

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

In continuation of Common Final Order dated September 21, 2017 passed in the matter of Synthetics and Chemicals Limited and in consideration of the representation submitted by Ajay Suresh Kilachand (PAN- ABAPK6943R).

Background:-

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') vide common order dated September 21, 2017, prohibited five companies and their directors from accessing the securities market and from buying, selling or dealing in securities, directly or indirectly, till the companies / directors on behalf of the company resolve all the investor grievances pending against it. This includes Synthetics and Chemicals Limited (SCL) and its directors, namely; a) Ajay Suresh Kilachand; b) Suresh Tulsidas Kilachand and c) Sunil Dutt Sharma. The common order was issued against the companies for failure to obtain SEBI Complaints Redress System (SCORES) authentication within the time period specified in various SEBI circulars and non-redressal of investor grievances.
 2. Aggrieved by the said order, Ajay Suresh Kilachand (hereinafter referred to as 'Applicant') filed Appeal No. 75 of 2018 before Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT'). During the hearing on March 26, 2018 before Hon'ble SAT, Counsel for the applicant, on instructions, requested permission for withdrawing the appeal, with a liberty to file a representation to SEBI. Accordingly, vide order dated March 26, 2018, Hon'ble SAT allowed the withdrawal of Appeal and directed SEBI to dispose of the representation on merits and in accordance with law.
 3. Subsequently, on May 5, 2018, SEBI received a representation from the applicant *inter alia* submitting that:-
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- a) The order dated September 21, 2017 passed by SEBI records that no reply to the SCN was received, whereas the applicant had replied to the SCN as a director of SCL;
- b) The applicant had resigned as a director of SCL with effect from October 21, 2011;
- c) No separate SCN was issued to the applicant and the order against the applicant has been passed without compliance of principle of Natural Justice;
- d) The requirement of obtaining SCORES authentication was a requirement only for listed companies. SCL was de-listed with effect from March 24, 2017 by NSE and May 29, 2017 by BSE;
- e) The company is in liquidation and a petition for winding up has already been admitted by the Bombay High Court by its order dated March 26, 2018. As the company is being wound up, the circular is not applicable and incapable of being implemented.

4. Thereafter, applicant vide letter dated August 8, 2018, requested for personal hearing in the matter. Later, applicant vide letter dated November 3, 2018 and December 20, 2018 reiterated the above submissions. Applicant through his Advocates Vineet Malhotra and Shubhendu Kaushik appeared for the hearing on February 5, 2019 and made similar submissions as stated above.
5. Subsequently, SEBI vide email dated March 14, 2019 sought justification from the applicant, for signing the letters dated April 26, 2013 and February 20, 2014 as director of SCL, after resigning from the company on October 21, 2011. In reply to the email, Advocates of the Applicant vide letter dated March 19, 2019 submitted that “....applicant resigned from the company on October 21, 2011. Thereafter he was unwell and the promoter of the company late Shri Suresh T. Kilachand had expired. Our client does not remember signing the letter and if the same has been signed by our client, it might be due to oversight. The Promoter before the company came to be delisted was Late Shri Suresh T. Kilachand. Our client was never the promoter of the company.”

Consideration:-

6. I have considered the final order dated September 21, 2017 and the representation/ letters filed by Applicant. There are three contentions raised by the applicant against the final order, each of which are separately discussed in the following paragraphs:-

A. Applicant had resigned from the Company on October 21, 2011 and thus not responsible for the acts and omission of the company.

- (i) I have noted that though the applicant, had resigned on October 21, 2011 (as per the RoC records), the applicant signed as a director of the company in letters dated April 26, 2013 and February 20, 2014, which were in response to SEBI letters dated March 28, 2013 and January 3, 2014 respectively. Therefore, it is clear that the applicant continued to operate as a director even after his resignation, at least till February 20, 2014. In the final order dated September 21, 2017 against SCL and its directors including the applicant, it was held that they have failed to obtain SCORES authentication within the time period specified in SEBI circulars dated June 3, 2011, August 13, 2012 and newspaper advertisement dated January 13, 2013, i.e. prior to February 20, 2014. Therefore, even though the records show that the applicant had resigned on October 21, 2011, he was actually continuing to discharge the functions of a director of SCL. Therefore, I am unable to accept that he is not responsible for failure to obtain SCORES authentication within the time period specified in SEBI circulars.
- (ii) From the SCN, it is also noted that 16 investor complaints were received prior to October 21, 2011 (date of resignation of the applicant) and only 6 complaints were received after October 21, 2011. Therefore, even if it is accepted for argument sake

that applicant was not connected to SCL with effect from October 21, 2011, I am of the view that applicant is certainly responsible for the 16 investor complaints received prior to October 21, 2011. Applicant has failed to submit the measures taken by him to resolve the 16 investor grievances pending during the time of his directorship with SCL. The non redressal of investor grievances is a breach of the provisions of SEBI Act, 1992 and it adversely affects the confidence of investors in securities market.

B. The company SCL got delisted with effect from March 24, 2017 by NSE and May 29, 2017 by BSE and therefore SEBI circulars for obtaining SCORES authentication is not applicable on SCL.

- (i) With regard to the said contention, I note that the failures/violations on the part of SCL and its directors including the applicant were prior to the date of delisting. Therefore, SCL and its directors including the applicant, cannot be absolved on the happening of a subsequent event like delisting of the SCL.
- (ii) It is pertinent to mention that SCL had undergone compulsory delisting with effect from March 24, 2017 by NSE and May 29, 2017 by BSE and it is not a voluntary delisting. Compulsory delisting by exchange is done when a listed company fails to comply with the laid down rules of the exchange and this failure of compliance by a company cannot be a valid defense. At this juncture it is pertinent to mention Regulation 23 & 24 of SEBI (Delisting of Equity Shares) Regulations, 2009, which envisages certain rights for public shareholders and certain duties on the part of

promoters, directors etc. for a compulsorily delisted company. Regulation 23 of SEBI (Delisting of Equity Shares) Regulations, 2009 is as under:-

Reg. 23 - Rights of public shareholders in case of a compulsory delisting.

- (1) *The recognised stock exchange shall form a panel of expert valuers from whom the valuer or valuers shall be appointed for purposes of sub-regulation (2).*
- (2) *Where equity shares of a company are delisted by a recognised stock exchange under this Chapter, the recognised stock exchange shall appoint an independent valuer or valuers who shall determine the fair value of the delisted equity shares.*
- (3) *The **promoter of the company shall acquire delisted equity shares from the public shareholders by paying them the value determined by the valuer within three months of the date of delisting from the recognised stock exchange**, subject to their option of retaining their shares. Explanation: For the purposes of sub-regulation (1), -*
 - (a) *'valuer' means a chartered accountant within the meaning of clause (b) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949), who has undergone peer review as specified by the Institute of Chartered Accountants of India constituted under that Act, or a merchant banker appointed to determine the value of the delisted equity shares;*
 - (b) *value of the delisted equity shares shall be determined by the valuer having regard to the factors mentioned in regulation 15. (Emphasis supplied)*

It is clear from the above regulation that, delisting does not mean that the promoters are absolved of all responsibilities toward the investors of the company. Further, Regulation 24 (1) of SEBI (Delisting of Equity Shares) Regulations, 2009 reads as follows:-

Consequences of compulsory delisting

Reg. 24. (1) *Where a company has been compulsorily delisted under this Chapter, the company, its **whole time directors**, its promoters and the companies which are promoted by any of them shall **not directly or indirectly access the securities market** or seek listing for any equity shares for a period of **ten years** from the date of such delisting. (Emphasis supplied)*

Thus, as per the above regulations company, whole time directors, promoters are debarred from accessing the securities market for a period of 10 years. After compulsory delisting, the company moves to the Dissemination Board of the

Exchange for a period of 5 years. Therefore, I am unable to accept that delisting absolves the company and its directors from all responsibilities, specially the violation committed prior to delisting.

C. The third contention raised by the applicant is with regard the liquidation of SCL by an order of Hon'ble Bombay High court.

- (i) As submitted by the applicant, the order of liquidation of SCL by Hon'ble Bombay High Court is dated March 26, 2018, which is well after the failure/violation to obtain SCORES authentication and non-redressal of investor grievances. I have also noted that the company had not appeared before Hon'ble Bombay High Court in the liquidation proceedings against it. I further note that in the circular CIR/OIAE/1/2012 dated August 13, 2012, it is clearly mentioned that in case of failure, SEBI would take appropriate enforcement actions. Relevant portion of the above circular reads as follows:-

“All companies against whom complaints are pending on SCORES, shall take appropriate necessary steps within 7 days of receipt of complaint by the concerned company through SCORES, so as to resolve the complaint within 30 days of receipt of complaint and also keep the complainant duly informed of the action taken thereon.

In case of failure to comply with the above, SEBI would be constrained to initiate enforcement actions as per the law as may be deemed appropriate.”
(Emphasis supplied)

Thus it was well within the knowledge of the applicant that failure to obtain SCORES authentication and non-redressal of investor grievances will attract enforcement action from the very beginning and the liquidation of company in March 2018 cannot be a tenable ground for non-compliance of SEBI circulars of 2012-2014 period.

Direction:-

7. I have taken into consideration the fact that company is under liquidation and has been delisted by exchanges. The applicant had also pleaded that he is unable to meet his medical expenses because of the SEBI order dated September 9, 2017 and if this final order is not modified against the applicant, it will be an order in perpetuity restraining the applicant from directly or indirectly dealing in security market. Considering the above, in partial modification of the earlier order dated September 9, 2017, I, in exercise of the powers conferred on me under Sections 11, 11(4) and 11B of the SEBI Act, 1992, hereby restrain and prohibit the applicant i.e. Ajay Suresh Kilachand (PAN- ABAPK6943R) from accessing the securities market and from buying, selling or dealing in securities, directly or indirectly, for a period of two years from September 9, 2017.
8. The representation of the applicant in this regard is disposed of accordingly.
9. A copy of this Order shall be forwarded to the recognised stock exchanges, registered depositories for necessary compliance with the above directions.

DATE: June 4, 2019

G. MAHALINGAM

PLACE: MUMBAI

WHOLE TIME MEMBER

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