

**BEFORE THE ADJUDICATING OFFICER SECURITIES  
AND EXCHANGE BOARD OF INDIA [ADJUDICATION**

**ORDER NO. : Order/GR/RK/2020-21/9399]**

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**ORDER UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD  
OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR  
HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995**

**In respect of  
Osian Industries Limited**

**In the matter of Non-Redressal of investor grievances on SCORES**

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**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 platform only. Subsequently, SEBI also vide 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 circulars**) *inter-alia* directed all companies whose securities were listed on stock exchanges to obtain SCORES authentication within a period of 30 days from the date of issue of this circular and also to redress the pending investor grievances within the stipulated time period.
2. It was alleged that Osian Industries Limited (hereinafter, **Noticee/Company**) had failed to redress investor grievances pending therein and to submit the Action Taken Report (hereinafter, **ATR**) duly supported by documentary evidence in respect of the pending complaints, even after obtaining SCORES authentication within the timelines stipulated by SEBI, therefore not complying with the aforesaid SEBI Circulars.

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. The undersigned was appointed as the Adjudicating Officer ('**AO**') vide order dated June 12, 2019, under Section 19 read with Section 15-I of Securities and Exchange Board of India, 1992 (hereinafter, "**SEBI Act**") and under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter, **Rules**) to enquire into and adjudge under Section 15A(a) and Section 15C of the SEBI Act, for the aforementioned alleged violations by the Noticee. Earlier, the case was assigned to Shri Sudeep Mishra, Shri Achal Singh and Shri Anindhya Kumar Das. I therefore proceed in the matter from where it had been left by the previous Adjudicating Officer.

### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

4. A Show Cause Notice dated March 06, 2013 (hereinafter, **SCN**) was issued by the erstwhile Adjudicating Officer 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 15A(a) and Section 15C of the SEBI Act for allegedly failing to redress investor grievances pending therein and to submit the Action Taken Report (hereinafter, **ATR**) duly supported by documentary evidence in respect of the pending complaints, within the timelines stipulated by SEBI, respectively. The SCN was delivered to the Noticee however it did not submit any reply to the SCN.
5. Subsequently, pursuant to the appointment of the undersigned as the Adjudicating Officer in the matter, the Noticee was granted an opportunity of personal hearing on October 07, 2020 vide Hearing Notice dated September 18, 2020. The said Hearing Notice was sent vide digitally signed email dated September 18, 2020 and was duly delivered to the Noticee. It is pertinent to mention here that vide the aforesaid notice it was clearly indicated that in case of failure to appear before the undersigned, the case would be proceeded with ex-parte on the basis of the material available on record. However, the Noticee neither appeared for the said hearing nor filed any reply in this regard.

6. Considering the fact that the Noticee has not availed the opportunity of personal hearing despite being granted opportunities for the same, I am of the view that the Noticee has nothing more to submit, and in terms of rule 4(7) of the Rules, the matter can be proceeded ex-parte on the basis of material available on record.

### **ISSUES FOR CONSIDERATION AND FINDINGS**

7. Given the aforesaid, I proceed in the matter on the basis of the material available on records and the issues that arise for consideration in the present case are:
- Whether the Noticee had failed to redress the grievance(s) of investor(s) and also to file Action Taken Report, thereby failed to comply with SEBI circulars dated June 03, 2011, August 13, 2012 and April 17, 2013?
  - Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 A(a) and 15 C of the SEBI Act?
  - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15 J of the SEBI Act?
8. While recording my finding, it is pertinent to have a brief narration on SCORES and its applicable circulars.
9. SEBI commenced its web based investor grievance redressal portal, SCORES, in June 2011 to enhance investor protection, enabling investors 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 / its Share Transfer Agent (hereinafter, **STA**), 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 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 in its annexure, for listed companies to provide information to the former to obtain authentication.

10. 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. From the material available on records, I find that the Noticee had obtained SCORES Authentication on December 12, 2011.
11. Redressal of investor grievances in SCORES is distinct from obtaining authentication. Accordingly, 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. In this regard, I find that despite SEBI forewarning the Noticee repeatedly through issue of various Circulars and in letters in the matter, the Noticee which was a listed company at the relevant period of time did not pay heed to the same and consistently failed and neglected to comply with the SEBI Circulars for redressing pending grievances of the investors. Further, this proceeding was initiated, inter-alia, on the allegation that forty-one grievances of investors were pending for redressal. From the material available on record, I note that the said complaints are not resolved by the Noticee till date. I observe that SEBI is inter alia entrusted with the task of ensuring speedy resolution of investor grievances and to achieve the same, SEBI has provided a centralized web portal viz. SCORES wherein unresolved grievances pertaining to securities market are registered. It is observed that the Noticee failed to redress the investor grievances which were pending on the date of initiation of the instant proceedings within the time period stipulated under the SEBI Circulars. Thus, the aforesaid

non-compliance to SEBI circulars dated August 13, 2012 and April 17, 2013 render the Noticee liable for penalty under section 15 C of the SEBI Act.

13. I also note that the Circular dated June 3, 2011, had inter alia stated that:

*“The companies are required to view the complaints pending against them and submit ATRs along with supporting documents electronically in SCORES. Failure on the part of the company to update the ATR in SCORES will be treated as non redressal of investor complaints by the company.”*

14. In this regard it is observed that the Noticee had failed to submit its Action Taken Report with respect to the said pending grievances of investors to SEBI within the prescribed period of time as was stipulated under Circular No. CIR/OIAE/1/2013 dated April 17, 2013. This makes the Noticee liable for penalty under section 15A(a) of the SEBI Act. Further, non-updation of the ATR by the Noticee is also to be treated as non-redressal of investor grievance as stated in the Circular dated June 3, 2011 and cited above.

15. The provisions of section 15A(a) and 15C of the SEBI Act is reproduced herein below:

**Penalty for failure to furnish information, return, etc.**

**15A.** *If any person, who is required under this Act or any rules or regulations made thereunder, —*

*(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.*

The penalty amount was amended as “*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*”], by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.

**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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.*

The penalty amount was amended as “*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*”, by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.

16. As per the dates of defaults, Section 15C and Section 15A(a) of SEBI Act, as they stood prior to their amendments, respectively, are applicable for non-redressal of grievances and for not submitting the ATR, respectively. Nevertheless, guided by the principle of rule of beneficial construction of even ex post facto law to mitigate the rigour of law, as was laid by the Hon’ble Supreme Court in *T. Barai vs. Henry Ab Hoe and Ors.* (07.12.1982 -SC): MANU/SC/0123/1982 [(1983)1SCC177], the amended version of section 15C and section 15A(a) of SEBI Act is applied for the investor grievance which was not redressed during the stipulated period of time and for the failure to submit ATR on time or at all.
17. While determining the quantum of penalty under Section 15A(a) and Section 15C of SEBI Act as aforesaid, provisions of Section 15J of SEBI Act would be applicable, which read as under: -

**[Factors to be taken into account while adjudging quantum of penalty.]**

**15J.** *While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or 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 to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*

18. 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 redress the grievance and for filing the ATR with SEBI, are not available on record. As regards the repetitive nature of the default, as already observed, the Noticee had not redressed the pending grievances of forty-one investors and consequently had not filed the ATR for such pending grievances within the timeline specified by SEBI. Such persistent non-compliance does not inspire confidence of investors in the market, whose protection is SEBI's prime mandate.

### **ORDER**

19. After taking into consideration all the facts and circumstances of the case, I impose a penalty of **Rs. 1,00,000/-** under Section 15 A(a) of the SEBI Act and **Rs. 2,00,000/-** under section 15C of the SEBI Act, i.e. penalties totalling to **Rs. 3,00,000/-** (Rupees Three Lacs) on the Noticee viz. Osian Industries Limited, which will be commensurate with its non-compliances.
20. 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 online payment facility available on the website of SEBI, i.e. [www.sebi.gov.in](http://www.sebi.gov.in) on the following path, by clicking on the payment link:

### **ENFORCEMENT Orders Orders of AO PAY NOW.**

21. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department - DRA-IV), Securities and Exchange

Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”. The Noticee shall also provide the following details while forwarding DD / payment information:

- a) Name and PAN of the 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

22. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

23. In terms of Rule 6 of the Rules, copy of this Order is sent to the Noticee and also to the Securities and Exchange Board of India.

**Date : October 14, 2020**

**Place : Mumbai**

**G Ramar**

**Adjudicating Officer**