WTM/GM/CFD/ 67 /2019–20

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11B READ WITH SECTIONS 11(1), 11(5) AND 19 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND REGULATION 10 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997 [READ WITH THE SAVING PROVISION UNDER REGULATION 35 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011] ALONG WITH REGULATION 5(3) OF THE SEBI (INVESTOR PROTECTION AND EDUCATION FUND) REGULATIONS, 2009.

IN THE MATTER OF ORIENT TRADELINK LIMITED –

	ACQUIRER	PAN
1.	AUSHIM KHETARPAL	**ANZPK1199C**

BACKGROUND –

1. Securities and Exchange Board of India ("**SEBI**") had issued a Show Cause Notice dated October 29, 2008 ("**1st SCN**"), against Aushim Khetarpal Shah ("**Acquirer/Aushim Khetarpal**") for the alleged violation of Regulations 4(b)–(e) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 ("**PFUTP Regulations 1995**") read with Regulation 13(2) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("**PFUTP Regulations 2003**"), on account of having allegedly indulged in market manipulation and creation of artificial volume in the scrip of Orient Tradelink Limited ("**Orient Tradelink/Target Company**").

2. SEBI had also issued a SCN dated March 24, 2008 ("**2nd SCN**") against Aushim Khetarpal for the alleged violation of Regulations 10 and 12 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("**Takeover Regulations 1997**") and Regulations 13(4) and 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 ("**Insider Trading Regulations 1992**") in the matter of Orient Tradelink for allegedly (a) failing to comply with the mandatory requirement of making a public announcement in accordance with the Takeover Regulations 1997 and (b) failing to file mandatory disclosures/declaration with the Stock Exchanges.

3. Thereafter, Aushim Khetarpal had filed Consent Applications (Applications no. 1931 of 2010 and 1974 of 2010) in respect of the proceedings pending under the 1st SCN and 2nd SCN, which were disposed of vide SEBI Consent Order dated July 23, 2013 ("**Consent Order**"), with *inter alia* the following directions:

I. *"Aushim Khetarpal shall make an open offer to the shareholders of Orient Tradelink as specified in the Takeover Regulations, as existed at the time of alleged violation, including the applicable interest, if any, as decided by SEBI. …*

II. *Aushim Khetarpal … (is) prohibited from buying, selling or dealing in securities for a period of four years from the date of this Consent Order. However, this would not affect the obligation of Aushim Khetarpal to make an open offer to the shareholders of Orient Tradelink Limited … as agreed upon by him. …*

Aushim Khetarpal shall complete the Settlement Term no. I within a period of 6 months from the date of this Consent Order."

4. During the intervening period, vide a letter dated January 16, 2014, Aushim Khetarpal had sought an extension of six months from SEBI for making the open offer for the acquisition of shares of Orient Tradelink and had also indicated his willingness to escrow the amount as required for the open offer(s) with the merchant banker as proof of the commitment towards ensuring compliance with the Consent Order. Vide SEBI letters dated June 6, 2014 and June 18, 2014, Aushim Khetarpal was granted time till July 22, 2014, to make the open offer for acquisition of shares in the aforementioned Companies with a condition that the amount as required for the open offer shall be deposited with the merchant banker (towards Escrow) by Aushim Khetarpal and not the Companies. Vide the aforesaid letters, SEBI had also advised Aushim Khetarpal to report the compliance with the captioned Consent Order on or before July 22, 2014.

5. Vide an e–mail dated September 11, 2014 (in reply to SEBI's query regarding compliance with the Consent Order), Aushim Khetarpal had *inter alia* informed SEBI that draft Letter of Offer in the matter of Orient Tradelink was being readied for filing. Thereafter, vide an e–mail dated September 7, 2015 (in reply to SEBI's query raised on that date), Aushim Khetarpal informed SEBI that the open offer for acquisition of shares in Orient Tradelink without revocation of suspension of

trading (trading in the scrip was suspended by BSE Limited ("**BSE**") from October 29, 2002), would not be feasible since no shareholder would tender their shares at the offer price of ₹3.95.

6. Accordingly, vide a letter dated October 6, 2017, SEBI had advised Aushim Khetarpal to make an open offer to the shareholders of Orient Tradelink within a period of six months from August 22, 2017 i.e. February 22, 2018 (in view of the revocation by BSE of the suspension of trading on August 22, 2017).

7. Towards ensuring compliance with the Consent Order read with the SEBI letter dated October 10, 2017, Aushim Khetarpal had filed a draft Letter of Offer on September 11, 2018 (which was subsequently revised on January 18, 2019), for the acquisition of upto 21,93,000 equity shares representing 20% of the total voting share capital of Orient Tradelink @ ₹3.45 per equity share in terms of the Takeover Regulations 1997 read with the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**Takeover Regulations 2011**"). The Acquirer i.e. Aushim Khetarpal, had made a detailed Public Announcement on January 11, 2019. SEBI had observed that the offer price had wrongly been miscalculated by the Merchant Banker to the Offer i.e. Fast Track Finsec Private Limited ("**Fast Track Finsec**") and the same was subsequently revised to ₹23, as informed to SEBI vide Fast Track Finsec's letter dated April 5, 2019. Thereafter, vide an e–mail dated June 1, 2019, Fast Track Finsec informed SEBI that Orient Tradelink had undertaken a stock split of its equity shares vide a Resolution passed by its

shareholders on April 6, 2019 and accordingly, the number of equity shares and offer price was revised as under:

TABLE I – DETAILS REGARDING REVISED OFFER PRICE POST STOCK SPLIT		
	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 (₹)	23	4.60
MAXIMUM CONSIDERATION UNDER THE OPEN OFFER (₹)		5,04,39,000

8. SEBI issued its observations on the draft Letter of Offer on June 18, 2019 and thereafter, the Open Offer for the acquisition by the Acquirer of upto 1,09,65,000 equity shares representing 20% of the total voting share capital of Orient Tradelink @ ₹4.60 per equity share in terms of the Takeover Regulations 1997 read with the Takeover Regulations 2011 opened on July 5, 2019 and closed on July 18, 2019 ("**Open Offer**"). As per information received by SEBI from BSE, 1,09,65,000 equity shares were tendered in the Open Offer i.e. 100% acceptance and accordingly, the total maximum consideration payable under the Open Offer amounted to ₹5,04,39,000 (i.e. 1,09,65,000 equity shares x ₹4.60).

9. Pursuant to the above, SEBI had received a letter dated July 30, 2019, from Fast Track Finsec forwarding a request made by the Acquirer vide letter dated July 30, 2019, for extension of time for payment of consideration to the equity shareholders who had tendered their shares in the above mentioned Open Offer.

10. In this regard, vide an e–mail dated July 31, 2019, SEBI had sought information from Fast Tract Finsec regarding details of the Escrow Account (including

amount deposited therein) created in compliance with Regulation 17 of the Takeover Regulations 2011, for the purpose of the instant Open Offer. Vide an e–mail dated July 31, 2019 read with e–mail dated August 22, 2019, Fast Track Finsec informed SEBI that the following amounts had been provided by the Acquirer in lieu of the Open Offer, viz.

a. ₹2 Lakh deposited in ICICI Bank Limited (Escrow Account);
b. ₹12 Lakh deposited with Fast Track Finsec (and which was subsequently transferred to the above mentioned Escrow Account on August 1, 2019);
c. 17.30 Lakh equity shares of Orient Tradelink were pledged by the Acquirer (and his relatives) with Fast Track Finsec during the period June 3–July 4, 2019, details of which are provided below:

TABLE II – 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 SINCE CLOSING MARKET PRICE AS ON DATE OF PLEDGE PORTRAYS TRUE VALUE OF SHARES BEING PLEDGED. IT IS NOTED THAT FAST TRACK FINSEC HAD CONSIDERED AN AMOUNT OF ₹8 PER SHARE WHILE CALCULATING THE VALUE OF PLEDGED SHARES IRRESPECTIVE OF DATE OF CREATION OF PLEDGE.**

11. Vide a letter dated September 25, 2019, SEBI rejected the request for extension of time as sought vide the Acquirer's letter dated July 30, 2019 and further, advised the Acquirer and Fast Track Finsec to immediately ensure payment of consideration amount to the shareholders who had tendered their shares in the Open Offer (including interest for the period from the date of triggering the Open Offer till the date of payment of consideration). A reminder was also forwarded to the Acquirer and Fast Track Finsec vide SEBI letter dated October 14, 2019.

12. I have perused the material available on record. As per the Consent Order, Aushim Khetarpal was clearly mandated to make an open offer for the acquisition of shares in the matter of Orient Tradelink. Aushim Khetarpal was granted time by SEBI till February 22, 2018, to ensure compliance with the aforementioned direction. In this connection, Regulation 17(1) of the Takeover Regulations, 2011 reads as below:

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

Sl. No.	*Consideration payable under the Open Offer*	*Escrow Amount*
A.	*On the first five hundred Crore rupees*	*An amount equal to twenty-five per cent of the consideration*
B.	*On the balance consideration*	*An additional amount equal to ten per cent of the balance consideration*

Provided that …"

13. As per the applicable provisions of the Takeover Regulations 1997 read with Takeovers Regulations, 2011, an Escrow Account "*OTL – Open offer Escrow Account*" was opened with ICICI Bank (Current Account no. 000405118154) wherein the Acquirer (through Fast Track Finsec) had deposited an amount of ₹14,00,000 [see paragraph 10(a) and (b)]. In addition, the Acquirer had pledged 17.30 Lakh equity shares of Orient Tradelink (amounting to ₹1,10,85,050) with Fast Track Finsec as security towards the obligation under the Open Offer. Fast Track Finsec vide an e–mail dated January 14, 2020, had confirmed that the aforementioned amount and shares deposited continue to remain in the aforesaid Escrow Account.

14. Upon a consideration of the aforementioned in light of the total maximum consideration payable under the Open Offer and Regulation 17(1) of the Takeover Regulations 2011, it is observed that there has been a shortfall in respect of the deposit of 25% of the Open Offer consideration in the Escrow Account. Therefore, the Acquirer has *prima facie* violated Regulation 17(1) of the Takeover Regulations 2011.

15. It is further noted that as per Regulation 18(10) of the Takeover Regulations 2011, *"The acquirer shall, within ten working days from the last date of the tendering period, complete all requirements under these regulations and other applicable law relating to the open offer including payment of consideration to the shareholders who have accepted the open offer."*

16. As stated above, the Open Offer made by the Acquirer had opened on July 5, 2019 and closed on July 18, 2019. As per Regulation 18(10) of the Takeover Regulations 2011, the Acquirer was mandated to ensure completion of all requirements under the said Regulations relating to the Open Offer including payment of consideration to the shareholders who have accepted such Offer within 10 working days from the last date of the tendering period i.e. by August 1, 2019. In the facts of the instant proceedings, it is observed that till date, the Acquirer has failed to ensure payment of consideration to all shareholders who had tendered their shares under the Open Offer. Accordingly, the Acquirer has *prima facie* violated Regulation 18(10) of the Takeover Regulations 2011 on account of the aforesaid Open Offer default.

17. The Open Offer in the matter of Orient Tradelink is yet to be completed and further, from BSE's e–mails dated November 7, 2019, November 22, 2019, December 5, 2019, December 6, 2019 and January 21, 2010, it is gathered that the affected shareholders/investors of Orient Tradelink are vigorously following up with the exchange for ensuring completion of the Open Offer. Similarly, SEBI has also received several complaints from the affected shareholders/investors of Orient Tradelink on Sebi Complaints Redress System ("**SCORES**"). An Open Offer has two parts – the making of an Offer to the public (through a Public Announcement, draft Public Statement, Letter of Offer) and paying the investors the consideration for the shares tendered in acceptance of such Offer. Merely publishing the Offer document inviting tender of shares from the public

shareholders, etc. cannot be treated as compliance with the Open Offer requirement under the Takeover Regulations 2011. Thus, the Noticee has failed to comply with the Open Offer requirement as contemplated under the Takeover Regulations 2011. I note that 1,09,65,000 shares have been tendered by the shareholders in response to the Offer document. As stated above, certain amounts/securities have been deposited by the Acquirer towards Open Offer consideration through deposits in the Escrow Account. While the cash component available in the Escrow Account has been taken into account towards settlement of the outstanding Open Offer obligation, I am not inclined to consider the value of the securities pledged by the Acquirer (as reproduced at Table II of this Order) as it comprises only of the shares of the Target Company. Accordingly, at this stage, for ensuring completion of the Open Offer, the Acquirer's liability (excluding interest payable to affected shareholders from August 1, 2019 till date of actual payment of open offer consideration) amounts to **₹4,90,39,000**, which has been computed as under:

TABLE III – TOTAL OUTSTANDING OPEN OFFER OBLIGATION (AMOUNT IN ₹)			
	TOTAL SHARES	**PRICE/SHARE IN ₹**	**AMOUNT IN ₹**
SHARES TENDERED IN OPEN OFFER* **[A]**	1,09,65,000	4.60	5,04,39,000
LESS TOTAL AMOUNT ALREADY DEPOSITED BY THE ACQUIRER IN ESCROW ACCOUNT **[B]**#			14,00,000
TOTAL OUTSTANDING OPEN OFFER OBLIGATION [A – B]			**4,90,39,000**
***AS CONFIRMED VIDE BSE E-MAIL DATED DECEMBER 5, 2019.** **# FURTHER, THE AMOUNTS TO BE REALISED FROM THE PLEDGED SECURITIES ARE SUBJECT FIRSTLY, TO INVOCATION OF PLEDGE AND THEREAFTER, SUBSEQUENT LIQUIDATION BY FAST TRACT FINSEC. ACCORDINGLY, THE SAME MAY BE REDUCED FROM THE ACQUIRER'S LIABILITY WHEN SUCH REALIZATION OCCURS AND TO THE EXTENT THEREOF.**			

18. Upon a consideration of the preceding paragraphs, it is therefore appropriate for SEBI to step in and protect the interest of shareholders/investors by

adopting effective measures through an Order to compel the Acquirer i.e. Aushim Khetarpal, to comply with the legal mandate under the Consent Order of completing the Open Offer in the matter of Orient Tradelink.

ORDER –

19. In view of the foregoing and in the interest of investors and for protection of their rights, I in exercise of the powers under Section 11B read with Sections 11(1), 11(5) and 19 of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") and Regulation 10 of the Takeovers Regulations, 1997 [read with saving provision under Regulation 35 of the Takeovers Regulations, 2011] along with Regulation 5(3) of the SEBI (Investor Protection and Education Fund) Regulations, 2009, hereby direct as under:

(a) The amount of **₹14,00,000 (Rupees Fourteen Lakhs)** deposited by Aushim Khetarpal in the Escrow Account opened with ICICI Bank (Current Account no. 000405118154) shall stand attached with immediate effect and shall be utilised for payment of consideration to the eligible and identifiable investors of Orient Tradelink who have tendered their shares in acceptance of the Open Offer.

(b) Aushim Khetarpal shall disgorge the balance Open Offer consideration amount of **₹4,90,39,000 (Rupees Four Crore Ninety Lakhs and Thirty Nine Thousand) along with simple interest @ 10% from August 1, 2019 till date**

of actual payment. Aushim Khetarpal shall pay the said amount on or before January 31, 2020, either by way of demand draft drawn in favour of *"Securities and Exchange Board of India"*, payable at Mumbai or by e-payment* to SEBI account as detailed below:

BANK	BRANCH	RTGS CODE	BENEFICIARY NAME	BENEFICIARY ACCOUNT NO.
BANK OF INDIA	BANDRA KURLA BRANCH	BKID 0000122	SEBI	012210210000008

**Noticees who are making e–payment are advised to forward the details and confirmation of the payments so made to the Enforcement Department of SEBI for their records as per the format provided in Annexure A of Press Release No. 131/2016 dated August 9, 2016, which is reproduced as under:*

1. *CASE NAME:*	
2. *NAME OF THE PAYEE:*	
3. *DATE OF PAYMENT:*	
4. *AMOUNT PAID:*	
5. *TRANSACTION NO:*	
6. *BANK DETAILS IN WHICH PAYMENT IS MADE:*	
7. *PAYMENT IS MADE FOR: (LIKE PENALTIES/ DISGORGEMENT/RECOVERY/SETTLEMENT AMOUNT AND LEGAL CHARGES ALONG WITH ORDER DETAILS:*	

(c) Banks shall not allow debits from the bank account(s) of Aushim Khetarpal to the extent of the above mentioned amount, without the permission of SEBI. Credits, if any, into the accounts may be allowed. The Banks are directed to ensure that all the aforementioned directions are strictly enforced.

(d) Aushim Khetarpal is restrained from disposing of or alienating any of his assets/ properties/securities, except for the purpose of completing the Open Offer.

(e) Aushim Khetarpal is directed to provide, on or before January 31, 2020, a full inventory of all his assets and properties and details of all his bank accounts, demat accounts and holdings of shares/securities, if held in physical form and details of companies in which he holds substantial or controlling interest.

(f) The amount disgorged by way of this Order shall be credited to the Investor Protection and Education Fund and shall be utilised to make restitution of the investors of Orient Tradelink who have tendered their shares in acceptance of the Open Offer, in terms of sub–regulation (3) of Regulation 5 of the SEBI (Investor Protection and Education Fund) Regulations, 2009.

(g) Upon failure to comply with the above directions, SEBI shall initiate other suitable actions under the securities laws including Recovery proceedings under Section 28A of the SEBI Act, prosecution, etc. against Aushim Khetarpal.

20. This Order is without prejudice to any other action that SEBI may initiate under the securities laws, as deemed appropriate, against the above mentioned persons/entities.

21. This Order shall come into force with immediate effect.

22. A copy of this Order shall be forwarded to the Stock Exchanges, Depositories, Registrar and Share Transfer Agents and Banks to ensure necessary compliance

Place: Mumbai
Date: January 23, 2020

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA