BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AS/DP/2024-25/31205]

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

In respect of:

Nexpact Limited

PAN: AAFCN0208F

In the matter of examination of compliance with respect to Investment in Debt Instruments by Foreign Portfolio Investor

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BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI"), had carried out an inspection of the Custodian, Orbis Financial Corporation Limited (**OFCL**) for the Financial Year (FY) 2021-22 wherein it was observed that investments made by Foreign Portfolio Investor (hereinafter referred to as "**FPI**") i.e. Nexpact Limited (hereinafter referred to as "**Noticee"**) is not in accordance with the permissible limits (related to residual maturity) for investment in Debt Securities applicable for FPIs as on March 31, 2022.

2. SEBI carried out an examination for the period from April 01, 2018 until November 30, 2023 to assess the compliance of the Noticee with respect to the provisions the SEBI (Foreign Portfolio Investors) Regulations, 2019 (hereinafter referred to as "**FPI Regulations**"), Master circular for FPIs and DDPs dated December 19, 2022 read with RBI Circular ref no. RBI/2017-18/199 dated June 15, 2018.

3. Based on the examination, SEBI observed certain non compliances and initiated adjudication proceedings against the Noticee under Section 15HB of the SEBI Act for the

alleged violation of Regulation 20(5) of FPI Regulations and Clause 9 of Part C of the Master Circular issued to FPI and DDPs dated December 19, 2022 read with RBI Circular RBI/2017-18/199 dated June 15, 2018.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI appointed Shri Biju S as Adjudicating Officer, vide communique dated March 01, 2024, under Section 15-I (1) of the SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'Adjudication Rules'**) to inquire into and adjudge under the provisions of the Section 15HB of the SEBI Act read for the violations alleged to have been committed by the Noticee. Subsequent to his transfer, vide communique dated July 29, 2024, the undersigned has been appointed as Adjudicating Officer.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice dated June 12, 2024 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed on it under Section 15HB of the SEBI Act. The SCN, inter alia, alleged the following:

Holding investment in short term debt securities exceeding the 30% prescribed limit.

A. Short term Investment by Nexpact Limited (Noticee)

5.1 It is alleged that the percentage of short-term investment upon the total investment made by the FPI in G Secs has continuously exceeded the prescribed limit of 30% for a continuous period of 586 days as shown in below table:

Table 1: Summary of Investments in G secs by the FPI – NL / Noticee

Start Date	**End Date**	**Total Investments (Rs. in Lakhs)**	**Short Term Investments (Rs. in Lakhs)**	**% of Short Term**	**No of Days**
19-Dec-2021	21-Apr-2022	7,000	7,000	100%	586
22-Apr-2022	23-Aug-2022	10,000	7,000	70%	
24-Aug-2022	28-Nov-2022	11,000	7,000	64%	
29-Nov-2022	11-Dec-2022	11,000	11,000	100%	
12-Dec-2022	18-Dec-2022	12,000	11,000	92%	
19-Dec-2022	19-Dec-2022	13,000	11,000	85%	
20-Dec-2022	20-Dec-2022	7,000	4,000	57%	
21-Dec-2022	27-Dec-2022	8,000	4,000	50%	
28-Dec-2022	26-Jun-2023	10,000	4,000	40%	
27-Jun-2023	27-Jul-2023	10,000	7,000	70%	

5.2 From the above table, it is observed that on December 19, 2021 the percentage of short-term investments upon total investments made by the FPI is 100% and continued to exceed the prescribed limit of 30% till July 27, 2023. Hence, there was a continuous non-compliance for a period of 586 days, from December 19, 2021 to July 27, 2023.

5.3 Aforesaid observations were communicated to Noticee vide email dated December 8, 2023 advising Noticee to clarify as to how its debt investments are in compliance with the provisions of Regulation 20 of SEBI (FPI) Regulations, 2019, Clause 9 of Part C of the SEBI Master Circular read with RBI Circular dated June 15, 2018.

5.4 In response, Noticee, vide email dated December 18, 2023 acknowledged that it was in fact breached in the limits asper RBI Circular due to oversight at its side and, further submits that it is preparing to implement requisite checks & balances, to ensure such a breach does not recur in the future.

5.5 In view of the above, it is observed that the Noticee, by holding investments in short term debt securities exceeding the prescribed limit of 30% for 586 days. Hence, it is alleged that the Noticees has not-complied with Regulation 20(5) of SEBI (FPI) Regulations, 2019 and Clause 9 of Part C of the Master Circular issued to FPI and DDPs dated December 19, 2022 read with RBI Circular RBI/2017-18/199 dated June 15, 2018.

5.6 In view of the above, it is observed that the Noticee, by holding investments in short term debt securities exceeding the prescribed limit of 30%, for 562 days. Hence, it was alleged that the Noticee has not-complied with Regulation 20(5) of SEBI (FPI) Regulations, 2019 *and Clause 9 of Part C of the Master Circular issued to FPI and DDPs dated December 19, 2022 read with RBI Circular RBI/2017-18/199 dated June 15, 2018.*

6. Since, proof of service of the said SCN was not available on record, vide email dated September 02, 2024, the SCN was served on the Noticee through digitally signed email.

7. Vide email dated September 12, 2024, acknowledged the receipt of SCN and *inter-alia* submitted the following:

7.1 Vide email dated December 18, 2023, we informed SEBI that we indeed, exceeded the limits set by the RBI circular due to an unintentional error on our part, and we also stated that we are prepared to install all the required checks and balances and standard operating processes at our end to ensure that such a breach does not occur again.

7.2 Given the foregoing, we submit that we have now successfully implemented checks and balances and standard operating procedures on our end to ensure that any We will adhere to the relevant and applicable regulations at all points in time and will ensure that any breaches will not occur again. We also ensure that we are constantly updated on the appropriate rules and regulations governing Foreign Portfolio Investors' investment in debt securities, as well as all other applicable laws.

8. Vide Notice of hearing dated November 04, 2024, Noticee was granted an opportunity of being heard on November 19, 2024. Subsequently, vide email dated November 14, 2024, Noticee sought inspection of documents which was granted.

9. Subsequently vide hearing notice dated November 29, 2024, Noticee was granted final opportunity of hearing on December 10, 2024. Vide email dated December 09, 2024, Noticee requested rescheduling of the hearing which was acceded to and hearing was rescheduled on December 19, 2024.

10. The AR of the Noticee appeared for the hearing on December 19, 2024 and reiterated the submissions made vide reply dated Setpember 12, 2024. The AR sought one week's time one week's time to file additional reply which was granted.

11. Since, the additional reply was not received from the Noticee, vide email dated January 03, 2025, Noticee was reminded to file its additional submission on or before January 07, 2025.

12. Vide email dated January 06, 2025, Noticee forwarded letter dated December 27, 2024 and made following additional submissions:

    12.1 *It is submitted that the said limit of 30% was inadvertently breached by the Notice due to an oversight on its behalf. The said breach was done without any malafide intention. In fact it may also be taken into Consideration that the noticee at no point tried to hide, deny or justify the alleged breach as the same was not intentional and was merely a mistake/ oversight on its part.*

    12.2 *It is submitted that the Noticee has subsequently undertaken efforts to implement requisite checks and balances to ensure that such a breach does not ever occur in the future. The said breach was not intentional and totally inadvertent.*

    12.3 *Further, it may be noted that the investments were made with proprietary money and not money of any external investors and the Company, therefore, has not breached its fiduciary duty or responsibility to any outside investors.*

    12.4 It is also submitted *that the ON action note and the investigation report states that the Noticee only rectified the breach subsequent to the same being brought put to the Noticee by the Custodian or SEBI vide emails/letters dated September 16, 2023 and April 17, 2023.*

    12.5 *In this regard it is submitted that we do not appear to have any such emails/letters dated September 16, 2023 and April 17, 2023 from the Custodian or SEBI on our record.*

    12.6 *In the event your Honour wishes to hold this point against the Noticee, your Honour is kindly requested to provide us a copy of these emails/letters dated September 16, 2023 and April 17, 2023 and allow us an opportunity of cross examination of the Custodian.*

12.7 In the circumstances, your Honour is requested to kindly drop the present proceedings in view of the fact that the breach, if any was merely venial and technical done inadvertently due to a genuine oversight by the Noticee.

CONSIDERATION OF ISSUES AND EVIDENCE

13. I have carefully perused the allegations levelled against the Noticees in the SCN, their reply and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination: -

I. Whether Noticee has violated Regulation 20(5) of FPI Regulations and Clause 9 of Part C of the Master Circular issued to FPI and DDPs dated December 19, 2022 read with RBI Circular RBI/2017-18/199 dated June 15, 2018?

II. Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15HB of the SEBI Act?

III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

14. Before proceeding with the matter on merits, it would be relevant to reproduce the provisions of law:

"FPI Regulations

20. Investment restrictions.

…

(5) In respect of investments in the debt securities, the foreign portfolio investors shall also comply with terms, conditions or directions, specified or issued by the Board or Reserve Bank of India, from time to time, in addition to other conditions specified in these regulations.

Clause 9 of Part C of SEBI Master Circular for FPI and DDPs dated December 19, 2022

9. FPIs investments in debt securities

i. With respect to FPIs investments into government (Central and State) securities, exchange traded currency and interest rate derivatives, FPIs shall be guided by directions issued by RBI from time to time.

ii. In respect of investment conditions in the corporate debt securities, the FPI shall also comply with terms, conditions or directions, specified or issued by RBI, from time to time. No separate circular(s) shall be issued by SEBI. The intermediaries may take steps required to operationalize the RBI notifications."

15. Before proceeding to the merit of the case, it is pertinent to address the contention of the Noticee regarding non-receipt of documents.

16. Noticee has contended that Noticee does not have emails dated September 16, 2023 and April 17, 2023 from the Custodian or SEBI in its record. In this regard, I note that with the SCN dated June 12, 2024 in the matter, the examination report and its annexures were forwarded to the SCN. The same were served on the Noticee on September 02, 2024. One of the annexures namely annexure 9 was the emails dated September 16, 2023 and April 17, 2023 sent by the custodian to the Noticee, which I am of the opinion Noticee has failed to take cognizance of.

17. Further, with respect to the cross-examination of the Custodian, it is pertinent to mention here that allegation in the present case is not about when did the Noticee rectify the its error and brought down its investment in G-Secs. The allegation is that the Noticee breached the investment limit which is evidenced by the data shown in Table 1 and for which Noticee has admitted to and submitted that it had breached the investment limit due to oversight. Therefore, the question of cross-examination of the custodian does not arise in the matter. To arrive conclusion in the matter, the undersigned has only relied upon the submissions of the Noticee.

18. Now I will proceed on the merits of the case.

Issue No. 1. Whether Noticee has violated Regulation 20(5) of FPI Regulations and Clause 9 of Part C of the Master Circular issued to FPI and DDPs dated December 19, 2022 read with RBI Circular RBI/2017-18/199 dated June 15, 2018?

19. RBI vide its Circular RBI/2017-18/199 dated June 15, 2018 (updated up to February 26, 2021) has mandated that short terms investments shall not exceed 30% of total investment by an FPI in any category and therefore, were required to be closely monitored and limits adhered to.

20. As per the data in the SCN, it is observed that the percentage of short-term investment vis-a-vis the total investment made by Noticee in G secs' continuously exceeded the prescribed limit of 30% for a continuous period of 586 days as shown in below table:

Start Date	End Date	Total Investments (Rs. in Lakhs)	Short Term Investments (Rs. in Lakhs)	% of Short Term	No of Days
19-Dec-2021	21-Apr-2022	7,000	7,000	100%	586
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12-Dec-2022	18-Dec-2022	12,000	11,000	92%	
19-Dec-2022	19-Dec-2022	13,000	11,000	85%	
20-Dec-2022	20-Dec-2022	7,000	4,000	57%	
21-Dec-2022	27-Dec-2022	8,000	4,000	50%	
28-Dec-2022	26-Jun-2023	10,000	4,000	40%	
27-Jun-2023	27-Jul-2023	10,000	7,000	70%	

21. From the above table, it is observed that on December 19, 2021 the percentage of short-term investments upon total investments made by the FPI is 100% and continued to exceed the prescribed limit of 30% till July 27, 2023. Hence, there was a continuous non-compliance for a period of 586 days, from December 19, 2021 to July 27, 2023.

22. Thus, Noticee was holding investments in short term debt securities exceeding the prescribed limit of 30%, for 586 days which is for almost 2 years. Noticee has not denied the allegation and submitted that the said breach was due to oversight and was immediately rectified.

23. In view of the admission of the Noticee, I am of the opinion that the violation of Regulation 20(5) of FPI Regulations and Clause 9 of Part C of the Master Circular

issued to FPI and DDPs dated December 19, 2022 read with RBI Circular RBI/2017-18/199 dated June 15, 2018 by the Noticee is established.

24. Noticee has submitted that it was a minor technical error on part of the Noticee which was immediately rectified. I note that Regulation 20 of FPI Regulations clearly puts onus on the FPI to adhere with norms with respect to debt securities of other instrument as permitted by the RBI. The Noticee, being a registered intermediary was required to comply with the provisions of FPI Regulations.

Issue II: Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15HB of the SEBI Act?

25. It has been established in the aforesaid paragraphs that Noticee has violated the provisions of law as alleged in the SCN and therefore Noticee is liable for payment of monetary penalty in terms of Section 15HB of SEBI Act.

26. In this context, I would also like to refer to the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361} wherein Hon'ble Supreme Court of India held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not*.''

27. The text of Section 15HB of the SEBI Act is reproduced below:

"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 III: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

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

"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."

29. The material available on record has neither quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee nor the amount of loss, if any, caused to an investor as a result of the default of the Noticee. As regard the repetitive nature of the default, the default by the Noticee is repetitive in nature as the violations of not adhering to the permissible limit of investment went on for almost 2 years.

30. However, Noticee was under a statutory obligation to abide by the provisions of the FPI Regulations, which it has failed to do. The non-compliances on the part of the

Noticee as brought out in the preceding paragraphs clearly show that it had failed in its regulatory compliances and need to be adequately penalized.

ORDER

31. Having considered all the facts and circumstances of the case, the material available on record including submissions of the Noticees as well as the factors mentioned in section 15J of SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules 1995, I hereby impose penalty of Rs. 20,00,000/- (Rupees Twenty Lakh Only) on the Noticee. I am of the view that the said penalty is commensurate with the violations committed by Noticee.

32. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order 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.

33. In the event of failure to pay the said amount of penalty by Noticee within 45 days of the receipt of this Order, recovery proceedings may be initiated against Noticee under Section 28A 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.

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

ASHA SHETTY

Digitally signed by ASHA SHETTY
Date: 2025.02.24 16:24:32 +05'30'

Date : February 24, 2025 **Asha Shetty**
Place : Mumbai **Adjudicating Officer**