BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. JJ/AM/AO–7/2014

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. Gaylord Commercial Company Limited

(PAN – AAACG9332J)

In the Matter of: Gaylord Commercial Company Limited

BACKGROUND

1. An Open Offer was made by M/s. Vista Vyapaar Private Limited **(Acquirer)** and Mr. Ankit Jain **(Person Acting in Concert / PAC)** to acquire 26% shares of Gaylord Commercial Company Limited **(Target Company / Noticee)** in terms of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 **(SAST Regulations, 2011)** to the shareholders of the Target Company and Public Announcement for the same was issued on September 21, 2012. The shares of the Target Company are listed at Calcutta Stock Exchange **(CSE)** and U.P. Stock Exchange **(UPSE)**.

2. While examining the offer document pertaining to the afore-mentioned Open Offer, Securities and Exchange Board of India **(SEBI)** observed certain non compliances of Regulation 8(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 **(SAST Regulations, 1997)**.

3. Shri Piyoosh Gupta was appointed as the Adjudicating Officer vide order dated July 08, 2013 and the said appointment was conveyed vide proceedings of the Whole Time Member dated July 24, 2013 to inquire and adjudge under Section 15A(b) of the SEBI Act, 1992, the violations of provisions of Regulation 8(3) of SAST Regulations, 1997 for the years 2007, 2008 and 2011; read with Regulation 35 of SAST Regulations, 2011 alleged to have been committed by the Noticee. Pursuant to the transfer of Shri. Piyoosh Gupta, the undersigned was appointed as Adjudicating Officer vide Order dated November 08, 2013.

SHOW CAUSE NOTICE, HEARING & REPLY

4. Show Cause Notice **(SCN)** in terms of the provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") were issued to the Noticee on September 03, 2013, calling upon the Noticee to show cause why an inquiry should not be held against it under Rule 4(3) of the Adjudication Rules for the alleged violations.

5. The aforesaid SCN was duly delivered to the Noticee by Speed Post. Vide letter dated September 18, 2013 the Noticee replied to the SCN and *inter alia* made the following submissions:

"*.....Though the our company took care of making all compliances as per the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 and subsequent amendments thereto (hereinafter referred to as "SAST Regulations") and were duly filed with Calcutta Stock Exchange and simultaneously with U.P. Stock Exchange, but there was some inadvertent delay in submission of disclosure under Regulation 8(3) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 as mentioned in your above mentioned letter.*

On 21st September, 2012 a Share purchase Agreement was entered between Acquirer and old promoters/management of our Company, pursuant to which an Open Offer was triggered. M/s VC Corporate Advisors Private Limited who was appointed by the acquirer as the Merchant Banker to the letter of offer, while carrying out the due diligence of our company it was noticed that documentary evidence of compliances filed with U. P. Stock Exchange was missing and requested for the same. The old promoters/ management of our Company could not provide the dispatch proof of the relevant compliance papers under regulation 8(3) filed with U. P. Stock Exchange, due to which we were not able to produce the same to the officer carrying out its due diligence on behalf of them. On matter of abundant caution and as per advice of Merchant Banker we resubmitted all the aforesaid compliances to U P Sock Exchange....."

6. Subsequent to the appointment of the undersigned, vide Notice dated December 31, 2013 the Noticee was given an opportunity of personal hearing on January 09, 2014. Vide letter dated January 04, 2014 the Noticee acknowledged the receipt of the Notice dated December 31, 2013 and *inter alia* made the following submissions

   a) *That we deny all the allegations leveled against us and reiterate our earlier submissions made before you vide our letter dated September 18, 2013 in response to your show cause notice no. EAD/ADJ/PG/AM/OW/22341/2013 dated September 3, 2013.*
   b) *That our Company have made all disclosures as required under regulation 8(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 with the Calcutta Stock Exchange Limited and copy marked to The U P Stock Exchange Association Limited within the due course of time except few days delay in the year 2007 and 2008. The copies of disclosures made under regulation 8(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 to the above said exchange are annexed herewith and marked as letter – "A" (Colly.)*
   c) *Our Company further submit that for the financial year, 2011 disclosure under regulation 8(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations,*

1997 was duly deposited with the above stock exchange in time i.e. 29.04.2011 which was inadvertently taken as 29.11.2011. Copy of disclosure made under regulation 8(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 to the above said exchange are annexed herewith and marked as letter - "B" (Colly.)

d) In the light of the above, we request you to drop the proceeding.

e) *Further our submissions as above may be treated as personally submitted before you.*

7. In view of Noticee's letter dated January 04, 2014 vide which the Noticee has also submitted that the said submissions may be treated as personally submitted before me, I note that principles of natural justice have been duly complied with and hence, I am proceeding with the inquiry taking into account the material available on record.

ISSUES FOR CONSIDERATION

8. After perusal of the material available on record, I have the following issues for consideration, viz.,
   A. Whether the Noticee has violated provisions of Regulation 8(3) of SAST Regulations, 1997?
   B. Whether the Noticee is liable for monetary penalty under Section 15 A (b) of the SEBI Act, 1992?
   C. What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

FINDINGS

9. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

ISSUE 1: Whether the Noticee has violated provisions of Regulation 8(3) of SAST Regulations, 1997?

10. The provisions of Regulation 8(3) of SAST Regulations, 1997 read as under:

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997

8 (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. From the material available on record, I note that the Noticee had failed in making the annual disclosures of the holdings of the promoters or persons(s) having control over the company to all the stock exchanges on which the shares of the Noticee were listed within the stipulated time frame as required under Regulation 8(3) of the SAST Regulations, 1997. The details of the same, as observed from Annexure – I of SCN, are as follows:

Regulation	**Due date for compliance**	**Actual date of compliance**	**Delay (no. of days)**
8(3)	30.04.2007	12.10.2007	165
8(3)	30.04.2008	02.05.2008	2
8(3)	30.04.2011	29.11.2011	213

12. From the reply of the Noticee dated September 18, 2013 I note that the Noticee has accepted its default of not making the required disclosures on time and have stated that there was some inadvertent delay in submission of disclosure. I note that the Noticee in its reply dated January 04, 2014 has accepted the fact that it had made delayed disclosures under Regulation 8(3) of the SAST Regulations, 1997 for the years 2007 and 2008. There can be no dispute that compliance of regulations is mandatory and it is duty of SEBI to enforce compliance of these regulations. To give equal treatment and opportunity to all shareholders/investors and protect their interests and to bring about transparency in the transactions, dissemination of full information is required. It is with this end in view that the Regulations require the making of disclosures so that investing public is not deprived of any vital information. However, the Noticee has neglected its duty of making the disclosures in compliance with Regulation 8(3) of the SAST Regulations, 1997 for the years 2007 and 2008.

13. In its reply dated January 04, 2014 the Noticee has also submitted that for the year 2011, it had made disclosure under Regulation 8(3) of the SAST Regulations, 1997 within the time limit, i.e., on April 29, 2011 but the same was inadvertently taken as November 29, 2011. Subsequently, vide email dated January 13, 2014 the CSE has also confirmed that the Noticee had made required disclosure on April 29, 2011. Hence, I do not hold the Noticee guilty of violation of Regulation 8(3) of the SAST Regulations, 1997 on this count.

14. In view of the above, I hold that the Noticee has failed to make timely disclosure in the years 2007 and 2008 and therefore the Noticee has violated the provisions of Regulation 8(3) of SAST Regulations, 1997.

ISSUE 2: Whether the Noticee is liable for monetary penalty under Section 15 A (b) of the SEBI Act, 1992?

15. The provisions of Section 15A(b) of the SEBI Act, 1992, read as under:

"Penalty for failure to furnish information, return, etc.
15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*
(a)…..
(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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;"

16. In the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)*, the Hon'ble Supreme Court of India has 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 regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant*".

17. As already observed, the Noticee violated the provisions of Regulation 8(3) of SAST Regulations, 1997 for the years 2007 & 2008. Therefore, I find that the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992.

ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

18. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of the 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."*

19. In the absence of material on record, the amount of disproportionate gain or unfair advantage made as a result of the default and the amount of loss caused to the investors due to the said default cannot be quantified. The Noticee, in its reply dated September 18, 2013 has stated that the delays in compliances under Regulation 8(3) of SAST Regulations, 1997 has not caused any loss to any investor in securities and the Noticee has not gained any profit in any way. However, the fact remains that by not complying

with the regulatory obligation of making the disclosures, the Noticee had not provided the vital information within the prescribed time which is detrimental to the interest of investors in securities market. Our entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Hence, the violations of the Noticee cannot be viewed lightly. Further, the Noticee failed to make the necessary disclosures on time in 2 consecutive years. Therefore, the default of the Noticees is repetitive in nature.

20. In the forgoing paragraphs, it is now established that the Noticee has violated the provisions of Regulation 8(3) of SAST Regulations, 1997. Considering the facts and circumstances of the case and the violation committed by the Noticee, I find that imposing a penalty of ₹ 2,00,000/- (Rupees Two Lakhs only) on the Noticee would be commensurate with the violations committed.

ORDER

21. Considering the facts and circumstances of the case, in terms of the provisions of Section 15A(b) of the SEBI Act, 1992 and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 2,00,000/- (Rupees Two Lakhs only) on Gaylord Commercial Company Limited.

22. The penalty shall be paid by way of demand draft drawn 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 shall be forwarded to the Division Chief, Corporate Finance Department, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.

23. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to the Noticee and also to Securities and Exchange Board of India.

Date: January 15, 2014
Place: Mumbai

Jayanta Jash
Adjudicating Officer