

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

Under Sections 11B(1), 11(4) and 11B of Securities and Exchange Board of India Act, 1992

Noticee Name	SEBI Reg. Number
Fast Track Finsec Private Limited	INM000012500

In the matter of Fast Track Finsec Private Limited

1. The present proceeding emanates from an interim order cum show cause notice dated January 24, 2022 (hereinafter referred to as “**interim order**”/ “**SCN**”) issued against Fast Track Finsec Private Limited (hereinafter referred to as “**FTFPL**”/ “**Noticee**”), a Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) registered Category-I Merchant Banker having its registered office at B-502, Statesman House, 148, Barakhambha Road, New Delhi-110001. The interim order issued the following directions:
 - “a. FTFPL shall not take up any new assignment relating to merchant banking activities in the securities market, till further orders from SEBI.
 - b. FTFPL shall, in case of pending assignments where it is already engaged as a merchant banker prior to issuance of the order, disclose the direction specified at a. above, in the offer documents pertaining to the issues concerning such assignments. FTFPL shall provide to SEBI details of all such assignments, within 7 days of receipt of this order.”

2. The interim order cum SCN also called upon FTFPL to show cause as to why suitable directions/prohibitions, including restraining the Noticee from acting as a Merchant Banker for an appropriate period or any other direction as deemed fit, under Sections 11, 11(4), and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) should not be issued against it.
3. The SCN stated the following facts/ background of the case:
 - 3.1. FTFPL acted as the manager to the open offer made, in terms of Regulations 3 and 4 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the “**Takeover Regulations**”), by the respective acquirers in the two Target Companies, viz. Sea Gold Infrastructures Limited (hereinafter referred to as “**Sea Gold**”) and AKM Lace and Embrotex Limited (hereinafter referred to as “**AKM Lace**”).
 - 3.2. During the course of processing of the draft letter of offers filed by FTFPL on behalf of the respective acquirers in the aforementioned Target Companies, it was observed that there was a delay in making the Public Announcement (hereinafter referred to as “**PA**”) in case of these open offers, on behalf of Mr. Amar Jitendra Patwa. Mrs. Sangita Amar Patwa and Ms. Shah Shalvi Rajan (acquirers in AKM Lace) and Mr. Satnam Singh , Ms. Harjot Kaur Chawla and Ms. Parminder Kaur (acquirers in Sea Gold), respectively, and the PA has been submitted to the Stock Exchange with delay, as detailed below:

Table 1				
Open Offer		Agreement Date/Board Approval of Preferential Issue Date	Date of submission of PA to Stock Exchange(s)	Delay in making PA
Sea Infrastructures Limited	Gold	September 07, 2021	September 08, 2021	1 day

AKM Lace and Embrotex Limited	September 06, 2021	September 07, 2021	1 day
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- 3.3. FTFPL by not adhering to the timelines prescribed under the Takeover Regulations has failed to discharge its obligations as the manager to the open offer and has not complied with the mandate under Regulation 27(5) of the Takeover Regulations. The actions of the Noticee, are also not in compliance with the code of conduct specified in Schedule III of the SEBI (Merchant Bankers) Regulations, 1992 (hereinafter referred to as “**Merchant Bankers Regulations**”) read with Regulation 13 of Merchant Bankers Regulations.
- 3.4. Certain prior violations found in respect of FTFPL had also been observed, viz.:
- 3.5. It was noted from the records that FTFPL had earlier acted as the manager to the open offer made by the respective acquirers in these Target Companies viz; Spaceage Products Limited (hereinafter referred to as “**Spaceage**”), Specular Marketing and Finance Limited (hereinafter referred to as “**Specular**”) and Oracle Credit Limited (hereinafter referred to as “**Oracle**”), and the following contravention had been observed while processing the draft letter of offers:

Table 2	
Non-compliance	Target Company
Delay in making PA	Spaceage
	Specular
	Oracle
Incorrect calculation of Offer Size	Spaceage
Incorrect factual representation in the Draft Offer Document	Spaceage
	Specular

- 3.6. It was also noted that a complaint had been received alleging diversion/siphoning of funds from the proceeds of the IPO of

Trekkingtoes.com, which was managed by the FTFPL. It is noted that the complaint was filed by one Mr. Sahil Agarwal, who was one of the directors of Trekkingtoes.com. It was alleged in the complaint, that a portion of the siphoned off funds were utilised for meeting the expenses incurred in obtaining a Category-I Merchant Banking license by GYR Capital Advisors Private Limited (GYR) alleged to be a related entity of FTFPL. In the preliminary examination conducted by SEBI on the allegations made in the complaint, it had emerged that the FTFPL and GYR, at the relevant time, had a common director. It was further, *prima facie*, observed that the IPO proceeds were transferred to four companies, which appeared to be shell companies, at the instance of the Noticee. This apparent collusion/involvement of the Noticee in the siphoning off of IPO proceeds was observed to be an allegation which entails serious repercussions. The involvement of the manager to the issue in such activities would erode the trust of the investors in the sanctity of the IPO process and would have detrimental impact on investor confidence and result in decreased participation in future issues.

- 3.7. It was also observed that there has been repeated lapses on the part of the Noticee in ensuring compliance with the provisions of the Takeover Regulations, which were detrimental to the interests of the investors. Further, as noted above, a serious complaint had also been received alleging that the Noticee had been complicit in the siphoning off of funds from the proceeds of an IPO managed by it which on preliminary examination, had been found to be *prima facie* a true accusation against the Noticee.
4. In view of the aforesaid, SCN alleged that the Noticee has violated Regulations 27(2) and (5) of the Takeover Regulations read with Regulation 13 and Code of Conduct specified under Schedule III of the Merchant Banker Regulations.

5. In response to the SCN, the Noticee vide his emails dated January 31, 2022 and February 11, 2022 sought copies of certain documents. Documents (copy of compliant related to trekkingtoes.com) were provided to the Noticee vide email dated February 15, 2022. Thereafter, the Noticee vide email dated February 25, 2022 sought physical inspection of documents. The same was provided to it and the Authorized Representatives (hereinafter referred to as “ARs”) of the Noticee carried out an inspection of documents on March 02, 2022 and the following documents were inspected by the AR of the Noticee:

S.No	Particulars of the documents provided for inspection.	Whether copy provided to the Authorized representative during Inspection of Documents
1	Public Announcement for Oracle Credit Limited and BSE Disseminated Date: 08/03/2021	Yes
2	Public Announcement for Specular Marketing & Finance Limited and BSE Disseminated Date: 09/04/2021	Yes
3	Public Announcement for Spaceage Products Limited and BSE Disseminated Date: 11/03/2021	Yes
4	Public Announcement for AKM Lace and Embrotex Limited and BSE Disseminated Date: 07/09/2021	Yes
5	Public Announcement for Sea Gold Infrastructure Limited and BSE Disseminated Date: 08/09/2021	Yes
6	Draft Letter of Offer in the matter of Spaceage Products Limited	Yes
7	E-mail from Vikas verma dated 30/09/2021 with respect to the delays in the matter.	Yes
8	E-mail from Hippocabs (Sahil Agarwal) dated 18/08/2021 Guidance required in the matter of Appointment of Statutory Auditor and Independent Director and along with (Annexure – 1 to Annexure – 5)	Yes
9	Complainant from Trekkingtoes.com Limited	Yes
10	E-mail from compliance officer hippocabs to SEBI dated 13/08/2021 - seeking investigation how promoters arranged the amount of INR 5 crores to register the company as Cat-1 merchant banker and fraud by the promoters	Yes
11	E-mail to SEBI dated 12/08/2021 regarding submission of documents	Yes

6. A reply was received from the Noticee dated March 05, 2022. The file was placed before me on March 17, 2022 for granting a date of hearing and a hearing was granted to the Noticee on June 13, 2022. On June 13, 2022, the AR of the Noticee appeared on behalf of the Noticee and sought an adjournment of the hearing, stating that the Noticee wished to make further submissions on certain

issues and the hearing be conducted after filing of such submissions which are essential to his defense. The next date of hearing was fixed for August 23, 2022. The Noticee submitted further reply dated June 28, 2022. On August 23, 2022, the Authorized Representative (hereinafter referred to as “AR”) appeared for the hearing and made submissions. The Noticee was granted time of seven days to file written submissions and the hearing was concluded. Pursuant to hearing, Noticee also filed written submissions dated August 27, 2022.

7. Vide the replies dated March 05, 2022 and June 28, 2022, during the personal hearing and in written submissions dated August 27, 2022, the Noticee has submitted as follows:

- i. Prior to the said interim order, the Noticee has also been issued Show Cause Notices on the following dates:

SCN Date	Alleged violation	Date of order	Penalty
July 19, 2021	Regulation 27(5) of SEBI Takeover Regulations, 2011 in the matter of Oracle Credit Limited	No Order Till date	N.A.
August 27, 2021	Regulation 27(5) of SEBI Takeover Regulations, 2011 in the matter of M/s Orient Tradelink Ltd.	January 27, 2022	Rs. 2,00,000/-
August 31, 2021	Regulation 7(1), 17(1) & 27(5) of SEBI Takeover Regulations, 2011 in the matter of Spaceage Products Limited and Specular Marketing and Finance limited.	March 28, 2022	Rs. 6,00,000/-

- ii. As far as SCN dated August 31, 2021 is concerned, the said SCN was issued for non-compliances in the open offer of Spaceage Products Limited and Specular Marketing and Finance Limited and the Adjudicating Officer has passed an order on March 28, 2022 imposing a monetary penalty of Rs. 6,00,000/-. Same non-compliances have been considered in the interim order and the Noticee has been alleged to have violated Code of Conduct specified in Schedule III of the Merchant

Bankers Regulations. This is an act of double jeopardy which is against the principles of natural justice, equity and fair play and also barred by the principle of “*res judicata*”.

- iii. As far the SCN dated August 27, 2021 is concerned, the Adjudicating Officer has passed an order dated January 27, 2022 wherein a monetary penalty of Rs 2,00,000/- has already been levied. However, same violations in same case have been considered and highlighted in the said interim order just to prejudice the mind of Whole Time Member.
- iv. Similarly, in the case of Oracle Credit Limited, a SCN No. SEBI/EAD/PB/PP/OW/15746/2021 dated July 19, 2021 has also been issued for which the proceedings are under progress, however, the non-compliances have been highlighted in the said interim order also. This is an act of double jeopardy which is against the principles of natural justice, equity and fair play and also barred by principle of “*res judicata*”.
- v. With regard to delay in making PA, its understanding was that the PA was to be published in the newspaper only after the stock exchanges are intimated about the PA. Further, at the time of signing of Share Purchase Agreement (hereinafter referred to as “**SPA**”) the Noticee gave PA to the Newspaper Agency for the publication and after publishing, it had intimidated SEBI as well as Stock Exchanges on the same day of advertisement which caused delay of one day.
- vi. It is submitted that in the case of Sea Gold Infrastructure Limited, the Noticee gave the announcement in newspapers on September 7, 2021. This was published on September 8, 2021. The Noticee thereafter provided the newspaper cutting to the stock exchange, SEBI and the Target Company on the same day when the publication was done, i.e. September 8, 2021. There is therefore no delay or lapse on part of the Noticee. Further, it is pertinent to note that there was no change in the price at the time of agreeing to acquire shares and at the time when the PA was made. It is submitted that in the case of AKM Lase, the Noticee gave the announcement in the newspaper as on September 6, 2021, which was published on September 7, 2021, and thereafter provided the

newspaper cutting to the stock exchange, SEBI and Target Company on the same day when the publication was done i.e. September 7, 2021. Further, it is pertinent to note that there was no change in the price at the time of agreeing to acquire shares and at the time when the PA was made. The trading was initiated only after 2 days of PA.

- vii. The Noticee's above understanding was never objected by SEBI or BSE and hence, it kept issuing open offers. Therefore, now to allege violation at belated stage is not in consonance with the principles of natural justice, and is unjustified and harsh.
- viii. For the open offers of Orient Trade link Limited, the Adjudication proceedings have been completed, therefore, to bring out non compliances again in the interim order is unjust and uncalled for.
- ix. At the time of open offers, the country was going through the Covid-19 pandemic, however the Noticee was trying to meet all the SEBI deadlines. Considering the above reasons, the delay in making public announcement may be condoned, interim order may be lifted and the Noticee may be allowed to accept new assignments. No evidence has been adduced in the interim order to show that the information was misused by the employees of the Noticee to warrant any punitive directions and more especially passing of any grave direction not to accept new clients pending investigation.
- x. The calculation of size of open offer on the basis of pre-preferential issue paid up capital was never objected by SEBI or BSE and the said offer document was cleared by SEBI itself. In the observation letter in Spaceage Products Limited no observation has been given regarding incorrect calculation of offer size.
- xi. In the case of Spaceage, the acquirer came out with an open offer of 26% of 31,24,700 equity shares of Spaceage which worked out to 8,12,422 equity shares. The open offer got triggered when the target company and acquirer entered into the share swap agreement, wherein the target company agreed to issue and allot 6,01,36,426 equity shares to Acquirers and PACs by way of preferential allotment. The shares

swap agreement was entered on March 10, 2021. The expanded share capital was 7,07,61,126 equity shares. As alleged, the open offer was to be given 26% of 7,07,61,126 equity shares which works out to 1,83,97,892 equity shares. Instead of 1,83,97,892 equity shares, the open offer was given for 8,12,422 equity shares with the presumption that on the date of trigger the equity share capital is 31,24,700 equity shares and the shares allotted in preferential allotment are subject to approval of the shareholders. Therefore, the said shares allotted in the preferential allotment were not considered part of the expanded share capital. The offer document was filed with SEBI and full disclosures were given. SEBI cleared the offer document and issued the observation letter considering our view as correct interpretation of the Takeover Regulations. None of the shareholders tendered shares in open offer. Therefore, it can be reasonably presumed that the shareholders showed confidence in new acquirers.

- xii. Regarding the allegation of siphoning of funds, it is submitted that one, Mr. Abhishek Sharma, the former director of FTFPL who was supervising the IPOs, was also a good friend of Mr. Sahil Agrawal, director of Trekkinto.com. The Noticee came to know later on that Mr. Abhishek Sharma used to borrow funds in the name of FTFPL and with the same funds he started his own Merchant Banking business by the name of GYR Capital Advisors Ltd. (hereinafter referred to as “GYR”). The promoters of trekkinto.com have already filed complaint which is pending before Magistrate. The Noticee had received instructions from the director of Trekkinto.com for transferring of funds and as per the instructions it had transferred the funds to the companies. The Noticee was not aware about the fact that the companies to whom funds were transferred were shell companies. The said allegation appears to be baseless as SEBI is also well aware that the Merchant Banker does not have any control over escrow account and all transfers done out of escrow account are done with the approval of company itself. Further it defies rationale that the Noticee would carry out a scheme to procure

another merchant banker license when the Noticee is itself registered as such.

- xiii. As per Page 54 of Prospectus of Trekkingtonoes.com, it has been stated under unnumbered Para 2 of the strategic investments that Trekkingtonoes.com plans to utilize in aggregate Rs. 3 Crores as strategic investments in 13 Ways Media Technology Private Limited and Endure Quality Consultant Private Limited. The Prospectus on the same page also contains that Trekkingtonoes.com intends to utilize an amount of Rs. 40 Lakhs towards re-payment/ pre-payment of certain identified unsecured loans. Pursuant to receipt of instructions from Trekkingtonoes.com, the Noticee verified the same with the details mentioned in the Prospectus and accordingly the funds were transferred. Otherwise, the Noticee would have transferred the IPO funds to the current account of the Company. It is, therefore, submitted that the funds were transferred on the basis of instructions received from the Trekkingtonoes.com and disclosure in terms of Prospectus.
- xiv. The ex-parte order, while imposing debilitating restraints, does not specify that there is any investigation on-going in relation to the subject matter. There is no reference or mention of any investigation in the matter. It is submitted that the powers of imposing restraint under Sections 11 and 11B of the SEBI Act are available only pending an investigation or enquiry. The Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") has in *Bhoruka Financial Services Ltd. Vs. SEBI* (decided on May 10, 2006), directed that ex-parte directions can be issued only pending investigation by SEBI. Further, even the scope of the said pending investigation was described by the Hon'ble Appellate Tribunal. In the present case, absent any investigation pending in the matter, there ought to not have been an ex-parte order issued in the matter.
- xv. The ex-parte order is silent on the exact nature of urgency that necessitates passing of the ex-parte order and imposing drastic measures against the Noticee.

- xvi. The instances of lapse which is mentioned in the ex-parte order are per se not correct. Even if the same is held to be true, these are minor procedural lapses; it does not imply that the Noticee has violated the provisions of Regulations 27(2) and (5) of the Takeover Regulations and is not exercising diligence and care in conducting the open offer and thereby is not acting professionally as a merchant banker.
- xvii. The directions in the ex-parte order are disproportionate. “Proportionality” is a basic principle to adhere to while interpreting any provisions relating to punishment with serious consequences. Every sanction must be proportionate to the offence alleged as observed by the Hon'ble Appellate Tribunal in the case of GRD Securities Ltd. v. NSE. A similar observation was confirmed by the Hon'ble Supreme Court in the case of Prakash Gupta Vs. SEBI, wherein the court held that a judicial/quasi-judicial body plays an important role in setting limits through their adjudication and by prescribing punishment in proportion to how far away from these limits was the offence which was committed. However, in the present case, SEBI has imposed the harsh restraint for something as small as a day's delay in sending out PA mails, which is disproportionate and incorrect.
- xviii. As regards the allegation that in the ‘offer price justification’ for Spaceage, it was incorrectly mentioned that shares of the target company were frequently traded, it is submitted that in the para at Page 19 of the Letter of Offer, it has not been categorically stated that the shares are frequently traded. It has only been stated that the total turnover of the equity shares of the Target Company on BSE is 85.90% which is more than 10% of fully paid-up equity shares. Further at point 4 in the Table at Para 6.1.3, wherein it is stipulated that the volume weighted average market price of equity shares in case the said shares are frequently traded is to be taken, it has been stated ‘nil’ which establishes that there is no wrong disclosure and it has not been stated that the shares of the Target Company were frequently traded. Further, the open offer has been made at negotiated price as stipulated under

the Takeover Regulations and the investor interest has not been compromised. It is further submitted that no objection was raised by SEBI at that point in time.

- xix. As regards allegation of non- disclosure of financials for nine months' period ended December 31, 2020 in the open offer of Spaceage and Specular, the same was cleared by SEBI and SEBI did not raise any objections at the time of giving observations. The Noticee has also not received any complaint from any investor in this regard.
- xx. As regards non disclosures of financials of two PACs, it is submitted that the same was cleared by SEBI and SEBI did not raise any objections at the time of giving observations. The Noticee has also not received any complaint from any investor in this regard.
- xxi. After the interim order, pursuant to internal discussions and also discussions held with various experts, following corrective actions were taken by the Noticee:
 - The Noticee has expanded its team and included various CAs and CSs having expertise in IPO, FPO, ESOP Implementation, Valuation, Financial Advisory, Financial Modelling etc. to ramp up skills in Merchant Banking. One CA and three CSs have been appointed afresh who were having relevant experience in securities market so that this kind of mistakes are not repeated in future.
 - The Noticee has appointed an Independent Chartered Accountant Firm, having around 14 years expertise in financial due diligence and peer reviewed by the Institute of Chartered Accountants of India.
 - Considering the dynamic world that we are living in, SEBI frequently amends the Regulations as per the developments in the market. To enable the team working in FTFPL to be abreast of latest developments, the Noticee has started in house training/academic sessions (nearly once a month) wherein the latest amendments in SEBI Regulations are discussed and its repercussions on its working are considered.

Consideration of submissions and findings:

8. I have considered the SCN, replies received, submissions made by the Noticee during the personal hearing granted to it and written submissions filed by the Noticee after the hearing. The SCN alleges the violation of the following provisions of law by the Noticees:

Extracts of relevant provisions of Takeover Regulations:

“27.(1)...

(2) The manager to the open offer shall ensure that the contents of the public announcement, the detailed public statement and the letter of offer and the post-offer advertisement are true, fair and adequate in all material aspects, not misleading in any material particular, are based on reliable sources, state the source wherever necessary, and are in compliance with the requirements under these regulations.

...

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

Extracts of relevant provisions of Merchant Bankers Regulations:

“Code of Conduct.

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

SCHEDULE III

Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992

CODE OF CONDUCT FOR MERCHANT BANKERS

1. A merchant banker shall make all efforts to protect the interests of investors.

2. A merchant banker shall maintain high standards of integrity, dignity and fairness in the conduct of its business.

3. A merchant banker shall fulfil its obligations in a prompt, ethical, and professional manner.

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

5. ...

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

.....

20. A merchant banker shall not make untrue statement or suppress any material fact in any documents, reports or information furnished to the Board.”

9. The SCN alleges that with respect to the two open offers by the acquirers in the two Target Companies, i.e. Sea Gold and AKM Lace, where the Noticee was manager to open offer, the PA were made with a delay of one day. In its reply dated March 05, 2022, the Noticee has submitted that in the case of Sea Gold

Infrastructure Limited, the Noticee gave the announcement in newspapers on September 7, 2021 and this was published on September 8, 2021 and that the Noticee thereafter provided the newspaper cutting to the stock exchange, SEBI and the Target Company on the same day when the publication was done, i.e. September 8, 2021 and that there is no delay or lapse on part of the Noticee. In the same reply, the Noticee has submitted that in the case of AKM Lace, the Noticee gave the announcement in the newspaper on September 6, 2021, which was published on September 7, 2021, and thereafter, it provided the newspaper cutting to the stock exchange, SEBI and Target Company on the same day when the publication was done i.e. September 7, 2021.

10. Before going into the merits of the Noticee's reply it will be useful to note Regulation 3 of the Takeover Regulations which states as follows:

"Substantial acquisition of shares or voting rights.

3.(1) No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

(2) No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:
...."

11. Further, Regulation 12 of the Takeover Regulation mandates that prior to making a public announcement, the acquirer shall appoint a merchant banker registered with the Board, who is not an associate of the acquirer, as the manager to the open offer. And the public announcement of the open offer for acquiring shares shall be made by the acquirer through such manager to the open offer.

12. Regulation 13 of the Takeover Regulations lays down the timing of the PA and Regulation 14 of the Takeover Regulations provides for the publication of the PA. The relevant extract of Regulations 13 and 14 of the Takeover Regulations, is as under:

“Timing.

13.(1) The public announcement referred to in regulation 3 and regulation 4 shall be made in accordance with regulation 14 and regulation 15, on the date of agreeing to acquire shares or voting rights in, or control over the target company.

(2) Such public announcement, -

...

(g) pursuant to an acquirer acquiring shares or voting rights in, or control over the target company, under preferential issue, shall be made on the date on which the board of directors of the target company authorises such preferential issue.;

.....

(3) The public announcement made under regulation 6 shall be made on the same day as the date on which the acquirer takes the decision to voluntarily make a public announcement of an open offer for acquiring shares of the target company.

(4) Pursuant to the public announcement made under sub-regulation (1) and sub-regulation (3), a detailed public statement shall be published by the acquirer through the manager to the open offer in accordance with regulation 14 and regulation 15, not later than five working days of the public announcement:

Provided that the detailed public statement pursuant to a public announcement made under clause (e) of sub-regulation (2) shall be made not later than five working days of the completion of the primary acquisition of shares or voting rights in, or control over the company or entity holding shares or voting rights in, or control over the target company.

Explanation. —It is clarified that in the event the acquirer does not succeed in acquiring the ability to exercise or direct the exercise of voting rights in, or control over the target company, the acquirer shall not be required to make a detailed public statement of an open offer for acquiring shares under these regulations.”

“Publication.

14.(1) The public announcement shall be sent to all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public.

(2) A copy of the public announcement shall be sent to the Board and to the target company at its registered office within one working day of the date of the public announcement.

(3) The detailed public statement pursuant to the public announcement referred to in sub-regulation (4) of regulation 13 shall be published in all editions of any one English national daily with wide circulation, any one Hindi national daily with wide circulation, and any one regional language daily with wide circulation at the place where the registered office of the target company is situated and one regional language daily at the place of the stock exchange where the maximum volume of trading in the shares of the target company are recorded during the sixty trading days preceding the date of the public announcement.

(4) Simultaneously with publication of such detailed public statement in the newspapers, a copy of the same shall be sent to,

(i) the Board through the manager to the open offer,

- (ii) all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public,
- (iii) the target company at its registered office, and the target company shall forthwith circulate it to the members of its board.”

13. I note from the records that the requirement for making the open offer in the case of AKM Lace was triggered on account of an agreement dated September 06, 2021 (Share Purchase Agreement, hereinafter referred to as “SPA”) to acquire 38.85% of the total equity share capital of the Target Company by the acquirers i.e. Mr. Amar Jitendra Patwa, Mrs. Sangita Amar Patwa and Ms. Shah Shalvi Rajan. Regulation 13 (1) provides when a PA is to be made. Regulation 14 whose heading is “Publication” provides that PA shall be sent to stock exchange who shall forthwith disseminate such PA to the public. Thus, a combined reading of Regulations 13 and 14 indicates that for a PA to be in accordance with Takeover Regulations, it has to be made within the time prescribed in Regulation 13 and its making is complete when it is sent to the stock exchange as provided under Regulation 14(1). Admittedly, PA in the matter of AKM Lace was sent to the stock exchange on September 07, 2021 whereas agreement which triggered the open offer was dated September 06, 2021, therefore in terms of Regulation 13 making of PA should have been completed on September 06, 2021 by sending it to the stock exchange. The PA in the matter was sent to stock exchange on September 07, 2021, thus, the making of the PA was completed on September 07, 2021 as opposed to September 06, 2021. Therefore, there I find that there was a delay of one day in making of PA in the case of open offer of AKM Lace.
14. I note from the records that the requirement for making the open offer in the case of SEA Gold was triggered on account of agreement to acquire shares of the Target Company through SPA dated September 07, 2021 for 49.56% of the total equity share capital of the Target Company as well as proposed allotment to acquirers under preferential issue amounting to 12.80% of the total equity share capital of the Target Company. In this regard, Regulation 13(2A) of the Takeover Regulations states as follows:

“13.

(2A) Notwithstanding anything contained in sub-regulation (2), a public announcement referred to in regulation 3 and regulation 4 for a proposed acquisition of shares or voting rights in or control over the target company through a combination of, - (i) an agreement and any one or more modes of acquisition referred to in sub-regulation (2) of regulation 13, or (ii) any one or more modes of acquisition referred in clause (a) to (i) of sub-regulation (2) of regulation 13, shall be made on the date of first such acquisition, provided the acquirer discloses in the public announcement the details of the proposed subsequent acquisition.”

15. In the case of Sea Gold, the open offer was triggered by proposed acquisition of shares through a combination of SPA and preferential allotment. I note that in the case of Sea Gold the date of the SPA as well as the date of the Business Succession Agreement which authorized the allotment of preferential shares of the Target Company to the acquirers, was September 07, 2021. Therefore, in terms of Regulation 13 (2A) of the Takeover Regulations the PA had to be made on the date of SPA/date of authorization of preferential allotment, i.e. September 07, 2021 and as discussed in the above para 13 above, the PA would have only been complete once sent to the stock exchange. I note that the PA was completed by sending it to the stock exchange on September 08, 2021, i.e. with a delay of one day.
16. I note that the Noticee's explanation for the delay in making the PA to the stock exchange is that it sent the announcement for newspaper publication on the date of the acquisition and thereafter, the same was published on the next day on which the Noticee also informed the stock exchanges. I cannot accept this contention, since the mandatory PA has to be made to the stock exchange under Regulation 14(1) of the Takeover Regulations and within one working day sent to the Target Company and SEBI. This has to be followed by a detailed public statement under Regulation 14(3) of the Takeover Regulations which is required to be published in newspapers within 5 days of making the PA. The PA and the detailed public statement are two distinct events which are required to be performed separately as contemplated in Regulation 14 of the Takeover Regulations. PA precedes the detailed public statement. Therefore, the Noticee's submission that the detailed public statement was published in the newspapers the next day and thereafter, the information was sent to the stock exchanges,

cannot be accepted. I note that merchant bankers are appointed mandatorily as managers to the open offers since they are experts in the matter. Merchant banker charges fees for its expertise. In view of the same, the contention of the Noticee which does not distinguish between a PA and a detailed public statement, is liable to be rejected outright when it comes from a registered intermediary such as the Noticee. I agree with the observation in the SCN that the delay in making the public announcement even by one day cannot be seen as a technical breach. Given the above, I am of the view that FTFPL by not adhering to the timelines prescribed under the Takeover Regulations has failed to discharge its obligations as the manager to the open offer and has not complied with the mandate under Regulation 27(5) of the Takeover Regulations and Regulation 13 of the Merchant Bankers Regulations.

17. I note that with respect to the previous violations of the Noticee which have been noted in the SCN (Table 2 of the SCN), the Noticee has raised preliminary objection that different show cause notices have already been issued by the Adjudicating Officers for the same violations captured in the Table 2 of the interim order/ SCN and the Noticee has submitted that this is an act of double jeopardy which is against the principles of natural justice and also barred by the principle of “*res judicata*”.
18. In this regard, I note that the Table 2 of the SCN records the following previous violations of the Noticee:

Table 2	
Non-compliance	Target Company
Delay in making PA	Spaceage
	Specular
	Oracle
Incorrect calculation of Offer Size	Spaceage
Incorrect factual representation in the Draft Offer Document	Spaceage

	Specular
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19. The Noticee has stated in its replies that the following SCNs have already been issued in the following adjudication proceedings:

	SCN Date	Alleged violation	Date of order	Penalty
1.	July 19, 2021	Regulation 27(5) of SEBI Takeover Regulations, 2011 in the matter of Oracle	No Order Till date	N.A.
2.	August 27, 2021	Regulation 27(5) of SEBI Takeover Regulations, 2011 in the matter of M/s Orient Tradelink Ltd.	January 27, 2022	Rs. 2,00,000/-
3.	August 31, 2021	Regulation 7(1), 17(1) & 27(5) of SEBI Takeover Regulations, 2011 in the matter of Spaceage and Specular	March 28, 2022	Rs. 6,00,000/-

20. I note that the show cause notices mentioned at serial number 1, 2 and 3 in the table above have resulted in the adjudication orders dated August 11, 2022, January 27, 2022 and March 28, 2022, respectively.

21. With respect to the contention of the Noticee, I observe as follows:

- (i) Firstly, I note that none of the violations noted in Table 2 of the SCN (reproduced at para 16 above) were a subject matter of any of the orders mentioned by the Noticee in its reply, as detailed above. In this regard, I note as follows:
- (a) Adjudication Order dated March 28, 2022 is with regard to appointment of additional director during offer period and non-submission of amount in escrow, in the open offer of Spaceage while in the present proceedings, the allegations are related to delay in making PA, incorrect calculation of offer size and wrong disclosures in the offer document, in the open offer of Spaceage.

- (b) Adjudication Order dated March 28, 2022 is with regard to allegation of delay in creation of escrow account and wrong calculation of open offer size in the matter of Specular while the present proceedings are with regard to delay in making PA and wrong disclosures in the offer document, in the open offer of Specular.
 - (c) Adjudication Order dated August 11, 2022 is with respect to delay in deposit of 25% of total consideration payable by acquirer in escrow in the open offer of Oracle while the present proceedings are with respect to delay in making PA, in the open offer of Oracle.
 - (d) Adjudication Order dated January 27, 2022 is with respect to failure to deposit 25% of total consideration payable by acquirer in escrow in the open offer of Orient Tradelink Ltd. which is not the subject matter of the present proceedings at all.
- (ii) Secondly, I note that the orders referred to by the Noticee in its reply are adjudication orders for the purpose of imposition of monetary penalty by Adjudicating Officers which serve a different purpose than the present proceedings under Section 11B of the SEBI Act, 1992, i.e. proceedings under Section 11B of the SEBI Act, 1992 are for the purpose of issuing directions while adjudication proceedings are for imposition of monetary penalties.

In view of the above, I find that neither the principle of *res judicata* nor that of double jeopardy apply to the issues raised in Table 2 of the SCN. Therefore, I am unable to accept preliminary objections raised by the Noticee in respect of the allegations made in Table 2 of the SCN.

22. Coming to the merits of the allegations made in Table 2 of the SCN, I note that the requirement for making the open offer in the case of Spaceage and Specular was triggered on account of preferential allotment of shares to the acquirers

whereby the acquirers' holdings in the paid up equity shares of the respective companies got enhanced to 72.14% and 70.9%, respectively; whereas in the case of Oracle, it was triggered on account of direct acquisition through purchase (through SPA) of shares amounting to 31.16% of the total equity share capital of the Target Company. The PA in case of open offers getting triggered by acquisition of shares issued in preferential issues, has to be completed by sending it to the stock exchange on the date on which the board of directors of the Target Company authorizes such preferential issue and with respect to direct acquisition of shares by the acquirers, the PA has to be completed by sending it to the stock exchanges on the date the acquirer enters into the agreement to acquire the shares or voting rights in the Target Company. From the examination of draft letter of offers filed by FTFPL in the aforesaid open offers, and as stated in the SCN, I note that there was a delay in making the public announcement in the open offers of Spaceage, Oracle and Specular, the details of which are furnished in the table below:

Table 3			
Open Offer	Agreement Date/Board Approval of Preferential Issue Date	Date of submission of PA to Stock Exchange(s)	Delay in making PA
Spaceage Products Limited	March 10, 2021	March 11, 2021	1 day
Specular Marketing and Finance Limited	April 08, 2021	April 09, 2021	1 day
Oracle Credit Limited	March 06, 2021	March 08, 2021	2 days

23. I note that the Noticee has not provided any explanation of the delay in making the PA except for a general submission that SEBI never raised any issue regarding the alleged delay in making PA for the above-mentioned open offers which are being now raised in the SCN. In this regard, firstly, I note that action

for violations can be initiated only when it comes to the notice of the enforcement agency. Secondly, in issuing observations on draft letter of offer, SEBI only gives comments to make the disclosures made in the draft letter of offer, in accordance with the disclosures mandated under the Takeover Regulations. Observation letter issued by SEBI does not waive off the violation of Takeover Regulations or liability for any wrong disclosure made in the draft letter of offer. Regarding the contention of the Noticee that there was no harm cause to anybody due to delay in making of PA as there was no leakage of information regarding the PA, I also find that timing for making the PA is a statutory mandate which has to be complied with, irrespective of whether there has been an actual leakage of price sensitive information as a result of the delay or not. Therefore, in my view, with respect to the open offers of Spaceage, Specular and Oracle, the PA was made with delay and the Noticee being the merchant banker managing the said open offer is responsible for the same. Thus, the Noticee has violated Regulation 27 (5) of Takeover Regulations and Regulation 13 of the Merchant Bankers Regulations.

24. With respect to the allegation of wrong calculation of offer size in the open offer of Spacegae, the SCN alleges that in the case of Spaceage, the size of the open offer was determined on the basis of the pre-preferential issue paid up capital, which resulted in the open offer being made for lesser number of shares than what is mandated under the Takeover Regulations. The details of the discrepancy observed in the open offer size, are given in the table below:

Table 4	
Pre-allotment total shares	Post-allotment total shares
31,24,700	7,07,61,126
Offer Size , i.e. 26% on the basis of pre allotment capital = 8,12,422 equity shares	Offer Size, i.e. 26% on the basis of pre allotment capital = 1,83,97,893 equity shares Note: The shares held by the public shareholders were 29,09,515 shares. Therefore, the open offer would have been made for 29,09,515 shares.

25. With respect to the said allegation, the Noticee has submitted that the calculation of size of open offer on the basis of pre-preferential issue paid up capital was never objected to by SEBI or BSE and the said offer document was cleared by SEBI and that the open offer was given for 8,12,422 equity shares with the presumption that on the date of trigger the equity share capital is 31,24,700 equity shares and the shares allotted in preferential allotment were subject to approval of the shareholders. In this regard, I note that regarding offer size, Regulation 7 of the Takeover Regulations specifies as follows:

“Offer Size.

7.(1) The open offer for acquiring shares to be made by the acquirer and persons acting in concert with him under regulation 3 and regulation 4 shall be for at least twenty six per cent of total shares of the target company, as of tenth working day from the closure of the tendering period:

Provided that the total shares of the target company as of tenth working day from the closure of the tendering period shall take into account all potential increases in the number of outstanding shares during the offer period contemplated as of the date of the public announcement:

Provided further that the offer size shall be proportionately increased in case of an increase in total number of shares, after the public announcement, which is not contemplated on the date of the public announcement.”

26. From a reading of Regulation 7 and the proviso to the same it is clear that the open offer for acquiring shares to be made by the acquirer and persons acting in concert with him shall be for at least twenty six per cent of total shares of the target company, as of tenth working day from the closure of the tendering period and that while calculating the offer size all potential increases in the number of outstanding shares during the offer period contemplated as on the date of the public announcement have to be taken into account. In this regard, ‘Offer period’, as defined in Regulation 2(1)(p) of the Takeovers Regulations means the period between the date of entering into an agreement to acquire shares, voting rights in, or control over a target company requiring a public announcement, or the date of the public announcement, as the case may be, and the date on which the payment of consideration to shareholders who have accepted the open offer is made. Therefore, in the case of Spaceage, the open offer size should have been calculated by taking into account all potential increase in shareholding from the date of authorization of the preferential issue

by the Board of Directors of Spaceage till the date on which payment of consideration was to be made by the acquirers to the shareholders who had tendered shares in the open offer. In the present case, the Noticee has contended that it did not take into account enhanced capital for the reason that enhancement in the capital of the Target Company was contingent upon approval of the shareholders of the Target Company. In this regard, I note that it is not the case of the Noticee that the shareholders in the case of Spaceage did not approve the preferential allotment. Rather, the fact that open offer formalities have been completed, which got triggered because of increase in shareholding of acquirer due to preferential allotment shows that the preferential allotment had happened. Therefore, in terms of Regulation 7 of the Takeover Regulations and its proviso, the merchant banker was obliged to take into account the enhanced shareholding. Assuming the contention of the Noticee was correct, the second proviso of Regulation 7 also allows a further proportional enhancement of open offer size in case of an increase in total number of shares, after the public announcement, which also was not done in case of Spaceage. Therefore, I cannot accept the argument that the Noticee did not take into account the increase in shareholding of the Target Company in case of Spaceage since the approval from shareholders was yet to come. It can be observed that the offer size calculated by FTFPL is significantly lower than the size mandated under the Takeover Regulations. I agree with the observations in the SCN that such miscalculations and non-adherence of mandatory provisions of the Takeover Regulations are detrimental to the interests of the public shareholders of such companies as they are being denied the opportunity to fully participate in the open offer. I find that by committing such a default in calculation of the open offer size, the Noticee, as the manager to the open offer has failed in its duties as a merchant baker and violated Regulation 27 (5) of Takeover Regulations and Regulation 13 of the Merchant Bankers Regulations.

27. I also note that in terms of Regulation 27 of the Takeover Regulations, the responsibility of the manager to the offer, *inter alia*, includes ensuring that the contents of the public announcement, detailed public statement, letter of offer

and post-offer advertisement are true, fair and adequate in all material aspects. However, the following non- disclosures have been alleged in the SCN with respect to the open offers handled by the Noticee:

- 27.1. In letter of offer which was filed in respect of the open offer in Spaceage, the financials of two Persons Acting in Concert (PACs)- Valbe Foods (India) Private Limited and Chin Corp Holding Pte. Ltd. were not disclosed.
 - 27.2. In the 'Offer Price Justification' section in letter of offer which was filed in respect of the open offer in Spaceage, it was incorrectly mentioned that the shares of the Target Company were frequently traded.
 - 27.3. In the draft letter of offer in Spaceage and Specular, it was erroneously mentioned that the audited financial information of the Target Company on a consolidated basis for the financial years ended 2020, 2019 and 2018 and limited review standalone financials for the nine months period ended December 31, 2020 was disclosed even when the limited review financials for the nine-month period was not provided.
28. With respect to the above, the Noticee has mainly submitted that with respect to these open offers the SEBI observation letters did not mention any defaults and that it is improper to make these allegations at a later stage. As discussed earlier, the observation letters issued by SEBI only provides comments on whether the draft letters of offer contain the mandatory disclosures and not a comment on the correctness of such disclosures. In view of the same, I do not accept the contention of the Noticee in this regard. With respect to the wrong disclosure of the shares of Spaceage as 'frequently traded' in the offer document for open offer in Spaceage, the Noticee has submitted that in the of the Letter of Offer, it has not been categorically stated that the shares are frequently traded but it has only been stated that the total turnover of the equity shares of the Target Company on BSE is 85.90% which is more than 10% of fully paid-up equity shares. I cannot accept this contention at all since the Noticee's disclosure of turnover being more than 10% of the total paid up equity shares, means one and

the same as 'frequently traded scrip', as defined in Regulation 2(1) (j) of the Takeover Regulations. The Noticee has also contended that at point 4 in the Table at Para 6.1.3 of the letter of Offer in Spaceage, wherein it is stipulated that the volume weighted average market price of equity shares in case the said shares are frequently traded is to be taken, it has been stated 'nil'. In my view, giving an indication in one para of the offer document that the scrip of the Target Company is frequently traded while in another place stating that it is not, gives rise to confusion in the mind of the investor. Disclosures in the offer document have to be clear, specific and understandable and should leave no room for multiple interpretations or inferences. As a manager to the open offer, it was the responsibility of the Noticee to ensure that proper disclosures are made in the offer document which the Noticee failed to do. It appears that the Noticee is making an attempt to mislead by submitting such reply to the allegations in the SCN. Therefore, I find that by failing to make disclosure/ making wrong disclosure in the offer documents for the open offers of Spaceage and Specular, the Noticee, as the manager to the open offer has failed in its duties as a merchant banker and violated Regulation 27 (2) and 27(5) of Takeover Regulations and Regulation 13 of the Merchant Bankers Regulations.

29. It is also noted that a complaint has been received alleging diversion/siphoning of funds from the proceeds of the IPO of Trekkingtoes.com, which was managed by FTFPL. It is noted that the complaint was filed by one Mr. Sahil Agarwal, who was one of the directors of Trekkingtoes.com. It was alleged in the complaint that a portion of the siphoned off funds were utilised for meeting the expenses incurred in obtaining a Category-I Merchant Banking license by GYR Capital Advisors Private Limited (GYR), alleged to be a related entity of FTFPL. In this regard, I note that no further documents such as bank statements of issuer or GYR have been made available with respect to the Noticee's role in siphoning off the funds from the IPO. The Noticee has submitted that as per page 54 of Prospectus of Trekkingtoes.com, it has been stated that Trekkingtoes.com plans to utilize in aggregate Rs. 3 Crores as strategic investments in 13 Ways Media Technology Private Limited and Endure Quality Consultant Private Limited and

that the Prospectus on the same page also contains that Trekkingtonoes.com intends to utilize an amount of Rs. 40 Lakhs towards re-payment/ pre-payment of certain identified unsecured loans. The Noticee has submitted that pursuant to receipt of instructions from Trekkingtonoes.com, the Noticee verified the same with the details mentioned in the Prospectus and accordingly, the funds were transferred. The Noticee has also submitted a copy of a letter dated August 14, 2020 from Trekkingtonoes.com instructing the Noticee that the funds be transferred. In this regard, I agree with the Noticee that it was not expected from the Noticee, as a merchant banker to trace where the funds had been transferred to, thereafter, after the first transfer from the Public Issue Account of Trekkingtonoes.com took place, which was as per disclosure in the prospectus. I also note that the Noticee has submitted its bank statement to show that it had only received fees from Trekkingtonoes.com. In view of the above, I find that not enough material is available to conclude that the Noticee had a role in the alleged siphoning of funds from the IPO of Trekkingtonoes.com and I do not agree with the observations in the SCN in this regard.

30. I note that the Noticee acted as a merchant banker for open offer in case of five target companies viz: AKM Lace, Seagold, Spaceage, Specular and Oracle. It is observed that in respect of open offers in the case of Specular, Spaceage and Oracle, penalties have already been imposed by the Adjudicating Officer with respect to other violations in the said open offers. The present proceedings under Sections 11B (1), 11(4) and 11B of SEBI Act, 1992 have been initiated against the Noticee for other violations in the same open offers, viz: delay in making of PA along with other violations like, wrong calculation of open offer size in case of open offer with respect to target company – Spaceage and wrong disclosures in offer document in case of open offer with respect to target companies i.e. Specular and Spaceage. The interim order in the matter was passed on January 24, 2022 by virtue of which the Noticee stands restrained from taking up any new assignment relating to merchant banking activities in the securities market, till further orders. Thus, the Noticee has already undergone one year of restraint. In the facts and circumstances of the case, particularly the

fact that Noticee is a registered intermediary, I find that the period of restraint already undergone by the Noticee is sufficient for the violations found against the Noticee.

Directions:

31. In view of the aforesaid findings and having regard to the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), and 11B of SEBI Act, 1992, hereby revoke the directions issued vide ex parte ad interim order cum show cause notice dated January 24, 2022 and dispose of the SCN without any further directions.
32. This Order comes into force with immediate effect.
33. This Order shall be served on the Noticee and Recognized Stock Exchanges, Depositories to ensure necessary compliance.

-Sd-

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Date: January 30, 2023

Place: Mumbai