<u>**BEFORE THE ADJUDICATING OFFICER**</u>

<u>**SECURITIES AND EXCHANGE BOARD OF INDIA**</u>

[ADJUDICATION ORDER NO. Order/BM/DS/2023-24/30036]

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

IN THE MATTER OF

First Overseas Capital Limited
(PAN: AAACL4737A)

<u>FACTS OF THE CASE</u>

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted inspection of M/s First Overseas Capital Limited (hereinafter referred to as "**Noticee**"/"**FOCL**") to check compliance with provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (hereinafter referred to as "**ICDR Regulations**") and SEBI (Merchant Bankers) Regulations, 1992 (hereinafter referred to as "**Merchant Bankers Regulations**")

2. SEBI initiated adjudication proceedings against the Noticee under section 15HB of SEBI Act, 1992 for the alleged violations of the provisions of Regulation 70(3) of ICDR Regulations, 2018 and Clauses (4) and (6) of Schedule III read with Regulation 13 of Merchant Bankers Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer **(AO)** vide Order dated April 25, 2023 under Section 15-I of the SEBI Act, 1992 and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**"), to inquire into and adjudge under section 15HB of SEBI Act, 1992, the alleged violations of provisions of ICDR Regulations and Merchant Bankers Regulations against the Noticee.

SHOW CAUSE NOTICE, REPLY OF THE NOTICEE AND HEARING

4. Show Cause Notice No. SEBI/EAD/BM/DS/27167/1/2023 dated July 05, 2023 (hereinafter referred to as **"SCN"**) was issued to the Noticee in terms of Section 15-I of the SEBI Act, 1992 and rule 4 of SEBI Adjudication Rules, to show cause as to why an inquiry should not be held against it and why penalty, if any, under section 15HB of SEBI Act, 1992 be not imposed on the Noticee.

5. The SCN issued to the Noticee alleged as follows:
   5.1. It was observed that the Noticee was lead manager (LM) for the Rights issue of Sakuma Exports Limited (hereinafter referred to as "**Sakuma**"/"**the Company**"). A draft letter of offer (DLoF) was filed by the Noticee with SEBI vide letter dated August 04, 2022 in this regard. Upon processing of the DLoF, it was observed that the Noticee had submitted the following details incorrectly.
      5.1.1. Shareholding pattern of the Company.
      5.1.2. Information with respect to offices, branches and sub-offices of the Company.
      5.1.3. Information with respect to country-wise product-wise exports for the financial years 2020-21 and 2021-22.

5.1.4. Financial details with respect to working capital requirement forming object of the issue.

5.2. Thus, it was alleged that the Noticee has violated the provisions of Regulation 70(3) of ICDR Regulations, 2018 and Clauses (4) and (6) of Schedule III read with Regulation 13 of Merchant Bankers Regulations, 1992.

6. The SCN was duly served on the Noticee through SPAD and digitally signed e-mail. Vide letter dated September 12, 2023, the Noticee submitted its response to the SCN, which has been summarized below.

6.1. Noticee, as Lead Manager to Sakuma, had received several queries from SEBI, BSE Limited and National Stock Exchange of India Limited after filing DLoF dated August 04, 2022 and February 23, 2023, time to time and same was also replied to respective regulators as and when demanded. Noticee has received in-principle approval from SEBI, BSE and NSE.

6.2. With respect to submitting incorrect details of shareholding pattern of the company, the Noticee submitted that in the DLOF dated August 04, 2022, the Shareholding Pattern was disclosed for March 31, 2022 wherein one of the Promoters, Mr. Saurabh Malhotra had pledged his shares and the said pledge was released on 12th April 2022. Under the circumstances whatever mentioned in the DLOF dated August 04, 2022 was correct. Further, the said pledged was released and documents were provided to the Noticee by the company and hence accordingly it had disclosed the same in the DLOF dated August 04, 2022 wherein Mr. Saurabh Malhotra had pledged.

6.3. With respect to incorrect promoter shareholding, Noticee had submitted that Sakuma Infrastructure And Realty Private Limited has two folios. In the DLOF dated August 04, 2022, the Shareholding Pattern was disclosed for March 31, 2022 wherein the number of shares held and % for both the folios has been *combined, merged and disclosed. Whereas in the table showing details of the shareholders holding more than 1% of the issued and paid-up equity share capital as on March 31, 2022, inadvertently, only 1 folio of Sakuma Infrastructure And Realty Private Limited has been disclosed. However, the same has been modified and disclosed in the updated DLOF dated February 23, 2023.*

6.4. *Thus, the shareholding pattern as disclosed on the stock exchange website as well in the DLOF date August 04, 2022 and subsequent updated DLOF dated February 23, 2023 were correct and does not imply to be incorrect shareholding pattern disclosure.*

6.5. *With respect to incorrect information with respect to offices, branches and sub-offices of the Company, Noticee submitted that Sakuma had opened its offices, branches and sub-offices at various places for their activities. The same was not reflected in DLoF dated August 04, 2022 as Sakuma had informed to the Noticee only about its office premise which was stated in the DLoF dated August 04, 2022. Subsequently, the same was disclosed in the update DLoF dated February 23, 2023.*

6.6. *With respect to incorrect information with respect to country-wise-product-wise exports for the financial year 2021-22, Noticee submitted the following*

6.6.1. *As per the DLoF dated August 04, 2022, the figures were shown with 'India' under the exporters country whereas it cannot be taken into account and hence the same was modified and disclosed in the updated DLOF dated February 23, 2023. By virtue of modification, it gives a true and fair view of the sales done by Sakuma.*

6.6.2. *Due to the typographical error at Sakuma's end, the figure was erroneously mentioned as Rs. 90231.1 Lakhs and the same should be read as Rs. 9023.11 Lakhs. However, the said figures have been modified* *to the latest numbers and disclosed in updated DLOF dated February 23, 2023*

6.6.3. The financial figures were provided by Sakuma and its representative including their auditor and CFO and hence accordingly the information supplied was disclosed in the DLoF and the replies

6.7. With respect to incorrect financial details with respect to working capital requirement forming object of the issue, Noticee submitted that the financial figures were provided by the company and its representative including their auditor and CFO and thus, accordingly the information supplied was disclosed in the DLoF and the replies.

6.8. Noticee has denied having violated any of the alleged provisions. Noticee regularly interacted with the senior management of Sakuma to gain understanding of the business, risks involved and financial view of Sakuma, among other matters. For the alleged matters, the Noticee had relied on Sakuma, its promoters, financial head, other senior management and statutory auditor for providing the Noticee explanations and documents. Based on the review of the data received, Noticee has asked for further clarifictions and documents and has obtained relevant back up papers.

6.9. Certain errors and delays were routine and of technical nature, which normally arise in the business of merchant banking. There has been no intention of wrongdoing.

6.10. Noticee is not guilty of any contumacious or dishonest or inconscious regard of law. It has not violated any substantive provision of law.

7. Vide hearing notice dated December 28, 2023, the Noticee was provided an opportunity of personal hearing in the interest of natural justice. The Noticee was advised to appear before the undersigned on January 09, 2024. The Noticee

requested for rescheduling of the hearing to January 15, 2024, which was acceded to by the undersigned. The Noticee appeared for the hearing on January 15, 2024 through an authorised representative (AR). The AR reiterated the submissions already made vide letter dated September 12, 2023. The AR sought time till January 25, 2024 for making additional submissions made during the hearing, along with documents, which was granted by the undersigned. Vide letter dated January 27, 2024, Noticee made additional submissions, which are summarized below.

7.1. *Noticee has submitted brief overview of its due diligence exercise upon receiving the mandate as a merchant banker.*

7.2. With respect to incorrect shareholding pattern, both the statements were true, because on page 51 of the DLoF dated August 04, 2022, the details of pledged shares in the shareholding pattern was 'as on March 31, 2022'. However, on page 49, the statement that no shares have been pledged was 'as on the date of DLoF'. As the details regarding pledged shares was different on the two dates, the statements were also different, but true.

7.3. With respect to incorrect information with respect to offices, branches and sub-offices of the Company, Noticee submitted that Sakuma had opened its offices, branches and sub-offices at various places for their activities. The same was not reflected in DLoF dated August 04, 2022 as Sakuma had informed to the Noticee only about its office premise which was stated in the DLoF dated August 04, 2022. Subsequently, Sakuma provided details of its other 6 offices and thereafter, the same was disclosed in the update DLoF dated February 23, 2023. Further, out of Sakuma's 7 offices, 3 were obtained on lease on July 27, 2022 for a period of 2 years wef August 01, 2022 and three other properties were obtained on lease on August 06, 2022, January 31, 2023 and February

16, 2023 respectively. Thus, the information regarding the new offices was not available at the time of preparation of the DLoF dated August 04, 2022.

7.4. With respect to the allegation of providing incorrect financial details with respect to working capital requirement forming object of the issue, Noticee submitted the following

7.4.1. The difference in the figures of Total Current Assets as on 31 March 2021 disclosed in the DLOF (Page 56) at Rs. 42,384.25 lakh, whereas amount provided in the Auditor's Certificate at Rs. 42,411.17 lakh, leading to difference of an odd amount of Rs. 26.92 lakhs was on account of the regrouping of financials under the head current and non-current assets adopted by the Auditor, M/s Mehta Singhvi & Associates in the Certificate. In the Audited Financial Statements and the DLOF, interest for a value of Rs. 26.92 lakhs had accrued but was not due outstanding for more than 1 year, hence the same was shown as "Non-Current Asset" in the DLOF as per applicable Accounting Standards. However, as per Auditor's expert opinion, Rs.26 lakhs interest accrued is a "liquid asset" to be added into Current Asset. Thus, increasing the figure of Current Asset for FY 21 to Rs. 42,411 lakhs in the Certificate from Rs. 42,384.25 lakh in the DLOF.

7.4.2. The difference in the figures of Total Current Liabilities (Trade Payables + Other Current Liabilities) for FY 2021 and FY 2022 between the DLOF and the Certificate was Rs. 272 lakhs as of FY 2021 and Rs. 8399 lakhs as of FY 2022. The said difference of Rs. 272 lakhs is on account of the fact that the "Other Current Liabilities" in the DLOF is stated as Rs. 2358 lakh, whereas in the Certificate, it is stated as Rs. 2630 lakh leading to a difference of Rs. 272 lakhs for FY 2021. The liability of Rs. 272 lakhs is disclosed separately in the DLOF under the "Existing Borrowing" head instead of adding it to the figures of Current Liabilities, thus bringing in a *difference between the amount of the Total Current Liabilities figures in the DLOF and the Certificate. Similarly, a liability of Rs. 8399 lakhs is disclosed separately in the DLOF under the "Existing Bank Borrowings" (incorrectly stated as Rs. 7300 lakh of Existing Bank Borrowing in the DLOF, whereas the correct figure is Rs. 8399 lakhs as stated in the Audited Financial Statements) and not included under Current Liabilities. However, Rs. 8399 lakh of bank borrowing is included under Total Current Liabilities in the Certificate.*

7.4.3. No. of Trade Receivable Days for FY 2021 and FY 2022 disclosed in the DLOF (page 56) was 210 days and 51 days, respectively. However, no. of trade receivable days for FY 2021 and FY 2022 in the Certificate was 163 days and 45 days, respectively. The difference in the figures of Trade Receivable days for FY 2021 and FY 2022 calculated as (Average Accounts Receivable / Annual Revenues 365) disclosed in the DLOF and the Auditor's Certificate was on account of the Auditor considering the Annual Revenues of the Company on a standalone basis, instead of Consolidated basis as done in the DLOF and the audited financial statements, leading to a difference in the number of trade receivable days.

7.4.4. Difference in Working Capital Gap (Total Current Assets - Total Current Liabilities) of Rs. 26.92 lakhs for FY 2021 and Rs. 8399 lakhs for FY 2022 between the DLOF and the Auditor's Certificate is on account of the explanation provided as to the different regrouping of current assets and liabilities of Rs. 26.92 lakhs for for FY 2021 and Rs. 8399 lakhs for FY 2021, respectively, under the Audited Financials Statements of the Company and the Auditor's Certificate.

7.4.5. Difference in Net Working Capital Requirement (Working Capital Gap - Existing Bank Borrowings) of Rs. 26.77 lakhs for FY 2021 was on account *of the difference in figures for the Working Capital Gap, as explained in the above point. Further, for FY 2022, the difference of Rs. 37638.83 lakh in the Certificate versus Rs.38737.57 in the DLOF, is on account of the fact that the Working Capital Gap of Rs.46037.57 lakh in the DLOF is excluding the amount of Rs. 8399 lakhs of bank borrowing which is considered separately under the heading "Existing Bank Borrowing" in the DLOF. However, the said amount of Rs. 8399 lakhs is included under the heading of "Total Current Liabilities" in the Certificate. Thus, the Working Capital Gap of Rs. 46037.57 lakh in the DLOF less the bank borrowing of Rs. 8399 lakhs (incorrectly stated as Rs. 7300 lakhs in the DLOF) brings the WCG to an amount of Rs. 37638 lakhs as stated in the Certificate.*

7.4.6. Difference in Revenue figures of Rs. 688 lakhs for FY 2022 and Rs. 507.22 lakhs for FY 2021 between the DLOF and the Noticee's email dated 26 November 2022 is on account of the Total Revenue figures in the DLOF being a total of the (1) Revenues and (2) Income from other Sources. However, the Noticee in its email to SEBI had provided Revenue figures of the Company only on the basis of the (1) Revenues, not including the (2) "Income from other Sources" figures.

7.4.7. Thus, the differences in the DLOF based on the audited financial statements and the figures in the Auditor's certificate are entirely based on the accounting standards adopted by the respective auditors and the same cannot be attributed to the Noticee.

7.5. Noticee referred to and relied upon the judgement of Hon'ble Supreme Court in the case of Chander Kanta Bansal vs Rajinder Singh Anand (AIR 2008 SC 2234), and judgements of Hon'ble SAT in the cases of Almondz Global Securities Limited [(2016) 26 SCL 320 (SAT)], Sharedeal Financial Consultants Private Limited [(2003) 4 CompLJ 148 (SAT)], and Mehta Equities

Limited [(2011) SAT 155]. Noticee has further submitted that the settled legal standard for due diligence is premised on whether the entity concerned did everything reasonable to discharge its legal obligation and not everything possible.

7.6. *There is no material on record to show that the alleged breach had any real-world effects. From the aforementioned submissions, it becomes abundantly clear that the Noticee has not made any unlawful or disproportionate gains or attained any unfair advantage or avoided loss illegally, nor has there been any loss caused to investors. Mere technical violations ought not to be subjected to punitive adjudication proceedings. The Hon'ble Securities Appellate Tribunal has held that "... SEBI is the watchdog and not a bulldog. If there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive measures ...". In the present case, assuming without admitting, that there has been violation, this can only amount to a technical violation distinct from a substantial breach of Merchant Bankers Regulations/ ICDR Regulations capable of having impact on retail investors, and as such could have been dealt with administrative/ cautionary advice and does not require imposition of any penalty under the SEBI Act.*

7.7. *Noticee has also relied upon and quoted from the judgements of Hon'ble Supreme Court in the case of M/s Hindustan Steel Limited vs State of Orissa [1969 (2) SCC 627] and in the case of Maharashtra State Board of Secondary Education and Higher Secondary Education vs. K.S. Gandhi & others [(1991) 2 SCC 716]*

CONSIDERATION OF ISSUES AND FINDINGS

8. Considering the findings of inspection, the allegations made out in the SCN and the submissions made by the Noticee, I find that following issues require consideration in the present case:

   ISSUE I - Whether the Noticee is in violation of the provisions of Regulation 70(3) of ICDR Regulations, 2018 and Clauses (4) and (6) of Schedule III read with Regulation 13 of Merchant Bankers Regulations, 1992?

   ISSUE II - Do the violations, if any, attract penalty under section 15HB of the SEBI Act, 1992?

   ISSUE III - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

ISSUE I - Whether the Noticee is in violation of the provisions of Regulation 70(3) of ICDR Regulations, 2018 and Clauses (4) and (6) of Schedule III read with Regulation 13 of Merchant Bankers Regulations, 1992?

9. The said provisions under which violations have been alleged against the Noticee are reproduced below –

   SEBI ICDR Regulations, 2018

   Regulation 70(3)

   The lead manager(s) shall exercise due diligence and satisfy themselves about all aspects of the issue including the veracity and adequacy of disclosure in the draft letter of offer and the letter of offer.

   Merchant Bankers Regulations, 1992

   Code of conduct.

   13. Every merchant banker shall abide by the Code of Conduct as specified in Schedule III

Schedule III read with Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992:

(4) A merchant banker shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.

(6) A merchant banker shall ensure that adequate disclosures are made to the investors in a timely manner in accordance with the applicable regulations and guidelines so as to enable them to make a balanced and informed decision. A merchant banker shall ensure that adequate disclosures are made to the investors in a timely manner in accordance with the applicable regulations and guidelines so as to enable them to make a balanced and informed decision.

10. I will now proceed with my findings in each of the alleged violations against the Noticee in the SCN dated July 05, 2023. It was alleged that the Noticee had submitted following details in the DLoF dated August 04, 2022, incorrectly.

    10.1. Shareholding pattern of the Company.

    10.2. Information with respect to offices, branches and sub-offices of the Company.

    10.3. Information with respect to country-wise product-wise exports for the financial years 2020-21 and 2021-22.

    10.4. Financial details with respect to working capital requirement forming object of the issue.

Incorrect Shareholding pattern of the Company

11. It was observed that on page 51 of the DLoF, shareholding pattern of the company stated that 51,84,380 shares (3.57% of the total shares held) were pledged or otherwise encumbered as on March 31, 2022. However, on page 49 of the DLoF,

in the Notes to Capital Structure, it was stated that "*No Equity Shares held by our Promoter or Promoter Group have been pledged or encumbered as of the date of this Draft Letter of Offer.*"

12. In this regard, the Noticee has submitted that both the details are correct as information on Page 51 of the DLoF dated August 04, 2022 pertains to the status as on March 31, 2022, whereas information on Page 49 pertains to the status on the date of the DLoF, i.e. August 04, 2022. I note from the BSE website that 51,84,380 shares were pledged by the promoter(s) of the Company as on March 31, 2022. Further, vide disclosure under regulation 31(2) of SEBI SAST Regulations, 2011, dated April 14, 2022, Mr Saurabh Malhotra, promoter of the Company, has disclosed to the exchange that the pledge on 51,84,380 equity shares was removed on April 12, 2022. There is no subsequent disclosure by the Company or its promoters regarding pledge/ encumbrance of its shares in the period between April 14, 2022 and August 04, 2022. Thus, I find that the disclosure in the DLoF on Page 49 stating that "*No Equity Shares held by our Promoter or Promoter Group have been pledged or encumbered as of the date of this Draft Letter of Offer*" is correct. Thus, Noticee's explanations are acceptable in this regard.

13. On page 53 of the DLoF, it was stated in the table showing Details of the Shareholders holding more than 1% of the issued and paid-up equity share capital as on March 31, 2022, that Sakuma Infrastructure And Realty Private Limited was holding 4,79,72,450 shares (20.4522% of total shares) in the Company. However, on page 52, in the statement showing holding of Equity Shares of the person belonging to the category "Promoter and Promoter Group", Sakuma Infrastructure

And Realty Private Limited was shown as holding 4,88,72,450 shares (20.84%) in the Company.

14. In this regard, the Noticee has submitted that the details provided on page 52 of the DLoF dated August 04, 2022 in the statement showing holding of Equity Shares of the person belonging to the category "Promoter and Promoter Group" as on March 31, 2022 shows correct details, i.e. holding of Sakuma Infrastructure And Realty Private Limited being 4,88,72,450 shares (20.84%) in the Company. However, inadvertently, on page 53 of the DLoF dated August 04, 2022, only one of the two folios were considered and the error was rectified subsequently in the DLoF dated February 23, 2023.

15. I note that, admittedly, shareholding details regarding holding of Sakuma Infrastructure And Realty Private Limited were erroneously provided on page 53 of the DLoF dated August 04, 2022. However the same has been rectified by the Noticee in the updated DLOF filed on February 23, 2023.

Incorrect Information with respect to offices, branches and sub-offices of the Company

16. It was observed that on page 81 of the DLoF, in the Business Overview - details of Company's properties, only one location was stated. However, vide letter dated January 23, 2023, Sakuma had provided details of seven offices of the Company, situated in different States of India. Thus, it was alleged that incorrect information with respect to offices, branches and sub-offices of the Company were stated by the Noticee in the DLoF.

17. In this regard, the Noticee has submitted that out of Sakuma's seven offices, three were taken on lease after the date of DLoF, i.e. August 04, 2022. These offices

were obtained on lease on August 06, 2022, January 31, 2023 and February 16, 2023. Thus, these offices could not have been disclosed in the DLoF dated August 04, 2022. Noticee further submitted that other three offices were obtained on lease on July 27, 2022, with effect from August 01, 2022. As the DLoF was being drafted during the same time, mention of these three offices in the DLoF was missed, but was subsequently made in DLoF dated February 23, 2023.

18. From the details of the Company's seven offices provided in the DLoF dated February 23, 2023, I note that one was the registered office, which has also been stated in the DLoF dated August 04, 2022. Out of the six new offices which find mention in the DLoF dated February 23, 2023, I find that four offices were obtained on lease by the Company, prior to the date of DLoF dated August 04, 2022. Thus, the Noticee should have disclosed the details of these four offices in the DLoF dated August 04, 2022, before filing the same with SEBI, which admittedly was not made by the Noticee. However, I observe that the Noticee has rectified and disclosed the same in the updated DLOF.

<u>Incorrect information with respect to country-wise product-wise exports for the financial years 2020-21 and 2021-22</u>

19. It was observed that on page 77 of the DLoF dated August 04, 2022, under the head 'Revenue Details', in the table for country wise product wise export for FY 2021-22, export for India was stated as 31.66%, which was appearing inconsistent. The table for country wise product wise export for FY 2021-22 and FY 2020-2021 is provided below.

(Rs. In Lakhs)

COUNTRY WISE PRODUCT WISE EXPORT for FY 2021-22							
Products	Country						Product %
	USA	Europe	South & South East Asia including Malaysia & Singapore	Middle East Country Including UAE	Africa Region	India	
Sugar & by products	-	34828.49	92566.52	61578.52	3427.63	9023.11	**99.05**
Other Agro Commodities	-	-	238.95	1806.62	561.75	62.40	**0.94**
Renewable Energy	-	-	-	-	-	48.81	**0.01**
Country %	**-**	**12.21**	**32.52**	**22.21**	**1.40**	**31.66**	**100.00**

(Rs. In Lakhs)

COUNTRY WISE PRODUCT WISE EXPORT FY 2020-21							
Products	Country						Product %
	USA	Europe	South & South East Asia including Malaysia & Singapore	Middle East Country Including UAE	Africa Region	India	
Sugar & by products	-	12006.50	50069.82	53758.25	5017.15	11858.54	99.902
Other Agro Commodities	-	-	-	88.85	-	9.54	0.024
Renewable Energy						32.33	0.074
Country %	**-**	**9.04**	**37.69**	**40.54**	**3.78**	**8.96**	**100.00**

20. The clarifications sought from the Noticee and the responses submitted by the Noticee in respect of country wise product wise export figures are summarized hereunder -

20.1. SEBI informed the Noticee vide letter dated September 20, 2022, that the country wise product wise export for India was mentioned in the DLoF as 31.66%, which was appearing to be incorrect. In this regard, the Noticee was advised to check the figures provided in both the tables and provide the corrected figures and confirm that the same are correct.

20.2. Vide email dated October 27, 2022, the Noticee provided an attachment, including tables with modified/ corrected figures (deleting the figures pertaining to India).

20.3. SEBI observed lack of due diligence on the part of Noticee and vide email dated December 23, 2022, advised the Noticee to be careful while providing any facts and figures, and confirm compliance undertaken in this regard.

20.4. Vide email dated January 03, 2023, the Noticee informed that the figures in ₹ and % mentioned for India for FY 2022 and FY 2021 should be marked as deemed exports. Further, in the attachment to the reply dated October 27, 2022, the name of the country India was removed from the table, hence only the % has changed and not the revenue in terms of ₹. Hence, the presentation in DLoF and reply differs. However, in terms of ₹, the figure does not change.

20.5. Vide letter dated January 23, 2023, in response to SEBI's mail dated December 23, 2022, the Company provided the revised table pertaining to country wise product wise exports for FY 21 and FY 22 (including the figure in terms of ₹ and % for India).

21. It was observed that, the Company submitted revised table, in which the export for India was still stated as 31.66%. However, the revenue amount was updated from ₹ 9,023.11 lakh (in the DLoF) to ₹ 90,231.1 lakh in the revised table. Also, a row was added in the revised table to show the total amount in ₹.

22. In view of the aforesaid, it was alleged that the Noticee, while submitting its reply, did not provide the reason for the discrepancy in the figures initially, and subsequently provided the reasons only after follow up query. Also, the term 'deemed exports' provided by the Noticee in its reply dated January 03, 2023, was not defined in the DLoF. The figures given in the DLoF were different from the figures provided by the Noticee when clarifications were sought from the Noticee, and the figures submitted by the Company vide letter dated January 23, 2023.

Thus, it was also alleged that incorrect information with respect to country wise product wise exports for FY 21 and FY 22 was provided in the DLoF.

23. In this regard, Noticee has submitted that the figures were modified in the updated DLoF dated February 23, 2023. Noticee has also admitted that due to typographical error, the figure was mentioned as ₹90231.1 lakh instead of ₹ 9023.11 lakh. Noticee has further submitted that the figures were disclosed in the DLoF as provided by Sakuma and its representatives.

24. From the submissions of the Noticee I note that it had rectified the typographical error in the DLoF dated February 23, 2023. From the copy of DLoF dated February 23, 2023, I note that heading of 'country wise product wise exports' has been changed to 'product wise and location wise sales as derived from the Audited Consolidated Financial Statements for FY 2021-22' and the decimal error in the sales amount of sugar and by products was rectified.

<u>Incorrect financial details with respect to working capital requirement forming object of the issue.</u>

25. Vide email dated September 20, 2022, clarifications and details were sought from the Noticee relating to working capital requirements of the company. Vide email dated October 27, 2022, the Noticee did not provide any specific explanation and merely referred to a certificate dated October 20, 2022 issued by M/s Mehta Singhvi & Associates. Upon comparison of DLoF dated August 04, 2022 with the certificate provided by M/s Mehta Singhvi & Associates, discrepancies were noticed regarding following items in respect of working capital requirement of the Company:

25.1. Amount of Total Current Assets as on March 31, 2021 disclosed in the DLoF (Page 56) was ₹42384.25 lakh, whereas amount provided by the Noticee vide email dated November 26, 2022 and also in the certificate dated October 27, 2022 was ₹42411.17 lakh.

25.2. No. of trade receivable days for FY 2021 and FY 2022 disclosed in the DLoF (Page 56) was 210 days and 51 days respectively. However, no. of trade receivable days for FY 2021 and FY 2022 in the certificate dated October 27, 2022 were 163 days and 45 days respectively.

25.3. Total current liabilities as on March 31, 2021 and March 31, 2022 disclosed in the DLoF (Page 56) was ₹5166.40 lakh and ₹ 17720.83 lakh respectively. However, total current liabilities as on March 31, 2021 and March 31, 2022 in the certificate dated October 27, 2022 were ₹5438.55 lakh and ₹26120.07 lakh respectively.

25.4. Working Capital gap as on March 31, 2021 and March 31, 2022 disclosed in the DLoF (Page 56) was ₹37217.85 lakh and ₹46037.57 lakh respectively. However, Working Capital gap as on March 31, 2021 and March 31, 2022 in the certificate dated October 27, 2022 were ₹36972.62 lakh and ₹37638.33 lakh respectively.

25.5. Net Working Capital Requirement as on March 31, 2021 and March 31, 2022 disclosed in the DLoF (Page 56) was ₹34917.85 lakh and ₹38737.57 lakh respectively. However, Working Capital gap as on March 31, 2021 and March 31, 2022 in the certificate dated October 27, 2022 were ₹34944.62 lakh and ₹37638.33 lakh respectively.

25.6. Total Revenue for FY 2021 and FY 2022 disclosed in the DLoF (Page 77) was ₹133347.99 lakh and ₹286032.21 lakh respectively. However, amounts of total revenue for FY 2021 and FY 2022 provided by the Noticee vide email dated November 26, 2022 was 132840.98 lakh and 285343.80 lakh respectively.

26. Further clarifications were sought from the Noticee regarding the above discrepancies. Vide email dated January 03, 2023, the Noticee provided the reasons for the differences in the fact and figures mentioned in the DLoF as compared with the certificate dated October 20, 2022 from M/s Mehta Singhvi & Associates in respect to the working capital requirement of Sakuma Exports Limited, including these items.

27. Subsequently, vide letter dated January 23, 2023, the Company replied and provided revised/ different figures as compared to its reply vide email dated January 03, 2023, along with different reasons for the same. It was alleged that Noticee was not diligent as it had provided incorrect financial details in the DLoF with respect to working capital requirements which forms the Object of the issue. Further, the Noticee did not provide the explanation in its earlier mail and only provided specific reasons after the follow up query.

28. In this regard, the Noticee submitted the reasons due to which there were differences in the figures originally present in the DLoF dated August 04, 2022. The reasons presented by the Noticee were majorly that different figures were considered by the Noticee vis-à-vis the net working capital certificate issued by the internal auditor. Noticee has further submitted that it had provided the figures based on the audited financial statements and the differences in the corresponding figures provided by the auditor based on the accounting standards adopted by the auditors, and thus, the differences cannot be attributed to the Noticee.

29. I note that in the DLoF dated February 23, 2023, the Noticee has finally incorporated the figures of working capital requirement provided by the internal auditor. In my view, the Noticee should have obtained the internal auditor's certificate in the initial stages itself, as the Noticee has itself admitted that it is not an expert of accounting standards. I note that the working capital requirement forms the Object of the Issue. Thus, providing figures based on its own assumptions cannot be accepted.

30. With respect to total current assets, it has submitted that interest accrued but not due for more than a year was not considered by the Noticee whereas it was included by the auditor. Similarly, bank borrowings were considered to be a part of current liabilities by the auditor, which was not considered by the Noticee. Also, no. of trade receivable days was computed by the Noticee based on consolidated revenues whereas the auditor has considered the standalone revenues. I note that Noticee has provided the figures in the DLoF dated August 04, 2022 based on its own assumptions, rather than availing assistance of the experts. Noticee has taken the auditor's certificate in October, 2022, which it could have also taken before the submission of DLoF dated August 04, 2022 to SEBI. If the Noticee has chosen to make its own assumptions and calculations, the errors in those figures will be attributed to the Noticee. Had the Noticee relied upon the figures provided by the auditor in the DLoF dated August 04, 2022, its contentions that the errors cannot be attributed to the Noticee, could have been accepted.

31. Further, with respect to Total Revenue for FY 2021 and FY 2022, the Noticee has provided different figures in its email dated November 26, 2022 vis-à-vis DLoF dated August 04, 2022. In this regard, Noticee has submitted that it had not considered income from other sources in its email dated November 26, 2022. I

note that this submission cannot be accepted, as it had submitted incorrect details in its email.

32. Noticee has also submitted that the alleged breach does not have any real-world effects and these are mere technical violations, which ought not be subjected to punitive adjudication proceedings. With respect to the discrepancies in the financial details as discussed above, I note that these details are provided in the DLoF for the purpose of informing potential investors about the financial position of the issuer and its business. Such discrepancies can creep into the final letter of offer if these are not properly checked and rectified. Financials are important part in any offer document which the investors rely upon for understanding the company's financial position. This shows that the Noticee was not been diligent and did not exercise independent professional judgement with regard to incorporating financial details in the DLoF dated August 04, 2022. Thus, by not exercising due care and diligence, Noticee has violated Regulation 70(3) of ICDR Regulations, 2018 and Clauses (4) and (6) of Schedule III read with Regulation 13 of Merchant Bankers Regulations, 1992.

ISSUE II - Do the violations, if any, attract penalty under Section 15HB of the SEBI Act, 1992?

33. I note that the above violations make the Noticee liable for monetary penalty under Section 15HB of the SEBI Act, 1992, the text of which is reproduced hereunder:

<u>SEBI Act, 1992</u>

Penalty for contravention where no separate penalty has been provided.

15HB. *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 shall not be less than one lakh rupees but which may extend to one crore rupees.*

34. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had observed: "*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 A breach ofcivil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not."*

ISSUE III - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

35. While determining the quantum of penalty under Section 15HB of the SEBI Act, 1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 respectively, which read as under:

SEBI Act, 1992

15J 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.

36. It is observed that the investors had access to true and fair information as the same was rectified by the lead manager after correspondence with SEBI. Given this, the assessment of loss may not arise. As per the available records, it is observed that Noticee has been penalised earlier under section 15HB of SEBI Act. The intermediary should appreciate the criticality of its function as merchant banker to provide true and correct information with regard to the financial details of the issuer to the investors for which it was supposed to perform due diligence which was found wanting.

ORDER

37. Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, 1995, I hereby impose following penalty upon Noticee.

Sr. No.	Name of Noticee	Violation provisions	Penal Provisions	Penalty
1	FIRST OVERSEAS CAPITAL LIMITED (PAN: AAACL4737A)	Regulation 70(3) of ICDR Regulations, 2018 and Clauses (4) and (6) of Schedule III read with Regulation 13 of Merchant Bankers Regulations, 1992	Section 15HB of SEBI Act, 1992	₹ 3,00,000/- (Rupees Three Lakh Only)

38. The 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.

39. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to

recovery proceedings under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

40. In terms of Rule 6 of the SEBI Adjudication Rules, 1995, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

DATE: FEBRUARY 21, 2024 **BARNALI MUKHERJEE**

PLACE: MUMBAI **ADJUDICATING OFFICER**