BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO-191/2014]

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

M/s. MD Overseas Limited (PAN No.AACCM9507F)

In the matter of

M/s. MD Overseas Limited

FACTS OF THE CASE

1. M/s. MD Overseas Limited (hereinafter referred to as **'**the **Noticee/ the Company**') is a company incorporated under the Companies Act. A suo moto consent application bearing Registration No. 2388/2011 was filed by the Noticee with SEBI on August 03, 2011 to settle the non-compliance of Regulation 8(3) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to a**s 'Takeover Regulations'**) during the period 1998 to 2011. The High Power Advisory Committee of SEBI vide its meeting held on March 19, 2012 rejected the said consent application of the Noticee and the same was informed to the Noticee vide letter dated September 06, 2012.

2. Pursuant to the rejection of the consent application No.2388/2011, SEBI examined the facts in respect of the violation/ non-compliance of Regulation 8(3) as admitted by the Noticee. SEBI observed that the company in the past had *inter alia* violated/ non-complied with the provisions of Regulation 8(3) of the Takeover Regulations during the period 1998 to 2011. Based on the aforesaid information with respect to the non-compliance of Takeover Regulations, Adjudication proceedings under Chapter VI-A of

SEBI Act, 1992 (hereinafter referred to as **"Act**") were initiated against the Noticee under Sec 15 A (b) of SEBI Act, 1992 to inquire into and adjudicate the alleged violation of the provision of Regulation 8(3) of the Takeover Regulations. The shares of the company were listed at Delhi Stock Exchange Ltd. (hereinafter referred to as '**DSE**') and Uttar Pradesh Stock Exchange Ltd.(hereinafter referred to as '**UPSE**'**).**

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer vide order dated March 28, 2014 under Section 15-I of the SEBI Act read with rule 3 of SEBI Rules to inquire into and adjudge under Section 15A(b) of the SEBI Act for the alleged violation of Regulation 8(3) of the Takeover Regulations committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice (hereinafter referred to as **SCN**) Ref No. EAD6/AK/VRP/19777/2014 dated July 9, 2014 was issued to the Noticee under Rule 4(1) of SEBI Rules communicating the alleged violation of Takeover Regulations as detailed below:

Sr No	Regulation	Due Date of compliance	Date of compliance
1	8(3)	30.04.1998	Not Complied
2	8(3)	30.04.1999	Not Complied
3	8(3)	30.04.2000	Not Complied
4	8(3)	30.04.2001	Not Complied
5	8(3)	30.04.2002	Not Complied
6	8(3)	30.04.2003	Not Complied
7	8(3)	30.04.2004	Not Complied
8	8(3)	30.04.2005	Not Complied
9	8(3)	30.04.2006	Not Complied
10	8(3)	30.04.2007	Not Complied
11	8(3)	30.04.2008	Not Complied
12	8(3)	30.04.2009	Not Complied
13	8(3)	30.04.2010	Not Complied
14	8(3)	30.04.2011	Not Complied

5. The Noticee was called upon to show cause as to why an inquiry should not be initiated against it and penalty be not imposed under Section 15A (b) of the SEBI Act for the alleged violations. The said SCN was duly acknowledged by the Noticee. The Noticee vide email and letter dated July 31, 2014 requested 14 days time to submit its reply to the SCN. The same was acceded to. Subsequently, the Noticee vide letter dated August 13, 2014 while denying the violation/ non-compliance with the provisions of Regulation 8(3) of the Takeover Regulations during the period 1998 to 2011 has *inter alia* made the following submissions :

5.1. That, the shares of Company were last traded during the year 1995, and during the period of alleged non-compliance, shares of the Company were not traded as DSE & UPSE were non-operative during such time. A copy of the DSE letter dated July 07, 2011 stating that as per their records the company last traded on July 05, 1995 at Rs. 25 was enclosed with the reply;

5.2. That even prior to the year 1995, the shares of Company were always thinly traded and had never been actively traded because of the low public shareholding. Further, that the aggregate issued and paid up share capital of the Company is 96,62,000/-, which is very low in comparison with other listed companies and 85.85% *of the share capital of the Noticee was held by the promoter and promoter group and 14.15% was held by the public and there was no change in the promoter shareholding during the entire period from 1998 to 2011;*

5.3. That the company had never violated/ non-complied with the provisions of Regulation 8(3) of the Takeover Regulations during the period 1998 to 2011. The consent application was filed by the Company at the behest of DSE at the time when the Company approached DSE for regularization of all pending matters. It has been submitted that DSE was wrongly of the view that there was non-compliance of Regulation 8(3) of the Takeover Regulations, 1997 during the period 1998 to 2011 and advised the company to apply to SEBI for condonation of the alleged default under Regulation 8(3) of Takeover Regulations, if any. The

Company, in order to buy peace and avoid mental agony preferred the consent route for condonation of the alleged default under Regulation 8(3) of Takeover Regulations, which was rejected;

5.4. *That the company was advised that a disclosure under Regulation 8(3) of Takeover Regulations was required to be made, only if there was a change in the shareholding in the Company and not otherwise. As there was no change in the overall shareholding of the persons referred to under sub-regulation (1) of the Takeover Regulations and the shareholding of the promoters of the Company or person(s) having control over the Company and further since the company had not proposed/ declared any dividend as on the periods ending on March 31 each of 1998 to 2011, the Company was under the bonafide belief that no disclosure was required to be made by the Company as prescribed under Regulation 8(3) of the Takeover Regulations, hence, did not make the disclosure;*

5.5. *That even if it is assumed, without admitting, that disclosure under 8(3) was required even when there was no change in shareholding, as alleged, the failure to make such alleged disclosures under Regulation 8(3) of Takeover Regulations for the years 1998 to 2011 was completely unintentional and there was no malafide interest or intentions and did not result in any loss or damage to public investors or any other person;*

5.6. *That, as a result of such alleged lapse and non-disclosure, if any, no benefits were drawn by and have accrued to the promoters of the Company or any other set of shareholders of the Company. Further, due to such alleged lapse no loss or damage was caused to the public shareholders in general or any other person, as the Company does not have a significant number of public shareholders and also the shares were not traded;*

5.7. *That the objective of the Takeover Regulations is to afford fair treatment to the shareholders who may be affected by a change in control of a company, to avoid any disproportionate or unfair advantage in favour of any person and / or causing irretrievable damage to the rights of shareholders. In their case, firstly it*

is to be determined whether there was any default as alleged, and even assuming, without admitting that there was, then it is to be seen whether there was any disproportionate / unfair advantage drawn by the promoters of the Company or any other shareholder and whether any irretrievable damage was caused to the rights of any shareholder, particularly when the shares of the Company were not being traded during the said period due to non operation of DSE and / or UPSE;

5.8. That no investor complaint was made against unintentional violation of Regulation 8(3) of Takeover Regulations as nobody was affected as such;

*5.9. That the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as **'Takeover Regulations, 2011'**) has done away with the requirement of making disclosure of promoter share holding as on record date by a company;*

5.10. That in view of above, the aforesaid SCN and the consequent proceedings need to be dropped ab-initio.

6. In the interest of natural justice and in terms of rule 4(3) of the SEBI Rules, the Noticee was granted an opportunity of hearing on August 25, 2014 vide notice dated August 04, 2014. Accordingly, Mr. Satish Bansal Managing Director, Authorized Representative (hereinafter referred to as the "**AR**") appeared on behalf of the Noticee and reiterated the submissions made vide letter dated August 13, 2014 and made further submission vide letter dated August 23, 2014 to the effect that the non disclosure has not caused any loss to any shareholder, also that there was no other violation by the company and the share capital of the company was also small, hence, even if submissions dated August 13, 2014 are not found satisfactory, a lenient view may be taken and minimum penalty imposed. In the matter, the Noticee has further referred to the following Orders of the Hon'ble SAT and the Orders passed by the Adjudication Officers involving non-disclosure under Regulation 8(3) as per details below:

Orders passed by Securities Appellate Tribunal (SAT) in similar cases:

S.No.	*Appeal No. & Date*	*In the matter of*	*Penalty (Rs.)*
1	*189 of 2011, Order dt 18.11.2011*	*Jogeshwar Rijumal Karachiwala & Ors. Vs SEBI*	*50,000*

Adjudication Orders passed by Adjudicating Officers (AOs) in similar cases:

S.No.	*Adjudication Order No. & Date*	*In the matter of*	*Penalty (Rs.)*
1	*ASK/RGA/AO/38/2014-15 dt 31.07.2014*	*Shree Bhawani Paper Mills Limited*	*25,000*
2	*AK/AO-156/2013 dt 20.09.2013*	*Kamalakshi Finance Corporation Ltd*	*50,000*
3	*PB/AO-49/2012 dt 12.07.2012*	*Gupta Carpets International Ltd*	*1 Lakh*
4	*CFD/EIL/AO/DRK/AKS/EAD-3/293/59-11 dated 23.11.2011*	*Eduexal Infotainment Ltd*	*1 Lakh*

7. The AR vide email dated September 18, 2014, in the matter, has further forwarded DSE's letter dated September 18, 2014 *inter alia* stating that there had been no trading in the shares of the companies listed at DSE from July 2003. The AR has stated that this only confirms their stand that no benefits were drawn by the promoters of the company and no loss or damage was caused to public shareholders in general.

CONSIDERATION OF ISSUES

8. I have carefully perused the written submission of the Noticee and the documents available on record. It is observed that the allegation against the Noticee is that they have failed to make the relevant disclosure under the provisions of Regulation 8(3) of the Takeover Regulations during the period from 1998 to 2011.

9. The issues that, therefore, arise for consideration in the present case are:

   9.1. Whether the Noticee has violated the provisions of Regulation 8(3) of the Takeover Regulations during the period from 1998 to 2011?

9.2. Does the violation, if any, attract monetary penalty under Section 15A(b) of SEBI Act?

9.3. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

FINDINGS

10. Before moving forward, it is pertinent to refer to the provisions of Regulation 8(3) of Takeover Regulations, which reads as under:

8. Continual disclosures.

(1).....

(2).....

(3) Every company whose shares are listed on a stock exchange, shall within 30 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, make yearly disclosures to all the stock exchanges on which the shares of the company are listed, the changes, if any, in respect of the holdings of the persons referred to under sub regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March.

11. The issue for consideration is whether the Noticee has failed to make the relevant disclosures under Regulation 8(3) of the Takeover Regulations for fourteen (14) consecutive financial years from 1997-98 to 2010-11. As per Regulation 8(3) of the Takeover Regulations, Noticee was required to make yearly disclosure within 30 days from the financial year ending March 31, to stock exchanges on which the shares of the company were listed, the changes, if any, in respect of the holdings of the persons referred to under sub regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March.

12. With regard to the non-compliance for the financial years 1997-98 to 2010-11, I find that the Noticee vide its reply dated August 13, 2014 has *inter alia* submitted that the company had never violated/ non-complied with the provisions of the Regulation 8(3) of

the Takeover Regulations during the period 1998 to 2011. It has *inter alia* further been submitted that the consent application was filed by the Company at the behest of DSE at the time when the Company approached DSE for regularization of all pending matters in order to buy peace and avoid mental agony. It has been submitted that the shares of Company were last traded during the year 1995, and during the period of alleged non-compliance, shares of the Company were not traded as DSE and UPSE were non-operative during such time. I, however, find that during the period of non-compliance, DSE and UPSE were recognized as stock Exchanges. I further note from DSE's letter dated July 07, 2011 forwarded along with the submission dated August 13, 2014 that DSE vide the said letter had stated that as per their records, the shares of the company were last traded on July 05, 1995. In the matter, I find from DSE's website www.dseindia.org.in that the trading in shares of the Noticee had been suspended since January 09, 2002. Further, I note from DSE's email dated September 16, 2014 that the trading in equity shares of the Noticee was suspended by DSE from January 09, 2002 due to non-payment of listing fees. However, I note that the Noticee Company was listed on DSE during the period of non-compliance. The AR vide email dated September 18, 2014 has further *inter alia* stated that they had deposited up-to-date fees of DSE under the Amnesty Scheme of DSE and the matter stood closed after that. Thus, I note that it was due to delinquency on the part of the Noticee with respect to payment of listing fees of the Exchange, which resulted in suspension of trading in Noticee's shares on DSE, and thus, cannot support the Noticee's case for non-disclosure under Regulation 8(3) of the Takeover Regulations, especially when the Noticee Company was listed on DSE, a recognized stock Exchange.

13. Further, I find that the Noticee has submitted that as there was no change in the overall shareholding of the persons referred to under sub-regulation (1) of Regulation 8 of the Takeover Regulations and the shareholding of the promoters of the Company or person(s) having control over the Company and the company had not proposed/ declared any dividend as on the periods ending on March 31 each of 1998 to 2011, the

Company did not make the disclosure, as it was under the bonafide belief that no disclosure was required to be made by the Company as prescribed under Regulation 8(3) of the Takeover Regulations. In the matter, I note that Regulation 8(3) is in the form of mandatory annual disclosures to be filed by a company to the concerned stock exchanges on which the shares of the company are listed, the shareholding of the persons referred to under sub-regulation (1) of Regulation 8 of the Takeover Regulations and also with respect to the holdings of the promoters or persons(s) having control over the company, so that investors are made aware of the changes, if any, in the holdings of these persons so as to enable them to take an informed investment decision.

14. Also, I find that the Noticee has *inter alia* submitted that assuming without admitting that disclosure under Regulation 8(3) was required even when there was no change in shareholding as alleged, the failure to make such alleged disclosures under Regulation 8 (3) of Takeover Regulations for the years 1998 to 2011 was completely unintentional and there was no malafide interest or intention. At this juncture I would like to refer to the Order of the Hon'ble SAT in the matter of Hybrid Financial Services Limited v. SEBI (Appeal No.119 of 2014 and Order dated June 12, 2014), wherein SAT has *inter alia* observed as follows:

" .....Arguments of the appellant that the delay in making disclosures occurred due to the incorrect, flawed and mistaken understanding and interpretation of Regulation 8(3) of SAST Regulations, 1997 is also without any merit because plain reading of Regulation 8(3) of SAST Regulations, 1997 makes it clear that the obligation to make disclosure by persons holding 15% and more shares is not only when there is change in shareholding but also when there is no change in the shareholding. Therefore, even if, there was no change in the shareholdings it was obligatory on the part of the appellant to make disclosures in each of the financial years…… ".

15. Further, in the matter of Gaylord Commercial Company Limited v. SEBI (Appeal No.62 of 2014 and Order dated April 10, 2014), the Hon'ble SAT had observed as follows:

".…….Once violation of regulation 8(3) of SAST Regulations, 1997 on account of failure to make disclosures within the time stipulated therein is established, then, liability to penalty arises under Section 15A(b) of SEBI Act, 1992. Penalty prescribed for such violations under Section 15A (b) of SEBI Act, 1992 is Rs 1 lac for each day during which such failure continues or Rs 1 crore whichever is less……."

16. After considering all the contentions put forth by the Noticee, for the reasons stated above and the judgments of Hon'ble SAT referred, it is established without doubt that the Noticee has violated the provisions of Regulation 8(3) of the Takeover Regulations for the financial years from 1997-98 to 2010-11. The respective number of days of non-compliance in respect of each financial year has been enumerated in the table at Para 4 above.

17. Further, I note that the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) has also 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…".* Also, in the matter of Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed *"Once it is established that the mandatory provisions of Takeover Code was violated the penalty must follow*."

18. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act, which reads as under:

Section 15A(b) after SEBI (Amendment Act), 2002 w.e.f 29-10-2002

Penalty for failure to furnish information, return, etc.-

15.A(b) *To file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one*

lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Section 15A(b) prior to SEBI (Amendment Act), 2002

Penalty for failure to furnish information, return, etc.-

15.A(b) *To file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues.*

19. While determining the quantum of monetary penalty under Section 15A(b), 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**

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."

20. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. The main objective of the Takeover Regulations is to afford fair treatment for shareholders who are affected by the change in control. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the

securities market and failure to do so results in preventing investors from taking well-informed decisions Thus, the cornerstone of the Takeover regulations is investor protection.

21. As per Section 15A(b) of the SEBI Act, with effect from October 29, 2002, the Noticee is liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Prior to the same, the Noticee is liable to a penalty not exceeding five thousand rupees for every day during which such failure continues. Further, under Section 15-I of the SEBI Act, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticee. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee. However, I note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Komal Nahata Vs. SEBI (Date of judgment- January 27, 2014) has observed that:

"Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure."

In view of the same, the argument put forth by the Noticee that due to such alleged lapse no loss or damage was caused to the public shareholders in general or any other person, as the Company did not have a significant number of public shareholders and also the shares were not traded is not relevant for the given case.

22. In addition to the aforesaid, I am also inclined to consider the following mitigating factors while adjudging the quantum of penalty: a) the paid-up capital/ market capitalization of the company at the relevant point of time; b) the trading volumes of

Noticee's shares on the Exchanges during the relevant period; c) the changes in promoters shareholding, if any, during the relevant period; and d) the number of occasions in the instant proceeding that the Noticee has violated the relevant provisions of the Takeover Regulations.

23. From the submissions made by the Noticee, I note that the share capital of the Noticee was 9,66,200 equity share of Rs. 10/- each aggregating Rs.96,62,000/-. I also note from the submissions made that from 1998 to 2011, 85.85% of the share capital of the Noticee was held by the promoter and promoter group and 14.15% was held by the public and there was no change in the promoter shareholding during the entire period. I note from the letter of the DSE dated July 7, 2011 that the shares of the company were last traded on July 5, 1995, thus, there was no trading in the shares of the company during the entire period of non-compliance. However, I further note that the trading in equity shares of the Noticee was suspended by DSE from January 09, 2002 due to non-payment of listing fees. Thus, I note that it was due to delinquency on the part of the Noticee with respect to payment of listing fees of the Exchange, which resulted in suspension of trading in Noticee's shares on DSE, and thus, cannot support the Noticee's case for non-disclosure under Regulation 8(3) of the Takeover Regulations. I find that the Noticee had not made the disclosure to the exchange under the provisions of Regulation 8(3) of the Takeover Regulations for fourteen (14) consecutive financial years from 1997-98 to 2010-11.

24. I find that the Noticee have further submitted that the Takeover Regulations, 2011 has done away with the requirement of making disclosure of promoter share holding as on record date by a company. It is pertinent to note here that under the old Takeover Regulations, 1997 persons having control/ substantial holding and the promoters of the Company under Regulation 8(1) and 8(2) of the Takeover Regulations were required to make yearly disclosure to the company, in respect of their holdings as on 31st March. The company, in turn, was required to disclose the same to the stock Exchanges under

Regulation 8(3) of the Takeover Regulations. On the other hand, under the new Takeover Regulations, 2011**,** the disclosure to the company and the stock Exchanges have to be done by the persons having substantial holding and the promoters themselves under Regulation 30. Thus, irrespective of whether disclosure to the stock Exchange is made by the company or the promoters themselves, under both the old Takeover Regulations, 1997 and the new Takeover Regulations, 2011, the intent of the law remains the same, to disseminate to investors so as to enhance confidence and informed participation by investors in secondary securities market. This, in turn, enhances the depth, liquidity and efficiency of the securities markets. Hence the inference drawn by the Noticee that the new Takeover Regulations, 2011 has done away with the requirement of making disclosure of promoter share holding as on record date by a company at present is incorrect.

25. The Noticee, I find, vide its letter dated August 23, 2014 has further relied upon the following judgments of the Hon'ble SAT judgments while requesting to take a lenient view and impose minimum penalty vide its aforesaid letter*:*

S.No.	*SAT Order/ AO Order*	*Adjudication Order No. & Date*	*In the matter of*	*Penalty (Rs.)*
1	Hon'ble SAT Order	189 of 2011, Order dt 18.11.2011	Jogeshwar Rijumal Karachiwala & Ors. Vs SEBI	50,000
2	*AO Order*	*ASK/RGA/AO/38/2014-15 dt 31.07.2014*	*Shree Bhawani Paper Mills Limited*	*25,000*
3	*AO Order*	*AK/AO-156/2013 dt 20.09.2013*	*Kamalakshi Finance Corporation Ltd*	*50,000*
4	*AO Order*	*PB/AO-49/2012 dt 12.07.2012*	*Gupta Carpets International Ltd*	*1,00,000*
5	*AO Order*	*CFD/EIL/AO/DRK/AKS/EAD-3/293/59-11 dated 23.11.2011*	*Eduexal Infotainment Ltd*	*1,00,000*

26. From a perusal of some of the judgments relied upon by the Noticee, I note that the facts of that case are different from the facts of the present case. For instance, in the case of Jogeshwar Rijumal Karachiwala & Ors. Vs SEBI referred by the Noticee, the

adjudication proceeding were initiated against the promoters of M/s Drillco Metal Carbide Limited for the alleged violations of regulations 3(4), 7(1) and 8(1) of the Takeover Regulations, whereas the given case pertains to alleged violation of Regulation 8(3) of the Takeover Regulations by the Noticee, which is a company. Besides, it is observed that in the said matter the acquisition was done in the year 2000 and the maximum penalty at that point of time was five thousand per day before amendment of section 15A(b) of SEBI Act in the year 2002. On the contrary, the violation of Regulation of 8(3) in the extant matter pertains to the period from 1997-98 to 2010-11 and the penalty w.e.f. October 29, 2002 is one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Further, as regards the alleged violation of regulation 8(1) of Takeover Regulations in the said case, it was held that disclosures as per regulation 8(1) of Takeover Regulations did not arise in respect of the promoters of M/s Drillco Metal Carbide Limited, whereas, in the given case it has been established without doubt that the Noticee has violated the provisions of Regulation 8(3) of the Takeover Regulations for the financial years from 1997-98 to 2010-11. Similarly, in the case of Shree Bhawani Paper Mills Limited, though the adjudication proceeding were initiated for violation of Regulation 8(3) of Takeover Regulations, 1997, the non-compliance in the said case had arisen only on two occasions viz. in 1998 and in 2001 and the delayed compliance was for 5 days for the year 1998 and 2 days for the year 2001. Again in this case too, the maximum penalty was five thousand per day during the period of said non-compliance, since it was before amendment of section 15A(b) of SEBI Act in the year 2002. Thus, I note that penalties levied for violation of the provisions of Takeover Regulations would be commensurate with the gravity of the individual case and cannot uniformly be made applicable to other cases.

27. Further, as regards the matters of M/s. Kamalakshi Finance Corporation Ltd. and M/s. Gupta Carpet International Ltd. referred to by the Noticee as above, I note that the Hon'ble SAT in the matter of Hybrid Financial Services Limitted v. SEBI (Appeal No.119 of 2014 and Order dated June 12, 2014) had observed as follows:

"……. argument that penalty imposed on appellant is excessive compared to penalty imposed in the case of M/s. Kamalakshi Finance Corporation Ltd. (supra) and Gupta Carpet International Ltd. is also without any merit, because, firstly, nothing is brought on record to show that facts in that case are similar to the facts in the present case. Secondly, assuming that excessive relief is granted by SEBI in some cases, it does not mean that in all other cases similar reliefs should be granted especially when the Regulations prescribe stringent action for non compliance of disclosure provisions which are mandatory….."

"….. Since disclosures have not been made in all the years set out herein above, it is evident that penalty imposable at the rate of Rs 1 lac per day would be Rs 1 crore for each year and therefore imposition of penalty of Rs 8 lac for all the 10 years in question which effectively comes to less than Rs 1 lac per year, cannot be said to be unreasonable or arbitrary or excessive".

28. In the matter, I further also note that the Hon'ble SAT in the matter of Gaylord Commercial Company Limited v. SEBI (Appeal No.62 of 2014 and Order dated April 10, 2014) had observed as follows:

"……. Argument that the appellant is a small company and has not violated any provisions in the past, that the delay in making disclosures has neither caused any loss to investors nor the appellant has gained any benefits on account of delay in making disclosures do not merit consideration, because, liability to pay penalty under Section 15A(b) of SEBI Act, 1992 has to be computed on the basis of each day during which the failure to comply with the regulation has continued and liability to pay such penalty is not dependent upon the fact as to whether such failure has occurred for the first time or not. Similarly, fact that no loss has occurred to the investors or that the appellant has not gained on account of delay in making disclosures would not be a ground for the appellant to escape penalty for failure to make disclosure within the stipulated time…."

29. As a listed company, the Noticee had a responsibility to comply with the disclosure requirements in accordance with their spirit, intention and purpose so that the investors could take a decision whether to buy, sell, or hold the Noticee's securities. Non-compliance with disclosure requirements by a listed company undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals.

ORDER

30. After taking into consideration all the facts and circumstances of the case, I impose a penalty of **Rs 7,00,000/- (Rupees Seven Lakhs only)** under Section 15 A(b) on the **Noticee M/s. MD Overseas Limited** which will be commensurate with the violations committed by the Noticee.

31. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Mr. V S Sundaresan, Chief General Manager, Corporation Finance Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

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

Date: September 22, 2014 **Anita Kenkare**

Place: Mumbai **Adjudicating Officer**