

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/VV/NK/2020-21/9247]

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

In respect of
Dakshin Mercantile Private Limited (PAN: AAECD7918B)

In the matter of LKP Finance Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') based on an investor complaint, conducted an examination into the acquisition of shares of LKP Finance Limited (hereinafter referred to as '**Company/ LKP**') by Dakshin Mercantile Private Limited (hereinafter referred to as '**Noticee/DMPL**') to ascertain the violation, if any, of the provisions of Securities and Exchange Board of India, Act 1992 (hereinafter referred to as the 'SEBI Act') and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "**SEBI (SAST) Regulations, 2011**") by Dakshin Mercantile Private Limited (Noticee).
2. SEBI examination in the matter observed that DMPL has made an open offer for acquisition of up to 32,67,842 equity shares of Rs.10/- each, representing 26% of the fully diluted voting equity share capital of LKP Finance Limited (Target Company) at a price of Rs. 198/- per equity share pursuant to execution of a Share Purchase Agreement (SPA) dated May 14, 2018 entered into by and between M.V. Doshi, M.V. Doshi (through partnership firm M/s L.K. Panday), Pratik M. Doshi, Ira P. Doshi, Shital A. Sonpal, Samaya P. Doshi, Sea Glimpse Investments Private Limited and Bhavana

Holdings Private Limited (collectively referred to as the “**Sellers**”), the Acquirer (Noticee) and the Target Company to acquire a minimum of 69,82,434 Equity Shares representing 55.55% of the fully paid-up equity share capital of the Target Company and upto a maximum of 77,92,546 Equity Shares representing 62.00% of fully paid-up equity share capital of the Target Company, depending upon the Equity Shares validly tendered and accepted in the Offer.

3. Further it was observed that 30,74,510 shares (24.46%) were tendered in the open offer and the payments were made to the eligible shareholders on November 13, 2018 along with applicable interest. It was alleged that the Noticee did not complete the acquisition of shares of LKP as per the SPA and in accordance with the timelines prescribed by SEBI and that the same was in violation of the provisions of Regulation 22(3) of the SEBI (SAST) Regulations, 2011. SEBI, therefore, initiated adjudication proceedings under the SEBI Act, 1992 against the Noticee to inquire into and adjudge the alleged violation of the provisions of Regulation 22(3) of SEBI (SAST) Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the ‘**Adjudication Rules**’) to inquire into and adjudge under section 15 HB of the Securities And Exchange Board of India (SEBI) Act-1992 for the alleged violation of the provisions of Regulation 22(3) of SEBI (SAST) Regulations, 2011 by the Noticee namely, Dakshin Mercantile Private Limited.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice (hereinafter referred to as “SCN”) SEBI/EAD-9VKV/JR/ /2020 dated June 10, 2020 was issued to the Noticee namely, Dakshin Mercantile Private Limited under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15HB of the SEBI Act, 1992 for the alleged violations specified in the SCN. The digitally signed SCN was delivered to the Noticee vide email dated 10-6-2020.

6. It was alleged in the SCN that the Noticee had entered into a Share Purchase Agreement (SPA) dated May 14, 2018 with M.V. Doshi, M.V. Doshi (through partnership firm M/s L.K. Panday), Pratik M. Doshi, Ira P. Doshi, Shital A. Sonpal, Samaya P. Doshi, Sea Glimpse Investments Private Limited and Bhavana Holdings Private Limited (collectively referred to as the “**Sellers**”) to acquire a minimum of 69,82,434 Equity Shares representing 55.55% of the fully paid-up equity share capital of the Target Company and upto a maximum of 77,92,546 Equity Shares representing 62.00% of fully paid-up equity share capital of the Target Company, depending upon the Equity Shares validly tendered and accepted in the Offer.
7. It was further alleged in the SCN that the acquirer failed to complete the transactions as aforesaid within the timelines prescribed by SEBI and RBI and also did not seek further extension from the competent authorities in respect of the same. In view of the aforesaid the acquisition of shares as per the SPA was not completed and the same lapsed. Therefore, it was alleged in the SCN that the acquirer by not completing the acquisition of shares within the permissible time limit has violated the relevant provisions of SEBI (SAST) Regulations, 2011.
8. The SCN was sent through email. The Noticee did not reply to the SCN. Thereafter, the Noticee was granted an opportunity of personal hearing on August 10, 2020 vide email dated July 31, 2020 through videoconferencing on the Webex platform in view of the difficulties faced due to Covid 19-pandemic. Alternatively, the Noticee was also informed that it can also appear for the personal hearing by being physically present before the Adjudicating Officer on August 12, 2020, if it desired which was rescheduled to August 11, 2020. The Noticee, vide email dated August 7, 2020, requested for adjournment of the scheduled personal hearing and grant an extension of 4 weeks to submit a reply to the SCN. The request of the Noticee was acceded to and the Noticee was granted an extension of 14 days to submit its reply to the SCN. The Noticee submitted reply to the SCN vide letter dated August 26, 2020 relevant portion of which is mentioned as below:
 - *We refer to the captioned show cause notice issued to Dakshin Mercantile Private Limited (Company) by the Adjudicating Officer, SEBI in the matter of LKP Finance Limited (Target Company) alleging violation of Regulation 22(3) of the SEBI (Substantial*

Acquisition of Shares and Takeovers) Regulations, 2011 by the Company (SEBI Takeover Regulations) (Show Cause Notice).

- *The Company had entered into a share purchase agreement dated 14 May 2018 with M.V. Doshi, M.V. Doshi (through partnership firm M/s L.K. Panday), Pratik M. Doshi, Ira P. Doshi, Shital A. Sonpal, Samaya P. Doshi, Sea Glimpse Investments Private Limited and Bhavana Holdings Private Limited (each a 'Seller' and collectively hereinafter referred to as the 'Sellers') and the Target Company to acquire equity shares of the Target Company held by the Sellers (Sale Shares) (Original SPA). The SPA was amended vide the First Amendment Agreement of December 2018 with effect from 31 October 2018 ('First Amendment to SPA' and along with the 'Original SPA' is hereinafter referred to as the 'SPA').*
- *The SPA stipulated that the Company will acquire a minimum of 69,82,434 Sale Shares representing 55.55% of the fully paid-up equity share capital of the Target Company and upto a maximum of 77,92,546 Sale Shares representing 62.00% of the fully paid-up equity share capital of the Target Company, depending upon the Equity Shares (defined later) validly tendered and accepted in the Open Offer (defined later). In case no Equity Shares were validly tendered and accepted in the Open Offer, the Company would acquire 77,92,546 Sale Shares representing 62.00% of the fully paid-up equity share capital of the Target Company from the Sellers. In case of full acceptance in the Open Offer, the Company would acquire 69,82,434 Sale Shares representing 55.55% of the fully paid-up equity share capital of the Target Company from the Sellers pursuant to the SPA and 32,67,842 Equity Shares of the Target Company from the Public Shareholders constituting 26.00% of the voting share capital pursuant to the Open Offer.*
- *If the number of equity shares of the Target Company held by the Company, after taking into account the minimum acquisition by the Company under the SPA of 69,82,434 Sale Shares representing 55.55% of the fully paid-up equity share capital of the Target Company and pursuant to the Open Offer, was less than 77,92,546 equity shares representing 62.00% of the fully paid-up equity share capital of the Target Company, then the Company would acquire such additional Sale Shares from the Sellers which would result in the Company's shareholding to be 77,92,546 equity shares representing 62.00%*

of the fully paid-up equity share capital of the Target Company, at the time of consummation of the underlying transaction. The Sellers would determine the inter-se proportion in which the Sellers would sell the Sale Shares of the Target Company to the Company in accordance with the provisions of the SPA.

- *Clauses 3.1.5 and 3.2.5 of the SPA stipulated that the obligation of the Company to purchase the Sale Shares from the Sellers in terms of the SPA and the obligation of the Sellers to sell the Sale Shares to the Company in terms of the SPA was subject to satisfaction of conditions precedent, unless waived in writing by the Company, including receipt of approval of the Reserve Bank of India (RBI) inter alia for change in control and management of the Target Company pursuant to the acquisition of Sale Shares under the SPA and Equity Shares under the Open Offer. For completeness, Clauses 3.1.5 and 3.2.5 of the SPA are reproduced below:*

*“...3.1 The obligation of the Purchaser to purchase the Sale Shares is subject to the following conditions and the delivery and execution of the following items in form and substance satisfactory to the Purchaser, any one or more of which may be waived in writing by the Purchaser, at its sole discretion (“**Sellers Conditions Precedent**”): ...*

...3.1.5 receipt of approval of the RBI, inter alia, for change in control and management of the Company pursuant to the Open Offer and the purchase of the Sale Shares by the Purchaser...”

*“... 3.2 The obligation of each Seller to sell their Respective Sale Shares is subject to the following conditions and the delivery and execution of the following items in form and substance satisfactory to the Sellers, any one or more of which may be waived in writing by each of the Sellers, at their sole discretion (“**Purchaser Conditions Precedent**”): ...*

...3.2.5 receipt of approval of the RBI, inter alia, for change in control and management of the Company pursuant to the Open Offer and the purchase of the Sale Shares by the Purchaser...”

- *The Target Company received the approval from the RBI vide letter bearing reference number DNBS.MRO.CMD No. 280/13.12.027/2017-18 dated 23 August 2018 for acquisition of shares and change in control pursuant to the acquisition of Sale Shares and*

Equity Shares under the SPA and the Open Offer, respectively (RBI Approval). The RBI Approval stipulated that it was valid for a period of 6 months, i.e. till 22 February 2019.

- *Clause 2.4.4 of the SPA stipulated that the sale and purchase of the Sale Shares in terms of the SPA must be completed within 20 days from the closure of the Open Offer. For completeness, Clause 2.4.4. of the SPA is reproduced below:*

“...2.4.4 It is agreed to between the Sellers and the Purchaser that the Purchase Consideration derived pursuant to this Clause 2.4 shall be the consideration for the entire Sale Shares notwithstanding that the transaction may be consummated in multiple tranches and at different intervals. Provided however that the entire sale and purchase of Sale Shares shall be completed within 20 (twenty) days from the date of closure of the Open Offer...”.

- *Clause 2.4.5 of the SPA (as introduced by the First Amendment to the SPA) stipulated that the Company will be liable to pay interest at the rate of 10% per annum for any delay in payment of purchase consideration payable to the Sellers in terms of Clause 2.4 of the SPA for the period 24 October 2018 till the date of actual payment of the Purchase Consideration to the Sellers. For completeness, Clause 2.4.5 of the SPA is reproduced below:*

“...2.4.5 It is further agreed to between the Sellers and the Purchaser, that the Purchaser shall be liable to pay interest at the rate of 10% per annum, for any delay in payment of the Purchase Consideration payable to the Sellers pursuant to this Clause 2.4, for the period starting from the expiry of 20 days from the date of closure of the open offer, that is, from October 24, 2018 till the date of actual payment of the Purchase Consideration to the Sellers, as is also payable to the public shareholders pursuant to Regulation 18 of the Takeover Regulations...”

- *In terms of Clause 2.4.4 of the SPA the sale and purchase of Sale Shares was to be completed within 20 days from the closure of the Open Offer and in any event before the Long Stop Date (defined later). However, the Company and the Sellers vide letter dated 24 December 2018 inter alia extended the timeline at Clause 2.4.4 of the SPA for sale and purchase of Sale Shares to 31 January 2019 (**24 December 2018 Letter**). Therefore, in*

terms of Clause 2.4.4 of the SPA read with the 24 December 2018 Letter, the sale and purchase of Sale Shares was to be completed by 31 January 2019.

- *Clause 3.3 of the SPA stipulated that the parties to the SPA must take all necessary steps to ensure satisfaction of conditions precedent to the SPA as soon as possible from the date of the SPA and in any event not later than the Long Stop Date specified in the SPA. Clause 1.1.43 of the SPA defines Long Stop Date to mean 31 December 2018 or such later date determined in accordance with Clause 3.6.1 of the SPA. For completeness, Clauses 3.3 and 1.1.43 of the SPA are reproduced below:*

“...3.3 The Parties shall take all necessary steps to ensure satisfaction of the Conditions Precedent as soon as possible after the date of this Agreement and in any event not later than the Long Stop Date...”

“...1.1.43 “Long Stop Date” shall mean December 31, 2018 or such later date as may be determined in accordance with Clause 3.6.1...”

- *Clause 3.6 of the SPA inter alia stipulated that if any of the conditions precedent are not fulfilled by the long stop date, then the parties may by mutual agreement extend the long stop date in writing or proceed to completion to the extent practicable or terminate the SPA. For completeness, Clause 3.6 of the SPA is reproduced below:*

“...3.6 If any of the Conditions Precedent are not fulfilled, or waived by agreement between the Parties, or there is Material Adverse Effect by the Long Stop Date, the Parties may, by mutual written agreement:

3.6.1 extend the Long Stop Date up such date as may be agreed in writing by the Parties;

3.6.2 proceed to Completion to the extent practicable; or

3.6.3 terminate this Agreement by giving a notice in writing to the other Parties, in which event the Agreement shall terminate with effect from the date of such notice, unless otherwise specified therein...”

- *The Company and the Sellers vide the 24 December 2018 Letter extended the long stop date to 31 January 2019 (**Long Stop Date**). The fact that the SPA provided for extension coupled with provisions relating to payment of interest and the fact that the parties did extend the Long Stop Date, goes to show that time was not the essence of the SPA.*

- Pursuant to the execution of the SPA, the Company was required to make a mandatory open offer in terms of the provisions of SEBI Takeover Regulations to acquire upto 26.00% of the voting share capital of the Target Company (**Equity Shares**) from the eligible public shareholders of the Target Company (**Open Offer**).
- In these circumstances, simultaneously with the execution of the SPA, the Company issued a public announcement to BSE Limited on 14 May 2018 with respect to the Open Offer in terms of the SEBI Takeover Regulations. A copy of the said public announcement was filed with SEBI and sent to the registered office of the Target Company on the same date.
- The Company published a detailed public statement on 21 May 2018 with respect to the Open Offer in terms of the SEBI Takeover Regulations in the relevant newspapers. A copy of the detailed public statement was sent to SEBI, the BSE Limited and the registered office of the Target Company on the same date.
- Subsequently, on 28 May 2018, the Company filed the draft letter of offer with respect to the Open Offer with the SEBI (**DLOF**). A copy of the DLOF was sent to the BSE Limited and the registered office of the Target Company on the same date. Pertinently, the fact that acquisition of the Sale Shares under the SPA and the Equity Shares under the Open Offer were subject to satisfaction of certain conditions precedent including receipt of RBI Approval was disclosed in the DLOF.
- On 31 August 2018, the Company received comments from SEBI on the DLOF. After incorporating SEBI's comments on the DLOF, the Company dispatched the letter of offer dated 4 September 2018 with respect to the Open Offer to the public shareholders of the Target Company (**LOF**).
- The tendering period for the Open Offer commenced on 19 September 2018 and ended on 4 October 2018. The Open Offer was completed and the Company acquired 30,74,510 Equity Shares representing 24.46% of the fully paid-up equity share capital of the Target Company from the public shareholders of the Target Company by making payment of INR 199.36/- per Equity Share (including interest of INR 1.36/- per Equity Share) to the eligible public shareholders of the Target Company on 13 November 2018, as disclosed vide the updated post offer report dated 20 November 2018 filed by the merchant banker to the

Open Offer with the SEBI (Updated Post Offer Report). Therefore, the offer period for the Open Offer expired on 13 November 2018.

- *The Updated Post Offer Report stated that the post offer shareholding of the Company in the Target Company would be 81.55% considering that the Company was in the process of acquiring the Sale Shares from the Sellers in accordance with the terms of the SPA.*
- *In terms of Regulation 22(1) of the SEBI Takeover Regulations, the Company could have completed the acquisition of Sale Shares only after the expiry of the Open Offer period i.e. 13 November 2018. As mentioned above, in terms of the SPA read with the 24 December 2018 Letter, the Company was required to purchase, and the Sellers were required to sell, the Sale Shares by 31 January 2019.*
- *However, during the month of October 2018, the Essel Group, the promoter group of the Company, started facing liquidity mismatch at the group level and was contemplating internal restructuring and realigning of all its businesses in order to tackle the liquidity mismatch. Consequently, the Company faced difficulties in completing the obligation to purchase the Sale Shares from the Sellers in terms of the SPA by 31 January 2019.*
- *Thereafter, on 13 February 2019, Mahendra Doshi, one of the Sellers, wrote to the Company referring to the delay in completion of the transaction contemplated in terms of the SPA and inter alia mentioned that the RBI Approval for the acquisition of the Equity Shares by the Company, was set to expire on 22 February 2019.*
- *By its letter dated 18 February 2019, the Company informed the Sellers of the liquidity mismatch and crunches faced by the Essel Group and that the process of internal restructuring and realigning the businesses would take about 3 months to complete. The Company also assured the Sellers that it intended to fulfill its obligations under the SPA but needed more time. In this context, the Company sought an extension of 3 months (i.e. till 30 April 2019) to complete the transaction contemplated in the SPA and requested the Sellers, who were in control of the Target Company, to apply to RBI seeking an extension of the RBI Approval for a period of 3 months (i.e. till 30 April 2019).*
- *Thereafter, Pratik Doshi, another Seller, vide his letter dated 21 February 2019 to the Company asked the Company to create an escrow account and deposit either 25% of the*

consideration payable by the Company to the Sellers in terms of the SPA or deposit all the Equity Shares acquired by it in the Open Offer or a combination of two together constituting 25 % of the consideration payable by the Company to the Sellers. The letter also mentioned that the Company's request for extension of time of 3 months to complete the underlying transaction and for applying to the RBI seeking extension of the RBI Approval would only be acceded to if the Company fulfilled the Sellers' new demand for creation of an escrow account.

- *The Company vide its letter dated 21 February 2019 responded to the Sellers' letter of even date, and stated that the demand for the creation of escrow and deposit of either 25% of the consideration payable by the Company to the Sellers in terms of the SPA or deposit all the Equity Shares acquired by it in the Open Offer or a combination of two together constituting 25% of the consideration payable by the Company to the Sellers was extraneous to the SPA and that these terms had never been agreed to between the parties to the SPA, and that such a term was not acceptable to the Company. The Company in this letter dated 21 February 2019 reiterated that it intended to fulfil its obligations in terms of the SPA. The Company in this letter also reiterated its request seeking extension of time for a period of 3 months to fulfil its obligations under the SPA and requested the Sellers, who were in control of the Target Company, to seek an extension for a period of 3 months for the RBI Approval.*
- *However, the Company did not receive a response to its letter dated 21 February 2019 and the Sellers did not accede to the request for extension of time sought by the Company nor applied to the RBI seeking extension of the RBI Approval. Therefore, the Sellers were not ready and willing to extend the term of the SPA beyond 31 January 2019 and seek extension of the RBI Approval.*
- *Considering the Long Stop Date had expired on 31 January 2019 it became impossible for the Company to acquire the Sale Shares in terms of the SPA.*
- *However, even though the Long Stop Date had expired, the Company wanted to fulfil its obligation in terms of the SPA and acquire the Sale Shares. The Company's letters dated 18 February 2019 and 21 February 2019 seeking extension of time to complete the acquisition attest to the bona fide intentions of the Company to acquire the Sale Shares.*

Further, the requests made by the Company to the Sellers were also in the spirit of the SPA, more particularly in terms of Clause 12.2 of the SPA which stipulated that:

“...12.2 Further Assurances

12.2.1 The Parties to this Agreement shall from time to time execute and deliver all such further documents and do all acts and things as the other Party may reasonably require to effectively carry on the full intent and meaning of this Agreement and to complete the transactions contemplated hereunder.

12.2.2 If, for any reason whatsoever, any term contained in this Agreement cannot be performed or fulfilled, the Parties agree to meet and explore alternative solutions depending upon the new circumstances, but keeping in view the spirit and core objectives of this Agreement...” (emphasis supplied)

- It is pertinent to note that the Company was at no point of time in control of the Target Company and was not in a position to apply to the RBI to seek extension of time of the RBI Approval. Further, without extension of the Long Stop Date in the SPA, the Company could not have unilaterally completed the acquisition of Sale Shares.
- Thereafter, the Target Company wrote a letter dated 25 February 2019 to SEBI stating that: (i) the transaction of Sale Shares between the Company and the Sellers should have been completed by 26 October 2018; (ii) the RBI Approval had lapsed on 22 February 2019 and a fresh RBI approval would be required; and (iii) in terms of the SEBI Takeover Regulations, the underlying transaction to the Open Offer, stipulated in the SPA, was to be completed within 26 weeks from the closure of the offer period, i.e. by 4 April 2019. The Target Company failed to disclose full particulars to SEBI as to why the transaction did not go through. The Target Company also failed to disclose to SEBI the repeated requests for extension of time sought by the Company vide the Company’s letters dated 18 February 2019 and 21 February 2019. Further, the date of 26 weeks from the closure of the offer period was incorrectly mentioned as 4 April 2019 instead of 14 May 2019, considering the Open Offer closed on 13 November 2018.
- The Target Company vide letter dated 5 March 2019 informed the RBI that (i) the RBI Approval lapsed on 22 February 2019 and that the Company had not purchased the Sale

Shares from the Sellers in terms of the SPA; (ii) the SPA had also lapsed and there had been no change in control of the Target Company; (iii) the Company had completed the Open Offer and acquired Equity Shares representing 24.46% of the equity share capital of the Target Company.

- Since the Sellers refused to provide an extension of time for a period of 3 months to the Company to fulfil its obligations in terms of the SPA and did not apply to the RBI seeking an extension of the RBI Approval, the Company was unable to fulfil its obligations to acquire the Sale Shares in terms of the SPA.
- In fact, the Target Company in its directors' report dated 2 May 2019 as part of the annual report of the Company for the financial year ended 31 March 2019 stated that the sale of Sale Shares in terms of the SPA could not be concluded due to financial constraints of the Company and the SPA has become void. For completeness, the disclosure made in the director's report is set out below:

“...Promoter Mr. Mahendra V. Doshi later on intimated to the Company that the aforesaid Share Purchase Agreement could not be concluded on part of Dakshin Mercantile Private Limited due to financial constraints of the Acquirer (Essel Group). Hence the said agreement became void...” (emphasis supplied).

- The Sellers treated the SPA as “void” even before the expiry of 26 weeks period from the Open Offer closure.
- The Company, to maintain status quo ante, with respect to its shareholding in the Target Company sold the Equity Shares acquired in the Open Offer for INR 64.70/- per Equity Share on 16 September 2019. While the Company acquired the Equity Shares for INR 199.36/- per Equity Share, it sold the Equity Shares at a price of INR 64.70/- per Equity Share thereby suffering a loss of INR 41 crores (approx.).
- Subsequently, at the Target Company's board meeting dated 22 October 2019, the board of directors of the Target Company removed Amitabh Chaturvedi, the representative of the Company on the board of the Target Company. The termination of Amitabh Chaturvedi's directorship by the board of directors of the Target Company was intimated to him vide the Target Company's letter to him dated 22 October 2019.

- *Thereafter, SEBI vide its letter dated 31 October 2019 sought the Company's comments regarding its compliance with Regulation 22(3) of the SEBI Takeover Regulations with respect to the acquisition of the Sale Shares.*
- *The Company vide its letter dated 6 November 2019, informed SEBI that since the Essel group, the group to which the Company belongs, was facing liquidity mismatch and was in the process of internal restructuring and realigning its business and considering that the RBI Approval for the acquisition of Sale Shares of the Target Company was set to expire on 22 February 2019, the Company wrote letters to the Sellers on 18 February 2019 and 21 February 2019 explaining the problems being faced by the Company at the group level, and requested the Sellers, who were in control of the Target Company, to apply to the RBI seeking an extension of the RBI Approval for a period of 3 months till 30 April 2019 and also sought an extension of time for a period of 3 months from the Sellers to complete the acquisition in terms of the SPA. However, the Sellers did not seek an extension for the RBI Approval and therefore the Company could not complete the acquisition in terms of the SPA.*
- *Thereafter, on 10 June 2020, the SEBI issued the captioned Show Cause Notice to the Company alleging violation of Regulation 22(3) of the SEBI Takeover Regulations with respect to the Open Offer and requiring the Company to show cause as to why an inquiry should not be held in terms of the Adjudication Rules and penalty not be imposed against the Company.*
- *The Show Cause Notice states that: (i) the Company was required to complete the acquisition contracted in the SPA not later than 26 weeks from the expiry of the offer period; (ii) the Company has informed the SEBI that the RBI Approval was valid for 6 months till 22 February 2019; and (iii) despite the RBI Approval, the Company did not complete the acquisition contracted in the SPA.*
- *We deny the violation of Regulation 22(3) of the SEBI Takeover Regulations. It is submitted that the charges in the Show Cause Notice are based on an incomplete appreciation of facts and are contrary to the factual position on record.*
- *It is submitted that the Company was unable to acquire the Sale Shares during the period of 26 weeks from the expiry of the offer period i.e. by 14 May 2019, as (i) the Long Stop*

Date of the SPA read with the 24 December 2018 Letter had expired; (ii) the Sellers treated the SPA as void by which the Company was prevented from completing the purchase of Sale Shares in terms of the SPA; (iii) the Sellers did not accede to the Company's request vide letters dated 18 February 2019 and 21 February 2019 seeking 3 months' time to acquire the Sale Shares; and (iv) the Target Company did not apply to the RBI seeking extension of the RBI Approval despite repeated requests by the Company.

- *Further, it is submitted that due to the extraordinary and supervening circumstances prevailing at that point in time i.e. the financial difficulties faced by the Essel Group, the Company made repeated requests to the Sellers, being in control of the Target Company to seek an extension of the RBI Approval. However, despite repeated requests, the Sellers did not apply to the RBI for an extension of the RBI Approval.*
- *It is submitted that the Company entered into the SPA read with the 24 December 2018 Letter with every intention to complete the acquisition contemplated therein. As evident from the Company's letters dated 18 February 2019 and 21 February 2019, the Company was willing to comply with its obligations to acquire the Sale Shares even after the Long Stop Date and in that context had requested the Target Company to seek extension of the RBI Approval for a period of 3 months to complete its obligations. However, despite repeated requests, the Sellers, despite being in control of the Target Company, did not apply to the RBI for an extension of the RBI Approval. Therefore, the Company, could not proceed to acquire the Sale Shares after 22 February 2019 as that would have been a violation of the requirement to obtain RBI Approval for acquisition of the Sale Shares.*
- *It is submitted that while the SPA read with the 24 December 2018 Letter required the Company to acquire Sale Shares by 31 January 2019, in terms of Regulation 22(3) of the SEBI Takeover Regulations, the obligation on the Company was to acquire Sale Shares by 14 May 2019, i.e. within 26 weeks from the expiry of the offer period. It is submitted that, at best, the failure to acquire Sale Shares is a violation of the terms of the SPA for which the appropriate remedy lies at civil law and not before SEBI; and the failure to acquire the Sale Shares does not constitute a violation of Regulation 22(3) of the SEBI Takeover Regulations. The Target Company is merely attempting to pressurise the Company and its officers by its letter dated 26 February 2019. The correspondence on record and the*

conduct of the Sellers show that it was the Sellers who did not want to complete the sale of Sale Shares to the Company and treated the SPA as void.

- *Without prejudice to the above contentions, the Company submits the following submissions for your consideration.*
- *It is submitted that the Show Cause Notice has failed to appreciate the fact that the Company was unable to comply with the requirements of Regulation 22(3) of the SEBI Takeover Regulations due to extraordinary and supervening circumstances:*
- *The Essel group, the promoter group of the Company, was facing liquidity mismatch and was contemplating internal restructuring and raising funds to refinance the promoter debt;*
- *The Long Stop Date in the SPA and the SPA expired on 31 January 2019, as evident from the SPA, the 24 December 2018 Letter and other correspondence on record;*
- *The RBI Approval expired before the Company could complete the acquisition in terms of the SPA;*
- *The Sellers treated the SPA as void even before the expiry of the statutorily permitted period of 26 weeks from the Open Offer closure, due to which the Company was prevented from completing the purchase of Sale Shares in terms of the SPA; and*
- *The Sellers, being in control of the Target Company, failed to apply for an extension of the RBI Approval for a period of 3 months till 30 April 2019.*
- *It is submitted that while Regulation 22(3) of the SEBI Takeover Regulations stipulates that the acquirer is required to complete the acquisition contracted in the SPA not later than 26 weeks from the expiry of the offer period, the proviso to the regulation provides for the possibility of an extension of the time period, in the event of any extraordinary and supervening circumstances which render it impossible to complete the acquisition within the 26 weeks period from the expiry of the offer period, if it is deemed be in the interests of the investors in securities and the securities market. The present facts fall squarely within the proviso.*
- *It is submitted that the SEBI has failed to note that there were, in fact, extraordinary and supervening circumstances which rendered it impossible for the Company to complete the acquisition by 14 May 2019. The SEBI has also failed to appreciate that the Company was*

facing financial difficulties at the group level and was therefore unable to complete the transaction prior to 22 February 2019, i.e. when the RBI Approval expired. However, it was the refusal of the Sellers to extend the Long Stop Date and cooperate and seek an extension of RBI Approval, which rendered it impossible for the Company to complete the transaction by 14 May 2019, i.e., 26 weeks from the expiry of the offer period, since the acquisition was contingent on the RBI Approval. It is submitted that the Company had time and again reassured the Sellers of its intention to fulfil its obligations and had requested them to seek an extension of 3 months for the RBI Approval, which would have allowed the Company to complete the transaction contemplated in the SPA.

- *It is also submitted that the Show Cause Notice has also not considered that the Target Company was under the control of the Sellers and that the Company was not in a position to seek an extension of the RBI Approval so that the Company could fulfil its obligations in terms of the SPA. Instead of acceding to the request of the Company, the Sellers demanded that the Company accept onerous obligations.*
- *In view of the foregoing submissions it is respectfully submitted that there is no justification for subjecting the Company to any inquiry in terms of Rule 4 of the Adjudication Rules read with Section 15I of the SEBI Act or to levy a penalty under Section 15HB of the SEBI Act as there is no prima facie finding of any violation of the law, backed up with material in support. The Show Cause Notice therefore is unwarranted.*
- *It is also submitted that the penalty should not be one which is disproportionate to the gravity of the offence. In the instant case, the Company was unable to comply owing to supervening circumstances and failure of the Target Company to seek an extension of the RBI Approval and extend the Long Stop Date. Without prejudice it is submitted that the Adjudicating Officer is expected to act judicially while deciding the quantum of the penalty. In terms of Section 15J of the SEBI Act, while adjudging the quantum of penalty under Section 15I of the SEBI Act, the Adjudicating Officer must have due regard to the following factors, namely:*
- *The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*

- *The amount of loss caused to an investor or group of investors as a result of the default; and*
- *The repetitive nature of the default.*
- *With regard to the said factors as contained in Section 15J of the SEBI Act it is submitted that:*

As a result of the non-acquisition of the Sale Shares, the Company has not made any disproportionate gain or gained an unfair advantage. In fact, it is the Company who has suffered a loss of INR 41 crores (approx.) when it sold the Sale Shares on 16 September 2019, as more detailed at paragraph □ above;

The Company has also not caused any loss to investors or group of investors. It is pertinent to note that the price of the Equity Shares of the Target Company saw a gradual and steady increase post the public announcement of the Company's intent to make the Open Offer on 14 May 2018 and, since March 2018, was almost at its highest around the time when the Company completed the acquisition of Equity Shares in terms of the Open Offer i.e. on 13 November 2018. Further, it may be noted that the price of the Equity Shares of the Target Company saw a steady decline after the acquisition of the Equity Shares by the Company to the extent where the price nearly fell to almost 1/3rd of the price per Equity Share paid by the Company to the public shareholders in the Open Offer. This reiterates the submission of the Company that there was no loss caused to the public shareholders of the Target Company. A table setting out the details of the opening and closing price of the Equity Shares on certain relevant dates with respect to the aforementioned trend is set out below:

<i>Date and Particulars</i>	<i>Opening price (INR per Equity Share)</i>	<i>Closing price (INR per Equity Share)</i>
<i>28 March 2018 (Last trading day of the financial year ended 31 March 2018)</i>	<i>150.00</i>	<i>145.10</i>
<i>14 May 2018 (Date of execution of the SPA and date of issue of Public Advertisement)</i>	<i>171.00</i>	<i>170.85</i>

<i>Date and Particulars</i>	<i>Opening price (INR per Equity Share)</i>	<i>Closing price (INR per Equity Share)</i>
<i>21 May 2018 (Date of publication of Detailed Public Statement in newspapers)</i>	<i>190.00</i>	<i>184.80</i>
<i>28 May 2018 (Date of filing the DLOF with the SEBI)</i>	<i>187.20</i>	<i>187.05</i>
<i>29 June 2018 (Last trading day for the quarter ended 30 June 2018)</i>	<i>189.00</i>	<i>187.15</i>
<i>19 September 2018 (Date of commencement of the tendering period)</i>	<i>195.15</i>	<i>195.30</i>
<i>4 October 2018 (Date of expiry of the tendering period)</i>	<i>189.90</i>	<i>188.00</i>
<i>9 November 2018 (Highest closing price of the scrip during the period of 1 March 2018 to 30 September 2019)</i>	<i>214.60</i>	<i>214.30</i>
<i>13 November 2018 (Date on which payment was made to public shareholders in terms of the Open Offer)</i>	<i>201.00</i>	<i>192.05</i>
<i>31 December 2018</i>	<i>180.00</i>	<i>170.60</i>
<i>31 January 2019 (Long Stop Date)</i>	<i>110.00</i>	<i>95.00</i>
<i>22 February 2019 (Date on which the RBI Approval expired)</i>	<i>108.10</i>	<i>114.10</i>
<i>29 March 2019 (Last trading day of the financial year ended 31 March 2019)</i>	<i>124.05</i>	<i>123.10</i>
<i>4 April 2019 (Date on which the 26 week period from closure of the offer expired as mentioned in the Show Cause Notice). The share price as on 4 April 2019 is not available and the opening price and closing price has been taken as the closing price of 3 April 2019.</i>	<i>117.40</i>	<i>120.40</i>

<i>Date and Particulars</i>	<i>Opening price (INR per Equity Share)</i>	<i>Closing price (INR per Equity Share)</i>
<i>14 May 2019 (Actual date on which the 26 week period from closure of the Open Offer)</i>	<i>99.50</i>	<i>102.00</i>
<i>16 September 2019 (Date on which the Company sold the Equity Shares acquired by it during the Open Offer aggregating to 24.46% of the equity share capital of the Target Company)</i>	<i>67.50</i>	<i>70.40</i>
<i>30 September 2019</i>	<i>73.80</i>	<i>73.80</i>
<i>31 October 2019</i>	<i>68.50</i>	<i>68.00</i>

- *Certain directors and key managerial personnel of the Target Company sold their Equity Shares in the Open Offer to the Company at price of INR 199.36/- per Equity Share and benefitted from the said sale as the price at which the Equity Shares were purchased in the Open Offer was almost the highest price of the scrip of the Target Company since 28 March 2018;*
- *Loss, if any, to the Sellers must be attributed to the failure of the Sellers to extend the Long Stop Date and obtain extension of the RBI Approval; and*
- *The alleged default is not repetitive.*
- *It is also submitted that the Company has never been penalized for any infraction or violation of any rules or regulations by SEBI. Save and except the current matter under reference, the Company has never received a show cause notice from SEBI.*
- *It is also submitted that during the last 2 financial years i.e. the financial year ended 31 March 2019 and 31 March 2020, the Company has suffered losses aggregating INR 90 lakhs (approx.) and INR 44 crores (approx.). Any penalty imposed by SEBI on the Company would only aggravate the losses suffered by the Company.*
- *Therefore, in the facts and circumstances, any imposition of penalty on the Company would be unjustified and unwarranted. It is submitted that if any action is proposed against us, the same would adversely affect us and would besmirch the reputation of the Company.*

- *It is also submitted that the reply demolishes the charges in the Show Cause Notice and therefore, it is humbly prayed that the Show Cause Notice be discharged and the charges as levelled against the Company be dropped.*
- *It is submitted that the Company reserves its right to modify and add additional grounds in its reply.*
- *Moreover, since this reply is being made amidst the COVID-19 pandemic, when curtailment measures at the place where the Company has its registered and corporate offices remain, the Company also craves leave to file any additional reply or documents, if necessary.*
- *Lastly, by its email dated 9 August 2020, the SEBI has asked us to indicate whether we would require a personal hearing in the matter. We would like to avail of this opportunity, and we request that, the Company be given an opportunity of personal hearing in the matter before any decision is taken by SEBI in the matter.*

9. Thereafter, the Noticee was granted another opportunity of personal hearing on September 16, 2020 through videoconferencing on the Webex platform in view of the difficulties faced due to Covid 19-pandemic. On the scheduled date of the personal hearing the Noticee was represented by its Authorised Representatives (ARs) who reiterated the earlier submissions vide letter dated August 26, 2020. The AR further requested for additional 5 days time to submit additional response in the matter which was acceded to.

10. Subsequently the Noticee vide email dated September 21, 2020 submitted its reply, relevant portion of which is mentioned as below:

- ***BACKGROUND OF THE ACQUISITION:*** *LKP Finance Limited (Target Company) is a non-banking financial company (NBFC) registered with the Reserve Bank of India (RBI) and is engaged in the business of finance and trading in shares, securities and derivatives. As stated in the letter of offer dated 4 September 2018 submitted by the Noticee through the Manager to the Offer i.e. ICICI Securities Limited, the object and purpose of acquisition of equity shares of the Target Company was to enable the Noticee to expand its subsidiary's existing business as a non-banking financial company. The acquisition also*

aligned with the Noticees' objective of acquiring a listed company which would have helped with the Noticees' long term expansion and growth plans.

➤ **REMEDIES AVAILABLE TO THE PARTIES IN TERMS OF THE SPA FOR ITS BREACH:** *The Noticee entered into share purchase agreement dated 14 May 2018 with the Target Company and M.V. Doshi, M.V. Doshi (through partnership firm M/s L.K. Panday), Pratik M. Doshi, Ira P. Doshi, Shital A. Sonpal, Samaya P. Doshi, Sea Glimpse Investments Private Limited and Bhavana Holdings Private Limited (each a 'Seller' and collectively hereinafter referred to as the 'Sellers') to acquire equity shares of the Target Company held by the Sellers (SPA). (Paragraph 6 of the Reply)*

➤ *Clause 10 of the SPA stipulated that the agreement shall be governed and construed in accordance with the laws of India and that subject to Clause 11, the courts of Mumbai must have exclusive jurisdiction over any legal proceeding arising out of or in connection with the SPA. In terms of Clause 11 of the SPA, any dispute or claim arising out of or in connection with or relating to the SPA or its breach, termination or invalidity was to be referred to a binding arbitration by a panel of 3 arbitrators, at the written request of any of the parties to the SPA. The arbitration would be in accordance with the Arbitration and Conciliation Act, 1996. Clause 11 of the SPA further set out the details of appointing the arbitrators and stated that the seat and venue of the arbitration would be Mumbai. Clause 11.3 of the SPA stipulated that the award made by the panel of arbitrators would be final and binding on the parties to the dispute. (Annexure 1 of the Reply)*

Clause 12.7 of the SPA stipulates that the parties to the SPA have acknowledged and agreed that a breach of the SPA would cause irreparable damage to the parties to the SPA and such parties may not have an adequate remedy at law and therefore the obligations of each party under the SPA, to the extent not reparable by damages, would be enforceable by a decree of specific performance issued by any court of competent jurisdiction, and appropriate injunctive relief could be applied for and granted in this connection.

Pertinently, no legal proceedings or dispute resolution mechanism for any alleged breach of the terms of the SPA has been invoked and no such proceeding is pending.

➤ **LIST OF MATERIAL DATES AND EVENTS:** *A list of material dates and events with respect to the matter is set out below:*

Sr. No.	Date	Event
1.	14 May 2018	<p>The Noticee entered into the SPA, as amended vide the First Amendment Agreement of December 2018 with effect from 31 October 2018. (Paragraph 6 of the Reply)</p> <p>Simultaneously with the execution of the SPA, the Noticee issued a public announcement to BSE Limited with respect to the mandatory open offer in terms of the provisions of SEBI Takeover Regulations to acquire upto 26.00% of the voting share capital of the Target Company from the eligible public shareholders of the Target Company (Open Offer). (Paragraph 17 of the Reply)</p>
2.	21 May 2018	The Noticee published a detailed public statement with respect to the Open Offer in the relevant newspapers. (Paragraph 18 of the Reply)
3.	28 May 2018	The Noticee filed the draft letter of offer with respect to the Open Offer with the SEBI. (Paragraph 19 of the Reply)
4.	23 August 2018	The Target Company received the approval from the RBI vide letter bearing reference number DNBS.MRO.CMD No. 280/13.12.027/2017-18 dated 23 August 2018 for acquisition of shares and change in control pursuant to the acquisition of shares under the SPA and the Open Offer, respectively. The RBI approval stipulated that it was valid for a period of 6 months, i.e. till 22 February 2019. (Paragraph 9 of the Reply)
5.	31 August 2018	The Noticee received comments from SEBI on the draft letter of offer. (Paragraph 20 of the Reply)
6.	4 September 2018	The Noticee dispatched the letter of offer with respect to the Open Offer to the public shareholders of the Target Company. (Paragraph 20 of the Reply)
7.	19 September 2018 to 4	The tendering period for the Open Offer commenced on 19 September 2018 and ended on 4 October 2018. (Paragraph 21 of the Reply)

Sr. No.	Date	Event
	<i>October 2018</i>	
8.	<i>October 2018</i>	<i>The Essel Group, the promoter group of the Noticee, started facing liquidity mismatch at the group level and was contemplating internal restructuring and realigning of all its businesses in order to tackle the liquidity mismatch. Consequently, the Noticee faced difficulties in completing the obligation to purchase the shares from the Sellers in terms of the SPA by 31 January 2019. (Paragraph 24 of the Reply)</i>
9.	<i>17 October 2018</i>	<i>The Commercial Court, Naya Raipur, vide its order dated 17 October 2018 directed the Noticee to maintain status quo in respect of the Open Offer till further orders.</i>
10.	<i>2 November 2018</i>	<i>The stay order dated 17 October 2018 of the Commercial Court, Naya Raipur was partially vacated by the Commercial Court inter alia permitting the Open Offer to proceed and status quo be maintained only for the 304 Equity Shares held by the plaintiff in the civil suit in the Commercial Court. Consequently, the payment of consideration to the public shareholders of the Target Company who had tendered their shares in the Open Offer, which was scheduled on 19 October 2018, occurred on 13 November 2018.</i>
11.	<i>13 November 2018</i>	<i>The Open Offer was completed and the Noticee acquired 30,74,510 Equity Shares representing 24.46% of the fully paid-up equity share capital of the Target Company from the public shareholders of the Target Company by making payment of INR 199.36/- per Equity Share (including interest of INR 1.36/- per Equity Share) to the eligible public shareholders of the Target Company. <i>Therefore, the offer period for the Open Offer expired on 13 November 2018 (emphasis supplied). (Paragraph 21 of the Reply)</i></i>

Sr. No.	Date	Event
12.	December 2018	<i>The First Amendment to the SPA was entered into between the Noticee, the Target Company and the Sellers with effect from 31 October 2018. (Paragraph 6 of the Reply)</i>
13.	24 December 2018	<i>The Noticee and the Sellers vide letter dated 24 December 2018 inter alia extended the timeline at Clause 2.4.4 of the SPA for sale and purchase of Sale Shares to 31 January 2019. (Paragraph 12 of the Reply)</i>
14.	13 February 2019	<i>Mahendra Doshi, one of the Sellers, wrote to the Noticee referring to the delay in completion of the transaction contemplated in terms of the SPA and inter alia mentioned that the RBI Approval for the acquisition of the equity shares by the Noticee, was set to expire on 22 February 2019. (Paragraph 25 of the Reply)</i>
15.	18 February 2019	<i>The Noticee vide its letter dated 18 February 2019 informed the Sellers of the liquidity mismatch and crunches faced by the Essel Group and that the process of internal restructuring and realigning the businesses would take about 3 months to complete. The Noticee also assured the Sellers that it intended to fulfill its obligations under the SPA but needed more time. In this context, the Noticee sought an extension of 3 months (i.e. till 30 April 2019) to complete the transaction contemplated in the SPA and requested the Sellers, who were in control of the Target Company, to apply to RBI seeking an extension of the RBI Approval for a period of 3 months (i.e. till 30 April 2019). (Paragraph 26 of the Reply)</i>
16.	21 February 2019	<i>Pratik Doshi, another Seller, vide his letter dated 21 February 2019 to the Noticee asked the Noticee to create an escrow account and deposit either 25% of the consideration payable by the Noticee to the Sellers in terms of the SPA or deposit all the equity shares acquired by it in the Open Offer or a combination of two together constituting 25 % of the consideration payable by the Noticee to the Sellers. The letter also mentioned that the Noticees request for extension of time of 3 months to complete the underlying</i>

Sr. No.	Date	Event
		<i>transaction and for applying to the RBI seeking extension of the RBI Approval would only be acceded to if the Noticee fulfilled the Sellers' new demand for creation of an escrow account. (Paragraph 27 of the Reply)</i>
17.	21 February 2019	<i>The Noticee vide its letter dated 21 February 2019 responded to the Sellers' letter of even date, and stated that the demand for the creation of escrow and deposit of either 25% of the consideration payable by the Noticee to the Sellers in terms of the SPA or deposit all the equity shares acquired by it in the Open Offer or a combination of two together constituting 25% of the consideration payable by the Noticee to the Sellers was extraneous to the SPA and that these terms had never been agreed to between the parties to the SPA, and that such a term was not acceptable to the Noticee. The Noticee in this letter reiterated that it intended to fulfil its obligations in terms of the SPA. The Noticee also reiterated its request seeking extension of time for a period of 3 months to fulfil its obligations under the SPA and requested the Sellers, who were in control of the Target Company, to seek an extension for a period of 3 months for the RBI approval. (Paragraph 28 of the Reply)</i>
18.	22 February 2019	<i>The RBI approval for acquisition of shares and change in control pursuant to the acquisition of shares under the SPA and the Open Offer, respectively, expired. (Paragraph 9 of the Reply)</i>
19.	25 February 2019	<i>The Target Company wrote a letter dated 25 February 2019 to SEBI stating that: (i) the transaction of shares between the Company and the Sellers in terms of the SPA should have been completed by 26 October 2018; (ii) the RBI approval had lapsed on 22 February 2019 and a fresh RBI approval would be required; and (iii) in terms of the SEBI Takeover Regulations, the underlying transaction to the Open Offer, stipulated in the SPA, was to be completed within 26 weeks from the closure of the offer period, i.e. by 4 April 2019.</i>

Sr. No.	Date	Event
		<i>The Target Company failed to disclose full particulars to SEBI as to why the transaction did not go through. The Target Company also failed to disclose to SEBI the repeated requests for extension of time sought by the Company vide the Company's letters dated 18 February 2019 and 21 February 2019. Further, the date of 26 weeks from the closure of the offer period was incorrectly mentioned as 4 April 2019 instead of 14 May 2019, considering the Open Offer closed on 13 November 2018 (emphasis supplied). (Paragraph 33 of the Reply)</i>
20.	5 March 2019	<i>The Target Company vide letter dated 5 March 2019 informed the RBI that (i) the RBI approval lapsed on 22 February 2019 and that the Company had not purchased the shares from the Sellers in terms of the SPA; (ii) the SPA had also lapsed and there had been no change in control of the Target Company; (iii) the Company had completed the Open Offer and acquired equity shares representing 24.46% of the equity share capital of the Target Company. (Paragraph 34 of the Reply)</i>
21.	2 May 2019	<i>The Target Company in its directors' report dated 2 May 2019 as part of its annual report for the financial year ended 31 March 2019 stated that the sale of Sale Shares in terms of the SPA could not be concluded due to financial constraints of the Noticee and the SPA has become void (emphasis supplied). (Paragraph 36 of the Reply)</i> <i>The Sellers treated the SPA as "void" even before the expiry of 26 weeks period from the Open Offer closure (emphasis supplied). (Paragraph 37 of the Reply)</i>
22.	16 September 2019	<i>The Company, to maintain status quo ante, with respect to its shareholding in the Target Company sold the Equity Shares acquired in the Open Offer for INR 64.70/- per Equity Share on 16 September 2019 thereby suffering a loss of INR 41 crores (approx.) (emphasis supplied). (Paragraph 38 of the Reply)</i>

Sr. No.	Date	Event
23.	22 October 2019	<i>At the Target Company's board meeting dated 22 October 2019, the board of directors of the Target Company removed Amitabh Chaturvedi, the representative of the Noticee on the board of the Target Company. The termination of Amitabh Chaturvedi's directorship by the board of directors of the Target Company was intimated to him vide the Target Company's letter to him dated 22 October 2019 (emphasis supplied). (Paragraph 39 of the Reply)</i>
24.	31 October 2019	<i>SEBI vide its letter dated 31 October 2019 sought the Company's comments regarding its compliance with Regulation 22(3) of the SEBI Takeover Regulations with respect to the acquisition of the shares in terms of the SPA. (Paragraph 40 of the Reply)</i>
25.	6 November 2019	<i>The Noticee vide its letter dated 6 November 2019, informed SEBI that since the Essel group, the group to which the Noticee belongs, was facing liquidity mismatch and was in the process of internal restructuring and realigning its business and considering that the RBI approval for the acquisition of shares of the Target Company was set to expire on 22 February 2019, the Noticee wrote letters to the Sellers on 18 February 2019 and 21 February 2019 explaining the problems being faced by the Noticee at the group level, and requested the Sellers, who were in control of the Target Company, to apply to the RBI seeking an extension of the RBI approval for a period of 3 months till 30 April 2019 and also sought an extension of time for a period of 3 months from the Sellers to complete the acquisition in terms of the SPA. <i>However, the Sellers did not seek an extension for the RBI approval and therefore the Noticee could not complete the acquisition in terms of the SPA (emphasis supplied). (Paragraph 41 of the Reply)</i></i>
26.	10 June 2020	<i>SEBI issued the captioned Show Cause Notice to the Company alleging violation of Regulation 22(3) of the SEBI Takeover Regulations with respect to the Open Offer and requiring the Noticee to show cause as to why an</i>

<i>Sr. No.</i>	<i>Date</i>	<i>Event</i>
		<i>inquiry should not be held in terms of the Adjudication Rules and penalty not be imposed against the Noticee. (Paragraph 42 of the Reply)</i>

➤ *In light of the above submissions read with the Reply along with the oral arguments made at the personal hearing, it is prayed that the Show Cause Notice be discharged and the charges against the Noticee be dropped.*

11. For the reasons mentioned above, I am of the opinion that the Noticee was provided with adequate opportunities for replying to the SCN and of being heard in the matter and that the principles of natural justice have been complied with in respect of the Noticee's matter.

CONSIDERATION OF ISSUES AND FINDINGS

12. I have perused the SCN, written and oral submissions and other materials available on record. The issues that arise for consideration in the present case are:

- I. Whether the Noticee violated the provisions of Regulation 22(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011?*
- II. Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15HB of SEBI Act?*
- III. If so, what would be the monetary penalty, duly considering the factors mentioned in Section 15J of SEBI Act read with Rule 5(2) of the AO Rules?*

Issue I – *Whether the Noticee violated the provisions of Regulation 22(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011?*

13. The first issue for consideration is whether the Noticee violated the provisions of Regulation 22(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011? Before I proceed with the matter, it is pertinent to look at the relevant provisions alleged to have been violated by the Noticee, which are reproduced below:

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ***22. Completion of acquisition.***

(3) The acquirer shall complete the acquisitions contracted under any agreement attracting the obligation to make an open offer not later than twenty-six weeks from the expiry of the offer period:

***Provided** that in the event of any extraordinary and supervening circumstances rendering it impossible to complete such acquisition within such period, the Board may for reasons to be published, may grant an extension of time by such period as it may deem fit in the interests of investors in securities and the securities market.*

14. I note that the Noticee intended to acquire a majority stake (upto approximately 81.55% of the share capital) in LKP through Share Purchase Agreement (SPA) dated May 14, 2018 with the existing Promoters and from public through open offer in terms of the provisions of SEBI (SAST) Regulations, 2011. I note that the SPA defined the timeline for completion of the aforesaid acquisition of shares of LKP. The SPA provided that the aforesaid transaction should be completed within 20 days from the end of the open offer period but not later than the Long Stop Date (LSD). The open offer period ended on October 4, 2018 and therefore the date of completion of the acquisition of share stipulated in the SPA was October 24, 2018 (i.e. 20 days from the end of open offer period). The LSD in the SPA was defined to be not later than December 31, 2018 which was extended to January 31, 2019 vide amendment to the SPA dated December 24, 2018.

15. I note that the aforesaid transaction also required approval from RBI besides SEBI. The RBI accorded its approval vide letter dated August 23, 2018 valid for a period of 6 months i.e. till February 22, 2019. The time limit for completion of the transaction as per SEBI (SAST) Regulations, 2011 was 26 weeks from the close of the open offer i.e. till April 4, 2019. I note from the material available on record that the open offer period was from September 19, 2018 to October 4, 2018. Therefore, the open offer ended on October 4, 2018 and not November 13, 2018 as interpreted by the Noticee. I find that on November 13, 2018, the Noticee paid consideration for the shares tendered in the open offer along with interest for the late payment. I note that the date of payment of consideration is not the same as the open offer end date. The open

offer period ended on October 4, 2018, since the tendering of shares in the open offer ended on that date and any shares offered after that date was not acceptable. Therefore, the date of payment is not the same as date of offer ending. I also note that the Noticee in its reply has mentioned contradictory dates as October 4, 2018 in some places and November 13, 2018 in some other as the open offer end date.

16. I note that as per the SPA, the acquisition of shares as contracted, should have been completed by October 24, 2018 and if not then latest by January 31, 2019 (i.e. amended long stop date). I note from the material available on record that the Noticee did not complete the aforesaid acquisition of shares by October 24, 2018 nor by January 31, 2018. Further, admittedly, the Noticee failed to complete the acquisition before the lapse (February 22, 2019) of RBI approval dated August 28, 2018 which consequently resulted in lapse of the time limit (till April 4, 2019) as per SEBI (SAST) Regulations, 2011.

17. I note that the Noticee in its reply has admitted the alleged violation of the provisions of SEBI (SAST) Regulations, 2011. The Noticee however has submitted that the alleged violation was not intentional rather a compulsion. The Noticee submitted that it intended to complete the aforesaid acquisition but required some additional time to realign its assets and resources as its parent organisation (Essel Group) were facing a major liquidity problem. The Noticee submitted that the issue of liquidity crunch at the Group level (Essel Group) necessitated restructuring and realigning of resources within the Group. Therefore, the Noticee submitted that it requested, the sellers to allow it some more time to complete the aforesaid acquisition which inter-alia required seeking extension of the approval from SEBI and RBI. However, the sellers did not seek extension from RBI and SEBI. Thereafter, the time limit for completion of the said acquisition of shares of LKP in accordance with the provisions of SEBI Regulations and RBI guidelines lapsed and the same resulted in the Noticee not completing the aforesaid acquisition thereby violating the provisions of the Regulation 22(3) of the SEBI (SAST) Regulations, 2011.

18. I note from the material/documents available on record that the main basics of the Noticee's submission is that the sellers did not seek extension from the RBI and the SEBI which resulted in the Noticee being not able to complete the aforesaid

acquisition which consequently resulted in violation of the provisions of Regulations 22(3) of SEBI (SAST) Regulations, 2011 by the Noticee. However, I find that lack of commitment to honour the agreement/contract is visible on part of both, sellers and acquirer. I find that the offer period ended on October 4, 2018 and as per SPA the transactions should have been completed by October 24, 2018 which did not happen. I also note that even though the Long Stop Date was extended for a further period of 1 month, the Noticee did not complete the transaction within the extended period as well. I note from reply of the Noticee that one of the sellers insisted on opening of an Escrow account and deposit at least 25% of the consideration payable to the sellers in the form of cash/bank balance or securities or combination of both as an assurance. I find that the sellers insistence was not unreasonable since it was a known fact that the Noticee was under liquidity crunch and therefore it was prudent on the part of the sellers who might have been anxious with regard to payment capacity of the Noticee. Therefore, insisted on a reasonable security that the deal (acquisition) would be completed. I note that the Noticee did not accept the above, stating that the same was extraneous and not part of the SPA. I note that the above could have been easily done by the Noticee since the Noticee had already acquired 25% (approximately) of the shares of LKP from the Public in the open offer which could have been deposited in the Escrow Account. I note that Noticee submitted if it had the money to deposit in the Escrow Account it would have acquired the shares from the sellers instead of depositing the same in the Escrow Account. I note that the above contention of the Noticee is not correct as the sellers insisted only 25% of the consideration. Further, the 25% of the consideration to be deposited in the Escrow Account could have funds or securities or a combination of both.

19. I find that the Noticee did not accept the aforesaid request for creating an Escrow account stating that the SPA did not provide for the same. Further that it did not have the required money to deposit in the Escrow Account. As mentioned above, the sellers did not insist on deposit of money in the Escrow Account rather, it said either money or security or combination of both representing at least 25% of the consideration payable to the sellers which I find was reasonable from the point of view of sellers. I note that exchange of benefits between two parties is a common understanding and

rule of business/contract. In the instant matter, the Noticee required the sellers to seek extension from the competent Authorities (which was not provided for in the SPA) to complete the acquisition of the shares as contracted in the SPA, the sellers, in return required the Noticee to deposit 25% of the consideration payable to them as an assurance for the contract/deal. I note that the Noticee did not agree to the demands/request of the sellers stating that it was not provided for in the SPA. Similarly, the sellers did not accept the request of the Noticee for seeking extension from the competent Authorities to complete the acquisition of shares as per the SPA.

20. I find that the Noticee submitted that the request of the sellers with respect to the Escrow Account was extraneous to the SPA. In this respect I note that the SPA stipulated the acquisition of shares to be completed within the Long Stop Date which the Noticee failed to do. I find that SPA did not provide to complete the acquisition until the expiry of the approval period by the RBI or the SEBI. I find that the parties to the SPA mutually agreed for mutual benefit to ignore the Long Stop Date and waited until the expiry of the RBI approval date for either completion of the acquisition of shares of LKP as per the SPA or to declare the SPA as void. The Noticee submitted that the sellers acted unilaterally which I differ for the reasons mentioned as aforesaid.

21. I also note that the time limit to complete the acquisition of shares of LKP in accordance with SPA ended on January 31, 2019. I find from material/documents available on record that the Noticee did not communicate with the sellers even after the expiry of the Long Stop Date which was the cutoff date for completing the acquisition of shares as per the SPA. I find that the Noticee's letter dated February 18, 2019 wherein it requested for additional time to complete the acquisition as aforesaid was in response to one of the seller's letter dated February 13, 2019. I find the approach of the Noticee to be very casual in this respect. I understand that had the Noticee, genuinely been keen on acquiring the shares of LKP then it would have immediately after or even before the expiry of the Long Stop Date (January 31, 2019) approached the sellers to seek extension of time to complete the aforesaid acquisition so as to give the sellers adequate time to think and consult other parties to the SPA and arrive at conclusion. In the instant matter, I find that the time limit of RBI approval was due to end on February 22, 2019 and the Noticee wrote seeking extension on

February 18, 2019 and that also in response to the seller's letter. I find that this was a short time given to the sellers, to seek extensions and complete the formalities. However, I do find that the sellers responded vide letter dated February 21, 2019 to the request of the Noticee by putting a condition which basically to my understanding was to safeguard their interest which any prudent person would have done, which the Noticee did not agree to. I find that the request of the Noticee was also extraneous to the SPA as the request of the seller was extraneous. I understand that had the parties to the SPA been keen on going ahead with the acquisition, surely both the request from the sellers and acquirers were within their performing capacities without much extra effort or additional resources.

22. I also note that the Noticee had sold the shares acquired from the public in the open offer in September 2019. I note that the Noticee incurred a loss of approximately Rs. 41 crore by selling the above shares. I note that the Noticee has submitted that it sold the shares to maintain *status quo ante* which I find illogical. I note from the submission of the Noticee that the Noticee intended to acquire the controlling stake in LKP since the Noticee was in the same area of operation and that the acquisition would have given synergy of business and scale of operation. I note that to achieve the aforesaid objective of the Noticee it was in its interest to hold the shares acquired in the open offer and make effort to further acquire either from the public or promoters. However, the sale of shares by the Noticee, post failure to obtain shares through SPA belies the claim of the Noticee as aforesaid.

23. In view of the discussions in the foregoing paragraphs, I am of considered view that the Noticee has violated the provisions of the Regulation 22(3) of the SEBI (SAST) Regulations, 2011.

Issue II – Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15HB of SEBI Act?

24. I note that section 11 of the SEBI Act, 1992 casts a duty on the Board (SEBI) to protect the interests of investors in securities and to promote the development of and to regulate the securities market. For achieving such object, it has been authorised to take such measures as it thinks fit. Thus, power to take all measures necessary to

discharge its duty under the statute which is a reflection of the objective disclosed in the preamble has been conferred in widest amplitude. In view of the same and considering the violations committed by the Noticee as discussed in the foregoing paragraphs, makes the Noticee liable for penalty under Sections 15 HB of the SEBI Act 1992 which reads as follows:-

15HB. Penalty for contravention where no separate penalty has been provided.

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

25. As regards the Noticee it is clear that it is liable for imposition of penalty as is drawn from the Hon'ble Supreme Court of India judgement in the matter of **SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)** wherein the Hon'ble Apex Court held;

“In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...”.

ISSUEIII: *If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act?*

26. Factors to be taken into account by the adjudicating officer:

15J. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

[Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]

27. I find that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, accrued/made by the Noticee and the losses, if any, caused/suffered by the investors due to the failure of the Noticee to complete the acquisition of shares in accordance with the Share Purchase Agreement. Further, I find that the Noticee has incurred a loss of approximately Rs. 41 crore by selling the shares acquired from public in the open offer pursuant to the Share Purchase Agreement. The documents/material available on record, do not suggest the violation to be repetitive in nature. However, it would be appropriate to refer to the observations made by the Hon'ble SAT in the matter of **Akriti Global Traders Ltd. Vs. SEBI (Appeal No. 78 of 2014) decided on September 30, 2014 :-**

“...penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay.

ORDER

28. For the aforesaid reasons and after taking into consideration the nature and gravity of charges established, the facts and circumstances of the case as enumerated above, I, in exercise of the powers conferred upon me under Section 15I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, hereby impose a monetary penalty of Rs. 5,00,000/- (Rupees Five Lakh Only) on the Noticee, Dakshin Mercantile Private Limited (PAN: AAECD7918B) under section 15HB of SEBI Act, 1992 for the violation of the provisions of Regulation 22(3) of SEBI (SAST) Regulations, 2011 which will be commensurate with the violations committed by the Noticee.

29. The Noticee shall remit / pay the said total amount of penalty within 45 days of receipt of this order in either of the following way:

- a. By using the web link
<https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>; OR
- b. By way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai; OR

30. The Noticee shall forward the said Demand Draft in the format as given in table below shall be sent to "The Division Chief, Enforcement Department -DRA-III, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai - 400 051." and also to e-mail id :- tad@sebi.gov.in

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)	
Penalty	

31. In the event of failure to pay the said amount of penalty within 45 days from the date of this order, recovery proceedings may be initiated under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

32. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: September 29, 2020
Place: Mumbai

Vijayant Kumar Verma
Adjudicating Officer