BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: EAD-9/AO/SM/55 /2018-19

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of:
Shree Vindhya Papers Mills Ltd
(PAN No. Not Available)

In the matter of Non-obtaining of SCORES Authentication

Facts of the Case:

1. Securities and Exchange Board of India (hereinafter referred to as SEBI) vide Circular No. CIR/OIAE/2/2011 dated June 03, 2011, inter-alia, directed all listed companies to obtain SEBI Complaints Redressal System (hereinafter to SCORES) authentication and also redress any pending investor grievances in the SCORES only. This was followed by various circulars/directions/public notice from time to time inter-alia requiring listed companies, including M/s Shree Vindhya Papers Mills Ltd (hereinafter referred to as the "Noticee/"Company") to obtain authentication on SCORES for processing investor complaints received by SEBI. SEBI vide 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 3, 2011, CIR/OIAE/1/2012 dated August 13, 2012, 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of investor grievances, but, also indicate wilful avoidance of the same and that failure to take action under the rescinded circulars before the date of issuance of SEBI Consolidated Circular, shall be deemed to have been done or taken or commenced under the provisions of SEBI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. SEBI Observed that the Noticee had failed to comply with the said directions of the SEBI Consolidated Circular.

2. It was therefore, alleged that the Noticee had failed to obtain SCORES authentication and thereby violated SEBI Circular No. CIR/OIAE/1/2014 dated

December 18, 2014, thus, making the Noticee liable for imposition of penalty under Section 15HB of SEBI Act, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI has appointed Ms. Anita Kenkare as the Adjudicating Officer, to inquire and adjudge under Section 15-I of SEBI Act and Rule 3 of SEBI (Procedure of Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Rules') to inquire into and adjudge under Section 15HB of SEBI Act for the alleged violations of the provisions of CIR/OIAE/1/2014 dated December 18, 2014 by the Noticee. Subsequent to the transfer of case, the undersigned was appointed as Adjudicating Officer vide Order dated October 04, 2017.

SHOW CAUSE NOTICE, REPLY AND HEARING:

4. A Show Cause Notice No. EAD-6/AK/VG/14281/2017 dated June 20, 2017 (hereinafter referred to as "SCN") was issued to the Noticee under Rule 4 of the Rules 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 under Section 15HB of the SEBI Act for the alleged violation of provisions of the SEBI Consolidated Circular for not obtaining SCORES authentication. The Noticee was advised to file its reply within 14 days of receipt of the SCN.

5. The SCN was sent to the last known address of the Noticee –*Somani Nagar, Duskheda District, Jalgaon, Bhuswal – 425203*, but the SCN could not be delivered. Therefore, a Public Notice was also given in Times of India and Loksatta, Mumbai Edition, which was published on November 13, 2017

Personal Hearing:

1. In the interest of natural justice, a hearing notice no. SEBI/HO/EAD/SM/EE/31981/2017 dated December 15, 2017 granting an opportunity of personal hearing was sent to the last known address of the Noticee to appear for personal hearing on January 16, 2018 and since the same could not be delivered. The copies of the SCN and Hearing Notice were also uploaded on the website of SEBI under Unserved Summons/Notices www.sebi.gov.in**.** A Public Notice was also given in Times of India and Loksatta, Mumbai Edition, which was published on January 23, 2018 to appear for Personal Hearing on February 21, 2018. However, the Noticee neither submitted any reply nor availed the opportunity of hearing on the scheduled date.

6. In the above referred SCN, Hearing Notice and Public Notice, it was specifically indicated that if the Noticee fails to submit its reply to the SCN or fails to attend the

hearing proceedings on the stipulated date and time, it will be presumed that Noticee has no submissions to offer in its defense and the matter would be further proceeded with on the basis of the material available on record.

7. In view of the above, I am of the opinion that the SCN has been duly served upon the Noticee in terms of AO Rules , but the Noticee failed to reply and also failed to avail the opportunity of personal hearing. The principle and natural justice has been followed in the matter, as enough opportunities were provided to the Noticee to reply to the SCN and to appear for hearing. As such I am inclined to decide the matter ex-parte taking into account the evidence/material available on record.

Consideration of Issues and Findings:

8. I have carefully pursued the documents available on record. It is observed that the allegation against the Noticee is that it has failed to obtain SCORES authentication. The issues, therefore, that arise for consideration in the present matter are:

Issue No. I: 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?

Issue No. II: Does the violation, if any, attract monetary penalty under Section 15 HB of the SEBI Act, 1992?

Issue No. III: If yes, what should be the quantum of penalty?

FINDINGS:

Issue I: 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?:

9. I note that the aforesaid SEBI circulars are addressed to all companies whose securities are listed on the Stock Exchanges. As per the SCORES website, the Noticee was listed on Bombay Stock Exchange (hereinafter referred to as “BSE”) National Stock Exchange (hereinafter referred to as “NSE”) and Calcutta Stock Exchange (hereinafter referred to as “CSE”) On BSE, the Noticee was “Compulsorily Delisted” with effect from August 23, 2017**.** On NSE, the Noticee was compulsory delisted from March 08, 2017. As per the information from CSE, the Noticee is suspended with effect from June 17, 2004.

2. I note from records made available to me that adjudication proceedings against the

Noticee were approved by the Competent Authority on February 05, 2015 which was before "Compulsory Delisting" by BSE on August 23, 2017 and NSE on March 08, 2017 and the Noticee continues to be suspended from June 17, 2004 on CSE.

3. Thus, I note that the Noticee was listed when SEBI had issued the above mentioned circulars in respect of SCORES and also when the adjudication action was approved by the Competent Authority of SEBI. Therefore, I find that the Noticee was obligated to comply with the directions of SEBI in respect of obtaining SCORES authentication when it was very much listed.

4. I find it was obligatory on the part of the Noticee to obtain SCORES authentication within the time frame stipulated by SEBI. However, from the facts available on record, it was observed that the Noticee failed to comply with the same. Therefore, the Noticee violated the provisions of SEBI circulars dated June 3, 2011, August 13, 2012, April 17, 2013 and December 18, 2014 for not taking SCORES authentication.

5. 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".*

6. 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".*

7. 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...*".

Issue No. II: Does the violation, if any, attract monetary penalty under Section 15 HB of the SEBI Act, 1992?;

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

Issue No. III: If yes, what should be the quantum of penalty?

9. 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."

10. 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 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

11. 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. Shree Vindhya Paper Mills Ltd 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.

12. 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 favor 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

13. The Noticee shall forward said Demand Draft or the details/confirmation of penalty so paid through e-payment to the Deputy General Manager (Enforcement Department - DRA- II) of SEBI. The format for forwarding details/confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in:

Date	Department of SEBI	Name of Intermediary/other Entity	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.	Purpose of payment (including the period for which payment was made e.g Quarterly, annually)	Bank Name and Account Number from which payment is remitted	UTR No

14. In terms of Rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: June 14, 2018
Place: Mumbai

SAHIL MALIK
ADJUDICATING OFFICER