

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. EAD/PM-NK/AO/10/2017-18]**

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**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**

**Sanchana Trading & Finance Limited (PAN: Not Available)**

**In the matter of Non- Obtaining of SCORES Authentication**

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**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India (hereinafter referred to as SEBI), vide Circular No. CIR/OIAE/2/2011 dated June 03, 2011, inter alia, directed all listed companies to obtain SEBI Complaints Redressal System (hereinafter referred to as SCORES) authentication and also redress any pending investor grievances in the SCORES only. This was followed by various circulars/directions from time to time inter alia requiring listed companies, including M/s Sanchana Trading & Finance Limited (hereinafter referred to as the "Noticee"/ "Company") to obtain authentication on SCORES for processing investor complaints received by SEBI. On December 18, 2014, SEBI issued Circular No. CIR/OIAE/1/2014 dated December 18, 2014 (hereinafter referred to as "SEBI Consolidated Circular"), consolidating the earlier Circulars/ directions viz. CIR/OIAE/2/2011 dated June 03, 2011, 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. The said SEBI Consolidated Circular further, inter alia, stated that failure by any listed company

to obtain SCORES authentication would not only be deemed as non-redressal of investor grievances, but also indicate wilful avoidance of the same and that failure to take action under the rescinded circulars before the date of issuance of SEBI Consolidated Circular, shall be deemed to have been done or taken or commenced under the provisions of SEBI Consolidated Circular.

2. SEBI observed that the Noticee had failed to comply with the said directions of the SEBI Consolidated Circular.
3. It was, therefore, alleged that the Noticee had failed to obtain SCORES authentication and thereby violated SEBI Circular No. CIR/OIAE/1/2014 dated December 18, 2014, thus, making the Noticee liable for imposition of penalty under Section 15 HB 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, Ms. Anita Kenkare was appointed as the Adjudicating Officer, to inquire and adjudge 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 "Rules") to enquire into and adjudge under section 15HB of SEBI Act for the alleged violations of the provisions of CIR/OIAE/1/2014 dated December 18, 2014 by the Noticee. Pursuant to the interdepartmental reallocation of the works, the undersigned was appointed as the Adjudicating Officer vide Order dated October 04, 2017.

#### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

5. A Show Cause Notice No. EAD-6/AK/VG/114164/2017 dated June 19, 2017 (hereinafter referred to as "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 them in terms of rule 4 of the Rules read with section 15-I of SEBI Act and penalty be not imposed under Section 15HB of the SEBI Act for the alleged violation of provisions of the SEBI Consolidated Circular by not obtaining SCORES authentication.

6. The SCN was delivered to the last known address of the Noticee at M/s Sanchana Trading & Finance Limited 307-B, Trade world, Senapati Bapat Marg, Kamala Mills, Lower Parel, Mumbai – 400013. The Noticee was advised to file its reply within 14 days of receipt of the SCN. No reply was received from the Noticee. However, in the interest of natural justice, it was decided to provide an opportunity of personal hearing to the Noticee and hence a hearing notice EAD/AK/VG/18736/2017 dated August 7, 2017 was delivered at the aforesaid address of the Noticee to appear for personal hearing on August 29, 2017. However, neither did the Noticee appear on the date scheduled for the personal hearing, nor, has the Noticee filed any reply in the matter till date. After appointment of the undersigned as the Adjudicating Officer in the matter, in the interest of natural justice, it was decided to provide another opportunity of personal hearing to the Noticee and hence a hearing notice EAD//AO-PM/NK/28155/2017 dated November 15, 2017 was delivered at the aforesaid address of the Noticee to appear for personal hearing on November 27, 2017. However, neither did the Noticee appear on the date scheduled for the personal hearing, nor, has the Noticee filed any reply in the matter until date.
7. In the above referred SCN as well as in the hearing notice, it was specifically indicated that if the Noticee fails to submit their reply to the SCN or fails to attend the hearing proceedings on the stipulated date and time, it will be presumed that Noticee has no submissions to offer in its defense and the matter would be further proceeded with on the basis of the material available on record.
8. In view of the above, I am of the opinion that the SCN has been duly served upon the Noticee, but the Noticee failed to reply and also failed to avail the opportunity of personal hearing. The principle of natural justice has been followed in the matter, as enough opportunities were provided to the Noticee to reply to the SCN and appear for hearing. As such I am inclined to decide the matter ex-parte taking into account the evidence / material available on record.

### **CONSIDERATION OF ISSUES**

9. I have carefully perused the documents available on record. It is observed that the allegation against the Noticee is that they have failed to obtain SCORES

authentication. The issues, therefore, that arise for consideration in the present matter are:

- a) *Whether the Noticee has violated the provisions of SEBI Circular No. CIR/OIAE/1/2014 dated December 18, 2014 by failing to obtain 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 would be the monetary penalty that can be imposed duly taking into account the factors mentioned in Section 15J of SEBI Act?*

## **FINDINGS**

10. The first issue for consideration is whether the Noticee by failing to obtain SCORES authentication has violated the provisions of SEBI Circular No. CIR/OIAE/1/2014 dated December 18, 2014. 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 all listed companies including Noticee to obtain SCORES authentication. However, 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 its said reminder circular had made it clear that SEBI would be constrained to initiate enforcement actions as per law in case of failure to inter alia comply with obtaining of the SCORES authentication. SEBI again followed with another reminder circular no. CIR/OIAE/1/2013 dated April 17, 2013, again 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 wilful avoidance of the same. Prior to the same, SEBI had also issued a Public Notice dated January 13, 2013 listing out the names of the listed companies against whom complaints were pending with SEBI and that the companies had failed to obtain SCORES authentication as per SEBI's records as on December 31, 2012. SEBI through the said Public Notice too had warned the companies whose names had appeared in the list that if they failed to

obtain SCORES authentication within 7 days from the date of the advertisement, SEBI would be constrained to initiate appropriate enforcement actions. Further, the public notice also mentioned that companies other than those named in the above mentioned public notice, who had not yet obtained SCORES authentication were also advised to obtain authentication, failing which enforcement would follow.

11. 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.
12. From all of the above, I find that despite SEBI forewarning the Noticee repeatedly through issue of various circulars in the matter as well as through Public Notice, the Noticee did not pay heed to the same. Further, I note that Noticee failed to furnish any reply to the SCN and also did not avail the opportunity of personal hearing before me despite service of the SCN and hearing notice.
13. In this regard, it is pertinent to note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Classic Credit Limited vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) has inter alia, observed that "*..... the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*".
14. It is also pertinent to note that the Hon'ble Securities Appellate Tribunal (SAT), in the matter of Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), has also inter-alia, observed that:  
*"...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and,*

*therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...*

15. It is the duty of SEBI to ensure speedy resolution of investor grievances, and for furtherance of such objective, 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. It is therefore important that listed companies including the Noticee complement the regulators efforts by complying with various directives as laid down in SEBI circulars relating to investor complaints redressal mechanism and investor protection. However, it is observed from the above that the Noticee has consistently failed and neglected to comply with the SEBI Consolidated Circular CIR/OIAE/1/2014 dated December 18, 2014 to obtain a Login ID and password. Further, I also note that Noticee was a listed company of BSE and the scrip was suspended for trading since September 20, 2006 due to penal reasons.

However, the provisions of consolidated circular dated December 18, 2014 shall be applicable to all listed companies irrespective of the status of trading. In view of above, I conclude that the allegation of non-obtaining of SCORES Authentication is established against the Noticee and therefore has violated SEBI Consolidated Circular CIR/OIAE/1/2014 dated December 18, 2014 to obtain a Login ID and password.

16. 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 *"In 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..."*

17. 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..."*

18. 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 read as under:

**Section 15HB of the SEBI act 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 liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

19. 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:

**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.*

20. It is not possible in cases of such nature to quantify exactly 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.

21. I find that the Noticee Company has been 'Suspended' for trading on BSE due to penal reason. 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:  
*"Argument 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. However, the appellant has consistently failed and neglected to comply with the directions of SEBI and it is only when SEBI initiated penalty proceedings, the appellant chose to comply with the directions of SEBI therefore, in the facts of the present case appellant deserved higher penalty.”*

22. In the extant case, I find that the Noticee Company has failed to comply with the directions / circular of SEBI till date. 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. The Noticee also failed to pay heed to the Public Notice dated January 13, 2013 issued by SEBI. Thus, the default of the Noticee to this extent is found to be repetitive in nature. Further, obtaining SCORES authentication inter alia by listed companies was one of the regulatory measures of SEBI to help in enhancing the confidence of the investors and thereby the integrity of the securities markets. Hence, wilful noncompliance of the same by the Noticee is a matter of serious concern. 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

23. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15 I of the SEBI Act and Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 1, 00,000 /-(Rupees One Lakh only) under Section 15 HB of the SEBI Act on the Noticee viz. M/s Sanchana Trading & Finance Limited. I am of the view that the said penalty would be commensurate with the violations committed and acts as a deterrent factor for the Noticee and others in the interest of investors

24. The Noticee shall remit / 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 Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

*Account No. for remittance of penalties levied by Adjudication Officer*

<b>Bank Name</b>	<b>State Bank of India</b>
<b>Branch</b>	<b>Bandra - Kurla Complex</b>
<b>RTGS Code</b>	<b>SBIN0004380</b>
<b>Beneficiary Name</b>	<b>SEBI – Penalties Remittable To Government of India</b>
<b>Beneficiary A/c No</b>	<b>31465271959</b>

25. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Deputy General Manager, DRA- II, Enforcement Department, SEBI, Mumbai as per the following format.

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	

Bank Details in which payment is made	
Payment is made for (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)	
Penalty	

26. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

**Date: December 18, 2017**  
**Place: Mumbai**

**Prasanta Mahapatra**  
**Adjudicating Officer**