WTM/SKM/CFD/55/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA
INTERIM ORDER-CUM-SHOW CAUSE NOTICE

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, IN THE MATTER OF FAST TRACK FINSEC PRIVATE LIMITED

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

BACKGROUND

1. Fast Track Finsec Private Limited (*hereinafter referred to as 'FTFPL'/'Noticee'*) is a SEBI registered Category-I Merchant Banker having its registered office at B-502, Statesman House, 148, Barakhambha Road, New Delhi-110001.

2. 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 Target Companies - Sea Gold Infrastructures Limited (*hereinafter referred to as 'Sea Gold')* and AKM Lace and Embrotex Limited (*hereinafter referred to as 'AKM Lace').*

3. In terms of Regulation 16(1) of the Takeover Regulations, acquirers making an open offer under the regulations have to file a draft letter of offer with SEBI, through the manager to the open offer, containing such information as specified. 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.

4. I note from the records that the requirement for making the open offer in the case of AKM Lace and SEA Gold was triggered on account of direct acquisition of shares amounting to 38.85% and 62.37% of the total equity share capital of the respective companies. Regulation 13 of the Takeover Regulations specifies the timing for making the Public Announcement (PA) in respect of open offers triggered by various modes of acquisitions and sub-regulation (1) thereof lays down the timing for making open offers triggered by direct acquisitions. In this regard, regulation 13(1) reads as under:

"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."

5. It can, therefore, be noted that the PA in case of open offers getting triggered by direct acquisitions have to be made on the date when the acquirer enters into any formal or informal agreement thereby agreeing to acquire the shares or voting rights in the target company. Further, regulation 14 of Takeover Regulations provides the manner and timelines for publication of the PA and the detailed public statement. Regulation 14(1) provides that the PA 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.

6. However, on examination of draft letter of offers filed by FTFPL, on behalf of the respective acquirers in the aforementioned Target Companies, it has been noticed that FTFPL has not complied with the provisions of Takeover Regulations and the PA has been submitted to the Stock Exchange with delay, as detailed below:-

Table 1			
Open Offer	**Agreement Date/Board**	**Date of submission of**	**Delay in making PA**

	Approval of Preferential Issue Date	**PA to Stock Exchange(s)**	
Sea Gold Infrastructures Limited	September 07, 2021	September 08, 2021	1 day
AKM Lace and Embrotex Limited	September 06, 2021	September 07, 2021	1 day

7. In this regard, it does not require any iteration that the information contained in the PA is price sensitive information and requires immediate dissemination to the public to avoid information asymmetry for the investors at large. Consequently, the Takeover Regulations stipulate that a PA, containing the basic details, shall be made on the same day as the date of the transaction which has triggered the open offer. It is further noted that requirement for making the PA on the same date, as the date of acquiring or agreeing to acquire shares in the target company, was introduced only in 2011 with the coming into force of the Takeover Regulations, 2011. Under the erstwhile SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, the PA could be made within four working days from the date of acquiring or agreeing to acquire shares or voting rights in a target company. The time period for making the PA, I note, was shortened to avoid selective leakage of price sensitive information related to the impeding acquisition.

8. In view of the above, the delay in making the public announcement even by one day cannot be seen leniently as a technical breach. Further, regulation 27 of the Takeover Regulations, which lays down the obligations of the manager to the open offer, provides in sub-regulation (5) that *"The manager to the open offer shall exercise diligence, care and professional judgment to ensure compliance with these regulations."* 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.

9. I further note that regulation 13 of the SEBI (Merchant Bankers) Regulations, 1992 (Merchant Bankers Regulations), provides that *"[e]very merchant banker shall abide by the Code of Conduct as specified in Schedule III.* Clauses 1, 3, 4 and 6 of the Code of Conduct provides as under:

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

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

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

Clause 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.

10. From the above, it is noted that Code of Conduct under the Merchant Bankers Regulations requires the *Noticee* to act in a professional manner, exercise due diligence and ensure that adequate disclosures are made to the investors in a timely manner as provided in the respective regulations. I am, therefore, of the view that the actions of the *Noticee,* detailed in the preceding paragraphs, is also not in compliance with the code of conduct specified in schedule III of the Merchant Bankers Regulations.

Prior violations observed in respect of FTFPL

11. It is 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 were 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

Delay in making PA

12. I note from the records that the requirement for making the open offer in the case of Spaceage and Specular was triggered on account of preferential allotment of shares whereby the acquirer's 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 of shares amounting to 31.16% of the total equity share capital of the Company.

13. Regulation 13 (2)(g), which, lays down the timing for making open offers getting triggered by preferential issues is reproduced below,-

" (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 authorizes such preferential issue."

14. It can, therefore, be noted that the PA in case of open offers getting triggered by preferential issues has to be made on the date the board of directors of the target company authorises such issue; whereas in the case of direct acquisition, as stated earlier, it has to be

made on the date of the acquirer entering into any formal or informal agreement thereby agreeing to acquire the shares or voting rights in the target company. Further, as already stated in paragraph 6, regulation 14(1) provides that the PA 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.

15. From the examination of draft letter of offers filed by FTFPL, on behalf of the respective acquirers in the aforementioned Target Companies, it has been noticed that there has been a delay in making the public announcement, 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

16. I, therefore, note that the acts of omission on the part of the *Noticee,* as detailed out in the preceding paragraphs, is not in compliance with but in contravention of the provisions of the Takeover Regulations and the acts are also not in compliance with the code of conduct specified in schedule III of the Merchant Bankers Regulations.

Incorrect Calculation of the Offer Size

17. Regulations 7 of the Takeover Regulations specifies both the minimum offer size and also the manner of computing the size of a mandatory open offer under the regulations. In this regard, regulation 7(1) of Takeover Regulations states as under:

"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."

18. It can, therefore, be noted that in the event the requirement for making the open offer is triggered by a preferential issue of shares, the minimum size of the offer has to be calculated based on expanded share capital after taking into consideration the contemplated increase due to the preferential allotment. It is, however, noted 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 regulations. The details of the discrepancy observed in the open offer size is 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.

19. It can be observed that the offer size calculated by FTFPL is significantly lower than the size mandated under the Takeover Regulations. Such miscalculations and non-adherence of mandatory provisions of the Takeover Regulations are not only 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 but also cast serious aspersion on the conduct and capability of the FTFTP to act and perform fairly the onerous duties cast upon it in the capacity of a Merchant Banker.

20. I am, therefore, of the view of the that the such conduct of the *Noticee* is not only in contravention of the duties cast upon it under regulation 27(5) of the Takeover Regulations, but also not in compliance with the code of conduct specified under schedule III of the Merchant Banker Regulations.

Inadequate disclosures in the Offer Document

21. 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. In this regard, regulation 27(2) of the Takeover Regulations, states as under:

"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."

22. It is noted that 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 - have not been disclosed. It was also observed

that in the 'Offer Price Justification' section, it was incorrectly mentioned that the shares of the target company were frequently traded. Further, in the draft letter of offer in Spaceage and Specular, it was erroneously mentioned in the draft letter of offer 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..

23. The above mentioned instances show the cavalier and nonchalant approach of FTFPL towards drafting the letter of offers and in ensuring compliance with the provisions of the Takeover Regulations. The manager to open offer is obligated in terms of regulation 27(2) of the Takeover Regulations to "*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"*

24. In view of the above, considering the repeated nature of the violations, I am of the view that the *Noticee* has adopted a lackadaisical approach towards drafting the letter of offers and has, therefore, not complied with the obligations cast on the manger to the offer in terms of regulation 27(2) of Takeover Regulations. I am, further, also of the view that the actions of the *Noticee,* detailed in the preceding paragraphs, are also not in compliance with the code of conduct specified in schedule III of the Merchant Bankers Regulations.

Prior actions initiated against the FTFPL

25. It is also noted from the material available on record that an administrative warning was issued, vide letter dated May 19, 2021, and adjudication proceedings were also initiated against the *Noticee* in respect for the delay in depositing the requisite amount in the escrow account in respect of open offers in Orient Trade Link Limited, Oracle, Spaceage and

Specular; and in connection with the appointment of additional director in the target company during the offer period, in respect of the open offer in the case of Spaceage. The details regarding the said violations are given below:

Delay in depositing requisite amount in the escrow account

(a) Regulation 17(1) of Takeover Regulations states as under:

"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…."

(b) In this regard, while examining the draft letter of offers filed in respect of the open offer in the matters of Orient Trade Link Limited, Spaceage and Specular, it is observed that there was a delay in depositing the requisite amounts in the escrow account(s), by the respective acquirers.

Appointment of directors during offer period

(a) Regulation 24(1) of the Takeover Regulations states as under:

During the offer period, no person representing the acquirer or any person acting in concert with him shall be appointed as director on the board of directors of the target company, whether as an additional director or in a casual vacancy:

(b) It is noted that in the matter of Spaceage, the company had appointed one of the PACs as Additional Director of the Target Company on March 10, 2021, i.e. during the offer period which ran from March 10, 2021 to June 15, 2021.

Compliant received against the FTFPL

26. I also note from the records that a complaint has 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.

27. In the preliminary examination conducted by SEBI on the allegations made in the compliant, it has 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 appear to be shell companies, at the instance of the *Noticee*. This apparent collusion/involvement of the *Noticee* in the siphoning off of IPO proceeds is 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 may result in decreased participation in future issues.

28. I further note that the merchant banker, acting as the manager to the open offer, is expected to play an objective professional role in advising the acquirer regarding his obligations under the Takeover Regulations and in ensuring that the compliance requirements prescribed under the regulations are effectively met in the process of the open offer. The mandate under the Takeover Regulations, requiring the acquirers to file the letter of offer through a merchant banker, has been put in place to ensure that a SEBI registered intermediary is handholding the acquirer through the process and ensuring compliance with the regulatory norms.

29. The role of a merchant banker is central to the effective operation of the Takeover Regulations. The merchant banker is expected to demonstrate the application of due skill, care and diligence in the discharge of professional duties cast on him by ensuring 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, and are in compliance with the requirements under these regulations.

30. As stated in the preceding paragraphs, there has been repeated lapses on the part of the *Noticee* in ensuring compliance with the provisions of the Takeover Regulations, which are detrimental to the interests of the investors. Further, as noted above, a serious compliant has also been received alleging that the *Noticee* has been complicit in the siphoning off of funds from the proceeds of an IPO managed by it which on preliminary examination, has been found to be prima facie a true accusation against the *Noticee.* I am, therefore, of the view that it would be detrimental to interest of investors in the securities market, to permit the *Noticee* to take up new assignments as a Merchant Banker since the conduct of the *Noticee* does not inspire confidence, and in every likelihood, the sanctity of future issues/open offers managed by the *Noticee* will be called into question. In view of the same, considering the prima facie violation of the provisions of 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, I find this to be a fit case to pass interim directions against the *Noticee*, under Section 11(1) read with 11(4) and 11B of the SEBI Act.

ORDER

31. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B of the SEBI Act, 1992 and in the interest of investors and the securities market, hereby issue, with immediate effect, the following directions: -

(i) FTFPL shall not take up any new assignment relating to merchant banking activities in the securities market, till further orders from SEBI.

(ii) FTFPL shall, in case of pending assignments where it is already engaged as a merchant banker prior to issuance of this order, disclose the direction specified at para 31(i) 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.

32. The preliminary findings contained in this order are made on the basis of the examination of the draft letter of offers and other relevant material on record. FTFPL is hereby called upon 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 SEBI Act, should not be issued against it.

33. The *Noticee* (FTFPL), within 21 days from the date of receipt of this order, file its reply, along with all supporting documents and evidences, to rebut the abovementioned allegations against them. They may also indicate in their replies whether they wish to avail an opportunity of personal hearing in the matter.

34. This Order shall come into force with immediate effect and shall be in force till further Orders.

35. Copy of this Order shall be forwarded to the recognized Stock Exchanges for information and necessary action.

Place: Mumbai **S.K. MOHANTY**

Date: January 24, 2022 **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA