

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ORDER/SR/PP/2019-20/5212/123]

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

In respect of

Dharnendra Industries Limited
PAN: AAACD4124F

Address: 2nd Floor, Chakravarti Complex
Near Vijay Char Rasta
Ahmedabad- 380009

In the matter of

Failure to redress investor complaints and file action taken report

BACKGROUND

1. A Department of Securities and Exchange Board of India (hereinafter referred to as **SEBI**) (**OD**) observed that Dharnendra Industries Limited (hereinafter referred to as the **Noticee**) having office at 2nd Floor, Chakravarti Complex, Near Vijay Char Rasta, Ahmedabad-380009 had failed to redress investor complaints received by SEBI and failed to file action taken report (**ATR**) with SEBI. OD forwarded several investor complaints to the Noticee vide letter dated September 25, 2008 alongwith details of 101 investor grievances which were pending unresolved by the Noticee. OD sent reminders on November 21, 2008 and December 19, 2008. The said investor complaints were forwarded to the Noticee for redressal and reminders were also sent to it for resolving the same. OD noted that inspite of receiving the said complaints and reminders in the registered office of the Company, Noticee failed to redress the said complaints.
2. In the aforementioned letter dated September 25, 2008 and reminders, OD made a reference to sections 15C and 24 of the Securities and Exchange Board of

Adjudication Order in respect of Dharnendra Industries Limited for its failure to redress investor complaints and file Action Taken Report.



India Act, 1992 (hereinafter referred to as the **SEBI Act**) for initiation of enforcement actions, such that in case of failure to redress the said complaints and file ATRs, SEBI would initiate such action as deemed appropriate. However, the Noticee is alleged to have failed to redress investor complaints and submit ATR.

APPOINTMENT OF ADJUDICATING OFFICER

3. In view of this, OD initiated adjudication proceedings against the Noticee for its failure to resolve investor complaints and failure to submit action taken report. Vide an order dated July 07, 2009, Shri Amar Navlani was appointed Adjudicating Officer (hereinafter referred to as **AO**) under section 15-I of the SEBI Act read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **Adjudication Rules**) to inquire into and adjudge under sections 15C and 15A(a) of the SEBI Act, the alleged non-redressal of investor grievances by the Noticee and alleged failure to furnish the ATR. On transfer of Shri Amar Navlani, the Adjudication Proceedings was transferred to the undersigned and I was appointed as AO vide order dated June 07, 2019.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice No. AO/SCN/AN/DIL/2887/2010 dated February 16, 2010 was issued to the Noticee under Rule 4(1) of the Adjudication Rules, requiring the Noticee to show cause as to why an inquiry should not be held against it and penalty be not imposed under sections 15C and 15A(a) of the SEBI Act, 1992 for the alleged non-redressal of complaints and filing of status report. This has returned undelivered. Fresh Show Cause Notice (**SCN**) No. AO/SCN/AN/DIL/3035/2010 dated March 05, 2010 was issued on the address available as per MCA website, by previous AO. Noticee acknowledged receipt of the said SCN.
5. Noticee vide its letters dated June 03, 2010 and June 19, 2010 filed its reply to the SCN. Submissions of the Noticee are as under-



- (i) The company has filed a reference to BIFR and company was declared sick industrial company.
- (ii) On account of continuous losses, the normal working of the company was disrupted and the management had more focus on rehabilitation than other areas. As a result the complaints of shareholders remained unattended in spite of sincere efforts of Board of Directors as the key personnel in share/secretarial department had left the company.
- (iii) The company have resolved / closed complaints as per Annexure A attached with the reply. Noticee submitted that he has resolved 14 investor grievances. We ensure you that company is working towards resolving all the pending investor grievances within a period of one and half months.

6. Vide hearing notice dated June 25, 2010, an opportunity of hearing was granted to the Noticee on July 21, 2010. Mr. Ashish Shah and Mr. Vishal Jalan appeared for the hearing scheduled on July 21, 2010, *interalia* submitted that –

- (i) we have initiated the process of resolution of investor grievances.
- (ii) A scheme has been filed before the BIFR for approval. We undertake to provide details and copies of the same within 3 working days.
- (iii) We would like a week's time to apply for consent.

Further, vide letter dated July 21, 2010, Noticee has *interalia* requested for the name and address of complainants and nature of their complaint, that will help Noticee to resolve the matter as quickly as possible.

7. After my appointment as AO in the instant matter, vide hearing notice (HN) dated July 08, 2019, Noticee was granted an opportunity of personal hearing on July 24, 2019. The HN sent through Speed post Acknowledgement due and the same was returned undelivered with the comment "refused". Thereafter, HN was served upon the Noticee through affixture in terms of rule 4 of Adjudication Rules. In this regard, Affixture report is on record. Thereafter, HN was uploaded on the SEBI website under "Unserved Summons / Notices". Subsequently, by way of release of public notice vide newspaper



publication dated August 26, 2019 and September 04, 2019, attempt was made to serve another hearing notice on the Noticee by way of publication in terms of rule 7(d) of the Adjudication Rules and the paper clippings is on record. The Noticee was provided with an opportunity of hearing on September 19, 2019. Newspaper publication were released in the newspapers detailed hereunder-

S.No	Name of the newspaper	Language	Edition	Published on
1.	The Times of India	English	Ahmedabad Edition	August 26, 2019
2.	Gujarat Vaibhav	Hindi	Ahmedabad Edition	August 26, 2019
3.	Gujarat Samachar	Gujarati	Ahmedabad Edition	September 04, 2019

8. However, the Noticee has not availed of the opportunities of personal hearing given.
9. After taking into account, the allegations levelled in the SCN, reply received to the said SCN, and other material available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

10. I have carefully perused the charges levelled against the Noticee in the SCN and other material available on record. In the instant matter, the following issues arise for consideration and determination:-

- a. **Whether the Noticee has violated the provisions of sections 15C and 15A(a) of SEBI Act?**
- b. **Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15C and 15A(b) of the SEBI Act, for the alleged violations by the Noticee?**
- c. **If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in section 15J of the SEBI Act, r/w rule 5(2) of the Adjudication Rules?**



11. Before proceeding further, it will be appropriate to refer to the provisions of sections 15C and 15A(a) of the SEBI Act, 1992, which read as under:-

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.*

Penalty for failure to redress investors' grievances.

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.*

12. 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 violated the provisions of sections 15C and 15A(a) of the SEBI Act?

- a) With regards to the allegation of non-redressal of 101 investor complaints, OD was requested vide note dated October 04, 2019 to send copies and status of the complaints as the same was not available on record. I note that OD has stated that the complaints are pertaining to the period 1994 to 2008, copies and status of these complaints are not available on SCORES/IGRD. Further, I note that Noticee has accepted the delay on its part for resolving complaints. Noticee has also submitted, that as on December 22, 2009 for 14 complaints, payment of dividend was sent through DD. As regards other complaints no status is available on record.
- b) With regards to the contention of sickness of the company evidentiary proof is not submitted by the Noticee. Further from the print downloaded on June 24, 2010 from company master details of MCA website RoC-Ahmedabad which is available



on record, I note that status of company is shown as 'unlisted company' and date of last AGM is September 28, 2009.

13. I note that the section 15C of the SEBI Act directs listed companies whose securities are listed on the recognized Stock Exchanges to redress investor grievances within the time specified by SEBI. Therefore, it is pertinent to examine if the Noticee was listed on any recognized stock exchange, at the time of the alleged violations. I have noted from the available record that the Noticee was an unlisted company as on June 24, 2010.
14. OD has stated that as per SCORES, the status of the company is "compulsory delisted". Further, the company has not taken SCORES authentication. As per BSE's email dated October 14, 2019, the company has been compulsorily delisted with effect from August 17, 2016 since the company was suspended for more than 13 years. As per NSE's email dated October 11, 2019, the company is neither listed on NSE nor on the dissemination board of NSE.
15. Further, record maintained on SCORES shows status of the Noticee as placed on BSE: dissemination board. Therefore, a relevant question before me is whether the Noticee's existence on dissemination board of any recognized Stock Exchange can be considered as listed on a recognized Stock Exchange. In this regard, I note from the circular no. CIR/MRD/DSA/14/2012 dated May 30, 2012 regarding Exit Policy for De-recognized/ Non-operational Stock Exchanges (herein after referred to as Exit policy and it is available at https://www.sebi.gov.in/legal/circulars/may-2012/exit-policy-for-de-recognized-non-operational-stock-exchanges_22825.html) issued by SEBI that, "*...the exclusively listed companies, which fail to obtain listing on any other stock exchange, will cease to be a listed company and will be moved to the dissemination board by the exiting stock exchange. Therefore, in the interest of investors of exclusively listed companies, a mechanism of dissemination board will be set-up by stock exchanges having nationwide trading terminals.*" Further, I



note from the Exit Policy that, "...Exchanges having nationwide trading terminal will not have listing agreement with these companies" refers to the companies on the dissemination board. So, in terms of the Exit Policy the companies placed on dissemination board cannot be said to be listed, unless said companies specifically enter into a listing agreement with any recognized Stock Exchange. As regards Noticee, no such information is made available on record.

16. In light of, non-availability of details on complaints, absence of any proof of listing made available on record, reading of the aforesaid Exit Policy and other material on record, I am inclined to believe that the Noticee was not listed at the time of alleged violations. Therefore, considering the above facts, I am of the view that it is not a fit case for proceeding further and that issues (b) or (c) do not merit consideration.

ORDER

17. In view of the above findings, I hereby dispose of the adjudication proceedings initiated against Dharnendra Industries Limited vide SCN dated March 05, 2010 without imposing any monetary penalty.

18. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, a copy of this Order is being sent to the Noticee and also to Securities and Exchange Board of India.

Date: October 25, 2019
Place: Mumbai


SANGEETA RATHOD
ADJUDICATING OFFICER

