BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. JJ/AK/AO–34/2015

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

In respect of:

M/s. Delight Handicrafts Palace Limited

(PAN – AABCD1278K)

In the Matter of M/s Delight Handicrafts Palace Limited

BACKGROUND

1. Securities and Exchange Board of India **(**hereinafter referred to as **"SEBI")** came out with a Circular dated June 03, 2011 dealing with the processing of investor complaints against listed companies through SEBI Complaints Redress System **(**hereinafter referred to as "**SCORES")**. In terms of said Circular, all listed companies were inter alia required to view the complaints pending against them, redress them and submit Action Taken Reports **(**hereinafter referred to as **"ATRs")** electronically in SCORES. As the SCORES is online electronic system, therefore, for the purposes of accessing the complaints of the investors against them, as uploaded in the SCORES, listed companies were required to login to SCORES system electronically through a company specific user id and password, to be provided by SEBI. For the purpose of generating said user id and password, listed companies which were yet to obtain SCORES user id and password, were required to submit the details for authentication to SEBI, in the format annexed to the said Circular. However, it was observed that M/s Delight Handicrafts Palace Limited

(hereinafter referred to as **"Noticee")** did not submit the details to SEBI which were required to be furnished in terms of the said Circular.

2. In order to further remind the Noticee about the compliance with the requirements as laid down in the SEBI Circular dated June 03, 2011, letter dated April 25, 2012 were sent to the Noticee informing about the commencement of processing of investor complaints in a centralized web based complaints redress system "SCORES" in terms of the Circular and advising the Noticee to send the information (i.e. details for authentication) as required in the Circular, at the earliest.

3. As observed from the contents of the Circular, SCORES introduced electronic dealing of the complaints of the investors, by the respective companies. Thus, once a complaint against a company was uploaded by SEBI in the SCORES, it amounted to calling upon by SEBI to such company to redress the investor grievance. Accordingly, it was incumbent upon such company to redress the investor complaint. It was observed that seven investor complaint was pending against the Noticee as on August 27, 2012. However, it was alleged that the Noticee failed to redress pending investor grievances and also failed to obtain SCORES authentication in spite of being called upon by SEBI to do so thereby violating the provisions of Section 15C of the SEBI Act, 1992.

4. Shri Praveen Trivedi was appointed as the Adjudicating Officer to inquire and adjudge under Section 15C of the SEBI Act, 1992, the alleged violations committed by the Noticee. Pursuant to the transfer of Shri Praveen Trivedi, the undersigned was appointed as Adjudicating Officer vide Order dated December 18, 2013.

SHOW CAUSE NOTICE, HEARING & REPLY

5. Show Cause Notice **(SCN)** in terms of the provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 **(**hereinafter referred to as **"Adjudication Rules")** was issued to the Noticee on July 19, 2013, calling upon the Noticee to show cause

why an inquiry should not be held against it under Rule 4(3) of the Adjudication Rules read with Section 15I of the SEBI Act, 1992 for the alleged violations.

6. I find from the records that the aforesaid SCN was sent at the last known address of the Noticee at *"P.O. & Vill. Tilathi, Mirzapur Uttar Pradesh - 231001"*. The said SCN was duly delivered to the Noticee through the Department of Post.

7. Subsequent to the appointment of the undersigned, in the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Adjudication Rules, the Noticee was granted an opportunity of personal hearing on February 13, 2015, vide notice dated January 20, 2015 at SEBI, Head Office, Mumbai. The said Notice of hearing dated January 20, 2015 along with a copy of SCN dated July 19, 2013 was sent via hand at the aforesaid address of the Noticee through Lucknow Local Office of SEBI was returned undelivered. However, the copy of said Notice of hearing dated January 20, 2015 along with a copy of SCN dated July 19, 2013 was also sent at the aforesaid address of the Noticee through Registered Post AD.

8. Noticee vide letter and email dated February 09, 2015 had stated *inter alia* as under:

".....

- *I on behalf of the company, being Director thereof, is in receipt of your notice dated 20.01.2015 and noted the contents therein.*

  The desired contact detail is as under:-

  Phone number – 09167433620
  Permanent account number of the company – ***AABCD1278K***
  Email address – ramjicarpet@yahoo.com

- *In view of the fact that the company has remained doremant almost for the last more than Seven years now, I would like to file a mercy petition before the Adjudicating Officer of SEBI. Therefore, by this letter, it is requested a personal hearing in the matter may please be granted at New Delhi.*

- *Mr. Prakash Gupta, Statutory Auditor of the company, who is Delhi based will appear before the Adjudicating Officer in this regard alongwith his ID as directed by your honour....."*

9. Vide email dated February 09, 2015, Shri Ramji Mishra, Director of the Noticee was informed that his request for change of place of hearing from Mumbai to New Delhi was not acceded and Noticee was advised to appear for the hearing as scheduled vide notice of hearing dated January 20, 2015.

10. On the scheduled date of personal hearing, Mr. Pradeep Kumar Srivastav, appeared as Authorised Representative **(AR).** During the hearing, the AR made the following submissions, which *inter alia*, stated as under:

    - *I reiterated the submissions made by the Noticee vide letter dated February 09, 2015. In addition to it I submit additional written submissions in the matter vide letter dated February 13, 2015. I request 10 days time to submit the status of the complaints. Further, I do not have any other submissions to make in the matter.*

11. Noticee vide letter dated February 13, 2015 stated *inter alia* as under:

    ".....

    I on behalf of the company being Authorized Representative attend/appear before you and my submission are as below:

    - *That the company more or less a dormant company for last more than seven year.*
    - *that the company has not been complied to comply with the requirement of law firstly on account of its financial position and secondly it is virtually impossible to hire company secretary in remote village of U.P.*
    - *That besides the above company face a number of problem but feel there responsibility.*
    - *That Company being disturbed for which there investor in problem. But company ready for solve their problem as soon as possible.*
    - *That in this regard company want only some time for their compliance.*

    Therefore, keeping in view above facts & circumstances please provided some time to the company and further it is requested no any coercive action against the company or its director may please be taken....."

12. Noticee further vide letter dated February 23, 2015 stated *inter alia* as under:

"……

- *As informed to you vide my earlier letter dated 09.02.2015, the noticee company is virtually a dormant company as on this date. The company was engaged in the business of manufacturing and exporting of hand knotted carpets and it was exporting its products to USA and EUROPE. The company established its own joint venture company at Germany in the year of 1999-2000. Unfortunately, the German Partner played fouled with us and the noticee company suffered heavy losses. It resulted in multifarious litigation from bankers, vendors and other stakeholders. Day by day the company lost everything and for last more than 7 years there are no business transactions. I do not have any infrastructure facility at my disposal to take care day to day matters of the company. With my limited means, somehow or other I am trying to settle the pending issues whether legal or otherwise.*
- *No doubt, there is default on the part of the company for not getting it registered with SCORES as per the circular on time. Now the company has got itself registered with SCORES and whatever were the pending complaints of the shareholders has been resolved.*
- *I am also taking necessary action to resolve all other pending complaints of the shareholders / SEBI / Stock Exchange or any other entity at earliest. However, I need to have some breathing time in this regard.*

……"

ISSUES FOR CONSIDERATION

13. After perusal of the material available on record, I have the following issues for consideration, viz.,
    A. Whether the Noticee has failed to resolve investor grievances?
    B. Whether the Noticee is liable for monetary penalty under Section 15C of the SEBI Act, 1992?
    C. What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

FINDINGS

14. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

ISSUE 1: Whether the Noticee has failed to resolve investor grievances?

15. As already observed, SEBI introduced an online electronic system for resolution of investor grievances, i.e., SCORES in 2011. For the purposes of accessing the complaints of the investors against them, as uploaded in the SCORES, listed companies were required to login to SCORES system electronically through a company specific user id and password, to be provided by SEBI. By not submitting the details for authentication as required by the Circular, the Noticee did not obtain the user id and password which was essential for accessing the complaints pertaining to the Noticee, as uploaded on the SCORES for redressing the investors grievances and subsequent redressal thereof. Vide letter dated April 25, 2012 the Noticee was once again advised to obtain the SCORES authentication. However, the Noticee failed to obtain the SCORES authentication. From the SCN I also note that the Noticee did not resolve 7 (seven) investor grievances pending against it as on August 27, 2012.

16. I note that though SEBI had introduced online electronic system for resolution of investor grievances, i.e., SCORES vide Circular dated June 03, 2011; the Noticee had obtained SCORES authentication (user id and password) on February 18, 2015 i.e. subsequent to the issuance of SCN and initiate the process of redressing the grievances of investors only in February 2015. I note that the said SEBI Circular clearly states that all listed companies are required to view the complaints pending against them and submit ATRs alongwith supporting documents electronically in SCORES and failure to update the ATR in SCORES will be treated as non redressal of investor complaints by the company. Further, Hon'ble SAT in *S. S. Forgings & Engineering Limited & Others v SEBI*, Appeal No. 176 of 2014 (decided on August 28, 2014) has, *inter-alia*, observed that – *"……Undoubtedly, an obligation is cast upon every listed company to redress investors' grievances in a time bound manner as may be prescribed by SEBI from time to time……. This*

Tribunal has consistently held that redressal of investors' grievances is extremely important for the Regulator to regulate the capital market. If the grievances are not redressed within a time bound framework, it leads to frustration among the investors' who may not be motivated to further invest in the capital market. Hence the importance of complaints redressal system initiated by SEBI in June, 2011 cannot be undermined and its sanctity has to be maintained by all the listed companies…….". Therefore, I hold that the Noticee has failed in its duty of resolving the investor grievances pending against it as alleged in the SCN.

ISSUE 2: Whether the Noticee is liable for monetary penalty under Section 15C of the SEBI Act, 1992?

17. The provisions of Section 15C of the SEBI Act, 1992, read as under:

> ***15C Penalty for failure to redress investors' grievances:*** *If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.*

18. In the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)*, the Hon'ble Supreme Court of India has held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant*".

19. A listed company is expected to comply with the extant regulatory and statutory requirements. As already observed, the Noticee failed in resolving the investor grievances pending against it, despite being called upon to do so by SEBI. Therefore, the Noticee is also liable for monetary penalty under Section 15C of the SEBI Act, 1992.

ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

20. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of the Act, which reads as under:

> ***"15J - Factors to be taken into account by the adjudicating officer***
> *While adjudging quantum of penalty under section 15-I, 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."*

21. In the absence of material on record, the amount of disproportionate gain or unfair advantage made as a result of the default and the amount of loss caused to the investors due to the said default cannot be quantified. However, the fact remains that the Noticee, being a listed company, failed to fulfil its duty of complying with SEBI Circulars. It is the duty of SEBI to ensure speedy resolution of investor grievances and to further the cause SEBI has come out with SCORES which is a centralized web based complaints redress system that enable investors to lodge and follow up their complaints and track the status of redressal of such complaints from anywhere. After introduction of SCORES, all listed companies are required to view the complaints pending against them and submit ATRs alongwith supporting documents electronically in SCORES and SEBI Circular dated June 03, 2011 clearly states that failure to update the ATR in SCORES will be treated as non redressal of investor complaints by the company. However, listed companies like the Noticee which do not obtain SCORES authentication and do not resolve investor grievances and upload ATRs in SCORES despite SEBI Circulars frustrate the entire process. It is of utmost importance that every listed company assigns high priority to investor grievances and takes all necessary steps to redress the grievances of investors at the earliest, which the Noticee has failed to do. Hence, the omission on part of the Noticee is detrimental to the interest of investors in securities market.

However, while imposing monetary penalty, I have also considered the fact that the Noticee has taken SCORES authentication on February 18, 2015 and SEBI has informed that Noticee had not resolved the 7 (seven) pending investor grievances (as mentioned in the SCN) till February 24, 2015.

22. In view of the aforesaid paragraphs, it is now established that the Noticee failed to resolve investor grievance and therefore I find that imposing a penalty of ₹ 3,00,000/- (Rupees Three Lakh only) on the Noticee would be commensurate with the violation committed.

ORDER

23. Considering the facts and circumstances of the case, in terms of the provisions of SEBI Act, 1992 and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 3,00,000/- (Rupees Three Lakh only) under Section 15C of the SEBI Act, 1992, on M/s Delight Handicrafts Palace Limited.

24. The penalty shall be paid 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 said demand draft shall be forwarded to the Regional Director, Northern Regional Office, Securities and Exchange Board of India, 5th Floor, Bank of Baroda Building, 16, Sansad Marg, New Delhi – 110001.

25. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to the Noticee and also to Securities and Exchange Board of India.

Date: February 27, 2015 **Jayanta Jash**
Place: Mumbai **Adjudicating Officer**