

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO- 208/2014]**

**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. Virtual Global Education Limited (PAN No.AABCT3362J)

In the matter of

M/s Virtual Global Education Limited

FACTS OF THE CASE

1. M/s. Virtual Global Education Limited (hereinafter referred to as ‘the **Noticee/ the Company**’) is a company incorporated under the Companies Act. The Noticee vide its letter dated September 15, 2012 addressed to SEBI, *inter alia* submitted that the company had inadvertently not filled the disclosures required under Regulation 8(3) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as ‘**Takeover Regulations, 1997**’) for the year 2009 within the stipulated time and requested to condone the said non-compliance. The shares of the company were listed on Delhi Stock Exchange Ltd (hereinafter referred to as ‘**DSE**’).
2. Thereafter SEBI vide letter dated February 25, 2013 sought status report of the non-compliances with regards to disclosure obligations under Chapter-II of Takeover Regulations, 1997 and Chapter-V of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **Takeover Regulations, 2011**) from DSE. Pursuant to the submission of the Noticee and DSE’s reply dated March 07, 2013, SEBI observed that the Noticee 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 2009. 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 15A(b) of SEBI Act, 1992 to inquire into and adjudicate the alleged violation of the provision of Regulation 8(3) of the Takeover Regulations, 1997.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer vide Order dated March 12, 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/19418/2014 dated July 7, 2014 was issued to the Noticee under Rule 4(1) of SEBI Rules at 2936/43, Saraswati Marg, Karol Bagh, New Delhi – 110005 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

5. The Noticee vide the aforesaid SCN was called upon to show cause as to why an inquiry should not be initiated against it and penalty be not imposed under Section 15 A(b) of the SEBI Act for the alleged violations. Further, an opportunity of personal hearing was given to the Noticee on September 08, 2014 vide hearing notice dated August 12, 2014. However, since later, it came to knowledge that the company's registered address had changed and the company had not received the notices, a scanned copy of the aforesaid SCN was sent vide email dated September 03, 2014, which was acknowledged by the Noticee, and further, the Noticee vide email dated September 03, 2014 requested for some time to respond to the matter. In response vide email dated September 04, 2014, the Noticee was advised to file the reply on or before September 22, 2014.
6. The Noticee vide letter dated September 15, 2014 while admitting the violation/ non-compliance with the provisions of Regulation 8(3) of the Takeover Regulations *inter alia* submitted as follows:
 - 6.1. *That though as per the Takeover Regulations, 1997 they were bound to comply with some applicable provisions, but due to interpretation error, they were not able to comply with the provisions well in time;*
 - 6.2. *That the Noticee had inadvertently not filed the disclosures required under Regulation 8(3) during the period starting from 30th April, 1998 to 30th April, 2009 within the stipulated time. The reasons for not complying with the provisions of regulations 8(3) of Takeover Regulations, 1997 were due to lack of professional advice or interpretation of laws in this matter;*
 - 6.3. *That the Promoter shareholding in the Company was very minimal and the changes in the same quite insignificant;*
 - 6.4. *That the investors had not suffered any losses due to the absence of these disclosures;*
7. Vide the said letter dated September 15, 2014, the Noticee requested for further extension of time upto September 30, 2014 to prepare the case. Accordingly, 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 October 13, 2014 vide notice dated September 19, 2014. Mr. Vijay Mishra, Practicing Company Secretary, Authorized Representative (hereinafter referred to as the "AR") appeared on behalf of the Noticee and *inter alia* reiterated the submissions made vide letter dated September 15, 2014 and email dated September 26, 2014. The Noticee was *inter alia* advised to clarify whether the Noticee had regularized the non-filing under Regulation 8(3) of Takeover Regulations, 1997 under the SEBI Regularization Scheme, 2002, and if so, to provide documental proof thereof.

8. Vide email dated September 26, 2014, the Noticee *inter alia* submitted as follows:

- 8.1. *That they had received letter No. DSE/LIST/8290/R/470 dated 21st December, 2009 from DSE regarding Condonation of Non-Compliances under Listing Agreement stating that "The Company has failed to file disclosures under Regulation 6(2), 6(4) as on 20th February, 1997 and subsequently under Regulation 8(3) of SEBI (Substantial Acquisition of Shares and Takeover), 1997 for the year ended 1998 to 2009";*
- 8.2. *That thereafter, the Noticee had submitted disclosures along with condonation fees vide letter no. BLSGEL/DSE/2009/21 dated 22nd December, 2009 to DSE for Condonation of Non- Compliances.*

9. The Noticee vide email dated October 20, 2014 *inter alia* further submitted as follows:

- 9.1. *That during the period 1998-2009, the Company was listed on DSE and the shares of the Company were suspended on DSE. There was no single trading of shares on the Exchange, a non operational Regional Stock Exchange;*
- 9.2. *That on 22.12.2009, the Company had applied to Delhi Stock Exchange for resumption of trading suo-moto and complied all compliances for removing suspension and paid Rs.22,060/- as reinstatement fees for Listing;*

- 9.3. *That during that period, there was no change in the shareholding pattern of Promoters or any major changes in shareholdings. The Company had submitted all compliances of Regulations 8 (3) from 1998-2009;*
- 9.4. *The Company has never violated any provision of SEBI since incorporation and not faced any penalty or charges for non compliances/ offences;*
- 9.5. *That the Company had prepared and submitted papers for non-compliance of Regulations 8(3) under DSE Amnesty Scheme and had made payment of Rs. 145,305/- via Cheque bearing No."118508" dated 30/06/2009 drawn on HDFC Bank in favour of "Delhi Stock Exchange", in respect of above mentioned scheme;*
- 9.6. *That the non-compliance was not affecting any Shareholders or financial position of the Company, which was having very marginal profits of Rs.12 lacs as on March 31, 2014;*
- 9.7. *That in light of above circumstances and facts, the penalty proceedings may be dropped.*

CONSIDERATION OF ISSUES

10. 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 2009.
11. The issues that, therefore, arise for consideration in the present case are:
- 11.1. Whether the Noticee has violated the provisions of Regulation 8(3) of the Takeover Regulations during the period from 1998 to 2009?
- 11.2. Does the violation, if any, attract monetary penalty under Section 15A(b) of SEBI Act?
- 11.3. 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

12. 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.

(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.

13. The issue for consideration is whether the Noticee has failed to make the relevant disclosures under Regulation 8(3) of the Takeover Regulations for twelve (12) consecutive financial years from 1997-98 to 2008-09. 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.
14. With regard to the non-compliance for the financial years 1997-98 to 2008-09, I find that the Noticee vide its submissions has *inter alia* specifically admitted that as per the Takeover Regulations, 1997 they were bound to comply, but, due to interpretation error, they were not able to comply with the provisions well in time. The Noticee has further *inter alia* submitted that they had inadvertently not filed the disclosures required under Regulation 8(3) during the period starting from 30th April, 1998 to 30th

April, 2009 within the stipulated time due to lack of professional advice or interpretation of laws in this matter. The Noticee, I note has further submitted that during the period 1998-2009, the Company was listed on DSE, the shares of the Company were suspended on DSE and that there was no single trading of shares on DSE, a non operational Regional Stock Exchange

15. I, however, find that during the period of non-compliance, DSE was recognized as stock Exchange. I further note that the Noticee in its reply has submitted that on December 22, 2009, the Company had applied to DSE for resumption of trading suo-moto and complied all compliances for removing suspension and paid Rs.22,060/- as reinstatement fees for Listing. Thus, I note that it was due to delinquency on the part of the Noticee, 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.
16. Further, I find that the Noticee has submitted that there was no change in the shareholding pattern of promoters or any major change in the shareholdings. 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, 1997 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.

17. 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..... "*
18. 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....."*
19. 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 2008-09. Taking into consideration the disclosures submitted by the Noticee to DSE along with condonation fees paid to DSE vide letter dated December 22, 2009, which was received by DSE on December 23, 2009, the respective number of days of non-compliance in respect of each financial year would stand revised as follows:

Sr No	Regulation	Due Date of compliance	Date of compliance	Delay in number of days
1	8(3)	30.04.1998	23.12.2009	4,255
2	8(3)	30.04.1999	23.12.2009	3,890
3	8(3)	30.04.2000	23.12.2009	3,524
4	8(3)	30.04.2001	23.12.2009	3,159
5	8(3)	30.04.2002	23.12.2009	2,794
6	8(3)	30.04.2003	23.12.2009	2,429
7	8(3)	30.04.2004	23.12.2009	2,063
8	8(3)	30.04.2005	23.12.2009	1,698
9	8(3)	30.04.2006	23.12.2009	1,333
10	8(3)	30.04.2007	23.12.2009	968
11	8(3)	30.04.2008	23.12.2009	602
12	8(3)	30.04.2009	23.12.2009	237

20. 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."*
21. 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.*

22. 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.”

23. 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.

24. 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 the investors had not suffered any losses due to the absence of these disclosures is not relevant for the given case.

25. 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; and c) the number of

occasions in the instant proceeding that the Noticee has violated the relevant provisions of the Takeover Regulations.

26. From the shareholding patterns submitted by the Noticee, I note that the share capital of the Noticee was 1,05,00,000 equity share of Rs. 10/- each aggregating 10,50,00,000/- as on March 31, 2002 and 9.85% of the share capital was held by the promoters and 90.15% of the share capital was held by the public and Institutional investors. I further note that the share capital of the Noticee was 1,13,34,000 equity share of Rs. 10/- each aggregating 11,33,40,000/- from the year 2003 to 2009 and the promoter holding in the Noticee company was nil. I further note from the submissions made that there was almost no trading in the shares of the company during the entire period of non-compliance. However, I find that the Noticee vide email dated October 22, 2014 has stated that the trading in equity shares of the Noticee was suspended w.e.f. August 01, 2001 by DSE *inter alia* due to non-compliance of listing requirements. Also vide email dated September 26, 2014, the Noticee has *inter alia* submitted that they have paid condonation fees on December 22, 2009 to DSE for Condonation of Non- Compliances. Thus, I note that it was due to delinquency on the part of the Noticee due to non-compliance of the listing requirements, 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 twelve (12) consecutive financial years from 1997-98 to 2008-09.
27. I note that the Noticee has *inter alia* also submitted that the Noticee Company had never violated any provision of SEBI since incorporation and not faced any penalty or charges for non compliances/ offences and further that the non-compliance was not affecting any Shareholders or financial position of the Company, which was having very marginal profits of Rs.12 lacs as on March 31, 2014, as such, the penalty proceedings may be dropped. In the matter, I further rely on 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...."

28. 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

29. After taking into consideration all the facts and circumstances of the case, I impose a penalty of **Rs 12,00,000/- (Rupees Twelve Lakhs only)** under Section 15 A(b) on the **Noticee M/s Virtual Global Education Limited** which will be commensurate with the violations committed by the Noticee.
30. 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.

31. 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: October 30 , 2014

Place: Mumbai

Anita Kenkare

Adjudicating Officer