BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. : Order/GR/RK/2019-20/7016]

ORDER UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of

Newton Engineering and Chemicals Limited

(Formely: Hitech Orgochem Limited)

(CIN: L24100GJ1992PLC017574)

In the matter of SCORES Authentication

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, directed all listed companies to obtain SEBI Complaints Redressal System (hereinafter referred to as, "**SCORES"**) authentication and also redress any pending investor grievances in that platform only. Subsequently, SEBI also vide 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 referred to as, "**SEBI circulars"**) *inter alia* directed all companies whose securities were listed on Stock Exchanges to obtain SCORES authentication within a period of 30 days from the date of issue of this circular and also to redress the pending investor grievances within the stipulated time period.

2. It was alleged that Newton Engineering and Chemicals Limited (formerly known as **"Hitech Orgochem Limited"**) (hereinafter referred to as," **Noticee/Company"**) had failed to obtain the SCORES authentication and to redress investor grievances pending therein within the timelines stipulated by SEBI, therefore not complying with the aforesaid SEBI Circulars.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer(**AO**) vide order dated December 24, 2019, conveyed vide communique dated December 26, 2019 under Section 19 read with Section 15-I of Securities and Exchange Board of India, 1992 (hereinafter referred to as, "**SEBI Act**") and under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as, "**Rules"**) to enquire into and adjudge under Section 15C of the SEBI Act, for the aforementioned alleged violations by the Noticee. Earlier, the case was assigned to AO Shri Vijayant Kumar Verma, Shri Sahil Malik and Shri V. S. Sundaresan. I therefore proceed in the matter from where it had been left by the previous Adjudicating Officers.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated January 29, 2016 (hereinafter referred to as, "**SCN"**) was issued by the erstwhile Adjudicating Officer 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 15C of the SEBI Act for allegedly failing to obtain the SCORES authentication and to redress investor grievances pending therein within the timelines stipulated by SEBI respectively but the SCN returned undelivered. Public Notice vide newspaper publication dated February 28, 2016 was issued in English and Hindi Edition for the undelivered SCN in terms of Rule 7(d) of the Rules. In the interest of natural justice, Hearing Notice No. SEBI-NRO/OW/AO/VKV/AS/HN/453/2017 dated April 17, 2017 was also issued for

granting an opportunity of personal hearing on April 27, 2017. However, the said Hearing Notice was also returned undelivered.

5. Further, it was observed that the name of the company was changed from "Hitech Orgochem Limited" to "Newton Engineering and Chemicals Limited" w.e.f February 09, 2001(Annual Report 2000-2001) and also the address of the company was different from the earlier one. Accordingly, letter dated October 31, 2019 (digitally signed) attaching the aforesaid SCN dated February 28, 2016 was sent through email to the company at its following email-ids i.e. "newton@newtonengg.com" and "accountsmanager@newtonengg.com" which were obtained from company's website and MCA's website with a request to resolve the complaints and file the status of the same latest by November 20, 2019. However, no reply has been received from the Noticee till date.

6. Subsequently, pursuant to the appointment of the undersigned as the Adjudicating Officer in the matter, the Noticee was granted another opportunity of personal hearing on January 24, 2020 vide Hearing Notice dated January 14, 2020. The Hearing Notice was sent to the address of the Noticee provided in the website of the company and MCA website. The Hearing Notice was duly delivered to the address of the Noticee. However, the Noticee neither appeared for the said hearing nor submitted any reply to the SCN/Hearing Notice.

7. Hence, I find that all possible steps have been taken to bring the SCN and the hearing notices to the knowledge of the Noticee, including sending the same by post, publication in the National daily Newspaper and sending the SCN via email address provided on the company's website. Therefore, I conclude that all the process of service of the SCN and the Hearing Notices as specified under Rule 7 of the SEBI (Adjudication) Rules, 1995 have been exhausted and therefore the principles of natural justice has been complied with qua the said Notices. It is pertinent to mention here that vide the aforesaid notice it was clearly indicated

that in case of failure to submit reply, the case would be proceeded with ex-parte on the basis of the material available on record. Hence, I am of the view that the Noticee has nothing to submit and in terms of rule 4(7) of the Rules, the matter can be proceeded ex-parte on the basis of material available on record. In absence of any response from the Noticee to the SCN, I presume that the Noticee has admitted the charges levelled against it. 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".

Further, 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, and 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..."

8. Further, the same position is reiterated by the Hon'ble SAT in the matter of *Dave Harihar Kirtibhai Vs SEBI* (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon'ble SAT observed as under:

"...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to

SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal..."

9. In view of the aforesaid observations made by the Hon'ble SAT, I find no reason to take a different view and accordingly I deem it appropriate to proceed against the Noticee ex-parte, based on the material available on record.

ISSUES FOR CONSIDERATION AND FINDINGS

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

    a. Whether the Noticee had failed to obtain SCORES authentication and to redress the grievance(s) of investor(s) within the stipulated time, thereby failed to comply with SEBI circulars dated June 03, 2011, August 13, 2012 and April 17, 2013?
    b. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15C of the SEBI Act?
    c. 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?

11. The first issue for consideration is whether the Noticee failed to obtain SCORES authentication and thereby violated the provisions of SEBI Circular No. CIR/OIAE/1/2013 dated April 17, 2013. 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. This was followed by reminder circular no. CIR/OIAE/1/2012 dated August 13, 2012. 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 wilful avoidance of the same.

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

13. 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 referred to as, "**STA"**), which in turn is required to redress the same and furnish the 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 referred to as, "**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.

14. 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. Therefore, I hold that the Noticee had not obtained the SCORES authentication within the stipulated timeline. Further, I note that the Hon'ble SAT 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..."*

15. 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.

16. As already noted, bereft of authentication, redressal of investor grievance cannot happen in SCORES. In this regard, I find that despite SEBI forewarning the Noticee repeatedly through issue of various circulars and in letters in the said matter, the Noticee which was a listed company at the relevant period of time did not pay heed to the same and consistently failed and neglected to comply with the SEBI Circulars for obtaining a Login ID and password. Further, these proceedings were initiated, *inter-alia*, on the allegation that nine unique grievances of investors were pending for redressal at the time of issuance of SCN. Two of these grievances pertained to “non-receipt of dividend” and seven other grievances pertained to “non-receipt of shares after transfer”. From the material available on record, I note that the said complaints are still pending. Further, I observe that SEBI is inter alia entrusted with the task of ensuring speedy resolution of investor grievances and to achieve the same, SEBI has provided a centralized web portal viz. SCORES wherein unresolved grievances pertaining to securities market are registered. However, in the present case, the Noticee has not shown any inclination to resolve the investor grievances in spite of repeated advice of SEBI. It is observed that the Noticee failed to redress the

investor grievances which were pending on the date of initiation of the instant proceedings within the time period stipulated under the SEBI Circulars. As already stated above, the Circular dated April 17, 2013 had *inter alia* stipulated that

"Failure to obtain the SCORES user ID and password within 30 days of issue of this circular would not only be deemed as non redressal of investor grievances but also indicate wilful avoidance of the same."

17. Further, I note that the failure of the Noticee to redress nine investor grievances pending against the company is a breach of the provisions of SEBI Act, 1992. It adversely affects the confidence of investors in securities market. The authentication on the electronic platform introduced specifically for this purpose as an investor protection measure by SEBI has to be meticulously followed by all the listed companies. Any lapse in the basic compliance by the listed companies in this regard would defeat the purpose of such efforts adopted by the regulator under the provisions of Section 11 of the SEBI Act, 1992, to advance the interest of the investors and the securities market. The Noticee is thus under an obligation to redress all investor complaints in terms of the advice/directions of SEBI. However, the company and its directors have not shown any inclination to resolve the investor grievances and in spite of repeated remainders of SEBI, the said investor grievances are pending till date.

18. Thus, the aforesaid non-compliance to SEBI circulars dated August 13, 2012 and April 17, 2013 by not obtaining SCORES authentication and non-redressal of investor grievances within the stipulated time render the Noticee liable for penalty under Section 15 C of the SEBI Act.

19. The provisions of section 15C of the SEBI Act is reproduced herein below:

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.

20. As per the dates of defaults, Section 15C of SEBI Act, as it stood prior to its amendment, is applicable for not obtaining authentication and non redressal of grievance, respectively. 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 the investor grievance which was not redressed during the stipulated period of time.

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

Factors to be taken into account while adjudging quantum of penalty.

15J. *While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or 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 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.

22. 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 the grievance, are not available on record. As regards the repetitive nature of the default, as already observed, there is no material on record which suggest that the Noticee had obtained SCORES authentication even after several intimations, consequent to which the grievance of nine investors were pending for redressal as on date of initiation of the instant proceedings. Such persistent non-compliance does not inspire confidence of investors in the market, whose protection is SEBI's prime mandate.

ORDER

23. After taking into consideration all the facts and circumstances of the case, I impose a penalty of Rs. 1,00,000/- (Rupees One Lakh Only) under section 15C of the SEBI Act on the Noticee viz. Newton Engineering and Chemicals Limited, which will be commensurate with its non-compliances.

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 online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW.

25. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department - DRA-II), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.". The Noticee shall also provide the following details while forwarding DD / payment information:

    a) Name and PAN of the Noticee
    b) Name of the case / matter
    c) Purpose of Payment – Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

26. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to Recovery proceedings under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

27. In terms of Rule 6 of the Rules, copy of this Order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date : February 28, 2020 **G Ramar**

Place : Mumbai **Adjudicating Officer**