ADJUDICATION ORDER NO. AO/JS/VRP/ 84/2018

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:
Midfield Industries Limited
CIN: U27109AP1990PLC011353
PAN No. AAACM9490M
In the matter of Midfield Industries Limited

BACKGROUND

1. Securities and Exchange Board of India (**SEBI**) pursuant to investigations observed that Midfield Industries Limited (**The Noticee/ The Company'**) had not prima facie complied with the provisions of the Listing Agreement and the violated some of the clauses of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. (**'Listing Regulation'**) for the period August 2010 to March 2016 (**relevant period**).

2. SEBI has alleged that the Noticee had violated provisions of Listing Agreement violations and provisions of Listing Regulations, the details are as under:

Sr no	**Key provisions of Listing Regulations/ Agreement**	**Compliance Status as on 19th May, 2016 for the compliance made during the period from August 2010 till March 2016**
1	Regulation 7 (3) compliance certificate	Not submitted for Quarter March 2016
2	Regulation 13(3) Statement of investor complaints	Not submitted for Quarter December 2015 and March 2016.
3	Regulation 27 (2)(a) - Corporate Governance Report (Erstwhile Clause 49)	Not Submitted for the Quarter June 2010 & from the Quarter from December 2012 to March 2016
4	Regulation 31(1) – Shareholding Pattern (Erstwhile Clause 35)	Not Submitted for the Quarter June 2010 & from the Quarter from December 2012 to March 2016
5	Regulation 33 - Financial Result (Erstwhile Clause 41)	Not Submitted for the Quarter June 2010 & from Quarter March 2013 to December 2015 (Due date for March Quarter is 30.05.2016)
6	Regulation 34(1) - Annual Report - Hard Copy (Erstwhile Clause 31)	Not Submitted for the year 2010, 2012,2013, 2014 & 2015
7	Regulation 34- Annual Report soft Copy (Erstwhile Clause 31)	Not Submitted for the year 2012,2013, 2014 & 2015
8	Form A / Form B as per Erstwhile Clause 31 of Listing Agreement	Not Submitted for the year 2013, 2014 & 2015
9	Regulation 40(9) – Certificate from RTA (Erstwhile Clause 47C)	Not Submitted from September 2012 to March 2016
10	Regulation 42 - Book Closure/Record Date (Erstwhile Clause 15/16)	Not Submitted for the year 2011 & 2012
11	Regulation 46(1) - Website Compliance Status (Erstwhile Clause 54)	Website is not updated as per requirements mentioned in Regulation 46 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

3. Accordingly, an Adjudicating Officer was appointed to adjudicate the matter.

APPOINTMENT OF ADJUDICATING OFFICER

4. An Adjudicating Officer was appointed vide order dated February 07, 2017 under Section 19 the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act, 1992'**) read with section 23I of Securities Contract (Regulation) Act, 1956 (SCR Act, 1956) Rule 3 of Securities Contract (Regulations) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rule, 2005 (hereinafter referred to as **'Adjudication Rules'**), to inquire into and adjudge under Section 23E of SCR Act, 1956. Consequent to transfer of these proceedings are now proceeded with in terms of Order dated May 18, 2017 to inquire into and adjudge under Sections 23 E of SCR Act, 1956 the alleged violations against the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice Ref No. EAD-8/JS/VRP/OW/24847/2017 in terms of the provisions of Rule 4 of Adjudication Rules read with Section 15I of SEBI Act, 1992 was issued on October 10, 2017 and A Supplementary Notice to the Show Cause Notice bearing no dated October 10, 2017 Ref. No. EAD-8/JS/VRP/OW/901/2017 was issued on January 09, 2018 (hereinafter referred to as **'SCN'**) to the Noticee calling upon the Noticee to show cause as to why an inquiry should not be held against them under Rule 4 of the Adjudication Rules and penalty be not imposed for the alleged violation. The SCNs were duly delivered to the Noticee.

6. The Noticee did not file reply to the SCN thus hearing was granted on November 16, 2017 vide hearing notice dated November 01, 2017. The Noticee represented by its Managing Director, during the course of hearing had submitted a copy of letter dated March 13, 2017 addressed to the General Manager, Enforcement Department of SEBI and requested to consider the letter dated March 13, 2017 as his submissions to the SCN which is as follows:

Vide letter dated March 13, 2017

We are in receipt of the above referred letters and would like to reply as below:
1.) Our company is 27 years old and we were doing good business in packing area/line having multi products and manufacturing facilities at multiple locations.
Around 525 employees including contract workers were working for our company till Dec'2012.
2.) Income Tax officials conducted raid on 07-11-2012 and have taken away all our files including electronic data. They have given attachment letters to all bankers and the debtors on the same day.
3.)We thought of solving Income Tax issues in a couple of months but the issues could not be solved and the matter has been referred to the court. We expect to get the judgment in a couple of months' time from now and have been attending the court hearings.
4.) Meantime, our company operations were stalled due to the IT attachments to Bankers and debtors. Due to the delay in solving the IT problems, our bank accounts became irregular and were declared as NPA and all the facilities sanctioned by them were withdrawn. Later the banks used SARFASEI ACT and used court order to take physical possession of the company's properties including my house. Court has appointed advocate commissioner to take physical possession of all the properties. I had given my house as collateral security to the bank in 2004 and my wife also signed as one of the guarantors as the house is on joint name.

5.) As we could not pay the salaries to the employees due to the attachments, the workers union filed a case in the labor court and the case is going on.
6.) Mr. Ashok Sagar has quit the company as an Executive Director in 2012 itself and the same has been officially informed to Registrar of Companies.
7.) ROC filed cases against us in Hyderabad court as we could not finalize balance sheets and conduct AGM due to non-availability of records and company operations have stalled since 5 years.
8.) We are fighting 16 cheque bounce cases filed against us in the courts. These cheques were given to the creditors before the Income Tax raid.
9.) We have completed all the projects mentioned in the RHP but we have changed the places and Suppliers for the sake of operational convenience and to reduce the project cost. We have taken approval from the directors and at AGM for these changes. These changes were informed to the concerned officials at BSE and SEBI at that time only.
10.) Funds deposited at Deesha Tieup and SBI mutual funds have been brought back and the projects were completed in stipulated time.
11.) None of the promoters sold or bought any shares before IPO or after till date.
12.) We have not diverted any IPO funds and in fact have spent more than IPO funds in our new projects.
13.) We have not given any loans to any employees or directors of the company at any point of time. We used to give small emergency loan to the union workers only as per the union, agreement and we used to recover this amount from their salary only.
14.) Once we solve IT issue and once attachments are removed to our bankers and debtors, we are confident to solve the bankers issue and start the company operations. Then we are taking a new CFO and will provide information to you in a detailed way .i.e. as per your requirement.
15.) In fact, SEBI department official visited our plant along with the Hyderabad SEBI officials and I met them at your Hyderabad office also and gave them all bank account details in order for them to get statements from the bankers.
16.) SEBI officials have already fined us Rs.2 lakhs penalty for non-compliances and I met your officials at Mumbai office also. We could not make this payment due to attachments. Your officials also sent attachment letters to our bankers to recover this amount.
Now we request you to understand the position we are in and cooperate so that we can start the company operations at the earliest and provide all the information sought by you in a detailed manner. We are making continued efforts to restart our factories and will succeed soon.

ISSUES FOR CONSIDERATION

7. After perusal of the material available on record, the following issues arises for consideration:

   I. Whether the Noticee has violated Clause 43(a) read with 43(b), Clause 15/16, 31, 35, 41, 47C, 49, 54 of Listing Agreement read with Section 21 of Securities Contract (Regulations) Act 1956 (hereinafter referred to as 'SCR Act, 1956') and in addition to the above the Noticee had not submitted Shareholding pattern, Financial results, Annual Report, Form A / Form B, Certificate from RTA, Corporate Governance Report, Compliance certificate, statement of investor complaints, to the exchange. Further, Website of the company is not functional thereby violated Regulations 42, 34, 31(1), 33, 40(9), 27(2) (a), 46(1), 7(3), 13 (3) of Listing Regulations.?

   II. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 23E of SCR Act, 1956?

   III. If so, what quantum of monetary penalty should be imposed on the Noticees considering the factors stated in section 23E of SCR Act, 1956?

FINDINGS

8. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticee, the findings are as under.

ISSUE I: Whether the Noticee has violated Clause 43(a) read with 43(b), Clause 15/16, 31, 35, 41, 47C, 49, 54 of Listing Agreement read with Section 21 of Securities Contract (Regulations) Act 1956 (hereinafter referred to as 'SCR Act, 1956') and in addition to the above the Noticee had not submitted Shareholding pattern, Financial results, Annual Report, Form A / Form B, Certificate from RTA, Corporate Governance Report, Compliance certificate, statement of investor complaints, to the exchange. Further, Website of the company is not functional thereby violated Regulations 42, 34, 31(1), 33, 40(9), 27(2) (a), 46(1), 7(3), 13 (3) of Listing Regulations.?

9. It is pertinent to note that the Noticee in his submissions has not proffered any specific rebuttal to any of the charges specifically made out in the SCN. In fact the Noticee has taken a stand that the Income Tax Authorities have seized the documents and also attached the bank accounts of the company so they are unable to comply with any provisions. It has also been mentioned that all the matters would be set right once the "Income Tax matter" is sorted out. Thus it can be seen that there is no specific rebuttal to any of the charges in the SCN and on being so specifically asked about the violations in the SCN it is admitted by the Noticee that the company is going through "problems".

10. It is to be mentioned that the compliance of the Noticee are being examined with respect to the relevant period as mentioned in the SCN unless otherwise specifically stated for the violations examined herein.

11. The various compliances alleged to have not been filed/not complied with are being discussed with the text of the relevant provisions alleged to have been violated as under:

    11.1. *Regulation 7.(3) of listing Regulations, 2015: The listed entity shall submit a compliance certificate to the exchange, duly signed by both the compliance officer of the listed entity and the authorised representative of the share transfer agent, wherever applicable, within one month of end of each half of the financial year, certifying compliance with the requirements of sub- regulation (2).*

    It is noted from the BSE email dated May 19, 2016 the Noticee had not submitted the compliance certificate for the Quarter March 2016, within the stipulated time.

    No statement has been made out by the Noticee that this requirement has been fulfilled after the institution of these proceedings.

Beyond the submissions made vide its letter dated March 13, 2017, the Noticee did not have any further defense to offer. Thus it is concluded that the entity has not complied with the stated provisions.

11.2. Regulation *13. (3) of Listing Regulation, 2015 The listed entity shall file with the recognised stock exchange(s) on a quarterly basis, within twenty one days from the end of each quarter, a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter*

As per the BSE email dated May 19, 2016 the Noticee had not filed the quarterly statement of investor grievances for December 2015 and March 2016 within the stipulated time.
No statement has been made out by the Noticee that this requirement has been complied with after the institution of these proceedings.
Beyond the submissions made vide its letter dated March 13, 2017, the Noticee did not have any further defense to offer. Thus it is concluded that the entity has not complied with the stated provisions.

11.3. *Regulation 27. (2)(a) Listing Regulations, 2015 (Erstwhile clause 49 of Listing Agreement) : The listed entity shall submit a quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognised stock exchange(s) within fifteen days from close of the quarter. Holding of specified securities and shareholding pattern.*

As per the BSE email dated May 19, 2016 the Noticee had not submitted the quarterly compliance report on corporate governance the Quarters June 2010 & from the Quarter from December 2012 to March 2016, within the stipulated time.
No statement has been made out by the Noticee that this requirement has been complied with after the institution of these proceedings.
Beyond the submissions made vide its letter dated March 13, 2017, the Noticee did not have any further defense to offer. Thus it is concluded that the entity has not complied with the stated provisions.

11.4. Regulation *31.(1) of Listing Regulations, 2015 (Erstwhile clause 35 of Listing Agreement) The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by the Board from time to timewithin the following timelines -*
(a)one day prior to listing of its securities on the stock exchange(s);
(b)on a quarterly basis, within twenty one days from the end of each quarter; and,
(c)within ten days of any capital restructuring of the listed entity resulting in a change exceeding two per centof the total paid-up share capital:
Provided that in case of listed entities which have listed their specified securities on SME Exchange, the above statements shall be submitted on a half yearly basis within twenty one days from the end of each half year.

As per the BSE email dated May 19, 2016 the Noticee did not submit the statement of shareholding pattern separately for each class of securities

quarter of June 2010 and from the quarter from December 2012 to March 2016, within the stipulated time. No statement has been made out by the Noticee that this requirement has been complied with after the institution of these proceedings.

Beyond the submissions made vide its letter dated March 13, 2017, the Noticee did not have any further defense to offer. Thus it is concluded that the entity has not complied with the stated provisions.

11.5. *Regulation 33. (Erstwhile clause 41 of Listing Agreement) While preparing financial results, the listed entity shall comply with the following:*

(1) (a)The financial results shall be prepared on the basis of accrual accounting policy and shall be in accordance with uniform accounting practices adopted for all the periods.

(b)The quarterly and year to date results shall be prepared in accordance with the recognition and measurement principles laid down in Accounting Standard 25 or Indian Accounting Standard 31 (AS 25/ Ind AS 34 – Interim Financial Reporting), as applicable, specified in Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder or as specified by the Institute of Chartered Accountants of India, whichever is applicable.

(c)The standalone financial results and consolidated financial results shall be prepared as per Generally Accepted Accounting Principles in India:

Provided that in addition to the above, the listed entity may also submit the financial results, as per the International Financial Reporting Standards notified by the International Accounting Standards Board.

(d)The listed entity shall ensure that the limited review or audit reports submitted to the stock exchange(s) on a quarterly or annual basis are to be given only by an auditor who has subjected himself to the peer review process of Institute of Chartered Accountants of India and holds a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India.

(e)The listed entity shall make the disclosures specified in Part A of Schedule IV.

(2)The approval and authentication of the financial results shall be done by listed entity in the following manner:

(a)The quarterly financial results submitted shall be approved by the board of directors:

Provided that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.

(b)The financial results submitted to the stock exchange shall be signed by the chairperson or managing director, or a whole time director or in the absence of all of them; it shall be signed by any other director of the listed entity who is duly authorized by the board of directors to sign the financial results.

(c)The limited review report shall be placed before the board of directors, at its meeting which approves the financial results, before being submitted to the stock exchange(s).

(d)The annual audited financial results shall be approved by the board of directors of the listed entity and shall be signed in the manner specified in clause (b) of sub-regulation (2).

(3)The listed entity shall submit the financial results in the following manner:

(a)The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter.

(b)In case the listed entity has subsidiaries, in addition to the requirement at clause (a) of sub-regulation (3), the listed entity may also submit quarterly/year-to-date consolidated financial results subject to following:

(i)the listed entity shall intimate to the stock exchange, whether or not listed entity opts to additionally submit quarterly/year-to-date consolidated financial results in the first quarter of the financial year and this option shall not be changed during the financial year.

Provided that this option shall also be applicable to listed entity that is required to prepare consolidated financial results for the first time at the end of a financial year in respect of the quarter during the financial year in which the listed entity first acquires the subsidiary.
(ii)in case the listed entity changes its option in any subsequent year, it shall furnish comparable figures for the previous year in accordance with the option exercised for the current financial year.
(c)The quarterly and year-to-date financial results may be either audited or unaudited subject to the following:
(i)In case the listed entity opts to submit unaudited financial results, they shall be subject to limited review by the statutory auditors of the listed entity and shall be accompanied by the limited review report.
Provided that in case of public sector undertakings this limited review may be undertaken by any practicing Chartered Accountant.
(ii)In case the listed entity opts to submit audited financial results, they shall be accompanied by the audit report.
(d)The listed entity shall submit [annual]audited standalone financial results for the financial year, within sixty days from the end of the financial year along with the audit report and [Statement on Impact of Audit Qualifications (applicable only]for audit report with modified opinion):
Provided that if the listed entity has subsidiaries, it shall, while submitting annual audited standalone financial results also submit annual audited consolidated financial results along with the audit report and [Statement on Impact of Audit Qualifications (applicable only]for audit report with modified opinion)[:]

Provided further that, in case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange(s) while publishing the annual audited financial results.

(e)The listed entity shall also submit the audited financial results in respect of the last quarter along-with the results for the entire financial year, with a note stating that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures upto the third quarter of the current financial year.
(f)The listed entity shall also submit as part of its standalone or consolidated financial results for the half year, by way of a note, a statement of assets and liabilities as at the end of the half-year.
(4)The applicable formats of the financial results and Statement on Impact of Audit Qualifications (for audit report with modified opinion)]shall be in the manner as
specified by the Board [***]
(5)For the purpose of this regulation, any reference to "quarterly/quarter" in case of listed entity which has listed their specified securities on SME Exchange shall be respectively read as "half yearly/half year" and the requirement of submitting 'year-to-date' financial results shall not be applicable for a listed entity which has listed their specified securities on SME Exchange.
(6)The [Statement on Impact of Audit Qualifications (for audit report with modified opinion)]and the accompanying annual audit report submitted in terms of clause (d) of sub-regulation (3) shall be reviewed by the stock exchange(s)

It was observed from the BSE vide email dated May 19, 2016 that the Noticee did not submit the financial result on quarterly and year-to-date standalone financial results to the stock exchange within the stipulated time. The financial results were not submitted for quarter June 2010 and from the quarter March 2013 to December 2015 (Due date for March Quarter is 30.05.2016)
No statement has been made out by the Noticee that this requirement has been complied with after the institution of these proceedings.

Beyond the submissions made vide its letter dated March 13, 2017, the Noticee did not have any further defense to offer. Thus it is concluded that the entity has not complied with the stated provisions.

11.6. Regulation 34 of Listing Regulation, 2015 *(Erstwhile clause 31 of Listing Agreement)*:
The listed entity shall submit the annual report to the stock exchange within twenty one working days of it being approved and adopted in the annual general meeting as per the provisions of the Companies Act, 2013.
(2)The annual report shall contain the following:
(a) audited financial statements i.e. balance sheets, profit and loss accounts etc [,and Statement on Impact of Audit Qualifications as stipulated in regulation 33(3)(d), if applicable;]13
(b) consolidated financial statements audited by its statutory auditors;
(c) cash flow statement presented only under the indirect method as prescribed in Accounting Standard-3 or Indian Accounting Standard 7, as applicable, specified in Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder or as specified by the Institute of Chartered Accountants of India, whichever is applicable;
(d) directors report;
(e) management discussion and analysis report - either as a part of directors report or addition thereto;
(f) for the top 14 [five hundred] listed entities based on market capitalization (calculated as on March 31 of every financial year),business responsibility report describing the initiatives taken by them from an environmental, social and governance perspective, in the format as specified by the Board from time to time:
Provided that listed entities other than top 15[five hundred] listed companies based on market capitalization and listed entities which have listed their specified securities on SME Exchange, may include these business responsibility reports on a voluntary basis in the format as specified.
(3) The annual report shall contain any other disclosures specified in Companies

It is observed from BSE email dated May 19, 2016 that the Noticee had not submitted the annual report to the stock exchange within the stipulated time for the years 2010, 2012, 2013, 2014 & 2015.
No statement has been made out by the Noticee that this requirement has been complied with after the institution of these proceedings.
Beyond the submissions made vide its letter dated March 13, 2017, the Noticee did not have any further defense to offer. Thus it is concluded that the entity has not complied with the stated provisions.

11.7. *Clause 31 of listing agreement: The Company will forward to the Exchange promptly and without application - - -*
(a) six copies of the Statutory and Directors' Annual Reports along with Form A or Form B, as applicable, (the proforma for which shall be as under)1 Balance Sheets and Profit and Loss Accounts and of all periodical and special reports as soon as they are issued and one copy each to all the recognised stock exchanges in India;
(b) six copies of all notices, resolutions and circulars relating to new issue of capital prior to their despatch to the shareholders;
(c) three copies of all the notices, call letters or any other circulars including notices of meetings convened u/s 391 or section 394 read with section 391 of the Companies Act, 1956 together with Annexures thereto, at the same time as they are sent to the shareholders, debenture holders or creditors or any class of them or advertised in the Press.
(d) copy of the proceedings at all Annual and Extraordinary General Meetings of the Company;
(e) three copies of all notices, circulars, etc., issued or advertised in the press either by the Company, or by any company which the Company proposes to absorb or with

which the Company proposes to merge or amalgamate, or under orders of the court or any other statutory authority in connection with any merger, amalgamation, re-construction, reduction of capital, scheme or arrangement, including notices, circulars, etc. issued or advertised in the press in regard to meetings of shareholders or debenture holders or creditors or any class of them and copies of the proceedings at all such meetings.

As per the BSE email dated May 19, 2016 the Noticee had not supplied the requisite information within the stipulated time for the years 2013, 2014 & 2015 No statement has been made out by the Noticee that this requirement has been complied with after the institution of these proceedings.
Beyond the submissions made vide its letter dated March 13, 2017, the Noticee did not have any further defense to offer. Thus it is concluded that the entity has not complied with the stated provisions.

11.8. *Regulation 40(9) of Listing Regulation, 2015 (Erstwhile clause 47C of Listing Agreement:) Transfer or transmission or transposition of securities. The listed entity shall ensure that the share transfer agent and/or the in-house share transfer facility, as the case may be, produces a certificate from a practicing company secretary within one month of the end of each half of the financial year, certifying that all certificates have been issued within thirty days of the date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies.*

BSE email dated May 19, 2016 states that the Noticee has failed to file the certificate from the practicing company secretary within the stipulate time for the period September 2012 to March 2016.
No statement has been made out by the Noticee that this requirement has been complied with after the institution of these proceedings.
Beyond the submissions made vide its letter dated March 13, 2017, the Noticee did not have any further defense to offer. Thus it is concluded that the entity has not complied with the stated provisions.

11.9. *Regulation 42 of Listing Regulation (Erstwhile clause 15/16 of Listing Agreement:)*
(1)The listed entity shall intimate the record date to all the stock exchange(s) where it is listed for the following purposes:
(a)declaration of dividend;
(b)issue of right or bonus shares;
(c)issue of shares for conversion of debentures or any other convertible security;
(d)shares arising out of rights attached to debentures or any other convertible security
(e)corporate actions like mergers, de-mergers, splits and bonus shares, where stock derivatives are available on the stock of listed entity or where listed entity's stocks form part of an index on which derivatives are available;
(f) such other purposes as may be specified by the stock exchange(s).

(2)The Noticee shall give notice in advance of at least seven working days (excluding the date of intimation and the record date) to stock exchange(s) of record date specifying the purpose of the record date Further the Noticee shall give notice in advance of at least seven working days (excluding the date of intimation and the record date) to stock exchange(s) of record date specifying the purpose of the record date.

(3)The Noticee shall recommend or declare all dividend and/or cash bonuses at least five working days (excluding the date of intimation and the record date) before the record date fixed for the purpose.

(4)The Noticee listed entity shall ensure the time gap of at least thirty days between two record dates.

(5)For securities held in physical form, the Noticee may, announce dates of closure of its transfer books in place of record date for comp lying with requirements as specified in sub-regulations (1) to (4): Provided that the listed entity shall ensure that there is a time gap of at least thirty days between two dates of closure of its transfer books.

As per BSE email dated May 19, 2016 the Noticee had not intimated the record date to the stock exchange for the year 2011 & 2012. However in this respect it is to be mentioned that the compliance with this provisions – i.e. declaration of record date is subject to the corporate actions that have been announced by the company. There is no information available on records to show that the company had made announcements requiring the Company to intimate the record date.

Given the above, no fault can be attached to the Noticee on this count, and the charges in the SCN with respect to this fails.

11.10. *Regulation 46.(1) Listing Regulations, 2015 (Erstwhile clause 54 of Listing Agreement:) The listed entity shall maintain a functional website containing the basic information about the listed entity.*

As per the BSE email dated May 19, 2016 the Noticee had not maintained a functional website containing the basic information about the listed entity. However it is ascertained that the website does exist at the location http://www.midfieldindustries.com/ . It is seen that the website is functional. However it was not ascertainable as to the currency of the information available on the website. Further given that the "basic information' has not been codified it is open for question as to what would constitute basic information. As this has not been specifically spelt out, it is held that the Noticee has partly complied with provision as it has created a website but has not maintained the same by updating the information after Annual Report of 2012

11.11. Clause 43(a) of Listing Agreement; *The Company agrees that it will furnish on a quarterly basis a statement to the Exchange indicating the variations between projected utilisation of funds and/or projected profitability statement made by it in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilisation of funds and/or actual profitability.*

Clause 43(b) *The statement referred to in clause (1) shall be given for each of the years for which projections are provided in the prospectus/letter of offer/object/s stated in the explanatory statement to the notice for considering preferential issue of securities and shall be published in newspapers simultaneously with the unaudited/audited financial results as required under*

As per the BSE email dated May 19, 2016 the Noticee had not furnished the quarterly statement of utilization of funds from the IPO. The Company had come out with the IPO in August 2010 and had project implementation period as per the prospectus for completion of the objects of the issue by end of May 2011.Thus the Company was required to continue to file the variation statement until the completion/ utilisation of the issue proceeds. It is clear from the information provided by the BSE that the same has not been complied with by the company.

It is observed that separate proceedings have been instituted against the company for irregularities observed in the utilisation of the issue proceeds and are being dealt with separately.

No statement has been made out by the Noticee that this requirement has been complied with even after the institution of these proceedings.

Beyond the submissions made vide its letter dated March 13, 2017, the Noticee did not have any further defense to offer. Thus it is concluded that the entity has not complied with the stated provisions.

11.12. As per section 21 of SCRA Act, 1956 Noticee agrees to comply with the conditions of the listing agreement with that stock exchange.

The text of the alleged provisions are reproduced as under:

Conditions for listing.

21. Where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

It is noted from the BSE email dated May 19, 2016 the Noticee had not complied with the condition referred at para 11.1 to para 11.11 thereby violated section 21 of SCRA Act, 1956.

12. It is noted that the Noticee in its reply has not denied that allegations alleged in the in the SCN categorically. Further, the Noticee in its reply is silent on the specific allegation and not replied to the allegation. In this regards reliance is placed on 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) wherein it, 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 showcause notice were admitted by them".

Thus the Noticees has admitted the allegation of the indulged in NHP there by contribution the price rise in the scrip of the company.

The Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others v SEBI* (Appeal No. 68 of 2013 decided on February 11, 2014), 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……..”.

In light of the above citations it is to be held that the Noticee has accepted the charges alleged in the SCN.

13. After considering the contentions put forth by the Noticee for the reasons stated above, it is established without doubt that the Noticee has violated Regulation 7(3) of listing Regulations, 2015, Regulation 13 (3) of Listing Regulation, 2015, Regulation 27(2)(a) Listing Regulations, 2015 (Erstwhile clause 49 of Listing Agreement), Regulation 31(1) of Listing Regulations, 2015 (Erstwhile clause 35 of Listing Agreement), Regulation 33 (Erstwhile clause 41 of Listing Agreement), Regulation 34 of Listing Regulation, 2015 (Erstwhile clause 31 of Listing Agreement), Clause 31 of listing agreement, Regulation 40(9) of Listing Regulation, 2015 (Erstwhile clause 47C of Listing Agreement), Regulation 42 of Listing Regulation (Erstwhile clause 15/16 of Listing Agreement, Regulation 46(1) Listing Regulations, 2015 (Erstwhile clause 54 of Listing Agreement, Clause 43(a) & 43(b)of Listing Agreement read with Section 21 of SCR Act, 1956.

ISSUE II: Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 23E of SCR Act, 1956?

14. The violations referred at para 13 on the part of the Noticee attract monetary penalty under Section 23E of SCR Act, 1956. The text of the said provision is as follows:

Penalty for failure to comply with provision of listing conditions or delisting Conditions or grounds.

23E. *If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be [1][liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.*

15. The Company has stated that it is undergoing problems at present due to the Income Tax Authorities seizing its documents and also attaching its various bank accounts and have stated that once the issue is settled would comply with all the regulatory provisions. It is to be stated that this cannot be the premise for not complying with the regulatory provisions and thus does not come to the aid of the Company.

16. Further, I note that the Hon’ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) has also 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…”.*

[1] Substituted for the words "liable to a penalty not exceeding twenty-five crore rupees" by the Securities Laws (Amendment) Act, 2014, w.e.f 08-09-2014.

17. Given the above it is to be held that where violations have occurred the penalty follows and thus the company is liable for penalty under 23 E of the SCR Act., 1956.

ISSUE V: If so, what quantum of monetary penalty should be imposed on the Noticees considering the factors stated in section 23J of SCR Act, 1956?

18. While determining the quantum of monetary penalty under Section 23E of SEBI Act, 1992 the factors stipulated in Section 23J of SCR Act, 1956, is to considered which reads as under:

> ***Factors to be taken into account by adjudicating officer.***
>
> ***23J.*** *While adjudging the quantum of penalty under section 23-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.]*

19. As per Section 23E of SCR Act, 1956 of the Noticee is liable to penalty, which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees as the violations is in continuation. Further, under Section 23-I of SCR Act, 1956, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty.

20. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of the Noticee's failures.

21. There are eleven provisions that were alleged to have been violated by the company, and it is assessed above that nine of them are held to have been violated as alleged in the SCN.

22. The violations observed above are repetitive in nature. Further despite enough opportunities to comply with the provisions, the Company has not complied with the provisions and thus the default continues even as on date.

ORDER

23. After taking into consideration all the facts and circumstances of the case, and after considering the factors enumerated in section 23 J of SCR Act, 1956. A penalty of **Rs 20,00,000/- (Rupees Twenty Lakh Only)** is imposed under 23E of SCR Act, 1956 on the Noticee, Midfield Industries Limited which in my opinion, will be commensurate with the violations committed by the Noticee.

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

25. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI (EFD-DRA-1). The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided At Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;
    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)

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

Date: January 31, 2018
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer