

**BEFORE THE ADJUDICATING OFFICER SECURITIES
AND EXCHANGE BOARD OF INDIA (ADJUDICATION
ORDER NO: EAD/PM/SM/2020-21/10394)**

**UNDER SECTION 15-I OF THE 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:
Suman Motels Limited

Failure to obtain SCORES Authentication and to redress investor grievances

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **SEBI**) had issued a Circular no CIR/OIAE/2/2011 dated June 3, 2011 for *inter alia* obtaining authentication on SEBI Complaints Redress System (hereinafter referred to as **SCORES**) for processing investor complaints received by SEBI and advised all companies whose shares are listed on various stock exchanges to comply with the provisions of the said circular. Thereafter, SEBI issued another Circular no. CIR/OIAE/1/2012 dated August 13, 2012 advising all listed companies to obtain SCORES authentication by September 14, 2012. Subsequently, SEBI, vide Circular no. CIR/OIAE/1/2013 dated April 17, 2013, directed the listed companies which had not obtained to obtain the SCORES user id and password to do the same. The circular further stated that failure to obtain SCORES user ID and password within 30 days of issue of the circular, would be deemed to be willful avoidance of the same. Further, SEBI Circular no CIR/OIAE/1/2014 dated December 18, 2014 consolidated the aforesaid three circulars and rescinded the said circulars. However, it was clarified at para 15 of the Circular 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.

2. It was observed by SEBI that Suman Motels Limited (hereinafter referred to as Noticee/you) had failed to obtain the SCORES authentication and had also failed to redress investor grievance and thereby failed to comply with the aforesaid SEBI Circulars. SEBI initiated adjudication proceedings against the Noticee and appointed Shri Prasad Jagadale as Adjudicating Officer (AO) to inquire into and adjudge under sections 15C and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the **SEBI Act, 1992**) for the aforesaid violation SEBI Circulars. The then AO Shri Prasad Jagadale passed an ex-parte order on November 18, 2016 imposing a penalty of Rs. 1 lakh on the Noticee for the violation of aforesaid SEBI Circulars. The said adjudication order was challenged by the Noticee in the Hon'ble Securities Appellate Tribunal (hereinafter referred as SAT). Hon'ble SAT, vide order dated January 07, 2021, quashed the aforesaid adjudication order and directed the following:

"8.The matter is remitted to the AO of SEBI to decide the matter afresh after giving an opportunity of hearing to the appellant. For this purpose the appellant will appear before the AO of SEBI on January 28, 2021 at 1200 hours and from there onwards the AO will proceed in accordance with law."

APPOINTMENT OF ADJUDICATING OFFICER

3. Pursuant to the Hon'ble SAT order dated January 07, 2021, SEBI appointed undersigned as AO in the said matter vide communique dated January 15, 2021 under section 15-I of the SEBI Act, 1992 and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **Adjudication Rules, 1995**) to inquire into and adjudge under sections 15C and 15HB of the SEBI Act, 1992, for the alleged failure on the part of the Noticee to obtain SCORES authentication and also to redress investor grievance.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Upon appointment of AO in the instant matter, as directed by the Hon'ble SAT an opportunity of hearing was granted to the Noticee on January 28, 2021 at 12.00 noon, vide hearing notice dated January 21, 2021. The said hearing notice was sent through digitally signed e-mail and the same was delivered to the Noticee as seen from reply of the Noticee. Vide e-mail dated January 22, 2021, the authorized representative (AR), on behalf of the Noticee replied that *"we are not in receipt of the show cause notice and other relevant documents relied in the adjudication proceedings, we are not in a position to explain our defense in the matter. Hence, in the interest of justice we request you to furnish the relevant documents in order to enable us to put our defense in the matter for a just and fair hearing."* Acceding to the request of the Noticee, vide letter dated January 25, 2021, the Show cause Notice having reference no. EAF/PJ/JAK/23159/2016 dated August 19, 2016 (hereinafter referred to as **SCN**) issued by the earlier AO alongwith the Annexures as available on record was served to the Noticee through hand delivery which was also duly acknowledged by the AR of the Noticee. On the schedule date of hearing i.e. January 28, 2021, the AR came early and requested to prepone the hearing to 10:00 am, as he had some urgent work at 12.00 noon.

Acceding to the AR's request, the hearing took place at 10:00 am in the instant matter. The AR requested time till February 08, 2021 to submit reply to the SCN and the same was acceded to. Subsequently, the reply of the Noticee received on February 08, 2021.

5. The SCN was issued to the Noticee by the earlier AO under the provisions of rule 4(1) of the Adjudication Rules, 1995 to show cause as to why an inquiry should not be held against the Noticee and why penalty should not be imposed on the Noticee under sections 15C and 15HB of the SEBI Act, 1992, for the alleged failure on the part of the Noticee to obtain SCORES authentication and also to redress investor grievance.

6. Reply of the Noticee are given under:

- a) *Suman Motels Limited is incorporated in the year 1984 as a Private Limited Company and thereafter converted into a Public Limited Company in the year 1989. On 12th February, 1990, Suman Motels Limited came out with public issue of equity shares. The Company was listed in Bombay Stock Exchange in the same year i.e. 1991.*
- b) *The Company was a profit making and dividend paying Company till the year 1998. However the situation worsened after the registration of complaints against the company under MPID Act 1999 and as a result the company's reputation in the market was adversely affected and company started making losses every year thereafter.*
- c) *In the year 2001 onwards due to the heavy losses suffered by the company, it was not in a position to comply with its commitments and pay the yearly listing fees of the stock exchange. As the yearly listing fees and other commitments to stock exchange was long overdue since 2001, the Company Secretary informed the company that it was de-listed. Hence the company vide its letters dated 06.12.2007 and 31.10.2011 both addressed to General Manager, Bombay Stock Exchange Limited requested for re-listing of company and further requested to inform about the formalities and fees required to be paid by the company for re-listing, to which inspite of receiving those letters on 11th December, 2007 and 1st November, 2011 respectively, there was no response from Stock Exchange. Hereto annexed and marked as Exhibit-B is the copy of letter dated 06.12.2007 and as Exhibit-C is the copy of letter dated 31.10.2011.*
- d) *Hence the status of the company till date from the year 2001 is that of a delisted company and the rules and regulations of listed companies and SCORES authentication is not applicable to the company. It is pertinent to note that the company has not received any complaints from shareholders with regards to the nature of allegations levelled against the company in the show cause notice. Further, though it was mentioned that SEBI has noticed that the 12 companies (as mentioned in Annexure-A) had not obtained SCORES authentication and not redressed investor grievances, the details of the 12 Companies were missing in the show cause notices and other details furnished to the company.*
- e) *Since the Company secretary had informed that the company was de listed and since there was no response from stock exchange the Company did not further enter into any correspondence with stock exchange requesting for re listing of the company.*
- f) *I say that even today the status of the company was that of a de-listed company which can be ascertained from the print outs of the master-data taken from the official website of ROC for the year ended 31.03.2013 and for the year ended 31.03.2017. Hereto annexed and marked as Exhibit-*

D is the copy of print outs of the master data for the year ended 31.03.2013 and as Exhibit–E is the copy of the master data for the year ended 31.03.2017.

- g) Thus it is crystal clear from the facts stated hereinabove that the company is a de-listed company from 2001 onwards and till date it was not re listed. Further there is no documentary proof as to whether the alleged complaints received by SEBI were earlier made to the company for necessary action and even the copy of the complaint of Mr. Anil B Lalcheta, though shown under the caption attached document as view attachment no such document was furnished to us. Thus before initiating action against the company it is incumbent upon SEBI to first ascertain as to whether any complaint was made to the company prior to making complaint with SEBI which is absent in the present case. The said Mr. Anil B Lalcheta was not a shareholder in the company and this can be ascertained from the list of shareholders furnished by the company's share transfer agent "Intime Share Services Pvt Ltd." to the company. Hereto annexed and marked as Exhibit–F is the copies of relevant page No.28 and 29 of the alphabetic name–wise index of shareholders provided by share transfer agent to the company. I crave leave to refer to and rely upon the entire alphabetic name wise index of shareholders as and when produced.*
- h) In view of the above, I most respectfully submit that the show cause notice issued against the company deserves to be dismissed and accordingly pray that the adjudication proceedings may be dismissed."*

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

7. I have carefully perused the charges levelled against the Noticee, reply of the Noticee and the documents/ material available on record. The issues that arise for consideration in the present case are:
- a) Whether the Noticee has failed to obtain SCORES authentication and redress investor grievances?**
 - b) If yes, whether the Noticee is liable for monetary penalty under sections 15C and 15HB of the SEBI Act, 1992?**
 - c) If yes, what would be the monetary penalty that can be imposed duly taking into account the factors mentioned in section 15J of the SEBI Act, 1992?**

8. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder:

Issue (a): Whether the Noticee has failed to obtain SCORES authentication and redress investor grievances?

- a) It is alleged in the SCN that the Noticee failed to obtain SCORES authentication and also failed to redress one (1) investor complaint and hence violated the aforesaid SEBI 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 '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 circular dated June 03, 2011 and fixed September 14, 2012 as the last date for obtaining SCORES authentication.

- b) Subsequently, SEBI Circular No. CIR/OIAE/1/2013 dated April 17, 2013, inter alia, reiterated the contents of circular dated June 03, 2011 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. The aforesaid SEBI Circular dated April 17, 2013 also stated that failure by the companies to file ATR within 30 days from the date of receipt of the complaints/grievances may attract penal action from SEBI. Further, SEBI Circular no CIR/OIAE/1/2014 dated December 18, 2014 consolidated the aforesaid three circulars and rescinded the said circulars. However, it was clarified at para 15 of the

Circular 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

- c) Now, the first issue for consideration is whether the Noticee violated the provisions of the aforesaid SEBI Circulars by failing to obtain SCORES authentication and redress investor grievances. I note that the said SEBI circulars are addressed to all companies whose securities are listed on the Stock Exchanges and directed to obtain SCORES authentication, redress investor grievances and file Action Taken Report (ATR) on SCORES within thirty days of date of receipt of the investor grievance. In this regard, it is noted that being a listed company, the Noticee was obligated to comply with the directions of SEBI in respect of obtaining SCORES Authentication and also redressal of investor complaints. With regard to the listing of the company on BSE, Noticee replied that the company was delisted in the year 2001 and hence rules and regulations for SCORES authentication is not applicable to the Noticee. However, Noticee has not been able to substantiate regarding its claim that the company was delisted from BSE since 2001. In this regard, vide e-mail dated February 08, 2021, BSE was advised to provide the listing status of the Noticee. BSE vide its e-mail dated February 08, 2021 replied that *"The company Suman Motels Limited was delisted from BSE on 23rd August 2017"*. Also, it is seen from the BSE Notice no. 20170821-24 dated August 21, 2017 that *"Trading Members of the Exchange are hereby informed that 117 companies (given in Annexure I) that have remained suspended for more than 10 years would be delisted from the platform of the Exchange, with effect from August 23, 2017 pursuant to order of the Delisting Committee of the Exchange in terms of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 ("Regulations")"*. Out of 117 companies as per the Annexure I of the said BSE Notice, Noticee was one of the company, which was delisted from the platform of the Exchange i.e. BSE with effect from

August 23, 2017, as the Noticee remained suspended for more than 10 years. Thus from the above, it can be seen that the Company was listed on BSE during the period of issuance of the aforementioned SEBI Circulars i.e. June 03, 2011, August 13, 2012, April 17, 2013 and December 18, 2014. In view of the same, being a listed company, the Noticee was obligated to comply with the directions of SEBI in respect of obtaining SCORES Authentication and also redressal of investor complaint.

d) With regard to the allegation of pending one investor complaint against the Noticee, Noticee replied that the complainant namely Anil B Lalcheta was not the shareholder of the Noticee. Noticee also provided the list of shareholder of the Company. In this regard, it is noted from the available record that although there was one complaint pending against the Noticee, however the details of the complaint are not available on record. Further, from the list of shareholders provided by the Noticee, the name of the complainant is not in the list. Due to insufficient evidence regarding the investor complaint pending against the Noticee, the allegation against the Noticee regarding non redressal of the investor complaint does not stand established.

e) With regard to the allegation of not obtaining SCORES authentication, I find that despite repeated reminders by SEBI through various circulars, the Noticee did not pay heed to the same. I note that 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 had consistently failed and neglected to comply with the afore-mentioned SEBI Circulars. In this context, I would also like to refer to the judgment of the Hon'ble SAT in S. S. Forgings & Engineering Limited & Others v SEBI, (Appeal No. 176 of 2014 decided on August 28, 2014) wherein it, inter alia, observed that “.....*This Tribunal has consistently held that redressal of investors' grievances is extremely important for the Regulator to regulate the capital market. If the grievances are not redressed within a time bound framework, it leads to frustration among the investors' who may not be motivated to further invest in the capital market. Hence, the*

importance of complaints redressal system initiated by SEBI in June, 2011 cannot be undermined and its sanctity has to be maintained by all the listed companies.....”

- f) In view of the above facts, I conclude that the allegation of non-obtaining of SCORES Authentication in stipulated time stand established against the Noticee and therefore, the Noticee has violated SEBI's Circulars No. CIR/OIAE/2/2011 dated June 3, 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 (b): If yes, whether the Noticee is liable for monetary penalty under section 15HB of the SEBI Act, 1992?

- a) It has been established in the foregoing paragraphs that Noticee has violated the provisions of aforementioned SEBI Circulars. I would like to quote the Order of Hon'ble SAT in the matter of *Port Shipping Company Ltd. vs SEBI* decided on 29.04.2015 wherein it was observed that “...As held by this Tribunal in case of *M/s. Vidarbha Industries Ltd. (supra)* and *Rakan Steels (supra)* 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...”

- b) Therefore, after taking into account the aforesaid entire facts / circumstance of the case and the aforesaid case law, I note that the said violations of SEBI Circulars by the Noticee attracts the imposition of monetary penalty upon the Noticee under section 15HB of the SEBI Act, 1992. The text of the said section are reproduced below:

The SEBI Act, 1992

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 shall not be less than one lakh rupees but may extend to one crore rupees.*

Issue (c): If yes, what would be the monetary penalty that can be imposed duly taking into account the factors mentioned in section 15J of the SEBI Act, 1992?

a) While determining the quantum of penalty under section 15HB of the SEBI Act, 1992, it is important to consider the factors stipulated in section 15J of the SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, 1995 which reads as under:-

The SEBI Act, 1992

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.*

b) 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 failure. I note that the Noticee by failing to comply with the direction of obtaining SCORES authentication has repeatedly violated the directions given by SEBI through SEBI Circulars.

ORDER

9. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of section 15-I of the SEBI Act, 1992 r/w rule 5 of Adjudication Rules, 1995, I hereby impose a penalty of Rs. 1,00,000/- (Rupees One Lakh only) on the Noticee i.e. Suman Motels Limited in terms of the provisions of section 15HB of the SEBI Act, 1992. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

10. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, or the 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. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

11. The Noticee shall forward the said Demand Draft or the details/confirmation of penalty so paid to the Enforcement Department of SEBI. Noticee shall provide the following details while forwarding DD/payment information:

- a) Name and PAN of the entity (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

12. In terms of the provision of rule 6 of the Adjudication Rules, 1995, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India, Mumbai.

Date: February 11, 2021

Place: Mumbai

PRASANTA MAHAPATRA

ADJUDICATING OFFICER