BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. AO/AK/4/2018]

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

In respect of

Atcom Technologies Ltd.(PAN: AABCA2058C)

In the matter of Non Obtaining/ Delayed Obtaining of SCORES Authentication

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FACTS OF THE CASE IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") issued its first circular viz. CIR/OIAE/2/2011 dated June 03, 2011 for *inter alia* obtaining authentication on SEBI Complaints Redress System (hereinafter referred to as **"SCORES"**) for processing investor complaints received by SEBI. Thereafter, SEBI issued two more Circulars, i.e. CIR/OIAE/1/2012 dated August 13, 2012 and CIR/OIAE/1/2013 dated April 17, 2013 *inter alia* directing all the companies whose securities were listed on stock exchanges to obtain SCORES authentication and also redress the pending investor grievances within the stipulated time period provided therein. On December 18, 2014, SEBI issued Circular No. CIR/OIAE/1/2014 dated December 18, 2014 consolidating the earlier Circulars/ directions. The said Circular dated December 18, 2014 further *inter alia* stated that failure by any listed company to obtain SCORES authentication shall not only be deemed as non-redressal of investor grievances, but also indicate willful avoidance of the same and that failure to take action under the rescinded circulars before the date of issuance of SEBI Consolidated Circular, shall be deemed to have been done or taken or commenced under the provisions

of Circular dated December 18, 2014. The aforementioned SEBI Circulars are hereinafter collectively referred to as the **“SEBI Circulars".**

2. It was observed by SEBI that **Atcom Technolgoies Ltd.**(hereinafter referred to as the **"Noticee"/ "Company"/”Atcom”**) had failed to comply with the provisions of the SEBI Circulars.

3. It was, therefore, alleged that the Noticee violated the SEBI Circulars by failing to obtain SCORES authentication within the time period provided thereinthus, making the Noticee liable for imposition of penalty under Section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"the SEBI Act"**).

APPOINTMENT OF ADJUDICATING OFFICER

4. Vide order dated March 31, 2017, I was appointed as the Adjudicating Officer to inquire and adjudge under Section 15-I of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the **"Rules"**) to inquire into and adjudge under section 15HB of the SEBI Act for the alleged violations of the provisions of the SEBI Circularsby the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice No**.** EAD-6/AK/VG/9196/2017 dated April 24, 2017(hereinafter referred to asthe **“SCN”**) was issued to the Noticee under Rule 4 of the Rules to show cause as to why an inquiry should not be held against it in terms of Rule 4 of the Rules read with Section 15-I of theSEBI Act andpenalty be not imposed under Section 15HB of the SEBI Act for violation ofthe provisions of the SEBI Circulars by not obtaining SCORES authentication.

6. The SCN was delivered to the Noticee via SPAD, and the Noticee filed its reply vide their e-mail datedApril 28, 2017. The Noticee, *inter alia*, stated the following**:**

   i. that it had obtained the SCORES authenticationon September 27, 2016;

   ii. that as on April 27, 2017 there was no pending complaint against the Company; and

   iii. that the Company was "under BIFR" and suspended by the Stock Exchanges.

   A copy of the 'Form A' for obtaining SCORES Authentication and a copy of the email from SEBI providing the Noticee with the SCORES Username and Password were also enclosed with the said reply.

7. Consequently thereof, vide Notice of Hearing dated July 18, 2017, the Noticee was communicated of the decision to conduct an inquiry under Rule 4(3) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 against it. The Noticee, vide the said Notice of Hearing was also granted an opportunity of personal hearing before me on August 7, 2017 at 03:30 p.m. In response to the said Notice of Hearing, the Noticee replied vide letter dated July 29, 2017making substantively the same submissions as made vide its e-mail dated April 28, 2017. Furthermore, vide the said letter of July 29, 2017, it was not indicated as to whether the Noticee wished to appear for a personal hearing. On the appointed date of August 7, 2017, no appearance was made by the Noticee.

8. Inthe interest of justice, a Notice of Hearing dated August 22, 2017was issued to the Noticee granting it the final opportunity of personal hearing on September 5, 2017. Consequent thereto, the Noticee vide email dated August 31, 2017 requested for a change of the hearing date to September 01, 2017from September 5, 2017 owing to the occasion of "Ganesh Visarjan". The said request was acceded to and vide email dated August 31, 2017, the Noticee was informed that the date of hearing under the Notice of Hearing dated August 22, 2017 stands changed to September 01, 2017.

9. On the scheduled date of hearing, i.e.September 01, 2017, Mr. Sanjay Nimbalkar, Director and Ms. Isha Shah appeared before me as Authorised Representatives (**"ARs"**) of the Noticeeand made submissions on behalf of the Noticee in the matter. The ARs, during the hearing reiterated the submissions made by way of written replies dated July 29, 2017 and April 28, 2017. Further, a written reply dated September 01, 2017 was submitted by the Noticee along with the copy of the letter dated September 22, 2016 addressed to SEBI with FORM A for SCORES authentication. The ARs clarified that no order had been passed as on September 01, 2017 in respect of the Noticee by the BIFR. The ARs also confirmed that there was no past non-compliance of SEBI Act and Regulations by the Noticee and no action taken by SEBI in the past against the Noticee.

CONSIDERATION OF ISSUES

10. I have carefully perused the documents available on record. It is observed that the allegation against the Noticee is that it has failed to obtain SCORES authentication as required under the Circulars referred to hereinabove.The issues, therefore, that arise for consideration in the present matter are:
    a) Whether the Noticee has violatedthe provisions of the Circulars by failing/ delaying obtaining of SCORES authentication?
    b) Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 HB of the SEBI Act?
    c) If so, what shall be the monetary penalty that maybe imposed duly taking into account the factors mentioned in Section 15J of the SEBI Act?

FINDINGS

11. In this regard, before moving forward, it is pertinent to refer to the provisions of the SEBI Circulars.SEBI vide circular No. CIR/OIAE/2/2011 dated June 3, 2011 commenced processing of investor complaints in a centralised web based complaints redress system **'SCORES'**. The salient features of this system are:

i. centralised database of all complaints;
ii. online movement of complaints to the concerned listed companies;
iii. online upload of Action Taken Reports (ATRs) by the concerned companies; and
iv. online viewing by investors of actions taken on the complaint and its current status.

The Circular stipulated that all complaints pertaining to companies would be electronically sent through SCORES, and the companies were required to view the complaints pending against them and submit Action Taken Reports (**"ATRs"**) alongwith supporting documents electronically on SCORES. This was applicable to all companies whose securities were listed on Stock Exchanges, and as suchthe companies were accordingly advised to comply with the aforesaid Circular.

12. Subsequently, vide Circular CIR/OIAE/1/2012 dated August 13, 2012, all companies whose securities were listed on stock exchanges were advised to obtain SCORES authentication in terms of the aforesaid Circular by September 14, 2012. It was also specified that in case of failure to comply with the directions, SEBI would be constrained to initiate enforcement actionas per law as may be deemed appropriate.

13. It is further observed that SEBI issued a Public Notice dated January 13, 2013 naming the companies which had failed to obtain SCORES authentication.Videthe said public notice, the companies that were named therein were advised to obtain SCORES authentication within 7 days from the date of the public notice, failing which it was stated therein that SEBI would be constrained to initiate appropriate enforcement action. Further, companies other than those named in the public notice, who were yet to obtain SCORES authentication, were also advised to obtain authentication, failing which enforcement action would follow.

14. Thereafter, vide Circular No. CIR/OIAE/1/2013 dated April 17, 2013, companies that had not obtained their SCORES user ID and password were directed to obtain the same. The circular

further stated that the failure to obtain SCORES user ID and password within 30 days of issue of the said circular, would be deemed to be willful avoidance of the same.

15. Further, SEBI Circular CIR/OIAE/1/2014 dated December 18, 2014 consolidated the aforesaid Circulars, namely, Circular no.CIR/OIAE/2/2011 dated June 3, 2011, Circular no.CIR/OIAE/1/2012 dated August 13, 2012 and Circular no.CIR/OIAE/1/2013 dated April 17, 2013 and rescinded the said circulars.

16. Now, with this background in place, the first issue for consideration is whether the Noticeeby failing to / delaying inobtaining SCORES authentication has violated the provisions of the Circulars. I find from the material available on record that as per SEBI circular no.CIR/OIAE/2/2011 dated June 03, 2011, it was obligatory on the part of the Noticee to obtain SCORES authentication, however, the Noticee failed to obtain SCORES authentication. Even after issuance of the reminder circular no.CIR/OIAE/1/2012 dated August 13, 2012 requiring all listed companies to obtain SCORES authentication by September 14, 2012, the Noticee failed to obtain the SCORES authentication. This was despite the fact that SEBI vide the said reminder circular had made it clear that SEBI shall be constrained to initiate enforcement action as per law in case of failure to *inter alia* obtain SCORES authentication. SEBI again followed with another reminder circular no.CIR/OIAE/1/2013 dated April 17, 2013, pointing out that if SCORES authentication was not obtained within 30 days, it would not only be deemed as non-redressal of investor grievances, but, also indicate willful avoidance of the same. Prior to the same, as stated hereinabove, SEBI had also issued a Public Notice dated January 13, 2013 listing out the names of the listed companies that had failed to obtain SCORES authentication as per SEBI's records and against whom complaints were pending with SEBI as on December 31, 2012. The companies other than those named in the public notice, who were yet to obtain SCORES authentication were also advised to obtain authentication, failing which, it was stated that enforcement action shall follow.

17. Further, SEBI Circular CIR/OIAE/1/2014 dated December 18, 2014 consolidated the aforesaid Circulars, viz. Circular no.CIR/OIAE/2/2011 dated June 03, 2011, Circular no.CIR/OIAE/1/2012 dated August 13, 2012 and Circular no.CIR/OIAE/1/2013 dated April 17, 2013 and rescinded the said circulars. However, it was clarified at para 15 of the Circular CIR/OIAE/1/2014 dated December 18, 2014 that notwithstanding such rescission, anything done or any action taken or any failure to take action under those Circulars before the date of issuance of this Circular, shall be deemed to have been done or taken or commenced under the provisions of this Circular.

18. From all of the above, I find that despite SEBI forewarning the Noticee repeatedly through issue of various circulars in the matter, the Noticee did not pay heed to the same. It is the duty of SEBI to ensure speedy resolution of investor grievances, and to further the same, SEBI through a centralized web based SEBI Complaints Redressal System (SCORES) has provided a platform for aggrieved investors, whose grievances pertaining to the securities market remain unresolved by the concerned listed company after a direct approach. Further, the then existing investor grievance system lacked a centralized database and resolution of investor grievances usually got delayed. It was, hence, all the more important that listed companies including the Noticee complement the regulators efforts by complying with its directives,as putting in place an investor redressal mechanism and investor protection go hand in hand.

19. It is, thus, observed from the above that the Noticee has consistently failed and neglected to comply with the SEBI Circulars for obtaining a Login ID and password till September 2016. From the documents provided, I observe that the Noticee received the login and password from SEBI for SCORES in September 2016via email. The same was verified with SEBI, and SEBI has confirmed that the SCORES Authentication request by the company was granted in September, 2016. Hence,I find that the Noticee obtained SCORES Authentication only in September2016 i.e. after a period of four years from the deadline of September 14, 2012 as set out by SEBI vide Circular CIR/OIAE/1/2012 dated August 13, 2012.

20. Therefore, it is established without doubt that the Noticee has failed to / delayed inobtaining SCORES authentication and thereby violated the SEBI Circulars in this regard. Further, it is pertinent to note that the ***Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)*** held that *"(i)n our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant."*

21. Further, I note that the Hon'ble Securities Appellate Tribunal in the matter of ***Port Shipping Company Ltd. vs. SEBI*** (decided on April 29, 2015) observed that*"...where a listed company fails to obtain SCORES authentication within the time stipulated by SEBI, then it amounts to violating the directions of SEBI and in such a case penalty is imposable under Section 15HB of SEBI Act."*

22. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty on the Noticee under section 15HB of the SEBI Act, which reads as under:

"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 [1][liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]"

23. While determining the quantum of monetary penalty under Section 15HB of SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

"Factors to be taken into account by the adjudicating officer

[1]Substituted for the words "liable to a penalty which may extend to one crore rupees"‖by the Securities Laws (Amendment) Act, 2014,w.e.f. 08-09-2014.

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.

***[Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to** adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]*[2]"

24. It is not possible in cases of such nature to exactly quantify the disproportionate gains or unfair advantage enjoyed by the Noticee. Also, it may not be possible to ascertain the exact monetary loss to the investors as a result of the default. It is also noted that no quantifiable figures are available on record to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee.

25. I note that the scrip of the Noticee company had been suspended, and the details of the same are as follows:

Name of the Company	**Suspension Date**	**Reason for Suspension**
Atcom Technologies	September 11, 2006	Non-compliance with clauses of Listing Agreement

[2]Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Prt II Section 1 dated March 31, 2017, wef April 26, 2017

Ltd.		

26. In the matter, I note that in the case of ***M/s Port Shipping Company Limited, The Hon'ble Securities Appellate Tribunal (SAT)*** has made the following observation *"(a)rgument of the appellant that there was no operating income, no permanent employee, no pending investor grievance, no prejudice caused to any investor and that the shares of the appellant company were not traded for more than six years, cannot be a ground to disobey the directions given by SEBI. Obligation to obtain SCORES authentication was not dependent on there being operating income or pending investor grievance or trading of shares on the stock exchanges. Admittedly, the appellant company continues to be a listed company and, therefore, it was obligatory on part of appellant company to obtain SCORES authentication within the time stipulated by SEBI.* Hence, the submission of the Noticee that the Company was under BIFR and suspended by the stock exchange is not relevant to the case.

27. Further, obtaining authentication on SCORES for processing investor complaints received by SEBI has to be a part and parcel of the corporate responsibility of every listed company. The Noticee by failing to comply with the direction of obtaining SCORES authentication, has repeatedly violated the directions given by SEBI through SEBI Circulars viz. dated June 03, 2011, August 13, 2012, April 17, 2013, and which were eventually consolidated by issue of SEBI Consolidated Circular dated December 18, 2014. Thus, the default of the Noticee is found to be repetitive in nature. It was only in September 2016i.e. after a period of four years from the issuance of SEBI Circular CIR/OIAE/1/2012 dated August 13, 2012, providing a deadline of September 14, 2012 to all listed companies to obtain SCORES authentication that the Noticee Company chose to comply with the SEBI circular by obtaining SCORES Authentication in September 2016.

28. It is pertinent to mention here that the obtaining of SCORES authentication *inter alia* by listed companies was one of the regulatory measures of SEBI toenhance the confidence of the investors and thereby, the integrity of the securities markets.Hencedelayed complianceof the same by the Noticee after a period of four years from the deadline as stipulatedis a matter of grave concern.

29. In the matter, I find that the ***Hon'ble Securities Appellate Tribunal (hereinafter referred to as '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*"…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…"*

ORDER

30. After taking into consideration all the facts and circumstances of the case, I impose a penalty of **Rs. 8,00,000/- (Rupees Eight Lakh Only)**on the Noticee**,**Atcom Technologies Ltd.**,**under Section 15HB of the SEBI Act, which shall be commensurate with the violations committed by the Noticee.

31. The Noticee shall remit / pay the said amount of penalty within forty five (45) days 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 e-payment facility in the Bank Account, the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of

	India
Beneficiary A/c No.	31465271959

32. The Noticee shall forward the said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager, Enforcement Department, SEBI. The Format for forwarding details / confirmation of e-payment made to SEBI shall be in the form as provided at Annexure A of the Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website, which is produced as under:

1. Case Name :	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5.Transaction No:	
6. Bank Details in which payment is made:	
7.Payment is made for: (like penalties/disgorgement/recovery/settlement amount and legal charges along with order details)	

33. In terms of Rule 6 of the Rules, copies of this order are being sent to the Noticee and also to the Securities and Exchange Board of India.

Date: April 27, 2018 **Anita Kenkare**

Place: Mumbai **Adjudicating Officer**