BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. : Order/GR/RK/2019-20/7015]

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

Information Technologies (India) Limited

(CIN: U65910UP1994PLC017049)

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 Information Technologies (India) 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 and 15HB 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 Officer.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated August 03, 2017 (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 and 15HB 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. A Hearing Notice dated November 28, 2017 was also issued to the Noticee, however the same also returned undelivered. Thereafter, Public Notice vide newspaper publication dated December 26, 2017 was issued in English and Hindi Edition for the undelivered SCN in terms of Rule 7(d) of the Rules.

5. In response to the newspaper advertisement, the Noticee vide its letter dated January 01, 2018 stated that its correspondence address was – *Village Gujartola, Raebareilly Amethi Road, Gauriganj, Dist. Sultanpur, UP*, and requested for the SCN to be sent to its aforesaid address. Accordingly, vide letter dated January 12, 2018, copy of the SCN was forwarded to the Noticee. Subsequently, the Noticee vide its letter dated February 01, 2018 requested for copy of the investor complaint to understand the nature of the complaint and take suitable action. Vide letter dated March 14, 2018, SEBI informed the Noticee that SCORES authentication has not been taken by it and further, a copy of the complaint no. SEBIE/UP13/0000563/1 by complainant Kishore Sevaklal Dada was forwarded to the Noticee. From the available records, it is noted that no response to the same was received from the Noticee.

6. Pursuant to the appointment of the undersigned as AO, an opportunity of personal hearing was granted to the Noticee on January 24, 2020. However the Noticee did not appear for the said hearing. Subsequently, vide letter dated February 18, 2020, the Noticee submitted a reply in the matter, and the main contentions made therein is reproduced as follows –

"This is with reference to your above-said letter. In this regard it is to inform you that M/s Information Technologies (India) Ltd. (ITIL) is totally defunct from 2002 onwards. The said company is not carrying out any business activity. It has no source of Income. Its record lying at its registered office in the Gauri Ganj, District Sultanpur, has been stolen / removed by the local people / scrap dealers. Lots of incident of theft has been taken place in the above-said area wherein most of the records have been taken away by the local people / scrap dealers while stealing other materials from the site. Matter has been reported to the local police by the local Security Guard.

The above-said company has no employee. We have been nominal directors on the board of above-said company just to consists its mandatory coram in terms of provisions of the Companies Act, 1956 I 2013.

We are not aware about the past records or alleged non compliances by the above-said company. Any such alleged default is without any deliberate intention or due to willful act of the company or its directors.

We have no information regarding any alleged SEBI violation or proceedings. In absence of requisites record, we are unable to comment on your letter under reply. We hope that you will appreciate our bonafide and genuine reason in this regard. WE have every intention to cooperate in your investigation but helpless due to non-availability of record.

We therefore request you to withdraw the above-said notice."

ISSUES FOR CONSIDERATION AND FINDINGS

7. 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 and 15HB 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?

8. 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.

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

10. 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.

11. 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..."*

12. 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.

13. 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 two nos. of investors grievances were pending for redressal at the time of issuance of SCN. One of the complaints pertained to non-receipt of annual reports, and the other complaint

pertained to issues faced during demating of shares. From the records, it is noted that the complaint pertaining to the annual reports was disposed off by SEBI. However, the other investor complaint pertaining to the demating of shares is still pending. 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."*

14. With regards to the allegations, the Noticee has inter alia submitted that it is not carrying out any activity or having any source of income, and that its records are all stolen. The Noticee has also stated that any alleged default is without any deliberate intention and in the absence of the requisite records, they are unable to comment on the letter under reply. In this regard, I note that being a listed company, the Noticee has certain responsibility and duties to its shareholders, and resolution of investor grievances is one such key responsibility. Thus, I find the aforesaid reply of the Noticee to be untenable. Further, I note that the failure of the Noticee to redress the 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.

15. 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 15C and 15HB of the SEBI Act.

16. 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.

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 twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher*

The penalty amount was amended as *"liable to a 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.

17. As per the dates of defaults, Section 15C and 15HB 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 and 15HB of SEBI Act is applied for the investor grievance which was not redressed during the stipulated period of time.

18. While determining the quantum of penalty under Section 15C and 15HB 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.

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 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 the 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

20. 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 15HB of the SEBI Act and Rs. 1,00,000/- (Rupees One Lakh Only) under section 15C of the SEBI Act, i.e. penalties totalling to Rs. 2,00,000/- (Rupees Two Lakh Only) on the Noticee viz. Information Technologies (India) Limited, which will be commensurate with its non-compliances.

21. 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.

22. 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

23. 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.

24. 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**