WTM/MB/CFD/DCR-2/13426/2021-22

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11 (1), 11(4) and 11B (1) of the Securities and Exchange Board of India Act, 1992

In Re: Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

In the matter of Rama Steel Tubes Limited

In respect of:

Sl. No.	Name	PAN
1	Naresh Kumar Bansal	AADPB6899B
2	Richi Bansal	ADWPB0496N
3	Kumud Bansal	AAGPB0080K
4	Krati Bansal	AIDPB1784B
5	Nikhil Naresh Bansal	AIDPB9163C
6	Kanika Bansal	BSHPB7937B
7	Naresh Kumar & Sons	AAAHN1124L
8	Charanjit Lal Dhir	ABCPD0781C
9	Arun Dhir	ABCPD0779J
10	Tarun Dhir	ABCPD0780D
11	M/s Arun Enterprises	AADFA9183D
12	Prem Dhir	AGYPD8943M
13	Sangeeta Dhir	ABDPD0597P
14	M/s Dhir Exports	AACFD1644F

Background

1. Rama Steel Tubes Limited ("**Target Company / RSTL**") was incorporated on February 26, 1974. RSTL is a manufacturer of Steel Pipes & Tubes, Rigid PVC and G.I. Pipes and has its registered office at B-5, 3rd Floor, Main Road, Ghazipur, New

Delhi - 110096.

2. Securities and Exchange Board of India ("**SEBI**") had received complaints vide undated letter received on August 8, 2019 and another letter dated December 2, 2019 (collectively to be referred as "**Letters**") wherein it was *inter alia* submitted as follows:

   2.1. Mr. Naresh Kumar Bansal ("**NKB**"), Promoter of RSTL, and Mr. Charanjit Lal Dhir ("**CLD**") hold fifty percent shareholding each and are directors in a company namely Virinder Engineers and Chemicals Limited ("**VECL**").

   2.2. The Target Company had allotted preferential equity shares at Rs. 122/- per share on March 29, 2017 among others to M/s Arun Enterprise and M/s Dhir Exports (collectively referred to as "**Firms**"), partnership firms owned by CLD and his family members.

   2.3. Both the Firms were Persons Acting in Concerts ("**PACs**") with NKB and hence the Promoter Group along with the partnership firms were liable to make an open offer to the public shareholders.

3. Pursuant to the reciept of the complaints, an examination was carried out by SEBI *inter alia* to determine whether M/s Arun Enterprises and M/s Dhir Exports were acting as PACs with the Promoter Group of the Target Company for the prefrerential allotment of equity shares, done by the Target Company on March 29, 2017 and to ascertain whether there was any possible violations of provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**Takeover Regulations**") at the time of preferential allotment of equity shares by the Target Company.

Show Cause Notice

4. Consequent to the completion of examination, a common Show Cause Notice ("**SCN**") dated November 25, 2020 was issued to the Promoter Group of the Target Company (7 in nos.), M/s Arun Enterprises and its Partners and M/s Dhir Exports and its Partners (collectively referred to as "**Noticees**") in the extant matter. The

SCN was served on the Noticees by emails dated November 25, 2020 and by Speed Post Acknowledgment Due. Proof of service is on record.

5. The allegations in brief, as set out in the SCN were as follows:

5.1. The following is the nexus of Promoter Group of the Target Company with the partnership firms owned by CLD and his family members:

5.1.1. NKB and CLD are both Directors in VECL.

5.1.2. NKB's son, Mr. Richi Bansal and CLD's son, Mr. Tarun Dhir are both Directors in APS Housing Projects Pvt. Ltd.

5.1.3. Mr. Richi Bansal and CLD's daughter-in-law, Mrs. Sangeeta Dhir are both Directors in TR Oil and Gas Pvt. Ltd.

5.1.4. CLD's another daughter-in-law, Mrs. Hannya Dhir held the designation of Non-Executive Director in the Target Company.

5.2. It was observed that Mr. Richi Bansal had resigned from APS Housing Projects Pvt. Ltd. before the allotment date and Ms. Hannya Dhir had also resigned from her position in the Target Company before the allotment date. It was alleged that the apparent motive behind the resignation from directorship by the aforementioned entities was to avoid classifying themselves as PACs as on dates of preferential allotment of shares and warrants.

5.3. Further, it was observed that Mr. Richi Bansal was appointed as a Director in TR Oil and Gas Pvt. Ltd. after the allotment date.

5.4. In view of the above, it was alleged that M/s Arun Enterprises and M/s Dhir Exports were PACs with the Promoters of the Target Company. It was further alleged that pursuant to the preferential allotment, the shareholding of the aforementioned partnership firms increased to more than the threshold of five per-cent (6.75%) in a single FY 2016-17 and thus, it was alleged that it has triggered regulation 3(2) of Takeover Regulations for which the Noticees have failed to make an open offer.

6. Thus, based on the above, the Noticees were advised to show cause as to why suitable directions in terms of Section 11B of SEBI Act read with regulation 32 of

Takeover Regulations including but not limited to directions against Noticees to make an open offer and to pay interest at 10% along with the offer price should not be initiated against them for the aforesaid alleged violation.

Reply, Hearing and Post Hearing Submissions

7. In response to the SCN, NKB on behalf of the Promoters of the Target Company vide his letter dated December 10, 2020 requested for two months' time to submit a reply to the SCN as he and his family members were suffering from Covid. Mr. Arun Dhir on behalf of the Firms, vide his letter dated December 11, 2020 requested for one months' time to submit a reply to the SCN as he was not keeping well. Noticees requests were considered and vide emails dated December 11 and 15, 2020, Noticees were granted two weeks' additional time to submit their response to the SCN. However, NKB and Mr. Arun Dhir vide their letter dated December 30, 2020 requested for another six weeks' and four weeks' respectively, to submit a detailed reply to the SCN. Vide emails dated December 30 and 31, 2020, Noticees were advised to submit their response to the SCN by January 10, 2021.
8. NKB on behalf of the Promoters of the Target Company vide his letter dated January 11, 2021 *inter alia* submitted as follows:
   8.1. Bansal family, are the Promoters of the Target Company and are in the management and control of the Target Company. NKB and Mr. Richi Bansal are the Directors of the Target Company.
   8.2. Shared common objective or purpose of substantial acquisition of shares or control over the Target Company, between persons, is a pre-requisite condition, for making them 'persons acting in concert' under the Takeover Regulations.
   8.3. There is not a whisper as to how Promoters of the Target Company and the Firms - the entities belonging to Dhir family, share (or had shared) any common objective or purpose of substantial acquisition of shares or control over the Target Company, with them. Same renders the allegations in the SCN, legally untenable and unsustainable.
   8.4. Shareholding of NKB in VECL or his directorship in VECL, has got nothing to do

with his shareholding in the Target Company. Further, merely because NKB and CLD, along with their families, hold fifty percent shareholding each of VECL and are its Directors, cannot automatically mean that both are persons acting in concert for the purposes of acquisition of shares in the Target Company or that the Firms are persons acting in concert with the Promoters of the Target Company for the purposes of acquisition of shares in the Target Company by them.

8.5. With regard to Mr. Richi Bansal and Mr. Tarun Dhir holding common directorship in APS Housing Projects Pvt. Ltd., it may be pointed out that Mr. Richi Bansal had already resigned as a Director of APS Housing Projects Pvt. Ltd on January 30, 2017. Pertinently he was not a Director at the relevant date i.e. allotment of shares on preferential basis on March 29, 2017. Here it may also be noted that in APS Housing Project Private Limited, Mr. Tarun Dhir was the Chairman of the company between 2011 to 2017. Further, it may be noted that this company was not having any business and was owning just a property. Mr. Richi Bansal had just invested Rs. 50,000/- in this company and did not enjoy any management control. Further, on January 27, 2017, Mr. Richi Bansal had exited from the company by selling his shareholding in the company.

8.6. With regard to Mr. Richi Bansal and Ms. Sangeeta Dhir holding common directorship in T R Oil and Gas Pvt. Ltd., it may be pointed out that Mr. Richi Bansal was appointed as a Director only on January 18, 2018. It may be noted that he was not a Director at the relevant date i.e. allotment of shares on preferential basis on March 29, 2017. Further, it may also be noted that in T R Oil and Gas Pvt. Ltd., Ms. Sangeeta Dhir is the Chairperson of the company. This company is not having any business. Mr. Richi Bansal had just invested Rs. 3,370/- in this company and he does not enjoy any management control in the company.

8.7. With regard to Ms. Hannya Dhir being Non-Executive Director of RSTL, it may be pointed out that being a qualified Management Consultant and well versed in the field of finance and management, she was appointed as a Non-Executive

Independent Director (Woman Director) in March 2015. She had resigned as a Director of RSTL on January 25, 2017, due to personal reasons. Pertinently, she was not a Director at the relevant date i.e. allotment of shares on preferential basis on March 29, 2017.

8.8. The resignation of Mr. Richi Bansal as a Director from APS Housing Projects Pvt. Ltd. on January 30, 2017 (2 months prior to the allotment) and his appointment as a Director on the board of T R Oil & Gas Pvt. Ltd on January 18, 2018 (10 months post the allotment) had nothing to do with the preferential allotment as alleged in the SCN. Resignation as a Director and appointment as a Director, was happening in the ordinary course.

8.9. Bansal family, who are the founder Promoters of RSTL have been in management and control of RSTL since inception. For the last around 6 years, their shareholding has been around 60% and above. Given the extent of their shareholding there is no need for them to make acquisitions through other persons (including Dhir family entities). They can always acquire shares to the extent of 5% every year (till 75%) by way of creeping acquisitions. Same would also demonstrate that the allegations are totally misconceived and misplaced.

8.10. It may be appreciated that during the relevant period i.e. FY 2016-17, the fluctuation in shareholding of the Bansal family and Dhir family will also demonstrate that they cannot be persons acting in concert. It may be noted that, as per the shareholding details available with RSTL, as on April 1, 2016, the shareholding of Bansal Group was at 73.94 % and as on March 31, 2017, their shareholding got reduced to 59.52 % in RSTL. In complete contrast, as on April 1, 2016, the shareholding of Dhir Group was at 0.34 % and as on March 31, 2017 their shareholding got increased to 6.75 % in RSTL. Patently, conduct of both the families in terms of acquisitions, is at cross purposes with the allegation of persons acting in concert.

8.11. Noticees have placed reliance on the order of Hon'ble Supreme Court of India ("**SC**") in the matter of *Daiichi Sankyo Company Ltd* vs. *Jayaram Chigurupati and Others* Civil Appeal No 7148 of 2009 and Hon'ble Securities

Appellate Tribunal ("**SAT**") in the matter of *Triumph International Finance India Ltd.* (SAT Appeal No 183 of 2009) to throw light on the meaning of the term 'person acting in concert ' as defined under Takeover Regulations.

8.12. Noticees have placed reliance on the order of Hon'ble SAT in the matter of *Swedish Match AB & Ors* vs. *SEBI* (SAT Appeal No 33 of 2002) to submit that once 'persons acting in concert' is not always 'persons acting in concert'. It is not a permanent relationship. It is the intent and action of the person that would decide as to whether that particular person is acting in concert with the acquirer. Therefore, the relationship of persons' vis-a-vis a particular 'Target Company' cannot be stretched over to another 'Target Company'.

8.13. Merely because Dhir family, who are alleged to be connected to Promoters of the Target Company, have independently acquired the shares of RSTL for making an investment to earn profits, same cannot result in Dhir family, being persons acting in concert with the Promoters of the Target Company. Absent the sharing of common objective to acquire substantial shares or control, charge of acting in concert cannot stick.

8.14. Noticees by placing reliance in the matter of *Daiichi Sankyo Company Ltd.* have submitted that even for the persons falling within the deeming category as provided for in regulation 2(l)(q)(2) of Takeover Regulations, it is imperative that it be shown that the person falling within the same category share the common objective or purpose of substantial acquisition of shares etc. of the Target Company, before branding the said persons as "persons acting in concert". Therefore, even if it is assumed for the arguments sake, Bansal family and Dhir family fall within any of the deeming categories (which are rebuttable presumptions), nothing turns on the same.

8.15. It has not been stated in SCN, as to how the Noticees fall within the deeming categories, incapacitating them in giving an effective reply. For instance, it is not clear as to which of the companies are being adverted to in context of regulation 2(l)(q)(2)(i) of Takeover Regulations. To the said extent, the allegation in the SCN suffers from the vice of vagueness and needs to be

discarded.

9. Mr. Arun Dhir vide his letter dated January 10, 2021 on behalf of the Firms, while making similar submissions as that of Promoters of the Target Company, *inter alia* submitted as follows:

   9.1. CLD, Mr. Arun Dhir and Mr. Tarun Dhir are Partners of M/s Arun Enterprises and Mr. Prem Dhir, Ms. Sangeeta Dhir and Mr. Tarun Dhir are Partners of M/s Dhir Export. The aforesaid entities are PACs among themselves and the same has been religiously disclosed to the Stock Exchanges.

   9.2. The Firms are regular investors in stock market and have been investing in shares of various listed companies.

   9.3. The Firms have invested in the shares of RSTL, in the ordinary course, by acquiring shares by way of preferential allotment and through open market.

   9.4. At no point of time, the Firms have been involved in the management or day to day affairs of the RSTL in any manner. They do not have any representation on the Board of RSTL and also do not have any right to appoint its Directors. They also never had / do not have any control over the management or policy decisions of RSTL, directly or indirectly.

10. Vide emails dated March 10, 2021, Noticees were granted an opportunity of hearing on March 30, 2021. In response to the hearing notice, vide an email dated March 26, 2021, Promoter Group of the Target Company sought the adjournment of hearing by four weeks'. Promoter Group's request was acceded to and they were granted another opportunity of hearing on April 27, 2021. The Firms through Mr. Arun Dhir along with Ms. Shagun Dhir attended the scheduled hearing via Webex on March 30, 2021. They re-iterated their submissions made vide their letter dated January 10, 2021. The following additional information was sought from the Noticees:

    10.1. Details of Ms. Hannya Dhir prior to her marriage were sought and also the reason for her resignation from the Board of RSTL.

    10.2. Details of connection of Ms. Hannya Dhir and Ms. Sangeeta Dhir with the Bansal family, if any, to be provided.

    10.3. Reason for the resignation of Mr. Tarun Dhir from APS Housing Projects

Pvt. Ltd.

10.4. Details of the holdings/ portfolio of the Dhir family during September 2016 to September 2017, excluding the one made in Rama Steels, to be provided

Noticees were given time till April 21, 2021, to provide the additional submissions.

11. The Promoter Group of the Target Company sought adjournment of hearing on two more occasions. Subsequently they were granted a final opportunity of hearing on June 28, 2021.

12. Post Hearing, Mr. Arun Dhir vide his letter dated June 14, 2021 on behalf of the Firms *inter alia* submitted as follows:

12.1. Mrs. Hannya Dhir is the daughter of Mr. K.P. Syal and Mrs. Santosh Syal. After her marriage to Mr. Tarun Dhir, she changed her name to Mrs. Hannya Dhir. She was appointed as an Independent Director, on the Board of RSTL on March 30, 2015. She resigned from the Board of Directors of the company on January 25, 2017, due to personal reason / family commitments. It is clarified that Mrs. Hannya Dhir was never connected or related to the Bansal family and has no relation with Bansal family as on today.

12.2. Mrs. Sangeeta Dhir is the daughter of Late Mr. Subhash Seth and Mrs. Usha Seth. After her marriage to Mr. Arun Dhir, she changed her name to Mrs. Sangeeta Dhir. She was appointed as a Director on the Board in T R Oil & Gas Pvt. Ltd. on January 18, 2018. The request for closure of the said company was submitted online to RoC on October 8, 2019. It is clarified that Mrs. Sangeeta Dhir was never connected or related to the Bansal family and has no relation with Bansal family as on today.

12.3. Mr. Tarun Dhir was appointed as a Director in APS Housing Projects Pvt. Ltd on December 26, 2011. Since the project did not earn revenues as expected and the Promoters did not foresee growth in the company, therefore, Mr. Tarun Dhir resigned as a Director on January 30, 2017 and sold his stake in the company to Mr. Manoj Kumar Gupta and Mr. Pranshu Gupta in January 2017.

12.4. During the period September 2016 to September 2017, the Firms have made investments in the shares of several companies that amounts to Rs.

22,62,52,209/- excluding the investment made in RSTL. The investment in the shares of RSTL through open market purchase and preferential allotment amounts to Rs. 13,08,20,705/-.

13. The AR of the Promoters of the Target Company appeared for the hearing scheduled on June 28, 2021 and *inter alia* submitted as follows:

13.1. The AR denied the allegations made in the SCN.

13.2. Shareholding of Bansal group in RSTL was 73.94% on 30.06.2016, which was reduced to 63.90 pursuant to sale of 15,00,000 share on 15.07.2016.

13.3. Preferential allotment including Dhir Group entities was made on 29.03.2017, pursuant to which the holding of Bansal Group reduced to 59.50% in RSTL.

13.4. Holding of Dhir Group entities increased from 2.56% to 6.75% consequent to allotment.

13.5. No nexus between Bansal family and Dhir family. During the alleged period Bansal family members were not holding any positions in the Dhir Group companies/firms and had resigned prior to the said allotment period.

13.6. Noticees have replied and responded to all SEBI letters like 12.09.2019, 29.03.2017 & 04.10.2019 and have not tried to suppress any information sought. Their reply dated 20.09.2019 and 17.10.2019 be taken on record.

13.7. No financial trail of financing the acquisition of Dhir Group has been shown in SCN.

13.8. No intent or common objective for the allegation of substantial acquisition has been brought out in the SCN and also close association cannot be considered as PAC. In this respect the Noticees relied on the Hon'ble SC order in the matter of *Daiichi Sankyo Company Ltd* vs*. Jayaram Chigurupati and Others*, Hon'ble SAT order in the matters of *Triumph International Finance India Ltd.* and *Swedish match AB & Ors vs SEBI.*

13.9. Noticees were granted one week' additional time i.e. by July 4, 2021, to make additional submissions, if any.

14. NKB vide his letter dated July 5, 2021 on behalf of the Promoter Group of the Target

Company *inter alia* made the following additional submissions:

14.1. NKB sold 15,00,000 shares of RSTL on market on July 15, 2016. Consequent, to the said sale of, the shareholding of Bansal Group reduced to 63.90% shares in RSTL.

14.2. Shareholding of Bansal Group was 63.90% in RSTL for the quarter ending December 2016. RSTL allotted 11,00,000 equity shares to various investors by way of preferential allotment on March 29, 2017, including Dhir Group entities, the Firms. Consequent to allotment of equity shares to various investors, resulting in increase in total equity base of RSTL, the equity shareholding of Bansal Group reduced to 59.5 % in RSTL.

14.3. Bansal Group entities were allotted fully convertible warrants on March 29, 2017. Bansal Group entities had converted part of the warrants into equity shares in the next FY 2017-18. No warrants were converted into equity shares during 2016-17-which is the period of allegation in the SCN.

14.4. The allegation of acquisition of "additional shares" during FY 2016-17 has been levelled against Bansal Group, by erroneously loading/fastening the acquisitions/shareholding of Dhir Group entities. As per the data available, pre March 29, 2017, Dhir Group entities were holding 2.56% shares in RSTL. In fact, the Dhir Group had been shareholders of RSTL, since 2014. Over the years they had increased their shareholding. On March 29, 2017, Dhir Group entities were allotted 7,00,000 equity shares of RSTL. Consequent to the said allotment, the total shareholding of Dhir Group increased from 2.56 % to 6.75% in RSTL. The said 6.75% shareholding of Dhir Group, has been fastened on the Bansal Group and the same has been erroneously alleged to be acquisition of "additional shares" by Bansal Group, without demonstrating as to how acquisitions made by Dhir Group can be construed as Bansal Group's acquisition or made on Bansal Group's behalf or at Bansal Group's behest or acting in concert with Bansal Group.

14.5. Even post the event (i.e. March 29, 2017), whereas Bansal Group has been both, selling (during January 2018) its shareholding in the market and also

acquiring (during 2019-20) shares from the market from time to time, Dhir Group has been only acquiring the shares of RSTL. As on date, Dhir Group's shareholding stands at around 8.08%. Same also demonstrates that there is no concerted understanding, otherwise, both the Groups would have acted in tandem, wherein they would only acquire the shares of RSTL.

14.6. If SEBI's allegations regarding timing of resignation, are correct i.e. that the resignations were timed so as to avoid scrutiny, then there was no need for Mr. Richi Bansal to become a Director on the Board of T R Oil and Gas Pvt. Ltd. (in which Dhir Group persons were also holding shares and directorship). Act of becoming a Director of a company in which Dhir Group persons were involved, itself destroys the insinuation regarding resignations being timed.

Findings and Considerations

15. I have perused the SCN, oral submissions, written submissions and other materials available on record. On perusal of the same, the following issues arise for consideration:

   i. *Whether Dhir family / connected entities of Dhir family can be considered to be acting as PACs with the Promoter Group of the Target Company for the equity shares allotted to them in the preferential allotment on March 29, 2017 made by the Target Company, as alleged in the SCN? Further, whether 6.75% of additional shares with an entitlement to voting rights, was acquired by the Promoter Group of the Target Company along with the PACs, as alleged in the SCN?*

   ii. *If issue (i) is answered in affirmative, whether the acquisition of additional shares by the Promoter Group of the Target Company along with the PACs, led to the violation of regulation 3(2) of Takeover Regulations, as alleged in the SCN? If the answer to it is in affirmative, then what is the trigger date?*

   iii. *If answer to the aforesaid issue no. (ii) is in affirmative, what direction(s), if any, need to be issued against the Noticees?*

16. I now proceed to deal with the merits of case.

Issue No. 1 - *Whether Dhir family / connected entities of Dhir family can be considered to be acting as PACs with the Promoter Group of the Target Company for the equity shares allotted to them in the preferential allotment on March 29, 2017 made by the Target Company, as alleged in the SCN? Further, whether 6.75% of additional shares with an entitlement to voting rights, was acquired by the Promoter Group of the Target Company along with the PACs, as alleged in the SCN?*

17. It is observed from the records that a preferential allotment of shares in the Target Company was made, *inter alia* to the two firms along with other entities on March 29, 2017, the details of which are given below:

Sl. No.	Name of the allottees	No of equity shares
1	M/s Arun Enterprise	6,70,000
2	M/s Dhir Exports	30,000
	Total	**7,00,000**

The details mentioned in the aforesaid table have not been disputed by the Noticees mentioned therein.

18. It has been alleged in the SCN that the Firms are deemed PACs with the Promoter Group of the Target Company and pursuant to the preferential allotment, the shareholding of the Firms increased to more than the threshold of five per-cent (6.75%) in a single FY 2016-17, triggering regulation 3(2) of Takeover Regulations. In response to this allegation, NKB has submitted that the SCN has not mentioned how the Noticees fall within the deeming categories, incapacitating them in giving an effective reply. In this regard, from the SCN it is observed that nexus of Bansal family with Dhir family has been explained which shows close association among them apart from multiple common directorship / part of management in various companies. The latter is the basis for allegation of deemed PACs in the SCN. Further, reports of BSE and NSE were furnished to the Noticees along with the SCN which have stated that Mr. Chiranjit Lal Dhir, VECL, M/s Dhir Exports and M/s Arun Enterprise are PACs with NKB / Promoter Group of the Target Company. Moreover, relevant provisions of Takeover Regulations i.e., regulations 2(1)(q)(2)(i) & (iii), for deemed PACs have also been mentioned in the SCN. Moreover, Noticees have

replied on the basis of the allegation made in the SCN indicating that the Noticees have correctly appreciated the allegations as mentioned in the SCN. Thus, the submission of NKB that the SCN is vague, is unacceptable.

19. It will be relevant here, to quote regulation 2 (1)(q)(2) of Takeover Regulations which deals with the expression "deemed PACs". The same reads as follows:

"Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established, —

(i) a company, its holding company, subsidiary company and any company under the same management or control;

(ii) …

(iii) directors of companies referred to in item (i) and (ii) of this sub-clause and associates of such directors;

…

Explanation. —For the purposes of this clause "associate" of a person means, —

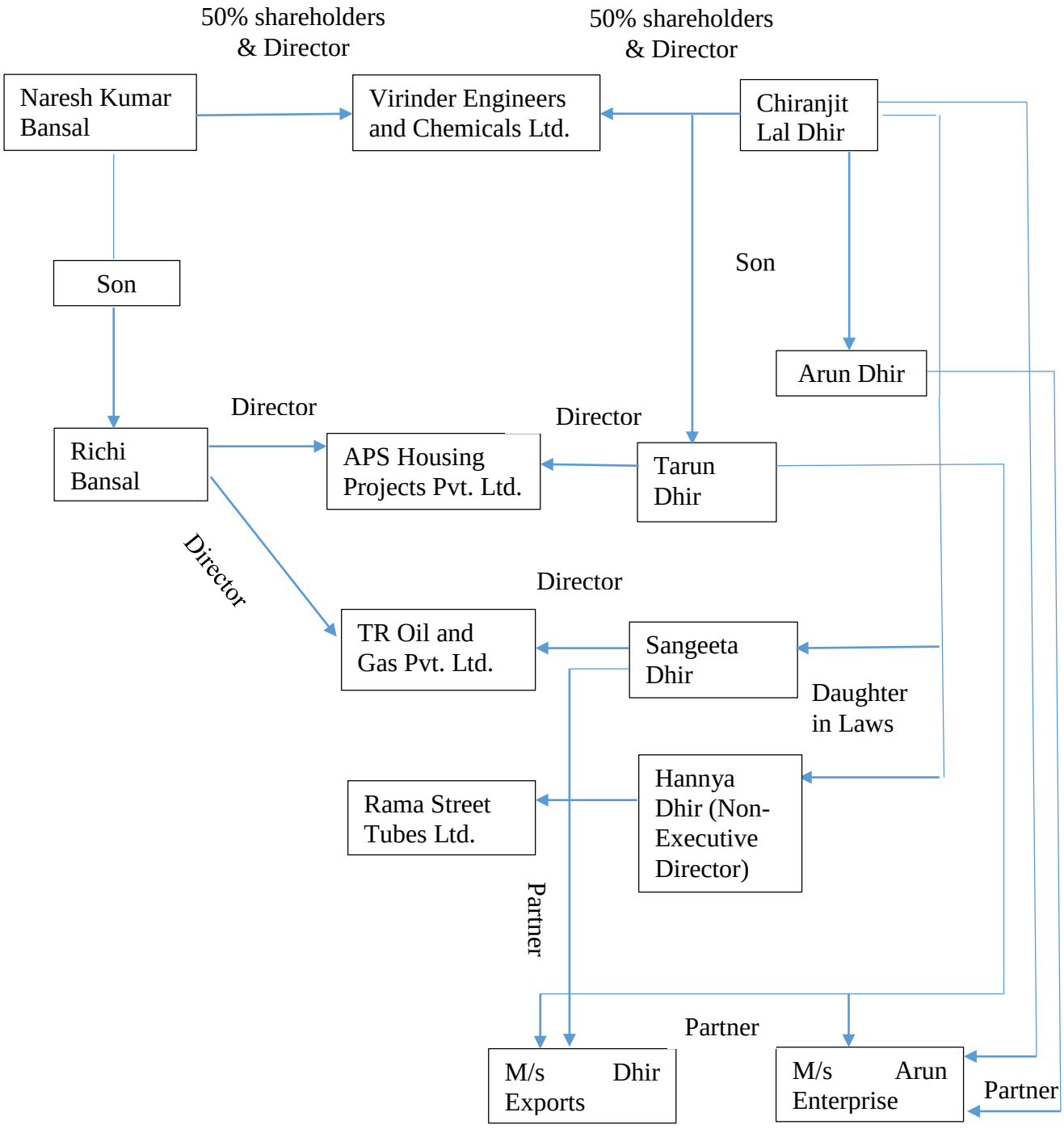
(a) any immediate relative of such person;

…

(c) partnership firm in which such person or his immediate relative is a partner; and

…

20. The following is further observed from the pictorial representation, show below between Bansal family and Dhir family:



20.1. VECL is a deemed PAC under regulation 2(1)(q)(2)(i) of Takeover Regulations being a company under the control of NKB as NKB and CLD each holds 50% in VECL and NKB is part of the Promoter Group of Target Company

which is in control of the Target Company. Thus, VECL is under the same control as that of the Target Company. Further, VECL is also a deemed PAC under regulation 2(1)(q)(2)(i) of Takeover Regulations being a company under the same management as NKB and CLD are the only two Directors of VECL and NKB is the Chairman and Managing Director of the Target Company. Thus, VECL is under the same management as that of the Target Company.

20.2. VECL is a deemed PAC. The same makes CLD as a deemed PAC under regulation 2(1)(q)(2)(iii) of Takeover Regulations as he is the Director of VECL. His immediate relatives also namely Mr. Arun Dhir and Mr. Tarun Dhir become deemed PACs under regulation 2(1)(q)(2)(iii) of Takeover Regulations. Ms. Sangeeta Dhir being the spouse of Mr. Arun Dhir also becomes a deemed PAC.

20.3. VECL is a deemed PAC. Thus, its Director, CLD is also a deemed PAC under regulation 2(1)(q)(2)(iii) of Takeover Regulations. The same makes Mr. Tarun Dhir who is the son of CLD also a deemed PAC and the partnership firms. M/s Arun Enterprise and M/s Dhir Exports, where he is one of the partners also becomes deemed PACs under regulation 2(1)(q)(2)(iii) of Takeover Regulations.

20.4. APS Housing Projects Pvt. Ltd. is also a deemed PAC under regulation 2(1)(q)(2)(i) of Takeover Regulations. It is observed from NKB's reply that Mr. Richi Bansal had invested Rs. 50,000/- in APS Housing Projects Pvt. Ltd. From the MCA records of the said company, it is observed that the authorised capital and paid up capital of the company is Rs, 1,00,000/-. The same makes Mr. Richi Bansal 50% owner of the company as on the relevant date i.e., January 25, 2017. Mr. Richi Bansal is part of the Promoter Group of Target Company which is in control of the Target Company. Thus, APS Housing Projects Pvt. Ltd. is under the same control as that of the Target Company. Further, Mr. Richi Bansal is a Director in the Target Company. He is also the only other Director of the company along with Mr. Tarun Dhir who is the son of CLD, on the relevant date i.e., January 25, 2017. Thus, APS Housing Projects Pvt. Ltd. is under the same management as that of the Target Company.

20.5. APS Housing Projects Pvt. Ltd. is a deemed PAC. Thus, its Director, Mr. Tarun Dhir is also a deemed PAC under regulation 2(1)(q)(2)(iii) of Takeover Regulations. The same makes the partnership firms. M/s Arun Enterprise and M/s Dhir Exports, where Mr. Tarun Dhir is one of the partners also deemed PACs under regulation2(1)(q)(2)(iii) of Takeover Regulations.

21. Thus, from the above it is held that M/s Arun Enterprise, M/s Dhir Exports, CLD, Mr. Arun Dhir, Mr. Tarun Dhir and Ms. Sangeeta Dhir are deemed PACs (hereinafter refereed collectively as "**PACs**") with the Promoter Group of the Target Company.

22. Here, it will be relevant to quote the observations of Hon'ble SC in the matter of *Daiichi Sankyo Company Ltd.* matter wherein the Hon'ble Court held as follows:

"Then what does the deeming provision do? The deeming provision simply says that in case of nine specified kinds of relationships, in each category, the person paired with the other would be deemed to be acting in concert with him/it. What it means is that if one partner in the pair makes or agrees to make substantial acquisition of shares etc. in a company it would be presumed that he/it was acting in pursuance of a common objective or purpose shared with the other partner of the pair. For example, if a company or its holding company makes or agrees to make a move for substantial acquisition of shares etc. of a certain target company then it would be presumed that the move is in pursuance of a common objective and purpose jointly shared by the holding company and the subsidiary company...

... It needs further to be noted that the presumption created by virtue of the deeming provision is expressly left open to rebuttal as indicated by the concluding words "unless the contrary is established" occurring in sub- regulation (2) ..."

23. In light of the above finding of the Hon'ble Apex Court, it is observed that once it is established that the Noticees fall within the ambit of deemed PACs, the burden of proof shifts on to the Noticees, to prove the contrary. Thus, the next issue that requires determination is whether the Noticees have discharged their burden to prove the contrary i.e., PACs were not acting together with a common objective to

substantially acquire the shares of the Target Company along with the Promoter Group of the Target Company.

24. Noticees have submitted that there is not a whisper as to how the Promoter Group of the Target Company and the Firms share (or had shared) any common objective or purpose of substantial acquisition of shares or control over the Target Company, with them. The said submission of the Noticees is unacceptable. As observed in preceding paragraphs, the presumption of a common objective to substantially acquire the shares of the Target Company is there amongst deemed PACs by virtue of the deeming provision. The onus is on the Noticees to rebut the said presumption. That the Noticees are deemed PACs has been alleged in the SCN. Thus, the submission of the Noticees that SCN is legally untenable is without any merit.

25. It has been submitted by the Noticees that shareholding of NKB in VECL or his directorship in VECL, has got nothing to do with his shareholding in the Target Company and the same cannot automatically mean that Firms are PACs with the Promoter Group of the Target Company for the purposes of acquisition of shares in the Target Company. In this regard, it is observed that shareholding and directorship of NKB in VECL and his shareholding and directorship in the Target Company, makes VECL, a company under common management and control (NKB has 50% shareholding in VECL and is one of the two Directors of VECL. The same has to be seen with NKB being part of the Promoter Group which is in control of RSTL and he is also the Chairman and Managing Director of RSTL) a deemed PAC. It is also noted that members of Bansal family and Dhir family are part of the management of multiple companies evidencing close connection among themselves. Being deemed PACs it is presumed that the entities are acting in pursuance of a common objective or purpose to substantially acquire the shares of the Target Company. Thus, unless the contrary is proved, the presumption of a common objective to substantially acquire the shares of the Target Company will stand and hence, the aforesaid submission of the Noticees is unacceptable.

26. With respect to the submission of the Noticees regarding resignation of Mr. Richi

Bansal from the directorship in APS Housing Projects Pvt. Ltd., Noticees have submitted that he was not a Director on the date of allotment of shares on preferential basis i.e., on March 29, 2017. It is observed that the timing of his resignation which was within a few days of approval of Board resolution to issue equity shares in a preferential allotment, has been shown as one of the attending circumstances in the present matter to demonstrate that a concerted effort was being made by the Bansal family to distance itself from the Dhir family and to also enable the aforesaid two families not to be classified as deemed PACs. Thus, the submission of the Noticees that Mr. Richi Bansal was not a Director of APS Housing Projects Pvt. Ltd. on March 29, 2017, does not serve to rebut the presumption of common objective to substantially acquire the shares of the Target Company along with the Promoter Group of the Target Company.

27. Similarly, the submission of the Noticees that Mr. Richi Bansal was not a Director of T R Oil and Gas Pvt. Ltd. on March 29, 2017, is also not relevant in the extant matter as it is shown as one of the circumstances where family members of Bansal family and Dhir family are part of the management of a company, demonstrating close connection between the said families.

28. The submission of the Noticees that Ms. Hannya Dhir resigned from the Target Company due to personal reasons and that she was not a Director of the Target Company on March 29, 2017, also does not serve to rebut the presumption of common objective to substantially acquire the shares of the Target Company along with the Promoter Group of the Target Company. It is noted from the records that she was appointed as a Non-Executive Independent Director in the Target Company for a period of five years starting from March 30, 2015 onwards. However, she resigned within two years of joining that too on the day when the Board resolution to issue equity shares in a preferential allotment, was approved by the Target Company. This when seen along with the resignation of Mr. Richi Bansal from the directorship of APS Housing Projects Pvt. Ltd., on a preponderance of probability basis leads to an inference that an effort was made by the Noticees to avoid

Promoter Group of the Target Company and the PACs from being classified as deemed PACs.

29. It has been submitted by the Noticees that given the extent of Bansal family's shareholding, there is no need for them to make acquisitions through other persons (including Dhir family entities). They can always acquire shares to the extent of 5% every year (till 75%) by way of creeping acquisitions. It is observed that NKB had sold 10.04% (15 lakh shares) of his shareholding in the Target Company on July 15, 2016. The same shows that the Promoter Group was in need of funds. Further, the fact that preferential allotment of only 11 lakh shares was done and to only five entities, showing that substantial funds were not required and preferential allotment did not include the Promoter Group members who were allotted convertible warrants, shows that the Target Company was in need of some funds but the Target Company could not have raised the same from its Promoter Group. The fact of Promoter Group selling its shares in the Target Company means that the funds are required for some purpose other than acquiring shares of the Target company. Juxtaposing this with the need of the Target Company to raise funds which the Target Company could not have done from its Promoter Group, on a preponderance of probability basis shows that Promoter Group of the Target Company in the FY 2016-17 could not have acquired shares of the Target Company on its own. Without prejudice to the aforesaid finding, it is observed that the mere possibility that Promoter Group of the Target Company could have acquired shares in the Target Company but chose not to do so, is not material to the present matter as going into its reasons leads us into a realm of speculation. The extant matter deals with the issue of whether deemed PACs were acting in concert with the Promoter Group of the Target Company to substantially acquire the shares of the Target Company. Since the allegation is that they are deemed PACs, the onus is on the Promoter Group of the Target Company and the alleged PACs to rebut the said presumption for which the possibility that they could have acquired shares to the extent of 5% is not material as there is no bar in their joining hands for acquisition of shares in the Target Company with their close associates / persons with whom

they had strong connection, particularly if they do not themselves have surplus investible funds.

30. It has been contended by the Noticees that during the relevant period i.e. FY 2016-17, the fluctuation in shareholding of the Bansal family and Dhir family will also demonstrate that they cannot be PACs. Even post the event (i.e. March 29, 2017), whereas Bansal family has been both, selling (during January 2018) its shareholding in the market and also acquiring (during 2019-20) shares from the market from time to time, Dhir family has been only acquiring the shares of RSTL. In this regard, it is observed that the fact that Promoter Group is selling its shares in the Target Company while the Dhir family is buying shares in the Target Company, does not effectively rebut the presumption of their common objective to substantially acquire the shares of the Target Company for the following reasons:

30.1. As noted in preceding paragraphs, Promoter Group of the Target Company had sold substantial shareholding (10.04%) in the Target Company leading to an inference that the Promoter Group was in need of funds and that they could not have prioritised the use of available funds to buy the shares of the Target Company.

30.2. At the same time the Dhir family members / entities who were shareholders of the Target Company since 2014 and had only 0.34% shareholding in the Target Company at the beginning of FY 2016-17, started showing sudden interest in the shares of the Target Company. Post preferential allotment their shareholding in the Target Company was 6.75%.

The aforesaid circumstances when seen with the fact that the shares were allotted to the Firms belonging to the Dhir family who have a close association with the Promoter Group of the Target Company in a preferential allotment wherein they were allotted approximately 64% of the total allotment coupled with the fact that the Promoter Group by virtue of being part of the management of the Target Company and due to their designation and shareholding in the Target Company, had substantial influence over the Board process, on a

preponderance of probability basis leads to an inference that though their buying and selling pattern was opposite to each other, still when it came to the preferential allotment the cumulative effect of circumstances outweighs the trading pattern of the Noticees. Thus, the presumption of commonality of objective between them to substantially acquire the shares of the Target Company by virtue of being deemed PACs, still stands. Notwithstanding that even the common objective of the PACs does not get diluted when it is very well possible that one PAC may reduce the holding and the other PAC may acquire and maintain their overall holding

Further, though post preferential allotment, Dhir family was buying shares in the Target Company and the Promoter Group of the Target Company was buying and selling shares of the Target Company, the same still does not compensate for the conduct of the Noticees who are deemed PACs, prior to the preferential allotment and the attending circumstances at the time of the preferential allotment. Therefore, the events post preferential allotment, in the peculiar facts and circumstances of the extant matter, does not effectively refute the presumption of common objective to substantially acquire the shares of the Target Company between the Noticees.

31. Noticees have placed reliance on the order of Hon'ble SC in the matter of *Daiichi Sankyo Company Ltd.* and Hon'ble SAT in the matter of *Triumph International Finance India Ltd.* to throw light on the meaning of the term PAC. I note that the issue at hand in the present matter is not whether the Noticees are PACs. If that was the issue, then it would require first to establish the common objective of the Noticees to substantially acquire shares of the Target Company and then it would be for the Noticees to disprove it. However, the extant matter deals with deemed PACs. Therefore, the issue at hand is whether the Noticees who are deemed PACs, have been able to refute the presumption of common objective created by virtue of the deeming provision. To put it differently, there is no need to first establish that the Noticees had a common objective to substantially acquire shares of the Target

Company. As noted in the preceding paragraphs, Hon'ble Apex Court in the *Daiichi Sankyo Company Ltd.* has held that under the specified kind of relationships that are covered under the deeming provision, it would be presumed that the entities who are paired together, each entity / partner was acting in pursuance of a common objective or purpose shared with the other entity / partner of the pair.

32. Noticees have placed reliance on the order of Hon'ble SAT in the matter of *Swedish Match AB & Ors* to submit that once a PAC is not always a PAC. However, there is no allegation to the effect that once a PAC is always a PAC.

33. Noticees have further submitted that the relationship of persons' vis-a-vis a particular 'Target Company' cannot be stretched over to another 'Target Company'. The said submission of the Noticees is without any merit. There is no such allegation in the SCN which stretches the relationship of persons' vis-a-vis a particular 'Target Company' to another Target Company. The presence of family members of Dhir family and Bansal family in the management of multiple companies and in the Target Company, by virtue of the deeming provisions has made the entities where members of both families are present or one member is present, as deemed PACs. The same has happened by operation of law and not by stretching of facts. Moreover, the relationship of Dhir family with the Promoters of the Target Company is one of the attending circumstances in the matter which when seen along with other circumstances as discussed in preceding paragraphs, on a preponderance of probability basis offsets the submissions of the Noticees which have been made to refute the presumption of the common objective of the Noticees to substantially acquire the shares of the Target Company.

34. The submission of the Noticees that the Dhir family has independently acquired the shares of RSTL and in the ordinary course and therefore, they cannot be PACs with the Promoter Group of the Target Company, is untenable. It is observed that the allegation in the matter is not that whenever the members of Dhir family or its related entities have bought shares of RSTL that was pursuant to a common objective with the Promoter Group of the Target Company. In the peculiar facts and

circumstance of the matter, during the financial year 2016-2017, based on the following attending circumstances viz., selling of substantial shares (10.04%) by the Promoter Group of the Target Company, sudden interest shown by members / entities of Dhir family, significant allotment in the preferential issue of equity shares, influence of Promoter Group over the Board process and dominance of the portfolio of Dhir family / connected entities by the shares of the Target Company, it has been alleged that the PACs had a common objective to substantially acquire the shares of the Target Company along with the Promoter Group of the Target Company.

35. Noticees by placing reliance in the matter of *Daiichi Sankyo Company Ltd.* have submitted that even for the persons falling within the deeming category, it is imperative that it be shown that the person falling within the same category share the common objective or purpose of substantial acquisition of shares etc. of the Target Company, before branding the said persons as PACs. However contrary to their submission Hon'ble SC, as noted earlier, held that the presumption of common objective is there if a relationship falls within the definition of deemed PAC. Thus, there is no need to first establish that there is a common objective between the partners / entities who are termed as deemed PACs. It is for the entities to establish the contrary. In the given facts and circumstances of the matter, it is for the Noticees to refute that they did not have a common objective to substantially acquire the shares of the Target Company.

36. The Noticees have contended that the Firms have not been involved in the management or day to day affairs of the RSTL in any manner and they do not have any representation on the Board of RSTL. The contention of the Noticees that they are not involved in the management or day to day affairs of the RSTL is correct though there is no requirement that the Firms / PACs have to be involved in the management or day to day affairs of the Target Company to be considered as PACs. However, Ms. Hannya Dhir who is the wife of one of the partners of the Firms, was a Non-Executive Independent Director of the Target Company who had resigned on

the day of approval of Board resolution (January 25, 2017) to issue equity shares in a preferential issue. Thus, the Firms did have Ms. Hannya Dhir, spouse of Mr. Tarun Dhir who is one of the partners in the two Firms, in the Board of Directors of the Target Company before January 25, 2017.

37. It has also been submitted by the Noticees that if SEBI's allegations regarding timing of resignation, are correct, then there was no need for Mr. Richi Bansal to become a Director on the Board of T R Oil and Gas Pvt. Ltd. The said submission of the Noticees does not hold good in the facts of the matter. It is not that in every company where members of Dhir family and Bansal family are part of the Board of Directors, will qualify them or that particular company, as deemed PACs. The deeming fiction is a creation of law and so long the parameters mentioned under regulation 2(1)(q)(2) of Takeover Regulations are not satisfied, entities cannot be termed as deemed PACs. In the present matter, T R Oil and Gas Pvt. Ltd. cannot be classified as deemed PACs with the Promoter Group of the Target Company. Therefore, Mr. Richi Bansal becoming a Director in the said company that too post Board approval of preferential issue of equity shares by the Target Company, is not germane to the extant matter. Moreover, during the relevant time i.e., January 25, 2017, T R Oil and Gas Pvt. Ltd. was not in existence. The directorship of Mr. Richi Bansal has been referred to in that company to show the closeness of relationship that the Bansal family has with the Dhir family.

38. In view of the aforesaid discussion, it is held that the Noticees have not been able to refute the presumption that the PACs were having common objective to substantially acquire the shares of the Target Company along with the Promoter Group of the Target Company. Further, the factors which have been employed to categorise the relevant Noticees as deemed PACs viz., PACs being connected to the Promoter Group of the Target Company through multiple common directorship / company under same management and control, were in existence since the beginning of the financial year 2016-2017. Thus, it makes the relevant Noticees mentioned at para 21 as deemed PACs since the beginning of the financial year

2016-2017. Therefore, it is held that the Promoter Group of the Target Company along with PACs, acquired shares in the Target Company during the the financial year 2016-2017 pursuant to a common objective to substantially acquire shares in the Target Company.

39. Before proceeding further and without prejudice to the aforesaid findings, it is appropriate to further see whether the facts otherwise support that PACs had the common objective irrespective of the finding that they were deemed to be PACs and by virtue of that they are deemed to have common objective. I note that in matters dealing with common objective among the Noticees, direct substantive evidence will not always be present. For instance, the direct substantial evidence for ascertaining common objective would be a formal agreement among the Noticees to act together for acquisition of shares in a Target Company. But in the absence of the same, one has to infer the common objective of the Noticees, based on the immediate and proximate facts and circumstances surrounding the events on which the charges / allegations are founded. The following is observed from the attending facts and circumstances of the present matter:

39.1. Ms. Hannya Dhir who was part of the Board of Directors of the Target Company resigned on the same day (January 25, 2017) when the Board of the Target Company had approved the resolution for making preferential issue of equity shares. It may be noted that she was initially appointed for five years but she resigned from the Board of the Target Company within two years. This act of resignation claimed to be for personal reasons, enabled the PACs to distance themselves from the Bansal family / Promoter Group of the Target Company.

39.2. The aforesaid act of resignation when seen along with the resignation of another Director of the Target Company, Mr. Richi Bansal within few days i.e., on January 30, 2017 from APS Housing Projects Pvt. Ltd. which is classified as deemed PAC of the Target Company, on a preponderance of probability basis shows that an attempt was made by the management of the Target company to distance itself from the Dhir family / entities.

39.3. As per NKB's own submission, Dhir Group had been shareholders of the Target Company since 2014. It is observed from the holding statement of Dhir Group in the Target Company that as on April 1, 2016, they had 51,000 shares (0.34%) in the Target Company. However, from January 2017 onwards, members of Dhir Group have shown a sudden interest in buying the shares of the Target Company. Prior to the allotment of shares in the preferential issue, Dhir Group's total shareholding in the company had increased to 2.56%. This when seen along with the fact that between September 2016 to September 2017, Dhir Group had made investments worth Rs. 22,62,52,209/- in 65 scrips. However, apart from the above invested amount, they had invested an amount of Rs. 13,08,20,705/- in the Target Company alone through open market purchase and preferential allotment. Thus, almost 37% of Dhir Groups's investment portfolio consisted of the shares of the Target Company. On the other hand, during the FY 2016-17, NKB had sold 10.04% shares of the Target Company. Though the Promoter Group of the Target Company was selling shares, its close associates / persons with whom they had strong connection, were showing sudden interest in the scrip of the Target Company and their investment portfolio was dominated by the shares of the Target Company bought through open market purchase and preferential allotment, leads to an inference that the Promoter Group of the Target Company along with the PACs, were trying to maintain the shareholding of the Promoter Group in the Target Company as it was during the beginning of the FY 2016-17 (i.e., more than 70%).

39.4. It is observed that the shares were allotted to the Firms in a preferential issue. During the relevant time, NKB was the Chairman and Managing Director of the Target company and his son, Mr. Richi Bansal was the Director and CEO of the Target Company. The other three Directors on the Board of the Target Company were Non-Executive Independent Directors. Thus, by virtue of their designation and shareholding in the Target Company, Bansal family would have influence over the Board proceedings. This when seen along with the fact that the close associates / persons with whom they had strong connection, got

allotted almost 64% of the total preferential issue share capital, while attempt was made to masquerade the connection, leads to an inference that the Bansal family and the PACs were acting with the common objective of substantial acquisition of shares in the Target Company.

40. In view of the aforesaid discussion, I note that the cumulative effect of the aforesaid circumstances, on a preponderance of probability basis, leads to a conclusion that the PACs were acting with a common objective for substantial acquisition of shares in the Target Company along with the Promoter Group of the Target Company.

41. This brings us to the discussion and determination of whether the Promoter Group of the Target Company along with the PACs had acquired 6.75% of additional shares with an entitlement to voting rights as on March 29, 2017 as envisaged under regulation 3(2) of Takeover Regulations. Regulation 3(2) states as follows:

"No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:

Provided that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding

Explanation. — For purposes of determining the quantum of acquisition of additional voting rights under this sub-regulation, —

(i) gross acquisitions alone shall be taken into account regardless of any

intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company.

(ii) in the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of new shares in any given financial year, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition.

..."

42. On a reading of the aforesaid regulation, it is observed that the first requirement is to find out whether the Acquirer/PACs were already having shareholding with an entitlement to exercise more than 25 per cent of voting rights and less than maximum permissible non-public shareholding. It is noted from the records that prior to the preferential allotment, the Promoter Group of the Target Company was holing 63.90% of equity share capital in the Target Company.

43. The second requirement is to consider the "additional shares" acquired by the Acquirer/PACs. The following table shows the percentage of shares acquired by PACs in the preferential allotment:

Prior to preferential allotment		
Existing shareholding of PACs	**Total equity share capital of the Target Company**	**% of equity share capital held by PACs**
3,82,732	1,49,34,000	2.56 %
Post preferential allotment		
Shares allotted to Firms / PACs	**Total equity share capital of the Target Company post preferential allotment**	**% of equity share capital held by Firms / PACs post preferential allotment**
7,00,000	1,60,34,000	6.75%
% of shares acquired during preferential allotment		4.19%

It is noted from the records that Mr. Charanjit Lal Dhir, a PAC, prior to the financial

year 2016-2017 was holding 51,000 shares (0.34% of total share capital) in the Target Company. Further, Mr. Charanjit Lal Dhir, Mr. Arun Dhir, M/s Arun Enterprises, Mr. Tarun Dhir and Ms. Sangeeta Dhir had further acquired 3,31,732 shares (2.22% of total share capital) during the financial year 2016-2017 prior to the preferential allotment. Thus, the additional shares acquired by the PACs during the financial year 2016-2017 was 6.41% (4.19% + 2.22%) and not 6.75% as alleged in the SCN.

Issue No. 2 - *If issue (i) is answered in affirmative, whether the acquisition of additional shares by the Promoter Group of the Target Company along with the PACs, led to the violation of regulation 3(2) of Takeover Regulations, as alleged in the SCN? If the answer to it is in affirmative, then what is the trigger date?*

44. The text of regulation 3 (2) of Takeover Regulations has been reproduced above. As noted in preceding paragraphs on account of acquisition of shareholding with an entitlement to exercise 6.41% voting rights in the Target Company by the Promoter Group of the Target Company along with the PACs (in the financial year 2016-2017) whose pre-acquisition shareholding with an entitlement to exercise voting rights was more than 25% in the Target Company, and in the absence of any exemption available automatically under regulation 10, or, under regulation 11 of Takeover Regulations, to the Acquirer and PACs, it is held that Acquirer and PACs have violated regulation 3(2) of the Takeover Regulations.

45. The second issue that arises for determination is with respect to the date on which the Open Offer obligation is triggered. As per regulation 13 (1) of Takeover Regulations, public announcement for Open Offer has to be made on the date of agreeing to acquire shares or voting rights in, or control over the Target Company. Further, as per regulation 13 (2) (g) of Takeover Regulations, such public announcement, "*pursuant to an acquirer acquiring shares or voting rights in, or control over the target company, under preferential issue, shall be made on the date on which the board of directors of the target company authorises such preferential issue."* In the instant case, it is observed that the Board of Directors of the Target

Company had approved the proposal of making preferential issue of 11,00,000 equity shares of Rs. 5/- each on January 25, 2017. Thus, the trigger date to make the public announcement for Open Offer by Promoter Group of the Target Company and PACs is January 25, 2017, as on that date Board of the Target Company authorised the preferential issue.

Issue No. 3 **-** *If answer to the aforesaid issue no. (ii) is in affirmative, what direction(s), if any need to be issued against the Noticees?*

46. As per the mandatory provisions of regulation 3 (2) of Takeover Regulations, no Acquirer who together with persons acting in concert with him, has acquired and holds shares or voting rights in a Target Company entitling them to exercise twenty-five per cent or more of the voting rights in the Target Company, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the Acquirer makes a public announcement of an open offer for acquiring shares of such Target Company. Thus, once the provisions of regulation 3 (2) of Takeover Regulations are triggered and the Acquirer together with PACs has acquired additional 5% shares in a financial year without making a public announcement and in the absence of any exemption available automatically under regulation 10 or under regulation 11 of Takeover Regulations, a direction to make public announcement has to be issued to the Acquirer together with the PACs. Once the limits are breached, then the interests of the shareholders have to be protected which is by way of giving them the option to exit in an Open Offer made by the Acquirer / PACs. The same is also in line with the principle of equality of treatment and opportunity to all the shareholders. Further, the liability of the PACs is joint and several with the Acquirer and the same can be seen from the provision of regulation 7(1) of Takeover Regulations which deals with Offer Size. It reads as follows:

"7 (1). The open offer for acquiring shares to be made by the acquirer and persons acting in concert with him under regulation 3 and regulation 4 shall be for at least twenty six per cent of total shares of the target company, as of tenth working day from

the closure of the tendering period".

47. In view of the aforesaid, the liability to make the public announcement in the instant matter is jointly and severally on the Acquirer, Promoter Group of the Target Company and PACs. Mr. Naresh Kumar Bansal, Mr. Richi Bansal, Mr. Kumud Bansal, Mr. Krati Bansal, Mr. Nikhil Naresh Bansal, Ms. Kanika Bansal and Naresh Kumar & Sons being Acquirer / Promoters and Mr. Charanjit Lal Dhir, Mr. Arun Dhir, Mr. Tarun Dhir and Ms. Sangeeta Dhir in their individual capacity, M/s Arun Enterprises and M/s Dhir Exports being the PACs are jointly and severally liable to make public announcement. The partners of M/s Arun Enterprises, Mr. Charanjit Lal Dhir, Mr. Arun Dhir and Mr. Tarun Dhir and partners of M/s Dhir Exports, Mr. Tarun Dhir, Mr. Prem Dhir and Ms. Sangeeta Dhir are responsible for the obligations of the respective partnership firms.

48. The question that arises next is which shareholders of the Target Company are eligible to tender shares in the Open Offer and whether any interest is payable to the shareholders of the Target Company. The obligation of the Acquirer and PACs to make an Open Offer continues till the time he makes it. Further, Hon'ble SC in the case of *Clariant International Limited and another* vs*. SEBI* [Appeal (Civil) No. 3183/2003] while determining the question to whom the interest is payable in case of delayed Open Offer, held as follows:

"...While compensating a person, the court should see that he is not unjustly enriched. Interest is directed to be paid on the default of the acquirer occasioning loss suffered by an investor of his money. The question of paying interest by way of compensation to persons who had not suffered any loss, thus, would not arise. Interest was, therefore, payable only to such persons who shareholders were of target company as on the triggering date...

…

We uphold that part of the decision of the Tribunal whereby it was held that those persons who were the shareholders till 24.2.1998 and continued to be shareholders on the closure day of public offer alone would be entitled to interest."

49. In the aforesaid order, the Hon'ble Court made a distinction between shareholders who were eligible to be paid interest and shareholders who are not eligible for the same. To put it differently, shareholders whose name appear in the register of the company at the time when public announcement of the Open Offer should have been made as per the Takeover Regulations and continue to be shareholders till the closure day of public offer, when made, are eligible to be compensated for the delayed Open Offer by way of interest while the other shareholders who can tender their share prior to the closure of Open Offer, are not eligible to be compensated for delayed Open Offer by way of interest. Corollary to this is that every shareholder of the Target Company is eligible to tender their shares in the Open Offer prior to its closure irrespective of whether or not their name appears in the register of the company as on the date of public announcement of the Open Offer. In the extant matter, though some of the shareholders of the Target Company would have reduced their shareholding in the company or would have exited the company and new shareholders would have come in their place, but that does not discharge the Acquirer and PACs from their Open Offer obligation to make it to all the existing shareholders of the Target Company, as the Open Offer is yet to be completed by the Acquirer and PACs / Open Offer is yet to be closed. Therefore, the direction to make Open Offer as stipulated in the present order, should be extended to all shareholders including the new shareholders of the Target Company who became the shareholders of the company post trigger date.

50. In addition to the directions to make Open Offer under the provisions of the Takeover Regulations, under regulation 32 (1)(h) of Takeover Regulations, a direction has to be given to the Acquirer and PACs to pay interest for the delay in making Open Offer. Further, for the purpose of calculation of interest, Hon'ble SC in the case of *Clariant International Limited and another* vs. *SEBI* [Appeal (Civil) No. 3183/2003] held *inter alia* as follows:

"... *In view of our findings aforementioned, we are of the opinion that while calculating the amount of interest, the amount of dividend paid to the shareholders*

should be excluded. The shareholders who by reason of default on the part of acquirer have been deprived of interest payable on the difference of the offer price and market price would be entitled to interest as direction to pay interest being not penal in nature, they cannot make double gains."

51. Thus, the shareholders who held shares on the date when the Board of Director of the Target Company approved the preferential issue of equity shares i.e., on January 25, 2017 and continued to hold shares in the Target Company till the date when the public announcement would be made for the acquisition of shares, as per the Hon'ble SC judgment recorded above, are entitled to receive interest of 10% simple interest per annum on the Open Offer price.

ORDER

52. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11(1) and 11B (1) of the SEBI Act read with regulation 32 of the Takeover Regulations, hereby issue the following directions:

52.1. Mr. Naresh Kumar Bansal, Mr. Richi Bansal, Mr. Kumud Bansal, Mr. Krati Bansal, Mr. Nikhil Naresh Bansal, Ms. Kanika Bansal and Naresh Kumar & Sons being Acquirer / Promoters and Mr. Charanjit Lal Dhir, Mr. Arun Dhir, Mr. Tarun Dhir and Ms. Sangeeta Dhir in their individual capacity, M/s Arun Enterprises and M/s Dhir Exports being the PACs (the partners of M/s Arun Enterprises, Mr. Charanjit Lal Dhir, Mr. Arun Dhir and Mr. Tarun Dhir and partners of M/s Dhir Exports, Mr. Tarun Dhir, Mr. Prem Dhir and Ms. Sangeeta Dhir are responsible for the obligations of the respective partnership firms) shall jointly and severally make a public announcement to acquire shares of the Target Company, Rama Steel Tubes Ltd. in accordance with the applicable provisions of the Takeover Regulations, within a period of 45 days from the date of this Order.

52.2. The Noticees mentioned at sub paragraph 52.1 shall, along with consideration amount, pay, as per the ratio of judgment of Hon'ble SC in the

matter of *Clariant International Limited*, simple interest at the rate of 10% per annum from the trigger date on the Open Offer price at which they were supposed to make the Open Offer when they had triggered regulation 3(2) of Takeover Regulations, till the date of payment of consideration to the shareholders who were holding shares in the Target Company on the trigger date and continued to hold shares till the date of public announcement to be made by the Noticees mentioned at sub paragraph 52.1 and whose shares have been accepted in the current Open Offer directed to be made in this Order, after adjustment of dividend, if any, paid.

53. This order disposes of the show cause notice dated November 25, 2020.

54. This order shall come into force with immediate effect.

55. A copy of this order shall be served upon all the Noticees, recognised Stock Exchanges, Depositories and the Registrar and Share Transfer Agents to ensure compliance with the above directions.

56. This order is without prejudice to any other actions that SEBI may take in accordance with securities laws.

-sd-

DATE: September 17, 2021
PLACE: Mumbai

MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA