BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/MC/RM/2021-22/14794]

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

In respect of –

1. **Fast Track Finsec Pvt. Ltd. (Regn. No. INM000012500) (PAN: AABCF4818P)** having address at B-502, B Wing, Statesman House 147, Barakhamba Road, New Delhi – 110001

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

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated adjudication proceedings under under Sections 15HB of SEBI Act,1992 (hereinafter referred to as, '**SEBI Act**') against Fast Track Finsec Pvt. Ltd. (**"Noticee")**, for alleged violation of Regulation 27(5) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **'SAST Regulations'**) in the matter of Orient Tradelink Ltd (OTL).

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer *vide* order dated March 5, 2021 to inquire into and adjudge under Section 15HB of SEBI Act, the aforesaid alleged violation against the Noticee. The appointment of the AO was communicated *vide* order dated March 12, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD-5/MC/RM/21171/2021 dated August 27, 2021 (hereinafter be referred to as "**SCN**") was served upon the Noticee under Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 read with Section 15I of the SEBI Act to show cause as to why an inquiry should not be held and penalty not be imposed against Noticees under Sections 15HB of SEBI Act upon Noticee for the aforesaid alleged violations.

4. The allegations levelled against the Noticees in the SCN are summarized as below:

5. Proceedings under Section 11B of SEBI Act were initiated against OTL 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 (**SAST Regulations, 1997**). While the proceedings were underway, the said entities including OTL 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 OTL and others.
    c. OTL cannot raise fresh capital for one year.
    d. open offer for shareholders of OTL by Mr. Aushim Khetarpal within a period of 6 months from the date of Consent Order.

6. The said consent order was issued without prejudice to the right to 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.

7. With respect to Mr. Aushhim Khetarpal making open offer for shareholders of OTL in compliance with the terms of the aforesaid consent order, the Noticee was the manager to the offer. Draft Letter of Offer (DLOF) for acquisition of 21,93,000 equity shares of OTL at a price of Rs. 3.45 per share was filed vide letter dated September 11, 2018, which was subsequently revised to acquisition of 21,93,000 equity shares at a price of Rs. 8.97 per share vide letter dated January 18, 2019 by Noticee. Pursuant to split in shares of OTL from face value of Rs.10 to face value of Rs.2, the Letter of Offer for acquisition of 1,09,65,000 equity shares at a price of Rs. 4.60 per share was filed by Noticee in terms of SAST Regulations, 1997 with SEBI on July 30, 2019.

8. It was disclosed in the Letter of Offer (LOF) that 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 amounts to Rs. 5,04,39,000. 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. In this regard, Noticee submitted the following details to SEBI:

   a) Rs. 14 lakhs deposited in escrow account
      i. Rs. 2 lakhs on account opening.
      ii. Rs. 12 lakhs were pledged with Noticee 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 with Noticee on January 11, 2019). The said pledge was made for 3 months and the time period expired. Mr. Aushim Khetarpal (including relatives) again pledged 17,30,000 equity shares of OTL in tranches, during the period June 03, 2019 to July 04, 2019 with Noticee.

9. Draft Letter of Offer (DLOF) for acquisition of 21,93,000 equity shares at a price of Rs. 3.45 per share was filed with SEBI on September 11, 2018. It was observed that Noticee had miscalculated the price without taking into

consideration parameters envisaged in Regulation 20 of SAST Regulations, 1997 to arrive at the offer price. Vide letter dated April 5, 2019, Noticee 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 from Rs. 3.45 to Rs. 23, Mr. Aushim Khetarpal was required to bring in the difference amount.

10. Vide email dated April 11, 2019, Noticee informed that, on receipt of final observations, necessary action towards depositing the balance amount in terms of Regulation 17 of SAST Regulations, 2011 would be undertaken.

11. Noticee 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. Details of shares pledged in favour of Noticee in terms of Regulations 17(3) of SAST Regulations, 2011 is as given below:

(Table 1)

Value of Pledged Securities				
Date of Pledge	**Name**	**No. of Shares**	**Closing Market Price as on date of Pledge***	**Total Value (₹)**
3.06.2019	Aushim Khetarpal	7,00,000	7.64	53,48,000
25.06.2019	Aushim Khetarpal	1,50,000	6.34	9,51,000
27.06.2019	Radhika Khetarpal	1,45,000	5.96	8,64,200
27.06.2019	Mahesh Kumar Verma	1,00,000	5.96	5,96,000
27.06.2019	Mahesh Kumar Verma	1,00,000	5.96	5,96,000
2.07.2019	Aushim Khetarpal	30,000	5.13	1,53,900
2.07.2019	Aarti Khetarpal	1,50,000	5.13	7,69,500
2.07.2019	Rama Nath Pathak	3,00,000	5.13	15,39,000
2.07.2019	Yash Pal	25,000	5.13	1,28,250
4.07.2019	Radhika Khetarpal	30,000	4.64	1,39,200
Total		**17,30,000**		**1,10,85,050**
***Average Market Price taken as ₹5.67**				

12. As seen from the above, the price in the scrip of OTL was not Rs. 8 as claimed by the Noticee. Hence, Noticee was alleged to have misrepresented information while concealing the fact that adequate amount in terms of Regulation 17(1) of SAST Regulations, 2011 was not deposited in the escrow account by the acquirer.

13. While Mr. Aushim Khetarpal 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 Mr. Aushim Khetarpal as on date of opening of offer thereby resulting in shortfall of Rs. 13,24,700.

14. Following disclosures were made by the Noticee in DLOF and LOF:

<u>DLOF-</u>

"5.3.3. The Acquirer, the Manager to the Offer and ICICI Bank Limited, a banking company incorporated under the laws of India, have entered into an Escrow Agreement, for the purpose of this Offer. Pursuant to the Escrow Agreement and in compliance with the SEBI (SAST) Regulations, 2011, the Acquirer have opened an Escrow Account in the name and style as "OTL - Open Offer Escrow Account". The Acquirer has deposited Rs. 2,00,000/- (Rupees Two Lakh Only) and 3,00,000 Equity Shares of Orient Tradelink Limited with appropriate margin, with the Merchant Banker being more than 25% of the total consideration payable to the shareholders under the Offer. The Manager to the Offer is duly authorised by the Acquirer to realise the value of the Escrow Account and operate the Escrow Account in terms of the Regulations."

<u>LOF-</u>

"5.3.3. The Acquirer, the Manager to the Offer and ICICI Bank Limited, a banking company incorporated under the laws of India, have entered into an Escrow Agreement, for the purpose of this Offer. Pursuant to the Escrow Agreement and

in compliance with the SEBI (SAST) Regulations, 2011, the Acquirer have opened an Escrow Account in the name and style as "OTL - Open Offer Escrow Account". The Acquirer has maintained the said Escrow Account in pursuant to the provisions of Regulation 17 of the SEBI (SAST) Regulations, 2011. The Manager to the Offer is duly authorised by the Acquirer to realise the value of the Escrow Account and operate the Escrow Account in terms of the Regulations."

15. Thus, Noticee disclosed in DLOF that deposit in escrow account is more than 25% of the total consideration payable to the shareholders, while such a disclosure was not made in LOF, thus allegedly being aware that 25% of the amount had not been deposited in the escrow account and, therefore, modified the disclosure in the LOF to conceal the fact.

16. Noticee deposited an amount of Rs. 12,00,000 in the escrow account on August 01, 2019. The offer opened on July 05, 2019 and an amount equivalent to 25% of the consideration payable to shareholders was to be deposited in the escrow account before July 05, 2019. Noticee tried to cover up the non-compliance by submitting the escrow account statement as on August 01, 2019.

17. Therefore, in view of the above, since Noticee allegedly had **not exercised due diligence in ensuring that 25% of consideration amount of the open offer was deposited in Escrow Account at the time of making open offer, Noticee was alleged to have violated Regulation 27(5) of SAST Regulations, 2011.** The Regulation 27(5) of SAST Regulations, 2011 is reproduced below:

SEBI (SAST) Regulations, 2011

Obligations of the manager to the open offer.

27.(5) *The manager to the open offer shall exercise diligence, care and professional judgment to ensure compliance with these regulations.*

18. The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under Sections 15HB of SEBI Act.

19. In response to SCN dated August 27, 2021 Noticee filed its reply vide letter dated December 16, 2021. Opportunity of Hearing was provided to the Noticee through video conferencing on December 22, 2021 and Mr. Vikas Verma, Director (Authorised Representative) of the Noticee attended the hearing on December 22, 2021 and reiterated the submissions made by the Noticee in its reply dated December 16, 2021. The submissions of the Noticees are summarized as below:

20. Noticee was appointed as a manager to the Open Offer dated July 10, 2018 and on behalf of Mr. Aushim Khetarpal ("Acquirer"), it made Public Announcement dated January 04, 2019. The open offer was triggered on the basis of the consent order passed by SEBI on July 23, 2013 as per SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997;

21. 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. After appointment as a Manager to the Offer, on July 29, 2018 Noticee sent a request mail to SEBI for seeking clarification in terms of pricing of the Open Offer. As on September 24, 2018 after telephonic conversation with SEBI, Noticee was sent request mail for confirmation on the Offer Price as per consent order passed by the SEBI.

22. That as on September 27, 2018 Noticee received a mail from SEBI instructing to calculate the price as of the triggered date along with an interest of @10%. On October 13, 2018, Noticee filed a representation letter to SEBI on the basis of the discussion held between Mr. Aushim Khetarpal ("Acquirer") and SEBI officials for determining the price of INR 7.13/- per Equity Share.

23. Noticee sent email dated October 23, 2018, to SEBI 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. On October 23, 2018, Noticee received SEBI email 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).

24. After the confirmation of the price Noticee as Manager to offer initiated the process for finalization of PA, Opening of Escrow Account, Opening of Escrow Demat Account and Appointment of other intermediaries for the said Open Offer. Noticee as Manager to the Offer 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 SEBI on October 23, 2018.

25. Noticee 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 to make sure that Acquirer had a firm arrangement of funds to meet the payment obligations in the Open Offer.

26. After the PA, Noticee created an Escrow Account towards security for performance of obligation under these regulation and deposited the amount of INR 2,00,000/-(Rupees Two Lakh Only) in the Escrow Account in Cash and pledged the Equity Shares of OTL at the @23.55/- per Equity Share.

27. 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 than 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.

28. Noticee was also ensured through an undertaking by the Acquirer that acquirer will deposit the additional amount in Escrow account, if required in future. Noticee as the Manger to the offer submitted the Draft Letter of Offer to the SEBI dated January 18, 2019 for the issue of Observation Letter. Noticee as manger to the

open offer had issued the Due Diligence Certificate as on January 18, 2019 where Noticee complied with the provisions of the Regulations of the SAST Regulations at that time.

29. As on March 28, 2019 Noticee received a mail from SEBI for the discussion on the said open offer to visit the SEBI Office along with Acquirer on April 01, 2019 at 03:00 P.M. Further, meeting was postponed to April 03, 2019 at 11:00 A.M and decided the revised offer price from INR 8.97/- to INR 23/- per equity shares. After the revision of price Noticee 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). After many reminders and request, Acquirer pledged more Equity Shares on different dates and deposited INR 12,00,000/- (Rupees Twelve Lakh Only) in cash in the Escrow Account and rest is pending till date.

30. This was first Open Offer of Noticee and Noticee, as a manger to the offer citing the complexity of the case wanted to withdraw the offer but it was informed by SEBI that it does not have option to withdraw as per the SEBI (SAST) Regulations and guidelines. In keeping the view of same, Noticee would like to inform that it has exercised due diligence, care and professional judgement in respect to the Net Worth of Acquirer and in ensuring the 25% of consideration amount of the open offer was deposited in the Escrow Account at the time of making Public Announcement.

31. Accordingly, on creating and maintaining of Escrow Account as per Regulations, requisite compliances were taken care of and not found any non-compliances. Due to impact of revised offer price which has been decided after filing of DLOF, Noticee as a manager to the offer, neither had an option to withdraw the open offer nor maintain the additional fund requirement of Escrow amount since additional fund was not deposited by Acquirer as per his commitment.

32. As the inquiry in the matter has been completed, I now proceed to decide the case on the basis of SCN issued, replies made by the Noticees and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

33. The issues that arise for consideration in the instant matter are:

Issue No. I Whether Noticee is in violation of Regulation 27(5) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011?

Issue No. II If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HB of SEBI Act,1992? And

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

Issue No. I **Whether Noticee is in violation of Regulation 27(5) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011?**

34. The Noticee has contended that in the consent order dated July 23, 2013, no direction was provided in respect to calculation of Offer Price on which the Open Offer was required to be offered by the acquirer. In this regard I note that Regulation 20 of SEBI (SAST) Regulations, 1997 clearly specify the parameters for determining the offer price in case of open offer, which were to be referred by the Noticee while determining the offer price. Hence the contention of lack of guidance in the consent order for offer price is not acceptable.

35. The Noticee has contended that it has exercised due diligence, care and professional judgement in ensuring the 25% of consideration amount of the open

offer was deposited in the Escrow Account at the time of making Public Announcement. In this regard I note that, In terms of Regulation 17(1) of SAST Regulations, not later than 2 days from the date of the detailed public statement of the open offer for acquiring shares, the acquirer Mr. Aushim Khetarpal was required to create an escrow account towards security for performance of his obligations under these regulations, and deposit in escrow account 25% of the maximum consideration payable by him to acquire equity shares at the offer price.

36. The clause 17(3) of the SAST Regulations stipulates that the escrow account referred may be in the form of cash deposited with any Scehduled Commercial Bank (SCB), Bank Guarantee issued in favour of Manager of the offer by any SCB, deposit of frequently traded and freely transferable equity shares or other freely transferable securities with appropriate margin (securities shall conform to the requirements set out in sub-regulation (2) of regulation 9 of SAST Regulations).

37. As per the DLOF dated January 18, 2019 submitted by Noticee the acquirer offered to acquire 21,93,000 shares of OTL at a price of Rs.8.97 per equity share. Accordingly, 25% of the total consideration of Rs. 1,96,71,210 which amounts to Rs. 49,17,802.50 was required to be desposited in the escrow account towards security of acquirer's performance. There were Rs.2 Lakhs in escrow bank account and 3,00,000 equity shares of OTL pledged with Noticee. The closing price of the OTL equity share as on January 11, 2019 (date of pledge) was Rs. 23.55. Accordingly the value with in the escrow accounts was Rs.72,65,000 [Rs. 2 lakh in bank account + Rs. 70,65,000 the value share pledged (3,00,000 shares X Rs. 23.55 closing price)]. I note that this was in compliance of Reg. 17(1) of SAST Regulations.

38. I also note that the Noticee, in the DLOF, while giving disclosure in regard to Reg. 17(1) of SAST, specifically detailed that there were Rs. 2,00,000 in escrow bank account and 3,00,000 equity shares of OTL pledged with Noticee, which were

cumulatively more than 25% consideration payable as per terms of the regulations.

39. Further, I note that susbsequent to the filing of DLOF with SEBI for issuance of observation of the letter, there were discussions of Acquirer and Noticee with concerned department of SEBI in regard to the wrong calculation of the offer price. Since, the offer price had been wrongly calculated by the Merchant Banker without taking into consideration parameters envisaged in Regulation 20 of SAST Regulations, 1997 to arrive at the offer price, the same was subsequently revised to Rs. 23. Further, OTL had undertaken a stock split of its equity shares vide a Resolution passed by its hareholders on April 6, 2019 and accordingly, the number of equity shares and offer price was revised as under:

	As per draft letter of offer	***Post stock split***
No. of equity shares	*21,93,000*	*1,09,65,000*
Offer price per equity share	*Rs. 23*	*Rs. 4.60*
Maximum consideration under the open offer	*Rs. 5,04,39,000*	
25% of the Maximum consideration	*Rs. 1,26,09,750*	

40. Accordingly, in order to meet requirement of Reg 17(1) of SAST regulations, and the fact that the aforesaid pledge of 3,00,000 equity shares to Noticee by acquirer was made for 3 months and upon its expiry, Acquirer (including its relatives) pledged 17,30,000 equity shares of OTL in tranches, during the period June 03, 2019 to July 04, 2019 with Noticee.

41. In this regard, I note that the Noticee while assessing if Reg 17(1) of SAST Regulations has been complied by the Acquirer 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, for lliquid stocks, the the closing market price reflects the appropriate market value of shares being pledged, which should have been considered by Noticee while calculating the value of securities in

escrow account. Accordingly, on basis of the closing price of OTL on the dates of pledge, the aggregate value of pledged securities was Rs. 1,10,85,050.

42. The offer opened on July 05, 2019 and an amount equivalent to 25% of the consideration payable to shareholders was to be deposited in the escrow account before July 05, 2019. The acquirer was required to deposit Rs. 1,26,09,750 towards fulfilling the obligations under Regulation 17(1) of SAST, 2011 before July 05, 2019, whereas there were equity shares worth Rs.1,10,85,050 pledged without any margin and a cash deposit of Rs. 2,00,000 in the escrow resulting in shortfall of Rs. 13,24,700 and consequent non-compliance of Regulation 17(1) of SAST, 2011.

43. I note that this non-compliance by the acquirer was not disclosed by the Noticee in the LOF. Further in the Notice of the LOF, the Noticee did not give details of the money and the securities pledged and deposited in escrow in the way it specifically detailed in DLOF, but stated merely that *"The Acquirer has maintained the said Escrow Account in pursuant to the provisions of Regulation 17 of the SEBI (SAST) Regulations, 2011. The Manager to the Offer is duly authorised by the Acquirer to realise the value of the Escrow Account and operate the Escrow Account in terms of the Regulations."*

44. I further note that an amount of Rs.12 lakhs was transferred to escrow account on August 01, 2019, and the Noticee submitted the escrow account statement as on August 01, 2019. The exclusion of details of the money and securities in escrow account, and submission of escrow account statement as on August 01, 2019 rather than as on date of open offer, indicates that the Noticee was aware of the non-compliance and modified the disclosure to avoid stating the non-compliance.

45. In view of the above, since Noticee concealed the non-compliance of Reg 17(1) of SAST Regulations by Acquirer, and vaguely stated in Notice of LOF that the acquirer *maintained the said Escrow Account in pursuant to the provisions of*

Regulation 17 of the SEBI (SAST) Regulations, 2011. I find that Noticee failed to exercise diligence, care and professional judgment to ensure compliance with SEBI (SAST) Regulations, 2011.

46. Hence, by failing to exercise due care in making proper disclosure regarding compliance of Reg 17(1) of SAST Regulations by acquirer, the Noticee violated provisions of Regulation 27(5) of SEBI (SAST) Regulations 2011.

Issue No. II **If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HB of SEBI Act,1992? And**

Issue No. III **If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?**

47. As it is established that the Noticee violated Regulation 27(5) of SEBI (SAST) Regulations as brought out in the foregoing paragraphs, the Noticee is liable for monetary penalty under Section 15HB of SEBI Act,1992 which states as follows:

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.*

48. While determining the quantum of penalty under Section 15HB of SEBI Act,1992, the following factors stipulated in Section 15J of the SEBI Act have to be given due regard:

SEBI Act, 1992

<u>Factors to be taken into account by the adjudicating officer</u>

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.

49. The material on record does not bring out the quantum of disproportionate gain made or loss caused to investors by the default Noticee or any repititve nature of violation. I further take note the submissions by the Noticee that this was the first open offer managed by Noticee, and it wanted to withdraw from the open offer given its complexity but it could not do so in view of the SEBI (SAST) Regulations, 2011. I note that while the responsibility of maintaining adequate amount in escrow account was of the acquirer, instead of being upfront regarding inability of the acquirer to provide 25% of the open offer amount in escrow, the Noticee vaguely stated that acquirer had maintained escrow account in pursuance to provisions of Regulation 17 of the SEBI (SAST) Regulations, 2011. Hence, I am of the view that a penalty of Rs. 2,00,000/- under Section 15HB of SEBI Act,1992 will be commensurate with the violation committed by the Noticee.

ORDER

50. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15-I of SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh only) under Section 15HB of SEBI Act,1992 on Fast Track Finsec Pvt. Ltd. (Noticee) for violation of of Regulation 27(5) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

51. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

ENFORCEMENT → Orders → Orders of AO → PAY NOW

52. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – V of SEBI. The Noticees shall provide the following details while forwarding DD/ payment information:
    a) Name and PAN of the entity (Noticee)
    b) Name of the case / matter
    c) Purpose of Payment – Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

53. Copy of this Adjudication Order is being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: January 27, 2022
PLACE: MUMBAI

MANINDER CHEEMA
ADJUDICATING OFFICER