BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ORDER/MS/SB/2018-19/1068]

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 Eastern Mining & Allied Industries Ltd.
(PAN No: Not available**; CIN: L51909ML1993PLC003931)**
In the matter of SCORES Authentication

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter, **SEBI**) vide Circular No. CIR/OIAE/2/2011 dated June 03, 2011, directed all listed companies to obtain SEBI Complaints Redressal System (hereinafter, **SCORES**) authentication and also redress any pending investor grievances in that platform only. Subsequently, SEBI also issued Circulars No CIR/OIAE/1/2012 dated August 13, 2012, No. CIR/OIAE/1/2013 dated April 17, 2013 and No CIR/OIAE/1/2014 dated December 18, 2014, (hereinafter, SEBI circular) in the matter.

2. It is alleged that Eastern Mining & Allied Industries Ltd (hereinafter, **Noticee**/**Company**) failed to obtain the SCORES authentication and to redress investor grievances pending therein, both within the timelines stipulated by SEBI, thereby not complying with the aforesaid SEBI circulars.

APPOINTMENT OF ADJUDICATION OFFICER

3. The undersigned was appointed as the AO vide order dated January 08, 2016, under section 15-I of Securities and Exchange Board of India Act, 1992, (hereinafter, **SEBI Act**) and under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter, **Rules**) to enquire into and adjudge under section 15HB and section 15C of the SEBI Act, the alleged violation of cited circulars by the noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated September 01, 2017, (hereinafter, **SCN**) was issued to the noticee under Rule 4 of the Rules, calling it 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 SEBI Act and penalty be not imposed on it under Section 15HB and section 15C of the SEBI Act allegedly not obtaining SCORES authentication and failure to redress the grievances of the investors within the specified timelines, respectively. The SCN was dispatched through Speed Post with Acknowledgement Due (hereinafter, **SPAD**) to the address of registered office of the noticee as available in the portal of the Ministry of Corporate Affairs (hereinafter, **MCA**), however the same was returned undelivered with the endorsement "office moved". A copy of the said SCN was also sent to another address of the noticee available on records, which too was returned undelivered with the endorsement "addressee left without instruction".

5. Thereafter, the noticee was granted an opportunity of personal hearing on November 08, 2017, vide letter dated October 25, 2017. This notice of hearing, dispatched through SPAD to the same addresses as stated above, also returned undelivered with the endorsements "office shifted somewhere else" and "addressee left without any instruction", respectively.

6. Nevertheless, one more opportunity of personal hearing was granted to the noticee on December 15, 2017 vide letter dated December 04, 2017. This notice of hearing, dispatched through SPAD to the same addresses were returned undelivered with the endorsement "office shifted somewhere else" and "addressee left without any instruction" respectively.

CONSIDERATION OF ISSUES AND FINDINGS

7. Given the aforesaid, I proceed ahead in the matter on the basis of the material available on records and the issues that arise for consideration in this case are:

   a. Whether dispatch of the SCN and Notices of Hearing by SPAD to the address of the registered office of the noticee, as available in MCA portal, constitute valid service as per the Rules?

b. Whether the noticee failed to obtain SCORES authentication and also to redress the grievance(s) of investor(s), thereby failed to comply with SEBI circulars dated August 13, 2012 and April 17, 2013?

c. Does the violation, if any, on the part of the noticee attract monetary penalty under Section 15 HB and 15 C of the SEBI Act?

d. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15 J of the SEBI Act?

8. The applicable legal provisions pertaining to the validity of service notices, are as under;

Companies Act, 1956

146. REGISTERED OFFICE OF COMPANY

(1) A company shall, as from the day on which it begins to carry on business, or as from the thirtieth day after the date of its incorporation, whichever is earlier, have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of every change therein, shall be given within thirty days after the date of the incorporation of the company or after the date of the change, as the case may be, to the Registrar who shall record the same:

610B. PROVISIONS RELATING TO FILING OF APPLICATIONS, DOCUMENTS INSPECTION, ETC. THROUGH ELECTRONIC FORM (Inserted by the Companies (Amendment) Act, 2006, w.e.f. 16-9-2006).

(1) ……

(a) such applications, balance sheet, prospectus, return, declaration, memorandum of association, articles of association, particulars of charges, or any other particulars or document as may be required to be filed or delivered under this Act or rules made thereunder, shall be filed, through the electronic form and authenticated in such manner as may be specified in the rules;

….

(f) the Registrar shall, register change of registered office, alteration of memorandum of association or articles of association, prospectus, issue certificate of incorporation or certificate of commencement of business, register such document, issue such certificate, record notice, receive such communication as may be required to be registered or issued or recorded or received, as the case may be, under this Act or rules made thereunder or perform duties or discharge functions or exercise powers under this Act or rules made thereunder or do any act which is by this Act directed to be performed or discharged or exercised or done by the Registrar, by the electronic form, in such manner as may be specified in the rules.

Sections 12 and 398 of the Companies Act, 2013, which came into force w.e.f. May 29, 2015 and April 01, 2014, respectively, correspond to the aforesaid provisions of Companies Act, 1956.

SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 (Notification: No. GSR 541(E), dated 10-7-1995)

…..

7. Service of notices and orders.

A notice or an order issued under these rules shall be served on the person in the following manner, that is to say, —

(a) by delivering or tendering it to that person or his duly authorised agent ;

(b) by sending it to the person by 4[fax or electronic mail or courier or speed post with acknowledgement due or] registered post with acknowledgement due to the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works, or last worked, for gain:

[Provided that a notice sent by Fax shall bear a note that the same is being sent by fax and in case the document contains annexure, the number of pages being sent shall also be mentioned: (inserted w.e.f. 28.05.2015)

Provided further that a notice sent through electronic mail shall be digitally signed by the competent authority and bouncing of the electronic mail shall not constitute valid service;]

(c) if it cannot be served under clause (a) or clause (b), by affixing it on the outer door or some other conspicuous part of the premises in which that person resides or is known to have last resided, or carried on business or personally works or last worked for gain and that written report thereof should be witnessed by two persons; or

(d) if it cannot be affixed on the outer door as per clause (c), by publishing the notice in atleast two newspapers, one in a English daily newspaper having nationwide circulation and another in a newspaper having wide circulation published in the language of the region where that person was last known to have resided or carried on business or personally worked for gain (inserted w.e.f. 28.05.2015)

9. From the foregoing, it is clear that incorporated companies are under statutory obligation to, *inter-alia*, 1) be available at their registered office and receive all notices addressed to this address and 2) make appropriate filing to the Registrar of Companies (hereinafter, **RoC**) / MCA portal, in case of change in this address. Hence the consequences of non-compliance to these provisions, if any, shall vest solely upon the noticee and in any case cannot be the ground for claiming relief under 7 (b) of these Rules. Moreover, Order 29, Rule 2 (b) of the Civil Procedure Code states that:

"*2. Service on corporation.- Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served—*

(a) ……

(b) *by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.*"

10. I, therefore, hold that the dispatch of the SCN and two notices of hearing by SPAD, to the address of the registered office of the noticee as available in the MCA portal, constitutes valid service under 7(b) of the cited Rules. I also note that Rules 7 (c) & (d) are more relevant to natural persons who are under no statutory obligation to intimate any authority about their address or its change thereof.

11. While recording my finding on the other issues, it is pertinent to have a brief narration on SCORES and its applicable circulars.

12. SEBI commenced its web based investor grievance redressal portal, SCORES, in June 2011 to enhance investor protection, enabling investors to lodge their complaint against listed companies either through 'on-line' or physical mode and thereafter monitor its status on 24 X 7 basis. Complaints received by SEBI / in SCORES are electronically forwarded to the listed company / its Share Transfer Agent (hereinafter, STA), which in turn is required to redress the same and furnish the Action Taken Report (hereinafter, ATR) in electronic form. However, as a prerequisite to access SCORES portal, listed companies have to obtain user ID and login password from SEBI by providing specified information to the latter (hereinafter, **SCORES authentication**). The foregoing were spelt out in the SEBI Circular No. CIR/OIAE/2/2011 dated June 03, 2011 which also provided the format in its Annexure, for listed companies to provide information to the former to obtain authentication.

13. SEBI circular No. CIR/OIAE/1/2012 dated August 13, 2012, inter-alia, reiterated the contents of the June 2011 circular and fixed September 14, 2012 as the last date for obtaining SCORES authentication. From the material available on records, I find that the noticee has not done so within this timeline.

14. Redressal of investor grievances in SCORES is distinct from obtaining authentication. Accordingly, SEBI Circular No. CIR/OIAE/1/2013 dated April 17, 2013, *inter-alia*, reiterated the contents of June 2011 circular and by way of standing order, "called upon" listed companies to redress investor grievances in SCORES within 30 days, thereby enabling SEBI to impose penalty u/s 15 C of SEBI Act in case of their failure to do so. Further, SEBI circular No. CIR/OIAE/1/2014 dated December 18, 2014, *inter-alia*, extended SCORES platform to specified intermediaries, and also called upon 'newly listed companies' to redress investors' grievances through this portal. Also, SEBI (Listing

Obligations and Disclosure Requirements) Regulations, 2015, notified on September 02, 2015 and came into force 90 days thereafter, subsumed the September 2012 circular.

15. As per the material available on records, the noticee was a listed company during the relevant period and has neither obtained SCORES authentication within the time line of September 14, 2012 as aforesaid, nor has it done so subsequently. As already noted, bereft of authentication, redressal of investor grievance cannot happen in SCORES. In this regard, I note that this proceedings was initiated, *inter-alia*, on the allegation that 25 grievances of investors were pending for redressal. I find from SCORES portal that as on date 25 grievances are pending for redressal of which the first and last one were lodged on September, 19, 2006 and January 02, 2015, respectively. Accordingly, as per the 30 days norm for redressal, the pendency of these grievances range from 3.5 years to 11.8 years. Further, I also note that four of the grievances have been lodged after September 08, 2014 and that grievances received before commencement of SCORES and not yet redressed, also reflect in this portal as pending.

16. The aforesaid non-compliance to SEBI circulars dated August 13, 2012 and April 17, 2013 render the noticee liable for penalty under section 15 HB and 15 C of SEBI Act, respectively, which read as follows:

15HB - Penalty for contravention where no separate penalty has been provided
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 may extend to one crore rupees

The penalty amount was amended as "*liable to penalty which shall not be less than one lakh rupees but which may extend to one crore rupees*, by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.

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

The penalty amount was amended as "*which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees",* by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.

17. As per the dates of defaults, Section 15HB and 15C of SEBI Act, as they stood prior to their amendments, are applicable for not obtaining authentication and non redressal of 21 grievances, respectively and section 15C of SEBI Act, as it stands after the amendment is applicable for the remaining four grievances. Nevertheless, guided by the principle of rule of beneficial construction of even ex post facto law to mitigate the rigour of law, as was laid by the Hon'ble Supreme Court in T. Barai vs. Henry Ah Hoe and Ors. (07.12.1982 - SC): MANU/SC/0123/1982 - (1983)1SCC177, the amended version of section 15C of SEBI Act is applied for all the 25 pending grievances.

18. While determining the quantum of penalty under Section 15 HB and 15 C of SEBI Act as aforesaid, provisions of Section 15 J of SEBI Act would be applicable, which read as under:-

15 J 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.*

19. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that the disproportionate gain or unfair advantage made by the noticee or loss caused to the investors as a result of the failure on the part of the noticee to obtain SCORES authentication and thereafter redress their 25 grievances, are not available on record. As regards the repetitive nature of the default, as already observed, the noticee is yet to obtain SCORES authentication as against the stipulated time line of September 14, 2012, consequent to which 25 grievances of investors are pending for redressal for period ranging from 3.5 years to 11.8 years. Such persistent non-compliance does not inspire confidence of investors in the market, whose protection is SEBI's prime mandate.

ORDER

20. After taking into consideration all the facts and circumstances of the case, I impose a penalty of **Rs.5,00,000/ (Rupees Five lakhs only)** under Section 15HB of the SEBI Act and **Rs. 7,00,000/- (Rupees Seven lakhs only)** under section 15C of the SEBI Act i.e. penalties totaling **to Rs. 12,00,000/- (Rupees Twelve lakhs only)** against Eastern Mining & Allied Industries Ltd, which will be commensurate with its non-compliances.

21. The noticee shall pay the said amount of penalty within 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 **Kolkata** OR through e-payment to the following bank account:

Bank account details 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

22. The noticee shall forward the said Demand Draft or the details /confirmation of penalty so paid through e-payment, as per format below, to the Regional Director, SEBI, Eastern Regional Office, L & T Chambers, 16, Camac Street, V floor, Kolkata – 700 017

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction Number	
Bank details in which payment is made	
Payment is made for (like Penalties / disgorgement / recovery / settlement amount and legal charges along with order details	

23. In terms of Rule 6 of the Rules, copy of this order is sent to the noticee and to Securities and Exchange Board of India.

Date: July 31, 2018
Place: Kolkata

S. MANJESH ROY
ADJUDICATING OFFICER