BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO.- Order/VV/AK/2022-23/22623

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:

TINNA FINEX LTD.
CIN-U65910DL1990PL041750

in the matter of Non-redressal of investor grievances

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI")** had passed Adjudication order dated February 19, 2018 (hereinafter referred to as "**AO order**") wherein **Tinna Finex Ltd** (hereinafter referred to as "**Noticee**") was held liable for monetary penalty under section 15C and 15HB of SEBI Act, 1992 for the violation of SEBI vide Circular No. CIR/OIAE/1/2013 dated April 17, 2013 (hereinafter referred to as "**Circular dated April 17, 2013**"). The said AO order was set aside and remanded back to SEBI by Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") vide order dated October 31, 2022. The Hon'ble SAT held that

   "*3. In this regard, we find that admittedly the show cause notice was served at the address which was the old address of the appellant and, consequently the same returned undelivered.*
   4. In the light of the aforesaid admitted position, we are of the opinion that adequate opportunity of hearing was not provided to the appellant. Consequently, the impugned order cannot be sustained and is quashed. The appeal is allowed. The matter is remitted to the Adjudicating Officer ("AO") for a fresh decision in accordance with law after serving the show cause notice and after giving an opportunity of hearing.
   5. In this regard, the appellant shall appear before the AO on November 24, 2022 on which dated the AO will serve the show cause notice and proceed from there onwards in accordance with law."

2. Noticee submitted as per the direction issued by the Hon'ble SAT in the aforesaid order, it went to the last known address of the Adjudicating Officer SEBI (i.e., 5th Floor, Bank of Baroda Building, 16, Sansad Marg, New Delhi-110001) and was shocked to know that the Adjudicating Officer, SEBI has shifted to some other place and the Noticee was never intimated about the same by the Adjudicating Officer. In this regard, I note that, Noticee failed to provide any documentary evidence that it has taken any reasonable step to approach the office of adjudicating officer as directed by Hon'ble SAT. Further, I highlight that SEBI being a statutory body maintains a website of its own which is publicly accessible. SEBI website clearly mentions the current address of the offices of the SEBI including SEBI Delhi office. Snapshot of the same is provided below:

Head Office (HO)

SEBI Bhavan BKC
Address :
Plot No.C4-A, 'G' Block
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400051, Maharashtra
Tel : +91-22-26449000 / 40459000
Fax : +91-22-26449019-22 / 40459019-22
Toll Free Investor Helpline: 1800 22 7575
Contact: You may reach us through Contact Us / Feedback tab

SEBI Bhavan II BKC
Address :
Plot no. C-7, 'G' Block, Bandra Kurla Complex, Bandra(E),
Mumbai - 400051, Maharashtra
Tel : 91-22-26449000/40459000

3. Further, the address of the adjudicating officer has been given in the said decision of the Hon'ble SAT. The screenshot of the same is given below:

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 31.10.2022

Misc. application No. 1161 of 2022
And
Misc. Application No. 1162 of 2022
And
Appeal No. 736 of 2022

Tinna Finex Limited
CIN-U65910DL1990PL041750
11, Woodvilla, IInd Avenue,
Bandh Road, Chandan Haula,
New Delhi- 110 074 ...Appellant

Versus

1. The Adjudicating Officer,
   Securities and Exchange Board of India,
   SEBI Bhavan, Plot No. C-4A, G-Block,
   Bandra-Kurla Complex, Bandra (East),
   Mumbai- 400 051

4. In the view of the above, I find that Noticee failed to take reasonable step to appear before the AO on November 24, 2022 as directed by the Hon'ble SAT in its order dated October 31, 2022.

5. Subsequently, in the interest of principles of natural justice, the SCN dated July 27, 2017 is being forwarded to Noticee vide letter dated December 09, 2022 on the address of the Noticee as mentioned in the Hon'ble SAT order dated October 31, 2022. The said letter dated December 09, 2022 has been duly served on the address of the Noticee in terms of rule 7(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules (hereinafter referred to as "**SEBI Adjudication Rules**") through Speed Post Acknowledgment Due (hereinafter referred to as "**SPAD**"). In response to the said letter, Noticee filed its reply vide email dated December 26, 2022. The reply submitted by the Noticee is summarise as below:

   a) *SCN dated July 27, 2017 is bad in law and is denied by Noticee. Noticee submitted no cause of action arise out of the copy of SCN.*
   b) *Noticee has proper mechanism for meeting the Investor grievances and servicing investor complaints, as such, alleged Investor complaints were resolved. Any alleged inadvertent non-entry in the SCORES system does not necessarily mean non-compliance by the Noticee. Further, technical issues should not be allowed to be overstepped with compliance of law. As such isolated and inadvertent reflection of any resolved investor complaint as pending in the SCORES system cannot be taken as non-compliance.*
   c) *No investor complaints which were pending whatsoever and the Noticee has been fully compliant with the law. Further, any alleged inadvertent non-entry in the SCORE system does not necessarily mean non-compliance by Noticee.*
   d) *The Noticee also based on the advice received, understands that circulars may not be mandatory but directory in nature, given that they are not specifically passed by legislature.*
   e) *Investors have also not raised any grievance anytime during the current financial year and the alleged matter suffers from bar of limitation due to lapse of significant time.*

6. I note that hearing was concluded on December 27, 2022. The hearing was scheduled through video conferencing on WebEx platform. On the scheduled date of hearing, the authorized representative of the Noticee appeared before me through video conference and reiterated the submission vide email dated December 26, 2022.

7. Noticee submitted that the present adjudication is barred due to limitation since significant time has been elapsed. Further, SCN dated July 27, 2017 is bad in law. In this regard, I note that SCN dated July 27, 2017 issued by the SEBI and the same has been disposed of by the vide AO order dated February 19, 2018. However, SCN dated July 27, 2017 was delivered on the old address of the Noticee. Accordingly, the present adjudication proceedings have been initiated due to Hon'ble SAT order *vide* dated October 31, 2022, in which Hon'ble SAT remanded back the matter.

8. I note from the above paras that Noticee failed to appear before AO on November 24, 2022 as directed by Hon'ble SAT. Subsequently, vide letter dated December 09, 2022, in the interest of the principles of natural justice, delivery has been attempted through SPAD on the address of the Noticee as mentioned in the SAT order dated October 31, 2022. The same has been duly delivered in terms of rule 7(1) of SEBI Adjudication rules. I note that Noticee in its submissions, apart from the contention that the present adjudication proceeding barred from limitation, has not specifically pointed out as to how the purported delay, if any, had prejudiced them in putting up their defense. It is not the Noticees' contention either that on account of the purported delay, records /documents /evidences that perhaps may be relevant for their defence, if any, could not be accessed by them. Having regard to the chronology of events detailed in the preceding paragraph, I find that no prejudice has been caused to Noticee. Thus, I find that the Noticee contention is not sustainable in the facts and circumstances of the present matter.

9. At this juncture, I also placed reliance on following orders of the Hon'ble SAT:
    a) *In Appeal No. 482 of 2020 in the matter of **Rajendra Hukumchand Gupta. vs. SEBI** (order dated June 8, 2021) wherein Hon'ble SAT held that: "As regards the issue of delay in issuing the notice we find that the appellant was not at all prejudiced by the issuing of notice on 29th October, 2020, as he could not show any inability to defend the proceeding due to any delay. The respondent SEBI was required to carry investigation and then issue notice in the case and therefore this plea cannot be sustained."*
    b) *In **M/s. Adamina Traders Private Limited vs. SEBI** (Appeal No. 331 and 366 of 2020) dated December 15, 2021, the trades concerned in the appeal took place in 2013, and the show cause notice was issued by the adjudicating officer in 2018. The appellants raised an argument of inordinate delay in issuance of the show*

cause notice. Dismissing the aforesaid contention, the Hon'ble SAT held the following:
'We do not find any evidence to hold that there was an inordinate delay in the issuance of the show cause notice. This contention is accordingly rejected. <u>Further, nothing has been shown as to how this delay has prejudiced the appellant. In the absence of any prejudice the delay, if any, cannot be set aside.</u>"
(emphasis supplied)

10. I note that SEBI commenced its web-based investor grievance redressal portal, known as SEBI Complaints Redress System (hereinafter referred to as **SCORES**), in June, 2011 to enhance investor protection. Investors can lodge their complaint against listed companies 'online' or in physical mode and monitor its status. Complaints, received by SEBI, in SCORES are electronically forwarded to the listed company or 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, 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. Subsequently, SEBI, vide Circular no. CIR/OIAE/1/2013 dated April 17, 2013, directed the listed companies, who do not have SCORES authentication, to obtain the SCORES user id and password. 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 wilful avoidance of the same.

11. SEBI came out with a circular vide ref. no. CIR/OIAE/1/2014 dated December 18, 2014 (hereinafter referred to as "**Circular dated December 18, 2014"**), consolidating the earlier Circulars issued by SEBI vide ref. nos. (i) CIR/OIAE/2/2011 dated June 3, 2011 (ii) CIR/OIAE/1/2012 dated August 13, 2012 and (iii) CIR/OIAE/1/2013 dated April 17, 2013 with regard to redressal of investor grievances through SCORES platform. Circular dated December 18, 2014 consolidated the aforesaid three circulars and rescinded the said circulars. However, it was clarified at para 15 of the Circular 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.

12. In the view of the above, I note that it is mandatory requirement, as mentioned under circular dated April 17, 2013, that all newly listed companies and SEBI registered intermediaries (excluding Stock Brokers, Sub-Brokers and Depository Participants) have to obtain SCORES user id and password immediately within a period of one month from the date of listing. Failure by any listed company or SEBI registered intermediary to obtain the SCORES user ID and password would not only be deemed as non-redressal of investor grievances but also indicate wilful avoidance of the same.

13. I note from the records that SCN made 2 allegations which are mentioned below:
    a) Noticee failed to obtain SCORES authentication in terms of circular dated April 17, 2013.
    b) Noticee failed to redress 3 investor complaint, details of which mentioned below:

S.N.	Registration No.	Name of Complainant	Complaint Against
1	SEBIE/MH13/0001376/1	Rajeswer Rao	Tinna Finex Ltd
2	SEBIP/DH13/0000015/1	HARBANS SINGH	Tinna Finex Ltd
3	SEBIP/DHI3/000Il51/1	AMIT KUMAR MALL / NEETAMALL	Tinna Finex Ltd

14. With reference to allegation of not obtaining SCORES authentication, I note that it was mandatory on the part of the Noticee to obtain SCORES authentication within the time frame stipulated by SEBI. However, from the facts available on record, I note that the Noticee had consistently failed and neglected to comply with the direction in terms of SEBI circular dated April 17, 2013. I note that, Noticee admitted the allegation as mentioned in the SCN with reference to the SCORE authentication and failed to put forward any defence for the same.

15. Noticee submitted that based on the advice received, understands that circulars may not be mandatory but directory in nature, given that they are not specifically passed by legislature. In this regard, I note that it's trite law that circular has been issued by SEBI under the power conferred by the SEBI Act, are binding in nature. In the present case, Circular dated April 17, 2013 is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act to protect the interests in securities and promote the development of, and to regulate the securities market. Thus, I note that such contention of the Noticee is of no use.

16. At this juncture, I also would like to highlight following judgment of the Hon'ble SAT:

    a) **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...."*

    b) **M/s Vidarbha Industries Limited v. SEBI** (decided on December 01, 2014) held that: "…*since the appellant being a listed company, failure on part of the appellant to comply with the SEBI circular dated April 17, 2013 constitutes violation of SEBI circular for which penalty imposable under section 15HB of SEBI Act*…"

17. In the view of the above facts and circumstance, I find that allegation with reference to the Noticee regarding violation of SEBI circular dated April 17, 2013 has been established and the same would attract the penalty under 15HB of the SEBI Act.

18. With regard to the allegation that 3 investor complaint had been pending with respect to Noticee, I note from the record that SCN has only mentioned about the registration number as generated through SCORE and name of the complainant. Further, SCN alleged that by not submitting the details for authentication as required by the Circular dated April 17, 2013, Noticee failed to redress the investor grievances as uploaded in the SCORES. In other words, it has been alleged that once a complaint against a company is uploaded by SEBI in the SCORES, it amounted to calling upon by SEBI to such company to redress the investor grievance and thereby, liable under section 15C of the SEBI Act.

19. In this regard, I note that for the purposes of accessing the complaints of the investors against listed companies, they were required to login to SCORES system electronically through a company specific user id and password, to be provided by SEBI. In the present case, Noticee did not obtain the user id and password which was essential for accessing the complaints pertaining to the Noticee, as uploaded on the SCORES for and subsequent redressal thereof.

20. In the view of the above, I note that the requirement under Section 15C of the SEBI Act which states that "… after having been called upon by the Board in writing..." remains unfulfilled. Thus, I find that the charge on the Noticee with respect to the violation of section 15C of the SEBI Act does not stand established in the present case.

21. Therefore, after taking into account the aforesaid entire facts / circumstance of the case and the aforesaid case law, I find that the allegation of non-obtaining of SCORES Authentication within stipulated time stands 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. I also placed reliance on the judgment of Hon'ble Supreme Court of India in the matter of **SEBI v. Shri Ram Mutual Fund** [2006] 68 SCL 216 (SC), the has held that *"in our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the*

regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant".

22. In the view of the above, 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 is reproduced below:

    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.*

23. For the purpose of adjudging the quantum of penalty under 15HB, I note that due regard to the factors specified in section 15J has to be given. For the ease of convenience factors stipulated in Section 15J of the SEBI Act, are reproduced below:

    15J - 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 investor/s as a result of the default;
    c) the repetitive nature of the default.

24. I note that Hon'ble Supreme Court in the matter of *Bhavesh Pabari vs SEBI* (2019) 5 SCC 90 held that the factors under section 15J are not exhaustive but are inclusive. Thus, other factors namely, matter pertaining to the period of more than 8 years ago from the date of violation and Company is already compulsorily delisted at BSE with effect from August 23, 2017 are also taken as mitigating factors.

25. Therefore, having regard to the factors listed in Section 15J and, and considering the facts and circumstances of the case and the findings arrived in the matter, I, in exercise of the powers conferred upon me under Section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a monetary penalty of

total **Rs 1,00,000/- (Rupees One Lakhs Only) on the Noticee *i.e.* Tinna Finex Ltd**, under section 15HB of the SEBI Act. In my view, the said penalty is commensurate with the violations committed by the Noticee as found in this case.

26. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order in either of the way of demand draft in favour of "*SEBI - Penalties Remittable to Government of India*", payable at Mumbai, or by following the path at SEBI website, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticees may contact the support at portalhelp@sebi.gov.in.

27. The Demand Draft or details and confirmation of e-payment made in the format as given in table below shall be sent to *"The Division Chief, EFD-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"* and also to e-mail id: - tad@sebi.gov.in.

1	Case Name	
2	Name of the 'Payer/Noticee'	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for - (like penalties along with order details)	

28. 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 for realization of the said amount of penalty along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

29. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: December 30, 2022 **Vijayant Kumar Verma**

Place: Mumbai **Adjudicating Officer**