BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ORDER/MS/SB/2018-19/1605]

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 P M Commercial Co Ltd.
(PAN No: Not Available)
In the matter of SCORES Authentication

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter, **SEBI**) vide Circular No. CIR/OIAE/2/2011 dated June 03, 2011, directed all listed companies to obtain SEBI Complaints Redressal System (hereinafter, **SCORES**) authentication and also redress any pending investor grievances in that portal only. Subsequently, SEBI also issued 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, SEBI circular/s) in the matter.

2. SEBI, vide letter dated December 02, 2013 to P M Commercial Co Ltd. (hereinafter, **the Noticee/the Company),** drew its attention to circular dated April 17, 2013 and advised it to obtain SCORES authentication by December 18, 2013. It is alleged that the noticee did not comply with the aforesaid.

APPOINTMENT OF ADJUDICATON OFFICER

3. Ms. Soma Majumder was appointed as the Adjudicating Officer (hereinafter, **AO**), vide order dated May 07, 2014, to inquire and adjudge under section 15-I of Securities and Exchange Board of India Act, 1992, (hereinafter, **SEBI Act**) and under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter,

Rules) to enquire into and adjudge under section 15 HB of SEBI Act the alleged non-compliance by the noticee. Pursuant to her transfer, Shri P. Mahapatra was appointed as AO. Subsequent to his transfer, the undersigned was appointed as AO vide order dated January 27, 2016.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated May 27, 2014, (hereinafter, **SCN**) was issued 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 15 HB of SEBI Act for its alleged non-compliance to circular dated April 17, 2013 and the reminder vide letter dated December 02, 2013. The SCN was duly delivered to the noticee on 29th and 31st of May, 2014 through hand delivery and Speed Post with Acknowledgement Due (hereinafter, **SPAD**), respectively, at the registered office address of the noticee as available in the portal of the Ministry of Corporate Affairs (hereinafter, **MCA**). However, no reply was received from the noticee.

5. Thereafter, the noticee was granted an opportunity of personal hearing on August 19, 2014, vide letter dated June 25, 2014. This notice was duly delivered on July 24, 2014 by SPAD to address of registered office of the noticee. However, the noticee did not appear for the hearing. Another opportunity of hearing was granted on January 30, 2015 vide notice of hearing dated January 09, 2015. The noticee replied vide its letter dated January 30, 2015 that its Director was out of station and had authorized one Mr. Naren Siddhanta to appear before SEBI and had requested SEBI for 15 days' time. Subsequently, vide letter dated January 18, 2018 the noticee was granted one final opportunity to appear before the Adjudicating Officer on February 05, 2018. This notice too was duly delivered on January 20, 2018 by SPAD to address of registered office of the noticee. However, the noticee did not avail the opportunity

CONSIDERATION OF ISSUE AND FINDINGS

6. I proceed ahead to record my findings 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 has failed to obtain SCORES authentication, thereby failed to comply with the cited SEBI Circulars?
b. Does the violation, if any, on the part of the noticee attract monetary penalty under Section 15 HB 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 15J of the SEBI Act?

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

8. SEBI commenced its web based investor grievance redressal portal, SCORES, in June 2011 to enhance investor protection, enabling the latter 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 / it's Share Transfer Agent (hereinafter, **STA**), which in turn is required to redress the same and furnish the Action Taken Report (hereinafter, **ATR**) electronically. 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, **SCORES authentication**). 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 to the former to obtain authentication.

9. 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. As per material available on records, the noticee has not done so.

10. Redressal of investor grievances in SCORES is distinct from obtaining authentication; and failure of the former attracts monetary penalty u/s 15 C of SEBI Act, which reads as follows:

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 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 (emphasis supplied).

11. 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.

12. As per the material available on records, the noticee is a listed company and has neither obtained SCORES authentication within the time line of September 14, 2012 as aforesaid, nor has it done so subsequently, as per the information from the dealing division. I also note that aforesaid non-compliance is despite SEBI's reminder vide letter dated December 02, 2013 being duly served on the noticee on December 06, 2013. The aforesaid non-compliance renders the noticee liable for penalty U/s 15 HB of SEBI Act which reads as follows:

15HB - Penalty for contravention where no separate penalty has been provided

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 may extend to one crore rupees.

The penalty amount was amended as "*liable to 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.

13. While determining the quantum of penalty under Section 15 HB of SEBI Act, as it stood prior to its amendment in 2014, it is pertinent to consider the factors stipulated in Section 15 J of SEBI Act which reads as under:-

15 J Factors to be taken into account by the Adjudicating Officer:

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.*

14. 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, are not available on record. As regards repetitive nature of the default, as already observed, the noticee is yet to obtain SCORES authentication as against the stipulated time line of September 14, 2012, which is certainly not in the interest of investors, whose protection is SEBI's prime mandate. While the non-inclusion of Section 15 C of SEBI Act in the terms of reference of this proceedings, leading to the plausible inference that there were no investor grievances, may be cited as a mitigating factor, the non-compliance by the noticee despite the reminder and its subsequent conduct by not adequately responding to the notices issued in this proceedings, qualify as aggravating factors.

ORDER

15. After taking into consideration all the facts and circumstances of the case, I impose a penalty of Rs. 5,00,000/- (Rupees five lakhs only) under Section 15 HB of the SEBI Act against P M Commercial Co Ltd., which will be commensurate with its non-compliance.

16. The noticee shall 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 **Kolkata** OR through e-payment to the following bank account:

Bank account details 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

17. The noticee shall forward the said Demand Draft or the details /confirmation of penalty so paid through e-payment, as per format below, to the Regional Director, SEBI, Eastern Regional Office, L & T Chambers, 16, Camac Street, V floor, Kolkata – 700 017

1. Case Name	
2. Name of Payee	
3. Date of Payment	
4. Amount Paid	
5. Transaction Number	
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	

18. In terms of Rule 6 of the Rules, copy of this order is sent to the noticee and to Securities and Exchange Board of India.

Date: March 14, 2018
Place: Kolkata

S. MANJESH ROY
ADJUDICATING OFFICER