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Sect/41

30 April 2024

To, The General Manager [BSE Listing Centre] Department of Corporate Services BSE Limited New Trading Ring, Rotunda Building 1st Floor P.J. Towers, Dalal Street Fort, Mumbai – 400 001 SCRIP CODE: 523457	To, The Manager [NEAPS] Listing Department National Stock Exchange of India Limited Exchange Plaza, 5th Floor Plot No. C/1, G - Block Bandra Kurla Complex, Bandra (E) Mumbai – 400 051 SYMBOL: LINDEINDIA

Dear Sir/Madam,

Intimation under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 – SEBI Ex-Parte Interim Order

Pursuant to Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, this is to inform you that the Company has on 29 April 2024 received an Interim Ex-Parte Order bearing reference no. WTM/AB/30299/2024-25 dated 29 April 2024 passed by Securities and Exchange Board of India (SEBI) under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992.

Details of the aforesaid Order as required to be disclosed as per Regulation 30 read with Para A of Part A of Schedule III of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and SEBI Circular no. SEBI/HO/CFD/PoD2/CIR/P/2023/120 dated 11 July 2023 are mentioned below:

Sl. No.	Particulars	Details
1.	Name of the authority	Securities and Exchange Board of India.
2.	Nature and details of the action(s) taken, initiated or order(s) passed	This is an Interim Ex-Parte Order issued by SEBI. Details of the Interim Order passed: (i) Linde India Limited shall test the materiality of future RPTs as per the threshold provided under Regulation 23(1) of the SEBI LODR Regulations on the basis of the aggregate value of the transactions entered into with any related party in a financial year, irrespective of the number of transactions or contracts involved. (ii) In the event the aggregate value of the related party transactions, calculated as provided in clause (a),

		exceeds the materiality threshold provided under Regulation 23(1), Linde India Limited shall obtain approvals as mandated under Regulation 23(4) of the SEBI LODR Regulations. (iii) NSE shall appoint a registered valuer to carry out a valuation of the business foregone and received, including by way of geographic allocation, in terms of Annexure IV of the JV&SHA.
3.	Date of receipt of direction or order, including any ad-interim or interim orders, or any other communication from the authority	29 April 2024
4.	Details of the violation(s)/ contravention(s) committed or alleged to be committed	(i) Failure of Linde India Limited in obtaining shareholder approvals for material related party transactions ("RPTs") undertaken with Praxair India Private Limited, a related party of the Company. (ii) Irregularities alleged in respect of a business agreement entered by Linde India Limited with Praxair India Private Limited wherein certain products and geographic areas were allocated between the companies.
5.	Impact on financial, operation or other activities of the listed entity, quantifiable in monetary terms to the extent possible	The Company is examining the next steps to be taken in this matter and is analyzing the impact, if any, of this Interim Ex-Parte Order on Company's financial, operation or any other activities at the moment.

A copy of the SEBI's aforesaid Interim Order dated 29 April 2024 is enclosed herewith for dissemination of the same for information of the shareholders and investors of the Company.

Thanking you,

Yours faithfully,

AMIT DHANUKA

Amit Dhanuka
Company Secretary

Encl. As above

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SECURITIES AND EXCHANGE BOARD OF INDIA

INTERIM EX PARTE ORDER

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

In respect of:

Name of the Noticee	PAN
Linde India Ltd.	AAACB2528H

1. Securities and Exchange Board of India ("**SEBI**") received multiple complaints against Linde India Ltd. ("**LIL / Company**"). These complaints predominantly concern various transactions and agreements LIL had entered into with Praxair India Pvt. Ltd. ("**PIPL**") and Linde South Asia Services Pvt. Ltd. ("**LSASPL**"), which are related parties of the Company.

2. Given the nature of allegations, SEBI initiated a comprehensive examination to assess the nature of these transactions and agreements and examined whether they were in compliance with the applicable regulatory provisions. Before considering the findings of the SEBI examination, it would be helpful to detail the background and the relationships between these companies.

3. LIL (formerly BOC India Ltd.) is listed on the National Stock Exchange of India Ltd. ("**NSE**") and BSE Ltd. ("**BSE**") since June 1999. LIL is engaged in the business of:

   i) Gases and Related Products comprising manufacturing and sale of industrial, medical and special gases, equipment as well as related products; and

   ii) Project Engineering Division comprising manufacturing and sale of cryogenic and non–cryogenic vessels as well as designing, supplying, testing, erecting and commissioning of projects across diverse industries.

4. LIL was a subsidiary of BOC Group Ltd., an unlisted UK-based company. Linde AG (a German company) acquired BOC Group Ltd. in 2006. Consequently, BOC India Ltd. changed its name to LIL in February 2013.

5. In 2018, there was a global merger between Linde AG and Praxair Inc. This resulted in the formation of Linde Plc., which is a NASDAQ-listed entity. Linde AG and Praxair Inc. owned 50% each of the new company. Praxair Inc. had an unlisted subsidiary in India – PIPL, which was also predominantly engaged in the production and supply of various gases. Pursuant to the merger, Linde Plc had two subsidiaries operating in India – (i) LIL which is a listed entity wherein it held 75% of the beneficial ownership and (ii) PIPL which is a 100% step-down subsidiary.

6. LIL and PIPL, subsequently, entered into a Joint Venture and Shareholders Agreement ("**JV&SHA**"), whereby both LIL and PIPL were to hold a 50% stake in LSALPL, a company engaged in providing administrative and support services to both LIL and PIPL.

7. Consequent to the announcement by the Company about entering into the JV&SHA, SEBI started receiving investor complaints alleging that the business allocation between LIL and PIPL, which was part of the JV&SHA, was not in the interest of the public shareholders of LIL. Based on the complaints, SEBI started an investigation in the matter. Summons were issued to the Key Management Personnel (KMP) and Independent Directors of the Company as part of the investigation. The Company and KMPs moved the Hon'ble Bombay High Court against the Summons and sought a stay on the investigation initiated by SEBI. I note from the records that the Writ Petitions[1] preferred by the Company and Independent Directors are still pending and the Hon'ble Bombay High Court has not granted any stay in the matter.

8. Having looked at the background and interconnections between LIL, PIPL and LSASPL, I am proceeding to examine the major allegations raised in the complaints received by SEBI and the findings thereon in the examination conducted by SEBI. It is noted that the allegations covered under the SEBI examination can be clubbed under two broad heads:

[1] WP(L) 2501 of 2024 and WP(L) 2521 of 2025

a. Failure of LIL in obtaining shareholder approvals for material related party transactions (***"RPTs"***) undertaken with PIPL.

b. Irregularities alleged in respect of a business agreement entered by LIL with PIPL wherein certain products and geographic areas were allocated between the companies.

Related Party Transactions

9. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**"LODR Regulations"**), do not restrict listed companies from engaging in transactions with related parties. The regulations, instead, mandate disclosures and impose decisional requirements whereby approval of the audit committee or shareholders is required for *RPTs*, depending on their *'materiality'*.

10. The main allegation in the complaints pertained to alleged material–*RPTs* being undertaken by LIL with PIPL without seeking the approval of the shareholders of the Company.

11. Norms governing *RPTs* are primarily contained in Regulations 23 of LODR which read as under:

"Related party transactions.

23. (1) The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions including clear threshold limits duly approved by the board of directors and such policy shall be reviewed by the board of directors at least once every three years and updated accordingly:

Provided that a transaction with a related party shall be considered material, if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds rupees one thousand crore or ten per cent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower. ..."

...

(4) All material related party transactions and subsequent material modifications as defined by the audit committee under sub-regulation (2) shall

require prior approval of the shareholders through resolution and no related party shall vote to approve such resolutions whether the entity is a related party to the particular transaction or not:

12. As per Regulation 23 of the LODR Regulations, *RPTs* can be undertaken by a listed company with the prior approval of the Audit Committee. The Regulations, however, impose a higher decisional threshold for *'material' RPTs* by making prior approval from shareholders mandatory for such class of *RPTs*. It can, therefore, be noted that *RPTs* are categorised into two buckets with each having a different approval requirement – (a) material *RPTs* that have to be approved by the shareholders and (b) non–material *RPTs* which only require Audit Committee approval.

13. The criteria for determining *'materiality'* is specified in the proviso[2] to sub-regulations (1) of Regulation 23 which provides that a transaction will be considered material if it is *"individually or taken together with previous transactions during a financial year, exceeds rupees one thousand crore or ten per cent of the annual consolidated turnover of the listed entity."*

14. I note that issue that requires consideration in respect of the first issue is whether the *RPTs* under question satisfy the materiality threshold provided under the proviso to Regulation 23(1) of LODR Regulations.

15. To examine this, we need to first look at the value of these transactions, the earlier transactions undertaken with the same related party (PIPL) in the financial year and the audited turnover of the company in the financial year preceding these transactions. These details are captured in the Table below:

[2] Proviso to Regulation 23(1) was inserted vide the SEBI (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2021, w.e.f. 1.4.2022. The proviso replaced the following explanation:

"Explanation. -A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity."

(in Rs. Crore)

S. No.	DESCRIPTION	FY23	CY21	CY20	CY19
1	ANNUAL CONSOLIDATED TURNOVER OF LIL AS PER AUDITED FINANCIAL STATEMENT	3135.50	2112.00	1471.10	1761.80
	DETAILS OF RPT WITH PRAXAIR				
		FY 24 (TILL SEPT. 23)	FY23 (15 MONTHS)	CY21	CY20
A.	ANNUAL CONSOLIDATED TURNOVER OF LIL TO BE CONSIDERED WHILE ARRIVING AT MATERIALITY	3135.50	2112.00	1471.10	1761.80
B.	MATERIALITY THRESHOLD (10% OF A)	313.55 (250.80)*	211.20	147.11	176.18
C.	PURCHASE OF GOODS	77.70	151.90	93.90	54.80
D.	PURCHASE OF FIXED ASSETS / CAPITAL SPARES	0	1.90	2.90	0
E.	SALE OF GOODS/ SPARES/ SERVICES & REVENUE FROM CONSTRUCTION CONTRACT	245.90	0	308.40	107.30
F.	REVENUE FROM OPERATION /RECHARGES	0	573.40	0	0
G.	SALE OF FIXED ASSETS	1.70	3.00	5.10	0
H.	RECOVERY OF PERSONNEL COST	0	0.30	0.30	0.30
I.	TOTAL RPT WITH PRAXAIR (SUM OF C TO H)	325.30	730.40 (584)*	410.60	162.50
2	RPT WITH PRAXAIR AS A % OF ANNUAL CONSOLIDATED TURNOVER AS PER PREVIOUS YEAR'S AUDITED FINANCIAL STATEMENTS (I/A)	12.97%	34.60% (ANNUALISED 27.70%)	27.90%	9.20%

[Note: Till the calendar year 2022, the financial statements of LIL were prepared on a calendar year("**CY**") basis. The company, thereafter, adopted the financial year format for financial statements. The statement for FY23, therefore, encompassed 15 months (January 2022 to March 2023).]

*Annualised figures

16. It can be noted from the Table above that the consolidated value of the transactions between LIL and PIPL in the CY 2021, FY23 (15 months) and 1st Half of FY 2023-24 (till September 2023) significantly exceeded 10% of the turnover of LIL in the previous year. It is an admitted fact that LIL and PIPL are related parties and, therefore, such transactions qualify as material *RPTs* in

terms of the proviso to Regulation 23(1) of the LODR Regulations and were, therefore, required to be approved by the shareholders as required under Regulation 23(4) of LODR Regulations.

17. It is, however, noted that approval from shareholders was not obtained by LIL prior to undertaking these transactions. The Company, in its reply furnished during the examination, stated that these transactions were executed with the approval of the Audit Committee and did not require shareholder approval as they were not considered 'material' *RPTs*. It was contended by LIL that for the test of *'materiality'* under Regulation 23 of LODR, consolidation of the transactions with a related party was required only if such transactions were in pursuance of a common objective and were ancillary to a mother contract. In support of this position, the Company submitted copies of three Legal Opinions dated September 7, 2021, December 22, 2022, and December 27, 2022, obtained from Mr. Sandeep Parekh, Advocate, Mr. Abhishek Manu Singhvi, Senior Advocate, and Justice (Retd.) B.N. Srikrishna, Former Judge, Supreme Court of India, respectively.

18. Before examining these Legal Opinions, relied upon by the Company while assessing the materiality of the RPTs, it would be apposite to note that LIL had, in fact, sought shareholder approval for *RPTs* to be entered with PIPL at its 85th AGM held on June 24, 2021. This resolution was rejected by the shareholders with approximately 93.94% of the votes cast by eligible shareholders being against the resolution.

19. LIL, thereafter, vide an announcement dated June 26, 2021, made on the stock exchanges, disclosed the failure of the resolution as under:

"..., the aggregate of all transactions entered into by the Company during any financial year with Praxair India Pvt. Ltd. (a wholly owned subsidiary of the Linde PLC group) and Linde South Asia Services Pvt. Ltd, the JV company, may meet the criteria of materiality as aforesaid at any time during the validity of the resolution. The company is therefore under an obligation to seek the approval of its shareholders by way of an ordinary resolution." (emphasis supplied)

20. It is noted that subsequent to the failure to obtain shareholder approval for the *RPTs*, the issue was taken up at the meeting of the Audit Committee held on August 10, 2021. The minutes of the Audit Committee meeting records as under:

"The Committee was informed that the Head of Legal Services for South Asia had been working for getting an opinion from legal experts on the way forward for the RPTs after the resolution for approval of the RPTs with Praxair India and LSAS was voted against by the shareholders at the last Annual General Meeting. After detailed discussions, the Committee advised that before considering the proposal, the management should get an opinion from eminent legal experts with domain knowledge, given the importance of this matter".

21. It should, therefore, be noted that the first Legal Opinion dated September 7, 2021, was obtained in the backdrop of the failure by LIL to get shareholder approval for the *RPTs*. The opinion, which was obtained from Mr. Parekh, after the failure to get shareholder approval, essentially stated that the requirement to gross up the value of a transaction undertaken with a related party would arise only if such contracts dealt with similar subject matters. It is pertinent to note that the said Legal Opinion primarily relies on the following while arriving at its conclusion:

a. The definition of related party transaction under LODR Regulations, 2015;

b. A guidance note issued by the Institute of Company Secretaries of India ("ICSI");

c. Case laws, primarily dealing with taxation, pertaining to scenarios where there were multiple agreements and considers the question of when such contracts can be considered as a single contract and where they have to be considered as separate contracts.

22. The term *'related party transaction'* is defined in clause (zc) of Regulation 2(1) of LODR Regulations. The definition was substituted vide the SEBI (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2021, w.e.f. 1.4.2022. The substituted definition and definition in force at the time of the Legal Opinion is extracted below:

Prior to April 1, 2022

"(zc) related party transaction" means a transfer of resources, services or obligations between a listed entity and a related party, regardless of whether a price is charged and a "transaction" with a related party shall be construed to include a single transaction or a group of transactions in a contract"

With effect from April 1, 2022

"(zc) "related party transaction" means a transaction involving a transfer of resources, services or obligations between:

(i) a listed entity or any of its subsidiaries on one hand and a related party of the listed entity or any of its subsidiaries on the other hand; or

(ii) a listed entity or any of its subsidiaries on one hand, and any other person or entity on the other hand, the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries, with effect from April 1, 2023; regardless of whether a price is charged and a "transaction" with a related party shall be construed to include a single transaction or a group of transactions in a contract"

(emphasis supplied)

23. It is noted that the Legal Opinion of Mr. Parekh relies heavily on the terms *"in a contract"* used in the definition while arriving at the conclusion that transactions with a related party need to be grossed up only if such transactions are under a mother contract or were in pursuance of a common objective. The Legal Opinion essentially held that there needs to be some form of nexus between the different transactions and in the event the transactions under question pertained to unrelated items, there was no requirement to consolidate the value of such contracts when considering materiality under Regulations 23 of the LODR Regulations.

24. It can, however, be noted from the test for materiality found in the proviso to Regulation 23(1) of the LODR Regulations that it clearly provides that

"transaction in question has to be taken together with previous transactions during a financial year with the same related party while considering whether it has crossed the materiality threshold." Given that there is no ambiguity in the text of the proviso, the conclusion arrived at in the Legal Opinion by relying on the definition of RPT, in my opinion, is without merit.

25. In this regard, I would like to refer to the views expressed in the book *"Interpretation of Statutes" by Vepa. P. Sarathi.* The Author writes in this context that *"Definitions in an Act are to be applied only when there is nothing repugnant in the subject or context, and this is so even if such a qualifying provision is not expressly stated by the legislature."* In support of this view, the book refers to the case of *Nagpur Electric Co. Ltd. V. Shreepathirao*[3], wherein the Hon'ble Supreme Court was dealing with a case where the respondent, who was earlier an employee of the Appellant, was terminated under a Standing Order. The Standing Order defined the term *'workman'* and provided that every workman should have a ticket. No ticket was issued to the respondent and he successfully challenged the termination before the High Court by contending that the Standing Orders applied only to employees who had been issued a ticket. In appeal, the Supreme Court held that:

"We are not unmindful of the principle that in construing a statutory provision or rule, every word occurring therein must be given its proper meaning and weight, the necessity of such an interpretation is all the more important in a definition clause. But even a definition clause must derive meaning from the context or subject.

...

Therefore, the words 'whose names and ticket numbers are included in the departmental musters' in the Standing Order should be read as 'whose names and ticket numbers, if any, are included in the departmental musters'."

26. It is, therefore, noted that when provisions of a regulation expressly mandate that the transactions will be taken into consideration along with previous

[3] AIR 1958 SC 658

transactions entered with such party during the financial year, the scope of such a provision cannot be restricted by reading in a requirement from a definition clause. The observations of the Hon'ble Supreme Court that even the definition clause needs to be read within the context of the provision supports this finding.

27. In respect of the other two sources relied upon in the Opinion; Guidance note issued by ICSI and certain case laws, my views are as follows:

(a) The guidance note issued by ICSI cannot serve as an interpretative aid, especially in cases where there is no ambiguity in the text of the Regulations, and I am of the considered view that this point does not require any further elaboration.

(b) As regards the case laws cited, I note that they pertain to instances where the Hon'ble Courts in the context of the said cases have held that the contracts under question should be looked at separately and cannot be clubbed. These cases, I note, have no bearing on the present matter which deals with a situation where the regulations specifically require the clubbing of contracts without prescribing any qualifying criteria. Regulation 23 of the LODR Regulations unambiguously provides that all transactions with a related party in a financial year have to be grossed up while calculating the materiality threshold. It does not create any exception to this rule.

28. It is noted that even the other two Legal Opinions proceed on the similar ground of commonality of Objective. Given the same, the other two Legal Opinions are also liable to be rejected on the same grounds.

29. It is also noted that the auditor of LIL, Price Waterhouse & Co. LLP, in its Review Report to the unaudited standalone and consolidated financial results of the Company for the 3rd quarter and nine months ended September 30, 2022 (for the 15-month period starting 1st January 2022), had noted that "*We draw attention to Note (iv) to the consolidated financial results which explains the management's assessment of RPTs in terms of Listing Regulations, 2015. There are significant uncertainties associated with the outcome of the above, being matters of legal and regulatory interpretation, the impact of which, if any, is presently not ascertainable.*"

30. Given the above, I hold that *RPTs* entered by LIL with PIPL in CY21, FY23(15 months) and FY24 (first six months) satisfy the *'materiality'* threshold specified in Regulation 23(1) of LODR Regulations and prior approval from the shareholders was required in terms of Regulation 23(4) of the said Regulations, for undertaking the said transactions.

Joint Venture agreement and allocation of business between LIL and PIPL.

31. The announcement of the global merger between Linde AG and Praxair, Inc. triggered a requirement for making a mandatory open offer to the public shareholders of LIL. The open offer was announced on 24 October 2018 and the promoters along with the open offer also conveyed their intention to voluntarily delist the Company. The offer price, discovered under the Reverse Book Building process mandated under the SEBI (Delisting of Equity Shares) Regulations, 2009 was Rs. 2,025/-. The acquirers rejected the discovered price and the equity shares of LIL continued to remain listed on the stock exchanges.

32. It is noted from the Annual Report of the Company for 2019 that subsequent to the failure to delist the Company, the promoters of LIL began exploring options for achieving operational synergy between LIL and PIPL. It is noted from the records that at the meeting of the Board held on December 17, 2019, options for potential integration between LIL and PIPL were discussed. Moloy Banerjee, Head – South Asia Linde Group PLC, attended the meeting as a special invitee. He informed the Board that various options were explored for the potential integration between LIL and PIPL and four options, given below, have been shortlisted for the consideration of the Board: -

Option 1	*LIL and PIPL to remain separate entities and operate independently*
Option 2:	*Remain Separate Entities – Set up a New JV company between LIL and PIPL to render Operation & Management services to the two companies*

Option 3	*Consolidation of overlapping Gases business at unlisted subsidiary level*
Option 4	*Consolidation at listed entity level - merger of LIL into PIPL*

33. The management, it is noted, recommended Option 2 to the Board of LIL as the most attractive option considering the costs involved. Option 2, apart from the forming of a JV, also involved product and geographical allocation between LIL and PIPL. In this context, it is important to emphasise that the discussion at the Board Meeting pertaining to the potential integration between LIL and PIPL was led by the representative of Linde Plc, who was a special invitee to the Board Meeting. The Independent Directors of the Company, it is noted from the minutes, raised questions regarding the impact on the future growth prospects of LIL due to the split of business between LIL and PIPL. It is also noted that as per the minutes, the Board had directed the management to place before it a comprehensive proposal in respect of Option 2 for consideration at the next Board meeting.

34. At the next meeting of the Board of LIL held on March 24, 2020, the approval for execution of the **JV&SHA** with PIPL and LSASPL, was granted. Pursuant to the execution of the JV&SHA, LIL and PIPL were to each hold 50% of the equity share capital of LSASPL. The JV&SHA also contained a clause which provided for the product allocation and geographical allocation of the businesses of LIL and PIPL ("Business Allocation") which provided that

    a) Geographic Allocation (north and east regions were allotted to Linde whereas south and west regions were allotted to Praxair)
    b) As per the Product Allocation proposal Linde got exclusivity with respect to the Project Engineering Business and Praxair got exclusivity in HyCO, Hydrogen, Carbon Monoxide, Green Energy, gasification and CO2 including carbon capture businesses ("HyCO").

35. The issue, therefore, that needs to be considered is the decisional threshold applicable for a transaction of this nature – *is the Board of LIL competent to*

accord such approval or would the shareholder also get a say in the decision-making process?

36. As stated earlier, subsequent to the decision of the Board of LIL to delineate the businesses, SEBI started receiving complaints from the shareholders of the Company alleging that the business allocation, referred to above, essentially involved granting promising future business opportunities to PIPL, which was a related party. The complaints also alleged that the business allocation would require shareholders' approval under the applicable regulatory provisions. The Company, however, it is noted, was of the view that the business allocation did not provide for or contemplate the transfer of any existing assets to PIPL and, therefore, did not require the approval of its shareholders.

37. Before I consider this question, it would be useful to look at the details of this proposal. It is noted from records that it was considered that only the air gases business was an area where both companies had a significant presence. The other business, PED and HyCO, it was noted, was considered unique to either LIL or PIPL. It was, therefore, decided that businesses considered unique to the respective Companies would be reserved for them whereas, for the air gases business, where both companies had a presence, there would be a geographic division with each company being granted the exclusive right to operate in distinct geographic areas. The intention behind the business allocation, it can be noted, was to ensure that in a given geographic area, only one of the companies was operating in any given vertical and they were not competing with each other.

38. It is further noted that the Board had taken the decision without the benefit of a Valuation Report. The available records do not indicate any material being placed before the Board which would have helped it in determining the gain/loss accruing to LIL and PIPL due to this business allocation. It appears that operational synergy at a holding company level was the driving factor behind this merger. While this might be a worthy goal to pursue from the Promoters' perspective, it need not always be in the interest of the public shareholders of LIL.

39. What has to also be considered is that this was a *RPT*. SEBI, while recognizing the inherent conflict of interest involved in such transactions, has imposed a higher decisional threshold for material *RPTs*. The rationale for requiring a higher threshold in such cases is to ensure that disinterested shareholders have a vote in 'material' transactions involving interested parties.

40. It is also noted from the complaints received by SEBI that even though the stated rationale for reserving HyCO business for PIPL was due to the said business being *'unique'* to PIPL, records indicate that LIL had been active in this space for more than a decade. The revenue and profitability from HyCO and CO2 business of LIL is given in the Table below:

DETAILS OF HYDROGEN AND CARBON DIOXIDE BUSINESS (RS. IN MILLION)										
PARTICULARS\YEAR	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
HYDROGEN										
SALES	19	122	141	102	66	86	125	103	88	141
CARBON DIOXIDE										
SALES	80.75	62.65	37.68	27.29	21.20	18.14	14.84	8.81	7.33	12.83

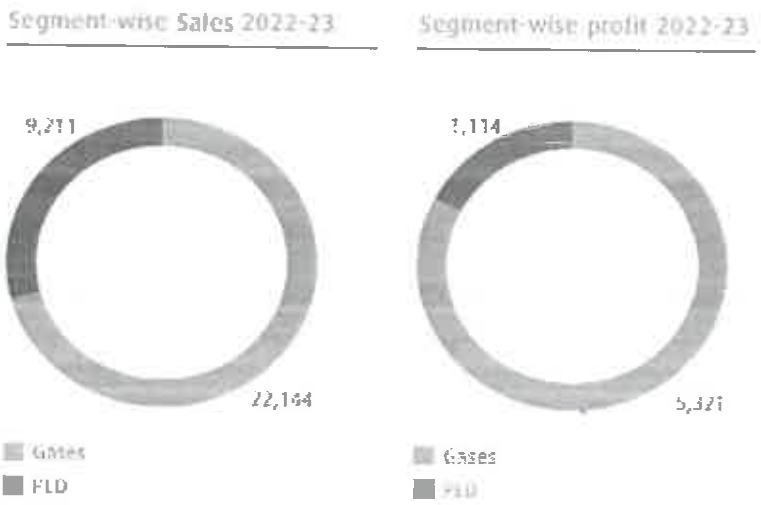
41. As mentioned in the earlier paragraphs, the business allocation between LIL and PIPL was stated to be on the basis that the businesses allocated were *'unique'* to the respective Companies. However, as observed from the above Table and discussions in the earlier paragraphs, it can be noted that LIL also had a presence in the HyCO business, and it may not have been *'unique'* to PIPL. LIL, in response to this observation, stated that the word *'unique'* was used in the disclosures made by the Company more to denote the *"significance"* or *"insignificance"* having regard to the Company's overall profitability or turnover.

42. The complainants also submitted reports to show that Linde Plc, the ultimate beneficial holder of LIL was very bullish about the prospects for hydrogen business. It is also noted that Niti Aayog in a report has forecast that *the "value of the green hydrogen market in India could be $8 billion by 2030 and $340 billion by 2050"*. Given the above, it was contended that the allocation of hydrogen (green energy) business to PIPL deprived LIL of a promising business opportunity and consequent loss of future revenues and benefits to LIL and its shareholders.

43. As stated above, no valuation was made available to the Board of LIL when the decision to award future businesses to a related party was being made. In this context, I note that relinquishing the rights to carry on a future business and the consequent opportunities of growth and earnings and cash flows associated with those business rights /opportunities, can be considered equivalent /synonymous to the transfer of business / resources /assets. The effect of both actions would be similar. The existing shareholders of LIL do have a reason to be aggrieved and feel shortchanged by the decision of their Board.

44. The company's argument that the agreement to divide future businesses does not constitute a related party transaction (RPT) because it does not involve a direct exchange of assets or services given the potential impact of the said transactions on the future revenue streams of the Company, does not hold. This, in my considered opinion, can be better explained by way of an illustration. As noted earlier, the Company had two main business segments – Gases and related products and Projects Engineering Division. The segment-wise sales and profits reported by the Company for FY 23 are given below:

(In Rs. million)



45. It can be noted from the above that a significant portion of the sales and profits of the Company is accounted for by the 'Gases and related products' segment, which under the business allocation proposal, in coming years, will be restricted to certain defined geographic areas. This decision, the company contends, can

be approved by the Board even without carrying out a valuation exercise. If this argument, made by the Company, is extended a little further, it would imply that the Board of LIL would be within its rights to reserve the entire gases and related products segment for a related party in the coming years, without getting shareholder approval. Surely, this cannot be allowed to be the likely outcome. To argue otherwise, would be a troubling overreach of board authority, undermining the safeguards provided under the LODR Regulations intended to protect shareholder interests.

46. Given the facts before me, I am of the view that the business allocation, although termed as a split of future business rather than a current transaction, effectively alters how business opportunities are allocated between the related parties.. Such arrangements can lead to a redistribution of corporate business and opportunities that would otherwise have benefited the company. This seemingly benign and arbitrary reallocation of business presents a potential risk to the future growth prospects of LIL which may not be in the best interests of the public shareholders.

47. Transactions of this nature need to be subjected to the same scrutiny and require similar approvals as traditional RPTs to ensure that investor interests are safeguarded. The business allocation between LIL and PIPL *prima facie* tantamounts to a transfer of resources by a listed company to a related party. Such a transfer, I note, should have been preceded by a valuation exercise or financial impact analysis to enable the Board of LIL to make an informed decision. In the current case, even as per LIL's own assessment, the activities relating to Hydrogen had significant future potential and, therefore, a proper valuation should have been made before the Board decision. Further, valuation would have thrown light on whether the decision required approval of just the Audit Committee or whether shareholder approval was also required. Given the same, I am of the view that the business allocation between LIL and PIPL, a related party, is vitiated as a valuation exercise was not carried out before the Board granted sanction for the transaction.

Need for the Issuance of Interim Directions

48. The necessity of passing these interim directions arises from the continuing act of the company in executing related party transactions which prima facie appear to be material, without taking shareholder approval. Such actions effectively deprive public shareholders of an opportunity to express their views on transactions which have the potential to disproportionately benefit controlling shareholders at the expense of the broader shareholder base. Further, if left unchecked, such practices could encourage similar conduct among other listed companies, risking broader market integrity. The balance of convenience in this case is in favour of taking interim measures and if the same is not taken it will lead to irreparable injury to the investors.

49. The LODR Regulations, recognising the inherent risk that related party transactions may not be conducted at arm's length, mandates companies to seek prior approval from the audit committee or disinterested shareholders for such transactions. This requirement is a safeguard designed to protect the interests of the public shareholders. Thus, the failure to obtain such approval not only contravenes specific regulatory mandates but also undermines the fundamental principles of fairness and transparency which underlie of our securities laws.

50. As stated in the preceding part of this Order, even though the Company and its Independent Directors have moved the Bombay High Court against the Investigation initiated by SEBI, Hon'ble Court has not granted any stay in the matter. Further, the directions outlined in this order are designed to be remedial, not punitive in nature. They aim to restore proper engagement and oversight by the Board and shareholders over certain significant corporate decisions taken by the Company. This lies at the heart of corporate governance.

51. Any punitive actions related to these matters will be considered separately following the conclusion of the ongoing investigation.

Directions

52. Keeping in view the prima facie observations and findings recorded in the preceding paragraphs and in order to protect the integrity of the securities market and the interest of investors, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B read with Section 19 of the SEBI Act, 1992, hereby direct as under:

    a) LIL shall test the materiality of future *RPTs* as per the threshold provided under Regulation 23(1) of the LODR Regulations on the basis of the aggregate value of the transactions entered into with any related party in a financial year, irrespective of the number of transactions or contracts involved.

    b) In the event the aggregate value of the related party transactions, calculated as provided in clause (a), exceeds the materiality threshold provided under Regulation 23(1), LIL shall obtain approvals as mandated under Regulation 23(4) of the LODR.

    c) NSE shall appoint a registered valuer to carry out a valuation of the business foregone and received, including by way of geographic allocation, in terms of Annexure IV of the JV&SHA.

53. LIL shall reimburse the expenses incurred by NSE in respect of the valuation to be carried out as per the directions at paragraph 52 above.

54. LIL and its management and their statutory auditors shall extend full cooperation and provide necessary assistance to the valuer appointed by NSE in compliance with the directions contained in this Order.

55. NSE shall share the valuation report received from the valuer appointed in compliance with the directions contained in this Order with the Company and SEBI.

56. LIL shall within two weeks of receiving the valuation report place it before the Audit Committee and the Board.

57. LIL shall make a disclosure on the stock exchanges providing a summary of the key observations in the valuation report along with management comments on the same.

58. The Company may, within a period of 21 days from the date of receipt of this Order, file their reply/objections, if any, to this Order and may also indicate whether they desire to avail an opportunity of personal hearing on a date and time to be fixed in that regard

59. The above directions shall take effect immediately and shall be in force until further orders.

60. A copy of this order shall be served upon the Company, its Statutory Auditors, and the National Stock Exchange Ltd. for necessary action and compliance with the above directions

Place: Mumbai

Date: April 29, 2024

ASHWANI BHATIA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA