BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/AD/2022-23/ 24157]

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

In respect of

Arihant (India) Limited

CIN: U74210DL1984PLC019292

In the matter of Arihant (India) Limited

FACTS IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') vide Circulars No. CIR/OIAE/1/2012 dated August 13, 2012 and No. CIR/OIAE/1/2013 dated April 17, 2013 had directed all listed companies to obtain the SEBI Complaints Redressal System (hereinafter referred to as "**SCORES**") authentication and also to redress pending investor grievances within the stipulated time period. SEBI observed that certain companies including Arihant (India) Limited (hereinafter referred to as **'Noticee/Company/By Name'**) had neither obtained the SCORES authentication nor redressed the investor grievance pending against it and therefore, had failed to comply with the aforesaid SEBI Circulars.

2. Therefore, SEBI initiated adjudication proceedings against aforesaid companies including Noticee and in this regard, vide Order dated October 25, 2013, SEBI appointed undersigned as Adjudicating Officer to inquire into and adjudge under Section 15HB and Section 15C of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**), the aforesaid alleged violations of Noticee. Thereafter, show cause notice no. SEBI/ERO/SM/ADJ/3413/2014 dated January 30, 2014 (hereinafter referred to as "**SCN**") was issued to Noticee under Rule 4 of the Securities and Exchange Board of India

(Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 to show-cause as to why an inquiry should not be initiated against Noticee and penalty, if any, not be imposed upon it under the provisions of Section 15HB and Section 15C of SEBI Act for the violation alleged to have been committed by it.

3. Thereinafter, an ex parte adjudication order dated August 12, 2014 was passed against Noticee, wherein by it was concluded that Noticee had violated SEBI Circulars No. CIR/OIAE/1/2012 dated August 13, 2012 and No. CIR/OIAE/1/2013 dated April 17, 2013 and a penalty of Rupees Three Lakh was imposed on it.

4. Subsequently, recovery certificate dated June 23, 2015 for the recovery of penalty amount along with interest was issued by the Recovery Officer, SEBI at the address at 10, Princep Street, 2nd Floor, Kolkata -700072. Since the recovery amount was not paid by Noticee, a subsequent recovery notice dated March 08, 2018, was issued by Recovery Officer, SEBI at the address of Noticee at "C/o Khairatilal & Sons, 80, Janpath, New Delhi-11001", which was obtained from the website of Ministry of Corporate Affairs (**MCA**).

5. On receipt of the aforesaid letter, Noticee filed an appeal against the aforesaid Recovery Notice dated March 08, 2018 issued by SEBI before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"SAT"**). Noticee, in its appeal, submitted before Hon'ble SAT that its registered address was at C/o Khairatilal & Sons, 80, Janpath, New Delhi-11001. Noticee also submitted before the Hon'ble SAT that SCN had been issued by SEBI with respect to another company named "Arihant (Limited)" which had its address at 10, Princep Street, 2nd Floor, Kolkata - 700072. With regard to the aforementioned, Counsel for SEBI submitted before Hon'ble SAT that penalty order was in fact passed against the appellant, however, inadvertently, notices were sent to some other address. Considering the aforementioned submission, Hon'ble SAT vide its Order dated June 01, 2018 set aside the penalty order dated August 12, 2014 and Recovery Notice dated March 08, 2018 with the following direction:

"3. Counsel for SEBI states that the penalty order was in fact passed against the appellant, however, inadvertently notices were sent to the address of a company situated in Kolkata.

4. In these circumstances, we set aside the penalty order dated 12th August, 2014 and also the impugned recovery notice dated 8th March, 2018 and direct SEBI to pass fresh order in accordance with law after giving an opportunity of hearing to the appellant."

APPOINMENT OF ADJUDICATING OFFICER

6. Pursuant to the aforementioned decision of Hon'ble SAT, vide order dated December 23, 2022, the undersigned was once again appointed as Adjudicating Officer in the matter under Section 19 of SEBI Act read with Section 15I (1) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **" Adjudication Rules**") by SEBI to inquire and adjudge under the provisions of Sections 15C and 15HB of SEBI Act, the alleged violation of Circulars No. CIR/OIAE/1/2012 dated August 13, 2012 and No. CIR/OIAE/1/2013 dated April 17, 2013 by Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

7. In order to comply with the aforementioned Order of the Hon'ble SAT dated June 01, 2018, vide letter dated January 04, 2023, Noticee was provided with a copy of SCN dated January 30, 2014, Adjudication Order dated August 12, 2014, decision of Hon'ble SAT dated June 01, 2018 and communique dated December 23, 2022 showing the appointment of undersigned as the Adjudicating Officer in the matter. Vide the aforementioned letter, Noticee was given 14 day's time for filing its reply, if any, to the SCN. The aforementioned letter was sent to Noticee at its address "C/o Khairatilal & Sons, 80, Janpath, New Delhi-11001" through Speed Post with Acknowledgment Due (**SPAD**) as well as through digitally signed email to the email address of Noticee as noted from the website of Ministry of Corporate Affairs i.e. raj_kankaria@hotmail.com on January 05, 2023. The aforementioned letter sent through SPAD returned undelivered with the status of address shown as "left w/o address". The letter sent through digitally signed email was duly delivered to Noticee.

8. The charges levelled against Arihant (India) Ltd in the SCN is detailed hereunder:

a. Arihant (India) Limited had neither obtained the SCORES authentication nor redressed the grievance of investor(s) and therefore, had failed to comply with the aforesaid SEBI circulars No. CIR/OIAE/1/2012 dated August 13, 2012 and No. CIR/OIAE/1/2013 dated April 17, 2013.

b. Thereafter, vide letter dated July 18, 2013, the aforesaid company was again advised to submit the requisite information regarding SCORES authentication and redress the pending investor by August 05, 2013. However, Noticee once again failed to comply with the SEBI directive.

c. Therefore, it was alleged that by failing to obtain SCORES authentication and to redress the pending investor grievances, Noticee has violated the aforesaid SEBI Circulars No. CIR/OIAE/1/2012 dated August 13, 2012 and CIR/OIAE/1/2013 dated April 17, 2013.

9. In response to letter dated January 04, 2023, vide email dated January 10, 2023, Mr Rajiv Kankaria, one of the directors of Noticee requested for an opportunity of personal hearing before the undersigned. In light of the aforementioned email of Noticee and in compliance with principles of natural justice and directions of Hon'ble SAT, an opportunity of personal hearing was granted to Noticee before the undersigned on January 17, 2023 vide hearing notice dated January 12, 2023. The aforementioned hearing notice was sent to Noticee vide email dated January 12, 2023 as well as through SPAD. The hearing notice sent through email was duly served on Noticee. However, hearing notice sent through SPAD at the registered address of Noticee returned undelivered. On the scheduled date of hearing, Mr. Rajiv Kankaria appeared on behalf of Noticee. During the hearing, Noticee was granted time till January 23, 2023 for filing its reply to the SCN.

10. Thereafter, vide email dated January 18, 2023, Noticee submitted its reply to the SCN. The extract of reply filed by Noticee is reproduced hereunder:

"1) No show cause notice, Notice of hearing, Adjudication order & Certificate order in accordance with law after giving an opportunity of hearing as referred in the said order was never sent by SEBI to us, rather all the said notice & order were delivered to one Arihant Ltd. 10 Princep Street, 2nd floor, Kolkata-700072, which is a separate entity not linked to us. Hence proceeding initiated against our company is void and bad in Law & liable to be discontinued.

2) Please find ROC records downloaded from MCA Portal clarifying the same that M/s. Arihant Ltd. of 10 Princep Street, 2"d floor, Kolkata-700072 and our Company

M/s. Arihant India Ltd. of C/o. Khairatilal & Sons, 80 Janpath, New Delhi-110001 are two separate entity.

3) For your information our company Arihant India Ltd. is already Exited from Dissemination Board of BSE in the year 2018, please find enclose the notice of BSE notice No.20180927-12 dt.27.09.2018. A copy of the said notice is enclosed for your ready reference."

11. Vide email dated January 20, 2023, it was clarified to Noticee that SCN related to Noticee only. The extract of clarification issued to Noticee vide email dated January 20, 2023 is reproduced hereunder:

> *"In accordance with the decision of Hon'ble Securities Appellate Tribunal (SAT) dated June 01, 2018, an opportunity of personal hearing was granted to you on January 17, 2023. During the aforesaid hearing, it was explained to you that charges in the Show Cause Notice (SCN) dated January 30, 2014, relates to Arihant (India) Limited, CIN: U74210DL1984PLC019292, having address at C/o. Khairatilal & Sons, 80, Janpath, New Delhi-110 001. It was also clarified during the hearing that vide our letter bearing ref. EAD-10/SM/387/1/2023 dated January 04, 2023, the SCN was being forwarded to you and that this would constitute service of SCN on Arihant (India) Limited. Accordingly, the service of SCN to Arihant (India) Limited has been completed. In this regard, we would also like to highlight that Hon'ble SAT, considering SEBI's submission that adjudicating order dated August 12, 2014 was in fact passed against Arihant (India) Limited but notices were delivered to wrong address, had remanded back the matter to SEBI to pass fresh order after giving opportunity of hearing to Arihant (India) Limited."*

Further, vide the same email, Noticee was provided with another opportunity to submit its reply to SCN, if any, on or before January 27, 2023.

12. Thereafter, vide its email dated January 20, 2023, Noticee reiterated the contents of its reply dated January 18, 2023. The relevant extract of the aforementioned reply is reproduced hereunder:

" *In the email dated 20/01/2023 sent by your good self you have stated that the said show cause notice dated 30/01/2014 vide memo number*

SEBI/ERO/SM/ADJ/3413/2014 relates to Arihant (India) Limited having CIN: U74210DL1984PLC019292, having address at C/o. Khairatilal & Sons, 80, Janpath, New Delhi -110 001 but we would like to draw your kind attention towards the said notice dated 30/01/2014 annexed here at wherein neither our correct delivery address is mentioned nor our CIN: U74210DL1984PLC019292 is mentioned therefore the said notice is liable to be considered as non fructuous.

Please also note that the order passed by SEBI dated 12/08/2014 was also done ex-parte as neither any notice was served upon us and nor relates to our company.

Further in your email dated 20/01/2023 you mentioned that:
"It was also clarified during the hearing (on 17/01/2023) that vide our letter bearing ref. EAD-10/SM/387/1/2023 dated January 04, 2023, the SCN was being forwarded to you and that this would constitute service of SCN on Arihant (India) Limited. Accordingly, the service of SCN to Arihant (India) Limited has been completed"

But again we would like to state and repeat the same fact that the notice dated 30/01/2014 vide memo number SEBI/ERO/SM/ADJ/3413/2014 was not received by us in the year 2014 and is liable to be considered as invalid.

We would further like to state that post our hearing held through video conferencing on 17.01.2023 with your goodself we have sent our post hearing reply/submissions through email and speed post along with all relevant annexure.

We would like to re-submit to your good self that in the year 2018 our company M/S Arihant India ltd CIN: U74210DL1984PLC019292 has already exited from dissemination board of BSE after observing all compliances. The said is pertinent from the letter issued by concerned officer of BSE vide notice number 20180927-12 dated 27/09/2018.

We have annexed and sent the copy of the said notice attached in our email sent to you on 18/01/2023 along with master data downloaded from MCA portal.

We are once again annexing the said notice of BSE vide notice number 20180927-12 dated 27/09/2018 here at for your ready reference.

Therefore we once again request your goodself in view of the facts as stated above we request your good self not to initiate any further proceedings against us and drop the matter."

13. Considering the observations in the preceding paragraphs, I am of view that sufficient opportunities for hearing have been given to Noticee and the principles of natural justice has been duly complied with in the instant adjudication proceedings and the matter can be proceeded with on the basis of material available on record.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

14. I have carefully perused the charges levelled against Noticee, replies/submissions filed by Noticee and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

    Issue I: Whether Noticee by failing to obtain SCORES authentication and failing to redress the investor grievances has violated the SEBI Circulars No. CIR/OIAE/1/2012 dated August 13, 2012 and No. CIR/OIAE/1/2013 dated April 17, 2013?

    Issue II: Does the violation, if any, on the part of the Notice attract monetary penalty under Sections 15HB and 15C of the SEBI Act?

    Issue III: If so, what would be the quantum of monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of the SEBI Act?

    Issue I: **Whether the Noticee by failing to obtain SCORES authentication and failing to redress the investor grievances has violated the SEBI Circulars No. CIR/OIAE/1/2012 dated August 13, 2012 and No. CIR/OIAE/1/2013 dated April 17, 2013?**

15. I note from the available records that Noticee is a company registered with Registrar of Companies (RoC), Delhi since November 07, 1984. I also note that it was listed with Delhi Stock Exchange (DSE) and remained as a listed company till its exit from the dissemination board of BSE with effect from September 28, 2018.

16. I note that Noticee has not submitted any reply to SCN on merits but instead has reiterated its stand that it had taken in its appeal before Hon'ble SAT that instant adjudication proceedings do not pertain to it. In this regard, vide email dated January 20, 2023, it was clarified to Noticee that adjudication proceedings was in fact initiated against Noticee and not against Arihant Limited having its address at 10, Princep Street, 2nd Floor, Kolkata -700072. However, in its reply to the aforesaid email, Noticee has again contended that no show cause notice, notice of hearing, adjudication order was served to them and they were all delivered to 10, Princep Street, 2nd Floor, Kolkata -700072 i.e. to the address of Arihant Limited.

17. With regard to the aforementioned contention raised by Noticee, I note that in compliance of principles of natural justice and Hon'ble SAT's direction, a fresh opportunity of hearing was granted to Noticee in the matter. I note that Noticee's contention that instant adjudication proceeding does not relate to it is solely based on the fact that in the year 2014, SCN was sent to address of Arihant Limited. I note that Hon'ble SAT has remanded back the matter to SEBI for fresh consideration after accepting SEBI's submission that although Adjudication Order SM/AO-1/2014 dated August 12, 2014 was passed against Noticee, notices had been served at the wrong address. In this context, I find it pertinent to note that Noticee has not appealed against the aforementioned decision of the Hon'ble SAT. Therefore, at this stage, it is no longer open to Noticee to contend that adjudication proceedings was initiated by SEBI against Arihant Limited with its address at 10, Princep Street, 2nd Floor, Kolkata -700072. In light of the above, I am of the view that the aforementioned contention of Noticee lacks merit. In any case, a copy of the SCN has now being issued on Noticee in the present proceedings.

18. I note that SEBI commenced SCORES in June, 2011 to enhance investor protection. In the SCORES platform, 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 it's Share Transfer Agent, which in turn is required to redress the same and furnish the Action Taken Report (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.

19. The allegations against Noticee in the SCN are as given below:
   a) Noticee failed to obtain SCORES authentication in terms of SEBI circulars dated August 13, 2012 and April 17, 2013.
   b) Noticee failed to redress one investor complaint communicated by SEBI to Noticee vide letter dated July 18, 2013, details of which mentioned below:

Registration No.	Complainant Name	Complaint Against	Date of Receipt
SEBIE/WB13/0000748/1	R K Gupta	Arihant(dia) Ltd	12/06/2013

20. With regard to the allegation of not obtaining SCORES authentication, I note that by virtue of SEBI Circulars No. CIR/OIAE/1/2012 dated August 13, 2012 and No. CIR/OIAE/1/2013 dated April 17, 2013, it was mandatory on the part of Noticee, who was a listed company at the relevant time, to obtain SCORES authentication within the time frame stipulated by SEBI. I note from the records of the SEBI, that Noticee had not obtained SCORES authentication. Further, I note from reply of Noticee that it is silent regarding obtaining SCORES authentication. I find that Noticee had not produced any evidence to contradict the allegation in the SCN that it had not obtained SCORES authentication during the relevant time period. At this juncture, I find it pertinent to place my reliance on the following decisions of Hon'ble SAT:
   a. **S. S. Forgings & Engineering Limited & Others v SEBI**, (Appeal No. 176 of 2014 decided on August 28, 2014) wherein it was, *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** (Appeal No. 386 of 2014 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..."*

21. In view of the above mentioned decisions of Hon'ble SAT and observations in the preceding paragraphs, I find that allegation in the SCN that Noticee has violated SEBI Circulars No. CIR/OIAE/1/2012 dated August 13, 2012 and No. CIR/OIAE/1/2013 dated April 17, 2013 stands established.

22. I note that Noticee has contended that it is no longer a listed company and had exited from the dissemination board of BSE, with effect from September 28, 2018. In this context, I find it pertinent to rely on following decisions of Hon'ble SAT:

a) **Pashupati Cables Ltd vs. SEBI**(Date of Decision: 07/05/2018; Appeal No.107 of 2018):- In the aforementioned decision, Hon'ble SAT has held as under:

"*5. Argument of the appellant that the SCORES authentication was not obtained on account of the trading in the scrip of the appellant being suspended in the year 1999 is untenable, because, being a listed company, it was obligatory on part of the appellant to obtain SCORES authentication in terms of SEBI Circulars even if the trading in the scrip was suspended in the year 1999. Similarly, fact that there was no investor complaint or investor loss could not be a ground for not obtaining SCORES authentication, because, appellant was obliged to obtain SCORES authentication under the SEBI Circulars, even if there was no investor complaint or investor loss. It was not open to the appellant to contend that SCORES authentication would be obtained only after the investor complaint, if any, was filed.*

<u>6. Similarly, fact that the company has been delisted on 5/7/2017 cannot be a ground to escape penalty for the violations committed under the SEBI Act up to the date on which the appellant-company was delisted.</u> However, all the

aforesaid factors could be the mitigating factors required to be considered while imposing penalty for the violations committed." (emphasis supplied)

b) **Chaman Exports Ltd. v SEBI** (Appeal No. 345 of 2016); Date of Decision: 06.01. 2017, Hon'ble SAT has held as under:

"Though the learned counsel for the appellant argued that the appellant has sought delisting from both the stock exchanges, it is not in dispute that the company continued to be listed during the relevant time and accordingly it was the responsibility of the appellant to take SCORES authentication and dispose of investor grievances, if any, through this electronic platform."

23. It is a settled principle of law that violation of a law/statute/regulatory provision by a person has to be adjudged based on the law applicable on that person at the time of commission of violation. I am of view that Noticee being a listed company at the relevant time was within the regulatory framework of SEBI in this respect and therefore was under an obligation to obtain SCORES authentication. Thus, Noticee cannot escape its liability for not obtaining SCORES authentication on account of its subsequent delisting. The subsequent delisting of Noticee can at best only be considered as a mitigating factor.

24. With respect to the allegation in the SCN that Noticee had failed to redress the investor grievance, I note that all listed companies vide SEBI Circular No. /OIAE/1/2013 dated April 17, 2013 were advised to redress the grievances of investors and inform them within 30 days of the receipt of the complaints. The aforementioned Circular further stated that the details of investor grievances relating to the respective companies are available at the webpage http://scores.gov.in/admin accessed through the respective SCORES user ID and password of each company. Subsequent to the aforementioned Circular, SEBI had sent remainder letters to certain companies to obtain SCORES Authentication and redress the pending investor grievance(s). In this regard, I find from the records that SEBI had issued a remainder letter dated July 18, 2013 to Noticee to submit the requisite information regarding SCORES authentication and also to redress the pending investor complaint (one in number) by August 05, 2013. The aforementioned letter contained details of the complaint filed against Noticee and the same is reproduced hereunder:

Registration No.	Complainant Name	Complaint Against	Date of Receipt

SEBIE/WB13/0000748/1	R K Gupta	Arihant(dia) Ltd	12/06/2013

25. However, I note that the aforementioned letter was issued by SEBI at 10, Princep Street, 2nd Floor, Kolkata - 700072. In light of the facts as placed before the Hon'ble SAT that the aforementioned address was not the address of Noticee, I am of the view that letter dated July 18, 2013 from SEBI was not received by Noticee.

26. I am of the view that since Noticee had not neither obtained SCORES Authentication nor received the letter dated July 18, 2013, Noticee was not in receipt of the SCORES complaint. In this context, I find it pertinent to refer to Adjudication Order dated December 14, 2017 in the matter of M/s Goodearth Financial Services Ltd wherein in the similar facts and circumstances, the Learned Adjudicating Officer has held as under:

" *13. Nothing is produced before me which indicates that Noticee was called upon by the Board (as it has not taken SCORES Authentication) informing about pending investor complaints.*
14.In the instant matter, since the Noticee has not obtained SCORES authentication which as per SCN was essential for accessing the complaints and nothing is available on record to indicate that notice was called upon the Board in writing. Thus, the requirement under 15C of the SEBI Act which states that "after having been called upon by the Board in writing remains unfulfilled.
15.Therefore, the allegation of penalty under Section 15C does not establish."

27. In this context, I find it pertinent to refer to Section 15C of SEBI Act as applicable during the relevant period:

<u>Penalty for failure to redress investors' grievances.</u>
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.

28. I note that in the instant matter since Noticee had neither obtained the SCORES authentication nor received the letter dated July 18, 2013, the requirement under Section 15C of the SEBI Act which states that *"... after having been called upon by the Board in writing..*." remains unfulfilled. In light of the above observations, I find that the charge on Noticee with respect to the violation of section 15C of the SEBI Act does not stand established in the present case.

Issue II: <u>Does the violation if any on the part of the Notice attract monetary penalty under Sections 15HB and 15C of the SEBI Act?</u>

29. It has been established in the foregoing paragraphs that Noticee has violated the provisions of SEBI Circulars No. CIR/OIAE/1/2012 dated August 13, 2012 and No. CIR/OIAE/1/2013 dated April 17, 2013 by not obtaining SCORES Authentication during the relevant time period. In this context, I find it pertinent to cite the Order of Hon'ble SAT in the matter of Port Shipping Company Ltd. vs SEBI decided on 29.04.2015 wherein it was observed that *"...As held by this Tribunal in case of M/s. Vidarbha Industries Ltd. (supra) and Rakan Steels (supra) 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..*."

30. Therefore, after taking into account the entire facts / circumstance of the case and the aforesaid case law, I note that the said violations of the aforementioned SEBI Circulars by Noticee attracts the imposition of monetary penalty upon the Noticee under section 15HB of SEBI Act. The text of the said section, as applicable during the relevant time 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 may extend to one crore rupees.*

31. With regard to the imposition of penalty under Section 15C of SEBI Act, I would like to refer to the discussion at para 28 of this order and in view of the said discussion, this case

does not warrants imposition of monetary penalty on the Noticee under Section 15C of the SEBI Act.

Issue III: <u>If so, what would be the quantum of monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of the SEBI Act?</u>

32. While determining the quantum of penalty under section 15HB of the SEBI Act, it is important to consider the factors stipulated in section 15J of the SEBI Act which reads as under:-

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

33. In view of the charges established and the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act, stated as above. In this context, 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 i.e. there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15-J which can be taken note of by the adjudicating officer while determining the quantum of penalty.

34. I note that the material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of the Noticee's failure. I also note that more than 13 years have elapsed since the violation has been committed by Noticee. I further observe that almost 5 years have passed since Hon'ble SAT had remanded back the matter for passing of fresh order in the matter. I am also conscious of the fact that Noticee got delisted from dissemination board of BSE with effect from September 28, 2018 and at present, Noticee is an unlisted company.

I am of the view that the aforementioned facts can be considered as mitigating factors while determining penalty in the matter.

ORDER

35. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs. 25,000/-(Rupees Twenty Five Thousand only) on Noticee i.e. Arihant (India) Ltd, under the provisions of Section 15HB of SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee.

36. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

37. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - VI, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "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 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)	

38. 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 of Noticee.

39. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee viz. Arihant (India) Ltd. and also to SEBI.

Place: Mumbai	**SOMA MAJUMDER**
Date: February 27, 2023	**ADJUDICATING OFFICER**