BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/AN/PR/2023-24/29357]

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

In respect of:
Mr. Aushim Khetarpal
PAN: ANZPK1199C

In the matter of
M/s. Orient Tradelink Ltd.

A. BRIEF BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated Adjudication proceedings, in respect of Aushim Khetarpal (hereinafter also referred as '**Noticee'/'acquirer')** for the alleged delay in compliance of terms of consent order dated July 23, 2013; alleged violation of Regulation 17(1) and 18(10) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter also referred as '**SAST Regulations, 2011**') and alleged non-compliance of SEBI order dated January 23, 2020, and in respect of Fast Track Finsec Pvt. Limited (hereinafter also referred as '**Noticee 2'**) for the alleged violation of Regulation 27(5) of SAST Regulations, 2011, in the matter of M/s. Orient Tradelink Ltd (hereinafter also referred to as '**OTL**').

B. APPOINTMENT OF ADJUDICATING OFFICER

2. Whereas, the Competent Authority of SEBI, was prima facie of the view that there were grounds to adjudicate upon the alleged violations by the Noticees, the Competent Authority of SEBI, therefore, in exercise of the powers conferred under Section 15 I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for

Holding Inquiry and Imposing Penalties) Rule, 1995 (hereinafter also referred to as "**SEBI Adjudication Rules**") read with Section 19 of the SEBI Act, 1992 appointed Ms. Maninder Cheema, Chief General Manager, SEBI, as the Adjudicating Officer vide Communique dated March 12, 2021 to inquire into and adjudge under Sections 15HB and 15H(iv) of the SEBI Act, 1992, the aforesaid alleged violations by the Noticee. Pursuant to the transfer of Ms. Maninder Cheema, Dr. Anitha Anoop, Chief General Manager, SEBI, was appointed as the Adjudicating Officer vide communique dated June 07, 2022. Thereafter, pursuant to the transfer of Dr. Anitha Anoop, the undersigned was appointed as the Adjudicating Officer vide communique dated September 05, 2022.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

3. A common Show Cause Notice bearing reference no. EAD-5/MC/RM/21171/2021 dated August 27, 2021 (hereinafter referred to as "**SCN**") was issued and duly served upon the Noticees (viz., Aushim Khetarpal being Noticee 1 and Fast Track Finsec Pvt. Ltd., being Noticee 2) to show cause as to why an inquiry should not be held against them in terms of Rule 4 of the SEBI Adjudication Rules read with Section 15-I of the SEBI Act; and why penalty should not be imposed under Sections 15HB and 15H(iv) of SEBI Act, 1992 as applicable upon the Noticees for the aforesaid alleged violations.

4. In this regard it is noted from the material available on record that with regard to Adjudication proceedings initiated in respect of Noticee 2 viz., Fast Track Finsec Pvt. Ltd., vide Show Cause Notice bearing reference no. EAD-5/MC/RM/21171/2021 dated August 27, 2021, Adjudication Order dated January 27, 2022 had already been passed by erstwhile Adjudicating Officer. Accordingly, this Order deals with the violations alleged in respect of Aushim Khetarpal ('Noticee 1' / 'Noticee') in the subject matter.

5. Briefly stated, the following was inter alia alleged in the SCN dated August 27, 2021 in respect of the violations concerning the Noticee viz., Aushim Khetarpal with regard to the alleged delay in making open offer, Shortfall in deposit of 25%

of the open offer amount in the escrow account, Failure in making payment to tendering shareholders, Non-compliance of SEBI Order dated January 23, 2020:

5.1. Delay in making open offer: By not complying with the 6 months' timeline in making the open offer to the shareholders of OTL, Noticee was alleged to have violated terms of consent order dated July 23, 2013.

5.2. Shortfall in deposit of 25% of the open offer amount in the escrow account: By not fulfilling the requirement of depositing 25% of the consideration amount of the open offer in the Escrow Account, Noticee was alleged to have violated Regulation 17(1) of SAST Regulations, 2011.

5.3. Failure in making payment to tendering shareholders: By not making payment to the tendering shareholders, Noticee was alleged to have violated Regulation 18 (10) of SAST Regulations, 2011.

5.4. Non-compliance of SEBI Order dated January 23, 2020: Noticee was alleged to have failed to comply with directions of SEBI issued vide SEBI Order dated January 23, 2020.

6. The Noticee was afforded an opportunity of hearing on December 22, 2021, vide Hearing Notice dated November 30, 2021. The Authorised Representative ("AR") of the Noticee, vide email dated December 20, 2021, inter alia intimated that the Noticee was in the process of filing consent Application in relation to all the proceedings which were underway including the present proceedings. The AR requested for a period of two weeks to complete the paper work and file a detailed reply and to thereafter schedule a personal hearing. Vide email dated December 22, 2021, the hearing was rescheduled to January 19, 2022. Vide email dated January 18, 2022, the AR inter alia filed copy of letter dated January 17, 2022 as reply to the SCN and intimated that Noticee has filed Settlement Application dated January 07, 2022 in the matter.

7. The Noticee availed the opportunity of hearing through his AR on January 19, 2022. During the hearing, the AR inter alia submitted that the Settlement Application filed in the matter with SEBI was in conjunction with the compounding application filed by the Noticee in respect of ongoing prosecution proceedings against the Noticee. Further, the AR submitted that the Adjudication Proceedings in the matter may be concluded after filing of additional submissions by the Noticee. The AR undertook to file the additional submissions by January 26, 2022. Vide email dated January 26, 2022, the AR submitted additional submissions inter alia indicating the same as an aide-memoire to the reply dated January 17, 2022 and to the submissions made during hearing held on January 19, 2022.

8. As regards settlement application, vide email dated June 21, 2022, the concerned department of SEBI inter alia informed that *"…The Settlement Application filed by Aushim Khetrapal in the matter of Orient Tradelink Limited has been returned to the applicant vide letter dated June 17, 2022 in terms of Regulation 5(1)(c) of the SEBI (Settlement Proceedings) Regulation, 2018, which states that 'No application for settlement of any specified proceedings shall be considered if monies due under an order issued under securities laws are liable for recovery under securities laws.'…".* In view of the above and appointment of Dr. Anitha Anoop as the Adjudicating Officer, vide Hearing Notice dated July 05, 2022, the Noticee was granted another opportunity of hearing on August 03, 2022. However, vide email dated July 27, 2022 the hearing was deferred due to administrative exigencies.

9. Pursuant to the appointment of the undersigned, vide Hearing Notice dated February 16, 2023, the Noticee was granted another opportunity of hearing on February 21, 2023. Vide email dated February 20, 2023, Noticee made further submissions. Noticee availed the hearing opportunity on February 21, 2023. During the hearing, the Noticee relied upon and reiterated his submissions dated January 17, 2022, January 26, 2022 and February 20, 2023. Noticee inter alia sought time to make further additional submissions, accordingly time till February 27, 2023 was allowed. Vide email dated February 27, 2023, the Noticee sought additional time till March 2023 to file his additional submissions.

Vide email dated March 03, 2023, the Noticee was allowed time till March 10, 2023 as last opportunity in this regard. Vide email dated March 10, 2023, the Noticee made additional submissions.

10. The key submissions of the Noticee, dated January 17, 2022, January 26, 2022, February 20, 2023 and March 10, 2023 (hereinafter collectively also referred as '**replies to the SCN'**) as regards alleged violations are reproduced below:

Submissions dated January 17, 2022:

"….

6. I submit that the open offer in question was made voluntarily by me pursuant to a settlement with SEBI. The settlement order did not specify any price in relation to the open offer. I had, through the merchant bankers appointed by me, provided to SEBI the working of the offer price at Rs. 8.97 on October 23, 2018. The same was accepted by SEBI by an email of the same date. A copy of the email dated October 23, 2018 from SEBI confirming this offer price is annexed as Annexure 1.

7. SEBI had thereafter called upon the merchant bankers appointed by me to revise the offer price. We had pointed out inter alia that the open offer was made pursuant to the consent order on account of which the price of Rs. 8.97 was the correct offer price. However, SEBI had called upon me and the merchant banker to meet with them where it was informed to us that the price was to be revised to Rs. 23 per share. This was confirmed by an email of April 11, 2019 issued by the merchant bankers.

8. As recorded in the SCN, I have thereafter deposited monies and pledged shares in lieu of the offer price from time to time. The SCN also records the fact that the price of the shares at the time of the pledge was higher. However, on account of subsequent reduction of the share value, there was a shortfall in the offer price to be deposited by me. The SCN also records that the shortfall is to the tune of Rs. 13,24,700/- out of a total consideration of about Rs. 4.90 crores.

9. I submit humbly that even after the issuance of the SCN, I have deposited monies from time to time even after the issuance of the SCN. I have deposited Rs. 5,00,000/- on March 29, 2021 and thereafter Rs. 2,00,000/-(vide payments of Rs. 50,000/- each on 24.09.2021, 17.09.2021, 16.09.2021 and 15.09.2021) since the issuance of the SCN. My bank account statement evidencing the above payments is annexed as Annexure 2.

10. I have therefore deposited an amount of Rs. 7,00,000/- with SEBI since the issuance of the SCN. I submit humbly that I am in the process of depositing further monies and will ensure that I comply with my obligations in this regard.

11. I submit humbly that:

a. I have taken necessary steps to ensure that I comply with my obligations. I have, from time to time, reached out to SEBI to ensure compliance with my obligations. I have, since the beginning of the process, been in touch with SEBI officials and has ensure that SEBI be kept aware of the developments.

b. I have also, from time to time, ensured that my financial obligations are met. I have deposited monies as and when available with me to ensure that my obligations is met. The record demonstrated that I have been depositing monies and shares to ensure compliance.

c. The shortfall in the amount to be deposited has arisen primarily from the fall in the market price of the shares pledged by me. In any case, as per paragraph 17 of the SCN itself, the shortfall amount is a meagre Rs. 13, 24,700/-, which I am in the process of depositing.

d. As the records indicates, the amount has increased several times (from about Rs. 4 to Rs. 23 per share). This is an increase of almost 6 times which lead to my financial planning being disturbed. I had not factored such a substantial increase in price when I entered into consent terms. However, as a bona fide effort, I have not run away from my obligation and am willing to ensure compliance with the same.

e. I have not been able to ensure payments on account inter alia of the pandemic in India. The lockdown that happened immediately after the SEBI order since March 2020 has resulted in several industries being affected adversely. This includes the movies and television entertainment industry of which I am a part. I have had limited income which has not allowed me to comply with the obligations of ensuring payment.

f. Despite the same, I have deposited monies from my earnings and there is only one part remaining which I will ensure is deposited.

12. As you will appreciate, in the event that any further penalty as proposed by the SCN is levied upon me, it will result in additional financial burden upon me which in turn will result in me not being able to comply with my obligation of open offer. It is submitted humbly that no penalty ought to be imposed upon me.

13. I have also, as a bona fide measure, filed a consent application with a view to settling proceedings inter alia pursuant to the SCN, I request that no orders be passed or penalties be imposed pending the same. In the event that my settlement application is accepted, there would be no requirement to impose any monetary penalty.

…."

Submissions dated January 26, 2022:

"….

2. These Written Submissions summaries the gist of the submissions made during the personal hearing on January 19, 2022. I repeat and reiterate the contents of the Reply dated January 17, 2022 ("Reply"), the contents of which are not being repeated for the sake of brevity.

3. At the outset, before providing my key submissions, I earnestly request you to consider my plea in these submissions on compassionate grounds, considering the financial dilemma that I have been facing, and that I have always intended and attempted to complete the open offer and comply with the directions of SEBI.

4. The core allegations in the Show Cause Notice are the following:

(a) There was a shortfall of Rs. 13,24,700/- as on date of opening of offer in alleged violation of Regulation 17(1) of the SEBI (Substantial Acquisitions and Takeovers) Regulations, 2011 ("SAST Regulations"); and

(b) Open Offer consideration amount of Rs. 4,90,39,000/- has not been paid to the tendering shareholders, in alleged violation of Regulation 18(10) of the SAST Regulations.

5. I am conscience of the fact that there has been a delay in completing the Open Offer, as stipulated in the Show Cause Notice. I have attempted to explain the reason for the delay in my Reply as well as in the submissions made during the personal hearing. It is a matter of fact and record that I have been consciously trying to repay the due amounts to the best of my ability, and that complete compliance of the same has been hindered due to the Covid '19 pandemic.

6. The key submissions of the Noticee are:

(a) I have always taken steps to ensure that the terms of the Open Offer are complied with. My intention to comply is visible from the fact that I had appointed a merchant banker, who also provided to SEBI the working of the offer price at Rs. 8.97/- on October 23, 2018. While this price was originally accepted by SEBI, SEBI thereafter called upon the merchant banker to revise the offer price. The offer price was subsequently increased several times and was finally revised to Rs. 23/- per share, as was confirmed on April 11, 2019. Further, I deposited monies and pledged shares in lieu of the offer price from time to time, which were sufficient to cover the offer price. However, the shortfall of around Rs. 13 lakhs occurred on account of the fall in price of the shares.

(b) It is pertinent to note that even though the price was unilaterally increased from Rs. 8.97/- to Rs. 23, I always attempted to comply with the terms of the open offer. Out of the shortfall of Rs. 13 lakhs, I have already deposited a total amount of Rs. 7 lakhs, in tranches, to the best of my ability. I am in the process of depositing the balance amount and will ensure that I comply with my obligations at the earliest opportunity. There has never been an iota of doubt that I intend to comply fully with the terms of the open offer.

(c) In relation to the payment of Rs. 4.90 crores to the shareholders, I intend to comply fully, so as not to prejudice the shareholders in any manner. I intend to complete the open offer and am making every effort to make financial arrangements for the same. I have also consistently been in contact with SEBI officials, and discussed the progress in my financials, which clearly shows my intention to comply with the competition of the open offer.

(d) As can be seen from the record, multiple proceedings have been initiated against me, including initiation of criminal proceedings, which have gravely prejudiced me. All such proceedings have been only on account of my failure to make a timely open offer and provide an exit to the shareholders.

(e) I hereby undertake and am completely willing and intending to make all the necessary financial arraignments to complete the open offer, without prejudice to my rights on the open offer price.

(f) I have provided by expected revenue streams below, for your reference. I undertake to utilize all the below proceeds towards competition of the open offer:

……

7. As can be seen from the above, I am actively trying my best to comply with my obligations and complete the open offer. I am positive that I will be able to fully complete the open offer and clear all the dues latest by January 2023. I reiterate that I have always intended and endeavoured to comply with the terms of the open offer, and the delay has been on account of genuine financial difficulties, which have been amplified on account of the pandemic.

8. I humbly submit that imposition of any monetary penalty on me in the current proceedings, will not serve any fruitful purpose, and will be an additional pecuniary liability on me, which will only delay the fulfilment of my obligations under the open offer. As I have stated above, all my revenue/ income is being utilised towards competition of the open offer, and any additional penalty will only prejudice the same.

9. I have also filed an application for settlement with SEBI, which has been my earnest attempt to engage with SEBI effectively.

10. I request the Ld. Adjudicating Officer to consider my plea on a humanitarian ground, and dispose of the pending proceedings, after taking my undertakings on record, and without passing any further penalty in the matter. I await your response in this regard. Please let me know if any further information/ documents are required.

…."

Submissions dated February 20, 2023:

"….

Further referring to our letter sent to you on 26th January, 2022. Following that letter, the film industry saw a huge setback in acquiring digital and theatrical rights due to the pandemic. However, a lot of efforts have gone to recover and re work business models to recover the due payments for the work done in previous years.
As per the company's intimation, I have been informed that my dues will be paid via the govt. film subsidies, attached reference document of MOU Signed with MP Tourism which will be releasing 35% of the production cost as subsidy, this will be the amount paid to be for my acting fees.
The distributor has confirmed a tentative release date of one of the film by April, 2023. 5 back to back films are set to release and with this agreement MP Government, the company is hoping to clear the dues with which I stand committed to repay SEBI for the open offer. First payment will start from April onwards and hoping that there is no pandemic. We would be able to pay the complete amount by year end.
I have also filed an application for settlement with SEBI, which has been my earnest attempt to engage with SEBI effectively.
I request the Ld. Adjudicating Officer to consider my plea on humanitarian ground, and dispose of the pending proceedings, after taking my undertakings on record, and without passing my further penalty in the matter. I await your response in this regard. Please let me know if any further information/documents are required.
…."

Submissions dated March 10, 2023:

"….

As specified in the order in respect to violation of regulation 27(5) of SAST Regulation in aforesaid matter, kindly consider our submissions are as under:

(i) That Fast Track Finsec Private Limited was appointed as a manager to the Open Offer dated July 10, 2018 on my behalf Aushim Khetarpal ("Acquirer"), they made Public Announcement dated January 04, 2019;

(ii) That this open offer was triggered on the basis of the consent order passed by SEBI on July 23, 2013 enclosed as Annexure 1 as per SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997;

(iii) That as per the consent order, no direction was provided in respect to calculation of Offer Price on which the Open Offer was required to be triggered by Mr. Aushim Khetarpal;

(iv) That after appointment as a Manager to the Offer, On July 29, 2018 Fast Track Finsec Private Limited had sent a request mail enclosed as Annexure 2 to the officer of the SEBI for seeking clarification in terms of pricing of the Open Offer;

(v) That as on September 24, 2018 after telephonic conversation with office in-charge of SEBI, Fast Track Finsec Private Limited were sent request mail enclosed as Annexure 3 for confirmation on the Offer Price as per consent order passed by the SEBI;

(vi) That as on September 27, 2018 we received a mail from Officer in-charge, that to calculate the price as of the triggered date along with an interest of @10%;

(vii) That as on October 13, 2018, Manager to the Offer filed a representation letter enclosed as Annexure 5 to your good office on the basis of the discussion held between Mr. Aushim Khetarpal ("Acquirer") and officials of the SEBI at the office of the SEBI for determining the price of INR 7.13/- per Equity Share;

(viii) That as on October 23, 2018, Manager to the offer sent a mail to office In-charge for said open offer for confirmation on the Offer Price of INR 8.97/- per Equity Shares (from October 2002 to October 2018) along with simple interest INR 10% per annum enclosed as Annexure;

(ix) That as on October 23, 2018, we received a mail from your good office for issue of Public Announcement ("PA") and Detailed Public Statement ("DPS") at the rate of INR 8.97/- per equity shares (price at the time of violation plus applicable interest @10% [simple interest] for delay in making open offer);

(x) That after the confirmation of the price the Manager to the Offer, initiated the process for finalization of PA, Open of Escrow Account, Open of Escrow Demat Account and Appointment of other intermediaries for the said Open Offer;

(xi) That Fast Track Finsec Private Limited as a Manager to the Offer has announced the PA as on January 04, 2019 with the Offer price of INR 8.97/- per Equity Share on behalf of the Acquirer, as confirmed by the office in charge on October 23, 2018;

(xii) That Fast Track Finsec Private Limited as a manager to the offer had taken the Net Worth certificate of Acquirer dated January 03, 2019 for an amount of INR 14,80,55,836/- (Rupees Fourteen Crore Eighty Lakh Fifty Five Thousand Eight Hundred Thirty Six) signed by Mr. Ashok Mahajan, Chartered Accountant, Partner of AM Sharma & Associates having its office at 32, Balaji Complex, Laxmi Nagar, Delhi 110092 for make sure that Aquirer had a firm arrangements of funds to meet the payment obligations in the Open Offer;

(xiii) That after the PA, we created an Escrow Account towards security for performance of obligation under this regulation and deposit the amount of INR 2,00,000/- (Rupees Two Lakh Only) in the Escrow Account in cash and pledge the 3,00,000 Equity Shares of OTL at the @23.55/- per Equity Share. The price as on the pledge date;

(xiv) That as on date of DPS, the Escrow amount including pledge shares was INR 72,65,000/- (Rupees Seventy Two Lakh Sixty Five Thousand Only) which was more that 25% of the Total Consideration of INR 1,96,71,210/- (Rupees One Crore Ninety Six Lakhs Seventy One Thousand Two Hundred and Ten Only) which was calculated on the basis of INR 8.97/- per Equity shares;

(xv) That Fast Track Finsec Private Limited was also ensured through an undertaking by the Acquirer that he will deposit the additional amount in Escrow account, if required in future;

(xvi) That the Manager to the offer submitted the Draft Letter of Offer to the SEBI dated January 18, 2019 for the issue of Observation Letter.

(xvii) That manager to the open offer had issued the Due Diligence Certificate as on January 18, 2019 where Fast Track Finsec Private Limited have compiled with the provisions of the Regulations of the SAST Regulations at that time:

(xviii) *That as on March 28, 2019, Fast Track Finsec Private Limited were received a mail from office in-charge of SEBI for the discussion on the said offer to visit the SEBI Office along with Aquirer on April 01, 2019 at 03:00PM. Further, meeting was postpone to April 03, 2019 at 11:00AM and decided the revised offer price from INR 8.97/- to INR 23/- per equity shares. This was against the consent order. But the officers said we are giving 2 days to go ahead. It was like a do it or face penalty. They were told to withdraw but we were told by SEBI that they would be penalised.*

(xix) *That after the revision of price Fast Track Finsec Private Limited informed to Acquirer to maintain the Escrow Account with additional fund of INR 53,44,750/- (Rupees Fifty Three Lakh Forty Four Thousand Seven Thousand Fifty Only). I have been penalised for change of rates in offer price. Then over again the consent order was given to acquire shares of other Mr. Jindal and 10 persons: Anita Jindal, Rahul Jindal, Pradeep Jindal, Ramit Jindal, Ruchi Jindal, Yogita Jindal, Seema Jindal, Monu Ghai, Aman Ghai, Manoj Kumar Jain, Indu Chandna and Naresh Kumar Chandna in my account. This was not clear in the consent order but was clearly told to us.*

(xx) *As this was not clear in the consent order. Public put the shares on the last two days which was again unfair.*

(xxi) *That after many reminders and request, we pledge more Equity Shares on different dates and deposited INR 12,00,000/- (Rupees Twelve Lakh Only) in cash in the Escrow Account and rest*

(xxii) *That this was first Open Offer of Fast Track Finsec Private Limited and we as a manager to the offer citing complexity of the case wanted to withdraw the offer but it was informed by the concerned SEBI official that Fast Track Finsec Private Limited has no option to withdraw as per the SEBI (SAST) Regulations and guidelines.*

(xxiii) *Inspite of the consent order the rate was increased three times and I have been penalised for the same. I have met officers in SEBI but finally with no result.*

Now

In the meanwhile Aum Sportainment Private Limited which has to pay my acting fees is also committed to pay my acting fees on successful completion of the IPO. There underwriting agreement is enclosed.

Once their IPO is out in April end May beginning my full payment would be made by them. Thus I should be able to clear my principle amount.

I request the learned Adjudicating Officer to consider my plea on humanitarian ground, and dispose of the pending proceedings, after taking my undertakings on record, and without passing my further penalty in the matter. I await your response in this regard. Please let me know if any further information / documents are required.

In view of the above pleas kindly look into our submissions and not put in us further burden fault which is been not committed.

…."

D. CONSIDERATION OF ISSUES AND FINDINGS

11. The following issues arise for consideration in the instant matter:

Issue No. I: Whether Noticee violated the terms of consent order dated July 23, 2013, Regulation 17(1) of SAST Regulations, 2011, Regulation 18 (10) of SAST Regulations, 2011 and failed to comply with directions of SEBI issued vide SEBI Order dated January 23, 2020, as alleged in the SCN?

Issue No. II: If yes, whether the failure on the part of the Noticee would attract monetary penalty under Section 15HB and 15H(iv) of SEBI Act,1992?

Issue No. III: If yes, what would be the monetary penalty that can be imposed upon the Noticee?

12. Before proceedings with the matter on merits, I would first deal with key technical contentions /submissions made by the Noticee.

12.1. Noticee has inter alia contended vide letter dated March 10, 2023 that *"… Public put the shares on the last two days which was again unfair….".* In this regard, in my view in any open offer, the eligible shareholders are free to tender their shares any time during the open offer period and accordingly the contention of the Noticee in this regard is devoid of merit and not acceptable.

12.2. Noticee had vide letter dated January 17, 2022 inter alia submitted *"… I submit humbly that I am in the process of depositing further monies and will ensure that I comply with my obligations in this regard…"* and the submissions of the Noticee made vide email dated February 20, 2023 that *"…First payment will start from April onwards and hoping that there is no pandemic. We would be able to pay the complete amount by year end…"*, and the submissions made vide letter dated March 10, 2023 that *"…Once their IPO is out in April end May beginning my full payment would be made by them. Thus I should be able to clear my principle amount…"*

12.3. In this regard, considering that the alleged violation is about the obligations then viz., during past as applicable, such as to make open offer within the six month timeline, deposit of 25% or more of the total consideration in the escrow account before the offer open date, payment to the shareholders who tendered their shares in the open offer within the ten days period as applicable per extant regulations, to comply with the directions relating to disgorgement within the stipulated timeline as stated in SEBI order dated January 23, 2020 etc., were to be complied by the Noticee at the relevant time. In view of thereof, the submissions of the Noticee inter alia that he will make the payments from April onwards are in nature of prospective statements and out of context for the instant Adjudication proceedings in so far as the same relate to alleged violations during relevant period then.

12.4. Noticee had inter alia submitted that *"…I have also filed an application for settlement with SEBI, which has been my earnest attempt to engage with SEBI effectively…".* I note that the Settlement Application was returned to the Noticee in light of Regulation 5(1)(c) of the SEBI (Settlement Proceedings) Regulation, 2018, as already brought out in the foregoing paragraphs, therefore, this submission of Noticee is out of context.

12.5. I also note that one of the preliminary technical contention made by the Noticee repeatedly is that the offer open from INR 8.97/- to INR 23/- per equity shares. In this regard, from material available on record I note that in respect of the open offer by the Noticee, the manager to the offer vide email dated June 01, 2019 addressed to SEBI had inter alia stated that, ' … it is hereby reiterated that the Offer Price of Rs. 23 is apt and in duly compliance of applicable law. ..'. and that, 'we would like to apprise your good office that OTL has done the split of its equity shares …. . Accordingly one equity share of Rs. 10 each is split into 5 equity shares of Rs. 2 each ….', and the revised offer price per equity share after taking into consideration the split of shares by OTL was indicated as Rs. 4.60. Further in this regard, it is noted that even as per the letter of offer as available on record that under Para 5.1.2 on Page 21 of the copy of letter of offer, the offer price was indicated as Rs. 4.60 per equity share. Accordingly, the contention of Noticee is devoid of merit and cannot be accepted.

12.6. Noticee has vide letter dated March 10, 2023 inter alia submitted, *"…Then over again the consent order was given to acquire shares of other … and 10 persons … in my account. This was not clear in the consent order but was clearly told to us…." ,* In this regard, I note that these submissions are without relevant and complete details and /or documents and accordingly vague and /or in the nature of mere statements and accordingly devoid of merit.

13. I now proceed to deal with the matter having regard to the submissions of the Noticee on merits:

Issue No. I Whether Noticee violated the terms of consent order dated July 23, 2013, Regulation 17(1) of SAST Regulations, 2011, Regulation 18 (10) of SAST Regulations, 2011 and failed to comply with directions of SEBI issued vide SEBI Order dated January 23, 2020, as alleged in the SCN?

14. **It was inter alia alleged in the SCN that by not complying with the 6 months' timeline in making the open offer to the shareholders of OTL, Noticee had violated terms of consent order dated July 23, 2013.**

14.1. In this regard, certain key developments as observed from the material available on record, are detailed as under:

14.1.1. In this regard, it was inter alia observed and alleged by SEBI that the Noticee had delayed in making open offer in the matter of Orient Tradelink Limited and thus there was delay in compliance of the consent terms of consent order dated July 23, 2013 in the matter of Orient Tradelink Limited.

14.1.2. It is noted from the material available on record that proceedings under Section 11B of SEBI Act were initiated against OTL, Noticee and other entities, for violation of Regulation 4(b), 4(c), 4(d), 4(e), 5 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 1995, 13(4),13(5),13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 and Regulation 10, 12 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. While the proceedings were underway, the said entities including OTL and Noticee applied for settlement through the consent mechanism in the year 2010 and 2011 and a joint consent order was passed on July 23, 2013 disposing of the applications as per the following terms mentioned in the consent order :

a) an amount of Rs. 10,00,000/- (Rupees Ten Lakhs Only) as settlement amount, for settling all the aforementioned consent applications.
b) four years voluntary debarment for Noticee, OTL and others.
c) OTL cannot raise fresh capital for one year.
d) open offer for shareholders of OTL by Noticee within a period of 6 months from the date of Consent Order.

14.1.3. In this regard, I also note that Para 17 of the Consent Order dated July 23, 2013 read as under:

> *"…*
> *17) This order is without prejudice to the right of SEBI to initiate enforcement actions, including commencing or reopening of the proceedings pending against applicants, if:*
>
> *a) any representation made by the applicants in this consent proceeding is subsequently discovered to be untrue; or*
> *b) the applicants breaches any of the consent terms or undertakings filed in this consent proceeding.*
> *….*
> *".*

14.1.4. The said consent order dated July 23, 2013 was issued without prejudice to the right of SEBI to initiate enforcement actions, including commencing or reopening of the proceedings pending against applicant if, inter alia, the applicants breaches any of the consent terms or undertakings filed in the consent proceeding.

14.1.5. It is noted from material available on record that SEBI vide its email dated October 21, 2013 inter alia advised the Noticee to inform the steps taken by him so far to comply with the terms of the consent order. SEBI vide email dated January 08, 2014 inter alia advised the Noticee to provide reasons for not appointing Merchant Banker so long when he had consented and was in a position to give open offer at the time of said consent order.

14.1.6. Vide letter dated January 16, 2014, Noticee inter alia cited reasons for his non-compliance with Consent Order and requested for one-time extension for complying with the Consent Order dated July 23, 2013 for 6 months. In this regard, it is noted from material available on record that SEBI vide letter dated June 06, 2014 inter alia informed the Noticee that *"Competent Authority at SEBI have acceded to your request for extension of further six months beyond Jan 23, 2014 for making a Public Offer by Mr. Aushim Khetarpal to the shareholders of Orient trade link Limited…"*.

14.1.7. It is noted that SEBI vide email dated September 09, 2014 inter alia sought compliance status of consent Order dated July 23, 2013 and mentioned that *"…This is in continuation to our telecom on 28.8.2014, whereby you are advised to report the compliance with Consent Order ref.no. CO/IVD/51/July/2013 dated July 23, 2013 for making an Open offer as per the term mentioned in the consent order, and you have assured us for sending an e-mail on the same day in this regard. However, till date you have not reported the compliance with regard to the 'Open offer to the shareholders of Orient Trade Link Ltd….in accordance with the terms of captioned Consent Order…."*. In this regard, it is noted that vide email dated September 11, 2014, Noticee communicated to SEBI that *"… the work for open offer is in progress, due diligence has been completed … and draft prospectus is being ready to filed very soon…"*.

14.1.8. Vide email dated September 07, 2015, Noticee inter alia mentioned that *"…As the rate for the open offer was decided at Rs. 3,95 by our merchant bankers, we chose to talk to SEBI as without revocation, no one would give the shares at this price. Moreover, since 2013, after the consent money was deposited there was no clarity for the revocation and now its two years since the process is going on…".*

14.1.9. Vide its letter dated October 6, 2017, SEBI inter alia communicated to the Noticee that *"…suspension in trading of equity shares of M/s Orient Tradelink Limited has been revoked w.e.f August 22, 2017. Accordingly, you are hereby advised to give open offer to shareholders of Orient*

Tradelink Limited, in compliance with consent order ref. No. CO/IVD/51/July/2013 dated July 23, 2013 within period of 6 months from Aug. 22, 2017…".

14.1.10. Vide email dated November 13, 2017, SEBI inter alia drawing reference to SEBI letter dated October 06, 2017, advised Noticee to provide updates in the matter. Vide letter dated November 30, 2017 forwarded vide its email dated December 22, 2017 Noticee inter alia communicated to SEBI that *"…we would like to let you know that we have already started the process for the same and in the same series we have even finalized our merchant bankers …".*

14.1.11. SEBI vide its email dated January 17, 2018 inter alia communicating that *"…In this regard, you are advised to inform the latest status of open offer. Further, you are advised to note that non-compliance to aforesaid timelines may lead to enforcement action by SEBI against you…",* sought latest status of open offer.

14.1.12. Vide email dated February 23, 2018, Noticee forwarded letter dated February 23, 2018 inter alia mentioning that *"… in reference to you above mentioned letter in regard to make an open offer to the shareholders of Orient Tradelink Ltd. We would like to let you know that we have already processed the same and our merchant bankers …, will be in touch with you very soon … for the open offer …".*

14.1.13. Vide email dated March 13, 2018, drawing reference to SEBI letter dated October 06, 2017, SEBI inter alia communicated to the Noticee that *"…It is noted time limit given in the aforesaid letter have already been expired. However, you have not even filed the draft offer documents with Corporate Finance department of SEBI for making open offer. Accordingly, it appears that you are not willing to comply with terms of aforesaid consent order. Accordingly, you are hereby granted last opportunity to do needful at the earliest, failing which we will reopen proceeding pending against you for breaching consent term, as per the para 17 of aforesaid consent order … ".*

14.1.14. Vide its email dated April 04, 2018, Noticee inter alia communicated to SEBI that *"…with regard to the above, we would like to state that we have started the process of making open offer to the shareholders of Orient Tradelink Ltd and in this regard we have entered into the agreement with the Merchant Banker …. for professional services for proposed open offer…".*

14.1.15. Vide email dated July 25, 2018, Fast Track Finsec Private Limited inter alia communicated to SEBI that, *"… we would like to inform you that we are being engaged by Mr. Aushim Parshottam Khetapral as manager for the open offer to be issued for Orient Tradelink Limited by virtue of the direction made in the SEBI Consent order CO/IVD/51/July/2013 dated July 23, 2013. We are analysing the documents and the applicable regulations to be complied with and will soon share the public announcement for the said open offer…"*

14.1.16. It is noted from material on record that vide letter dated September 11, 2018, bearing subject ,'*Open offer by Mr. Aushim Purshottam Khetarpal of the target company Orient Tradelink Limited having security code 531512*', Fast Track Finsec Pvt. Ltd., Manager to the Offer inter alia communicated to SEBI that, ' … *With reference to captioned subject please find attached the draft letter of offer pursuant to consent order dated 23rd July, 2013* … '. I also note that vide letter dated September 12, 2018, Aushim Khetarpal communicated to SEBI that, ' *… The open offer for myself has been submitted to SEBI by my Merchant Bankers – Fast Track Finsec Private Limited (Merchant Banker – Category I) on 12th Sept, 2018 with the Folio number F-134. This is for your kind information.*'.

14.1.17. In this regard, it is noted from the material available on record that Aushim Khetarpal had filed the Draft Letter of Offer (DLoO) through Fast Track Finsec Private Limited (MB) vide letter dated September 11, 2018.

14.1.18. In this regard, I also note from material available on record that in response to SEBI email, BSE vide email dated July 24, 2018 inter alia informed SEBI that, *" … open offer through Tender route" has not been carried out on the Exchange platform for Orient Trade Link Limited…".*

14.2. In this regard, it is noted from Noticee's replies to the SCN that the Noticee has neither denied nor disputed the allegation that there was delay on his part in compliance of consent terms of consent order dated July 23, 2013 in respect of making open offer to the shareholders of OTL.

14.3. In this regard, it is noted from the material available on record and the developments as brought out above that SEBI vide letter dated October 06, 2017, inter alia drawing reference to para 14(1) of the consent order ref no. CO/IVD/51/July/2013 dated July 23, 2013, had advised the Noticee to give open offer to shareholders of Orient Tradelink Limited, in compliance with consent order dated July 23, 2013 within period of 6 months from August 22, 2017. I note from material on record that, Noticee was required to make open offer on or before February 22, 2018. However, the DLoO in this regard was first filed by Noticee through its Merchant Banker on September 11, 2018. Accordingly, the allegation that by not complying with the 6 months' timeline in making the open offer to the shareholders of OTL, Noticee had violated terms of consent order dated July 23, 2013, stand established.

14.4. In view of thereof, I hold, that having regard to SEBI Letter dated October 06, 2017, there was delay on part of Noticee in making open offer in the matter of Orient Trade Link Limited and accordingly there was delay in compliance of the consent terms of the consent order dated July 23, 2013.

15. **It was inter alia alleged in the SCN that by not fulfilling the requirement of depositing 25% of the consideration amount of the open offer in the Escrow Account, Noticee had violated Regulation 17(1) of SAST Regulations, 2011.**

Regulation 17 of SAST Regulations, 2011:

"…
Provision of escrow

17. (1) Not later than two working days prior to the date of the detailed public statement of the open offer for acquiring shares, the acquirer shall create an escrow account towards security for performance of his obligations under these regulations, and deposit in escrow account such aggregate amount as per the following scale:

Sl. No.	*Consideration payable under the Open Offer*	*Escrow Amount*
a.	*On the first five hundred crore rupees*	*an amount equal to twenty-five per cent of the consideration*
b.	*On the balance consideration*	*an additional amount equal to ten per cent of the balance consideration*

….

(2) The consideration payable under the open offer shall be computed as provided for in sub-regulation (2) of regulation 16 and in the event of an upward revision of the offer price or of the offer size, the value of the escrow amount shall be computed on the revised consideration calculated at such revised offer price, and the additional amount shall be brought into the escrow account prior to effecting such revision.

…".

15.1. In this regard, following is noted from the material available on record:

15.1.1. As per the letter of offer available on record, the maximum consideration payable by the acquirer to acquire 1,09,65,000 equity shares at the offer price of Rs. 4.60 per equity shares amounted to Rs. 5,04,39,000 and 25% of the consideration amount i.e. Rs. 1,26,09,750 was required to be deposited in the escrow account in terms of Regulation 17(1) of SAST Regulations.

15.1.2. In this regard it is noted from SEBI order dated January 23, 2020 in the matter of Orient Tradelink Limited, available in record that an Escrow Account "OTL –Open offer Escrow Account" was opened with ICICI Bank (Current Account no. 000405118154). In this regard, as per the material available on record it is noted that, Noticee's Merchant Banker submitted the following details:

a. Rs. 14 lakhs deposited in escrow account
   (i) Rs. 2 lakhs on account opening.
   (ii) Rs.12 lakhs were pledged with Noticee's Merchant Banker and subsequently were transferred to escrow account on August 01, 2019.
b. 3,00,000 equity shares of OTL were taken as security @ price of Rs. 23 per shares of OTL (Pledged on January 11, 2019). The said pledge was made for 3 months and the time period expired. Noticee (including relatives) again pledged 17,30,000 equity shares of OTL in tranches, during the period June 03, 2019 to July 04, 2019 with the Merchant Banker.

15.1.3. It is noted from material available on record that Noticee's Merchant Banker had considered an amount of Rs. 8 per share of OTL while calculating the value of pledged shares irrespective of date of creation of pledge. In this regard, it is noted from material available on record that while the Noticee was required to deposit Rs. 1,26,09,750 towards fulfilling the obligations under Regulation 17(1) of SAST Regulations, 2011, equity shares worth Rs.1,10,85,050 were pledged without any margin and a cash deposit of Rs. 2,00,000 was made by the Noticee as on date of opening of offer thereby resulting in shortfall of Rs. 13,24,700.

15.2. The Noticee had inter alia contended vide his submissions dated January 17, 2022 that *"…The SCN also records the fact that the price of the shares at the time of the pledge was higher. However, on account of subsequent reduction of the share value, there was a shortfall in the offer price to be deposited by me. The SCN also records that the shortfall is to the tune of Rs. 13,24,700/- out of a total consideration of about Rs. 4.90 crores…"* .

As regards the contention of the Noticee that SCN also records the fact that the price of the shares at the time of the pledge was higher, it is noted from the contents of the SCN that "…*Noticee-2 had considered an amount of Rs. 8 per share of OTL while calculating the value of pledged shares irrespective of date of creation of pledge. However, closing* *market price as on date of pledge portrays the true value of shares being pledged. …As seen from the above, the price in the scrip of OTL was not Rs. 8 as claimed by the Noticee-2…" .* It is noted that contrary to the understanding of the Noticee, the relevant contents of the SCN inter alia contained observation of SEBI that the price of the pledged securities considered at Rs. 8 per share of OTL instead of at closing market price as on the dates of pledge portraying the true value of shares being pledged, ought to have been considered. Accordingly, the contention of the Noticee in this regard, is apparently misplaced and devoid of merit.

15.3. The Noticee had inter alia contended vide his submissions dated January 17, 2022 that *"… SEBI had called upon me and the merchant banker to meet with them where it was informed to us that the price was to be revised to Rs. 23 per share…"* and vide submissions dated January 26, 2022 that *"…The offer price was subsequently increased several times and was finally revised to Rs. 23/- per share…"* and vide submissions dated March 10, 2023 that *"…Further, meeting was postpone to April 03, 2019 at 11:00AM and decided the revised offer price from INR 8.97/- to INR 23/- per equity shares…" .*

In this regard, it is noted from the letter dated May 20, 2019 that the manager to the offer had inter alia stated:

> *"…*
> *Further kindly take note that on receiving final observation from your side we will update the tentative schedule and also take necessary action to deposit the balance amount (difference of previous offer price i.e. Rs. 8.97 per Equity Share and present offer price i.e. Rs. 23 per Equity Share) in escrow account to comply with Regulation 17 of SEBI (SAST) Regulations, 2011 wrt Escrow Amount.*
> *…"*

From the above, it is noted that the Merchant Banker on behalf of Noticee itself, undertook that the difference in amount will be brought in the escrow account on receipt of final observation from SEBI. However, it is noted that amount equivalent to 25% or more of the total consideration payable to the shareholders, had not been deposited by Noticee as is evident from his submissions dated January 26, 2022 that *"…. I am in the* *process of depositing the balance amount and will ensure that I comply with my obligations at the earliest opportunity...” .*

Further, in this regard, it is noted from material available on record that Noticee vide its letter dated July 30, 2019, bearing subject, ‘*Application for Extension of time for payment of consideration required to be paid for 1,09,65,000 Equity Shares tendered in Open Offer to the Equity Shareholders of Orient Tradelink Limited (“Target Company”) by Mr. Aushim Khetarpal (“Acquirer”)’*, addressed to SEBI inter alia stated that, ‘ *… with reference to the captioned subject. Kindly take note in terms of SEBI Order No. CO/ IVD/ 51/July/2013 dated July 23, 2013 and Securities Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (erstwhile SEBI (SAST) Regulations, 1997 …., I had announced the Open Offer …. of Orient Tradelink Limited …. at a Rs. 4.60/- per … Equity Shares as determined in accordance with Regulation 20 of the SEBI (SAST) Regulations, 1997 including applicable interest as determined by the Corporation Finance Department, SEBI…”.* In view thereof, the contention of the Noticee in this regard is devoid of merit and cannot be accepted.

15.4. The Noticee has inter alia submitted vide his letter dated January 17, 2022 that “…*I have therefore deposited an amount of Rs. 7,00,000/- with SEBI since the issuance of the SCN. I submit humbly that I am in the process of depositing further monies and will ensure that I comply with my obligations in this regard…In any case, as per paragraph 17 of the SCN itself, the shortfall amount is a meagre Rs. 13, 24,700/-, which I am in the process of depositing…”* and vide letter dated January 26, 2022 that “…*Out of the shortfall of Rs. 13 lakhs, I have already deposited a total amount of Rs. 7 lakhs, in tranches, to the best of my ability. I am in the process of depositing the balance amount and will ensure that I comply with my obligations at the earliest opportunity…” ,* and vide email dated February 20, 2023 that *“…First payment will start from April onwards and hoping that there is no pandemic. We would be able to pay the complete amount by year end….”* , and vide letter dated March 10, 2023 that *"…Once their IPO is out in April end May beginning my full payment would be made by them. Thus I should be able to clear my principle amount…" .*

15.5. It is also noted from the *Noticee's* replies to the SCN, as reproduced above that the Noticee's replies besides being prospective are in the nature of admission in so far as Noticee has inter alia himself submitted that *"… the shortfall amount is a meagre Rs. 13, 24,700/-, which I am in the process of depositing…"* and that *"… However, the shortfall of around Rs. 13 lakhs occurred on account of the fall in price of the shares…"* . In view thereof the allegation that by not fulfilling the requirement of depositing 25% of the consideration amount of the open offer in the Escrow Account, Noticee had violated Regulation 17(1) of SAST Regulations, 2011, stands established.

15.6. In view thereof, I hold that the Noticee, by not depositing in escrow account an amount equivalent to 25% or more of the total consideration payable to the shareholders, has violated Regulation 17(1) of SAST Regulations, 2011.

16. **It was inter alia alleged in the SCN that by not making payment to the tendering shareholders, Noticee had violated Regulation 18(10) of SAST Regulations, 2011.**

Regulation 18(10) of SAST Regulations, 2011 reads as under:

"…

18. (10) *The acquirer shall, within ten working days from the last date of the tendering period, complete all requirements under these regulations and other applicable law relating to the open offer including payment of consideration to the shareholders who have accepted the open offer.*

…"

16.1. In this regard, the following is noted from the material available on record:

16.1.1. It is noted from material available on record that SEBI had issued observations on the DLOF on June 18, 2019. In this regard, it is noted from the copy of Letter of Offer available on record that the offer open and close dates were July 05, 2019 and July 18, 2019 respectively. In this regard, it is noted from material available on record that as per SEBI Order WTM/GM/CFD/67/2019-20 dated January 23, 2020, 1,09,65,000 shares were tendered in the open offer being 100% acceptance and accordingly, total maximum consideration payable under the open offer amounted to Rs. 5,04,39,000 (i.e. 1,09,65,000 equity shares * Rs. 4.60).

16.1.2. In this regard, it is noted that in terms of Regulation 18(10) of SAST Regulations, 2011, the Noticee was required to make payment of consideration to the shareholders who had accepted the open offer within 10 working days from the last date of the tendering period i.e. latest by August 01, 2019.

16.2. In this regard, it is noted from material available on record that Noticee vide its letter dated July 30, 2019, bearing subject, '*Application for Extension of time for payment of consideration required to be paid for 1,09,65,000 Equity Shares tendered in Open Offer to the Equity Shareholders of Orient Tradelink Limited ("Target Company") by Mr. Aushim Khetarpal ("Acquirer")'*, addressed to SEBI inter alia stated that, ' *… with reference to the captioned subject. Kindly take note in terms of SEBI Order No. CO/ IVD/ 51/July/2013 dated July 23, 2013 and Securities Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (erstwhile SEBI (SAST) Regulations, 1997 …., I had announced the Open Offer …. of Orient Tradelink Limited …. at a Rs. 4.60/- per … Equity Shares as determined in accordance with Regulation 20 of the SEBI (SAST) Regulations, 1997 including applicable interest as determined by the Corporation Finance Department, SEBI. Kindly take note that the said Open Offer was duly commenced on July 05, 2019 and closed on July 18, 2019. As per Letter of Offer circulated to the equity shareholders … , I am required to pay Rs. 5,04,39,000/- (Rupees Five Crores Four lakhs Thirty Nine Thousand Only) … towards* *acquisition of said 1,09,65,000 Equity Shares from equity shareholders of the Target Company. … I had arranged part amount of said aggregate consideration and I am in process …. to gather the funds to be paid as consideration to the eligible shareholders who has tendered their shares in the said Open Offer ….. I am not able to arrange the remaining amount required to be paid on Thursday 01, August, 2019 i.e. Settlement Date. …… '* and inter alia sought extension of 90 days to enable him to arrange the funds. In this regard, from material available on record it is noted that the request of Noticee vide letter dated July 30, 2019 seeking extension was not acceded to by SEBI and the same was informed to the Noticee as well as to his Merchant Banker vide SEBI letter dated September 25, 2019. Further, vide SEBI letters dated September 25, 2019 and October 14, 2019, acquirer was advised to immediately make payment including interest to the tendering shareholders.

16.3. Noticee had inter alia also contented that, '*… As the records indicates, the amount has increased several times (from about Rs. 4 to Rs. 23 per share). This is an increase of almost 6 times which lead to my financial planning being disturbed. I had not factored such a substantial increase in price when I entered into consent terms. However, as a bona fide effort, I have not run away from my obligation and am willing to ensure compliance with the same.* …".

In this regard from material on record I note that SEBI had inter alia observed that the Noticee's Merchant Banker had miscalculated the price without taking into consideration parameters envisaged in Regulation 20 of SAST Regulations, 1997 to arrive at the offer price and that vide letter dated April 05, 2019, Noticee's Merchant Banker furnished the recalculated offer price in terms of Regulation 20 of SAST Regulations, 1997 and the offer price was accordingly revised to Rs. 23. Pursuant to revision in offer price to Rs. 23, the Noticee was required to bring in the difference amount.

Further in this regard, it is noted from material on record that in respect of the open offer by the Noticee, the manager to the offer vide email dated June 01, 2019 addressed to SEBI had inter alia stated that, ' … *it is hereby reiterated that the Offer Price of Rs. 23 is apt and in duly compliance of applicable law. ..*'. and that, '*we would like to apprise your good office that OTL has done the split of its equity shares …. . Accordingly one equity share of Rs. 10 each is split into 5 equity shares of Rs. 2 each ….',* and the revised offer price per equity share after taking into consideration the split of shares by OTL was indicated as Rs. 4.60. Further in this regard, it is noted that even as per the copy of letter of offer as available on record that under Para 5.1.2 on Page 21 of the letter of offer, the offer price of Rs. 4.60 (/Rs.23/- before split) per equity share was indicated. Accordingly, the contention of Noticee is devoid of merit and cannot be accepted.

16.4. Noticee vide letter January 17, 2022, as reply to the SCN inter alia stated, *"… I have not been able to ensure payments on account inter alia of the pandemic in India. The lockdown that happened immediately after the SEBI order since March 2020 has resulted in several industries being affected adversely. This includes the movies and television entertainment industry of which I am a part. I have had limited income which has not allowed me to comply with the obligations of ensuring payment. … Despite the same, I have deposited monies from my earnings and there is only one part remaining which I will ensure is deposited …"* .

Further, Noticee vide letter January 26, 2022, as reply to the SCN inter alia submitted, *"… I am actively trying my best to comply with my obligations and complete the open offer. I am positive that I will be able to fully complete the open offer and clear all the dues latest by January 2023. I reiterate that I have always intended and endeavoured to comply with the terms of the open offer, and the delay has been on account of genuine financial difficulties, which have been amplified on account of the pandemic … ".* Noticee vide letter dated March 10, 2023, as reply to the SCN inter alia submitted, *"…* in April end May beginning my full payment would be made …. Thus I should be able to clear my principle amount. … ". To summarise in brief the submissions of the Noticee primarily contend about covid pandemic, financial difficulties faced consequent to the covid pandemic and assurance that payment would be made.

In this regard, I note that the alleged violation is about Noticee having failed to *make* payment to the shareholders who tendered their shares in the open offer latest by August 01, 2019 i.e., date much prior to widespread outbreak and lockdown etc., owing to Covid-19 during March 2020. Considering that Noticee was required to make payment latest by August 01, 2019, contention of Noticee are devoid of merit and instead are in nature of admission.

16.5. In view thereof, the allegation that by not making payment to the tendering shareholders, within 10 working days from the last date of the tendering period i.e. latest by August 01, 2019, Noticee had violated Regulation 18 (10) of SAST Regulations, 2011, stands established. This is further evident from the fact that SEBI vide WTM Order No.: WTM/GM/CFD/67/2019-20 dated January 23, 2020 in the matter of Orient Tradelink Limited had inter alia directed Aushim Khetarpal to disgorge the balance Open Offer consideration amount of Rs. 4,90,39,000. The amount of Rs. 4,90,39,000 being balance open offer consideration after deducting Rs. 14,00,000/- from 5,04,39,000/-.

16.6. In view of thereof, I hold that the Noticee failed in making payment to the shareholders who had tendered their shares in the open offer relating to OTL. Therefore, I hold that Noticee has violated Regulation 18(10) of SAST Regulations, 2011.

17. **It was inter alia alleged in the SCN that the Noticee had failed to comply with directions of SEBI issued vide SEBI Order dated January 23, 2020.**

17.1. In this regard, following is noted from the material available on record:

17.1.1. SEBI vide WTM Order No.: WTM/GM/CFD/67/2019-20 dated January 23, 2020 (hereinafter also 'SEBI Order dated January 23, 2020' / 'SEBI Order' for brevity) passed directions against Noticee in the matter of OTL and inter-alia directed that**:**

> *"…*
> *b) Aushim Khetarpal shall disgorge the balance Open Offer consideration amount of ₹4,90,39,000 (Rupees Four Crore Ninety Lakhs and Thirty Nine Thousand) along with simple interest @ 10% from August 1, 2019 till date of actual payment. Aushim Khetarpal shall pay the said amount on or before January 31, 2020, either by way of demand draft drawn in favour of "Securities and Exchange Board of India", payable at Mumbai or by e-payment*to SEBI account as detailed below:*

17.1.2. In this regard, it is noted from material on record that the subject matter of instant Adjudication proceedings inter alia pertains to non-compliance of the direction in SEBI order dated January 23, 2020 relating to disgorgement of the balance Open Offer consideration. In view of the same, the contents of the SCN in so far as inter alia related to not providing of full inventory, was not within the scope of the subject matter of instant proceedings and accordingly this Order restricts to dealing with the alleged non-compliance of SEBI order dated January 23, 2020 relating to direction of disgorgement as stated in the SCN.

17.2. In this regard, the Noticee had inter alia submitted vide his letter dated January 17, 2022 that "…*I have not been able to ensure payments on account inter alia of the pandemic in India. The lockdown that happened immediately after the SEBI order since March 2020 has resulted in several industries being affected adversely…I have had limited income which has not allowed me to comply with the obligations of ensuring payment…" ,* and vide letter dated January 26, 2022 that "...*In relation to the payment of Rs. 4.90 crores to the shareholders, I intend to comply fully, so as not to prejudice the shareholders in any manner. I intend to complete the open offer and am making every effort to make financial* *arrangements for the same.* …", and vide email dated February 20, 2023 that "…*First payment will start from April onwards and hoping that there is no pandemic. We would be able to pay the complete amount by year end…",* and vide letter dated March 10, 2023 *"…Once their IPO is out in April end May beginning my full payment would be made by them. Thus I should be able to clear my principle amount…."*

17.3. In this regard, it is noted from the submission of the Noticee as replies to the SCN, as reproduced above, that the Noticee's submissions are in the nature of prospective /forthcoming statements and accordingly in nature of admission in so far as he has inter alia mentioned that *"…In relation to the payment of Rs. 4.90 crores to the shareholders, I intend to comply fully, so as not to prejudice the shareholders in any manner. I intend to complete the open offer and am making every effort to make financial arrangements for the same…".* It is noted that SEBI Order dated January 23, 2020 had directed to disgorge the balance open offer consideration on or before January 31, 2020 however the Noticee failed to do so. This is further evident from the fact that proceedings for recovery have already been initiated by SEBI against the Noticee vide Recovery Certificate No. 2884 dated March 06, 2020. Accordingly, the allegation that the Noticee failed to comply with directions of SEBI issued vide SEBI Order dated January 23, 2020 in the matter of Orient Tradelink Limited viz., ' … Aushim Khetarpal shall disgorge the balance Open Offer consideration amount of ₹4,90,39,000 (Rupees Four Crore Ninety Lakhs and Thirty Nine Thousand) along with simple interest @ 10% from August 1, 2019 till date of actual payment. Aushim Khetarpal shall pay the said amount on or before January 31, 2020 ..', stands established.

17.4. In view of thereof, I hold that the Noticee failed to comply with SEBI directions issued vide SEBI Order dated January 23, 2020.

Issue No. II: If yes, whether the failure on the part of the Noticee would attract monetary penalty under Sections 15HB and 15H(iv) of SEBI Act,1992?

18. It has been established in the preceding paragraphs that there was delay in compliance of the consent terms of the consent order dated July 23, 2013 and that the Noticee had violated provisions of Regulation 17(1) and 18(10) of SEBI (SAST) Regulations and that Noticee failed to comply with SEBI directions issued vide SEBI Order dated January 23, 2020, as already discussed and dealt with in the foregoing.

19. It is noted that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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......"*

20. Therefore, for the above violations, as brought out in the foregoing paragraphs, I find that Noticee is liable for monetary penalty under Sections 15HB and 15H(iv) of the SEBI Act 1992, which reads as under:

> *"…*
> ***Penalty for non-disclosure of acquisition of shares and takeovers.***
> ***15H.** If any person, who is required under this Act or any rules or regulations made thereunder, fails to,—*
> *…*
> *(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer,*
>
> *he shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.*
> *…*
> ***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.*
>
> *…"*

Issue No. III: If yes, what would be the monetary penalty that can be imposed upon the Noticee?

21. While determining the quantum of penalty, it is important to consider the factors as stipulated in Section 15J of the SEBI Act, which reads as under: -

SEBI Act

"…

Factors to be taken into account while adjudging quantum of penalty.

15J. *While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or 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.

Explanation.—For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

..."

In this regard, I find that the material available on record does not specifically quantify any disproportionate gain or unfair advantage or loss caused to investors or profit made by the Noticee as a result of the default nor does it specifically indicate that the violations committed by the Noticee are repetitive in nature. I note that SEBI vide Order No. WTM/GM/CFD/67/2019-20 dated January 23, 2020 has inter alia passed directions against the Noticee in the matter of Orient Tradelink Limited whereby Noticee had inter alia been directed to disgorge the balance Open Offer consideration amount of Rs. 4,90,39,000/- along with simple interest @ 10% from August 01, 2019 till date of actual payment and that the Noticee was directed to pay the said amount on or before January 31, 2020. In this regard, I also note that Attachment Proceedings No. 5755 & 5756 of 2020 vide Recovery Certificate No. 2884 dated March 06, 2020 have been initiated and Prohibitory Order No. Order No. RO/NRO/275/2022 dated September 01, 2022 has been issued in respect of Noticee regarding non-compliance of directions relating to disgorgement vide SEBI Order dated January 23, 2020 in the matter of Orient Tradelink Limited. I note that, as regards open offer by the Noticee, there was an overall delay of more than five years from the date of Consent Order dated July 23, 2013, and delay of more than six months from date of SEBI Letter dated October 06, 2017 as discussed and dealt with in the foregoing.

22. I also note that the Noticee has inter alia pleaded, "…*As you will appreciate, in the event that any further penalty as proposed by the SCN is levied upon me, it will result in additional financial burden upon me which in turn will result in me not being able to comply with my obligation of open offer . It is submitted humbly that no penalty ought to be imposed upon me…" ,* and that "… *I have not been able to ensure payments on account inter alia of the pandemic in India. The lockdown that happened immediately after the SEBI order since March 2020 has resulted in several industries being affected adversely…I have had limited income which has not allowed me to comply with the obligations of ensuring payment…",* and that *"… I have been consciously trying to repay the due amounts to the best of my ability, and that complete compliance of the same has been hindered due to the Covid '19 pandemic…"*

23. As regards the Noticee's contention that *"…I have been consciously trying to repay the due amounts to the best of my ability, and that complete compliance of the same has been hindered due to the Covid '19 pandemic..."* . In this regard, I am of the view that although the Noticee has contended so, however the fact is that the requirement to pay the consideration to the shareholders who tendered their shares in open offer arose well before and was due by August 01, 2019.

24. I also note that vide Adjudication Order dated January 27, 2022, in the matter of Orient Tradelink Limited, penalty of Rupees Two Lakhs was imposed upon the manager to the open offer by Noticee viz., Fast Track Finsec Pvt. Limited for its role in respect of violation relating to compliance of Regulation 17(1) of SEBI SAST Regulation, 2011 viz., shortfall in deposit of 25% of the open offer amount in escrow account, with regard to open offer by the Noticee.

25. I note that since the passing of the consent order in 2013, the Noticee had been defaulting in fulfilling his obligations and had been seeking extensions or citing

some or other reasons be it about making the open offer as prescribed or be it about completing the open offer in compliance of the legal provisions.

26. In this regard, it is noted from material available on record that multiple proceedings have been initiated in respect of Noticee with respect to non-compliance of the SEBI Order dated January 23, 2020 such as prosecution proceedings and recovery proceedings regarding disgorgement directions in the aforesaid SEBI Order dated January 23, 2020 as also pleaded by Noticee. However I cannot ignore the fact that the Noticee not only inter alia delayed in coming out with open offer and failed in making payment of consideration to the tendering shareholders but also failed to comply with the directions of SEBI Order dated January 23, 2020. Such instances of default, in my opinion, may have a bearing on the trust and confidence of investors in the securities market and may also pose serious risk to the orderly functioning of securities market. In view thereof, I am of the view that such violations on part of the Noticee needs to be dealt with imposition of suitable penalty.

E. ORDER

27. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticee and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, I hereby impose penalty of Rs. 25,00,000/- (Rs. Twenty Five Lakhs Only) upon the Noticee viz., Aushim Khetarpal under Section 15HB and 15H(iv) of the SEBI Act, 1992 as per details in table below for the aforementioned violations, as discussed in this order. In my view, the said penalty will be commensurate with the violations committed by the Noticee in this case.

Name of Noticee	Penalty Under Provisions	Penalty Amount (Rs.)
Aushim Khetarpal	Section 15HB of SEBI Act, 1992	15,00,000/- (Fifteen Lakhs only)
	Section 15H(iv) of SEBI Act, 1992	10,00,000/- (Ten Lakhs only)
TOTAL		25,00,000/- (Twenty Five Lakhs only)

28. 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

29. 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 Section28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

30. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

DATE: September 20, 2023
PLACE: MUMBAI

AMAR NAVLANI
ADJUDICATING OFFICER