

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER SECTIONS 11(1), 11(4), 11(4A), 11B (1) AND 11B (2) OF THE
SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In respect of:

Noticee No.	Name of the Noticee	PAN
1.	Royal Orchid Hotels Limited	AABCR0111M
2.	Mr. Chander Kamal Baljee	ACTPB3357L
3.	Mr. Keshav Baljee	AKYPB2322A
4.	Mr. Amit Jaiswal	ADMPJ0732H

(The aforesaid entities are hereinafter individually referred to by their respective names/ Noticee numbers and collectively referred to as “Noticees”)

In the matter of Royal Orchid Hotels Limited

A. SUMMARY

1. Securities and Exchange Board of India (“SEBI”) passed an Interim Order cum Show Cause Notice dated March 31, 2023 against the Noticees, alleging that Royal Orchid Hotels Limited (“ROHL” / “Company”) incorrectly classified Ksheer Sagar Developers Pvt. Ltd. (“KSDPL”) as an associate instead of a subsidiary. Allegedly, incorrect classification led to the inflation of ROHL’s profits in its consolidated financial statements for the financial year 2021-22, influencing its

share price and enabled Noticee nos. 2 and 3, who were the promoters of ROHL, to offload their shares at elevated prices.

B. BACKGROUND:

2. ROHL is a public company engaged in operating hotels and providing other allied services. Under its brand, the Company operates more than ninety-five (95) hotels in more than sixty-two (62) locations. The Company has its headquarters in Bengaluru, and is listed on the BSE Limited and the National Stock Exchange of India Limited ("**NSE**") since February 2006.
3. SEBI received a complaint against ROHL wherein it was *inter alia* alleged that ROHL, despite having control over KSDPL, did not include KSDPL as a subsidiary company in its consolidated financial statements for the Financial Year ("**FY**") 2021-22, and by doing so, the Company had overstated/ inflated its profit for the said FY.
4. SEBI conducted an investigation to ascertain whether ROHL had misrepresented/ misstated its consolidated financial statements while accounting for one of its subsidiary companies (**KSDPL**) for FY 2021-22 and whether the said misrepresentation/ misstatement, if any, was in violation of the provisions of Securities and Exchange Board of India Act, 1992 ("**SEBI Act**"), SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**"), SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("**PFUTP Regulations**"). The period of investigation was FY 2021-22.
5. Pursuant to the investigation, it was *prima facie* found that ROHL had wrongly classified KSDPL as an associate company instead of a subsidiary and published financial statements for FY 2021-22, thereby showing an overstated/ inflated consolidated profit of INR 26.78 crore instead of INR 3.63 crore. Further, influenced by the overstated profit of ROHL, the scrip price surged and the

promoter group entities, viz. Chander Kamal Baljee and Keshav Baljee, offloaded their holdings and made a total gain of INR 20.83 crore. Based on the findings of the investigation, SEBI passed an interim order cum show cause notice dated March 31, 2023 (“**SCN**”) and issued directions mentioned therein against ROHL and its promoter / directors viz., Chander Kamal Baljee, Keshav Baljee and Amit Jaiswal.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

6. The *prima facie* conclusions arrived at in the SCN are as follows.

- 6.1. On April 18, 2007 a Memorandum of Understanding (“**MoU**”) was executed amongst a) Royal Orchids Hotels Limited; b) Ksheer Sagar Developers (P) Limited, Ksheer Sagar Buildcon (P) Limited, Rajkamal Buildcon (P) Limited and J.H. Builders (P) Limited; and c) Jagdish Tambi, Sumitra Tambi, Rajesh Tambi, Rupesh Tambi and Ratnesh Tambi (“**Tambi Group**”) with respect to the construction and operation of a hotel under the Royal Orchid brand in Jaipur, Rajasthan.
- 6.2. Consequent to the above arrangement, a hotel was constructed in Jaipur, currently being owned and operated by KSDPL. The Tambi Group and ROHL each hold 50% of the total shareholding in KSDPL.
- 6.3. On March 04, 2022, by way of a notice to the stock exchanges, ROHL *inter alia* announced that KSDPL was no longer a subsidiary of ROHL and was classified as a joint venture/ associate company. Prior to March 04, 2022, Ksheer Sagar Buildcon (P) Limited, Rajkamal Buildcon (P) Limited, J.H. Builders (P) Limited and KSDPL were classified as subsidiaries of ROHL. It was further informed that as per the MoU executed between ROHL and the Tambi Group, the Board of Directors of KSDPL would consist of five (5) Directors, out of which three (3) would be nominated by ROHL and two (2) by the Tambi Group. ROHL also informed that at the Extraordinary General Meeting (“EGM”) of KSDPL held on March 02, 2022, two Independent Directors were appointed. Thus, the Board of KSDPL post-March 02, 2022 comprised of seven (7) Directors, of which only three (3) were the nominees of ROHL. Accordingly, the number of Directors that ROHL had the power to

nominate did not constitute the majority on the Board of KSDPL. On the basis of this reasoning, the Company through its notice dated March 04, 2022, informed that KSDPL had ceased to be a subsidiary company of ROHL and was classified as a joint venture company of ROHL.

- 6.4. Pursuant to the above announcement, ROHL considered KSDPL as an associate company w.e.f. March 02, 2022 (date of appointment of Independent Directors on KSDPL's Board) and accordingly prepared and published its consolidated financial statements for FY 2021- 22 on May 30, 2022, excluding the financials of KSDPL as a subsidiary from its financial statements.
- 6.5. During the course of investigation, ROHL was advised to provide detailed explanation for not considering KSDPL in its consolidated financial statements as a subsidiary. In response, ROHL *inter alia* submitted that based on the "Company Law Opinion" dated March 01, 2022 from G. Shankar Prasad, a Practising Company Secretary and the opinion dated December 01, 2022 given by a firm of Chartered Accountants, S. Ramanand Aiyar & Co., CK Baljee, CMD of ROHL, concluded that KSDPL would cease to be a subsidiary of ROHL and be treated as an associate company under joint venture category w.e.f. March 02, 2022.
- 6.6. The Holding-Subsidiary relationship is defined in the Companies Act, 2013 under section 2(87) read with section 2(27) and in the Accounting Standard under IND AS 110.
- 6.7. IND AS 110 also defines 'control' to identify whether an investor controls an investee. It *inter alia* provides that an Investor controls an investee if the investor has all the following:
- 6.7.1. Power over the investee and current ability to direct the relevant activities i.e. the activities that significantly affect the investee's returns;
 - 6.7.2. Exposure, or rights, to variable returns from its involvement with the investee; and
 - 6.7.3. The ability to use its power over the investee to affect the amount of the investor's returns.

ROHL Control/ Power Over the Composition of the Board of Directors of KSDPL

6.8. Voting Rights of ROHL

6.8.1. Clause 16 of the MoU provides that the Board of Directors of KSDPL will have a Chairman from ROHL. Further, the AoA of KSDPL dated May 19, 1995 and modified on March 30, 2018, stipulates that in case of an equality of votes, the Chairman shall be entitled to a second or casting vote. In this regard, Clause 63 of the AoA is reproduced hereunder:

“63. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place or at which a poll is demanded, shall be entitled to a second or casting vote.”

6.8.2. Thus, the MoU executed between ROHL and Tambi Group and further, the AoA of **KSDPL** *inter alia* state that the right of appointment of Chairman of KSDPL's Board shall be with ROHL, and the Chairman, appointed by ROHL, shall be entitled to a second or casting vote in case of an equality of votes in the meeting of the Board of KSDPL. In this regard, it is observed that ROHL appointed its CFO (Amit Jaiswal) as the Chairman of the KSDPL. Notably, he is designated as Chairman even after ROHL ceased to consider KSDPL as its subsidiary.

6.8.3. Hence, ROHL in addition to 50% voting rights holds second or casting vote through its CFO-Amit Jaiswal, who is still designated as Chairman of KSDPL, which enables the company to exert decisive power/ control over Tambi Group in respect of KSDPL.

6.9. ROHL's Rights to Appoint a Majority of the Directors and Removal of Directors

6.9.1. The AoA of KSDPL at Clause 76 provides that change in board composition can be made through an ordinary resolution. Further, Section 114 (1) of the Companies Act, 2013 *inter alia* provides that a resolution shall be an ordinary resolution if the notice as per the Companies Act, 2013 has been duly given. Such resolution is required to be passed by the votes cast in favour of the resolution, including the casting votes of the members and the Chairman who is also entitled to vote.

Right to appoint majority of Directors

6.9.2. The AoA of KSDPL empowered ROHL to nominate/ appoint majority of Directors on the Board of KSDPL. In this regard, Clause 76A of the AoA is reproduced below:

“76A. Board of Directors in the company shall constitute of 5 Directors of which 3 Directors shall be nominated by Royal Orchid Hotels Limited and 2 Directors shall be nominated by Tambi Group. The number of Directors can be increased to 9 Directors, of which 5 Directors shall be nominated by Royal Orchid Hotels Limited, and 4 Directors by Tambi Group. However, if and when any need arises, then Independent Directors per se or of any Financial Institution/ PSU Bank/ Private Bank may be taken on the Board of Directors of the Company”

Right to removal of Director

6.9.3. Section 169 (1) of the Companies Act, 2013 *inter alia* states that a company may remove a Director by an ordinary resolution.

6.9.4. Therefore, in terms of the abovementioned Clause 16 of the MoU and Clause 63 of the AoA of KSDPL read with the provisions of Section 114(1) and Section 169(1) of the Companies Act, 2013, it is observed that ROHL, by exercising the second or casting vote through the Chairman of KSDPL, who holds decisive voting right, has the power to pass an ordinary resolution, enabling ROHL to remove a director from KSDPL's Board at its discretion.

6.9.5. Further, it is observed that KSDPL appointed two Independent Directors through ordinary resolutions in the EGM held on March 02, 2022. Section 169 of the Companies Act, 2013 *inter alia* states that in case an independent director is re-appointed for a second term under section 149 of the Companies Act, 2013, then he shall be removed by the company only by passing a special resolution. Similarly, Regulation 25 (2A) of the SEBI (LODR) Regulations, 2015 provides that the appointment, re-appointment or removal of an independent director of a listed entity, shall be subject to the approval of shareholders by way of a special resolution.

6.9.6. The two Independent Directors appointed on the KSDPL Board w.e.f. March 02, 2022, have neither been re-appointed for a second term under section 149 of the Companies Act, 2013, nor is KSDPL a listed entity. So, a special resolution would not be required to remove these Independent Directors. Moreover, as the Independent Directors have been appointed through ordinary resolution, unless they are re-appointed for a second term under Section 149 of the Companies Act, 2013, they can be removed through ordinary resolution, which is well within the rights and control of ROHL.

6.9.7. Section 2 (87) of the Companies Act, 2013 clearly states that the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors.

6.10. ROHL's Current Ability to Direct the Relevant Activities of KSDPL

6.10.1. As per the MoU with respect to the operation of Royal Orchid Hotel – Jaipur, the rights/ control relating to operations, management, supervising, service & directions, etc. of the hotel are with ROHL. Further, ROHL also had the capacity of taking major decisions including construction, architecture, having the sole responsibility of completing the hotel project in all aspects and commencing the operations, statutory audit and appointment of Chairman of KSDPL.

6.10.2. Further, ROHL vide letter dated January 28, 2023 *inter alia* has admitted that it was able to direct relevant activities viz. selling and purchasing of goods or services, managing financial assets during their life, selecting acquiring or disposing of assets and determining a funding structure or obtaining funding in accordance with IND AS 110, in respect of KSDPL.

6.10.3. In this regard, Amit Jaiswal, Chairman of KSDPL, who is also the CFO of ROHL, in his statement recorded on February 23, 2023 has *inter alia* stated that all the operations of KSDPL were being taken care of by

ROHL. Further, the key persons who head the operations of KSDPL are also the employees of ROHL.

6.10.4. Further, CK Baljee, CMD of ROHL in his statement submitted that *“As per the MOU dated April 18, 2007, operations and management right were with ROHL, and therefore, in addition to the Chairman of KSDPL, General Manager (GM - operations) to look after whole operations of KSDPL has been appointed by ROHL to have control on the hotel operations. With respect to revenue/ sell, the property has been doing good except COVID duration, However, profit of KSDPL was negative on account of certain major expenditure items such as depreciation, interest etc.”*

6.10.5. In view of the above, it is observed that KSDPL's operations are significantly in the hands of ROHL as decisions/ rights on critical and significant portion of the hotel activities viz. operations, management, services, repair, maintenance, etc. are taken by ROHL. Thus, ROHL being the operator of the hotel operations of KSDPL was evidently capable of directing the relevant activities of KSDPL. Hence, ROHL has existing rights that give it ability to direct the relevant activities, i.e. activities that significantly affect KSDPL's returns.

6.11. ROHL's exposure/rights to variable returns from involvement with KSDPL

6.11.1. As per the MoU, ROHL has rights/ exposure to get management fee of 1.5% of the turnover and further earning of 5.5% of the gross profit. Further, having the rights on the hotel's operations and management, it also has an exposure to the repair and maintenance expenses that are required to maintain the hotel property as a “first class hotel”. As the returns from the hotel activities have potential to vary, ROHL is exposed or has rights, to variable returns from its involvement with KSDPL.

6.12. ROHL's ability to use its powers to affect returns

6.12.1. The list of rights vested with ROHL and its employees working in senior positions viz. CFO, Head-operations, clearly indicate that ROHL has

greater amplitude of rights/ powers, variability with its economic interests/ remunerations in respect of the hotel property being operated by KSDPL in the name of 'Royal Orchid Hotel'. The same also establishes ROHL as a principal entity and therefore, a decision maker. Further, ROHL has also the ability to use its power (remove/ appoint Director) over KSDPL to affect the amount of its returns/ profitability.

6.12.2. ROHL has the power/ authority to appoint majority of the Directors of KSDPL and also to remove the Directors on KSDPL's Board of Directors, which is the governing body that directs the relevant activities of KSDPL. Further, by being involved in relevant activities of KSDPL, it has also exposure/ rights to variable returns. The company also has current and practical/ unconditional ability to exercise its decisive power in the form of casting vote by the Chairman of KSDPL (Amit Jaiswal, who is also designated as CFO of ROHL) to affect the returns.

6.12.3. In this regard, CK Baljee, CMD of ROHL in his statement, has stated that one of the independent directors namely, Sharad Umeshchandra Shukla was nominated by Tambi Group and the other independent director- Haripal Singh Ubeori was nominated by ROHL, and that Haripal Singh Ubeori was his friend and known to him for more than 10 years. It is pertinent to mention that in the Board meeting of KSDPL held on February 08, 2022, Tambi Group gave its dissent with respect to the appointment of Haripal Singh Uberoi, however he was nevertheless appointed as an Independent Director.

6.12.4. Thus, the submission of ROHL that the composition of the KSDPL Board was the basis for the Holding-Subsidiary relationship between ROHL and KSDPL cannot be accepted in view of the control on the composition of KSDPL's Board. Hence, it is concluded that the Holding-Subsidiary relationship between ROHL and KSDPL still exists in terms of Section 2 (87) of the Companies Act, 2013 and IND AS 110 and ROHL has therefore, wrongly classified KSDPL as an Associate company which resulted in the misrepresentation/misstatement of its consolidated financial statements for FY 2021-22.

6.13. Impact on ROHL's Profit/Loss due to Change in the status of KSDPL

6.13.1. KSDPL had incurred losses in the six financial years prior to FY 2021-22, and its Net Worth had fully eroded. In the Annual Report of ROHL for FY 2020-21, under the note: Material uncertainty with respect to going concern of a subsidiary, the following was *inter alia* stated:

"Ksheer Sagar Developers Private Limited ('subsidiary company') has suffered a loss of INR 524.35 lakhs during the year and has an accumulated deficit INR 6,053.66 lakhs as at 31 March 2021. The subsidiary company's current liabilities exceed its current assets by ₹3,461.01 lakhs as on the Balance Sheet date. While these factors would normally indicate the existence of a material uncertainty which may cast significant doubt about the Company's ability to continue as a going concern, the Company is taking steps towards improving operating cash flows through term loan restructuring plan for improving operating cash flows through cost synergies, exploring avenues of enhancing revenues, operational and financial support from its shareholders...."

6.13.2. The auditor also *inter alia* stated that KSDPL's Net Worth was fully eroded, and it had incurred net cash loss during FY 2020-21. And such conditions cast a significant doubt on KSDPL's ability to continue as a going concern.

6.13.3. Further, in the Annual Report for FY 2021-22, ROHL *inter alia* informed in respect of KSDPL that:

"Change in control in a subsidiary: During the current year, Ksheer Sagar Developers Private Limited appointed two independent directors on its board due to which the Holding Company lost control in the said subsidiary w.e.f 2 March 2022 due to which the said subsidiary became an associate. The Holding Company has derecognized all assets and liabilities of the subsidiary from the date of loss of control and has followed equity method of accounting thereafter. In accordance with Ind AS - 28, the Company has recorded a net remeasurement gain on the loss of control of the subsidiary amounting to ₹2,315.71 as an exceptional item."

6.13.4. Pursuant to the announcement made by ROHL on March 04, 2022 of not considering KSDPL as its subsidiary, ROHL de-recognised all the assets and liabilities of KSDPL from the date of loss of control i.e. March 02, 2022. Accordingly, ROHL treated KSDPL as an associate company and recorded a measurement gain of INR 23.16 crore under exceptional item in the Consolidated Financial Statements for FY 2021-22. For FY 2020-21, ROHL had consolidated losses after tax of INR 40 crore. However, for FY 2021-22, it declared a net profit after tax of INR 26.78 crore. A significant part of the net profit in FY 2021-22 was attributable to re-measurement gain of INR 23.16 crore on account of treating KSDPL as an associate company instead of a subsidiary. A brief impact analysis on ROHL's consolidated financial statements is given below:

Table no. 1

Particulars	KSDPL as Subsidiary (A) (in INR lakh)	KSDPL as Associate (B) (in INR lakh)	Difference (B-A) (in INR lakh)
Total Revenue	15,787.60	15,593.13	-194.47
Total Expenses	15,305.72	15,111.28	-194.44
Profit Before exceptional Item and Tax	481.88	481.85	-.03
Exceptional Item	189.63	2,505.34	2,315.71
Profit/ loss for the year	362.78	2,678.46	2,315.68

6.13.5. Thus, the company failed to make proper and fair accounting treatment by derecognising KSDPL's assets & liabilities and recording net re-measurement gain on the loss of control over KSDPL as subsidiary. As KSDPL was a loss-making subsidiary, its exclusion as subsidiary enabled ROHL to overstate/ inflate its profit to the extent of INR 23.15 crore in the consolidated financial statements for FY 2021-22.

6.13.6. Thus, ROHL should have reported a consolidated profit of INR 3.63 crore instead of the profit of INR 26.78 crore. Had the company considered KSDPL as its subsidiary in the consolidated financial

statements, the investors would have been clearly aware of the actual consolidated net profit of INR 3.63 crore which was a sixth of the profit reported by ROHL. Therefore, incorrect and false information regarding the profit was presented to investors/ shareholders based on which they take decisions to buy/ sell stocks. Hence, the consolidated financial statements as prepared and published by ROHL for FY 2021-22 did not depict the true and fair financial position of the Company.

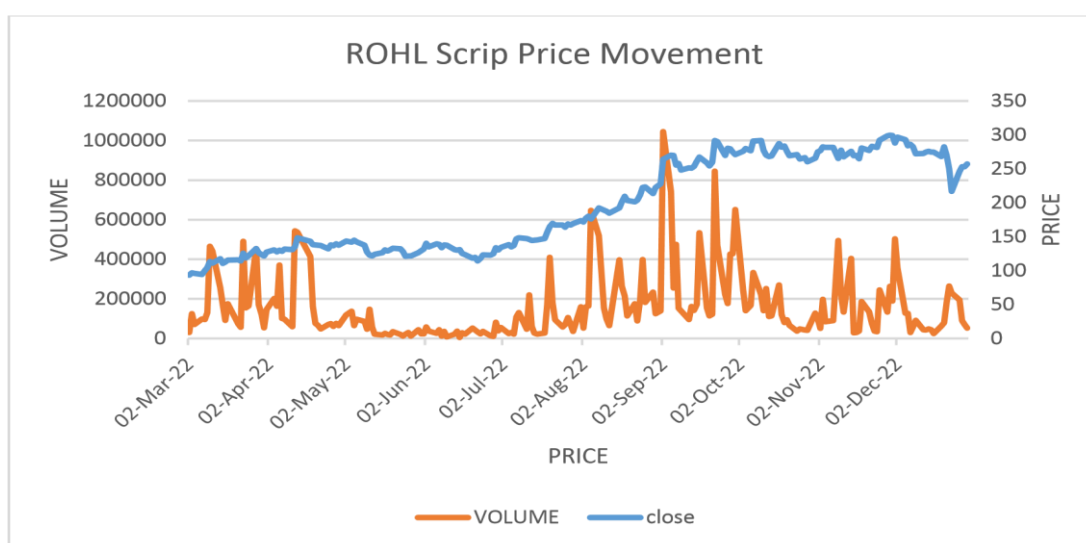
6.13.7. In light of the same, it was alleged that ROHL was under obligation to consolidate its accounts with KSDPL as a subsidiary instead of an associate company. However, it failed to do so which led to misrepresentation/misstatement of the Company's consolidated net profit/ loss for FY 2021-22.

6.14. Price Impact on ROHL Scrip due to Overstated Consolidated Profit of ROHL

6.14.1. ROHL's announcement for not considering KSDPL as subsidiary and the consequent, non-consolidation of KSDPL's financials as subsidiary resulted in positive impact on the company's profit after tax, which increased from a loss of INR 40.01 crore for FY 2020-21 to profit of INR 26.78 crore for FY 2021-22, i.e. rise of 166.94% on yearly basis. Publication of such misstated/ misrepresented financials by ROHL made significant impact on its share price.

6.14.2. It was observed that pursuant to declaration of misrepresented/ misstated consolidated profit by ROHL, the scrip price surged from INR 96.05 to INR 261.00, i.e. a jump of 171% within a short span of 9-10 months (from March 04, 2022 to December 30, 2022). Further, during the said period, the highest price recorded by the scrip (ROHL) was INR 317.70.

Image no. 1



6.14.3. It was observed that no event or announcement had been made by the Company during the period January 2022 to December 2022 that could have caused/ created such positive sentiments in the securities market resulting in a price surge of 171%.

6.14.4. Inflation of profits by ROHL impacted the market price of its shares and had a bearing on the investment decision of investors. Thus, it was observed that the overstatement of ROHL profits had interfered with the normal mechanism of price discovery and integrity of securities markets and created a positive impression with respect to its share price.

6.15. **Share offloaded by ROHL's Promoters for making gains**

6.15.1. Based on the shareholding pattern published by ROHL, it is observed that pursuant to the publication of the misrepresented and misstated financial statements, the Company's promoters offloaded their total shareholding (more than 4%) in ROHL.

6.15.2. The promoters' shareholding in ROHL reduced from 67.78% in January 2022 to 63.60% in December 2022. It is observed that CK Baljee, Promoter & CMD and Keshav Baljee, Promoter & Director of ROHL offloaded large number of their shares between March 2022 to November 2022.

6.15.3. CK Baljee offloaded a total of 8,04,336 shares. He sold 7,04,336 shares at a weighted average price between INR 124.50 and INR 275.45 in the open market during March-November, 2022 and the remaining 1,00,000 shares were transferred to his wife, Sunita Baljee (as gift) in an off-market transaction. More pertinently, C K Baljee purchased 37,878 shares at an average price of INR 132.22 on June 29/ 30, 2022. Further, Keshav Baljee disposed of all his holding in ROHL i.e. 4,40,916 shares at the weighted average price of INR 275.49 in two trading days i.e. September 28 and 30, 2022.

6.15.4. Based on the scrip price on the date of the Company's announcement for not considering KSDPL as a subsidiary and the date of selling the shares, quantum of gains made by CK Baljee and Keshav Baljee are estimated below.

CK Baljee's gains:

Table no. 2

Date	Buy/ sell	Total quantity (A)	Weighted Average Price (INR) (B)	Price on March 04, 2022 (INR) (C)	Price difference (INR) (D)=(B-C)	Gain (A*D) (INR)
March 2022- 30 & 31	Sell	15,100	124.50	96.05	28.45	4,29,595
June 2022 - 29 & 30	Buy	(37,878)	132.22	96.05	36.17	(13,70,047)
September 2022 – 5,6, 16,29 & 30	Sell	2,27,114	274.13	96.05	178.08	4,04,44,461
November 2022- 14	Sell	5,00,000	275.45	96.05	179.4	8,97,00,000
Total		7,04,336				12,92,04,009

Keshav Baljee's gains:

Table no. 3

Date	Buy/ sell	Total quantity (A)	Weighted Average Price (B) (INR)	Price on March 04, 2022 (C) (INR)	Price difference (D)=(B-C)	Gain (A*D) (INR)
September 2022 – 28 & 30	Sell	4,40,916	275.49	96.05	179.44	7,91,17,967
Total		4,40,916				7,91,17,967

6.15.5. In this regard, CK Baljee in his statement has *inter alia* submitted that – “I have sold shares in the month of September 2022 and November 2022. The total no. of shares sold were 7,27,114, amounting to value of INR 19,83,81,360. Being promoter of ROHL these shares were being held by me since inception of the ROHL. I have also gifted 1 lakh shares to my wife, Sunita Baljee, who is also the promoter of the company. As regards purpose of sale of such shares, there was some personal financial requirement so I sold the shares to get money...I incurred the proceeds received from above-mentioned selling of shares on my and my children personal requirements.”

6.15.6. Further, Keshav Baljee (also son of CK Baljee), in his statement has *inter alia* submitted that he had sold 4,40,916 shares during September 28 to 30, 2022, to meet the fund requirements in his other businesses. He also submitted that he sold the shares within 2 to 3 days, as the price of the scrip was high.

6.15.7. Thus, CK Baljee and Keshav Baljee offloaded their shares at a price which benefited as a result of ROHL's announcement made on March 04, 2022 by not treating KSDPL as a subsidiary and the resultant overstated profit reported by ROHL for FY 2021-22. Thus, through the sale of such amount of shares the profit accrued to CK Baljee and Keshav Baljee amounts to INR 12.92 crore and INR 7.91 crore, respectively.

6.15.8. ROHL's act of wrongly classifying KSDPL as an associate resulted in misrepresented/ misstated financial statements (of ROHL) for FY 2021-22. The Company's promoters offloaded their shares on surged rates, which shows that they knowingly misrepresented/ misstated/ manipulated the financial statements to implement a scheme to derive benefit for the promoter entities, thereby impacting the investors at large and compromising market integrity.

Alleged violations

6.16. ROHL wrongly classified KSDPL as an associate company instead of a subsidiary and published financial statements for FY 2021-22, thereby showing an overstated/ inflated consolidated profit of INR 26.78 crore instead of INR 3.63 crore. Influenced by the overstated profit of ROHL, the scrip price surged multiple times (171% from March 04, 2022 to December 30, 2022) and based on this significant price rise, the promoter group entities, viz. CK Baljee and Keshav Baljee, offloaded their holding and made a total gain of INR 20.83 crore.

6.17. It was alleged that ROHL misrepresented/ misstated/ manipulated its consolidated financial statements for FY 2021-22 to defraud the investors for implementation of a plan, device and artifice in violation of Section 12A (a), (b), (c); Regulations 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations; and Regulations 4(1), 33(1)(a), 33(1)(c), 33(3)(b), 34(2)(b), 34(3) and 48 of LODR Regulations.

6.18. CK Baljee (Promoter, Chairman and Managing Director of ROHL) and Keshav Baljee (Promoter and Non-Executive Non-Independent Director) are the signatories of the consolidated financial statements for FY 2021-22. Further, CK Baljee also signed the Certificate as required under Regulation 17(8) of SEBI (LODR) Regulations, 2015, stating that financial statement presents true and fair view and is in compliance with existing accounting standards, applicable laws and regulations.

6.19. Being CMD and Director on the ROHL Board, they were in-charge of operations and decision-making process. It is therefore their responsibility to ensure that the company's financial statements present true and fair picture of

the company's financial status and that correct financial statements are published. However, preparation and publication of misleading financial statements reflecting substantial overstated/ inflated consolidated profit could not have taken place without their approval (either written or oral) or knowledge. This provides that they failed to perform their duties and obligations.

6.20. The misreported and inflated profits resulted in increase in the price of the scrip of ROHL and taking advantage of the significant surge in price, both the Promoters/ Directors, CK Baljee and Keshav Baljee offloaded huge volumes of shares at high price, earning profit at the cost of retail investors.

6.21. It was alleged that CK Baljee and Keshav Baljee, were involved and responsible for furnishing incorrect/ misstated financial statements to the Board of Directors of ROHL which led to publication of misleading financials of the Company. Further, it was alleged that they made total gain of INR 20.83 crore by selling their shares at prices which were impacted/ influenced by the misstated financials of ROHL. Thus, it was alleged that both C.K Baljee (promoter) and Keshav Baljee (director) used the Company for implementation of a plan, device and artifice to defraud the investors by manipulating/ misrepresenting the financial statements.

6.22. Hence, it was alleged that CK Baljee has violated Regulations 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k), 4(2)(r) of SEBI (PFUTP) Regulations, 2003, Section 12A(a),(b),(c) of SEBI Act, 1992 and Regulations 4(2)(f)(i)(2), 4(2)(f)(ii)(2), 4(2)(f)(ii)(6), 4(2)(f)(ii)(7), 4(2)(f)(iii)(7) and 17(8) of the SEBI (LODR) Regulations 2015 r/w Section 27 of SEBI Act, 1992 and Regulations 4(1), 33(1)(a), 33(1)(c), 33(3)(b), 34(2)(b), 34(3) and 48 of SEBI (LODR) Regulations, 2015.

6.23. It was alleged that Keshav Baljee has violated Regulations 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k), 4(2)(r) of SEBI (PFUTP) Regulations, 2003, Section 12A(a),(b),(c) of SEBI Act, 1992 and Regulations 4(2)(f)(i)(2), 4(2)(f)(ii)(2), 4(2)(f)(ii)(6), 4(2)(f)(ii)(7), 4(2)(f)(iii)(7) r/w Section 27 of SEBI Act, 1992 and Regulations 4(1), 33(1)(a), 33(1)(c), 33(3)(b), 34(2)(b), 34(3) and 48 of SEBI (LODR) Regulations, 2015.

6.24. Amit Jaiswal, the CFO of ROHL, certified the consolidated financial statements of the company as required under Regulation 17(8) of LODR Regulations, stating that the financial statements presented a true and fair view of the Company's affairs and were in compliance with the existing accounting standards, applicable laws and regulations. He was one of the signatories to company's financial statements for FY 2021-22 and also KMP by virtue of his designation as CFO.

6.25. Amit Jaiswal, in addition to being the CFO of ROHL, is the Chairman of the KSDPL. As the Chairman of KSDPL, powers were vested in him through the MoU and AoA of KSDPL. Amit Jaiswal was holding the casting/ second/ decisive voting right. Having been vested with such right, Amit Jaiswal was well aware of the fact that ROHL has control over KSDPL, the composition of the Board of KSDPL. Thus, Amit Jaiswal failed to perform his duties and obligations diligently which resulted in publication of misstated and misleading financial statements of ROHL. This shows that he was complicit with the Company's promoters/directors' scheme for wrong classification of KSDPL as an associate company and the consequent inflation of the consolidated profit of ROHL.

6.26. Hence it was alleged that Amit Jaiswal, CFO of ROHL has violated Regulations 3(b),3(c),3(d),4(1),4(2)(e),4(2)(f), 4(2)(k), 4(2)(r) of SEBI (PFUTP) Regulations, 2003, Section 12A(a),(b),(c) of SEBI Act and Regulation 17(8) of SEBI (LODR) Regulations 2015 r/w Section 27 of SEBI Act, 1992 and Regulations 4(1), 33(1)(a),33(1)(c), 33(3)(b), 34(2)(b), 34(3) and 48 of SEBI (LODR) Regulations.

7. Further, *vide* the Interim order cum SCN, the following directions were issued:

"9.1.1. The Noticee nos. 1 to 4 shall jointly and severally file a public disclosure to the stock exchanges containing the prima facie findings as contained in this Order, within 7 days from the date of receipt of this Order.

9.1.2. The Noticee nos. 1 to 4 shall place a copy of this Order before its Audit Committee and Board of Directors to review the decision of classification of KSDPL and the consolidated financial statements for FY 2021-22 in terms of the applicable provisions of the Companies Act, 2013 and INDAS.

9.1.3. The Noticee nos. 1 to 4, pursuant to the review as directed at 9.1.2, shall file a report detailing the changes to the consolidated financial statements for FY 2021-22 and its impact, within one month from the date of the Order to the stock exchanges. The said report should be certified by a peer reviewed Chartered Accountant, other than the Statutory Auditor, who has audited at least one company forming part of NIFTY 100 or S&P BSE 100 indices during the past three years.

9.1.4. The Noticee nos. 1 to 4 shall ensure that the consolidated financial statements for FY 2022-23 are prepared in line with the directions of this Order and incorporate the details of the revisions/changes made to consolidated financial statements for FY 2021-22.

9.1.5. As required under Regulation 18(3) r/w Part C of Schedule II of SEBI LODR Regulations 2015, the Audit Committee of ROHL is directed to enhance the oversight of ROHL's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible."

8. The Noticees were also called upon to show cause as to why suitable directions/prohibitions under Sections 11 (1), 11 (4) and 11B (1) of SEBI Act, including the directions for restraining them from accessing the securities market, associating with any listed company or registered intermediary and disgorgement of gains made from the sale of shares should not be issued against them. Further, the Noticees were asked to show cause as to why penalty be not imposed on them under Sections 11 (4A) and 11 B (2) read with Section 15HA and/or 15HB of the SEBI Act, 1992 for the above alleged violations of provisions of the SEBI Act, LODR Regulations and PFUTP Regulations.
9. The Noticees sought inspection of documents *vide* email dated April 20, 2023. Thereafter, the Authorized Representative of the Noticees inspected the documents on May 03, 2023. The Noticees also filed an appeal against the Interim order cum SCN before the Hon'ble Securities Appellate Tribunal ("SAT") and SAT *vide* its order dated May 09, 2023 *inter alia* stayed the operation of the Interim Order cum SCN. Thereafter, SAT *vide* its order dated August 17, 2023 *inter alia* disposed of the appeal with a direction to the Noticees to file a reply to the SCN and further directed that the interim order dated May 09, 2023 passed by SAT would continue to operate till the disposal of the matter by SEBI.

10. The Noticees submitted a common reply to the SCN *vide* their letter dated September 07, 2023. Subsequently, the Noticees were granted an opportunity of personal hearing on October 30, 2023. On the said date, the Authorized Representative of the Noticees appeared before me through video conferencing and made oral submissions. Thereafter, the Noticees filed additional written submissions *vide* email dated November 29, 2023 and a copy of the same was received *vide* letter dated January 17, 2024. *Vide* email dated July 12, 2024, the Noticees were provided an opportunity to make any additional submissions, however, no further submissions were made.
11. The written submissions filed by the Noticees *vide* their letters dated September 07, 2023 and November 29, 2023 and those made during the personal hearing are summarized hereunder:
- 11.1. The Noticees have denied all the allegations made in the Interim Order cum Show Cause Notice dated March 31, 2023.
- 11.2. KSDPL is a company in which the Noticee no. 1 does not hold majority of the share capital. If KSDPL's board structure is perceived to render it as being under the control of Noticee No. 1, it would follow that KSDPL would be a subsidiary of a public limited company. In such status, KSDPL was required to induct independent directors to its board of directors ("Board").
- 11.3. SEBI's proceedings are primarily based on allegations by the Tambi Group related entities, that independent directors ought to have been inducted and they are not being inducted. Once the independent directors are brought in, the directors nominated by Noticee No.1 become a minority and therefore the perception that Noticee No. 1 has control over the composition of KSDPL Board, would become untenable.
- 11.4. Therefore, the conundrum is that assuming for the sake of argument that KSDPL is a subsidiary, the requirement to induct independent directors would result in KSDPL being incapable of being regarded as a subsidiary of Noticee No. 1.
- 11.5. KSDPL was at all relevant times a 50:50 joint venture between ROHL and the Tambi Group. ROHL earlier had a majority board membership of KSDPL because of which it treated KSDPL as its subsidiary.

- 11.6. Appointment of independent directors on KSDPL's board was a legal necessity, because under Section 149 of the Companies Act, 2013 ("Companies Act"), a subsidiary of a publicly listed company is a deemed public company, and each public company having a share capital of more than INR 10 crore is required to have at least one-third of its directors as independent directors. As the paid-up share capital of KSDPL exceeded INR 60 crore, KSDPL was required to appoint two independent directors on its board.
- 11.7. At the board meeting of KSDPL held on May 24, 2019, Noticee No. 4 had *inter alia* proposed the appointment of independent directors. However, the Tambi Group was opposed to the appointment of independent directors. On account of personal spite, the Tambi Group, while on the one hand opposed the appointment of independent directors on KSDPL's board, and on the other hand, lodged complaints before SEBI, MCA and stock exchanges, alleging violation of provisions of Companies Act, 2013 ("Companies Act") in view of non-appointment of independent directors on KSDPL's board.
- 11.8. Thereafter, on February 08, 2022, the board of directors of KSDPL, in their meeting recommended the appointment of Mr. Sharad Umeshchandra Shukla (DIN: 09151209) and Mr. Haripal Singh Uberoi (DIN: 01262337) who were registered in the Independent Directors Database and fulfilled the criteria for appointment of independent directors of KSDPL. The board of directors of KSDPL also resolved to call an extraordinary general meeting of shareholders on March 02, 2022.
- 11.9. Pursuant to the receipt of a notice of the extraordinary general meeting from KSDPL on February 08, 2022, concerning proposal for appointment of two independent directors ROHL sought an opinion from a practicing company secretary, Mr. G. Shanker Prasad on the holding company - subsidiary relation status between ROHL and KSDPL in the event of induction of independent directors on the Board of Directors of KSDPL. The opinion clarified that from the effective date of appointment of the two independent directors, the holding company-subsidiary relation between ROHL and KSDPL will cease to exist till the time any one of the independent directors remains on the board of KSDPL.
- 11.10. On March 02, 2022, the shareholders of KSDPL at the extraordinary general meeting approved the appointment of Mr. Sharad Umeshchandra

Shukla (DIN: 09151209) and Mr. Haripal Singh Uberoi (DIN: 01262337) as independent directors of KSDPL. With the appointment of the two (2) independent directors, the total strength of directors of KSDPL's board increased to seven (7) directors, out of which two (2) were nominated by the Tambi Group, three (3) were nominated by Noticee No. 1 and the remaining two (2) were independent directors. As a result of induction of the two independent directors, as a matter of fact, Noticee No. 1 ceased to have a right to appoint a majority of the directors of the board of KSDPL.

11.11. Once board majority was lost pursuant to appointment of independent directors on KSDPL's board of directors on March 02, 2022, ROHL's control over the composition of KSDPL's Board was also lost. Consequently, w.e.f. March 02, 2022, KSDPL ceased to be a subsidiary of ROHL.

11.12. Pursuant to the shareholders' resolution of KSDPL, on March 4, 2022, Noticee No. 1 disseminated an intimation on stock exchange platforms under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations"), stating that KSDPL was no longer a subsidiary of Noticee No. 1 on account of the expansion of the board of directors of KSDPL by the appointment of two (2) independent directors on KSDPL's board.

11.13. With the changed position, the board of directors of KSDPL comprised of seven (7) directors of which three (3) were nominees of Noticee No. 1. Two directors were independent directors, and the remaining two were from the Tambi Group. However, with a right or even the ability to appoint only three out of seven directors, the Noticee No. 1 had no power to appoint a majority of the Board of Directors of KSDPL. The definition of "control" across legislation has this fundamental requirement – the ability to appoint the majority of the Board of Directors of a company constitutes control. With 50% equity ownership, this right does not exist – it requires one more share above 50%. Therefore, one must look at attendant circumstances such as contractual rights. If those rights get altered, as happened in this case, the consequences would follow. In the instant case, the right to appoint a majority was denuded and the classification as a subsidiary ended. Therefore, the number of directors that Noticee No. 1 had the power to nominate did not constitute the

majority on the board of directors of KSDPL. Hence, KSDPL ceased to be a subsidiary company of Noticee No. 1 w.e.f. March 02, 2022 and would be classified as a joint venture/ associate company of Noticee No. 1.

11.14. As per the definition of the term “subsidiary” under Section 2 (87) of the Companies Act, 2013, a company is deemed to be a subsidiary company or subsidiary of a given holding company if and only if any of the two thresholds set out therein are fulfilled, i.e. (a) exercise or control over more than one-half of the total voting power of the subsidiary entity; or (b) control over the composition of the Board of Directors. In the instant case, as none of the thresholds so prescribed are met, KSDPL cannot be deemed to be a subsidiary of ROHL.

11.15. ROHL holds only 50% of the equity share capital of KSDPL, i.e., not more than one half of its voting power as required under Section 2 (89) of the Companies Act. Being 50% shareholder, ROHL cannot be called the holding company, with KSDPL its subsidiary. In this regard, reference is drawn to the matter of GL Sultania & Anr. (Appellants) v. SEBI (Respondent) ((SC: 2007 SCC 5 133) and (SAT: 2005 SCC Online SAT 124 (Affirmed by the Supreme Court)) wherein SEBI itself had taken the position that where a given company holds 50% of the equity share capital of another entity, the latter cannot be termed as subsidiary.

11.16. The classification as associate / joint venture (and not as subsidiary) of a company in which a listed entity holds 50% shares is a fairly common practice across top listed companies as well as peers of Noticee No. 1 in the Hospitality Sector. A list of Nifty-50 and Hospitality Sector companies having JVs / Associates in which they hold 50% stake has been submitted.

11.17. It is submitted that w.e.f. March 02, 2022, KSDPL’s board comprised of three (3) directors nominated by Noticee No. 1, two (2) directors nominated by Tambi Group, and two (2) independent directors (whose appointment was a mandatory requirement under Section 149 of Companies Act, 2013 read with Companies (Appointment and Qualification) Rules, 2014). The appointment of said two independent directors on KSDPL’s Board was undertaken pursuant to an ordinary resolution of shareholders of KSDPL passed on March 02, 2022, wherein a simple majority of shareholders voted in favour of their appointment.

Casting vote was not exercised for the purposes of the said appointments. Therefore, Noticee No. 1 no longer held the majority on KSDPL Board. Thus, the changed composition of the board of directors of KSDPL triggered the change in KSDPL's status from Noticee No. 1's subsidiary to its associate. Noticee No. 1 no longer controls the composition of KSDPL's board.

11.18. The Noticee has relied on the judgement of the Hon'ble Supreme Court of India in the matter of Vodafone India Limited & Ors. V. Union of India [2012] 1 SCR 573 and submitted that ROHL is not the holding company of KSDPL as ROHL does not hold capital in excess of 50% in KSDPL, so ROHL could not control the composition of KSDPL's Board, as a holding company is one which owns sufficient shares in the subsidiary company to determine who shall be its directors and how its affairs shall be conducted.

11.19. The Hon'ble Delhi High Court was seized of a similar matter on facts in Oriental Industrial Investment Corporation Ltd. v. Union of India and Ors. (1980 SCC Online Del 197) and held that whereby the Hon'ble High Court was examining whether the petitioner company therein (Oriental Industrial Investment Corporation Limited ("Oriental") was the holding company of Poonam Hotels Limited ("Poonam Hotels"). The articles of association of Poonam Hotels were modified to grant absolute power to Oriental to appoint or remove a majority of the directorships on the board of Poonam Hotels (5 directors) with the authority to appoint a replacement. The Delhi High Court held that the Department of Company Affairs could not deny the holding and subsidiary relationship existing between Oriental and Poonam Hotels.

11.20. In Oriental, the Hon'ble High Court held that under article 139A of Poonam Hotel's AoA, as Oriental had (a) full and absolute right and power; (b) exercisable by it at its discretion without the consent or concurrence of any other person; (c) to appoint directors constituting majority on the board of directors of Poonam Hotels; and (d) with power to remove any such director from office on a vacancy, Poonam Hotels was a subsidiary of Oriental. Accordingly, the Department of Company Affairs could not have denied the relationship of a holding and subsidiary company existing between them. However, in the instant case, the MoU between the Tambi Group and Noticee

No. 1 do not contemplate as well as KSDPL's AoA do not contain a provision that is *pari materia* to article 139A in Oriental's case.

11.21. As opposed to article 139A in Oriental's case, the clauses 13 of the MoU / Clause 76 of KSDPL's AOA do not vest with Noticee No. 1, full and absolute power exercisable by it at its discretion without the consent or concurrence of any other person to appoint or remove the holders of all or a majority of the directorships on KSDPL's Board (given that KSDPL's Board is comprised of 3 nominees of Noticee No. 1, 2 nominees of the Tambi Group, and 2 independent directors). On the contrary, the very fact that Noticee No. 1 alone does not get to direct who the independent directors on KSDPL's Board shall be, is reflective of the fact that Noticee No. 1 does not control the composition of KSDPL's Board. In fact, the appointment of independent directors on KSDPL's Board was undertaken pursuant to an ordinary resolution of shareholders of KSDPL, wherein a simple majority of shareholders voted in favour of their appointment.

11.22. Reference is also drawn to the case of *M. Velayudhan v. Registrar of Companies* (1978 SCC Online Ker 253) ("Velayudhan's case"), wherein the Hon'ble High Court of Kerala was seized with a situation which according to the Hon'ble Kerala High Court indeed amounted to control over composition of board of directors of a borrowing entity by the lending entity, by virtue of an agreement whose relevant clauses had been incorporated in the borrowing entity's AoA entity. The Hon'ble High Court took the view that the said provisions gave rise to control over composition of the borrower entity's board in favour of the lender. Therefore, the lender was the holding company of the borrower, albeit for a limited period of time. Unlike Velayudhan's case, the AoA of KSDPL / MoU between Noticee No. 1 and the Tambi Group do not confer on ROHL any absolute power exercisable solely at ROHL's discretion to appoint or remove majority of the directors on KSDPL's Board, as three (3) directors are nominated by ROHL, two (2) directors are nominated by Tambi Group, and two (2) independent directors. Therefore, as KSDPL's AoA / MoU between Tambi Group and ROHL read differently, and no absolute power is exercisable at ROHL's discretion as regards the same. KSDPL is not at present a subsidiary of ROHL.

- 11.23. The Noticee has placed reliance on the Hon'ble Allahabad High Court's decision in *Manmohan Sharma v. District Magistrate* (2011 SCC Online All 128) (Allahabad HC) and on Securities Appellate Tribunal's decision in *DLF Limited & Ors. V. SEBI* 2015 SCC Online 54 and submitted that an entity can only be called a subsidiary of the other if and only if the supposed holding entity can appoint or remove holders of all or a majority of the directorship by the exercise of some power exercisable by it at its discretion without the consent or concurrence of any other person, which conditions are not fulfilled in the instant case. Therefore, the classification of KSDPL as a subsidiary after the change in constitution of its board of directors w.e.f. March 02, 2022, would have been in fact been incorrect and misleading.
- 11.24. Appointment of independent directors on the Board has been envisaged to ensure ethical standards of integrity and probity are upheld and to ensure objectivity and unbiased opinion in decision making in the interest of the Company. Thus, it cannot be presumed that the two independent directors appointed by the Board of KSDPL are aligned or must be aligned with either the Noticee No. 1 or the Tambi Group. The presumption must necessarily be of independence and unbiased opinion (Ref: *McMullin v. Beran*, 765 A.2d 910, 923 (Del 2000); *Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1156 (Del. 1995)).
- 11.25. The role and duties of the Independent Directors are to uphold ethical standards of integrity and probity and objective independent judgment/view. In the absence of any evidence to the contrary to show that either of the Independent Directors acted beyond the scope of this Code and aligned with Noticee No. 1 or the Tambi Group, the assumption must necessarily be that the two independent directors appointed by the Board of KSDPL are completely independent and objective in their views and opinions. The presumption must necessarily be of independence and unbiased opinion (Ref: *McMullin v. Beran*, 765 A.2d 910, 923 (Del 2000); *Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1156 (Del.1995)).
- 11.26. It is submitted that in a general meeting(s) of shareholders, the casting vote is exercisable by the chairman of the meeting, is only a tie-breaker exercisable only in extraordinary event of equality of votes. It cannot be read

as “discretion” vested in ROHL or as a parameter for control assessment under accounting standards or otherwise.

11.27. SEBI has relied upon article 63 of KSDPL’s AoA (which has been reproduced below for facility) to allege that as the chairman (who happens to be the nominee of ROHL) has the casting vote, ROHL controls the appointment or removal of directors, including independent directors. Even if clause 63 were absent from the AoA of KSDPL, the office of chairman of the meeting would have had a casting vote so as to break the deadlock. This is because Section 118 (10) of the Companies Act mandates observance of secretarial standards on general and board meetings by companies.

11.28. As per the AoA of KSDPL, it is not necessary for the chairman of the company to also act as chairman of the meeting of shareholders, accordingly, the articles contemplate that the directors may elect one of their members to be the chairman of that meeting. Further, if at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present can choose one of the members to be the chairman of the meeting. Therefore, the casting vote available with the chairman of the meeting of shareholders is not necessarily exercisable by a nominee of ROHL. However, to allay any further concerns that SEBI may have, if SEBI so directs, the chairman of general meeting of shareholders of KSDPL can be an independent director of KSDPL’s Board.

11.29. It is submitted that the office of chairman has a casting vote under article 87 of the AoA in relation to board meetings. Such provision is consistent with model articles of association contained in Table F of Schedule I of the Companies Act, 2013. Further, similar provision is contained in Secretarial Standard – 1 - Secretarial Standard on Meetings of the Board of Directors (“SS-1”), and as stated above, observance of secretarial standards on general and board meetings is mandatory on companies.

11.30. It is further submitted that casting vote available with the chairman of KSDPL is not indicative of “control” under Accounting Standards or “control over composition of the board” under Section 2 (27) of the Companies Act, 2013, as it is exercisable by the chairman of the meeting in the unlikely event of a tie, as a means to break the deadlock. Taken at the highest, casting vote

available with the chairman of the meeting is a reactive power, which does not amount to “control” over KSDPL.

11.31. The Noticee has relied on the judgement of the Hon’ble Supreme Court in *Arcelormittal India Private Limited v. Satish Kumar Gupta & Ors.* (2019) 2 SCC 1, *M/s Subhkam Ventures (I) Private Limited v. SEBI* (Appeal no. 8 of 2009 decided on January 15, 2020) and *Vishwapradhan Commercial Private Limited v. SEBI* (Appeal No. 293 of 2018, decided on July 20, 2022). Casting vote, only being a measure of breaking deadlock cannot amount to “control” under accounting standards which have been relied upon by SEBI. In any event, accounting standards are principle-based articulation, of which multiple interpretations are possible. Given that the provisions of Company Law as regards the definition of what constitutes a subsidiary are clear and unambiguous and are no longer attracted, SEBI’s misplaced reliance on accounting standards to arrive at its finding of ROHL’s control over KSDPL is untenable.

11.32. The composition of the board of KSDPL is a matter of contract between private parties – the Tambi group and ROHL, and irrelevant to the securities law as well as the securities market. Securities laws become involved in the instant matter on account of the allegations of fraud impressed on the Noticees vide the Ex Parte Order, which allegations are devoid of any merits.

11.33. In this regard, reference is drawn to SAT order in the matter of *DLF Limited v. SEBI* (Appeal No. 331 of 2014, decided on May 13, 2015) wherein the Hon’ble Tribunal observed that the composition of directors of a company can be deemed to be controlled by another company only if the other company exercises power at its sole discretion to appoint or remove the directors of the other company. In the instant case, ROHL clearly does not have the sole discretion to appoint or remove the directors of KSDPL.

11.34. It may be noted that Hotel Operations Agreement(s) of similar nature are conventional in the Hotel industry in general, whereby the operations, and rights in connection to running the operations and day to day management of the Hotel property are reserved by the “Operator”, whereas the “Owner” owns the premises in which the operations are run. In most instances, the Hotel property is branded in the name of the Operator, owing to operator’s expertise,

wider reach, brand value, etc. Examples of similarly operated hotels in the listed hospitality sector space include ITC Fortune Hotels & Lemon Tree Hotels. Notably, these operated premises are neither shown as “subsidiaries” by ITC Limited, nor by Lemon Tree Hotels Limited.

- 11.35. As per the HOA, the exclusive obligation to supervise and direct the operation of the Hotel with due diligence is of the Operator, being ROHL. Accordingly, the authority to run the typical day-to-day operations of a hotel business have been conferred to ROHL. It ought to be considered that rights/ obligations/ powers under the HOA as per mutual agreement between the parties had been to create the relationship of “Owner” and “Operator” between the Tambi Group and ROHL. Accordingly, discretion over crucial matters concerning the Jaipur Hotel, such as appointment of managing director, control over bank account of KSDPL vest exclusively with the Tambi Group. Oversight over day-to-day management and operation of the Hotel property vests with ROHL, given its expertise and experience in the hospitality industry.
- 11.36. The “relevant” activities highlighted by SEBI are not rights or powers but operational authority that an Operator of a Hotel must have so as to run a hotel effectively. In no way can overlooking supervisory services, repairs and maintenance that are customarily made in the operation of first-class hotels, operations and management of the hotel be an indicator of “control” under law. Indeed, operations of KSDPL are overseen by ROHL, however the same does not tantamount to control.
- 11.37. SEBI has lost sight of the fact that while ROHL is only the Operator of the Hotel, Tambi group is the Owner. The power over the truly relevant activities which could tantamount to “control” under law are vested in the Tambi Group. Notably, KSDPL’s bank account is controlled by the Tambi Group, managing director of KSDPL is appointed by the Tambi Group and its internal auditor is appointed by the Tambi Group. Pertinently, KSDPL’s bank account is operated, signed and controlled by the Tambi Group and an exclusive employee of KSDPL. Accordingly, KSDPL’s financials are controlled by the Tambi Group, whereas, its operations are only controlled by ROHL. It is significant that other listed entities involved in the Hotel industry have similar arrangements, whereby the listed entity is an operator of the given hotel

property, and whereas the property is owned by the owner. However, under similar facts, the operating hotel entity is not treated as a subsidiary (E.g. Chalet Hotels). Accordingly, SEBI's control assessment is incorrect and arrives at the wrong conclusion as to control over "relevant activities".

11.38. SEBI has noted that as per the MoU, ROHL has rights/exposure to get management fee of 1.5% of the turnover and further earning of 5.5% of the gross profit. However, SEBI has failed to appreciate that the management fee is fixed in nature and not variable, it is treated as an expense on the revenue and thereafter, the gross operating profit. Therefore, management fee paid to ROHL is not an appropriation of profits, but rather a professional fee paid to the Hotel Operator, and is treated as an operational expense above the profit. Being an Operator, it is only natural for ROHL to have "rights on the hotel's operations and management", as also "exposure to the repair and maintenance expenses" that are required to maintain the hotel property. The same cannot and does not lead to any conclusion as control under Ind AS 110 or applicable law. Therefore, SEBI's conclusion as to exposure/ rights to variable returns being with ROHL is fallacious. SEBI has ignored that it is the Tambi Group that gets any surplus remaining after payment of management fees to ROHL, which ought to have been the yardstick to assess exposure/rights to variable returns from involvement with KSDPL.

11.39. Merely because ROHL is the operator and the Hotel property is branded as 'Royal Orchid Hotel', no conclusion as to the ability to use power to affect returns can be drawn, especially given that ROHL does not control the constitution of board of directors of KSDPL.

11.40. SEBI has failed to appreciate that KSDPL had been attempting to appoint independent directors on its board of directors since 2018 (the Hotel in Jaipur was a profitable entity then), as soon as it became a deemed public company having a paid-up share capital of more than INR 10 crore. However, owing to the resistance and non-cooperation received from the Tambi Group, the appointment of independent directors had been delayed, and finally happened in February 2022. In fact, KSDPL had to submit a compounding application with the Ministry of Corporate Affairs ("MCA") to settle the consequent violation of Section 149 (4) of the Companies Act. Therefore,

SEBI's observation that the classification was undertaken in 2022 so as to record a "measurement gain" is untenable. Furthermore, while alleging that KSDPL's net worth has "fully" eroded, SEBI has lost sight of the fact that the Hotel in Jaipur had been successfully running its operations for the last several years. Evidently, the Hotel in Jaipur has turned profitable again in FY 22-23.

11.41. Prior to change in composition of board of directors of KSDPL (pursuant to which ROHL's nominees constituted majority on KSDPL's board of directors), KSDPL was treated as a joint venture/associate entity in the books of ROHL, the same is evident from a perusal of ROHL's annual report(s) up to FY 2016-17. It is significant that the reason for classification for KSDPL as a subsidiary in the first instance was "board majority", and the same was disclosed to investors in the annual reports of ROHL. Accordingly, once ROHL board majority was lost pursuant to appointment of independent directors on KSDPL's board of directors, ROHL's control over KSDPL was also lost. Accordingly, w.e.f. March 02, 2022, KSDPL was no longer required to be classified as a subsidiary of the ROHL.

11.42. The information about classification of KSDPL as an associate was duly disclosed on stock exchange platforms, and re-measurement gain on account of such classification was transparently disclosed as an exceptional item, and the notes to accounts also set out the factum of classification of KSDPL as an associate. Thus, there was no misstatement in the financial statements of Noticee No. 1 for FY 2021-22.

11.43. On May 30, 2022, the board of directors of Noticee No. 1, at its meeting approved the Audited Financial Results (Standalone and Consolidated) for the year ended March 31, 2022. Immediately thereafter, Noticee No. 1 disseminated its audited financial results for the financial year ended March 31, 2022 along with Auditor's Report in respect of the financial results: M/s Walker Chandiok & Co LLP, the Statutory Auditors of the Noticee, which had issued the Auditor's Report with an unqualified opinion on the Audited Standalone and Consolidated Financial Statements for the financial year ended March 31, 2022, whereby KSDPL was treated as subsidiary until March 01, 2022 and associate effective March 02, 2022. It is significant that M/s.Walker Chandiok & Co LLP, after having audited the consolidated annual

financial results of Noticee No. 1 was of the opinion that the annual consolidated financial results of Noticee No. 1 presented the consolidated financial results in accordance with the requirements of Regulation 33 of the LODR Regulations, and gave a true and fair view in conformity with the applicable Indian Accounting Standards (“Ind AS”) prescribed under Section 133 of the Companies Act, 2013 read with the Companies (Indian Accounting Standards) Rules, 2015, and other accounting principles generally accepted in India, of the consolidated net profit after tax and other comprehensive income and other financial information of the Group, for the year ended March 31, 2022. The factum of change in KSDPL’s status from a subsidiary of Noticee No. 1, until March 01, 2022, and associate effective March 02, 2022, was also disclosed in the audited financials as well as the auditor’s report.

11.44. On December 01, 2022, Noticee No. 1 obtained another opinion from a practicing-chartered accountant, Mr. S. Ramanand Aiyar on whether induction of the two independent directors on the boards of KSDPL would amount to loss of control over the composition of the board as per Ind AS 110. The opinion clarified that even as per the Ind AS 110, once the independent directors were induced on the board of KSDPL, Noticee No. 1 lost its control over the majority of the directors on the board and accordingly KSDPL could not be considered as a subsidiary of the Noticee.

11.45. It is submitted that the accounting treatment derecognizing KSDPL as a subsidiary of ROHL is in compliance with the applicable Accounting Standards, as has also been confirmed by ROHL’s statutory auditors.

11.46. It is submitted that the jurisdiction to examine an entity’s compliance with accounting standards does not vest in SEBI, especially since there already exists a specialized statutory authority to monitor and enforce the compliance with accounting standards and auditing standards, viz. The National Financial Regulatory Authority (“NFRA”), which has also not determined the same as a non-compliance.

11.47. SEBI cannot proceed against the Noticees for violation of provisions of the LODR Regulations or the PFUTP Regulations, unless the NFRA has conclusively determined noncompliance, if any, with Ind AS 110 by ROHL. In

the absence thereof, jurisdictional facts meriting SEBI's investigation on ROHL's compliance with Ind AS 110 do not exist.

11.48. The decision to classify KSDPL was a bona fide business decision undertaken after due deliberations and consultation with experts. Even assuming, without admitting, that the action of the Noticees was incorrect, it was not open to the Respondent, or any judicial / quasi-judicial body to scrutinize these decisions and question the 'commercial wisdom' of the management of the Noticee No. 1, and seek to penalise them further for taking such decisions.

11.49. The direction issued in the Ex Parte Order, requiring ROHL to re-cast its financial statements for FY 2021-22 has been issued in ignorance of Section 130 of the Companies Act, which prohibits a company from re-opening its books of account and re-casting its financial statements unless an application is submitted in this regard by the specified authorities, including SEBI before the NCLT. Notably, in the SAT Appeal, vide its affidavit in reply, SEBI had taken a position that the directions contained in paras 9.1.3 and 9.1.4 of the Ex Parte Order neither direct the Noticees to compulsorily recast its published consolidated financial statements nor do they direct preparation of the next financial year. Clearly, the directions contained in paragraphs 9.1.3 and 9.1.4 of the Impugned Order directed the Noticees to prepare the financial statements in compliance with SEBI's directions in the Impugned Order, detailing changes and its impact.

11.50. SEBI has sought to sensationalise the matter by alleging that the classification led to significant improvement i.e., 166.94% rise in Noticee No. 1's net profits. However, as mentioned above, the re-measurement gain was listed as an exceptional item in the consolidated financial statements for financial year 2021-22 and the investor community perceived it as such. Notably, the Statutory Auditors of ROHL issued an unqualified opinion on the Audited Standalone and Consolidated Financial Statements for the financial year ended March 31, 2022. The Statutory Auditors had also certified in their audit report that the financial statements of ROHL provided a true and fair view of the accounts.

- 11.51. On the date of declaration of financial results for financial year 2021-22, being May 30, 2022, the stock prices did not witness any abnormal price movement. This is reflected upon a cursory analysis of the close price of Noticee No. 1's shares in/around May 30, 2022 (date of declaration of financial results) on BSE. Thus, SEBI's allegation that there was inflation of profits by the Noticees which impacted the market price of ROHL's shares and had a misleading impact on investment decisions of investors is incorrect. In fact, the prices did not react much on the date when results for financial year ended March 31, 2022, were declared on May 30, 2022, these also contained disclosures regarding re-classification of KSDPL from a subsidiary to an associate of ROHL.
- 11.52. The results for quarter / year ended March 31, 2022 were announced on May 30, 2022 when the scrip was trading at INR 127.45. SEBI has failed to appreciate that the subsequent surge in price was on account of improved financial performance of ROHL starting from the FY 22-23 – Q1, and revival of bullish sentiments in the Hospitality sector in general. The scrip of listed entities in the hospitality sector space generally recovered significantly after suffering a slump in 2020, and the rise in ROHL's scrip price is no exception.
- 11.53. ROHL's scrip saw an ordinary increase in trading price in the months following declaration of results for quarter / year ended March 2022, the scrip started to see a significant rally from August 2022, particularly after the FY 2022-23 – Q1 results were declared on August 05, 2022. In Q1 FY 22-23, key performance parameters of ROHL saw a significant improvement, such as, in Q1 FY 22-23, the average occupancy in owned / leased Hotels increased from 57% in FY 21-22 to 78%, average room rate in such Hotels increased from INR 3,572 in FY 21-22 to INR 4,880. Accordingly, as ROHL's revenues increased 35.122%, and its EBITDA rose by 68.79%, its scrip also reflected the same sentiment.
- 11.54. The rally observed in Noticee No. 1's stock from June 2022 was in tandem with the price movement of its peers in other hospitality sector stocks during the same period, as the industry in general was witnessing a revival, as restrictions on account of the Covid-19 pandemic were receding. Noticee No.

1's financial performance in the subsequent quarters was also positive, orchestrating price rise.

11.55. Noticee Nos. 2 and 3 did not “offload” shares of Noticee No.1 as a part of any fraudulent scheme, but to meet their personal fund requirements. In other words, the sale of shares by Noticee Nos. 2 and 3 was not influenced in any manner by the decision to re-classify KSDPL, or to register any “gains” from (the anyway flat) price movement caused as a consequence of KSDPL's reclassification.

11.56. It may be noted that after the sale of shares undertaken by Noticee Nos. 2 & 3 in September 2022 and November 2022 (many months after the disclosure of financial results for quarter / year ended March 31, 2022).

11.57. A bare perusal of the performance of ROHL's scrip reflects that it rallied even after November 2022. If it were assumed that re-classification had such far-reaching & long-lasting impact on ROHL's scrip, and it had been Noticee No. 2 and 3's intention to benefit from the price rise, they would have “offloaded” their stakes at higher levels subsequently in time, not in September 2022 and November 2022. Whereas, in spite of the significant surge in the price of ROHL's scrip, Noticee No. 2 continues to hold, and not “offload” his shareholding in ROHL. This goes on to establish that contrary to what is alleged by SEBI, there existed no correlation between classification of KSDPL, rally in ROHL's scrip price and sale of shares undertaken by Noticee Nos. 2 and 3.

11.58. It is a settled position of law that fraud is to be proved on the basis of probability and not mere conjectures and surmises. In this regard, reference is drawn to the judgment of the Hon'ble Supreme Court in SEBI v. Shri Kanaiyalal Baldevbhai Patel (2017) 15 SCC 7, whereby SC opined on the standard of evidence required to hold a person liable for a charge under the PFUTP Regulations.

11.59. As there was no misrepresentation /misstatement /manipulation in ROHL's consolidated financial statements for FY 2021-22, and there had never been any intention to defraud investors, for implementation of any plan, device or artifice.

- 11.60. Noticee No. 2 signed the certificate required under Regulation 17(8) of the LODR Regulations, stating that financial statements present a true and fair view and is in compliance with existing accounting standards, applicable laws and regulations. And as the financial statements of ROHL for FY 21-22 reflected the present true and fair picture of the company's financial status of the Company, Noticee No. 2 stands by his certification under Regulation 17 (8).
- 11.61. It is confirmed that Noticee no. 4 has certified the consolidated financial statements of ROHL for FY 21-22, under Regulation 17(8) of LODR Regulations, it is further confirmed that the said financial statements presented a true and fair view of ROHL's affairs and were in compliance with the existing accounting standards, applicable laws and regulations.
- 11.62. With respect to direction contained in para 9.1.1. of the Ex Parte Order, it may be noted that to keep its investors informed of material developments, ROHL had issued a corporate announcement on stock exchange platforms dated April 01, 2023 informing its investors about the factum of issuance of the Ex Parte Order.
- 11.63. With respect to the direction contained in para 9.1.2 of the Ex Parte Order, it may be noted that on April 01, 2023, a copy of the Ex Parte Order was circulated to all members of ROHL's Audit Committee and Board of Directors. Thereafter, in its meeting on May 30, 2023, Noticee No. 1's Audit Committee took note of Ex Parte Order as well as the Order of the Hon'ble Tribunal dated May 09, 2023 vide which, the Hon'ble Tribunal had stayed the effect and operation of the Ex Parte Order up to the next date of hearing.
- 11.64. With respect to the direction contained in para 9.1.3 of the Ex Parte Order, requiring ROHL to file a report detailing the changes to its consolidated financial statements for FY 21-22, and its impact, it is submitted that the aforesaid direction explicitly requires a review and recasting of the financial statements, detailing the changes on the presumption that ROHL's financial statements for FY 21-22 were incorrect. However, as has been set out herein, the said assumption of SEBI is untenable. ROHL's consolidated financial statements for FY21-22 reflected the true and fair view of its affairs, contained no misstatement and do not require any recasting. Accordingly, the direction

contained in para 9.1.3. of the Ex Parte Order must be revoked with immediate effect. It may further be noted that it is not open to ROHL to open and re-cast the financial statements for FY 21-22, unless an application to such effect under Section 130 of the Companies Act, 2013 is filed by SEBI before the National Company Law Tribunal (“NCLT”) in this regard.

11.65. With respect to the direction contained in para 9.1.4 of the Ex Parte Order, which requires the Noticees to “ensure” that the consolidated financial statements of ROHL for FY 22-23 be prepared in-line with the directions of the Ex Parte Order, and “incorporate” the details of the revisions/changes made to consolidated financial statements, it is submitted that the said direction too is an explicit firm and final direction, which must be revoked. In any case, upon review of the matter ROHL is advised that depiction of a company which is not a subsidiary as if it were a subsidiary would be a misstatement and purveying of information which is not believed to be true – a violation of the PFUTP Regulations.

11.66. With respect to the direction contained in para 9.1.5 of the Ex Parte Order, requiring Audit Committee of ROHL to enhance oversight of ROHL’s financial reporting process, it is to be noted that ROHL’s Audit Committee has taken note of the Ex Parte Order in its meeting held on May 30, 2023.

11.67. It is also submitted that the doctrine of doubtful penalisation is squarely applicable to the present case in light of the submissions made above and therefore no penalty or adverse directions be issued against the Noticees. Reference is drawn to the decision of the Hon’ble Supreme Court in the case of SEBI v. Sunil Krishna Khaitan (Civil Appeal No. 8249 of 2013).

D. CONSIDERATION OF ISSUES AND FINDINGS

12. I have considered the SCN, replies of the Noticees and other material available on record. Accordingly, I find that the following issues arise for consideration in the present matter:

12.1. Issue 1: Whether SEBI has the jurisdiction to pass orders against listed companies for non-compliance with accounting standards?

12.2. Issue 2: Whether ROHL wrongly classified KSDPL as an associate company instead of a subsidiary?

12.2.1. Issue 2.1: If the answer to Issue 2 is in the affirmative, whether the misrepresentation/ financial misstatement by ROHL amount to commission of fraud under PFUTP Regulations?

12.2.2. Issue 2.2: Whether the gain made by Noticee nos. 2 and 3 from the sale of share can be regarded as illegal gain arising from the perpetration of a fraudulent scheme, as alleged in the SCN?

12.3. Issue 3: If the answers to the aforesaid questions are in affirmative, whether this warrants issuance of directions and/ or penalty under sections 11(1), 11(4), 11(4A), 11A, 11B (1) and 11B (2) of the SEBI Act?

13. The relevant extracts of the legal provisions invoked in the SCN are reproduced for reference below:

SEBI Act

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

Contravention by companies.

27. (1) Where [a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder] has been committed by a company,

every person who at the time the [contravention] was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the [contravention] and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the [contravention] was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such [contravention].

(2) Notwithstanding anything contained in sub-section (1), where an [contravention] under this Act has been committed by a company and it is proved that the [contravention] has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the [contravention] and shall be liable to be proceeded against and punished accordingly. Explanation: For the purposes of this section, —

- (a) “company” means any body corporate and includes a firm or other association of individuals; and
- (b) “director”, in relation to a firm, means a partner in the firm.

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

...

- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a [manipulative,] fraudulent or an unfair trade practice in securities [markets].

[Explanation.— For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.]

(2) Dealing in securities shall be deemed to be a [manipulative] fraudulent or an unfair trade practice if it involves [any of the following] : —

...

(e) any act or omission amounting to manipulation of the price of a security [including, influencing or manipulating the reference price or bench mark price of any securities];

(f) [knowingly] publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals,] which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

...

(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of investors dealing in securities;

....

(r) [knowingly] planting false or misleading news which may induce sale or purchase of securities.

LODR Regulations

Principles governing disclosures and obligations.

4. (1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

(a) Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.

(b) The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.

(c) The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.

(d) The listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors.

(e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

(f) Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by investors.

(g) The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

(h) The listed entity shall make the specified disclosures and follow its obligations in letter and spirit taking into consideration the interest of all stakeholders.

(i) Filings, reports, statements, documents and information which are event based or are filed periodically shall contain relevant information.

(j) Periodic filings, reports, statements, documents and information reports shall contain information that shall enable investors to track the performance of a listed entity over regular intervals of time and shall provide sufficient information to enable investors to assess the current status of a listed entity.

(2) The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below.

.....

(f) Responsibilities of the board of directors: The board of directors of the listed entity shall have the following responsibilities:

(i) Disclosure of information:

....

(2) *The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making.*

(ii) Key functions of the board of directors-

.....

(2) *Monitoring the effectiveness of the listed entity's governance practices and making changes as needed.*

(6) *Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.*

(7) *Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.*

.....

(iii) Other responsibilities:

.....

(7) *The board of directors shall exercise objective independent judgement on corporate affairs.*

Board of Directors

17

(8) *The chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II.*

Financial results.

33. (1) *While preparing financial results, the listed entity shall comply with the following:*

(a) *The financial results shall be prepared on the basis of accrual accounting policy and shall be in accordance with uniform accounting practices adopted for all the periods.*

...

(c) *The standalone financial results and consolidated financial results shall be prepared as per Generally Accepted Accounting Principles in India:*

Provided that in addition to the above, the listed entity may also submit the financial results, as per the International Financial Reporting Standards notified by the International Accounting Standards Board.

.....

(3) *The listed entity shall submit the financial results in the following manner:*

.....

(b) *In case the listed entity has subsidiaries, in addition to the requirement at clause (a) of sub-regulation (3), the listed entity [shall] also submit quarterly/year-to-date consolidated financial results.*

Annual Report.

34.....

(2) *The annual report shall contain the following:*

.....

(b) *consolidated financial statements audited by its statutory auditors;*

(3) *The annual report shall contain any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V of these regulations.*

Accounting Standards.

48. *The listed entity shall comply with all the applicable and notified Accounting Standards from time to time.*

Issue 1: Whether SEBI has the jurisdiction to pass orders against listed companies for non-compliance with accounting standards?

14. The Noticees have contended that the jurisdiction to examine an entity's compliance with accounting standards does not vest with SEBI as there is a specialised statutory authority i.e. NFRA to monitor and enforce compliance with accounting and auditing standards. Further, Noticees have relied on the SAT order in the matter of DLF Limited v. SEBI (Appeal no. 331 of 2014 (decided on March 13, 2015) wherein SAT set aside SEBI's order observing non-compliance of accounting standards defining "control" over purported subsidiary companies.

15. I have perused the DLF case (supra) relied on by the Noticees. In the said case, Hon'ble SAT did not agree with SEBI's use of the definition of 'control' in the Takeover code and Accounting Standards, in the context of allegations under SEBI (Disclosure and Investor Protection) Guidelines, 2000. SEBI relied *inter alia* on those definitions since DIP Guidelines did not specify definitions of words such as "Control", "Subsidiary" or an "Associate Company". Unlike the DLF case, the main allegation in the present case is whether there was a need to consolidate financial statements in the manner specified under Indian Accounting Standards (Ind AS) as a subsidiary or as an associate. The endeavour made in this Order is *inter alia* to interpret the very same Ind AS (along with the definitions provided in the Companies Act, 2013) and determine whether the requirements therein to classify a company as a 'subsidiary' are satisfied. Therefore, in my opinion, the findings of the Hon'ble SAT in the DLF case, referred to by the Noticees, were in the context of a different set of facts and circumstances and do not aid the defence put forth by the Noticees.

16. In this regard, I would like to place reliance on the order of the Hon'ble SAT in the matter of Oasis Securities dated March 17, 2019 wherein *inter alia* the following was observed:

"9. As regards allegations of violation of Clause 50 and the various Accounting Standards (3, 18 and 24) it is the contention of the appellant that SEBI has no power to adjudicate on these matters. Bonafide interpretations of the accounting standard, even though some minor errors might have crept in, are not amenable to penal regulatory interventions by SEBI.

.....

*16. From a reading of Section 21 of the SCRA as above which states that "such person **shall** comply with the conditions of the listing agreement" and the language of Clause 50 of the Listing Agreement that "the company will **mandatorily** comply with the accounting standards issued by ICAI", we do not find any merit in the appellants' submission that SEBI does not have any mandate / jurisdiction on ensuring that accounting standards are followed in compliance with the listing obligations.*

18.....Similarly, the submission that Clause 50 is not violated because SEBI has no mandate on the accounting standards has no merit. A reading of Clause 50 makes it clear

that the stated accounting standards have to be mandatorily followed by a listed entity. Accordingly, we uphold the finding in the impugned order that the appellants have violated Clause 36 and Clause 50, along with the stated accounting standards.”

17. The aforesaid judgement of the Hon’ble SAT upheld the jurisdiction of SEBI to initiate action for non-compliance with the applicable accounting standards. Therefore, SEBI is not jurisdictionally barred from examining the compliance with accounting standards by listed companies.

Issue 2: Whether ROHL wrongly classified KSDPL as an associate company instead of a subsidiary?

18. Regulation 4(1) of the LODR Regulations mandates that information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosures. Section 129(3) of the Companies Act, 2013 *inter alia* states that a company with one or more subsidiaries or associate companies shall prepare a consolidated financial statements of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own in accordance with applicable accounting standards notified under section 133 of the Companies Act, 2013. The Indian Accounting Standards (Ind AS) have been notified under section 133 of the Companies Act, 2013. While section 129(3) of the Companies Act, 2013 mandates consolidation of financial statements of a parent company with subsidiaries and associate companies, under Indian Accounting Standards, specifically under Ind AS 110 and Ind AS 28, distinct methodologies are prescribed for the consolidation of financial statements with a subsidiary and an associate/ joint venture, respectively. The SCN alleges that the consolidated financial statements of ROHL published for the financial year 2021-22 were incorrect as it was prepared considering KSDPL as an associate instead of a subsidiary. Further, this wrong classification also resulted in the inflation of net profit of ROHL.

19. I note that the central issue required to be addressed in the present matter is whether KSDPL is a subsidiary or an associate company of ROHL. As per the

allegations made in the SCN, the criteria for determining whether a Holding-Subsidiary relationship exists is provided under Sections 2(87) and 2(27) of the Companies Act, 2013 and under Ind AS 110 of the Indian Accounting Standards.

Holding-Subsidiary relationship under Companies Act, 2013

20. Section 2(87) of the Companies Act, 2013 states that “subsidiary” means a company in which the holding company - (i) controls the composition of the Board of Directors or (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more subsidiary. The explanation to section 2(87) *inter alia* states that the composition of a company’s Board of Directors shall be *deemed to be controlled* by another company if that other company by exercise of *some power exercisable by it at its discretion can appoint or remove all or a majority of the directors*. Further, section 2(27) of the Companies Act, 2013 also *inter alia* defines “control” as the *right to appoint majority of the directors* by a person by virtue of their shareholding or management rights or shareholders’ agreement or in any other manner. In the instant case, as stated in the SCN and as also submitted by the Noticees, the shareholding in KSDPL is in the ratio of 50:50 between ROHL and Tambi group due to which it cannot be said that ROHL control more than one-half of the total share capital and consequently, clause (ii) of section 2(87) would not be applicable. Therefore, one will need to test this relationship based on the definition provided in section 2(87) (i) of the Companies Act, 2013. Explanation (b) makes it clear that what is relevant is not the actual number of directors represented on the Board of the subsidiary/ associate, but whether the parent is in a position to appoint or remove all or a majority of directors.
21. To support their contention that KSDPL cannot be classified as a ‘subsidiary’ as defined under section 2(87) of the Companies Act, the Noticees have relied on the observations of the Hon’ble SAT in the case of DLF Ltd. & Ors. v. SEBI (*decided on March 13, 2015*). The SAT order in the DLF case held that the composition of the Board of directors of a company shall be deemed to be controlled by another company only if that other company exercises power at its sole discretion to appoint or remove the Directors of the other company. Noticees have, in their

reply, highlighted the reference to “sole discretion”. I note that the DLF order referred to the definition of ‘subsidiary’ in the Companies Act, 1956. The definition in question in this Order is under Companies Act, 2013, the provisions of which do not use the expression “sole discretion”. In any case, I find that the allegation made in the Interim Order cum SCN does in fact point out to the ability possessed by ROHL to decide the composition of the board of KSDPL. The said order refers to the MoU and the AoA of KSDPL which, when read together, states that the Chairman of KSDPL would be appointed by ROHL and that the Chairman would have a casting vote in the event there is a tie in voting results. Obviously, given the 50-50 shareholding structure in KSDPL, every conflict in deciding the appointment of a director is bound to be decided in favour of one of the shareholder group i.e. ROHL, since the Chairman is appointed by it and in the specific facts of this case, the Chairman was in fact a CFO i.e. an employee of ROHL. Therefore, the findings of the Hon’ble SAT in the DLF case, referred to by the Noticees, were in the context of a different set of facts and circumstances and do not aid the defence put forth by the Noticees.

22. I note that a Memorandum of Understanding (“MoU”) was executed amongst i) ROHL ii) KSDPL, Ksheer Sagar Buildcon (P) Limited (“**KSBPL**”), Rajkamal Buildcon (P) Limited (“**RBPL**”) and J.H. Builders (P) Limited (“**JHBPL**”) and iii) Tambi group with respect to the construction and operation of a hotel under the Royal Orchid Brand in Jaipur, Rajasthan in 2007. KSDPL owns and operates the hotel constructed basis the said arrangement. The MoU needs to be read along with the AoA. Questions related to the governance structure can be determined by reading the MoU along with AoA.

23. From the Annual report of ROHL for FY 2016-17, I note that ROHL had 50% shareholding in KSDPL, KSBPL, RBPL and JHBPL and classified them as Joint Ventures (associate companies). In 2018, ROHL reclassified KSDPL, KSBPL, RBPL and JHBPL as subsidiaries based on the modification to Board composition clause of the AoA by virtue of which ROHL had the right to appoint majority of the Directors in the Board of the said companies.

24. The contention of the Noticees is that KSDPL was treated as a subsidiary of ROHL only by virtue of majority board membership of KSDPL (3-ROHL and 2-Tambi group) and that with the appointment of two independent directors on the Board of Directors of KSDPL, ROHL ceased to have majority representation on the Board of Directors of KSDPL. As explained above, the determination of Holding-subsidary relationship is based on the definition provided under section 2(87) (ii) of the Companies Act, 2013 as well as based on Ind AS 110 and is not dependent on the number of independent directors or whether they are in fact independent. Mr. Rupesh Tambi, from Tambi group, had also forwarded a representation dated September 06, 2023 to SEBI *inter alia* alleging that certain issues with respect to the appointment of independent directors on the Board of KSDPL. However, neither of these submissions are relevant for the adjudication of the central allegation in the SCN, as articulated earlier in this Order.
25. The Noticees have relied on the judgments in the matters of *G.L. Sultania (supra)* and *Vodafone India Limited (supra)* and submitted that a company which holds only 50% shareholding of another company cannot be its subsidiary. In this regard, I note that *inter alia* the allegation in the SCN, as pointed out in paragraph 19 above, is that ROHL controls the composition of Board of KSDPL through the casting vote of the Chairman of the General Meeting of Shareholders, who is the nominee of ROHL. Therefore, the aforesaid contention of the Noticees and the said judgements relied on by the Noticees do not address the specific allegation.
26. With respect to the allegation of control over composition of the Board of Directors, the Noticees have submitted that as per the AoA of KSDPL, it is not necessary for the Chairman of the company to also act as Chairman of the Meeting of the Shareholders and AoA contemplates that the directors may elect one of their members to be the Chairman of the Meeting. Further, the Noticees have relied on the judgements in the matters of *Oriental Industrial Investment Corporation Limited (supra)*, *M. Velayudhan (supra)*, *Manmohan Sharma (supra)* and *DLF Limited (supra)* and submitted that only if the AoA gives absolute power to appoint or remove majority of directors, Holding-Subsidiary relationship can be established.

27. I have perused the copies of AoA and MoU of KSDPL as available on record. The relevant extracts of the same is given below.

MoU

“16. The Board of Directors will have a Chairman from Royal Orchid Hotels Limited and Managing Director from Tambi group. Role and Responsibilities of the Chairman and Managing Director to be clearly outlined.”

AoA

“59. The Chairman, if any, of the Board shall preside as Chairman at every General Meeting of the Company.”

“60. If there is no such Chairman or if he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as Chairman of the meeting, the Directors shall elect one of their members to be the Chairman of that meeting.”

“63. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place or at which a poll is demanded, shall be entitled to a second or casting vote.”

28. I note that Clause 16 of the MoU states that the Board of Directors (of KSDPL) will have a Chairman from ROHL. Clause 59 of the AoA states that the Chairman of the Board of KSDPL shall preside as the Chairman at every General Meeting of the Company (KSDPL). Additionally, Clause 63 of AoA states that the Chairman of the Meeting shall be entitled to a second or casting vote in case of equality of votes. From a conjoint reading of the aforesaid clauses, I note that the nominee of ROHL would be the default Chairman of the General Meeting of the Shareholders and he/ the Chairman would be entitled to a casting vote in case of tie. Although Clause 60 of the AoA provides that directors can elect one of them as the Chairman of the Meeting, as contended by the Noticees, I note that the same is only an exceptional case if the Chairman of the Board is not available. The MoU makes it clear that the Chairman of the Board would be from ROHL. Therefore, the casting

vote of the Chairman of the General Meeting of Shareholders of KSDPL is essentially a discretion vested in ROHL.

29. The Noticees have contended that the 'casting vote power' which is exercisable by the Chairman of the meeting is only a tie-breaker exercisable only in extraordinary event of equality of votes. The Noticees have also submitted that even if Clause 63 were absent from AoA of KSDPL, the Chairman of the Meeting would have had a casting vote as mandated by secretarial standards and Section 118(10) of the Companies Act, 2013. The Noticees have relied on the judgements in the matters of *Arcelormittal India Private Limited (supra)*, *Subhkam Ventures (I) Private Limited (supra)* and *Vishwapradhan Commercial Private Limited (supra)* and submitted that casting vote is a reactive power only to break a deadlock and cannot amount to "control". I am in agreement with their submissions. Any Chairman would have a casting vote to break a deadlock. However, it must be borne in mind that ROHL and Tambi group had shareholding in the ratio of 50:50 in KSDPL. In the event of conflict, there would invariably be deadlock in decision making. But because the casting vote vested with the Chairman who in turn was appointed by ROHL (as per the MoU), and therefore assumed to be acting on the instruction of or in favour of ROHL as shareholder of KSDPL, every decision requiring an Ordinary Resolution would invariably go in favour of ROHL. As a matter of fact, during the relevant period in time, the Chairman of KSDPL – Mr. Amit Jaiswal was also the CFO of ROHL. Therefore, effectively, ROHL had control over the outcome of any ordinary resolution in a General Meeting of Shareholders of KSDPL and particularly in the context of appointment or removal of directors on the board of KSDPL.

30. The Noticees have submitted that the casting vote was not exercised for the appointment of independent directors on KSDPL's Board. From the minutes of the fifth meeting of the Board of Directors of KSDPL held on February 08, 2022, I note that Tambi group had expressed their dissent for the appointment of Mr. Haripal Singh Uberoi as an independent director. Further, the scrutinizer report of the Extraordinary General Meeting (EGM) of KSDPL held on March 02, 2022 records that 50% of the total number of votes were cast in favour of the resolutions to appoint two independent directors and 41.48% of the total number of votes were

cast against the resolution to appoint two independent directors. Although the scrutinizer report does not mention the names of the members who had voted, based on the percentage of votes, it *prima facie* appears that the Tambi group voted against the resolutions and Mr. Rajesh Tambi from the Tambi group abstained from voting. If Mr. Rajesh Tambi had also voted against the resolutions for appointment of independent directors, the casting vote of the Chairman of the Meeting i.e., Mr. Amit Jaiswal (nominee of ROHL and also an employee of ROHL) would have been required to be exercised. Therefore, in effect, ROHL can, at its discretion without the consent of Tambi group, control the outcome of any ordinary resolution in General Meeting of the Shareholders through the casting vote of the Chairman as the same is always with the nominee of ROHL.

31. I draw reference to the case of Oriental Industrial Investment Corporation Limited (*supra*), wherein the Hon'ble High Court of Delhi *inter alia* held the following:

“18. As regards the control of the composition of the board of directors, this requirement is established only in the holding company has the independent power to appoint or remove the holders of all or a majority of the directors, and the Act states three circumstances in which the requisite power to appoint is considered to exist [s. 4(2)]. By virtue of the agreement dated August 19, 1975, the exercise of the power to appoint directors is not subject to the consent or concurrence of any other person. ...”

32. Clause 76 of the AoA states that KSDPL may reduce or increase the number of directors through an ordinary resolution. Section 149(10) and section 169(1) of Companies Act, 2013 *inter alia* provides that a special resolution would be required only for re-appointment of an independent director and removal of a re-appointed independent director. The AoA or MoU does not confer any right or authority on Tambi group to obstruct or veto any ordinary resolution proposed for the purpose of appointment or removal of a director. Section 100 of the Companies Act, 2013 provides that the Board shall call for an EGM on the request of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting.

33. I note that pursuant to the appointment of independent directors on the Board, it could be well argued that ROHL does not exercise majority voting rights on the Board of KSDPL presently. It could also be contended that reappointment of independent directors or removal of re-appointed independent directors cannot be done by ROHL independently as the same would require a special resolution. However, I note that as per section 169 (1) of Companies Act, 2013, an ordinary resolution is sufficient to remove non-independent directors who form the majority (presently, 5 directors out of 7) on the Board of KSDPL. Relevant extract of the same is reproduced below:

“Section 169. Removal of directors

(1) A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard:

Provided that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard:

....”

34. Therefore, by virtue of rights provided under section 100 of the Companies Act, ROHL continues to possess the power to remove majority of the directors at its discretion through an ordinary resolution. In view of the same, I find that ROHL continues to be in a position to independently control the composition of the Board of Directors of KSDPL.

35. The Noticees have submitted that classification of a company, in which a listed entity holds 50% shares, as associate/ joint venture is a fairly common practice across listed companies and also provided a list of such listed companies given below.

Table no. 4

S. No.	Company	Joint Venture/ Associate Company
1.	Reliance Industries	D. E. Shaw India Securities Private Limited
		Ethane Crystal LLC
		Ethane Emerald LLC
		Ethane Opal LLC
		Ethane Pearl LLC
		Ethane Sapphire LLC
		Ethane Topaz LLC
		Gaurav Overseas Private Limited
		GenNext Ventures Investment Advisers LLP
		India Gas Solutions Private Limited
		Ixora Holdings Limited
		Pipeline Management Services Private Limited
		Reliance Europe Limited
		Reliance Services and Holdings Limited
2.	ITC Limited	ITC Essentra Limited
		Maharaja Heritage Resorts Limited
3.	State Bank of India	Oman India Joint Investment Fund-Management Co. Private Limited
		Oman India Joint Investment Fund- Trustee Co. Private Limited
4.	Larsen & Toubro Ltd	Gujarat Leather Industries Limited
		L&T Hydrocarbon Caspian LLC
		L&T-Sargent & Lundy Limited
5.	Maruti Suzuki India Ltd	Maruti Suzuki Toyotsu India Private Limited
6.	Adani Enterprises Ltd	Vishakha Industries Pvt Ltd
		Adani Global Resources Pte Ltd (AGRPTE)
		Carmichael Rail Network Pty Ltd
		Adani Total LNG Singapore Pte Ltd
		Vishakha Pipes and Moulding Pvt Ltd
		AdaniConnex Pvt Limited
7.	Bajaj Finserv Ltd	Bajaj Allianz Financial Distributor Limited
8.	Oil & Natural Gas Corpn Ltd	ONGC Tripura Power Company Ltd.
		Dahej SEZ Limited

S. No.	Company	Joint Venture/ Associate Company
		Shell MRPL Aviation Fuels & Services Limited
		Mansarovar Energy colombia Limited
		Himalya Energy Syria BV
		Hindustan Colas Pvt. Ltd
		South Asia LPG Co. Pvt. Ltd.
		HPOIL Gas Pvt Ltd
9.	Tata Motors Ltd	Fiat India Automobiles Private Limited
		Tata Cummins Private Limited
		Chery Jaguar Land Rover Automotive Company Limited
10.	NTPC Ltd	NSPCL (NTPC-SAIL Power Co. Ltd.)
		NTECL (NTPC Tamil Nadu Energy Co. Ltd.)
		APCPL (Aravali Power Company Pvt. Ltd.)
		MUNPL (Meja Urja Nigam Pvt. Ltd.)
		UPL (Utility Powertech Ltd.)
		NGSL (NTPC GE Power Services Private Limited)
		NBPPL (NTPC-BHEL Power Projects Pvt. Limited)
		CNUPL (CIL NTPC Urja Private Limited
		Jhabua Power Limited
		Trincomalee Power Company Ltd
		Bangladesh-India Friendship Power Company Private Ltd.
11.	Coal India Ltd	CIL NTPC Urja Private Limited
		Coal Lignite Urja Vikas Private Limited
12.	Power Grid Corporation of India Ltd	RINL Powergrid TLT Pvt. Limited
		Butwal-Gorakhpur Cross Border Power Transmission Limited
13.	Mahindra & Mahindra Ltd	Officemartindia.com Limited
14.	JSW Steel Ltd	JSW Severfield Structures Limited
		Gourangdih Coal Limited
		JSW MI Steel Service Centre Private Limited

S. No.	Company	Joint Venture/ Associate Company
		JSW MI Chennai Steel Service Centre Private Limited
		NSL Green Steel Recycling Limited
15.	Adani Ports & Special Economic Zone Ltd	Dighi Roha Rail Ltd
		Adani International Container Terminal Pvt. Ltd.
		Adani CMA Mundra Terminal Pvt. Ltd
		Adani Total Pvt. Ltd. (ATPL)
		Zuari Indian Oiltanking Pvt. Ltd.
16.	Tata Steel Ltd	Mjunction Services Limited
		Tata NYK Shipping Pte Ltd.
		Tata NYK Shipping (India) Pvt. Ltd.
		Tata Steel Ticaret AS
		Texturing Technology Limited
		Hoogovens Court Roll Service Technologies VOF
		Tata BlueScope Steel Private Limited
		BlueScope Lysaght Lanka (Pvt) Ltd
		GietWals Onderhoud Combinatie B.V.
		Hoogovens Gan Multimedia S.A. De C.V.
		ISSB Limited
17.	Tech Mahindra Ltd	SCTM Engineering Corporation
18.	Eicher Motors Ltd	Eicher Polaris Private Limited
19.	Tata Consumer Products Ltd	Tata Starbucks Private Limited
20.	Bharat Petroleum Corporation Ltd	Bharat Stars Services Pvt. Ltd
		Kochi Salem Pipeline Private Ltd.
		Matrix Bharat Pte Ltd.
		Haridwar Natural Gas Pvt. Ltd.
		Goa Natural Gas Pvt. Ltd
21.	Apollo Hospitals Enterprise	Apollo Gleneagles PET-CT Pvt Limited
22.	Ltd	Apkos Rehab Pvt. Limited

S. No.	Company	Joint Venture/ Associate Company
23.	UPL Ltd	Origeo Comércio De Produtos Agropecuários S.A
24.	Indian Hotels Co Ltd	Kaveri Retreats and Resorts Limited
25.	ITC Ltd	ITC Essentra Limited
		Maharaja Heritage Resorts Limited
26.	EIH Ltd	Oberoi Mauritius Limited
27.	Mahindra Holidays & Resorts India Ltd	Tropiikin Rantasauna Oy
28.	Benares Hotels Ltd	Oriental Hotels Limited

36. As mentioned earlier, the determination of whether KSDPL is a subsidiary or an associate company of ROHL is not solely based on the shareholding pattern of the ROHL in KSDPL. In the absence of any supporting information other than the shareholding details, the said submission does not aid the argument put forth by the Noticees.

37. The Noticees have submitted that the decision to classify KSDPL as an associate company was taken based on professional consultation and submitted the opinion provided by a firm of Chartered Accountants - S. Ramanand Aiyar & Co. and a Practicing company secretary - G. Shankar Prasad. I have perused the said opinions and I note that the opinions specifically mention that they were rendered on the basis of the facts presented to them. The relevant extract of the facts as cited in both opinions is given below for reference:

*"The facts of the case as cited to me or reproduced below are as under:
'Royal Orchid Hotels Limited holds 50% shareholding in Ksheer Sagar Developers Private Limited and the remaining 50% is held by Tambi family*

Clause 76A of MOU of Ksheer Sagar Developers Private Limited states that:

Board of Directors in the company shall consist of 5 Directors of which 3 Directors shall be nominated by Royal Orchid Hotels and 2 Directors shall be nominated by Tambi group. The number of Directors can be increased to 9 Directors of which 5 Directors shall be nominated by Royal Orchid Hotels Limited and 4 Directors by Tambi Group. However, if and when any need arises, then Independent Directors per se or of any Financial Institution / PSU Bank / Private Bank may be taken on the Board of Directors of the Company

by Virtue of the aforesaid clause the present composition of the Board of Directors is 5 of which 3 are nominee of Royal Orchid Hotels Limited and 2 are nominee of Tambi group

The aforesaid Board composition forms the Basis of Holding subsidiary relationship between Royal Orchid Hotels Limited and Ksheer Sagar Developers Private Limited

Pursuant to Section Section(sic) 149 (6) of the Companies Act, 2013 Ksheer Sagar Developers Private Limited is in the process of appointing 2 independent Directors

Post the appointment of the aforesaid independent Directors the composition of the Board would become seven.

Hence the Board majority of Royal Orchid Hotels Limited would come to an end' "

38. I note that the facts provided for obtaining these opinions do not include details regarding Clause 16 of the MoU. Even the Noticees in their replies have stated that the opinion was sought on whether induction of two independent directors on the Board of KSDPL would amount to loss of control over the composition of the Board. Therefore, these opinions do not take into account the aspect of casting vote providing right to remove a director. They have examined the issue only from the perspective of the actual composition of the Board of KSDPL and not ventured into whether ROHL or any other company was in a position to control the composition of the said Board. These facts do not appear to have been placed before the aforesaid Chartered Accountant and Practising Company Secretary (at least as gathered from the context of the opinion). Accordingly, I find that relying on these opinions, which have taken into account incomplete facts, would be inappropriate.

39. In view of the observations made above, I find that the allegation made in the Interim Order cum SCN that ROHL controls the composition of Board of KSDPL as defined under section 2(87) of the Companies Act, 2013 stands established. Consequently, I find that KSDPL is a subsidiary of ROHL, as defined in Companies Act, 2013, and is therefore a relevant factor to consider whether KSDPL has to be treated as a subsidiary in accordance with Ind AS.

Subsidiary Relationship under Indian Accounting Standards

40. I am now required to determine whether KSDPL was a 'subsidiary' of ROHL as per Indian Accounting Standards thereby requiring consolidation of accounts as a subsidiary and not as an associate company. Ind AS 110 defines a "subsidiary" as an entity that is controlled by another entity known as the parent and also provides that an investor controls an investee if and only if the investor has all the following.

- 40.1. Power over the investee and current ability to direct the relevant activities i.e. the activities that significantly affect the investee's returns;
- 40.2. Exposure, or rights, to variable returns from its involvement with the investee; and
- 40.3. The ability to use its power over the investee to affect the amount of the investor's returns.

41. The SCN alleges that as per the MoU executed between ROHL and the Tambi group, the rights/ control relating to operations, management, supervising, service and directions etc. of the hotel are with ROHL. Further, as per ROHL's letter dated January 28, 2023, ROHL has admitted that it was able to direct relevant activities viz. selling and purchasing of goods or services, managing financial assets during their life, selecting acquiring or disposing of assets and determining a funding structure or obtaining funding in accordance with Ind AS 110 in respect of KSDPL. Mr. Amit Jaiswal, Chairman of KSDPL and CFO of ROHL, in his statement recorded before SEBI on February 23, 2023 has *inter alia* stated that all the operations of KSDPL were taken care of by ROHL and the key persons who head the operations are also employees of ROHL.

42. The Noticees have submitted that in terms of the MoU r/w HOA, ROHL is the "**Operator**" of the Hotel in Jaipur and KSDPL would be the "**Owner**" of the said Hotel. Further, they have submitted that "relevant" activities highlighted by SEBI are not right or power but operational authority that an Operator of Hotel must have to run a Hotel effectively and the same does not tantamount to control. The Noticees have also submitted that Tambi group is the "**Owner**" and has the power

over relevant activities such as appointment of managing director and internal auditor of KSDPL, which could tantamount to control. It was also submitted that KSDPL's finances are controlled by the Tambi group and its operations are controlled by ROHL.

43. In order to determine whether an investor controls an investee under the above mentioned criteria, Ind AS 110 states that the following factors may assist in making that determination.

- I. Purpose and design of the investee;
- II. What the relevant activities are and how decisions about those activities are made;
- III. Whether the rights of the investor give it the current ability to direct the relevant activities;
- IV. Whether the investor is exposed, or has rights, to variable returns from its involvement with the investee; and
- V. Whether the investor has the ability to use its power over the investee to affect the amount of investor's return.

I. Purpose and Design of KSDPL:

43.1. In the context of Ind AS 110, this factor *inter alia* reads as follows:

“...the assessment of control focuses on which party, if any, is able to exercise voting rights sufficient to determine the investee's operating and financing policies (see paragraphs B34-B50)”.

Paragraph B-35 reads as *“An investor that holds more than half of the voting rights of an investee has power in the following situations, unless paragraph B36 or paragraph B37 applies: (a) the relevant activities are directed by a vote of the holder of the majority of the voting rights, or (b) a majority of the members of the governing body that directs the relevant activities are appointed by a vote of the holder of the majority of the voting rights”.*

43.2. KSDPL is a company that is owned by ROHL and Tambi group in the ratio of 50:50. Based on the MoU between ROHL and Tambi group, a hotel under the Royal Orchid brand is owned and operated by KSDPL. The MoU also states that the management of the Hotel would be with ROHL. I note that

the Noticees, in their reply dated September 07, 2023, have stated that KSDPL is the “Owner” at paragraph 14.3.4.1 and also that Tambi group is the “Owner” at paragraph no. 14.3.4.3. As per the MoU, I note that KSDPL is the owner of the hotel at Jaipur and ROHL has 50% shareholding in KSDPL. Further, as explained in paragraphs above, ROHL effectively has complete control over outcome of any ordinary resolution in General Meeting of members of KSDPL i.e., the “Owner” under Hotel Operation Agreement. Therefore, the submission of the Noticees that ROHL is just an “Operator” is not tenable.

- II. What the relevant activities are and how decisions about those activities are made?**
- III. Whether the rights of the investor give it the current ability to direct the relevant activities?**

43.3. Ind AS 110 defines “relevant activities” as the activities that significantly affect the investee’s returns. Further, the following activities were given as examples of “relevant activities” – selling and purchasing of goods or services, managing financial assets during their life, selecting, acquiring or disposing of assets and determining a funding structure or obtaining funding. As per the MoU, the segregation of rights in respect of various activities of KSDPL between ROHL and the Tambi group is given below.

Table no. 5

Sl. No.	Nature of activities/operations	Rights/control	
		ROHL	Tambi Group
1.	Cost of commercial conversion of land for hotel use		√
2.	ROHL will do construction in consultation with Tambi Group. In case of difference of opinion, final decision would be taken by ROHL	√	
3.	Architect will be decided by	√	

Sl. No.	Nature of activities/operations	Rights/control	
		ROHL	Tambi Group
4.	Completing the hotel project in all aspects and enabling commencement of hotel operations is the sole responsibility of ROHL	√	
5.	Technical fee of 1.5% of project cost, excluding the cost of land	√	
6.	Provide amount of working capital that may be mutually agreed upon between the Owner and the operator for initial working of the hotel		√
7.	Appointment of Chairman	√	
8.	Appointment of Managing Director		√
9.	Statutory Auditor Appointment	√	
10.	Internal Auditor Appointment		√
11.	After completion of Hotel, management will be with ROHL	√	
12.	Management Fee 1.5% of Turnover and 5.5% of Gross Profit to be earned by	√	
13.	Surplus remaining after payment of management fees and after reducing reasonable allowance of working capital to be transferred to		√
14.	Operations and management of the hotel	√	
15.	Supervisory Services	√	
16.	Repairs and maintenance that are customarily made in the operation of first class hotels	√	

43.4. From the table above, it can be seen that rights/ control with respect to operations, management, supervising, service and directions etc. are with ROHL. As per ROHL's own submission, it has admitted that these activities with ROHL but declared that this only provides "operation authority" to ROHL

in its capacity an “operator” of the Hotel. The Hotel Operation agreement (“**HOA**”) submitted by the Noticees appear to be the management contract between ROHL and Tambi group. As per the said agreement, Article V reads as *“The Operator shall supervise and direct the operation of the Hotel and shall have, within the limits stipulated in the Agreement, complete and exclusive control and discretion over the operation of the Hotel...”*. While there are shared responsibilities for both groups, considering the scheme of affairs, HoA and MoU, I find ROHL to be in control of the relevant activities of KSDPL which could significantly affect the returns of KSDPL. This is all the more so considering the finding earlier in this Order that ROHL controls the composition of KSDPL’s Board through its ability to appoint/ remove majority of directors.

43.5. Mr. Amit Jaiswal (Chairman of KSDPL and CFO of ROHL), in his statement, stated that all the operations of KSDPL were taken care of by ROHL and that the key persons who head the operations of KSDPL were also employees of ROHL.

43.6. The opinion obtained by the Noticees from the firm of Chartered Accountants - S. Ramanand Aiyar & Co. states that these relevant activities were controlled by ROHL through its majority on the Board of KSDPL and with the appointment of independent directors, ROHL does not have Board majority and will not be able to direct the relevant activities. I note that the appointment of Independent directors on the Board of KSDPL was carried out in compliance with law to improve corporate governance of KSDPL as its holding company is a public company. Therefore, merely because independent directors are appointed on the Board of KSDPL, the ability to control the relevant activities of KSDPL by virtue of the MoU, has not changed.

IV. Whether the investor is exposed, or has rights, to variable returns from its involvement with the investee?

43.7. The SCN alleges that ROHL has rights/ exposure to (1) management fee of 1.5% of the turnover, (2) further earning of 5.5% of the gross profit and (3) repair and maintenance expenses. Consequently, it was alleged that ROHL

has exposure to variable returns from its involvement with KSDPL as the returns from the hotel activities have the potential to vary. In this regard, the Noticees have submitted that (1) management fee is fixed in nature, not variable and treated as an expense (2) Being the operator, it is natural for ROHL to have rights on Hotel's operations and management and exposure to the repair and maintenance expenses. Further, the Noticee has submitted that Tambi group gets any surplus remaining after payment of management fees to ROHL.

43.8. Contrary to the submissions made by the Noticees, I find that the earning potential of ROHL is variable in nature as the turnover and the gross profit vary depending on the performance of KSDPL. This is a variable return because it exposes ROHL to the performance risk of KSDPL. The explanation provided in Ind AS 110 for determination of "exposure, or rights, to variable returns from an investee" is important in this regard. Relevant extract are reproduced: *"...Similarly, fixed performance fees for managing an investee's assets are variable returns because they expose the investor to the performance risk of the investee. The amount of variability depends on the investee's ability to generate sufficient income to pay the fee."* (emphasis supplied)

43.9. The Noticees have argued that Tambi group gets any surplus after payment of management fees. In this regard, I note that more than one entity can share the returns of the investee. Therefore, in addition to Tambi group, ROHL also has exposure to variable returns from its involvement with KSDPL.

V. Whether the investor has the ability to use its power over the investee to affect the amount of investor's return?

43.10. According to Ind AS 110, the link between power and returns requires determination of whether the decision maker is a principal or an agent. Further, it states that the following factors have to be considered to determine whether the decision maker is the principal or an agent.

- i. Scope of its decision-making authority over the investee.
- ii. The rights held by other parties.

- iii. The remuneration to which it is entitled to in accordance with the remuneration agreement.
- iv. The decision maker's exposure to variability of returns from other interests that it holds in the investee.

It also states that different weightage shall be applied to each of the factors on the basis of particular facts and circumstances.

i. Scope of its decision-making authority over the investee

43.10.1. I note that ROHL was significantly involved in the design of KSDPL in determination of its scope in the investee (KSDPL) and as a result, the relevant activities i.e., operation, management and supervisory services of the Hotel at Jaipur are with ROHL. Further, ROHL's control of Operations and management, supervisory services, appointment of chairman and statutory auditor, repair and maintenance (*as mentioned in Table no. 5 above*) indicates that it has a wide decision making discretion.

ii. Rights held by other parties

43.10.2. Although the right to appoint Managing Director and the right to appoint internal auditor is with the Tambi group, ROHL group has control over the relevant activities i.e., operations and management, supervisory services and repairs and maintenance of KSDPL. As per the material available on record, there are no substantive rights held by Tambi group that could affect ROHL's ability to direct the relevant activities of KSDPL.

iii. Remuneration to which it is entitled to in accordance with the remuneration agreement

43.10.3. Ind AS 110 states that both the conditions mentioned below should exist in order to establish that the decision maker cannot be an agent -

- i. Remuneration of the decision maker is commensurate with the services provided.

- ii. Remuneration agreement includes only terms, conditions or amounts that are customarily present in arrangements for similar services and level of skills negotiated on an arm's length basis.

43.10.4. With respect to the condition (ii), I note that sufficient information is not available before me to decide on the said condition. Although both the conditions have to be met in order establish that the decision maker is an agent, Ind AS 110 also states that meeting these conditions in isolation is not sufficient to conclude that a decision maker is an agent.

iv. Decision maker's exposure to variability of returns from other interests that it holds in the investee.

43.10.5. As mentioned earlier, ROHL holds 50% shareholding in KSDPL, which has an equity share capital of INR 60 crore. Further, as per the CARE Ratings report dated October 18, 2022, ROHL had extended unconditional and irrevocable corporate guarantee to secure a bank facility for KSDPL. There is no material available on record to determine ROHL's maximum exposure to variability of returns from KSDPL through these other interests.

43.11. ROHL satisfies two out of the four factors necessary to determine whether it is the decision maker or the agent. In my view, the first two factors i.e., scope of decision-making authority and rights held by other parties carry a significant weightage out of the 4 factors and therefore, I find that ROHL is the decision-maker and that it has the ability to use its power to affect the returns of KSDPL.

44. Since ROHL satisfies all the three conditions provided under Ind AS 110 as listed in paragraph 43 above, I find that KSDPL is a subsidiary of ROHL, as per the Indian Accounting Standards and therefore in accordance with the mandate of regulation

4(1) of LODR Regulations, ROHL should have consolidated financial statements including there in KSDPL as a subsidiary.

45. While the provisions of the MoU dealing with Board composition had been incorporated in KSDPL's AoA, the other provisions dealing with how the business of KSDPL would be run, particularly in the context of the role of ROHL as an operator of the hotel, does not find detailed mention in the AoA. Nonetheless, ROHL in its replies repeatedly refers to its role vis-à-vis KSDPL as being based on the MoU, which gives it significant control over the relevant activities of KSDPL. Therefore, for it to now argue that its relationship with KSDPL must solely depend on the composition of the board of directors (*i.e. the number of its representative directors on the board of KSDPL*) is contradictory and lays bare the incorrectness of the defence put forth.

46. In their replies, the repeated defence taken is that the decision to reclassify KSDPL as an 'associate' was based on the composition of the board of directors and that once independent directors were appointed to the Board, ROHL lost control over KSDPL. Therefore, according to the noticees, the 'subsidiary' status of KSDPL had to be changed and the financial statements had to be consolidated accordingly. This premise is fundamentally flawed. The determination of how the financial statements must be consolidated is based on the Ind AS and not based on the composition of the board. Whether or not KSDPL is to be treated as a subsidiary of ROHL is an issue that must be decided in accordance with Ind AS 110. As established in the foregoing paragraphs of this Order, in accordance with the provisions of the MoU and HoA, ROHL controlled KSDPL. Therefore, under Ind AS 110 KSDPL must be treated as a subsidiary of ROHL. The noticees have suggested that the new composition of KSDPL's board removes their ability to determine the operation and management of the business of KSDPL. However, it is clear that ROHL's ability to appoint or remove a majority of KSDPL's directors, effectively allows ROHL to wield significant authority over the board, thereby nullifying this argument as well.

47. The Noticees have submitted that the statutory auditor of ROHL issued an unqualified opinion on the audited consolidated financial statements for FY 2021-22. In this regard, I am informed that a reference against the statutory auditor has been forwarded to NFRA.
48. The Noticees have also contended that the decision to classify KSDPL as an 'associate company' was a commercial decision and that it was not open to SEBI or any judicial or quasi-judicial body to scrutinize these decisions. The Noticees have also submitted that the composition of the Board of KSDPL is a matter of contract between private parties – the Tambi group and ROHL, and irrelevant to the securities market. Further, they have stated that securities laws are involved only on account of the allegations of fraud impressed on the Noticees. I note that the classification of a company as an associate or a subsidiary should be done in accordance with applicable law i.e., Companies Act, 2013 and Accounting Standards and there is no scope/ discretion given to the Board of Directors to make a decision. Regulation 4(1) of LODR Regulations *inter alia* makes it abundantly clear that listed companies need to comply with the applicable accounting standards. In any case, since the publication of untrue financial statements has led to the allegation of violation of PFUTP Regulations as well, SEBI in fact does have the jurisdiction to examine the compliance with accounting standards by listed entities.
49. In view of the wrong classification of KSDPL as an associate company instead of a subsidiary in the consolidated financial statements published for FY 2021-22, I find that the ROHL has violated Regulation 4(1) of LODR Regulations which *inter alia* requires a listed entity to refrain from misrepresentation and abide by all applicable laws, make disclosures and follow its obligations in letter and spirit and file reports that contain relevant information. Further, ROHL has violated Regulation 33(1)(a), 33(1)(c), and 34(3) of the LODR Regulations which require a listed entity to prepare its consolidated financial results as per Generally Accepted Accounting Principles in India and Regulation 48 of the LODR Regulations which require a listed entity to comply with all the applicable and notified accounting

standards from time to time. Additionally, ROHL has violated regulation 33(3)(b) of LODR Regulations which requires a listed entity with subsidiaries to submit quarterly/ year to date consolidated financial statement and regulation 34(2)(b) of LODR Regulations which requires a listed entity's annual report to contain consolidated financial statements audited by its statutory auditors.

50. For failing to ensure the integrity of the listed entity's accounting and financial reporting systems, I find that Noticees 2 and 3, being directors on the Board of ROHL, have also violated regulation 4(2)(f)(i)(2), 4(2)(f)(ii)(2), 4(2)(f)(ii)(6), 4(2)(f)(ii)(7) and 4(2)(f)(iii)(7) of the LODR Regulations.

51. As per Regulation 17(8) of LODR Regulations, the CEO and CFO shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II, which states that the company's annual accounts that financial statements present a true and fair view of the company's affairs in compliance with existing accounting standards, applicable laws and regulations.

52. Noticee no. 2 was the Chairman and Managing Director of ROHL and Noticee no. 4 was the Chief Financial Officer of ROHL during the investigation period. These Noticees certified, as CEO and CFO, the company's annual accounts for the financial year 2021-22 stating that the financial statements present a true and fair view and are in compliance with the existing accounting standards, applicable laws and regulations. Therefore, Noticee nos. 2 and 4 are in violation of regulation 17(8) of LODR Regulations for providing false compliance certificate.

Issue 2.1: If the answer to Issue 2 is in the affirmative, whether the misrepresentation/ financial misstatement by ROHL amount to commission of fraud under PFUTP Regulations?

53. I have already concluded in paragraphs 39 and 44 of this Order that KSDPL is a subsidiary of ROHL. I note that the consolidated financial statements of ROHL were prepared by treating KSDPL as an associate company and as a result, ROHL derecognised all the assets and liabilities of KSDPL from the date of loss of control i.e., March 02, 2022. This allegedly led to the gain of INR 23.16 crore recorded

under 'exceptional item' in the consolidated financial statements for FY 2021-22. Table no. 1 above demonstrates the difference in computation of consolidated net profit of ROHL if KSDPL is considered as an associate – i.e., INR 26.79 crore and the consolidated net profit of ROHL if KSDPL is considered as a subsidiary - INR 3.63 crore i.e., an increase of 638%.

54. As already held in the previous paragraphs, KSDPL is a subsidiary of ROHL and consequently, the consolidated financial statements of ROHL for the FY 2021-22, which was prepared treating KSDPL as an associate company, were incorrect and did not depict the true and fair financial position of ROHL. The notes to the consolidated financial statement for FY 2021-22, as required under Ind AS, record that the inflated profit was a re-measurement gain due to reclassification of one of its subsidiary. I note that although the impact of the reclassification as associate was included in their consolidated financial statements, the headline profit in the consolidated financial statements was misleading and misstated as the same was based on wrong classification of KSDPL as an associate company instead of a subsidiary.

55. Financial Statements influence decision of investors to deal in a specific stock of a listed company and also affects all the investors of a listed company, irrespective of whether they traded in the scrip during the violation period or not. Inflation of profits, as had been done in the present case, would naturally influence the investment/ disinvestment decisions of the investors. The price of ROHL's scrip had also increased by 5% on the date of publication of the misleading and misstated consolidated financial statements. Had KSDPL been classified as a subsidiary, it could have made a difference in the decision taken by the investors who dealt in the scrip of ROHL during the relevant period. The Hon'ble Supreme Court in the matter of *N. Narayanan vs. Adjudicating Officer, SEBI* AIR 2013 SC 3191 had *inter alia* emphasised the adverse impact of incorrect information, including inflation of profits, on the markets. The Hon'ble SAT, in the matter of *V. Natarajan vs. SEBI (appeal no. 104 of 2011)* decided on June 29, 2011, held that the publication of false and misleading information which may induce the public to sell or purchase securities would also come within the ambit of unfair trade practice

in securities. Thus, I am of the opinion that ROHL has, through headline misstatement of consolidated financial statements for FY 2021-22, inflated its profits by INR 23.15 crore.

56. Regulation 4(2) of PFUTP Regulations lists thereunder those actions or omissions which are deemed to be fraud. The Interim Order cum SCN *inter alia* alleges that the financial misstatement followed by increase in price resulted in violation of regulations 4(2)(e), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations. In the foregoing paragraphs of this Order, I have concluded that the financial statements were infact misstated. As stated above, once the actions/ omissions listed in these clauses are factually established, the law does not require separate finding of 'fraud'. Accordingly, I find that ROHL has violated Regulation 4(2)(e), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations by publishing the misrepresented/ misstated consolidated financial statements resulting in price of ROHL's scrip being manipulated. Also, once the allegation of fraud under regulation 4(2) stands established, it follows that the alleged violations of provisions of Section 12A(c) of the SEBI Act and Regulation 3(d) and 4(1) of the PFUTP Regulations also stand established.

57. I note that Noticee no. 2 was a Promoter and the Chairman and Managing Director of ROHL during the investigation period. Noticee no. 3 is the son of Noticee no. 2. Further, he was a Promoter and Non-Executive Non-independent director on the Board of ROHL during the investigation period. Noticee nos. 2 and 3, by virtue of their positions on the Board of ROHL as CMD and Director respectively, were in-charge of operations and decision making process in ROHL. Noticee no. 4 was the CFO of ROHL and the Chairman of KSDPL with the casting vote during the investigation period.

58. In *N Narayanan vs Adjudicating Officer, SEBI* on April 26, 2013, Hon'ble Supreme Court of India held that "*Company though a legal entity cannot act by itself, it can act only through its directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A.*

Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.” Further, in SEBI vs. Gaurav Varshney (2016) 14 SCC 430, it has been held that “officers of a company who are responsible for acts done in the name of the company are sought to be made personally liable for acts which result in criminal action being taken against the company. It makes every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, liable for the offence.”

59. Therefore, Noticee nos. 2, 3 and 4 are vicariously liable for the misrepresentation of the consolidated financial statements of ROHL for FY 2021-22. Thus, I find that Noticee nos. 2, 3 & 4 have violated Section 12A(c) of the SEBI Act, Regulations 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations and Regulations 4(1), 33(1)(a), 33(1)(c), 33(3)(b), 34(2)(b), 34(3) and 48 of LODR Regulations read with section 27 of the SEBI Act.

Issue 2.2: Whether the gain made by Noticee nos. 2 and 3 from the sale of share can be regarded as illegal gain arising from the perpetration of a fraudulent scheme, as alleged in the SCN?

60. The SCN records that pursuant to the declaration of misrepresented/ misstated consolidated profit by ROHL, the scrip price of ROHL surged by 171% within a span of 9-10 months (from March 04, 2022 to December 30, 2022). The SCN alleges that the sale made by Noticee nos. 2 and 3 in the months of March 2022, September 2022 and November 2022 were at elevated prices influenced by the announcements regarding reclassification and misstated consolidated financial results. At para 7.11 of the SCN, the following allegation is recorded:

“Further it is alleged that they made total gain of Rs 20.83 crore by selling their shares at prices which were impacted/influenced by the misstated financials of ROHL. Thus it is alleged that both C.K. Baljee(promoter) and Keshav Baljee (director) used the Company for implementation of a plan, device and artifice to defraud the investors by manipulating/ misrepresenting the financial statements.”

Accordingly, the SCN directed the Noticees to, *inter alia*, show cause why the gain made from the sale of shares should not be issued to them.

61. The Noticees have stated that the disclosures in respect of the classification of KSDPL were already available in the public domain for investors to make their investment decision in respect of ROHL’s securities and the same did not result in any significant price movement. Further, they have stated that the stock prices did not witness any abnormal price movement on the date of declaration of financial results for the financial year 2021-22 i.e., May 30, 2022 and on the date of initial disclosure regarding re-classification of KSDPL on March 04, 2022. The price movement on the date of the announcement of reclassification (i.e., March 04, 2022) and date of publication of consolidated financial statements (i.e., May 30, 2022) and the trading days immediately after the said dates are as given below: -

Table no. 6

Date	Closing price (INR)	% change from previous day	VWAP (INR)	% change from previous day
04-Mar-22	95	-2.56%	97.39564156	1.77%
07-Mar-22	93	-2.11%	93.06708206	-4.44%
30-May-22	127.45	5.29%	127.3012478	4.43%
31-May-22	129.75	1.81%	125.9811235	-1.04%

Price details have been obtained from BSE website

VWAP – Volume-Weighted Average Price

62. From the table above, I note that the immediate effect of the reclassification of KSDPL on the scrip of ROHL appears to have been negative. ROHL scrip’s closing price declined on the date of announcement of reclassification and on the subsequent trading day as well. The VWAP declined by more than 4% on the

subsequent trading day. On the date of announcement of consolidated financial results for FY 2021-22 i.e., May 30, 2022, the closing price of ROHL's scrip increased by around 5%, which is around 10 times the average daily returns in the scrip of ROHL during the period from January 2022 to December 2022. Further, the VWAP increased by more than 4% on the date of announcement of financial results. Therefore, I find the submission of the Noticees, that there was no significant price movement on the date of publication of financial results to be incorrect.

63. The SCN alleges that there was no event or announcement during January 2022 to December 2022 that could cause the steep rise in the price of ROHL's scrip. The Noticees have stated that the ROHL scrip started to see a significant rally from August 2022, particularly after FY 2022-23 – Q1 results were declared on August 05, 2022 with significant improvement in performance parameters such as average occupancy and average room rate (both increased by around 37% from FY 21-22). The price movement on the date of publication of consolidated financial statements for Q1 and the subsequent trading day is given in the table below.

Table no. 7

Date	Closing price (INR)	% change from previous day	VWAP (INR)	% change from previous day
05-Aug-22	175.75	-2.74%	183.2467846	2.02%
08-Aug-22	192.15	9.33%	189.9642491	3.67%

Price details have been obtained from BSE website

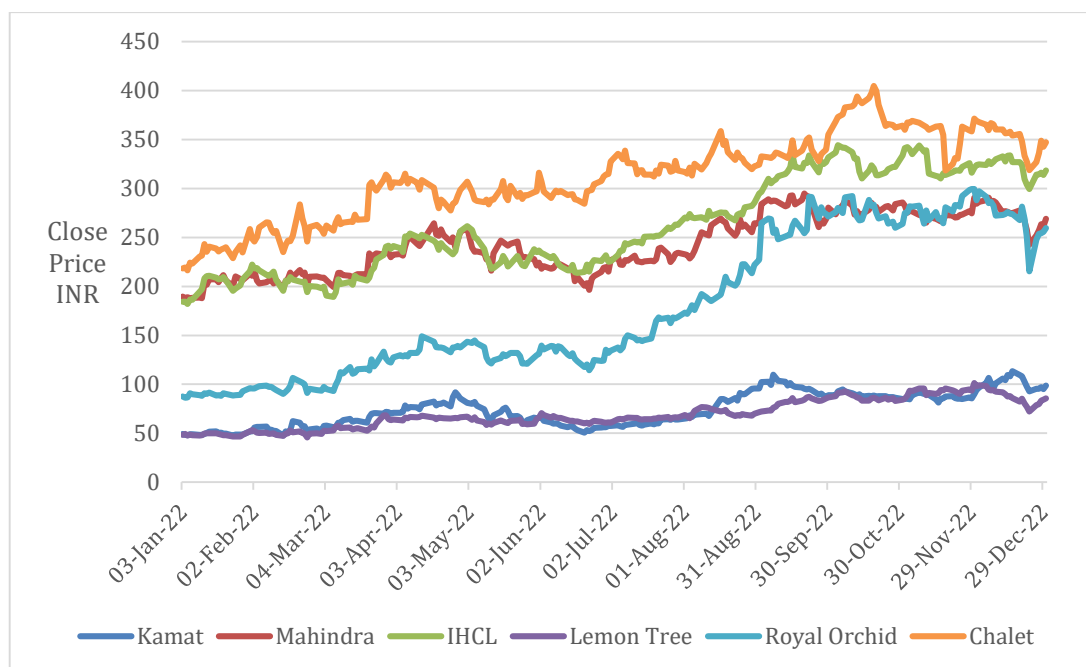
64. From the table above, I note that the closing price of ROHL's scrip declined on the date of announcement of FY 2022-23 - Q1 results, however, on the subsequent day, the closing price increased by around 9%, which is around 18 times the average daily returns during the period from January 2022 to December 2022. Thus, it appears that the market had reacted positively to the FY 2022-23 - Q1 results of ROHL.

65. The Noticees have argued that the financial results for FY 2021-22 published on May 30, 2022 cannot have a far-reaching effect till 6 months after the publication

of results. A comparison of price movement in the scrip of ROHL after the publication of consolidated financial statements for FY 2021-22 and FY 22-23 – Q1 suggests that the market perceived the FY 22-23 Q1 results as more favourable and reacted accordingly.

66. Further, Noticees have submitted that other scrips in the hospitality sector such as Kamat Hotels, Mahindra Holidays and Resorts, Indian Hotels and Chalet Hotels, had also witnessed a price rise during the same period. From the price movements of the said stocks in the hospitality sector as shown in the image given below, I note that there was a revival in the hospitality sector recovering from their COVID caused downturn.

Image no. 2



67. The Noticees have submitted that the sale of shares by Noticee nos. 2 & 3 in September and November 2022 was many months after the disclosure of financial results for the year ended March 31, 2022. Further, they have submitted that the price of ROHL rallied even after November 2022 and the Noticees did not sell at higher level of price subsequent in time. It has also been submitted that in spite of significant surge in the price of ROHL's scrip, Noticee no. 2 continues to hold his shareholding.

68. I note that the fundamental change i.e., reclassification of KSDPL was announced on March 04, 2022 and more than 2 months later, on May 30, 2022, the consolidated financial results of ROHL for FY 2021-22 were published. As stated earlier, the market reaction to the reclassification appears to have been negative and the shares sold by Noticee no. 2 in March 2022 were miniscule compared to the total number of shares sold by him during the Examination Period. The Noticee nos. 2 and 3 are alleged to have made most of their gains (99.8% of the alleged illegal gains) from their sale more than 4 months thereafter i.e., in September 2022 and November 2022 on the strength of the aforesaid information. As explained above, it is very unlikely that the price rise in ROHL's scrip is solely attributed to the misstated consolidated financial statements of FY 2021-22 as two quarterly results were published in the intervening period. In any case, it is apparent that there was an upward trend in hospitality sector stocks post COVID induced downturn. Further, I note that ROHL had a favourable FY 22-23 Q1 results with significant improvement in key performance parameters. Therefore, it cannot be said with certainty or on a preponderance of probability that the increase in price of ROHL's scrip after August 05, 2022 is solely attributable to the reclassification in March 2022 or to the strength of consolidated financial statements for FY 2021-22 published on May 30, 2022. In view of the above, the preponderance of probability does not suggest that the trades executed by Noticee nos. 2 and 3 and the consequent gain made by them were fraudulent, or that the said gain from sale of shares can be regarded as illegal gain.

Issue 3: If the answers to the aforesaid questions are in affirmative, whether this warrants issuance of directions and/ or penalty under sections 11(1), 11(4), 11(4A), 11A, 11B (1) and 11B (2) of the SEBI Act?

69. I note that the SCN had *inter alia* called upon the Noticees to show cause as to why appropriate penalty should not be imposed upon them under section 15HA and section 15HB of SEBI Act for the violation of provisions of the SEBI Act and PFUTP Regulations and LODR Regulations. The relevant extract of Section 15HA and Section 15HB of SEBI Act is as under:

“Penalty for fraudulent and unfair trade practices

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Penalty for contravention where no separate penalty has been provided

15HB. 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.”

70. On the basis of the discussion in the foregoing paragraphs, I note that the wrong classification of KSDPL as an associate company instead of a subsidiary led to the inflation of headline consolidated net profit of ROHL for the FY 2021-22. Thus, the consolidated financial statements for the said financial year have been found to be misstated/ misrepresented. Consequently, ROHL has violated Section 12A(c) of the SEBI Act, Regulations 3(d), 4(1), 4(2)(e), 42(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations and Regulations 4(1), 33(1)(a), 33(1)(c), 33(3)(b), 34(2)(b), 34(3) and 48 of LODR Regulations. Noticee no. 2 (Promoter, Chairman and Managing Director of ROHL), Noticee no. 3 (Promoter and Non-Executive and Non-Independent Director) and Noticee no. 4 (CFO and Chairman of KSDPL) were found to be responsible for such misrepresentation/ misstatement and therefore, they are vicariously liable for the violation committed by ROHL. Additionally, Noticee nos. 2 and 3, being on the Board of Directors of ROHL have violated regulation 4(2)(f)(i), 4(2)(f)(ii)(2), 4(2)(f)(ii)(6), 4(2)(f)(ii)(7) and 4(2)(f)(iii)(7) of the LODR Regulations. Furthermore, Noticee nos. 2 and 4 have violated regulation 17(8) of LODR Regulations. The violations of PFUTP Regulations warrant imposition of monetary penalty under section 15HA of SEBI Act and the violations of LODR Regulations warrant imposition of penalty under section 15HB of the SEBI Act.

71. I note that Section 15J of the SEBI Act provide for factors which are required to be considered for adjudging quantum of penalty. Section 15J of the SEBI Act reads as follows: -

“Factors to be taken into account while adjudging quantum of penalty.

15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or 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 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.”

72. As held earlier, there was no conclusive evidence of illegal gains having been made. Further, I find that the material available on record does not indicate the amount of specific loss caused to investors as a result of the acts of the Noticees or the repetitive nature of such violation.

73. The wrong representation/ computation of profits of ROHL basis the incorrect classification of KSDPL as an associate company led to investors not having the true and fair assessment of the company's financial status. Permitting this situation to continue would undoubtedly harm the interest of the investors. Therefore, in addition to penal or deterrent measure, it is necessary to pass remedial directions as well to correct the distorted picture thereby enabling investors to take an informed decision about their investments.

E. ORDER:

74. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11 (1), 11(4), 11(4A), 11B (1) and 11B (2) read with Section 15HA, Section 15HB and Section 19 of the SEBI Act and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, hereby issue the following directions:

- 74.1. The *Noticees* shall file a public disclosure to the stock exchanges containing the directions issued in this Order, within 7 days from the date of receipt of this Order.
- 74.2. The *Noticees* shall disclose the financial statements of KSDPL along with audit report for FY 2021-22, FY 2022-23 and FY 2023-24 within one month from the date of the Order to the stock exchanges.
- 74.3. The *Noticees* shall file a report detailing the impact on the consolidated financial statements of ROHL for FY 2021-22, FY 2022-23 and FY 2023-24 due to wrong classification of KSDPL as an associate company as detailed in this Order, within one month from the date of the Order to the stock exchanges. The said report should be certified by a peer reviewed Chartered Accountant, other than the Statutory Auditor, who has audited at least one company forming part of NIFTY 100 or BSE 100 indices during the past three years.
- 74.4. Monetary penalties as specified hereunder is imposed on the *Noticees*.

Noticee	Provisions under which penalty is imposed	Penalty amount (INR)
Royal Orchid Hotels Limited (PAN: AABCR0111M)	Section 15HA of SEBI Act	INR 5 lakh
	Section 15HB of SEBI Act	INR 1 lakh
Mr. Chander Kamal Baljee (PAN: ACTPB3357L)	Section 15HA of SEBI Act	INR 5 lakh
	Section 15HB of SEBI Act	INR 1 lakh
Mr. Keshav Baljee (PAN: AKYPB2322A)	Section 15HA of SEBI Act	INR 5 lakh
	Section 15HB of SEBI Act	INR 1 lakh
Mr. Amit Jaiswal (PAN: ADMPJ0732H)	Section 15HA of SEBI Act	INR 5 lakh
	Section 15HB of SEBI Act	INR 1 lakh

- 74.5. The *Noticees* shall remit/ pay the said amount of penalties within 45 days from the date of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT → Orders → Orders of Chairman/ Members → PAY NOW. In case of any difficulties in online payment of penalties, the said *Noticees* may contact the support at

portalhelp@sebi.gov.in. The details/ confirmation of e-payment should be sent to “Deputy General Manager, SEBI – Corporation Finance Investigation Department – SEC 4, SEBI Bhavan, Plot No. C4-A, ‘G’ Block, Bandra-Kurla Complex, Bandra (East), Mumbai - 400051” and also to e-mail id: - tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for:	Penalty

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

76. A copy of this Order shall be served upon the *Noticees*, all the recognised Stock Exchanges, Depositories and Registrar and Transfer Agents for ensuring compliance with the above directions.

-Sd-

ANANTH NARAYAN G.

DATE: OCTOBER 11, 2024

WHOLE TIME MEMBER

PLACE: MUMBAI

SECURITIES AND EXCHANGE BOARD OF INDIA