BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/KS/MKG/AO/80/2017-18]

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

Arochem Silvassa Limited

(PAN: Not Available)

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") issued Circulars viz., Circular No. CIR/OIAE/2/2011 dated June 3, 2011, Sebi Circular No. CIR/OIAE/1/2012 dated August 13, 2012 and Sebi Circular No. CIR/OIAE/1/2013 dated April 17, 2013 (hereinafter referred to as "SEBI Circulars") dealing with the processing of investor complaints against listed companies through SEBI Complaints Redress System (hereinafter referred to as "SCORES"). These SEBI Circulars *inter alia* mandated listed companies 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of investor grievances, but also indicate wilful avoidance of the same and that failure to take action under the rescinded circulars before the date of issuance of SEBI Consolidated Circular, shall be deemed to have been done or taken or commenced under the provisions of SEBI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 Arochem Silvassa Limited (hereinafter referred to as 'the Noticee / the Company) had failed to obtain SCORES authentication. In view of the same, it was alleged that the Noticee violated SEBI Circulars No. CIR/OIAE/2/2011 dated June 03, 2011, CIR/OIAE/1/2012 dated August 13, 2012, CIR/OIAE/1/2013 dated April 17, 2013 and 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

3. Ms. Anita Kenkare was appointed as the Adjudicating Officer, vide order dated March 31, 2017 and communique dated April 17, 2017 under section 15-I(1) and (2) of SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Adjudication Rules") to inquire into and adjudge under section 15HB of SEBI Act for the alleged violations of the provisions of SEBI Circulars No. CIR/OIAE/2/2011 dated June 03, 2011, CIR/OIAE/1/2012 dated August 13, 2012, CIR/OIAE/1/2013 dated April 17, 2013 and CIR/OIAE/1/2014 dated December 18, 2014 by the Noticee. Pursuant to the transfer of Ms. Anita Kenkare, the proceedings were transferred to the undersigned, which was intimated vide communique dated October 04, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated May 12, 2017 (hereinafter referred to as "SCN") was issued to the Noticee under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held against it in terms of rule 4 of the Adjudication 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 Circulars No. CIR/OIAE/2/2011 dated June 03, 2011, CIR/OIAE/1/2012 dated August 13, 2012, CIR/OIAE/1/2013 dated April 17, 2013 and CIR/OIAE/1/2014 dated December 18, 2014 by not obtaining SCORES authentication.

5. The SCN dated May 12, 2017 was sent to the Noticee at its address: *33 Amli Industrial Estate, Silvassa - 396230* via speed post acknowledgement due ("SPAD") however, neither acknowledgment of delivery was received nor company filed any reply to the SCN. Subsequently, the adjudication proceedings were transferred from Ms. Anita Kenkare to the undersigned. Further, a reminder notice for filing reply to the SCN within 15 days, dated November 22, 2017 was issued to Noticee which was delivered to the Noticee on November 27, 2017 however, no reply was received from the Noticee.

6. In the interest of natural justice, it was decided to provide an opportunity of personal hearing to the Noticee and hence a hearing notice dated January 01, 2018 was sent to the Noticee which was duly delivered to the Noticee on January 08, 2018. The hearing was scheduled for January 12, 2018. However, the Noticee failed to appear for personal hearing scheduled for January 12, 2018. Further, a final opportunity of personal hearing was granted to the Noticee on January 30, 2018 vide hearing notice dated January 15, 2018 which was duly delivered to the Noticee on January 20, 2018. However,

neither did the Noticee appear on the date scheduled for the personal hearing, nor did the Noticee file any reply in the matter till date.

7. In view of the above, I am compelled to proceed in the matter against the Noticee *ex parte*. I am of the view that principles of natural justice have been complied with since sufficient opportunities have been provided to the Noticee to submit reply and to appear for hearing, which the Noticee has failed to avail of. Therefore, the present proceedings against the Noticee are undertaken *ex-parte* on the basis of available documents and information.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the documents / evidence available on record. The issues that arise for consideration in the present case are :

   (a) Whether the Noticee had violated the provisions of SEBI Circular dated December 18, 2014 by failing to obtain SCORES authentication?

   (b) Does the violation, if any, attract monetary penalty under Section 15 HB of the SEBI Act, 1992?

   (c) If yes, what should be the quantum of penalty?

9. Before moving forward, it is pertinent to have a brief narration on SCORES and its applicable circulars. SEBI commenced its web based investor grievance redressal portal, SCORES, in June 2011 to enhance investor protection. Investors can lodge their complaint against listed companies in 'on-line' or in physical mode and monitor its status. Complaints received by SEBI / in SCORES are electronically forwarded to the listed company / its Share Transfer Agent, 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 do SCORES authentication for obtaining user ID and login password from SEBI. The foregoing was spelt out in the SEBI Circular

No. CIR/OIAE/2/2011 dated June 03, 2011 which also provided the format for listed companies to provide information for obtaining authentication. Thereafter, 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.

10. Subsequently, SEBI Circular No. CIR/OIAE/1/2013 dated April 17, 2013, *inter alia*, reiterated the contents of June 2011 circular and stated 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 to all the listed companies which had failed to obtain SCORES authentication as per SEBI's records as on December 31, 2012. SEBI through the said Public Notice had advised to the companies 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.

11. Further, SEBI Circular No. 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 said circular No. 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. Now, the first issue for consideration is whether the Noticee by failing to obtain SCORES authentication has violated the provisions of SEBI Circulars No. CIR/OIAE/2/2011 dated June 03, 2011, CIR/OIAE/1/2012 dated August 13, 2012, CIR/OIAE/1/2013 dated April 17, 2013 and CIR/OIAE/1/2014 dated December 18, 2014. I note that the said SEBI circulars are addressed to all companies whose securities are listed on the Stock Exchanges. I observe from the BSE website that the Noticee was compulsorily delisted from BSE vide the exchange notice dated August 21, 2017 with effect from August 23, 2017. I note that BSE vide email dated November 07, 2017 confirmed delisting of the Noticee from BSE. However, I note from records made available to me that adjudication proceedings against the Noticee were initiated on February 05, 2015 which was before compulsory delisting by BSE on August 23, 2017. I also note that the status of the Noticee is shown as "Listed on ASE", "Suspended on BSE" and "Listed on VSE" as per the SCORES records made available to me. I note that vide SEBI order dated November 09, 2015 Vadodara Stock Exchange (VSE) was allowed to exit with immediate effect. Therefore the Noticee remained listed at the time of approval of adjudication as an action by the Competent Authority of SEBI. In view of the above, I observe that the Noticee was listed on BSE, ASE and VSE when the adjudication proceedings were approved by the Competent Authority of SEBI. Thus, I find that the Noticee was obligated to comply with the directions of SEBI in respect of obtaining SCORES authentication.

13. I find that sufficient opportunities were granted to the Noticee to submit its reply to the SCN and to appear for personal hearing. However, despite service of the SCN and hearing notices, none of the given opportunities were availed of by the Noticee. The Hon'ble SAT in the matter of Classic Credit Ltd. v/s SEBI [2007] 76 SCL 51 (SAT - MUM) *inter alia* held 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. The Hon'ble SAT also made such proposition in case of Sanjay Kumar Tayal & Ors. Vs. SEBI (in appeal No. 68/2013) decided on February 11, 2014 viz. *".....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 levelled against them in the show cause notices".*

15. Thus, in light of the totality of facts mentioned above, I hold that the Noticee has failed to obtain SCORES authentication and thereby violated the provisions of the SEBI Circulars No. CIR/OIAE/2/2011 dated June 03, 2011, CIR/OIAE/1/2012 dated August 13, 2012, CIR/OIAE/1/2013 dated April 17, 2013 and CIR/OIAE/1/2014 dated December 18, 2014. 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...*".

16. 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:

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

17. 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:

Factors to be taken into account by the adjudicating officer:

15J. *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.

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."

18. 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. 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, to this extent, the default of the Noticee is found to be repetitive in

[1]*Substituted for the words "liable to a penalty which may extend to one crore rupees" by the Securities Laws (Amendment) Act, 2014, w. e. f. 08-09-2014.*

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, by wilful non-compliance of the same, the Noticee has conducted in a manner which is detrimental to the interest of the investors in the securities market.

ORDER

19. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and also the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 1,00,000/- (Rupees One Lakh only) on the Noticee viz. Arochem Silvassa Limited under the provisions of Section 15HB of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

20. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

21. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded 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."

1. Case Name:	
2. Name of payee:	
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/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

22. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Arochem Silvassa Limited and also to the Securities and Exchange Board of India.

Date: January 31, 2018 **K SARAVANAN**

Place: Mumbai **ADJUDICATING OFFICER**