

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO.VKV/DL/AO-50/2016**

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 Nova Surgikos Limited
(PAN-Not Available)
601, Som Dutt Chambers II,
Bhikaji Cama Place,
New Delhi-110048**

In the matter of Non-redressal of investor grievance(s)

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 the 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. 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 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 Nova Surgikos Limited** (hereinafter referred to as '**Noticee/the Company**') did not submit the details to SEBI which were required to be furnished in terms of the said Circular.
2. 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 one (01) investor complaint(s) were pending against the Noticee as on July 20, 2012.

3. It was alleged that Noticee had not submitted the details for SCORES authentication as required by the Circular and aforesaid letters, thereby 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, within specified time. Thus it was alleged that Noticee had failed to redress pending investor grievances which render the Noticee liable for imposition of penalty under section 15C of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

4. Shri Ram Mohan Rao was appointed as the Adjudicating Officer vide order dated August 22, 2012 under section 15-I of SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to inquire and adjudge under Section 15C of the SEBI Act, 1992, the alleged violations committed by the Noticee. Subsequent to the transfer of Shri Ram Mohan Rao, the undersigned was appointed as Adjudicating Officer vide order dated June 25, 2013.

SHOW CAUSE NOTICE AND REPLY

5. A Show Cause Notice (hereinafter referred to as "**SCN**") was issued to the Noticee under Rule 4(1) of SEBI Adjudication Rules to show cause as to why an inquiry be not held against it in terms of Rule 4 of the Adjudication Rules read with section 15I of SEBI Act, 1992 and penalty be not imposed under section 15C of SEBI Act, 1992 for the violation alleged to have been committed by the Noticee.
6. The said SCN bearing No. SEBI/NRO/AO/VKV/DL/207/2016 dated February 02, 2016 was sent at the last known address(s) of the Noticee through Postal Department. Noticee failed to submit any reply to the SCN.

7. Considering the facts and circumstances of the case the undersigned is of the opinion that no prejudice would be caused to the Noticee in the given matter, if opportunity of hearing under Rule 4(3) of Adjudication Rules is not provided to it and I deem it appropriate to decide the matter on the basis of facts/materials available on record.
8. After perusal of the material available on record, I have the following issues for consideration, viz.,
 - a) Whether the Noticee has violated the provisions of Section 15C of SEBI Act, 1992?
 - 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

9. I find that in the website of Ministry of Company Affairs, the status of the Noticee is mentioned as 'Under Liquidation'. Subsequently, SEBI has confirmed that as per SCORES, the status of the Noticee is under 'Liquidation' and after verifying the status of liquidation from the website of the Office of Official Liquidator, Delhi, I found that the Noticee was compulsory wound up by Official Liquidator vide order dated 31.05.2005
(Source- http://delhiol.com/companies_under_winding.aspx)
10. I am of the view that before proceeding in the matter on its merit, it would be in the fitness of the thing to first decide the preliminary issue as to whether the adjudication proceedings initiated by SEBI against the Noticee would continue.
11. In order to examine the maintainability of the present adjudication proceedings against the Noticee, it will be appropriate to refer to Section 446 of the Companies Act, 1956, which reads as under:

"Section 446 of the Companies Act, 1956

- 1) *When a winding up order has been made or the official liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company except by leave of the Tribunal and subject to such terms as the Tribunal may impose.*
- 2) *Tribunal shall, notwithstanding anything, contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of-*
 - a) *Any suit or proceeding by or against the company;*
 - b) *Any claim made by or against the company (including claims by or against any of its branches in India);*
 - c) *Any application made under Section 391 by or in respect of the company;*
 - d) *Any question of priorities or any other question whatsoever, whether of law or fact, which may relate to rise in course of the winding up of the company.*

whether such suit or proceeding has been instituted or is instituted or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960 (65 of 1960)

3) *(Omitted)*

Nothing in sub-section (1) or sub-section (3) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court."

12. According to Black's Law Dictionary, Sixth Edition, the term 'Legal Proceedings' includes "all proceedings authorized or sanctioned by law, and brought or instituted in a court or legal tribunal, for the acquiring of a right or the enforcement of remedy." Further, the term 'Proceedings' means, "any action, hearing, investigation, inquest or inquiry (whether conducted by a court, administrative agency, hearing officer, arbitrator, legislative body, or any other person authorized by law) in which, pursuant to law, testimony can be compelled to be given." (ibid).
13. I am of the opinion that the present Adjudication Proceedings falls under the scope of "other legal proceedings" used in **Section 446 of Companies Act, 1956**. Further, I note that there is no material on record to suggest that leave of the Court has been taken.

ORDER

14. In view of my findings noted in the preceding paragraphs, I am of the view that the adjudication proceedings initiated against Noticee vide SCN dated February 02, 2016 cannot be proceeded with. The matter is, accordingly, disposed of.

15. 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: 23.02.2016
Place: New Delhi

Vijayant Kumar Verma
Adjudicating Officer