BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. AO/AK/49-54/2017]

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

1. **Adam Comsof Ltd.** (PAN Not Available)
2. **Akash Agencies Ltd.** (PAN Not Available)
3. **Alert Petrogas Ltd.** (PAN Not Available)
4. **Arun Mantex Ltd.** (PAN Not Available)
5. **Bhavi Industries Ltd.** (PAN Not Available)
6. **Bhagwati Cottons Ltd.** (PAN Not Available)

In the matter of Non obtaining of SCORES Authentication

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) had issued its first circular viz. CIR/OIAE/2/2011 dated June 03, 2011 for *inter alia* obtaining authentication on SEBI Complaints Redress System (hereinafter referred to as "**SCORES**") for processing investor complaints received by SEBI. Thereafter, SEBI issued two more Circulars, i.e. CIR/OIAE/1/2012 dated August 13, 2012 and CIR/OIAE/1/2013 dated April 17, 2013 *inter alia* directing all the companies whose securities were listed on stock exchanges to obtain SCORES authentication and also redress the pending investor grievances within the stipulated time period. On December 18, 2014, SEBI issued Circular No. CIR/OIAE/1/2014 dated December 18, 2014 consolidating the earlier Circulars/ directions. The said Circular dated December 18, 2014 further *inter alia* stated that failure by any listed company to obtain SCORES authentication would not only be deemed as non-redressal of investor grievances, but, also indicate willful avoidance of the same and that failure to take action under the rescinded circulars before the date of issuance of SEBI Consolidated Circular, shall be deemed to have been

done or taken or commenced under the provisions of Circular dated December 18, 2014. The aforenamed SEBI Circulars are hereinafter collectively referred to as the **“SEBI Circulars "**.

2. SEBI observed that *inter alia* the following companies, (hereinafter collectively referred to as the **"Noticees"/ "Companies"**) had failed to comply with the said provisions of the SEBI Consolidated Circular:

Sl No	Name of Noticee/ Company
1.	Adam Comsof Ltd.
2.	Akash Agencies Ltd.
3.	Alert Petrogas Ltd.
4.	Arun Mantex Ltd.
5.	Bhavi Industries Ltd.
6.	Bhagwati Cottons Ltd.

3. It was, therefore, alleged that the Noticees have failed to obtain SCORES authentication and thereby violated the aforesaid Circulars, thus, making the Noticee liable for imposition of penalty under Section 15 HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"the SEBI Act"**).

APPOINTMENT OF ADJUDICATING OFFICER

4. Vide order dated March 31, 2017, I was appointed as the Adjudicating Officer, to inquire and adjudge under section 15-I of SEBI Act and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **"Rules"**) to enquire into and adjudge under section 15HB of SEBI Act for the alleged violations of the provisions of the aforesaid SEBI Circulars by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Individual Show Cause Notice as detailed below (hereinafter referred to as **"SCN"**) were issued to the Noticees under rule 4 of the Rules to show cause as to why an inquiry should not be held against

them in terms of rule 4 of the Rules read with section 15-I of SEBI Act and penalty be not imposed under Section 15HB of the SEBI Act for the alleged violation of provisions of the SEBI Consolidated Circular by not obtaining SCORES authentication. The SCNs were delivered to the last known addresses of the Noticees in the following manner:

Sl No	Name of Noticee/ Company	SCN no	SCN date	Delivery
1.	Adam Comsof Ltd.	EAD-6/AK/VG/9195/2017	April 24, 2017	Affixture
2.	Akash Agencies Ltd.	EAD-6/AK/VG/10586/2017	May 12, 2017	Affixture
3.	Alert Petrogas Ltd.	EAD-6/AK/VG/10588/2017	May 12, 2017	Affixture
4.	Arun Mantex Ltd.	EAD-6/AK/VG/10596/2017	May 12, 2017	Affixture
5.	Bhavi Industries Ltd.	EAD-6/AK/VG/10620/2017	May 12, 2017	Affixture
6.	Bhagwati Cottons Ltd.	EAD-6/AK/VG/9197	April 24, 2017	Affixture

6. In the interest of natural justice, it was decided to provide an opportunity of personal hearing to the Noticees and hence hearing notices as detailed below were issued to the Noticees calling upon them to reply to the SCN and appear for personal hearing. However, neither did the Noticee appear on the date scheduled for the personal hearing, nor have the Noticees filed any reply in the matter till date. The details of the hearing notices issued to the Noticees is as given below:

Sl No	Name of Noticee/ Company	Date of Hearing Notice	Scheduled date for Hearing	Delivery
1.	Adam Comsof Ltd.	July 18, 2017	August 7, 2017	Affixture
2.	Akash Agencies Ltd.	July 18, 2017	August 7, 2017	Affixture
3.	Alert Petrogas Ltd.	July 18, 2017	August 7, 2017	Affixture
4.	Arun Mantex Ltd.	July 18, 2017	August 7, 2017	Affixture
5.	Bhavi Industries Ltd.	July 19, 2017	August 8, 2017	Affixture
6.	Bhagwati Cottons Ltd.	July 19, 2017	August 8, 2017	Affixture

7. In the above referred SCNs as well as in the hearing notices, it was specifically indicated that if the Noticees fail to submit their reply to the SCN or fail to attend the hearing proceedings on the stipulated date and time, it will be presumed that Noticees have no submissions to offer in their defense and the matter would be further proceeded with on the basis of the material available on record.

8. In view of the above, I am compelled to proceed in the matter against the Noticees, ex parte. I am of the view that principles of natural justice have been complied with since sufficient opportunities have been provided to the Noticees to submit reply and to appear for hearing, which the Noticees have failed to avail of. Therefore, the present proceedings against the Noticees are undertaken ex-parte on the basis of available documents and information.

CONSIDERATION OF ISSUES

9. I have carefully perused the documents available on record. It is observed that the allegation against the Noticees is that they have failed to obtain SCORES authentication. The issues, therefore, that arise for consideration in the present matter are:
    a) Whether the Noticees has violated the provisions of SEBI Circulars by failing to obtain SCORES authentication?
    b) Does the violation, if any, on the part of the Noticees attract monetary penalty under Section 15 HB of the SEBI Act?
    c) If so, what would be the monetary penalty that can be imposed duly taking into account the factors mentioned in Section 15J of SEBI Act?

FINDINGS

10. Before moving forward, it is pertinent to refer to the provisions of SEBI Circulars. SEBI vide circular No. CIR/OIAE/2/2011 dated June 3, 2011 commenced processing of investor complaints in a centralized web based complaints redress system 'SCORES'. The salient features of this system are:
    - Centralised database of all complaints,
    - Online movement of complaints to the concerned listed companies,

- Online upload of Action Taken Reports (ATRs) by the concerned companies, and
- Online viewing by investors of actions taken on the complaint and its current status.

The Circular stipulated that all complaints pertaining to companies would be electronically sent through SCORES, and companies were required to view the complaints pending against them and submit ATRs alongwith supporting documents electronically in SCORES. All companies whose securities are listed on Stock Exchanges were advised to comply with the aforesaid Circular.

11. Subsequently, vide Circular CIR/OIAE/1/2012 dated August 13, 2012, all companies whose securities are listed on stock exchanges were advised to obtain SCORES authentication in terms of the aforesaid Circular by September 14, 2012. It was also specified therein that in case of failure to comply with the directions, SEBI would be constrained to initiate enforcement actions as per law as may be deemed appropriate.

12. It is further observed that SEBI issued a Public Notice dated January 13, 2013 against the companies which had failed to obtain SCORES authentication. Vide the public notice, the companies that were named therein were advised to obtain SCORES authentication within 7 days from the date of the advertisement, failing which it was stated that SEBI would be constrained to initiate appropriate enforcement actions. Further, companies other than those named in the public notice, who had not yet obtained SCORES authentication were also advised to obtain authentication, failing which enforcement action would follow.

13. Thereafter, vide Circular No. CIR/OIAE/1/2013 dated April 17, 2013, companies that had not obtained their SCORES user ID and password were directed to obtain 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.

14. Further, SEBI Circular CIR/OIAE/1/2014 dated December 18, 2014 consolidated the aforesaid Circulars, namely, Circular no.CIR/OIAE/2/2011 dated June 3, 2011, Circular no.CIR/OIAE/1/2012 dated August 13, 2012 and Circular no.CIR/OIAE/1/2013 dated April 17, 2013 and rescinded the said circulars.

15. Now, with this background in place, the first issue for consideration is whether the Noticees by failing to obtain SCORES authentication has violated the provisions of SEBI Circulars as mentioned above. I find from the material available on record that as per SEBI circular No.CIR/OIAE/2/2011 dated June 03, 2011, it was obligatory on the part of the Noticees to obtain SCORES authentication, however, the Noticees failed to obtain SCORES authentication. Even after issuance of the reminder circular no.CIR/OIAE/1/2012 dated August 13, 2012 requiring all listed companies to obtain SCORES authentication by September 14, 2012, the Noticees failed to obtain the SCORES authentication. This was despite the fact that SEBI vide its said reminder circular had made it clear that SEBI would be constrained to initiate enforcement actions as per law in case of failure to *inter alia* comply with obtaining of the SCORES authentication. SEBI again followed with another reminder circular no.CIR/OIAE/1/2013 dated April 17, 2013, again pointing out 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. Prior to the same, SEBI had also issued a Public Notice dated January 13, 2013 listing out the names of the listed companies against whom complaints were pending with SEBI and that the companies had failed to obtain SCORES authentication as per SEBI's records as on December 31, 2012. I find from the same that the Noticees, namely, Adam Comsof Ltd., Arun Mantex Ltd. and Bhagwati Cottons Ltd. were among the 201 listed companies, whose name appeared in the said list. SEBI through the said Public Notice too had warned the companies whose names had appeared in the list that if they failed to obtain SCORES authentication within 7 days from the date of the advertisement, SEBI would be constrained to initiate appropriate enforcement actions. The companies other than those named in the public notice, who had not yet obtained SCORES authentication were also advised to obtain authentication, failing which enforcement action would follow.

16. Further, SEBI Circular CIR/OIAE/1/2014 dated December 18, 2014 consolidated the aforesaid Circulars, viz. Circular no.CIR/OIAE/2/2011 dated June 03, 2011, Circular no.CIR/OIAE/1/2012 dated August 13, 2012 and Circular no.CIR/OIAE/1/2013 dated April 17, 2013 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.

17. From all of the above, I find that despite SEBI forewarning the Noticees repeatedly through issue of various circulars in the matter as well as through Public Notice, the Noticees did not pay heed to the same. It is the duty of SEBI to ensure speedy resolution of investor grievances, and to further the same, SEBI through a centralized web based SEBI Complaints Redressal System (SCORES) has provided a platform for aggrieved investors, whose grievances pertaining to the securities market remain unresolved by the concerned listed company after a direct approach. Further, the then existing investor grievance system lacked a centralized database and resolution of investor grievances usually got delayed. It was, hence, all the more important that listed companies including the Noticees complement the regulators efforts by complying with its directives, as putting in place an investor redressal mechanism and investor protection go hand in hand. However, it is observed from the above that the Noticees have consistently failed and neglected to comply with the SEBI Circulars in the matter for obtaining a Login ID and password.

18. I find that despite service of the SCNs and hearing notices, the Noticees neither replied to the SCNs, nor availed the opportunity of personal hearing granted to them.

19. In this regard, it is pertinent to note that the ***Hon'ble Securities Appellate Tribunal (SAT) in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006)*** has *inter alia*, observed 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"*.

20. It is also pertinent to note that the ***Hon'ble Securities Appellate Tribunal (SAT), in the matter of Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014),*** has also *inter-alia,* observed that: "*...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, 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 leveled against them in the show cause notices..."*

21. Therefore it is established without doubt that the Noticees have failed to obtain SCORES authentication till date and thereby violated SEBI Circulars in this regard. Thus, I find that despite

SEBI vide Circular CIR/OIAE/1/2012 dated August 13, 2012 issuing a deadline of September 14, 2012 to all listed companies to obtain SCORES authentication, the Noticees have failed to obtain SCORES Authentication till date i.e. even after a period of nearly five years from the said deadline.

22. Further, it is pertinent to mention here that the ***Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)*** 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 Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

23. Further, 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...".

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

    Section 15HB of the SEBI act reads as under:

    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 [1][liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]

25. While determining the quantum of monetary penalty under Section 15HB of SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

    15J.Factors to be taken into account by the adjudicating officer:

[1] Substituted for the words "liable to a penalty which may extend to one crore rupees" by the Securities Laws (Amendment) Act, 2014,w.e.f. 08-09-2014.

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.

[Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer 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.][2]"

26. It is not possible in cases of such nature to quantify exactly the disproportionate gains or unfair advantage enjoyed by the Noticees. Also, it may not be possible to ascertain the exact monetary loss to the investors as a result of the default. It is also noted that no quantifiable figures are available on record to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticees.

27. I find that all the Noticee Companies have been 'Suspended' for trading on BSE, and the details of the same are as follows:

Name of Company	**Suspension**		
	Date of suspension	**Date of revocation of suspension**	**Reason for suspension**
Adam Comsof Ltd	11/10/2004	Not Revoked	Non-Compliance with Listing Regulations
Akash Agencies Ltd	17/02/2003	Not Revoked	Non-Compliance with Listing Regulations
Alert Petrogas Ltd	10/09/2001	Not Revoked	Non-Payment of Annual Listing Fees
Arun Mantex Ltd	10/09/2001	Not Revoked	Non-Payment of Annual Listing Fees

[2] Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Prt II Section 1 dated March 31, 2017, wef April 26, 2017

Name of Company	Suspension		
	Date of suspension	**Date of revocation of suspension**	**Reason for suspension**
Bhavi Investments Ltd	30/04/2003	Not Revoked	Non-Compliance with Listing Regulations
Bhagwati Cottons Ltd	07/01/2002	Not Revoked	Non-Payment of Annual Listing Fees

28. In the matter, I note that in the case of ***M/s Port Shipping Company Limited, The Hon'ble Securities Appellate Tribunal (SAT)*** has made the following observation *"Argument of the appellant that there was no operating income, no permanent employee, no pending investor grievance, no prejudice caused to any investor and that the shares of the appellant company were not traded for more than six years, cannot be a ground to disobey the directions given by SEBI. Obligation to obtain SCORES authentication was not dependent on there being operating income or pending investor grievance or trading of shares on the stock exchanges. Admittedly, the appellant company continues to be a listed company and, therefore, it was obligatory on part of appellant company to obtain SCORES authentication within the time stipulated by SEBI. However, the appellant has consistently failed and neglected to comply with the directions of SEBI and it is only when SEBI initiated penalty proceedings, the appellant chose to comply with the directions of SEBI therefore, in the facts of the present case appellant deserved higher penalty."*

29. In the extant case, I find that the Noticees have failed to comply with the directions of SEBI till date. I find further that the following three Noticees have been compulsorily delisted under the provisions of Chapter V of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, as the company was suspended for a period of more than 13 years.

Name of Company	Delisting	
	Date from which the Scrip has been delisted	Reason for delisting
Alert Petrogas Ltd	17/08/2016	Compulsory delisted for suspension more than 13 years, vide exchange notice 20160816-8 dated 16th August, 2016
Arun Mantex Ltd	13/12/2016	Compulsory delisted for suspension more than 13 years, vide exchange notice 20161212-8 dated 12th December,

Name of Company	Delisting	
	Date from which the Scrip has been delisted	Reason for delisting
		2016
Bhagwati Cottons Ltd	17/08/2016	Compulsory delisted for suspension more than 13 years, vide exchange notice 20160816-8 dated 16th August, 2016

30. However, the fact that the above named Noticees have been delisted now due to delinquency on their part in complying with the provisions of the listing agreement and/ or with respect to payment of listing fees of the Exchange, cannot support non-compliance by the Noticee Companies in obtaining SCORES authentication and complying with the SEBI Consolidated circular, despite repeated reminders.

31. Obtaining authentication on SCORES for processing investor complaints received by SEBI has to be a part and parcel of the corporate responsibility of every listed company. The Noticees by failing to comply with the direction of obtaining SCORES authentication, have repeatedly violated the directions given by SEBI through SEBI Circulars viz. dated June 03, 2011, August 13, 2012, April 17, 2013, and which were eventually consolidated by issue of SEBI Consolidated Circular dated December 18, 2014. The Noticees also failed to pay heed to the Public Notice dated January 13, 2013 issued by SEBI. Thus, to this extent, the default of the Noticees is found to be repetitive in nature. Further, despite SEBI Circular CIR/OIAE/1/2012 dated August 13, 2012 issuing a deadline of September 14, 2012 to all listed companies to obtain SCORES authentication, the Noticees have failed to obtain SCORES Authentication till date i.e. even after a period of nearly five years from the said deadline. 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 wilful non-compliance of the same by the Noticees for a period of five years since the deadline to comply was given by SEBI is a matter of serious concern. In the matter, I find that the ***Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT') in S. S. Forgings & Engineering Limited & Others v SEBI, Appeal No. 176 of 2014 (decided on August 28, 2014)*** has *inter alia* observed that – *"……………..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…….”

ORDER

32. After taking into consideration all the facts and circumstances of the case, I impose the following penalty on each of the Noticees under Section 15HB of the SEBI Act, which will be commensurate with the violations committed by the Noticees:

Sl No	Name of Noticee/ Company	Penalty
1.	**Adam Comsof Ltd**	**Rs 10,00,000/- (Rupees Ten Lakh Only)**
2.	**Akash Agencies Ltd**	**Rs 10,00,000/- (Rupees Ten Lakh Only)**
3.	**Alert Petrogas Ltd**	**Rs 10,00,000/- (Rupees Ten Lakh Only)**
4.	**Arun Mantex Ltd**	**Rs 10,00,000/- (Rupees Ten Lakh Only)**
5.	**Bhavi Investments Ltd**	**Rs 10,00,000/- (Rupees Ten Lakh Only)**
6.	**Bhagwati Cottons Ltd**	**Rs 10,00,000/- (Rupees Ten Lakh Only)**

33. The Noticees 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 e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

34. The Noticees shall forward the applicable Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager, Enforcement Department, SEBI. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided

at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under:

1. Case Name :	
2. Name of Payee:	
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/disgorgement/recovery/settlement amount and legal charges along with order details)	

35. In terms of rule 6 of the Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date: August 29, 2017 **Anita Kenkare**
Place: Mumbai **Adjudicating Officer**