THE LEELA

PALACES HOTELS RESORTS

July 24, 2019

The Department of Corporate Services **BSE Limited** 1st floor, Rotunda Building B.S. Marg, Fort Mumbai – 400 001 **Stock Code: 500193** **NCD Code: HLVL19DEC08**	**The Listing Department** **National Stock Exchange of India Limited** Exchange-Plaza, Bandra Kurla Complex Bandra (E), Mumbai – 400 051 **HOTELEELA**
National Securities Depository Ltd. Trade World, 4th Floor, Kamala Mills Compound, Senapati Bapat Marg, Lower Parel Mumbai – 400 013 **ISIN No. INE102A01024**	**Central Depository Services (India) Limited** 25th Floor, A Wing, Marathon Futurex, Mafatlal Mills Compound, NM Joshi Marg, Lower Parel (E), Mumbai - 400 013 **ISIN No. INE102A01024**

Dear Sir,

Sub: Hotel Leelaventure Limited – SEBI Order in the Matter of Postal Ballot for asset sale transaction with BSREP III India Ballet Pte. Limited (Brookfield)

We refer to our letter dated 24th April 2019, enclosing SEBI's letter dated 23rd April 2019, whereby we had informed that SEBI has under its said letter advised the Company to ensure that none of the transactions proposed in the Company's Postal Ballot Notice dated 18th March 2019, are acted upon till further directions from SEBI.

In this regard, the Company has now received an Order dated 23rd July 2019 from SEBI, which is enclosed.

Please take the above information on record.

Thanking you,

Yours faithfully
For **Hotel Leelaventure Limited**

Alen Ferns
Company Secretary

HOTEL LEELAVENTURE LTD. Mumbai

Encl: as above

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER IN THE MATTER OF COMPLAINTS FILED BY MINORITY SHAREHOLDERS OF HOTEL LEELA VENTURE LIMITED –

1. Securities and Exchange Board of India (**"SEBI"**) had received complaints from the minority shareholders of Hotel Leela Venture Limited (**"HLVL/Company"**) in April 2019, alleging violations by the Company, its Promoters and JM Financial Asset Reconstruction Company Limited (**"JMF ARC"**) of the provisions of the Companies Act, 2013 (**"Companies Act"**) and the securities law administered by SEBI *inter alia* in relation to HLVL's Postal Ballot Notice dated March 18, 2019 (**"Postal Ballot Notice"**). As per the Postal Ballot Notice, the Company had sought shareholders' approval for special Resolutions *inter alia* regarding the proposed sale of assets of the Company to BSREP III India Ballet Pte. Ltd or its affiliates (**"Brookfield"**).

2. In exercise of the powers conferred upon SEBI under Section 11(1) and Section 11B of the SEBI Act, 1992 (**"SEBI Act"**), the allegations contained in the complaints have been examined on the following premises:

   (i) The examination is purely from the perspective of protecting the interests of the Company's minority shareholders while recognizing the rights of the Lenders to recover their dues under various provisions of law.

   (ii) The examination herein is for ascertaining whether there are any violations of the provisions of law administered by SEBI including the SEBI Act, the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2009 (**"LODR Regulations 2015"**) and the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (**"Takeover Regulations 2011"**).

   (iii) Allegations have also been made against JMF ARC in respect of its role/involvement in the sale of assets of the Company and also issues concerning *'related party transactions'*. The provisions of law governing specific activities of an Asset Reconstruction Company falling beyond the jurisdiction of SEBI are outside the scope of examination.

BACKGROUND –

3. HLVL is a company incorporated under the provisions of the Companies Act, having its Registered Office at The Leela Sahar, Mumbai–400059. The shares of the Company are listed on the Bombay Stock Exchange Limited (**"BSE"**) and the National Stock Exchange

of India Limited ("**NSE**"). The shareholding pattern of the Company as on June 30, 2019 (*as submitted to Stock Exchanges*), is as under:

TABLE I – SHAREHOLDING IN HLVL [SOURCE: BSE WEBSITE]		
	SHAREHOLDERS	SHAREHOLDING [%]
A.	PROMOTER AND PROMOTER GROUP	47.27
B.	PUBLIC	
1.	JM FINANCIAL ASSET RECONSTRUCTION COMPANY LIMITED	26.00
2.	ITC LIMITED	7.92
3.	LIFE INSURANCE CORPORATION OF INDIA	2.08
4.	OTHER PUBLIC SHAREHOLDERS	16.73
	TOTAL	52.73
C.	TOTAL SHAREHOLDING [A + B]	100.00

4. The date–wise sequence of some important events in connection with HLVL is outlined below:

    (i) **February 10, 2012:** The Board of Directors of the Company had resolved to apply for restructuring of its debts under the Corporate Debt Restructuring ("**CDR**") mechanism.

    (ii) **September 28, 2012:** The CDR Empowered Group had approved the CDR package of the Company on September 12, 2012. Thereafter, a Master Restructuring Agreement pursuant to the CDR mechanism was executed between the Company, State Bank of India ("**SBI**") [the Monitoring Institution for the CDR package of the Company] and its Lenders on September 28, 2012.

    (iii) **June 6, 2014:** In view of non–compliance by HLVL with the terms and conditions of the CDR package, a Joint Lenders' meeting was arranged on June 6, 2014, wherein they had decided to declare the CDR package as failed and invoke the default clause as per Master Restructuring Arrangement.

    (iv) **June 25, 2014:** A Trusteeship Agreement under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ("**SARFAESI Act**") was executed between JMF ARC and the Lenders for creation of JMF ARC–Hotels June 2014–Trust. JMF ARC had also issued an Offer Document for the private placement of Security Receipts to the Lenders in accordance with the provisions of the SARFAESI Act.

(v) **June 28, 2014**: The CDR Empowered Group in their meeting held on June 28, 2014, declared the CDR package of the Company as failed and approved the exit of the Company from the CDR system.

(vi) **June 30, 2014:** 14 out of 17 Lenders had assigned ₹4150.14 Crore of debt to JMF ARC (95.60%) vide separate Assignment Agreements each dated June 30, 2014. As per the Trusteeship Agreement read with the Assignment Agreements, JMF ARC had paid approximately ₹865 Crore upfront and issued ₹3200 Crore worth of Security Receipts to the Lenders [refer to paragraph 4(iv)].

The remaining 3 Lenders, viz. Federal Bank (assigned ₹38.11 Crore of outstanding debt as on 30.06.2014, to Phoenix ARC), Bank of Baroda (USD 9.25 million outstanding debt as on 30.06.2014) and Life Insurance Corporation of India ("**LIC**") (₹90 Crore outstanding debt as on 30.06.2014) would get their pro rata share from the sale proceeds to be received under the *Asset Sale Transaction* (as defined at paragraph 5) as a one–time settlement of dues.

(vii) **April 10, 2017:** Vide a letter dated April 10, 2017, JMF ARC approached HLVL for allotment of 16.39 Crore equity shares pursuant to conversion of part–debt amounting to approximately ₹275 Crore into equity.

(viii) **October 24, 2017:** After obtaining approvals from its Board of Directors on May 25, 2017 and shareholders by way of special resolution on September 18, 2017 read with the earlier shareholders' approval on March 28, 2013, HLVL allotted 16.39 Crore equity shares to JMFARC on October 24, 2017. JMF ARC had also filed disclosures under Regulation 29(2) of the Takeover Regulations 2011, in respect of the aforesaid acquisition on October 25, 2017.

(ix) **January 2019:** JMF ARC had filed a petition before the National Company Law Tribunal ("**NCLT**"), Mumbai Bench, under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") to initiate the corporate insolvency resolution process of the Company in view of the default in payment of its dues. The matter was subsequently listed for hearing on May 28, 2019 and thereafter, on July 8, 2019.

(x) **March 18, 2019:** The Board of Directors of the Company approved the Framework Agreement comprising the *Asset Sale Transaction* (as defined at paragraph 5). The Postal Ballot Notice was also issued to the shareholders of the Company (contents of the Postal Ballot Notice are reproduced at paragraphs 5 and 6).

(xi) **April 22, 2019:** ITC Limited ("**ITC**") had filed a Company Petition before the NCLT of oppression and mismanagement seeking a waiver of the 10% minimum shareholding for minority shareholders to be counted in management matters.

(xii) **May 15, 2019 and May 16, 2019:** JMF ARC had filed Reports under Regulations 10(6) and 10(7) of the Takeover Regulations vide letters dated May 15, 2019 and May 16, 2019, respectively, in respect of the aforementioned acquisition of 26% equity shareholding in the Company on October 24, 2017.

POSTAL BALLOT NOTICE BY HLVL –

5. By way of the Postal Ballot Notice, the Company had sought shareholders' approval for the following Special Resolutions involving the sale of its Undertakings to Brookfield ("***Asset Sale Transaction***"), viz.:

(i) Approval for sale of the Company's Delhi Hotel Undertaking (for ₹1705 Crore);
(ii) Approval for sale of the Company's Bengaluru Hotel Undertaking (for ₹1000 Crore);
(iii) Approval for sale of the Company's Chennai Hotel Undertaking (for ₹675 Crore);
(iv) Approval for sale of the Company's Udaipur Hotel Undertaking (for ₹320 Crore);
(v) Approval for sale of the Company's Hotel Operations Undertaking (for ₹135 Crore); and
(vi) Approval for sale of the Company's shareholding in Leela Palaces and Resorts Limited, a wholly owned subsidiary of the Company (for ₹115 Crore).

6. In the Explanatory Statement to the Postal Ballot Notice, it was also stated that for the consummation of the *Asset Sale Transaction*, the following additional Agreements were proposed to be entered into ("***Additional IP Transaction***"), viz.:

(i) An Escrow Agreement will be entered into between Brookfield, the Company and its Lenders, which will provide for the total consideration payable for the Transaction being deposited by Brookfield/ the relevant Purchase Entities in an Escrow Account which will be used for repayment of the loans taken by the Company from such Lenders. Simultaneous with such repayment, there will be a corresponding release of all mortgages/ security interests created by the Company and its Promoters/ Promoter Group in favour of such Lenders and the Company's assets, including the Mumbai Hotel, which will then be free from all mortgages/ security interests.
*(ii) An Agreement for assignment will be entered into by Leela Lace Holdings Private Limited ("**LLHPL**") and a Purchaser Entity, for assignment of the intellectual property owned by LLHPL used in, held for use in or related to the hospitality, hotels and resorts and business, as*

may be mutually agreed between the Purchaser Entity and LLHPL, for a total consideration of ₹150 Crore.

(iii) *An Agreement for the license of the right to use the name 'The Leela' with respect to the hotel operated by the Company in Mumbai and related matters and also an agreement for use of centralized services to be provided by Brookfield in this respect.*

(iv) *An Agreement to be entered into between Brookfield and certain Promoters/members of the Promoter Group (or their affiliates) with respect to business expansion services to be provided to Brookfield, whereby the said Promoters/members of the Promoter Group (or their affiliates) would provide services and may receive consideration up to an amount ₹150 Crore, subject to due performance of the terms and achievement of the milestones set out therein.*

(v) *As the Bengaluru Hotel Undertaking is built partly on the land leased from LLHPL, as a part of the transfer of the Bengaluru Hotel Undertaking, there will be a Fresh Lease Deed to be executed with respect to the grant of leasehold rights to the Bengaluru Hotel Undertaking land, which is owned by LLHPL, initially on the same rent as currently being paid by the Company. This agreement also grants to Brookfield a right of first refusal for the acquisition of the Bengaluru Hotel land.*

(vi) *Given that Promoters own the 'The Leela' brand inter alia in respect of real estate projects, Brookfield and certain Promoters will enter into a Joint Venture Agreement for the development of real estate projects using the said brand.*

(vii) *An Intellectual Property Assignment Agreement to be executed between the Promoters/ Promoter Group and their affiliates and LLHPL as may be mutually agreed between the parties and Brookfield.*

(viii) *An Intellectual Property Assignment Agreement between the Company and identified Promoters, and their affiliates, with respect to registrations/applications for registration of the trademark 'Jamavar', as may be mutually agreed between the parties and Brookfield.*

7. The voting process in respect of the aforementioned Special Resolutions was stated to be closed on April 24, 2019 while the results of the voting conducted were to be declared by the Company on April 26, 2019.

8. During the intervening period, SEBI had received complaints from ITC and LIC, shareholders of the Company, alleging violations by the Promoters and JMF ARC of the provisions of securities law/Companies Act in respect of the *Asset Sale Transaction* mentioned in the Postal Ballot Notice. SEBI had also received an e-mail from BSE on April 23, 2019.

9. In view of the above, vide a letter dated April 23, 2019, SEBI while informing the Company that the aforementioned complaints/correspondence were being examined, advised the

Company not to act upon the *Asset Sale Transaction/ Additional IP Transaction* mentioned in the Postal Ballot Notice till further directions from SEBI.

10. On April 26, 2019, HLVL intimated BSE of the results of voting conducted in relation to the Postal Ballot Notice (which is reproduced in the Table below) stating that the same was necessitated in accordance with the requirement under Regulation 44(3) of the LODR Regulations 2015. However, in the aforesaid disclosure to BSE, the Company had clarified that as per the instructions of SEBI, the *Transaction* would not be acted upon.

TABLE II – VOTING RESULTS

	SHAREHOLDERS	MARCH 2019	%	TOTAL VOTES	VOTES FOR	VOTES AGAINST
A.	PROMOTER AND PROMOTER GROUP	298087074	47.27	298087074	298087074	0
B.	PUBLIC					
	PUBLIC INSTITUTIONS					
1.	LIC OF INDIA FUTURE PLUS GROWTH FUND	14860800	2.36	14860800	0	14860800
2.	OTHERS	3700641	0.59	1578623	0	1578623
	PUBLIC NON – INSTITUTIONS					
3.	JM FINANCIAL ASSET RECONSTRUCTION COMPANY LIMITED	163943459	26.00	163943459	163943459	0
4.	ITC LIMITED (INCLUDING RCL)	54980620	8.72	54980620	0	54980620
5.	OTHER PUBLIC SHAREHOLDERS	94979172	15.06	456712	348813	107899
C.	TOTAL	630551766	100.00	533907288	462379346	71527942
	% OF TOTAL			84.67	86.60	13.40

11. SEBI held meetings with representatives of HLVL, JMF ARC and SBI on June 26, 2019, July 18, 2019 and July 19, 2019. SEBI also held meetings with representatives of ITC on June 27, 2019. SEBI had also sought and obtained clarifications from the aforementioned entities vide various correspondences, highlights of which are reproduced in the subsequent paragraphs.

SUMMARY OF ALLEGATIONS:

12. The allegations contained in the complaints forwarded by ITC and LIC are summarized as under:

   a. ***Alleged 'Related party transactions'/voting related concerns*:** The Promoters of the Company along with JMF ARC are alleged to have violated the provisions of Regulation 23 of the LODR Regulations 2015 read with Section 2(76) and Section 188(1) of the Companies Act on account of being related/interested parties to the *Asset Sale Transaction* and also beneficiaries thereof. Although the Explanatory

Statement to the Postal Ballot Notice clearly stated that voting and exclusivity agreements *inter-alia* with the Promoters have been entered into, where relevant members of the Promoter/Promoter Group have provided their express consent to vote in favour of the Special Resolutions, it nonetheless does not state whether the Promoter Directors who were interested parties voted on the Special Resolutions as part of HLVL's Board of Directors; hence, the postal ballot becomes an empty formality on account of voting by such interested parties. BSE has further stated that the Company had not clarified as to how JMF ARC was not an interested party especially since it had been assigned 95.60% of the Company's debt and also had 26% equity in the Company. Further, JM Financial (a SEBI registered Merchant Banker) was the exclusive financial advisor to HLVL.

b. **Impact of the *Asset Sale Transaction* on other Lenders and minority shareholders:** The assets proposed to be sold through the *Asset Sale Transaction* constitute 88% of the total networth of the Company as on March 31, 2018 while the residual assets would comprise only of the Leela Hotel, Mumbai and real estate in Hyderabad and Tamil Nadu. Such significant sale of assets through the *Asset Sale Transaction* benefiting the Promoters and JMF ARC will denude the Company of its existing Undertakings resulting in a negative networth and low business for the Company and also an erosion in the value of equity held by the minority shareholders. The Company will be subjected to tax in respect of the proceeds of the *Asset Sale Transaction* to the detriment of the Creditors other than JMF ARC and the shareholders. Further, no Valuation Reports in respect of the *Asset Sale Transaction*, etc. were mentioned in the Postal Ballot Notice.

c. **Violation of Takeover Regulations 2011:** JMF ARC had claimed exemption under Regulation 10(2) of the Takeover Regulations 2011 for the acquisition of 26% equity in the Company, which was on account of conversion of debt into equity in October 2017. It has been alleged that the aforesaid exemption cannot be claimed by JMF ARC since the acquisition occurred more than three years after the CDR package was declared as failed on June 28, 2014. The aforesaid provision only exempts acquisitions not involving a change in control. JMF ARC had however, acquired *de facto* control over HLVL since prior to the aforesaid conversion, it had already held a pledge over 34.16% equity shares of HLVL held by the Promoters, which had crystallised well before October 2017 on account of default in payment of dues by HLVL. With the additional 26% equity, JMF ARC was in a position to exercise direct and indirect control over 51.28% equity shares (post conversion) of the Company. JMF ARC had also delayed in making the relevant disclosure under

Regulation 10(6) of the Takeover Regulations 2011 (assuming that such acquisition in October 2017, by JMF ARC, was exempt).

d. **Denial of inspection:** The Company had failed to provide inspection of all the documents forming part of the Postal Ballot Notice and where documents were provided for inspection, the same were draft or unsigned versions. Further, no Valuation Reports in respect of the *Asset Sale Transaction*, etc. were provided for inspection.

e. **Deliberate structuring of the Framework Agreement comprising the *Asset Sale Transaction* to avoid regulatory scrutiny:** The Company had deliberately structured the *Asset Sale Transaction* through a Framework Agreement instead of a Scheme of Arrangement (which would require majority of minority approval to be acted upon as per the SEBI Circular dated March 10, 2017) to avoid seeking approval of NCLT.

f. **Wrong disclosures in the Annual Report – Liability to Airport Authority of India ("AAI") relating to the Leela Hotel, Mumbai:** In its latest Annual Report, the Company had made incorrect disclosures as regards its liability to AAI.

RESPONSE OF HLVL ON THE ALLEGATIONS MADE BY ITC AND LIC:

13. Vide letters dated Apr 18, 2019 and May 6, 2019, HLVL offered the following comments to the complaints made by ITC and LIC along with clarifications sought by SEBI –

13.1 ***On alleged 'Related party transactions'*/voting related concerns:** There is no requirement for the Promoters/ Promoter Group entities/ JMF ARC to refrain from voting on the Special Resolutions in respect of the *Asset Sale Transaction* and related matters in view of the following:

a. *With respect to Promoters/ Promoter Group entities:*

1. *The total consideration payable to the Company for sale of all undertakings is ₹3950 Crore. Apart from this, Promoters/ persons in the Promoter Group will enter into separate agreements with Brookfield for assignment of intellectual property / business expansion services to be provided to Brookfield for which separate consideration of ₹150 Crore each is to be paid to such Promoters, which is independent and separate from the consideration being paid to Company for sale of undertakings.*
2. *Agreements being entered into by Company with Brookfield are separate and distinct from the agreements proposed to be entered into between Brookfield and the Promoters/ Promoter Group*

entities. Therefore, proposed transfer of undertakings would not be a 'related party transaction' under Section 188 of Companies Act/Regulation2(1)(zc) of LODR Regulations 2015 as Brookfield is an independent entity and does not have any connection with the Company or its Promoters/ Promoter Group entities.

3. *Brookfield is not a 'related party' as per Section 188/ Regulation2(1)(zc) as stated above nor are any Promoters/ members of the Promoter Group who are Directors of the Company 'interested' or 'concerned' as per provisions of Section 184 of the Companies Act.*
4. *Therefore, aforesaid sale of undertakings by the Company to Brookfield is not:*
   A. *A transaction where Promoter Directors are interested/ concerned.*
   B. *A 'related party transaction' either at the level of voting by Board of Directors or by shareholders.*
5. *Section 184 of the Act only applies to 'interested' Directors and not on Promoters/ Promoter Group entities voting as shareholders of the Company.*

b. *With respect to JMF ARC:*

1. *JMFARC is independent of and does not have any connection to Brookfield and therefore, proposed transfer of undertakings to Brookfield would not be a 'related party transaction' under Section 188/ Regulation2(1)(zc) as stated above.*
2. *JMF ARC converted a part of debt to equity and acquired 26% shareholding in the Company and holds the shares on behalf of Lenders including 14 public sector banks.*
3. *There are no Directors of the Company who have been nominated/ appointed by JMF ARC and accordingly, the question of being 'interested' under Section 184 does not arise.*
4. *The mere fact that a part of the proceeds being received by the Company pursuant to sale of the Undertakings will be used to repay JMF ARC would not bring the sale within the ambit of Section 184 and 188 of the Companies Act or Regulation 2(1)(zc) of the LODR Regulations 2015 nor does it automatically result in there being a conflict of interest.*
5. *Furthermore, the fact that JMF ARC is permitted under the provisions of the Companies Act to vote on the said matters should be indicative that there is no conflict of interest.*
6. *JMF ARC is representing the interests of 14 public sector banks who are Lenders of the Company, all of whom are entitled to get a portion of the proceeds from the sale of the Undertakings. Therefore, JMF ARC, far from being a 'related party', is acting independently of the Company and Promoters/members of the Promoter Group.*
7. *Section 184 of the Act only applies to 'interested' Directors and not JMF ARC voting as shareholders of the Company.*

13.2 On violation of Takeover Regulations 2011:

1. *HLVL received a Notice dated April 10, 2017 from JMF ARC for conversion of debt into equity. Pursuant to the aforesaid Notice and in accordance with applicable law, HLVL issued*

and allotted 16,39,43,459 shares of the Company to JMFARC on October 24, 2017, for the purpose of which the requisite process and procedure required under law was followed by HLVL including obtaining the approval of the Board of Directors of HLVL on May 25, 2017, approval of shareholders on September 18, 2017, in-principle approval of the Stock Exchanges on November 21, 2017 (BSE) and December 1, 2017 (NSE) and as well as financial approval of the stock exchanges on December 12, 2017 (BSE) and December 14, 2017 (NSE). In respect to the provisions of the Takeover Regulations 2011, we understand that JMFARC had inadvertently delayed in making certain filings under the said Regulations.

13.3 On the Asset Sale Transaction adversely impacting other Lenders and minority shareholders:

1. *ITC's allegations on the transaction adversely impacting creditors and shareholders is contrary to the statements made in its own letter. ITC, in its letter has recognised the debt of more than ₹6000 Crore due to various Lenders. Given the heavy debt burden, the current value of the Company and shareholders is severely hindered and the Company's networth could even be considered as negative.*
2. *The Company has made several efforts to reduce its debts and has even appointed professional advisors (including JM Financial Limited – SEBI registered Merchant Banker) to assist and advise it in considering all options. In fact, the Company and its advisors have evaluated and considered several different options over the past few years. Ultimately, the offer from Brookfield is resulting in a final settlement with the Lenders thereby leaving the Company in a debt free position together with a fully functional and operating Mumbai Hotel, Hyderabad land parcels and receivables from a real estate joint venture in Bangalore.*
3. *The Company is already facing action under the IBC initiated by Lenders of the Company and which is presently pending and in the event such proceedings move forward, the shareholders of the Company (including minority shareholders) are unlikely to receive anything as the debts are so high.*
4. *Therefore, in the event the Special Resolutions are passed, there is at least a chance for the shareholders of the Company to recoup some value to their shareholding.*
5. *On the proposed sale, the consequences would be:*
   A. *Company would be debt-free;*
   B. *It will be left with: Operational Mumbai hotel, Real estate in Hyderabad (Valuation of ₹40 Crore after considering litigation), Receivables from joint venture project in Bangalore (Balance value – ₹90 Crore);*
6. *ITC, as competitor is attempting to drive the Company into liquidation for reasons that are not far to seek. It has alternate efficacious remedies which it has failed to use and is forum shopping and abusing due process of law.*

With respect to prejudice to interest of creditors other than JMF ARC:

7. *JMF ARC is representing interest of 14 public sector banks, all of whom are entitled to a portion of proceeds from sale of the undertakings. The aforesaid sale would be concluded only after consent of all Lenders including JMF ARC.*
8. *With respect to tax liability from sale affecting interest of Lenders other than JMF ARC, the allegations are baseless and unfounded as the Company would be entitled for set-off of such tax liability against carry forward losses.*

13.4 On issues pertaining to inspection of documents:

1. *The Company responded to the request of ITC for inspection vide its letter dated Apr 10, 2019 whereby, among other things, the Company offered to ITC/ its representatives, full free and complete inspection of documents in connection with the Postal Ballot Notice.*
2. *The Company provided full free and complete inspection of documents to ITC/ its representatives at registered office of the Company on 11 April and 12 April, 2019*
3. *In the interim period, correspondence was exchanged between the Company, ITC and their respective legal representatives.*
4. *ITC has made baseless allegations about being provided inspection of only certain documents, which were draft/ unsigned versions.*
5. *In fact, in the interest of maintaining total transparency, the Company provided inspection of certain documents even though not mandated under law to do so.*
6. *It is only with respect to one note that inspection was not provided and that was on the basis that the inspection cannot be provided of documents/ information that is confidential and contain sensitive commercial information, particularly to a competitor who appears to have its own questionable motives.*
7. *ITC/ its representatives were informed that should they wish to inspect executed copies of the said agreements, inspection would be provided in New Delhi at any time.*
8. *With respect to provision of copies, ITC is not entitled by law to provision of copies of documents and was accordingly informed.*
9. *ITC, though styling itself as a minority shareholder, is a competitor of the Company who appears to have, with oblique motives, undertaken this entire exercise as a part of a fishing inquiry with a view to delay and derail the sale by Company of its undertakings and/ or to get undue access to sensitive information.*

13.5 On wrong disclosures in Annual report – Liability to AAI relating to the Leela Hotel, Mumbai:

1. *As ITC itself has pointed out, prior to the month of March 2019, AAI has made claims of ₹38.77 Crore and ₹311.19 Crore with respect to the Mumbai hotel which is recorded in the*

financial statements of the Company for the year ended 31st Mar, 2018 & the third quarter ended 31st Dec, 2018. In both the disclosures, the Company has clearly stated that it has not accepted and is contesting the claims made by AAI.

2. *Only recently in the very month of March 2019, AAI has initiated proceedings wherein for the first time it has claimed an amount of more than ₹800 Crore, which claim is disputed by the Company.*
3. *Moreover, such matters are sub-judice and are being held before relevant forums and while certain claims have been made by AAI, ultimately the Courts will decide on merits of the matter and pass judgment accordingly.*

INFORMATION OBTAINED BY SEBI FROM HLVL SUBSEQUENT TO THE COMPLAINTS: Subsequent to the receipt of complaints, further clarifications were obtained from HLVL by SEBI, which are as under:

13.6 *Query: On whether the proposal as specified in the Postal Ballot Notice was placed before the Audit Committee: The proposal was considered by the Audit Committee in its meeting held on March 18, 2019. The explanatory statement to the Postal Ballot Notice also specifically mentions such approval.*

13.7 ***Query:** Minutes of all Board meetings where the aforesaid proposal was discussed: The Company provided the aforesaid documents.*

13.8 ***Query:** Classification of JMF ARC as Promoter of the Company, considering Regulation 2(1)(oo) of SEBI ICDR Regulations, 2018: The second proviso to Regulation 2(1)(oo) excludes certain persons to be deemed to be Promoter which includes 'financial institutions'. It states that such person shall not be deemed to be a Promoter merely by virtue of the fact that 20% or more shareholding is held by such person unless such person satisfies other requirements prescribed under the Regulations. JMF ARC is a financial institution in terms of Section 45–I(c) of the Reserve Bank of India ("**RBI**") Act, 1934. Therefore, JMF ARC cannot be deemed to be a Promoter of the Company. In addition, Regulation 158(3) of SEBI ICDR Regulations refer to financial institutions within Section 2(h)(ia) and (ii) of Recovery of Debts due to Banks and Financial Institutions Act, 1993 which includes Securitisation Company/ Reconstruction Company registered under SARFAESI Act. Since JMF ARC is so registered, it should be considered as a 'financial institution' under the aforesaid proviso.*

13.9 ***Query:** Process followed by the Company for valuation of assets and copies of independent valuation reports, if applicable:*

1. *In the year 2012, the Company restructured its debt under CDR mechanism. Pursuant to the same, persistent efforts were made to sell various undertakings of the Company/ attract investment in the Company.*

2. *The Company appointed JM Financial in 2014 to achieve the said objective and JM Financial has since been advising and assisting the Company in respect of the sale of the hotels within a view to get maximum value and benefit for all stakeholders.*
3. *In the ensuing period i.e. 2014 onwards, Special Resolutions were passed by the shareholders of the Company, on different occasions, for sale of its hotels in Delhi, Chennai, Goa and shares of LRPL.*
4. *The Company and JM had, in this respect devised a fair and transparent process to ensure maximum participation and full price discovery. This included issuance of various advertisements in national newspapers inviting expressions of interest for certain hotels of the Company. It also included invitations of expressions of interest and Information Memorandums in this aspect.*
5. *Details of bids received/ discussions held were as under:*
   a. *Overall, with respect to investment/ acquisition at a Company level, active discussions were held with more than 14 parties and 9 bids were received.*
   b. *With respect to sale of New Delhi hotel, active discussions were held with more than 19 parties and 8 bids were received.*
   c. *With respect to sale of Chennai hotel, active discussions were held with more than 19 parties and 13 bids were received.*
   d. *There had also been preliminary discussions by JM with other parties who either declined the opportunity upfront or had mentioned that they would get back in case they were interested but thereafter did not get back.*
6. *The reasons that these offers and discussions did not lead to a more concrete proposal ranged from interest falling away to parties offering very low amounts, to prospective bidders not being able to show proof of funds and so on.*
7. *After a period of more than 3 years from starting the process, JM obtained an offer from Brookfield. Brookfield had initially shown interest in investing into the Company but later changed their offer for acquisition of the undertakings.*
8. *The following, among other reasons, were considered by the Board in assessing whether the sale to Brookfield is in the best interest of the Company:*
   a. *Credibility, experience, asset portfolio of Brookfield*
   b. *Deleveraging of balance sheet at one go*
   c. *Keen interest by Brookfield, significant time and resources invested*
   d. *Offer by Brookfield one of the highest (in terms of a single bid)*
   e. *While most of the assets individually received interests from different players, this was best overall value proposition for Company and its shareholders.*
9. *On the aforesaid basis, JM made a presentation to the Board and the Board, after due consideration of the same, current condition and prospects of the Company, viability of the other offers received, approved the proposed sale.*

10. *With respect to independent valuation, valuation reports were obtained from Crowe Horwath HTL Consultants Private Limited with respect to hotels in New Delhi, Bangalore, Chennai and Udaipur in April 2014.*

11. *The Company had made an application to its Lenders on March 20, 2019, seeking approval for the aforesaid transactions pursuant to which, certain Lenders asked the Company to obtain fresh valuation reports for hotels in New Delhi, Bangalore, Chennai and Udaipur from Valuers empanelled with the Lenders and accordingly, the Company has obtained the valuation reports and submitted copies of the same.*

12. *The sale of the undertakings is intended to be consummated under Section 180(1)(a) of the Companies Act under which (nor under Rules), a valuation report is required to be obtained / considered in respect of an undertaking proposed to be sold. Under other sections E.g. Section 62,192, 230, etc., valuation report is specifically required.*

13.10 ***Query:** Process followed by the Company for identification of buyers for the aforesaid assets along with summary of bids received:* *HLVL has provided a copy of a presentation wherein the process followed by the Company for identification of bidders/ purchasers for the aforesaid assets as well as summary of bids received have been provided.*

13.11 ***Query:** Process followed for appointment of JM Financials Limited as merchant banker*

a. *While the Company was initially under the CDR scheme, SBI was the monitoring institution and the lead bank. At that time, SBI Capital Markets was appointed as the merchant banker. Thereafter, the SBI led consortium assigned its debt to JMF ARC.*

b. *Based on JM's experience, reputation and domain knowledge and based on the fact that commercial arrangement with JM was on similar lines as with SBI Capital Markets including with respect to fees, the Board appointed JM as the merchant banker.*

c. *Pursuant to a scheme of amalgamation in 2017, JM Financial Institutional Securities Limited amalgamated with its parent Company –JM Financial Limited as a result of which JM Financial Limited became a SEBI registered Category I merchant banker.*

13.12 ***Other submissions:*** *The Company has repeatedly stated that ITC has not voted against any of the aforesaid Resolutions. It has urged SEBI to consider the larger interest of stakeholders as the Company's debt is almost ₹7000 Crore (including interest which is increasing on a daily basis). The Company directly or indirectly provides employment to 6,500 employees. Delay in effecting the proposed sale by the Company of its Undertakings is hurting not only the Company, but the larger interest of all stakeholders including large number of employees, public shareholders and Lenders, which include public sector banks. It has also reiterated that ITC, though styling itself to be nothing more than a minority shareholder of the Company, is a wolf in sheep's clothing, attempting to entangle the Company in frivolous correspondence/ proceedings, forum shopping by raising its allegations in NCLT, SEBI etc. ITC is actually a competitor of the*

Company who appears to have, with oblique motives, undertaken this entire exercise as part of a fishing inquiry with a view to delay and derail the sale by the Company of its Undertakings and/or to get undue access to sensitive information.

13.13 *I also note that SBI, HDFC Limited ("**HDFC**") and JMFARC have submitted a letter to SEBI on May 8, 2019, inter-alia stating the following:*

a. The proceeds from the sale of assets are to be utilised for payments to Lenders - ₹2,960 Crore to CDR Lenders viz. JMFARC, Bank of Baroda, LIC, Phoenix ARC and ₹990 Crore to non-CDR Lenders viz. SBI and HDFC;

b. The overall dues of the Company are in excess of ₹7500 Crore. It has defaulted in its payment obligations and the present proposal for settlement involves a substantial waiver of its secured obligations and release of charge over the balance mortgaged assets of the Company;

c. If the Lenders accept the one time settlement offer, there will be a significant write off of liability of the Company and the benefit will be accruing to the shareholders of HLVL; and

d. In case the transaction does not go through, the Lenders will be taking various measures to recover their dues and there will be no residual value for the shareholders.

ISSUES FOR CONSIDERATION:

14. Based on the allegations made in the complaints, the following issues arise for consideration:

(i) *Whether the proposed transactions circulated vide the Postal Ballot Notice attract the provisions pertaining to 'related party transactions' as defined under Section 2(76) read with Section 188 of the Companies Act and if yes, whether provisions of Regulation 23 of the LODR Regulations 2015 have been complied with?*

(ii) *Whether full and complete disclosures have been made in the Postal Ballot Notice so as to enable the Company's shareholders to take an informed decision on the proposed transactions?*

(iii) *Whether the conversion of debt into equity shares by JMF ARC was exempt from Open Offer obligations under the provisions of Regulation 10 (titled General Exemptions) of the Takeover Regulations 2011?*

(iv) *Whether the proposed transaction should have been consummated as a 'Scheme of Arrangement' (as provided in the SEBI Circular dated March 10, 2017) mandating approval by majority of minority whereby the whole or substantially the whole of the undertaking of the listed entity could have been transferred without involving listed equity shares as consideration?*

(v) *Whether wrong disclosures were made by HLVL in its Annual Report in respect of its liability to AAI?*

15. For determining the aforementioned issues, the following documents were examined, viz.:

- *(i)* ITC's letters dated April 9, 2019, April 16, 2019, May 1, 2019 and June 11, 2019, to SEBI;
- *(ii)* LIC's email dated April 23, 2019, to SEBI;
- *(iii)* BSE's email dated April 23, 2019, to SEBI;
- *(iv)* HLVL's letters/e–mail dated April 18, 2019, May 6, 2019, May 13, 2019, May 30, 2019, May 31, 2019, June 20, 2019 and July 22, 2019, to SEBI;
- *(v)* Master Restructuring Agreement dated September 25, 2012, executed between the Company, SBI and the Lenders;
- *(vi)* Trusteeship Agreement dated June 25, 2014, executed between JMF ARC and the Lenders;
- *(vii)* Offer Document dated June 25, 2014, for private placement of Security Receipts;
- *(viii)* Assignment Deeds each dated June 30, 2014, executed between JMF ARC and the Lenders;
- *(ix)* JMF ARC's e–mails/letters dated June 18, 2019, June 25, 2019, July 15, 2019 and July 19, 2019;
- *(x)* Valuation Reports for the Delhi, Bengaluru, Chennai and Udaipur Hotel Undertakings obtained in 2014 ("**2014 Valuation Reports**"), as submitted vide HLVL's e–mail dated May 6, 2019;
- *(xi)* Joint Letter from SBI, HDFC Limited and JMFARC dated May 8, 2019, received by SEBI;
- *(xii)* Valuation Reports for the Delhi, Bengaluru and Chennai Hotel Undertaking each dated April 18, 2019 and Udaipur Hotel Undertaking dated April 12, 2019 ("**2019 Valuation Reports**"), as submitted vide HLVL's e–mail dated July 19, 2019;
- *(xiii)* SBI's e–mails dated June 26, 2019 and July 22, 2019.

FINDINGS ON THE ISSUES:

16. **'RELATED PARTY TRANSACTIONS'/VOTING RELATED CONCERNS:**

16.1 As on March 31, 2019, the overall debt of HLVL was in excess of ₹7500 Crore and the Company had defaulted in its payment obligations.

16.2 JMF ARC has stated that they expected to realise an amount of ₹2815.67 Crore from the

16.3 *Asset Sale Transaction*, which shall be distributed to the Security Receipt holders [refer to paragraphs 4(iv) and (vi)] post deduction of JMF ARC–Hotels June 2014–Trust's expenses as under:

TABLE III – PAYMENT TO SECURITY RECEIPT HOLDERS		
	NAME	AMOUNT TO BE PAID TO SECURITY RECEIPT HOLDERS [IN ₹ CRORE]*
1.	STATE BANK OF INDIA	340.85
2.	STATE BANK OF HYDERABAD	30.79
3.	STATE BANK OF BIKANER & JAIPUR	38.16
4.	STATE BANK OF TRAVANCORE	73.56
5.	STATE BANK OF MYSORE	117.98
6.	STATE BANK OF PATIALA	28.14
7.	VIJAYA BANK	120.02
8.	BANK OF BARODA	117.46
9.	BANK OF INDIA	356.23
10.	INDIAN OVERSEAS BANK	271.51
11.	UNION BANK OF INDIA	190.24
12.	SYNDICATE BANK	534.29
13.	ORIENTAL BANK OF COMMERCE	16.08
14.	EXIM BANK	159.55
15.	JM FINANCIAL ASSET RECONSTRUCTION COMPANY LIMITED	165.85
16.	GOLDMAN SACHS INVESTMENT MAURITIUS LIMITED	200.40
17.	JM FINANCIAL PRODUCTS LIMITED	6.69
	TOTAL	2767.87
*THE DISTRIBUTION IS CONSIDERING THE TRUST EXPENSES OUTSTANDING AS ON DATE AND ON THE BASIS OF OTS AMOUNT OF ₹2,815.67 CRORE PROPOSED BY COMPANY AS ON JUNE 30, 2019.		

16.4 Further, upon consummation of the *Asset Sale Transaction*, the Promoters of HLVL are also expected to realise an amount of ₹300 Crore from the *Additional IP Transaction* (refer to paragraph 6).

16.5 The definition of ***'related party'*** in Regulation 2(1)(zb) of the LODR Regulations 2015 adopts the definition of Section 2(76) of the Companies Act along with the definitions under the applicable *Accounting Standards.* As per the proviso to the aforesaid Regulation, ***any person or entity belonging to the Promoter or Promoter Group of the listed entity and holding 20% or more of shareholding in the listed entity shall be deemed to be a 'related party'.***

16.6 Section 2(76) of the Companies Act defines a *'related party'* with reference to a Company to *inter alia* mean:

i. *Director or his relative;*
ii. *Key managerial personnel or his relative;*
iii. *A firm, in which a Director/ manager/ relative is a Partner;*
iv. *A private company in which a Director/ manager is a member/ Director;*

v. *A public company in which a Director/manager is a Director or holds along with his relatives, more than 2% of its paid–up share capital;*

vi. *Any body corporate whose Board of Directors/Managing Director/manager is accustomed to act in accordance with the advice, directions or instructions of a Director/manager;*

vii. *Any person on whose advice, directions or instructions a Director/manager is accustomed to act:*

viii. *Any company which is (A) a holding, subsidiary or an associate company of such company; or (B) a subsidiary of a holding company to which it is also a subsidiary;*

ix. *Such other person as may be prescribed.*

16.7 Further, it may be noted that Indian Accounting Standard 24 ("**AS–24**") *inter alia* states that a person is related to a reporting entity, if that person has significant influence over the reporting entity.

16.8 Regulation 2(1)(zc) of the LODR Regulations 2015 defines ***'related party transaction'*** to mean *"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:*
Provided that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);"

16.9 A perusal of the definition of *'related party transaction'* points to an emphasis on the transfer of resources, services or obligations **between the listed entity and a *'related party'*.**

16.10 The above mentioned provisions cover such parties who are related with the Company either by virtue of being its Directors or key managerial personnel or their relatives and extends such relatedness of the Company to any body corporate whose Board of Directors/Managing Director/Manager is accustomed to act according to the advice of a Director or Manager of such Company and/or vice versa. Thus, if the definitions of *'related party'* and *'related party transactions'* under the LODR Regulations 2015 and Companies Act along with AS–24 are read together, it is understood that the purpose of the provisions is to regulate the transaction under certain conditions which are provided under Section 188 of the Companies Act and also under the provisions of LODR Regulations 2015.

16.11 In the instant case, there is a direct contract (to sell/buy) between the Company/its affiliates/Promoters and a third party Company i.e. Brookfield. While the Company and/or its affiliates are sitting on the sell side of all transactions, the sole counterparty to all these transactions is Brookfield. Hence, the test of *'related party'* needs to be applied on the entities included under Regulation 2(1)(zb) of the LODR Regulations 2015 and Section 2(76) of the Companies Act to ascertain if they have any connection with Brookfield.

Clearly, no such connection has been alleged by any of the complainants nor is it borne out by any documents.

16.12 As regards the *Additional IP Transaction* referred at paragraph 6, on account of the proposed sale of intellectual property by them to Brookfield, the part of the proposed transaction relating to the Promoters of HLVL has been analysed holistically as shown below:

Table IV – Details of *Additional IP Transaction*		
	Transaction	**Parties**
1.	Assignment of intellectual property owned by LLHPL, a Promoter, to Brookfield for ₹150 Crore	Promoters and Brookfield
2.	Agreement for right to use the name *'Leela'* for the Mumbai hotel and for use of centralized services to be provided by Brookfield in this aspect.	Promoters and Brookfield
3.	Agreement between Brookfield and certain Promoter/ members of the Promoter Group for business expansion services for which upto ₹150 Crore may be paid subject to achieving of milestones.	Promoters and Brookfield
4.	Fresh lease deed with Brookfield for leasehold rights for the land of the Bangalore hotel currently leased by Company from LLPHL along with ROFR to Brookfield for the said land.	Promoters and Brookfield
5.	Since Promoters own *'Leela'* brand, joint venture agreement between Brookfield and certain Promoters for development of real estate projects using the said brand.	Promoters and Brookfield
6.	An intellectual property assignment agreement to be executed between the Promoters/ Promoter Group and their affiliates and LLHPL as may be mutually agreed between the parties and Brookfield.	Promoters, their affiliates and Brookfield
7.	An intellectual property assignment agreement between the Company and identified Promoters, their affiliates, with respect to registrations/ applications for registration of the trademark *'Jamavar'*, as may be mutually agreed between the parties and Brookfield.	HLVL, Promoters, their affiliates and Brookfield

16.13 An examination of the *Additional IP Transaction* at Table IV above indicates that the first six transactions per se, are between Promoters/ Promoter entities and Brookfield which is not a *'related party'* and not between HLVL and the Promoters. Brookfield is an independent entity which is not connected to either the Company or the Promoters, and does not fall within the definition of *'related party'* as defined under the LODR Regulations 2015. The last transaction in Table IV is an Intellectual Property Assignment Agreement of the trademark *'Jamavar'* between the Company and the Promoters/Promoters' affiliates with Brookfield.

16.14 In this context, it is noted that in the Postal Ballot Notice, the aforementioned *'Jamavar'* transaction has been disclosed as being between the Company and the Promoters/Promoters' affiliates with Brookfield. Since the Promoters and their affiliates are involved in this part of the IP sale transaction, the same would fall within the ambit of *'related party transaction'*. Further, as no separate valuation for this transaction is available, it is appropriate for HLVL to disclose the same to its shareholders. In case such valuation in respect of the *'Jamavar'* trademark exceeds 10% of the annual consolidated turnover of

HLVL, as per the last audited financial statements, the same may be placed for voting by the shareholders on a *'majority of minority'* basis, in terms of Regulation 23 of the LODR Regulations 2015.

16.15 Vide the Postal Ballot Notice, the Company had sought shareholders' approval for the *Asset Sale Transaction* enlisted at paragraph 5. It is noted that the transaction involving sale of hotel properties is between HLVL and Brookfield, which is not a *'related party'* and the consideration for the same is to be paid by Brookfield to HLVL. Further, it is noted that there is no transfer of *'resources, services or obligations'* of any kind between HLVL and any of the Promoters. Therefore, it is noted that the Company's transactions do not fall within the ambit of *'related party transactions'* as defined under the LODR Regulations 2015.

16.16 The role of JMF ARC is also relevant for consideration in the light of the specific complaints. As seen from the documents, upon the failure of the CDR package, the Lenders therein entered into separate Assignment Deeds each dated June 30, 2014, with JMF ARC whereby all the rights of the Lenders were assigned to JMF ARC. The aforesaid Agreements have been executed under the provisions of Section 5(1)(b) of the SARFAESI Act. It is also noted that the rights of the Original Lenders which became part of the Master Restructuring Agreement were transmitted/transferred to JMF ARC by the Lenders by virtue of the Assignment Deeds. SBI, vide an e–mail dated June 26, 2019, had informed SEBI that although the failure of the CDR package would result in a withdrawal of concessions and other rights to the Company granted under CDR Scheme, the right to recourse for the Lenders would continue under the Master Restructuring Agreement. In other words, the rights of the Original Lenders which became part of the Master Restructuring Agreement were transmitted/transferred to JMF ARC by the Lenders by virtue of the Assignment Deeds. It is also noted that the Lenders and JMF ARC created JMF ARC–Hotels June 2014–Trust vide a Trust Deed dated June 25, 2014 and also issued Security Receipts under the SARFAESI Act, to the Lenders through an Offer Document dated June 25, 2014.

16.17 Having been assigned the *'financial assistance/asset'* under the provisions of SARFAESI Act, the interest of JMF ARC in the proposed transaction is to the extent of the application/utilisation of the sale consideration resulting from the *Asset Sale Transaction*, which is primarily the realization of dues outstanding to the Lenders. The complainants have attributed other benefits arising from the *Asset Sale Transaction* to JMF ARC. The income/gains/profits/fees/charges, etc. that accrue to a registered ARC out of its core activities cannot be considered as a *'benefit'* accruing to JMF ARC out of the proposed *Asset Sale Transaction*, in the absence of any other connections or interest between them. Further, JMF ARC cannot be seen to have any other *'interest'* in the Asset Sale Transaction other than utilisation of the sale proceeds for debt restructuring. In view of the aforesaid, it is found that JMF ARC cannot be treated as a *'related party'* as alleged under any of the provisions of the Companies Act or LODR Regulations 2015, as it cannot be considered as part of the Promoter/Promoter Group nor does it fulfill any of the criteria mentioned under the LODR Regulations 2015 for the purpose of this transaction.

17. **SUFFICIENCY/ADEQUACY OF DISCLOSURES MADE TO SHAREHOLDERS:**

17.1 The relevant provisions of the LODR Regulations 2015 provide for the following disclosure requirements/obligations:

Regulations 4(1)(d), (e), (h) and (j) state that:
"The *listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles ...*
(d) The listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors.
(e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.
(h) The listed entity shall make the specified disclosures and follow its obligations in letter and spirit taking into consideration the interest of all stakeholders.
(j) Periodic filings, reports, statements, documents and information reports shall contain information that shall enable investors to track the performance of a listed entity over regular intervals of time and shall provide sufficient information to enable investors to assess the current status of a listed entity.

Regulation 4(2)(b)(i) states that: *"The listed entity shall provide adequate and timely information to shareholders, including but not limited to the following:*
(i) Sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be discussed at the meeting..."

Regulation 4(2)(d)(iii) states that: *"The listed entity shall recognise the rights of its stakeholders and encourage co-operation between listed entity and the stakeholders, in the following manner:*
(iii) Stakeholders shall have access to relevant, sufficient and reliable information on a timely and regular basis to enable them to participate in corporate governance process."

Regulation 4(2)(e) states that: "*The listed entity shall ensure timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the listed entity..."*

17.2 Upon a perusal of the Postal Ballot Notice circulated to the shareholders, it is observed that the same furnishes details of the four identified Undertakings of the Company (Delhi, Bengaluru, Chennai and Udaipur) and the Hotel Operations Undertaking that is proposed to be sold by the Company to the Indian subsidiary of Brookfield with the separate consideration shown respectively towards the value of each such sale. Further, the shareholders were also approached for approval of sale of the Company's shareholding in Leela Palace Resorts Limited, which is a wholly owned subsidiary of the Company and owns property in Agra and holds licenses for the development of a hotel. It is also observed from the Explanatory Statement annexed to the Postal Ballot Notice that the proposed Agreement for assignment of intellectual property owned by Leela Lace Holdings Private Limited ("LLHPL") in favour of Brookfield for a total consideration of ₹150 Crore, was disclosed. Further, the reservation made in relation to the name *'Leela'* in respect of the hotel operated by the Company in Mumbai was also informed to the shareholders. Information relating to the proposed *Additional IP Transaction* whereby the Promoters/members of the Promoter Group (or their affiliates) would provide business expansion services and may receive consideration upto and amount of ₹150 Crore has also been shared with the shareholders. The shareholders were also informed that the Audit Committee had approved and recommended the transactions in a meeting held on March 18, 2019 to the Board of Directors, which had also approved the transactions. It was also disclosed that the said sale was part of a viable restructuring by the Company of its loan and liabilities. It was further stated that the proceeds of the transaction would be used in accordance with the provisions of the *Transaction Documents* to repay the existing Lenders of the Company and upon closing, all the borrowings of the Company from all banks and financial institutions would have been repaid. It was also disclosed that the hotel undertakings together with all its assets and liabilities, including but not limited to contracts, properties, permits, licenses, employees, employees' benefit funds, records, except the assets and liabilities specifically excluded, was proposed to be transferred as a going concern on a *'slump sale'* basis for a lump sum consideration without values being assigned to individual assets and liabilities, based on certain representations, etc. provided by the Company.

17.3 It is observed that even though separate asset sale valuations have been shown for the Undertakings and the intellectual property, remuneration for business expansion services to be provided by the Promoters / members of the Promoter Group (or their affiliates) to Brookfield, the disclosures are silent on the basis of the Valuation. The methods adopted for the valuation and the details of the Valuers were not made available to the shareholders. Further, the Postal Ballot Notice along with the Explanatory Note did not reflect any effort or provide assurance to the shareholders to the effect that the assets were fetching the best value possible.

17.4 In this connection, subsequent to the receipt of the complaint, JMF ARC along with SBI and HDFC vide a letter dated May 8, 2019, addressed to the Board, have stated that "*the overall dues of the Company are in excess of ₹7500 Crore and the Company has defaulted in its payment obligations. The present proposal for settlement by the Company involves substantial waiver of its secured obligations and release of charge over the balance mortgaged assets of the Company. If the Lenders accept the one time settlement offer, there will be significant write off of liability of the Company and the benefit will be accruing to the shareholders only.*" It therefore appears that the valuation as accepted in the proposed *Transaction* has the approval of the Lenders.

17.5 In this context, SEBI had sought and obtained the 2014 Valuation Reports and also the 2019 Valuation Reports from HLVL. In their reply dated May 6, 2019, HLVL had *inter alia* submitted:

A. *The 2014 Valuation Reports were based on a Discounted Cash Flow ("**DCF**") method of valuation, which essentially relies on projections of future revenue as well as on the Replacement Cost. These Reports were made available to prospective investors / buyers including Brookfield, from time to time. However, in the 4 years which have passed from the date of the valuation, in terms of the DCF valuation, the actual revenues and profit did not correspond to the assumed projections due to prevailing economic condition, and therefore, the prospective investors / buyers would have obviously made offers after adjusting for the difference in profit.*

B. *In any event, and without prejudice to any of these observations, the price being offered for the Delhi Hotel by Brookfield is actually higher than the DCF valuation, and the price offered for the Bangalore and Chennai Hotels by Brookfield is quite similar to the DCF valuation, and it is only with respect to the Udaipur hotel where there is a slight deviation in price offered. However, it is worth noting that the total price offered by Brookfield for all 4 hotels is higher than the DCF Value of 4 hotels. This by itself shows that the price from Brookfield is more than fair as even though the DCF Valuation assumes a higher revenue than what was actually achieved, the price being offered by Brookfield is still higher than even the price on the higher assumed revenues.*

C. *In addition, and without prejudice to any of these observations, the price being offered for the Delhi and Udaipur Hotels by Brookfield is quite close to the Replacement Cost valuation, and it is only with respect to the Bangalore and Chennai hotels where there is a deviation in price offered. With respect to Bangalore, the report included the land value estimated at approximately 583 Crore, on the basis that the land is freehold, while it is leasehold land if the land value is excluded, the price offered by Brookfield is higher than the valuation.*

D. *The values arrived at in 2014 through the Discounted Cash Flow method along with the Replacement Cost Valuation method were as under:*

Table V			
	Name	Discounted Cash Flow Value in ₹Crore	Replacement Cost Valuation Value in ₹Crore
1.	Delhi Hotel Undertaking	1359.10	1757.50
2.	Bengaluru Hotel Undertaking	1029.40	1565.40
3.	Udaipur Hotel Undertaking	337.90	363.40
4.	Chennai Hotel Undertaking	902.60	1327.60
	Total	3629.00	5013.90

17.6 In addition, HLVL had also provided details of bids received, etc. as under:

a. *Overall, with respect to investment/ acquisition at a Company level, active discussions were held with more than 14 parties and 9 bids were received.*

b. *With respect to sale of New Delhi hotel, active discussions were held with more than 19 parties and 8 bids were received.*

c. *With respect to sale of Chennai hotel, active discussions were held with more than 19 parties and 13 bids were received.*

d. *Besides entities/ organisations listed in second presentation, there had been preliminary discussions by JM with other parties who either declined the opportunity upfront or had mentioned that they would get back in case they were interested but thereafter did not get back.*

17.7 Further, upon a perusal of the 2019 Valuation Reports, it is observed that:

A. *The Reports have been prepared by Sapient Services Pvt. Limited, a Government Registered Valuer (for the Delhi, Bengaluru and Chennai Hotel Undertaking) and Er. Mukesh Dad (for the Udaipur Hotel Undertaking).*

B. *The Valuation for the Delhi, Bengaluru and Chennai Hotel Undertaking has been conducted based on Replacement Cost method under the Cost Approach, where the cost to construct and develop the similar kind of property is considered taking to account the current market conditions and location of the property. Further, to arrive at the development cost, the method of per key per room including all the facilities and amenities was considered. The entire hotels being maintained in the best of manner, based on the year of construction, a small amount of depreciation was applied to arrive at the Fair Market Value of the Hotel.*

C. *The Valuation for the Udaipur Hotel Undertaking is based on land (value based on prevailing market rate in the surrounding area) and building (value based on specification and construction quality/ age of building) method.*

D. *The Fair Value of Fixed Assets (for the Delhi, Bengaluru and Chennai Hotel Undertaking)/Market Value (for the Udaipur Hotel Undertaking) of the assets forming part of the Asset Sale Transaction as on March 2019 are as under:*

TABLE VI			
	NAME	FAIR MARKET VALUE/MARKET VALUE IN ₹CRORE	REPLACEMENT COST VALUATION VALUE IN ₹CRORE
1.	DELHI HOTEL UNDERTAKING	1648.61	1675.60
2.	BENGALURU HOTEL UNDERTAKING	924.24	997.90
3.	CHENNAI HOTEL UNDERTAKING	645.12	666.50
4.	UDAIPUR HOTEL UNDERTAKING	285.70	265.70
TOTAL		**3218.00**	**3605.70**

E. *The Realizable Value and Distress Value is summarized as under:*

TABLE VII			
	NAME	REALISABLE VALUE IN ₹CRORE	DISTRESS VALUE IN ₹CRORE
1.	DELHI HOTEL UNDERTAKING	1401.32	1236.46
2.	BENGALURU HOTEL UNDERTAKING	785.60	693.18
3.	CHENNAI HOTEL UNDERTAKING	548.35	483.84
4.	UDAIPUR HOTEL UNDERTAKING	NOT AVAILABLE	NOT AVAILABLE
TOTAL		**2735.30**	**2413.50**
*REALISABLE VALUE IS ASSESSED AT 85% OF FAIR MARKET VALUE			
*DISTRESS VALUE IS ASSESSED AT 75% OF FAIR MARKET VALUE			

17.8 The offer made by Brookfield under the *Asset Sale Transaction* and *Additional IP Transaction* is as under:

TABLE VIII		
	NAME	AMOUNT IN ₹CRORE
1.	DELHI HOTEL UNDERTAKING	1705.00
2.	BENGALURU HOTEL UNDERTAKING	1000.00
3.	UDAIPUR HOTEL UNDERTAKING	320.00
4.	CHENNAI HOTEL UNDERTAKING	675.00
TOTAL		**3700.00**

17.9 In view of the details of bids and valuation brought out in the preceding paragraphs, it is observed that the values ascribed to such hotel assets in 2014 and 2019 are lower (except for *Replacement Cost Valuation* of 2014) than the offer received from Brookfield under the *Asset Sale Transaction* (refer to paragraph 5). It is noted that the two Valuation Reports had adopted different valuation methods. The Valuation Report pertaining to the *Additional IP Transaction* is not available for the years 2014 and 2019.

17.10 As noted from the complaints made by ITC, the assets proposed to be sold through the *Asset Sale Transaction* constitute around 88% of the total networth of the Company as on March 31, 2018 while the residual assets would comprise only of the Leela Hotel, Mumbai and real estate in Hyderabad, etc. In this regard, I find that the Postal Ballot Notice did not contain the following critical disclosures that were required for enabling the shareholders to take an informed decision:

i. *The Valuation Reports of the assets to be sold, indicating the details of the Valuers and illustrating the methods adopted for the valuation;*
ii. *The valuation in respect of each of the Additional IP Transaction (including the difference with respect to 'Jamavar' trademark and the basis of the consideration arrived at), which is payable to the Promoters and their affiliates on one side and to HLVL, if any, in such Transaction.*

17.11 In view of the above, I am of the view that more disclosures were warranted in the Postal Ballot Notice, which would have enabled the shareholders to make an informed judgment.

18. **VIOLATION OF TAKEOVER REGULATIONS 2011:**

18.1 The relevant provisions of the Takeover Regulations 2011 as applicable during the time of conversion of debt into equity by JMF ARC, are reproduced as under:

3(1) No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

10. (2) The acquisition of shares of a target company, not involving a change of control over such target company, pursuant to a scheme of corporate debt restructuring in terms of the Corporate Debt Restructuring Scheme notified by the Reserve Bank of India vide circular no. B.P.BC 15/21.04, 114/2001 dated August 23, 2001, or any modification or re-notification thereto provided such scheme has been authorised by shareholders by way of a special resolution passed by postal ballot, shall be exempted from the obligation to make an open offer under regulation 3.

(6) In respect of any acquisition made pursuant to exemption provided for in this regulation, the acquirer shall file a report with the stock exchanges where the shares of the target company are listed, in such form as may be specified not later than four working days from the acquisition, and the stock exchange shall forthwith disseminate such information to the public.

(7) In respect of any acquisition of or increase in voting rights pursuant to exemption provided for in clause (a) of sub-regulation (1), sub-clause (iii) of clause (d) of sub-regulation (1), clause (h) of sub-regulation (1), sub-regulation (2), sub-regulation (3) and clause (c) of sub-regulation (4), clauses (a), (b) and (f) of sub-regulation (4), the acquirer shall, within twenty-one working days of the date of acquisition, submit a report in such form as may be specified along with supporting documents to the Board giving all details in respect of acquisitions, along with a non-refundable fee of rupees one lakh fifty thousand by way

of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board.

13. (1) The public announcement referred to in regulation 3 and regulation 4 shall be made in accordance with regulation 14 and regulation 15, on the date of agreeing to acquire shares or voting rights in, or control over the target company.

(2) Such public announcement,—

(a)…

…..

(g) 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.

18.2 As stated at paragraph 4, the acquisition by JMF ARC of 26% equity shareholding in HLVL had occurred pursuant to a conversion of part–debt amounting to approximately ₹275 Crore into equity, which had been approved by the Board of Directors along with the shareholders of the Company. It is pertinent to note that the CDR package had been declared as failed by the CDR Empowered Group on June 28, 2014. HLVL had made a corporate announcement with the stock exchanges (NSE and BSE) on July 2, 2014 *inter alia* informing that *CDR Empowered Group has approved the exit of our Company from CDR"*. HLVL had also reported the failure of CDR and exit from CDR system in its Annual Reports for the Financial Years 2014–15, 2015–16, 2016–17 and 2017–18. In this context, the following may be noted:

(i) Vide e–mails/letters dated June 18, 2019, June 25, 2019 and July 19, 2019, JMF ARC has *inter alia* submitted that the conversion of debt into equity was a consequence of occurrence of an event of default which has been provided for in clause 7.2 (e)(i) of the MRA. JMF ARC has also mentioned that Clause 8.3(b) of the MRA provided that in the event of revocation, the obligations of the Company and other obligors under the MRA and other CDR documents, shall continue to be binding on the Company and the obligors and the Lenders shall be entitled to exercise all rights and remedies conferred upon them pursuant to the CDR documents.

(ii) JMF ARC has stated that the acquisition of shares pursuant to the conversion of debt into equity was exempted under Regulation 10(2) of the Takeover Regulations 2011 on account of being pursuant to a scheme of CDR in terms of the CDR Scheme notified by RBI vide the Circular dated August 23, 2001. Further, JMF ARC had submitted that the aforementioned did not result in change in control in

the Company and had been approved by the shareholders of the Company by way of special resolution on September 18, 2017 read with the earlier shareholders' approval on March 28, 2013. JMF ARC had also submitted that although there was a delay of more than 500 days in making the disclosure under Regulation 10(6) and filing of Report under Regulation 10(7) of the Takeover Regulations 2011, the same was not done with a *mala fide* intention since necessary disclosures and compliances under Regulation 29(2) of the Takeover Regulations 2011 were made by the entity. Further, JMF ARC submitted that the aforesaid equity shareholding of 26% was held by it as a Trustee of JMFARC–Hotels June 2014–Trust [see paragraphs 4(iv) and (vi)].

(iii) SBI vide e–mails dated June 26, 2019 and July 22, 2019, had informed SEBI that although the failure of the CDR package would result in a withdrawal of concessions and other rights to the Company granted under CDR Scheme, the right to recourse for the Lenders would continue under the Master Restructuring Agreement. Further, SBI also stated that Clause No.7.2 (e) (i) of the Master Restructuring Agreement (Remedies on Event of Default) permits the Lenders to convert loan into equity in the event the Company defaults in repayment/payment of Principal amount of facilities or instalment under CDR package. Accordingly, on the occurrence of event of default by the Company, the right of conversion was exercised by JMF ARC, which is in accordance with aforesaid clause of MRA.

(iv) Vide an e–mail dated July 19, 2019, JMF ARC had *inter alia* submitted that conversion of debt into equity was done pursuant to exercise of rights by JMF ARC under the Master Restructuring Agreement and the same was not a statutory conversion under the provisions of Section 9(1)(g) of the SARFAESI Act. Further, JMF ARC had submitted that although the RBI Guidelines dated January 23, 2014, which permitted conversion of debt into equity in accordance with the aforesaid Section 9(1)(g) to a maximum of 26% of the equity shareholding of the Company was not applicable to the conversion, JMF ARC had nonetheless followed the spirit of the said Guidelines limiting its post–conversion equity shareholding to 26%.

18.3 I note that under the provisions of the Takeover Regulations 2011, an acquisition pursuant to the provisions of the SARFAESI Act is exempted under Regulation 10(1)(e) from the requirement of making an open offer under Regulations 3 and 4 therein. Similarly, an acquisition of shares not involving a change of control over the Target Company, pursuant to a corporate debt restructuring in terms of the CDR Scheme notified by RBI vide Circular dated August 23, 2011 is exempted under Regulation 10(2) of the Takeover Regulations 2011 (which has since been omitted w.e.f March 29, 2019) from the requirement of an open offer under Regulation 3 therein provided that such Scheme has been authorised by the shareholders by way of a special resolution. The acquisition of 26% equity shareholding by JMF ARC, an asset reconstruction company registered with the RBI, had been pursuant to the enforcement of the rights assigned to it by the Lenders under the Master Restructuring Agreement, which were transmitted to JMF ARC by the Lenders by virtue of the Assignment Deeds. I note that the acquisition by JMF ARC has happened as a fall out of the failure of the CDR package, which admittedly has been confirmed by HLVL. Even though it is accepted that the rights of recovery under the CDR package stand transferred to JMF ARC, the contention of the ARC that the subject transaction is exempt under Regulation 10(2) of the Takeover Regulations 2011, it being a part of CDR, is not acceptable.

18.4 In the circumstances, the question that arises for consideration is whether the debt conversion done by JMF ARC attracts the rigors of an Open Offer or not. The answer to the question would depend on (i) whether JMF AMC resorted to debt conversion so as to circumvent the provisions of the Takeover Regulations 2011 (both Regulations 3 and 4) and (ii) whether it has breached any threshold prescribed by its sectoral regulator i.e. RBI.

18.5 Upon an examination of the documents on record, it is noted that Security Receipts were issued by JMF ARC to the Lenders in the ratio of their contribution to the JMF ARC–Hotels June 2014–Trust (refer to Table V below). Further, in its capacity as the Trustee of JMF ARC–Hotels June 2014–Trust, JMF ARC holds approximately 26% equity shareholding in the Company for the benefit of the Lenders/Security Receipt holders.

TABLE IX – DETAILS OF SECURITY RECEIPT HOLDERS AND % OF SHAREHOLDING IN HLVL

	NAME	NUMBER OF SECURITY RECEIPTS ISSUED	% OF BENEFICIAL INTEREST IN EQUITY SHARES
1.	STATE BANK OF INDIA	46,19,160	3.35
2.	STATE BANK OF HYDERABAD	4,17,303	0.30
3.	STATE BANK OF BIKANER & JAIPUR	5,17,188	0.37
4.	STATE BANK OF TRAVANCORE	9,96,870	0.72
5.	STATE BANK OF MYSORE	15,98,940	1.16
6.	STATE BANK OF PATIALA	3,81,376	0.28
7.	VIJAYA BANK	16,26,576	1.18
8.	BANK OF BARODA	15,91,833	1.15
9.	BANK OF INDIA	48,27,614	3.50
10.	INDIAN OVERSEAS BANK	36,79,536	2.67
11.	UNION BANK OF INDIA	25,78,201	1.87
12.	SYNDICATE BANK	72,40,632	5.25
13.	ORIENTAL BANK OF COMMERCE	2,17,929	0.16
14.	EXIM BANK	21,62,319	1.57
15.	JM FINANCIAL ASSET RECONSTRUCTION COMPANY LIMITED	24,00,730	2.17
16.	GOLDMAN SACHS INVESTMENT MAURITIUS LIMITED	60,47,493	0.29
17.	JM FINANCIAL PRODUCTS LIMITED	2,00,000	0.01
	TOTAL	**4,11,03,700**	**26.00**

18.6 It is also noted that JMF ARC is acting in its capacity as a Trustee of the JMF ARC–Hotels June 2014–Trust for the benefit of Security Receipt holders and is exercising the voting rights as a shareholder of the Company primarily for the purpose of recovering the outstanding dues from the Company. In other words, the acquisition is in spirit, for safeguarding the existing Lenders' rights to recover their dues from the Company and not for the purpose of effecting a change of management/control in the Company.

18.7 The aim underlying the debt conversion as seen from the documents is to resolve the debt or restructuring the same. As the ARC is operating in a representative capacity as a Trustee of JMF ARC–Hotels June 2014–Trust, it is difficult to infer an intention of takeover behind the acquisition of shares.

18.8 As regards the threshold, at the time of conversion, the limit by RBI for conversion of debt into equity for ARCs was 26%. In this regard, I note that JMF ARC has submitted that although limit of 26% prescribed by RBI vide its Circular dated January 23, 2014, was not applicable for this transaction, nevertheless, the acquisition by JMFARC was within the aforesaid limit.

18.9 In view of the above, the acquisition of 26% equity shareholding by JMF ARC is technically in breach of the Takeover Regulations 2011 as the acquisition is neither pursuant to the provisions of the SARFAESI Act nor under the CDR package. At the same time, as the transaction is substantially fit for exemption under the Takeover Regulations 2011 for the reason that it is an action on behalf of the Lenders, JMF ARC ought to have approached SEBI seeking an exemption from Open Offer obligations under the aforesaid Regulations.

19. **VIOLATION OF SEBI CIRCULAR DATED MARCH 10, 2017:**

19.1 It is observed that the Company has not structured the transaction in the form of a *'Scheme of Arrangement'*. Therefore, the issue of violation of the provisions of the SEBI Circular dated March 10, 2017, does not arise. Likewise, the question of the Company having to necessarily structure the transaction as a *'Scheme of Arrangement'* to be approved by a Court or NCLT does not arise in the aforesaid circumstances. In this context, it is also noted that the complainants have not pointed towards any violation of any specific provision of law. The SEBI Circular dated March 10, 2017, appears to have been cited out of context. Moreover, under the Companies Act, the Company has the flexibility to sell its assets through different structures as may be feasible/suitable to the Company.

20. WRONG DISCLOSURES IN ANNUAL REPORT – LIABILITY TO AAI RELATING TO THE MUMBAI HOTEL:

20.1 As regards the allegation of wrong disclosures in the Annual Report of HLVL regarding its liability to AAI towards its Hotel in Mumbai, HLVL has contended that ITC had itself pointed out that prior to the month of March 2019, AAI had made claims of ₹38.77 Crore and ₹311.19 Crore with respect to the Leela Hotel, Mumbai, which is recorded in the financial statements of the Company for the year ended March 31, 2018 and the Quarter ended December 31, 2018. HLVL has stated that it has not accepted AAI's claim and is contesting it.

20.2 The claim of AAI though contentious, HLVL has to ensure proper disclosures of the material litigations in the Notes to financial statements along with the monetary impact, being part of the Company's contingent liabilities. Hence, HLVL is directed to ensure disclosures of the extent of liability to its shareholders.

21. CONCLUSION:

21.1 The instant case has emanated from the complaints received by SEBI from the minority shareholders of the Company alleging violations of the Companies Act and the provisions of securities law administered by SEBI. In this regard, upon a *prima facie* consideration of the matter, SEBI had deemed it appropriate to issue directions against HLVL on April 23, 2019, to not act upon the *Asset Sale Transaction* (as referred to in paragraph 5) and *Additional IP Transaction* (as referred to in paragraph 6) in the interests of the shareholders of the Company, pending examination of the matter. It is also a matter of concern from the shareholders' perspective that further delay in execution of the *Asset Sale Transaction/Additional IP Transaction* may lead to further deterioration of the asset value of the Company.

21.2 Upon a detailed examination of issues as above, it emerges that the proposed *Asset Sale Transaction/Additional IP Transaction* do not qualify as *'related party transaction'* except for the limb of the transaction that is proposed by HLVL along with its Promoters/affiliates with respect to the transfer of *'Jamavar'* trademark to Brookfield. As regards the disclosures made in the Postal Ballot Notice, as observed earlier in the preceding paragraphs, there are serious shortcomings, which are critical to the decisions of the shareholders. The shareholders should have been allowed to inspect all the Valuation Reports in respect of the proposed transaction for taking an informed decision. Further, HLVL has also failed to disclose the material litigation relating to AAI's claim in respect of the Leela Hotel, Mumbai, in its financial statements. As regards the conversion of debt into equity by JMF

ARC, it is noted that the same amounts to a technical violation of the Takeover Regulations 2011 by not having sought an exemption from SEBI.

ORDER:

22. In view of the foregoing, I, in exercise of the powers conferred upon me by virtue of Section 19 read with Section 11(1) and Section 11B of the SEBI Act, hereby issue the following directions:

A. HLVL shall provide the following additional disclosures in the Postal Ballot Notice:

i. All relevant details of each of the sale transactions including *Asset Sale Transaction* and *Additional IP Transaction* with specific information identifying the transactions between the Company and Brookfield and the Promoters and Brookfield including the amounts involved therein under separate tables with the split consideration amounts for each head, and

ii. Details of valuation of both the *Asset Sale Transaction* and *Additional IP Transaction* including the methods adopted by the Company.

iii. During the course of the Postal Ballot, the Valuation Reports shall be kept for inspection by the shareholders of HLVL.

iv. The *Asset Sale Transaction* of the Company along with the *Additional IP Transaction* of the Promoters/Promoters' affiliates (excluding the *'related party transaction'* involving transfer of *'Jamavar'* trademark), shall be put to vote by HLVL before its shareholders, afresh.

B. The *Additional IP Transaction* concerning the *'related party transaction'* involving transfer of *'Jamavar'* trademark, shall separately be put to vote by HLVL before its shareholders afresh, in case such valuation in respect of the *'Jamavar'* trademark exceeds 10% of the annual consolidated turnover of HLVL, as per the last audited financial statements. The Promoters/Promoter Group of HLVL shall not participate in the aforementioned voting process.

C. HLVL shall make all material disclosures including the litigation relating to the claim of AAI with respect to the Leela Hotel, Mumbai, in the Postal Ballot Notice and in the financial statements in the Annual Report.

23. SEBI may initiate adjudication proceedings under the SEBI Act against JMF ARC for its failure to ensure compliance with the applicable provisions of the Takeover Regulations, as deemed fit and appropriate.

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

25. This Order shall be served on all recognized Stock Exchanges and Depositories.

Place: Mumbai
Date: July 23, 2019

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA