional written submissions, if any. However, the same was responded to by Shri Surender Kumar Sharma (Noticee 3) only.

11. Shri Surender Kumar Sharma (Noticee 3) vide his letters dated August 11, 2021 September 18, 2021, June 22, 2022, June 24, 2022 and October 06, 2023 has submitted *inter alia* that he had resigned from directorship of the Company on March 02, 2015. He further submitted that his resignation was accepted by the board of the Company on March 09, 2015 and he has no connection with the Company. He further stated that he was unable to provide any information regarding the allegations in the SCN and that it would be proper to ask such information from Shri Rajendra Singh (Noticee 2). The Noticee has also submitted that as per an agreement dated March 02, 2015 between him and other directors of the Company, the Noticee has discharged all his obligations to the Company. Further, the Noticee and his wife have also lodged a criminal case / FIR against the Company and other directors.

12. Shri Shashi Bhushan (Noticee 4) vide his letters dated August 14, 2021, September 21, 2021 has submitted *inter alia* that he had resigned from the directorship of the Company on August 05, 2015. After his resignation, he was not involved in any of the decisions related to the Company and was not in contact with any of the directors of the Company. He further submitted that even before his resignation, he was not authorized to sign any important document of the Company and he was not much involved in the Board decisions of the Company. He also submitted that he had issued a notice in the newspapers regarding his resignation from the Company. He also submitted that he was not holding any document of the Company.

Consideration of issues and findings:

13. I have examined the allegations mentioned in the SCN, the submissions made by the Noticees 3 and 4 and the documents and material available on record.

14. As already stated above, Noticees 1, 2, 5 and 6 have not responded to SCN in any manner whatsoever. Accordingly, the matter against them is being proceeded on the basis of material available on record.

15. I note that as per the documents obtained from MCA Website, UAIL had offered and made 26 allotments of RPS (*offer and allotment of RPS*) during the three

FYs, viz. 2011-12, 2012-13 and 2013-14, details of which are provided under paragraph 2(c) above. Since the *offer and allotment of RPS* had taken place prior to April 01, 2014, the provisions of the Companies Act, 1956 were applicable to such offer and allotment of RPS. Section 67 of the Companies Act, 1956, which was applicable at the relevant time, dealt with the conditions or circumstances under which an offer of shares / debentures by a company was to be construed as one made to the public. Relevant provisions of section 67 of the Companies Act, 1956, dealing with offer of shares or debentures to the public, are reproduced below:

*"**Construction of reference to offering shares or debentures to the public, etc.***

***67.** (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*

(2) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(3) No offer or invitation shall be treated as made to the public by virtue of sub- section (1) or sub- section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

*(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation. **Provided** that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:*

***Provided further** that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956)."*

16. In terms of the first proviso to section 67(3), an offer of shares or debentures made to fifty persons or more constituted an offer to the public. In this regard, it is observed that UAIL had issued RPS to 1,835 investors during 2010-11 to 2013-14, as detailed in the Table under paragraph 3 above. The number of investors to whom RPS was issued exceeded 49 during each financial year. As UAIL is not a non-banking financial company or a public financial institution within the meaning of Section 4A of the Companies Act, 1956, it is not covered under the second proviso to Section 67(3) of the Companies Act, 1956. Therefore, the abovementioned *offer and allotment of RPS* by UAIL qualified to be construed as an offer made to the public in terms of section 67(3) of the Companies Act, 1956.

17. I note from records that the Company had also issued RPS even after March 31, 2013 (as copy of a certificate submitted by a complainant, which is available on record, shows the date of allotment as 30/04/2014). However, the total number of RPS issued after March 31, 2013 is not known, since the Company and its directors have failed to provide information in this regard.

18. Since the issuance of RPS by UAIL was a public issue of securities, such securities were required to be listed on a recognized stock exchange, as mandated under relevant provisions of Section 73 of the Companies Act, 1956, which are reproduced as under:

"73. (1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.
(1A) …

(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not

more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank until the permission has been granted, or where an appeal has been preferred against the refusal to grant such. permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in sub- section (2);"

19. In the Sahara Case, the Hon'ble Supreme Court of India had examined Section 73 of the Companies Act, 1956, wherein it observed that –

"Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty-nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section (1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for the permission under sub-section (1) of Section 73 or not granting of permission is clearly stipulated in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Act. Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons."

20. There is nothing on record to suggest that the Company complied with the provisions of Section 73(1) of the Companies Act, 1956, as regards the abovementioned *offer and allotment of RPS*.

21. As per Section 73(2) of the Companies Act, 1956, UAIL had an obligation to refund the amount with interest that was collected from investors under *offer and allotment of RPS*, within 8 days. However, investor complaints available on record show that the Company failed to refund the amount collected from

investors within prescribed time, indicating that UAIL has not complied with the provisions of Section 73(2) of the Companies Act, 1956.

22. As per Section 73(3) of Companies Act, 1956, *all the moneys received shall be kept in a separate bank account maintained with a Scheduled Bank.* In the instant case, there is no evidence on record to indicate whether or not funds received from the investors under *offer and allotment of RPS* were kept in separate bank account by UAIL. It is thus found that UAIL has not complied with the provisions of Section 73(3) of Companies Act, 1956.

23. Section 56(1) of the Companies Act, 1956 provided that *every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act.* Further, as per Section 56(3) of the Companies Act, 1956, *no one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by abridged prospectus, contain disclosures as specified.* It is noted that there is nothing on record to indicate that UAIL had complied with the provisions of Section 56(1) & (3) of the Companies Act, 1956, in respect of the *offer and allotment of RPS*. In view of the same, I find that UAIL has not complied with the provisions of Sections 56(1) & (3) of the Companies Act, 1956 in respect of the *offer and allotment of RPS*.

24. Further, Section 60 of the Companies Act, 1956 provided for registration of such prospectus with the ROC, before making a public offer or issuing the prospectus. As per Section 2(36) of the Companies Act, 1956, *"prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate."* As mentioned above, since the *offer and allotment RPS* was made to more than fifty persons, which qualified it to be a public offer, UAIL was required to register a prospectus with the ROC under Section 60 of the Companies Act, 1956. However, by failing to register a prospectus with ROC, UAIL has contravened the provisions of Section 60 read with Section 2(36) of the Companies Act, 1956.

25. It is noted that Noticees 2 to 6 were directors of UAIL at the relevant time when the offer and allotment of RPS was made to public. The tenures of their directorship are mentioned in the Table under paragraph 2(b) above.

26. Section 5 of the Companies Act, 1956 provided the following definition of an "officer who is in default":

"5. For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely :
(a) the managing director or managing directors;
(b) the whole-time director or whole-time directors;
(c) the manager;
(d) the secretary;
(e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;
(f) any person charged by the Board with the responsibility of complying with that provision:
Provided that the person so charged has given his consent in this behalf to the Board;
(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors :
Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form."

27. In light of the provisions of Section 5 of the Companies Act, 1956, which defines "officer who is in default", the Noticees are accountable for the violations committed by the Company. Further, Noticees 2 to 6 are also liable, along with the Company, to refund the money to investors of RPS, in terms of Section 73(2) of the Companies Act, 1956.

28. I note that Shri Surender Kumar Sharma (Noticee 3) and Shri Shashi Bhushan (Noticee 4) have repeatedly contended that they had resigned from the directorship of the Company in 2015. They have submitted that since they have

resigned as directors, they are no longer accountable for the acts of the Company. However, it is noted that the *offer and allotment of RPS* by UAIL had taken place before their resignations from the Company. Shri Shashi Bhushan has also submitted that even prior to his resignation, he was not authorized to sign Company's documents and was not involved in the Company's decisions. However, it is noted from records that Shri Surender Kumar Sharma and Shri Shashi Bhushan had actively participated in the offer and allotment of RPS by UAIL, which is evident from the fact that various board resolutions of UAIL which authorized the allotment of RPS to investors bore the signatures of all the Noticee directors, including Shri Surender Kumar Sharma and Shri Shashi Bhushan (Noticees 3 and 4). Thus, the Noticees remain liable for the acts of the Company which were done prior to their resignation from the posts of director. Accordingly, I do not find any merit in the contentions of the Noticees 3 and 4.

Directions:

29. I, in exercise of the powers conferred upon me under Sections 11 (1), 11(4) and 11A and 11B read with Section 19 of the SEBI Act, 1992 hereby issue the following directions:

(a) The Noticees 1 to 6 shall jointly and severally refund the money collected through the *offer and allotment of RPS* by UAIL, with an interest of 15% per annum [the interest being calculated from the date when the repayments became due in terms of Section 73(2) of the Companies Act, 1956 till the date of actual payment], within a period of 90 days from the date of receipt of this Order.

(b) The refund, as directed above, shall be made through banking channels such as demand draft or electronic mode of transfer and a trail of such refunds shall be maintained by the Noticees for verification, if necessitated at a later date.

(c) The Noticees 1 to 6 shall cause a public notice to be issued, in all editions of two National Dailies (one English and one Hindi) with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order.

(d) The Noticees 1 to 6 shall not alienate or dispose of or sell any of the assets of UAIL or any other asset acquired out of the funds collected from investors of UAIL, except for the purpose of making refunds to investors as directed above.

(e) Within fifteen days of completion of refund as directed above, the Noticees shall file a certificate of such completion with SEBI, certified by two independent Chartered Accountants upon proper verification of the details of all such refunds from records including bank accounts of the Noticee 1 and after being satisfied that the refund to the all the investors of RPS has actually been made.

(f) The Noticees 1 to 6 are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities market, in any manner whatsoever, for a period beginning from the date of this Order till the expiry of 5 (five) years from the date of completion of refunds to investors, as directed above.

(g) The Noticees 2 to 6 are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI, for a period beginning from the date of this Order till the expiry of 5 (five) years from the date of completion of refunds to investors, as directed above.

(h) If the Noticees 1 to 6 have any open position in any exchange traded derivative contracts, as on the date of the order, they can close out / square off such open positions within 3 months from the date of this order or at the expiry of such contracts, whichever is earlier. The Noticees 1 to 6 are, however, permitted to settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.

30. In the event of Noticees 1 to 6 failing to comply with the directions of refund as stated above, SEBI may initiate recovery proceedings in accordance with the provisions of the SEBI Act, 1992.

31. This Order shall come into force with immediate effect.

32. A copy of this Order shall be served on the Noticees, the recognized Stock Exchanges, Depositories and RTAs for ensuring compliance of this Order. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs.

PLACE: MUMBAI **ASHWANI BHATIA**

DATE: NOVEMBER 17, 2023 **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA