

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AA/JR/2020-21/9412]

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

Awes Ayogen Vitnigam Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") observed that Awes Ayogen Vitnigam Ltd. (hereinafter referred to as '**Noticee /Company/ By Name**') failed to redress various investor complaints pending against it. SEBI had issued Circulars viz., Circular No. CIR/OIAE/2/2011 dated June 3, 2011, SEBI Circular No. CIR/OIAE/1/2012 dated August 13, 2012 and SEBI Circular No. CIR/OIAE/1/2013 dated April 17, 2013 (hereinafter collectively referred to as "**SEBI Circulars**") dealing with the processing of investor complaints against listed companies through SEBI Complaints Redress System (hereinafter referred to as "**SCORES**"). These SEBI Circulars *inter alia* mandated listed companies to obtain SCORES authentication, view the complaints pending against them, redress them within 30 days of receipt and submit Action Taken Report (hereinafter referred to as "**ATR**") electronically in SCORES.

2. SEBI also observed that *prima facie* the Noticee had not only failed to obtain SCORES authentication but had also failed to redress the investor complaints. In view of the same, SEBI has initiated adjudication proceedings under Sections

15C and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") against the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Sudeep Mishra was appointed as the Adjudicating Officer, vide communique dated November 23, 2012 under section 19 read with section 15I(1) of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties By Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**AO Rules**") to conduct the adjudication proceedings in the manner specified under Rule 4 of the AO Rules and if satisfied that penalty is liable, impose such penalty as deemed fit in terms of Rule 5 of the AO Rules and Section 15C and 15HB of the SEBI Act. Pursuant to the transfer of Shri Sudeep Mishra, the Competent Authority vide order dated September 23, 2013 appointed Shri Achal Singh as the adjudicating officer in the instant matter. Thereafter, the Competent Authority vide order dated June 09, 2015 appointed Shri Anindya K Das, as the Adjudicating Officer. The undersigned was appointed as an Adjudicating Officer in the instant proceedings vide order dated August 13, 2020.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice ILO/AO/AS/841/2014 dated January 07, 2014 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4(1) of the AO Rules to show cause as to why an inquiry should not be held against it in terms of rule 4 of the AO Rules and penalty be not imposed under Section 15C and 15HB of the SEBI Act, for the violation alleged to have been committed by the Noticee.
5. The details in respect of the alleged violation by the Noticee are as given below:
 - a) In terms of SEBI Circulars, the Noticee was required to provide details for creation of user account on SCORES. However, the Noticee has failed to provide the same.
 - b) There are 3 investor complaints pending against the Noticee since 2010.

- c) Therefore, it is alleged that the Noticee has failed to provide details for creation of user account on SCORES and redress the pending investor grievance within the time specified by the Board. The Noticee was advised to file its reply if any, within 15 days from the date of receipt of the SCN. It is alleged that the Noticee has failed to provide the same.
6. A copy of the status report from SCORES was also sent to the Noticee along with the SCN.
 7. The SCN was sent to the last known address of the Noticee i.e. *Awas Ayogen Vitnigam Ltd., 101, Adalaja Chambers, Ellora Park, Vadodra 390007*, through Registered Post Acknowledgement Due (hereinafter referred to as 'RPAD') on January 7, 2014.. However, the SCN returned undelivered. Thereafter, the case was transferred to the undersigned. As no email id of the Noticee was available, the SCN could not be sent by email either.
 8. Due to ongoing pandemic environment, affixture was not possible at the last known address of the Noticee. In the interest of natural justice, an opportunity of personal hearing was given to the Noticee on October 5, 2020 vide newspaper publication. Accordingly, an intimation of the same was published in Indian Express, Vadodra edition on September 12, 2020 and Divya Bhaskar, Vadodra edition on September 12, 2020. Vide this paper publication, the Noticee was also intimated that the copy of the SCN is available in the website of SEBI. However, none appeared on the scheduled date nor was any reply received from the Noticee.
 9. In view of the above, I am compelled to proceed in the matter against the Noticee *ex parte*. I am of the view that principles of natural justice have been complied with as sufficient opportunities have been provided to the Noticee to submit reply and to appear for the hearing, which the Noticee has failed to avail. Therefore, the present proceedings against the Noticee are undertaken *ex-parte* on the basis of available documents and information.

CONSIDERATION OF ISSUES AND FINDINGS

10. I have carefully perused the documents / evidence available on record. The issues that arise for consideration in the present case are:
- (a) Whether the Noticee violated the provisions of the SEBI Circular No. CIR/OIAE/2/2011 dated June 3, 2011, SEBI Circular No. CIR/OIAE/1/2012 dated August 13, 2012 and SEBI Circular No. CIR/OIAE/1/2013 dated April 17, 2013 by failing to obtain SCORES Authentication and redress investor grievances?
 - (b) Does the violation, if any, attract monetary penalty under Section 15C and 15HB of the SEBI Act?
 - (c) If yes, what should be the quantum of penalty?
11. A brief narration on SCORES and its applicable circulars is given here for necessary reference. 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.
12. 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 willful 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.

13. Now, the first issue for consideration is whether the Noticee violated the provisions of the SEBI Circulars No. CIR/OIAE/2/2011 dated June 03, 2011, CIR/OIAE/1/2012 dated August 13, 2012 and CIR/OIAE/1/2013 dated April 17, 2013 by failing to obtain SCORES authentication, redress investor grievances and filing ATR. I note that the said SEBI circulars are addressed to all companies whose securities are listed on the Stock Exchanges. 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 redressal of investor complaints.
14. 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 the hearing notice, the Noticee did not respond to the same. 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*”.
15. The Hon'ble SAT also made similar 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*”.
16. Further, I note from the SCN dated January 07, 2014 that three complaints/grievances were pending against the Noticee at the time of issuing of the SCN and it was pending since 2010. However, the Noticee has not only failed to obtain SCORES Authentication but also failed to redress all the investor grievances within 30 days as stipulated in the SEBI circular. It is also observed that the current status of the Noticee is “strike-off company”. Hon'ble Securities Appellate Tribunal in the matter of Hemant Sheth v SEBI, in its order dated March 4, 2020 stated that

“Striking down of the names of these two companies by the Registrar for non-compliance of the provisions of the Companies Act, 2013 does not alleviate the statutory liabilities of these two entities.”

17. The Noticee was a listed company during 2010 and 2011 when it had received the complaints. The lapse on the part of the Noticee with respect to resolving the complaints in a timely manner is detrimental to the interest of the securities market, thus breaching the regulatory mandate for speedy redressal of investor grievance. It is absolutely necessary that resolution of investor complaints should be on the top of the priority for the listed companies so as to ensure confidence for investors in the securities market. The importance of complaints redressal system ‘SCORES’ initiated by SEBI cannot be undermined and its sanctity has to be maintained by all the then listed companies.
18. Thus, in the light of the facts mentioned above, I hold that the Noticee has not only failed to obtain SCORES Authentication but also failed to redress the investor grievances in timely manner as required in terms of the SEBI Circulars and thereby violated the provisions of the SEBI Circulars No. CIR/OIAE/2/2011 dated June 03, 2011, CIR/OIAE/1/2012 dated August 13, 2012 and CIR/OIAE/1/2013 dated April 17, 2013. 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...”*.
19. In this context, I would also like to refer to the judgment of Hon'ble Securities Appellate Tribunal (‘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.....”*.

20. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty on the Noticee under section 15C and 15HB of the SEBI Act, which read as under:

Penalty for failure to redress investors' grievances.

Section 15C - *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”.*

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 may extend to one crore rupees.*

21. While determining the quantum of monetary penalty under section 15C and 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.*

22. It is not possible in cases of such nature to quantify exactly the disproportionate gains or unfair advantage for the Noticee. Also, it may not be possible to ascertain the exact monetary loss to the investors as a result of the default. The Noticee by failing to comply with the direction of obtaining SCORES Authentication and also redressing of investor grievances within the stipulated time has repeatedly

violated the directions given by SEBI through SEBI Circulars viz. dated June 03, 2011, August 13, 2012 and April 17, 2013. Thus, to this extent, the default of the Noticee is found to be repetitive in nature. The failure to resolve investor's complaint by the Noticee is also serious and gross. 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 willful non-compliance of the same, the Noticee has acted in a manner which is detrimental to the interest of the investors in the securities market.

ORDER

23. 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 AO Rules, I hereby impose a penalty of ₹1,00,000 /- (Rupees One Lakh only.) on the Noticee viz. Awas Ayogen Vitnigam Ltd. under the provisions of Sections 15C and 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.
24. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department 1(EFD), Division of Regulatory Action - IV [**EFD 1-DRA-4**] SEBI Bhavan, Plot No.C4-A, 'G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

Case Name	
Name of the Payee	
Date of payment	
Amount Paid	
Transaction No.	
Bank Details	
In which payment is made for	Penalty

OR

25. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>
26. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.
27. 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 20, 2020
Place: Mumbai

DR. ANITHA ANOOP
ADJUDICATING OFFICER