BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref No.: Order/SS/VS/2019-20/6278]

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) RULES, 1995.

In respect of:

Hani Industries Limited
2567, Gojaria Pole, Halim Ni Khadki,
Shahpur, Ahmedabad, Gujarat-380001

1. Securities and Exchange Board of India (SEBI) had issued Circular No. CIR/OIAE/2/2011 dated June 03, 2011 regarding commencement of SEBI Complaints Redress System (hereinafter referred to as 'SCORES'). Vide the said Circular, it was advised to all companies, whose securities are listed on stock exchange/s that, "The companies are required to view the complaints pending against them and submit ATRs along with supporting documents electronically in SCORES. Failure on the part of the company to update the ATR in SCORES will be treated as non redressal of investor complaints by the company".

2. SEBI vide Circular No. CIR/OIAE/2/2011 dated June 03, 2011 advised to all companies, whose securities are listed on stock exchange/s that, "*The companies are required to view the complaints pending against them and submit ATRs along with supporting documents electronically in SCORES. Failure on the part of the company to update the ATR in SCORES will be treated as non redressal of investor complaints by the company*".

3. Subsequently, vide Circular No. CIR/OIAE/1/2012 dated August 13, 2012, all companies whose securities are listed on stock exchanges, were advised to obtain SCORES authentication by September 14, 2012. It was further stated in the said Circular that, "In case of failure to comply with the above, SEBI would be constrained to initiate enforcement actions as per the law as may be deemed appropriate". Vide another Circular No. CIR/OIAE/1/2013 dated April 17, 2013, SEBI once again advised all companies, to redress the investors' grievances and inform them within 30 days of the receipt of complaints; and to obtain SCORES authentication by May 16, 2013 if the companies have not obtained the same till date.

4. Thereafter, vide Circular No. CIR/OIAE/1/2014 dated December 18, 2014, SEBI consolidating the earlier Circulars / directions and 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.

5. It was observed that fifteen investor complaints were pending against Hani Industries Limited (hereinafter referred to as 'Noticee') in SEBI Complaints Redress System (hereinafter referred to as 'SCORES'). It was alleged that SEBI vide various letters dated February 22, 2013, April 15, 2013 and May 20, 2013, had forwarded list of pending complaint to the Noticee and advised it to resolve all pending complaints within the stipulated time from date of receipt of the said letters. However, despite being called upon to do so, the Noticee failed to resolve those complaints within the time specified by SEBI and submit Action Taken Report (ATR) on SCORES. It was therefore alleged that the Noticee had failed to comply with SEBI circulars Nos. CIR/ OIAE/2/2011 dated June 03, 2011, Cir/OIAE/l/2012 dated August 13, 20l2, and Cir/OIAE/1/2013 dated April 17, 2013 (hereinafter collectively referred to as "the Circulars").

6. The competent authority in SEBI had *prima facie* felt satisfied that there were sufficient grounds to inquire and adjudicate the alleged violations of the provision of sections 15HB and 15C of the Securities and Exchange Board of India Act, 1992 ('SEBI Act') by the Noticee and on November 23, 2012 appointed Shri Achal Singh, Deputy General Manager as Adjudicating Officer (erstwhile AO) to inquire and adjudge under rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'the Adjudication Rules') and under sections 15A(a) and 15C of the SEBI Act, the aforesaid alleged violations by the Noticee. Upon transfer of the erstwhile AO, the proceedings were transferred to Shri. Anindya Kumar Das, Deputy General Manager, vide an order dated June 22, 2015.

7. Subsequently, by a common *communication-order* dated July 05, 2019, this case has been transferred to the undersigned with an advise that except for the change of the Adjudicating Officer, the other terms and conditions of the original orders *'shall remain unchanged and shall be in full force and effect'* and that the "*Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders"*.

8. After receipt of records of these proceedings, it is noted that notice to show cause no. ILO/AO/AS/770/2014 dated January 07, 2014 ('the SCN') to the Noticee have been issued by the erstwhile AO in terms of rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act. The SCN was duly served upon the Noticee. It is noted that in terms of rule 4(3) of the Adjudication Rules an opportunity of hearing was given to Noticee on January 27, 2016 vide notice of hearing dated December 31, 2015. The notice of hearing was duly served upon the Noticee. The Noticee despite

service of the notice to it did not avail the opportunity of personal hearing. In the interest of natural justice another opportunity of personal hearing was given to the Noticee on and February 17, 2016 vide notice dated February 03, 2016. There is no evidence on record that the notice of hearing dated February 03, 2016 served upon the Noticee and there is no effort made for service of the notice of hearing since February 03, 2016. Thus, it was noted that notice of hearing was not served upon the Noticee at all by way of any prescribed mode.

9. In view of the above, in terms of rule 7 (d) of the Adjudication Rules, a public notice dated August 26, 2019 was published in newspaper on August 28, 2019 with regard to issuance of the SCN as well as the opportunity of personal hearing scheduled on September 19, 2019. Vide the said notice of hearing, it was clearly indicated that in case of failure to submit reply or to appear for the hearing, the case would be decided *ex- parte* on the basis of the material available on record. However, there is no response from the Noticee despite such service of the notices upon it.

10. It is clear that the requirement came into force on June 03, 2011 and last date to obtain SCORES was May 16, 2013. The aforesaid Circulars are addressed to all companies whose securities are listed on the stock exchange/s and they mandated SCORES for electronic dealing of the complaints of the investors, by the respective listed companies. Accordingly, it was incumbent upon such listed companies to obtain SCORES authentication within time permitted vide the aforesaid Circulars and redress investors' grievances pending against them. In this case, the charge as alleged in the SCN is established. The Noticee has committed brazen default and has completely disregarded the directions of SEBI as contained in aforesaid Circulars. 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..."*.

11. In the case in hand, the Noticee was listed on BSE at the relevant times when SEBI had issued the circulars in respect of SCORES and also when the adjudication action was approved by the Competent Authority of SEBI and thus, the Noticee very much fall within the jurisdiction of SEBI. Therefore, I find that the Noticee was obligated to comply with the directions of SEBI in respect of taking SCORES authentication, resolving the pending complaints within the time specified by SEBI and submit ATR on SCORES. However, it was observed that the Noticee had failed to comply with the same.

12. It is further noted that the alleged failure to redress investor complaints have been charged under section 15C of the SEBI Act and failure to take SCORES authentication has been charged under section 15HB of the SEBI Act. The provisions of these sections of the SEBI Act read as under:

Penalty for failure to redress investors' grievances.

15C. *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 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.*

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 100[liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

13. It is noted the advice to take SCORES authentication and to redress the impugned fifteen investors' complaints was issued in the year 2013. It is gathered that the no SCORES authentication is taken by the Noticee till date and there is nothing available on record to show the present status of those complaints after more than 6 years since the advice was issued by SEBI. However, since the Noticee has failed to show any explanation despite sufficient opportunities being granted to in accordance with procedure prescribed by law it is deemed that the allegations/charges have been admitted by the Noticees. In this regard, it is pertinent to note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Classic Credit Ltd. 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"*. It is also pertinent to note that the Hon'ble 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: *"..... 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..."*.

14. In view of the foregoing, I am of the view that the Noticee is liable for imposition of monetary penalty under section 15C of the SEBI Act for its failure to resolve fifteen investors' complaints and under section 15HB for its failure to take SCORES authentication. For the purpose of adjudication of quantum of penalty it is relevant to mention that under section 15I of the SEBI Act, imposition of

penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty"* are of considerable significance, especially in view of the guidelines provided by the legislature in section 15J. Further, while adjudging the quantum of penalty the adjudicating officer has discretion and such discretion should be exercised having due regard to the factors specified in section 15J. The factors stipulated in section 15J of the SEBI Act, which reads as follows:

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 investor/+s 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.

15. Having regard to the factors listed in section 15J and the guidelines issued by Hon'ble Supreme Court of India in *SEBI Vs Bhavesh Pabari Civil Appeal No(S).11311 of 2013* vide judgement dated February 28, 2019, it is noted that from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default in this case cannot be computed. It is pertinent to mention here that the Hon'ble SAT in S. *S. Forgings & Engineering Limited & Others v SEBI, Appeal No. 176 of 2014 (decided on August 28, 2014)* has held 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…"* As mentioned above, the nature of investors' complaints is not brought on record so as to indicate gravity of non-redressal of the fifteen complaints in this case. Further, the failure belongs to the year 2013 and the proceedings initiated in this case had been pending since 2015 without any progress after issuance of the SCN.

16. Considering all the facts and circumstances of the case including the aforesaid mitigating factors and exercising the powers conferred upon me under section 15I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose, a monetary penalty of ₹3,00,000 /- (Rupees Three Lakh Only) on the Noticee *viz.* Hani Industries Limited under sections 15C and 15HB of the SEBI Act. In my view, the said penalty is commensurate with the violations committed by the Noticee in this case.

17. The Noticee shall remit / pay the said total amount of penalty within 45 days of receipt of this order in either of the way of demand draft in favour of *"SEBI - Penalties Remittable to Government of India"*, payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in

18. The Demand Draft or details and confirmation of e-payment made in the format as given in table below shall be sent to *"The Division Chief, EFD-DRA-IV, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051"* and also to e-mail id :- tad@sebi.gov.in.

1	Case Name	
2	Name of the 'Payer/Noticee'	
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 along with order details)	

19. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

20. Copies of this order are sent to the Noticee and also to SEBI in terms of rule 6 read with rule 7 of the Adjudication Rules.

Date: December 26, 2019 **Santosh Shukla**

Place: Mumbai **Adjudicating Officer**