

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 12(3) OF SECURITIES AND EXCHANGE BOARD OF INDIA
ACT, 1992 READ WITH REGULATION 27 OF SECURITIES AND EXCHANGE
BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008

In respect of: First Overseas Capital Ltd.

PAN No.: AAACL4737A

SEBI Registration No.: INM000003671

A. BACKGROUND

1. First Overseas Capital Ltd. ("**FOCL**" / "**Company**" / "**Noticee**") is registered with the Securities and Exchange Board of India ("**SEBI**") as a Merchant Banker ("**MB**"). SEBI conducted an inspection of the Noticee for the period April 01, 2021 to March 31, 2022. The findings of the inspection were communicated to the Noticee *vide* emails dated September 28, 2022 and November 04, 2022. After examining the reply submitted by the Noticee *vide* letters dated October 21, 2022 and November 09, 2022, SEBI observed violation of provisions of the SEBI (Merchant Bankers) Regulations, 1992 ("**MB Regulations**").
2. Pursuant to the observations made in the course of inspection and after examining the response of the Noticee to the same, enquiry proceedings under SEBI (Intermediaries) Regulations, 2008 ("**Intermediaries Regulations**") were initiated against the Noticee. A Designated Authority ("**DA**") was appointed to enquire into whether the net worth of the Noticee for the FYs ending 2019, 2020 and 2021 complied with the mandatory capital adequacy requirement as per the MB Regulations and make a recommendation in compliance with the Intermediaries Regulations. The DA issued a show cause notice dated May 03, 2023 ("**DA SCN**") to the Noticee under regulation 25 of the Intermediaries regulations to show cause as to why appropriate recommendation should not be

made against it in terms of regulation 26 of the Intermediaries Regulations for the alleged violation. In response to the DA SCN, the Noticee filed its reply *vide* letter dated May 17, 2023 and emails dated December 20, 2024 and December 27, 2024. Further, an opportunity of personal hearing was granted by the DA on December 19, 2024, which was availed by the Noticee / its Authorized Representative (“**AR**”).

3. Thereafter, the DA submitted an enquiry report dated February 27, 2025 (“**DA Report**”) wherein he recommended that the registration certificate of the Noticee be suspended for six months and a regulatory censure may be issued.
4. Based on the DA Report, a post enquiry show cause notice dated March 25, 2025 (“**Post Enquiry SCN**”) was issued to the Noticee enclosing a copy of the DA Report, calling upon it to show cause in terms of regulation 27(1) of the Intermediaries Regulations as to why action as recommended by the DA or any other action in terms of the Intermediaries Regulations should not be taken against the Noticee.

B. DA REPORT, REPLY AND HEARING

5. The allegations in the Post Enquiry SCN are summarized below as follows:
 - 5.1 Regulation 7 of the MB Regulations stipulates that the capital adequacy requirement for a merchant banker is net worth of INR 5 crores.
 - 5.2 From the submissions of the Noticee and the material available on record, the net worth of the Noticee for the FYs ending 2019-2021 was as follows¹:

Table 1

FY	Paid-up capital (INR)	Free reserves (INR)	Net worth (INR)
2019	7,95,00,000	(4,52,79,688)	3,39,81,005
2020	7,95,00,000	(6,00,69,963)	1,91,83,465
2021	7,95,00,000	(5,61,20,411)	2,31,22,673

- 5.3 From the table above, it is established that the net worth of the Noticee was below the statutory threshold of INR 5 crores for the aforesaid financial years. This is admitted by the Noticee in its replies dated May 17, 2023 and December 20, 2024.

¹ While the Inspection Period is from April 01, 2021 to March 31, 2022, the net worth of the Noticee was examined for the previous three financial years, i.e, FYs ending 2019, 2020 and 2021.

- 5.4 The contention of the Noticee that it has met the net worth criteria of INR 5 crores as on March 31, 2023 and March 31, 2024 in no manner exonerates the Noticee from its failure to comply with the net worth requirement for the FYs ended 2019-2021. Further, the issue of net worth of Noticee for the subsequent period is pending before SEBI. The Noticee has also made different submissions with respect to its net worth for FY ending 2023. *Vide* letter dated May 17, 2023, it has stated that its net worth was (INR 79,76,957) and *vide* letter dated December 18, 2024, it has claimed that its net worth was INR 6,40,24,927.
- 5.5 Regarding the Noticee's contention that due to COVID-19 pandemic, it had to use its capital to remain afloat in the capital market, neither the MB Regulations provide any exemption to the registered MBs from the mandate of the net worth requirement nor there was any relaxation provided to MBs for FYs 2019, 2020 and 2021, which includes the pandemic period. Net worth requirement has to be complied with by the registered MB at all times. Therefore, the Noticee cannot be absolved from its failure to comply with the mandate of the net worth merely on the grounds of the Corona pandemic. Reliance is placed on the case of Premchand Shah and Ors. vs. SEBI (Appeal no. 192 of 2010), decided on February 21, 2011, wherein the Hon'ble SAT held that when a law prescribes a manner in which a thing is to be done, it must be done only in that manner.
- 5.6 Reliance placed by the Noticee on the order of Adjudicating Officer, SEBI dated April 28, 2023, in the matter of Angel Broking Limited would not apply to the present matter as it emanates from different sets of facts and laws. In the said case, Angel Broking Limited was a broker and there was no violation pertaining to the failure to comply with the net worth requirement.
- 5.7 The net worth requirement is a prerequisite condition for registration and is required to be maintained on a continuous basis. Reliance is also placed on the judgment of Hon'ble High Court of Gujarat in the matter of Nikhil T Parikh - Sole Proprietor of Parikh & Parikh & Ors. v. Union of India & Ors. 2014 GLH (2) 582. In the said case, it was held that net worth requirement is meant for determining the financial health of the company / organization and that it is required to ensure that only serious and sound players who can provide the required infrastructure for

capital market can enter the market. Therefore, any breach by a MB with regard to the net worth requirement has to be viewed seriously.

- 5.8 In view of the aforesaid, it is established that the Noticee has violated the provisions of regulation 7 of the MB Regulations and regulation 9A(d) of the MB Regulations.
- 5.9 Previously, monetary penalties have been imposed on the Noticee for violations of the MB Regulations.
- 5.10 It is recommended that the registration certificate of Noticee may be suspended for 6 months and a regulatory censure may be issued.
6. The reply of the Noticee submitted *vide* emails dated April 16, 2025, July 11, 2025 and August 10, 2025 is summarized below as follows:
- 6.1 Interim Order cum SCN has been issued for the inspection period covered in the DA proceedings and thereafter. For the same investigation period and same cause of action, SEBI should not subject the Noticee to multiple proceedings – any further directions pursuant to the DA Report would amount to double jeopardy and be against the principle of *res judicata*. Reliance is placed on judgment of Hon'ble SC in SEBI vs. Ram Kishori Gupta & Anr., wherein it held that SEBI cannot claim exemption from the applicability of the principles of *res judicata*.
- 6.2 The recommendations of the DA have already been covered in the Interim Order cum SCN. Due to the directions therein, the Noticee is suffering an action equivalent of suspension of license. Since SEBI has conducted the investigation, the Noticee has stopped receiving new mandates. The mandates reflected in the half yearly report for September, 2024, filed with SEBI pertain to issues for which mandates were signed before the Interim Order cum SCN dated October 23, 2024 was passed. None of the offer documents of clients where the Noticee was acting as a merchant banker have been accepted by SEBI since the investigation began. Reliance is placed on the following cases:
- SEBI order in SIC Stocks and Services Pvt. Ltd., dated May 21, 2014, wherein the WTM considering the mitigating factors and the doctrine of proportionality

held that penalty recommended by the DA need not be imposed on the Noticee.

- SEBI order in Saffron Capitol Advisors Pvt. Ltd., dated June 29, 2021, wherein the DA had recommended that the Noticee may be prohibited to take any new assignment for 15 days for the violation committed. However, in view of the fact that no red flags were brought to the notice of the Noticee, the WTM disposed of the SCN without any directions.

- 6.3 The direction to debar imposed vide the Interim Order cum SCN has been stayed by the order passed by Hon'ble SAT dated December 11, 2024, subject to the Noticee increasing its minimum net worth requirement to INR 5 crores by bringing in INR 3 crores, which was infused. The above process was carried out prior to the DA's recommendation and he was informed *vide* email. The DA has failed to take into account the infusion of INR 3 crores by the Noticee and mitigate Noticee's case in light of COVID. Reliance is placed on the judgment of Hon'ble SAT in Reflection Investments vs. NSE, dated January 23, 2020 wherein it was found that there was shortfall of client funds reported by the broker in weekly enhanced supervision. In the aforesaid case, it held that suspending or closing down the business of a broker is not in anyone's interest unless it is conclusively proved that the broker is working against the interest of the investors.
- 6.4 The DA Report has been issued 3 years after the inspection period. Punishing the Noticee belatedly is in violation of principles of natural justice, especially when the Noticee has been compliant of the net worth requirement for the past 3 years.
- 6.5 The judgments relied upon by the DA in his report are of no relevance to the present case. The case of Premchand Shah relates to non-disclosure under the takeover code and insider regulations, which are not the concerned regulations in the present case. The judgment of Nikhil T Parikh is in the context of market intermediary and the petitioner therein had challenged SEBI's power to frame policies, which is not the case with Noticee. The DA failed to consider the ratio in the matter of Angel Broking Ltd. by simply distinguishing it on its facts and ignoring the ratio relied upon by the Noticee.

6.6 The alleged violations in the Interim Order cum SCN are technical in nature and could not have caused any harm to investors in the stock market. Reliance is placed on the following cases of Hon'ble SAT and Hon'ble SC:

- Order of Hon'ble SAT in Religare Securities Ltd. vs. SEBI, Appeal no. 23 of 2011, dated June 16, 2011, wherein it *inter alia* held that the object of inspection could be achieved by pointing out the irregularities / deficiencies to the intermediary at the time of inspection and making it compliant.
- Order of Hon'ble SAT in UPSE Securities Ltd. vs. SEBI, Appeal no. 109 of 2011, dated July 25, 2011, wherein it *inter alia* held that the purpose of inspection in quite a few cases could be better achieved if the inspecting team at the time of inspection were to advise the erring entity.
- Judgment of Hon'ble SC in M/s Hindustan Steel Ltd. vs. State of Orrisa, 1969 (2) SCC 627, wherein it *inter alia* held that penalty will not be imposed merely because it is lawful to do so and the competent authority will be justified in refusing to impose penalty where there is a technical or venial breach.
- Judgment of Hon'ble SC in Maharashtra State Board of Secondary Education and Higher Secondary Education vs. K.S Gandhi & Ors., (1991) 2 SCC 716, wherein it held that depending on the nature and gravity of the misconduct, lesser punishment may be meted out.

6.7 The net worth of the Noticee for the past 6 years and the reasons for its fall in the years concerned in the present case are as follows:

Table 2

FY	Paid-up Capital (INR)	Free Reserve (INR)	Net Worth (INR)	Reason
March 31, 2019	7,95,00,000	(4,52,79,688)	3,39,81,005	Due to losses and accumulated losses carried forward from previous years.
March 31, 2020	7,95,00,000	(6,00,69,963)	1,91,83,465	Accumulated losses as well as COVID pandemic.
March 31, 2021	7,95,00,000	(5,61,20,411)	2,31,22,673	COVID pandemic.
March 31, 2022	9,45,00,000	(9,31,07,826)	13,92,174	NA
March 31, 2023	16,95,00,000	(10,54,75,028)	6,40,24,972	
March 31, 2024	19,57,00,000	(9,94,25,979)	9,63,24,021	

7. The Noticee availed a hearing opportunity before me on July 01, 2025 wherein the ARs of the Noticee reiterated the submissions filed by the Noticee *vide* email dated April 16, 2025. The ARs admitted that the Noticee has violated the net

worth requirement for the FYs 2019, 2020, and 2021, as concluded by the DA in its report. They attributed the above violations to the COVID-19 pandemic. In this regard, considering that the COVID-19 pandemic began affecting the world in early 2020, the ARs were asked to provide an explanation for the Noticee's failure to meet the net worth requirement for the FY ending March 31, 2019. In response, the ARs clarified that the COVID-19 pandemic was the cause for non-compliance for FYs 2020 and 2021 and that the reasons for non-compliance in FY 2019 were detailed in Noticee's reply dated April 16, 2025. The ARs submitted that, due to SEBI's actions, the Noticee has not received any new mandates in the past 1.5 years. In this regard, the ARs were asked to comment on the half-yearly report filed by the Noticee for the period September, 2024, which indicated that the Noticee had managed 1 rights issue of size INR 199.83 crores and it had received advances for 7 issues amounting to INR 0.54 crores, during the half year ended September, 2024. The ARs requested that they would address the aforesaid query in their additional submissions, which was acceded to. Subsequently, the ARs filed additional submissions on July 11, 2025.

C. CONSIDERATION OF ISSUES AND FINDINGS

8. I have perused the DA SCN, the DA Report, the replies of the Noticee and other material available on record. After considering the allegations levelled against the Noticee in the instant matter, the following issues arises for consideration:
 - *Whether for the same cause of action multiple proceedings have been initiated by SEBI which has led to violation of principles of natural justice?*
 - *Whether the issuance of DA Report three years after the inspection period is in violation of principles of natural justice?*
 - *Whether the Noticee has failed to comply with the net worth requirement for the FYs ending 2019, 2020 and 2021 in violation of regulation 7 and 9A(d) of the MB Regulations?*
 - *Whether the violations by the Noticee are technical or venial in nature and what directions ought to be passed against it?*

Issue I: Whether for the same cause of action multiple proceedings have been initiated by SEBI which has led to violation of principles of natural justice?

9. The Noticee has submitted that Interim Order cum SCN dated October 23, 2024 has been issued for the inspection period covered in the DA proceedings and thereafter. For the same investigation period and same cause of action, SEBI should not subject the Noticee to multiple proceedings and any further directions pursuant to the DA Report would amount to double jeopardy and would be against the principle of *res judicata*. Noticee has placed reliance on the judgment of Hon'ble SC in SEBI vs. Ram Kishori Gupta & Anr., wherein it held that SEBI cannot claim exemption from the applicability of the principles of *res judicata*.
10. In this regard, I note that the Interim Order cum SCN dated October 23, 2024 in paragraphs 1 and 2 records that enquiry proceedings (*referring to present proceedings*) were initiated against the Noticee due to its failure to maintain the required capital adequacy which arose from inspection period April 01, 2021 to March 31, 2022. Subsequent to the aforesaid inspection, another inspection was undertaken for the period April 01, 2022 to October 31, 2023, wherein it was found that the MB had still not complied with the capital adequacy requirement. Further, in terms of net worth criteria, paragraphs 25 and 36 of the Interim Order cum SCN discuss the capital adequacy of the Noticee for FYs ending 2022-2024 whereas the present enquiry proceedings are concerned with capital adequacy of the Noticee for FYs ending 2019-2021. The Interim Order cum SCN also deals with other alleged violations by the Noticee such as underwriting issues beyond the prescribed limits, submitting false and misleading information to SEBI on various instances, non-submission of quarterly information to SEBI *etc.* Thus, the inspection period and the violations are different in both the proceedings.
11. It may also be noted that simply because the alleged net worth violation in both the proceedings is at issue does not mean that principle of *res judicata* applies. The *res judicata* principle applies when the same cause of action is being re-litigated between the same parties after a final judgment or order has been passed, which is not the case in this matter.

12. It is a well settled position in law that SEBI has the power to pursue multiple enforcement actions for violations of securities law. Nonetheless, I need not delve into this aspect particularly since, as discussed earlier in this Order, the net worth of the Noticee for the FYs 2019-2021 is not the subject matter of any other enforcement actions initiated by SEBI including the Interim Order cum SCN dated October 23, 2024. Therefore, the argument of the Noticee that the present proceedings are against the principles of *res judicata* or the Ram Kishori Gupta judgment is not tenable in the facts and circumstances of this case.
13. The Noticee has also argued that the direction to debar imposed *vide* the Interim Order cum SCN dated October 23, 2024 has been stayed by an order of Hon'ble SAT dated December 11, 2024, subject to the Noticee increasing its minimum net worth requirement to INR 5 crores by bringing in INR 3 crores, which was infused. According to the Noticee, the above process was carried out prior to the DA's recommendation and the DA was informed *vide* email dated December 27, 2024. The Noticee has contended that the DA has failed to take into account the infusion of INR 3 crores by the Noticee and mitigate Noticee's case in light of COVID. In this regard, I have perused the DA Report which *inter alia* states the following:
- 27.1. *"I note that the ambit of the present enquiry proceedings is limited to compliance of the Noticee qua the net worth requirement for the financial years ended March 31, 2019, March 31, 2020 and March 31, 2021.*
- 27.2. *Thus, even if the contention of the Noticee that it has met the net worth criteria of Rs. 5 crores as on March 31, 2023 and March 31, 2024 is accepted, it in no manner exonerates the Noticee from its failure to maintain comply with the net worth requirement for the financial years ended March 31, 2019, March 31, 2020 and March 31, 2021.*
- 27.3. *With regard to the submission that "SEBI's interim order dated October 23, 2024 has been stayed by the Hon'ble SAT", it is apposite to take note of the following extract of the said order² of the Hon'ble SAT:*

"...ORDER

²Appeal No. 636 of 2024 dated December 11, 2024.

*i. **The appeal is allowed in part.** Direction in paragraph No. 96 to debar the appellant from taking any new mandate shall be stayed subject to appellant bringing in Rs. 3 Crores within 15 days from today and thereby ensuring that the net-worth capital adequacy of Rs. 5 Crores is maintained.*

*ii. **The appellant shall file his reply within four weeks from today before the SEBI and the proceedings may continue thereafter. All contentions of both parties kept open....***” (Emphasis supplied)

27.4. Accordingly, I note that the issue of net worth of Noticee for the subsequent period is pending before SEBI. Therefore, no inference against or in favor of the Noticee can be made as regards the compliance of the Noticee with the net worth requirement for the financial years ended March 31, 2023 and March 31, 2024.”

14. I note that, contrary to the Noticee’s contention, the DA in fact has taken into account the submission made by the Noticee, has rejected the submissions and expressed his reasons for the same. I am in agreement with the rationale provided by the DA that the present proceedings are only concerned with Noticee’s net worth for FYs ending 2019-2021. Therefore, the stay on the Interim Order cum SCN which dealt with Noticee’s net worth for FYs ending 2022-2024, by itself, does not exonerate, the Noticee from the liability for the violation observed in the present proceedings (covering FYs ending 2019-2021).

Issue II: Whether the issuance of DA Report three years after the inspection period is in violation of principles of natural justice?

15. The Noticee has submitted that SEBI carried out inspection for the period April 01, 2021 to March 31, 2022 and SCN was issued on May 05, 2023. According to the Noticee, the DA Report is dated February 27, 2025 i.e, 3 years after the inspection period and that punishing the Noticee belatedly would be in violation of principles of natural justice especially when the Noticee has complied with the net worth requirement since the past 3 years.
16. With respect to the contention of delay in the DA proceedings, I note that the inspection was conducted by SEBI on August 24-25, 2022, after which replies of

Noticee was sought *vide* emails dated September 28, 2022 and November 04, 2022. The Noticee responded *vide* letters dated October 21, 2022 and November 09, 2022. Thereafter, a SCN was issued by the DA on May 03, 2023 (*i.e.*, within 6 months of the receipt of the last reply by the Noticee). The Noticee filed a reply to the DA SCN *vide* letter dated May 17, 2023. An opportunity of hearing was granted to the Noticee by the DA wherein its AR appeared on June 06, 2023. On June 21, 2023, the Noticee informed that it has filed a settlement application in the matter. The settlement application of the Noticee was rejected on November 13, 2023. An opportunity of hearing was granted to Noticee on November 22, 2023. However, the Noticee informed about the filing of an application to SEBI for restoration of its settlement application and requested for adjournment. Accordingly, the hearing scheduled on November 22, 2023 was adjourned. The settlement application was rejected on December 14, 2023 and another hearing opportunity was provided to the Noticee on December 21, 2023. Since the Noticee did not avail the aforesaid opportunity, another hearing opportunity was granted on December 27, 2023, and pursuant to Noticee's request, the hearing was adjourned to January 10, 2024.

17. The hearing scheduled on January 10, 2024 was adjourned in light of the order of the Hon'ble Bombay High Court dated January 05, 2024. The said order was passed pursuant to the writ petition filed by the Noticee to restore the settlement applications with SEBI with respect to the show cause notices issued in the present proceedings and the adjudication proceedings ("**First WP**")³. In the order dated January 05, 2025 passed in the First WP, Hon'ble Bombay High Court held the following:

"2. In the meantime, adjudication proceedings be adjourned to convenient date till we pass further appropriate order in the proceedings."

18. Thereafter, Hon'ble Bombay High Court *vide* its order dated March 19, 2024 found that there was delay on the part of the Noticee in complying with the timelines for submissions of the documents, however, the Noticee deserved an opportunity for his settlement applications to be considered. Accordingly, the First WP was disposed of inter alia with the following direction:

³Writ Petition (L) No. 393 of 2024.

“...We are thus inclined to set aside the impugned order passed by the Respondent and restore the proceedings of the Settlement Applications with the Respondent to be decided in accordance with law. ...”

19. In compliance with the order of the Hon'ble Bombay High Court, the settlement application was restored but was eventually rejected on October 30, 2024 on the ground that the Noticee has failed to comply with the condition precedents within the time required *i.e*, compliance with the net worth requirement. Thereafter, hearing opportunities were provided to the Noticee on November 14, 2024, November 26, 2024, December 04, 2024 and December 19, 2024. The aforesaid hearing opportunities were rescheduled due to requests made by the Noticee. The Noticee also challenged the SEBI settlement rejection letter dated October 30, 2024, before Hon'ble Bombay HC (**“Second WP”**)⁴, which in its order dated December 04, 2024 held the following:

“14. ...in its order dated 19 March 2024, this Court directed the SEBI to grant the Petitioner an additional opportunity and dispose of the Petitioner's Settlement Applications within eight weeks. All parties' contentions were left open, and it was made explicit that the order should not be treated as a precedent since it was passed in the peculiar facts and circumstances of the case. Therefore, though there was nothing wrong with rejecting the Petitioner's settlement proposal in the earlier round, considering the peculiar facts and mostly by way of indulgence, the Petitioner was granted yet another opportunity, with consequential directions to the SEBI to dispose of the Petitioner's Settlement Applications expeditiously.

18.... This is not any case of unfairness or arbitrariness. The committees have considered the documents and other material supplied by the Petitioner...Despite the indulgence on the first occasion, the Petitioner persisted in supplying deficient documentation and did not comply with the net-worth requirements.

23. For all the above reasons, we are satisfied that the Petitioner's proposal was fairly considered and rejected... Accordingly, we are satisfied that no case has been made to interfere with the impugned communication.”

(emphasis supplied)

The Second WP was dismissed *vide* the aforesaid order dated December 04, 2024.

⁴ Writ Petition (L) No. 35133 of 2024.

20. Thereafter, the hearing was finally held before the DA on December 19, 2024 and on request of the Noticee, it was given additional time to make further submissions. The additional submissions were filed vide email dated December 20, 2024 and December 27, 2024. The DA Report dated February 27, 2025 was submitted within 3 months of the Noticee filing its additional submission with the DA.
21. From the sequence of events set out above, it is quite apparent that the time taken for conclusion of DA proceedings is in large measure attributable to the multiple legal proceedings initiated by the Noticee and the multiple adjournments that it sought. Clearly, there is no unjustifiable delay on the part of the SEBI or the DA in the progress of these proceedings. Throughout the proceedings before the DA and the present proceedings, the Noticee was afforded full opportunity to participate and defend its case. Therefore, I find that there is no unjustifiable delay in the present case and principles of natural justice have not been violated.

Issue III: Whether the Noticee has failed to comply with the net worth requirement for the FYs ending 2019, 2020 and 2021 in violation of regulation 7 and 9A(d) of the MB Regulations?

22. Before moving forward to examine the charges, it is necessary to mention the relevant legal provisions under the MB Regulations, which read as follows:

Consideration of application.

6. The Board shall take into account for considering the grant of a certificate, all matters which are relevant to the activities relating to merchant banker and in particular the applicant complies with the following requirements, namely:—

(d) The applicant fulfils the capital adequacy requirement specified in regulation 7;

Capital adequacy requirement.

7. The capital adequacy requirement referred to in clause (d) of regulation 6 shall be a net worth of not less than five crore rupees.

Explanation: For the purposes of this regulation, “net worth” means the sum of paid-up capital and free reserves of the applicant at the time of making application under subregulation (1) of regulation 3.

Conditions of registration.

9A. (1) Registration granted under regulation 8 shall be subject to the following conditions, namely:—

(d) it shall maintain capital adequacy requirements specified in regulation 7 at all times during the period of the [***]

23. I note from the records that the Noticee was granted registration as a MB on January 01, 2015. In terms of regulation 7 read with regulation 9A(d) of the MB Regulations, an applicant seeking registration as a MB with SEBI should have a minimum net worth of INR 5 crores, which it is required to maintain at all times i.e, as long as it holds a certificate of registration from SEBI. Net worth as explained in regulation 7 of the MB Regulations means the sum of paid-up capital and free reserves.
24. I note the certificates issued by Ganesh & Rajendra Associates, Chartered Accountants, made on the basis of the audited balance sheet of the Noticee for the FYs ending 2019-2021, states the following:

Table 3

Certificate dated	FY	Paid-Up Equity Share Capital (INR)	Accumulated Losses (INR)	Deferred Tax Liabilities (INR)	Net Worth (INR) (NW)
		(A)	(B)	(C)	(NW = A-B-C)
July 21, 2022	March 31, 2019	7,95,00,000	4,52,79,688	2,39,307	3,39,81,005
July 21, 2022	March 31, 2020	7,95,00,000	6,00,69,963	2,46,572	1,91,83,465
July 21, 2022	March 31, 2021	7,95,00,000	5,61,20,411	2,56,916	2,31,22,673

The aforesaid certificates unequivocally show that the net worth of Noticee had fallen down from the mandatory net worth of INR 5 crores required from a MB.

25. I note that in its replies the Noticee has provided the following reasons for the shortfall in the years relevant to the present case:

Table 4

FY	Net Worth (INR)	Reason
March 31, 2019	3,39,81,005	Due to losses and accumulated losses carried forward from previous years.
March 31, 2020	1,91,83,465	Accumulated losses as well as COVID pandemic.
March 31, 2021	2,31,22,673	COVID pandemic.

In this regard, I note that there was no regulation or circular which provided an exemption for MBs from meeting the net worth requirement during the COVID pandemic. While the Noticee has sought cover from liability for inadequate net worth citing the COVID pandemic, I note that the Noticee was not in compliance with the net worth even for the FY ending 2019 which is well before the COVID-19 pandemic period. Officially, the COVID pandemic only commenced in March 2020. Therefore, citing this reason even for the FY ending March 31, 2020 is unjustifiable. I note that the Noticee has not denied its non-compliance with the net worth mandate laid down in the MB Regulations. The mandate is unambiguous. Irrespective of the merits of the justification provided by the Noticee, it is clear that the Noticee has failed to comply with the aforesaid mandate, and I therefore, find the Noticee liable for having violated regulation 7 read with regulation 9A of the MB Regulations.

Issue IV: Whether the violations by the Noticee are technical or venial in nature and what directions ought to be passed against it?

26. The Noticee has emphatically and repeatedly argued that the non-compliance with the net worth mandate was technical and venial in nature. I note that net worth requirement laid down in the law ensures adequate financial health and operational stability of the registered intermediary. However, aside from this broad and basic point, the risk arising from MBs having inadequate net worth gets amplified. As per Regulation 22B (2) of the MB Regulations, at any point of time, the total underwriting obligations under all the agreements shall not exceed twenty times of the net worth of the merchant banker. MBs with insufficient net worth are less able to absorb financial shocks or fulfil underwriting commitments, leading to failed or delayed public offerings. The said non-compliance not only compromises the financial health and operational stability of the Noticee but also undermines the broader objectives of transparency, accountability and investor protection in the securities market.
27. Considering the Noticee's submissions, in order to assess the possible adverse impact that the Noticee's non-compliance could have had, I called for data regarding issues handled by the Noticee during FYs ending 2019-2021. The relevant operational department of SEBI *vide* email dated July 23, 2025 informed that during the said period:

- (i) Noticee had acted as the book running lead manager of the following public issues where it had underwritten 100% of the issue size:

Table 5

#	Company	Issue Type	Listing Date	Issue Size (INR in crores)
1	U.H.Zaveri Ltd.	BSE SME IPO	May 22, 2018	7.99
2	Palm Jewels Ltd.	BSE SME IPO	June 12, 2018	8.90
3	Vivid Mercantile Limited (erstwhile Veeram Infra Engineering Ltd.)	BSE SME IPO	October 23, 2018	10.74
4	S.M.Gold Ltd.	BSE SME IPO	October 19, 2018	7.50
5	Novateor Research Laboratories Ltd	BSE SME IPO	September 13, 2019	4.49
6	Janus Corp Ltd.	BSE SME IPO	February 06, 2020	7.99
7	RO Jewels Ltd.	BSE SME IPO	March 25, 2020	4.91
8	Party Cruisers Limited	NSE SME IPO	March 5, 2021	7.75
9	Sudarshan Pharma Limited ⁵	NSE SME IPO	Issue withdrawn before close. DRHP dated February 28, 2019	25.80

- (ii) Further, Noticee had acted as the manager to the offer in respect of the open offer for the equity shares of Beryl Securities Limited (offer size INR 2.20 Crores, LOF dated August 12, 2020).

28. A merchant bankers' inability to meet the INR 5 crores net worth requirement (*in one FY having lesser than INR 2 crore net worth*) while undertaking business of nearly INR 90 crores in three years, raises serious concerns about the possible adverse effect on the market if the Noticee failed in its underwriting obligations. What is all the more disconcerting is that, despite being aware it was not in compliance with the net worth mandate, the Noticee continued to take on significant underwriting obligations. I, therefore, do not agree with the Noticee's contention that the violation was merely technical or venial in nature.

29. As regards, the enforcement action that must follow, the Noticee has placed reliance on the order of Hon'ble SAT in the matter of Religare Securities Limited

⁵ It may be noted that in respect of the NSE SME IPO of Sudarshan Pharma Ltd., the total subscription received at the time of withdrawal of the issue was 45%. If the issue was not withdrawn, the obligation to subscribe to nearly 55% of the issue would have devolved upon the Noticee (*i.e.*, Noticee would have to bear the financial obligation of 55% of INR 25.80 crores).

(supra) and UPSE Securities Ltd. (supra) to *inter alia* submit that the purpose of carrying out inspection is not punitive and that the purpose of inspection could be better achieved if the inspecting team at the time of inspection were to advise the erring entity. In this regard, I note that in the both the aforesaid cases, Hon'ble SAT had added a caveat that SEBI is not precluded from taking action against a delinquent in case of serious lapses. As discussed in the preceding paragraphs, the violation committed by the Noticee is of a serious nature and goes into the very root of the conduct of the business by the Noticee. Therefore, I find that the aforesaid cases do not help the Noticee.

30. The Noticee's reliance on the order of Hon'ble SAT in *Reflection Investments vs. NSE* dated January 23, 2020 (*wherein it was held that suspending or closing down the business of a broker is not in anyone's interest unless it is conclusively proved that the broker is working against the interest of the investors*) does not aid the Noticee's defence. While the aforesaid case is concerned with shortfall of client funds, the current case involves failure to meet the regulatory net worth requirement, which is a core capital adequacy issue. Net worth deficiency puts all clients at risk and casts a serious doubt on the MBs ongoing ability to weather market and operational risks. Falling below the threshold specified means the MB does not meet the basic eligibility criteria to conduct business. Any financial weakness or shortcoming affecting the MB may erode confidence in the integrity of primary markets and compromise thousands of investors.
31. The Noticee has also relied upon the case of *Hindustan Steel* (supra) to submit that when there is a technical or venial breach of the provisions, the authority competent to impose the penalty will be justified in refusing to impose penalty and *K.S Gandhi and Ors.* (supra) to submit that depending upon the nature and gravity of the misconduct lesser punishment may be meted out. These cases do not aid the Noticee's defence since I have already held above, that the net worth mandate under the MB Regulations, is a fundamental requirement and failure to comply with it cannot be described as being technical or venial.
32. Similarly, Noticee's reliance on the SEBI orders of *SIC Stocks and Services Pvt. Ltd.* (supra) and *Saffron Capital Advisors Pvt. Ltd.* (supra) is misplaced. In the case of *SIC Stocks and Services Pvt. Ltd.* (supra), the alleged violations were either not established, or, where established, were deemed venial / technical. In

such facts and circumstances, the WTM was of the view that the penalty recommended by the DA need not be imposed on the noticee. However, in the present case, the violation of non-maintenance of minimum net worth has been established against the Noticee and admitted by it for the FYs 2019-2021. The said requirement is not technical or venial – but is rather a core eligibility criterion. Further, in the case of Saffron Capital Pvt. Ltd., the noticee was the merchant banker / book running lead manager to an IPO wherein it was found that it had failed to exercise due diligence with respect to disclosures made in the prospectus. It was found that no red flags existed for the noticee to question auditor's certificate, transfer of funds raised through IPO to overseas entities etc. In this context, instead of prohibiting the noticee to take any new assignment for 15 days as recommended by the DA, the WTM disposed of the SCN without any directions. In contrast, in the present case, it cannot be said that the Noticee was under reasonable ignorance of its obligation to maintain minimum net worth that might justify leniency. In summary, the circumstances and considerations justifying leniency in orders cited are inapplicable in the present case.

33. The Noticee has submitted that due to the directions in the Interim Order cum SCN, the Noticee is suffering an action equivalent to suspension of license as the Noticee has stopped receiving new mandates and none of the offer documents where Noticee is acting as a MB have been accepted by SEBI since the investigation began. According to the Noticee, the mandates reflected in the Half-Yearly-Report for September, 2024 ("**HYR 2024**") filed with SEBI were signed before the Interim Order cum SCN was passed. In this regard, I note that contentions with respect to the impact of the Interim Order cum SCN is outside the permissible scope of the present proceedings.
34. The Noticee has submitted that the judgments relied upon by the DA in his report are of no relevance to the present case. According to the Noticee, the case of Premchand Shah and Others vs. SEBI (Appeal no. 192 of 2010) decided on February 21, 2011, relates to non-disclosure under the takeover code and insider regulations, which are not the concerned regulations in the present case. Further, the judgment of Nikhil T Parikh – Sole Proprietor of Parikh & Parikh and Ors. Vs. Union of India through Secretary and Ors., decision dated May 07, 2014, is in the context of stock exchange and the petitioner therein had challenged SEBI's power to frame policies, which is not the case with Noticee. Without delving into

the merits of the Noticee's extensive arguments, it is clear that, fundamentally, the Noticee has accepted the allegation made in the SCN and admitted that it was not in compliance with the net worth mandate under the MB Regulations. I have also, in earlier paragraphs of this Order, recorded my concurrence that this allegation stands established. I have also determined that this non-compliance is by no means technical or venial in nature.

35. The Noticee has argued that the DA has failed to consider the ratio in the matter of Angel Broking Ltd. by simply distinguishing it on its facts and ignoring the ratio relied upon by the Noticee. I note that the Noticee seeks to rely on the aforesaid case of Angel Broking Ltd., dated April 28, 2023, as SEBI therein "*had considered intermediaries facing difficulties during COVID period.*". In this regard, I find it appropriate to reproduce the exact reasoning of the AO in the Angel Broking case (*supra*):

"21. Since the violation of Regulations is established, a commensurate penalty is required to be imposed. However, on account of various factors, such as corrective measures taken subsequently and the difficulties during the Covid-19 pandemic, I would like to take a lenient view with regard to the penalty to be imposed for certain technical violations by the Noticee. However, where the violations are grave, I am inclined to impose a proportionate penalty."

(emphasis supplied)

36. From the above it is clear that the AO sought to provide relief to the noticees therein only for the technical violations. The present case does not concern any technical violation, as has already been recorded above. Thus, I find no reason to differ from the DA's decision to not place reliance on the aforesaid case of Angel Broking Ltd.

D. CONCLUSION

37. In the preceding paragraphs, it has been recorded that allegation that the Noticee has violated regulation 7 and regulation 9A(d) of the MB Regulations by failing to maintain minimum net worth of INR 5 crores during FYs ending 2019 to 2021, stands established and that the violation was not technical. I am convinced that the non-compliance is fundamental in nature and deserving of stringent directions. I agree with the DA's recommendation that the Noticee's conduct warrants suspension of its certificate of registration.

38. I have noted the Noticee's submission made to SEBI *vide* email dated December 30, 2024 that it has increased its net worth by INR 3 crores pursuant to Hon'ble SAT's direction (*In appeal no. 636 of 2024, Hon'ble SAT vide order dated December 11, 2024 held that the direction in the Interim Order cum SCN shall be stayed if the Noticee brings in INR 3 crores ensuring the net worth capital adequacy*). Further, the Noticee has submitted a certificate dated September 12, 2025 determining the Noticee's net worth to be INR 11,42,84,592. The said certificate is issued by a Chartered Accountant and is based on the audited financial accounts of the Company as on March 31, 2025. I note that the violation in the present case pertains to FY ending 2019-2021, which has been clearly established against the Noticee.
39. Since the Noticee is a MB undertaking huge financial obligations with respect to its activities as discussed in preceding paragraphs, the act of non-compliance with net worth requirements must be viewed gravely. At the same time, in the interest of proportionality, I am inclined to reduce the period of suspension recommended by the DA.

E. ORDER

40. In view of the aforesaid findings and observations, I, in exercise of the powers conferred upon me under section 12(3) read with section 19 of the SEBI Act and regulation 27 of the Intermediaries Regulations, hereby suspend the registration certificate of the Noticee, First Overseas Capital Ltd. (PAN No. AAACL4737 and SEBI Registration No. INM000003671), for a period of 2 (two) months.
41. This Order shall come into force with immediate effect.
42. A copy of this Order shall be served upon the Noticee and the Stock Exchanges for its information and record.

DATE: OCTOBER 03, 2025

PLACE: MUMBAI

ANANTH NARAYAN G.

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA