

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

INTERIM ORDER CUM SHOW CAUSE NOTICE

Under Sections 11(1), 11(4), 11(4A), 11B (1) and 11B (2) of the Securities and Exchange Board of India Act, 1992 read with Rule 4 (1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995

In respect of:

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

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

In the matter of Royal Orchid Hotels Limited

1. Background –

- 1.1. Securities and Exchange Board of India (“**SEBI**”) received a complaint dated August 29, 2022 (“**Complaint**”) against Royal Orchid Hotels Limited (“**ROHL**”/ “**Company**”). In the said complaint, it was *inter alia* alleged that ROHL, despite having control over Ksheer Sagar Developers Pvt. Ltd. (“**KSDPL**”), did not

include KSDPL as a subsidiary company in its consolidated financial statements for the Financial Year (“FY”) 2021-22, and by doing so, the Company had overstated/inflated its profit for the said FY.

1.2. The Company is engaged in operating hotels and providing other allied services. Under its brand, the Company operates more than seventy-five (75) hotels in more than forty eight (48) locations. The Company has its headquarters in Bengaluru, and is listed on the BSE and the National Stock Exchange of India Limited (“NSE”) since February 2006.

1.3. From the financial statements filed by the Company with the stock exchanges for FY 2021-22, it was noted that ROHL had reported significant increase (by 166.94%) in its consolidated profit after tax and positive increase (by 444.12 %) in the exceptional items. Further, exceptional items accounted for 83.87% of the profit before tax of the Company. The value of the exceptional items was 520% of the Company’s profit before exceptional items & tax. The financial overview of ROHL for FY 2020-21 and FY 2021-22 is tabulated below:

Table – 1

(Rs. in Lakh)

Particulars	FY 2020-21	FY 2021-22	% Change
Total Income	8,883.91	15,593.13	75.52
Total Expense	12,757.61	15,111.28	18.45
Profit/(Loss) before exceptional items & tax	(3,873.70)	481.85	112.44
Exceptional items	(728.05)	2,505.34	444.12
Profit / (loss) before tax	(4,601.75)	2,987.19	164.91
Profit / (loss) after tax	(4,001.34)	2,678.46	166.94

(Source: Annual Reports of ROHL)

1.4. A preliminary examination into the allegations was carried out by SEBI, and subsequently the matter was referred to the NSE for its independent examination.

- 1.5. Upon completion of examination by NSE, an examination report dated December 30, 2022 was submitted by NSE to SEBI. By way of the said examination, NSE came to the following conclusion :
- 1.6. *“Considering section 2(87) and section 2(27) of Companies Act, 2013, clause 76A of Articles Of Association of KSDPL and IND AS 110, it appears that ROHL has power and ability to use its power over KSDPL and earns variable returns from its involvement in KSDPL. Thus, KSDPL should have been consolidated by ROHL in FY 2021-22.”*
- 1.7. Considering that the conclusion of the NSE report was in line with the allegations made against the Company in the afore-mentioned Complaint, SEBI initiated an investigation in the matter. The focus of investigation was to ascertain whether ROHL had misrepresented/misstated its consolidated financial statements while accounting for one of its subsidiary companies (KSDPL) for FY 2021-22 and whether the said misrepresentation/ misstatement, if any, was in violation of the provisions of Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”), SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**LODR Regulations**”), SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (“**PFUTP Regulations**”). The period of investigation was FY 2021-22. However, wherever deemed necessary, references were made to events/timeframes outside the said period of investigation.
- 1.8. The investigation in the matter has been concluded. In light of the findings brought out pursuant to investigation in the matter, a *prima facie* determination is being made by way of this Interim Order cum Show-cause Notice.

2. Classification of KSDPL from Subsidiary to Associate of ROHL –

- 2.1. On April 18, 2007 a Memorandum of Understanding (“**MoU**”) was executed amongst a) Royal Orchids Hotels Limited; b) Ksheer Sagar Developers (P) Limited, Ksheer Sagar Buildcon (P) Limited, Rajkamal Buildcon (P) Limited

and J.H. Builders (P) Limited; and c) Jagdish Tambi, Sumitra Tambi, Rajesg Tambi, Rupesh Tambi and Ratnesh Tambi (“**Tambi Group**”) with respect to the construction and operation of a hotel under the Royal Orchid brand in Jaipur, Rajasthan.

2.2. Consequent to the above arrangement, a hotel was constructed in Jaipur, currently being owned and operated by KSDPL. The Tambi Group and ROHL each hold 50% of the total shareholding in KSDPL.

2.3. On March 04, 2022, by way of a notice to the stock exchanges, ROHL *inter alia* announced that KSDPL was no longer a subsidiary of ROHL and was classified as a joint venture/associate company. Prior to March 04, 2022, Ksheer Sagar Buildcon (P) Limited, Rajkamal Buildcon (P) Limited, J.H. Builders (P) Limited and KSDPL were classified as subsidiaries of ROHL. It was further informed that as per the MoU executed between ROHL and the Tambi Group, the Board of Directors of KSDPL would consist of five (5) Directors, out of which three (3) would be nominated by ROHL and two (2) by the Tambi Group. ROHL also informed that at the Extraordinary General Meeting (“**EGM**”) of KSDPL held on March 02, 2022, two Independent Directors were appointed. So, the Board of KSDPL post-March 02, 2022 comprised of seven (7) Directors, of which only three (3) were the nominees of ROHL. So, the number of Directors that ROHL had the power to nominate did not constitute the majority on the Board of KSDPL. On the basis of this reasoning, the Company through its notice dated March 04, 2022, informed that KSDPL had ceased to be a subsidiary company of ROHL and was classified as a joint venture company of ROHL.

2.4. Pursuant to the above announcement, ROHL considered KSDPL as an associate company w.e.f. March 02, 2022 (date of appointment of Independent Directors on KSDPL’s Board) and accordingly prepared and published its consolidated financial statements for FY 2021- 22 on May 30, 2022, excluding the financials of KSDPL as a subsidiary from its financial statements.

2.5. In this regard, upon initiation of investigation by SEBI, ROHL was advised to provide detailed explanation and factors for not considering KSDPL in the consolidated financial statements as its subsidiary. In response, the company *vide* letter dated January 28, 2023, *inter alia* submitted the following:

2.5.1. ROHL received a notice of the EGM meeting from KSDPL on February 08, 2022 regarding proposal for appointment of two Independent Directors. Accordingly, an impact assessment was done by the ROHL management regarding the legal, compliance and financial implications on the appointment of Independent Directors.

2.5.2. Regarding financial compliance implications, Amit Jaiswal, Chief Financial Officer (“CFO”) of ROHL did a detailed research and intimated to Chander Kamal Baljee (“CK Baljee”), Chairman and Managing Director (“CMD”) of ROHL that as per IND AS 110, the Holding-Subsidiary relationship between ROHL and KSDPL would end, and KSDPL was required to be treated as an associate company during the consolidation of financial statements. As regards compliance of the Companies Act, 2013, Dr. Ranabir Sanyal, Company Secretary of ROHL also obtained a “Company Law opinion” dated March 01, 2022 from G. Shankar Prasad, a practising Company Secretary, which reiterated that the Holding-Subsidiary relationship between ROHL and KSDPL would end consequent to the appointment of two Independent Directors on the Board of KSDPL, unless anything was done viz., a supplementary MOU, which would enable ROHL to appoint such number of directors on the board of KSDPL that would put the nominees of ROHL in majority notwithstanding the presence of Independent Directors.

2.5.3. Based on the above, CK Baljee, CMD of ROHL, in order to comply with the statutory regulations which were triggered due to the appointment of the two Independent Directors on the Board of KSDPL, concluded that KSDPL would cease to be a subsidiary of ROHL and be treated as an associate company under joint venture category w.e.f. March 02, 2022. The stock exchanges were accordingly, intimated *vide* notice dated March 04, 2022.

2.6. The letter dated January 28, 2023 also refers to an opinion dated December 01, 2022 given by a firm of Chartered Accountants, S. Ramanand Aiyar & Co. Also, as has been stated above, an opinion dated March 01, 2022 was received from G. Shankar Prasad, a practising Company Secretary. The said opinions *inter alia* state the following:

2.6.1. With respect to the voting rights, ROHL and Tambi Group both held equal stake of 50% in KSDPL. So, they had similar voting rights and quantum of shares.

2.6.2. The Article of Association ("**AoA**") of KSDPL, did not have a clause which provided any right to any party, ROHL or Tambi Group, to remove a Director. ROHL, before March 02, 2022, through Board majority, had the right to appoint/ remove Key Managerial Personnel ("**KMP**") like Hotel GM and Hotel Finance Controller. However, from March 02, 2022 onwards, ROHL did not have majority in the Board, and hence, would not have unanimous power to appoint/ remove KMPs. Power of appointment of KMPs/ Directors was with the Board in accordance with the AoA of KSDPL.

2.6.3. ROHL was not in a position to enter/veto any decision as it did not have the majority in KSDPL's Board of Directors. Accordingly, it did not have rights to direct KSDPL to enter into or veto any changes to, transactions for the benefit of ROHL.

2.6.4. The composition of the Board of KSDPL forms the basis of Holding-Subsidiary relationship between ROHL and KSDPL. The appointment of Independent Directors was the event which resulted in loss of control by ROHL and accordingly, ROHL did not hold majority in the Board to direct the relevant activities of KSDPL. As per the AoA of KSDPL, ROHL had a right to appoint a maximum of five Directors and the Tambi Group to appoint a maximum of four Directors, however, ROHL still will not have a majority of the Board as it would have only five Directors out of total 11 Directors (ROHL-5, Tambi Group-4 and Independent Directors-2).

2.6.5. So, from the effective date of appointment of two Independent Directors i.e., March 02, 2022, the Holding-Subsidiary relationship between ROHL and KSDPL would cease to exist.

3. Holding-Subsidiary Relationship between ROHL and KSDPL –

3.1. ROHL, in its submissions, has *inter alia* stated that pursuant to the new composition of the KSDPL Board with three Directors from ROHL, two Directors from Tambi Group and two Independent Directors, the Company was no longer in the majority on the KSDPL Board and accordingly, KSDPL ceased to be considered as a subsidiary by ROHL w.e.f. March 02, 2022. So, ROHL considered composition of the Board of Directors of KSDPL as the trigger point for its decision to consider it an associate company instead of a subsidiary company.

3.2. In this regard, it is stated that the Holding-Subsidiary relationship is defined in the Companies Act, 2013 and the Accounting Standard, Ind AS 110. The said provisions are reproduced hereunder:

3.2.1. Section 2 (87) of the Companies Act, 2013: “*subsidiary company*” or “*subsidiary*”, in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed. Explanation.—For the purposes of this clause,—

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(b) the composition of a company’s Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

(c) the expression “company” includes any body corporate;

(d) “layer” in relation to a holding company means its subsidiary or subsidiaries;”.

3.2.2. Section 2(27) of the Companies Act, 2013 defines ‘control’ as under:

“control” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders’ agreements or voting agreements or in any other manner;”.

3.2.3. IND AS 110 also defines ‘control’ to identify whether an investor controls an investee. It *inter alia* provides that an Investor controls an investee if the investor has all the following:

- a) Power over the investee and current ability to direct the relevant activities;
- b) Exposure, or rights, to variable returns from its involvement with the investee; and
- c) The ability to use its power over the investee to affect the amount of the investor’s returns.

3.2.4. The same accounting standard further states that power over an investee arises when the investor has existing rights (even if it they are yet to be exercised) that give the current ability to the investor to direct the relevant activities, i.e. the activities that significantly affect the investee’s returns.

3.3. From the provisions brought out above, it is gathered that the following factors need to be considered for assessing whether KSDPL is still a subsidiary of ROHL even after appointment of two Independent Directors on the Board of Directors of KSDPL:

3.3.1. ROHL’s control/power over the composition of the Board of Directors of KSDPL;

3.3.2. ROHL’s current ability to direct the relevant activities of KSDPL;

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

3.3.4. ROHL's ability to use its power over KSDPL to affect its returns.

The said factors are discussed and examined in detail in the subsequent paragraphs.

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

Voting Rights of ROHL

3.4. KSDPL was incorporated in 1995, and owns and operates a 5-star hotel under the name of '*Hotel Royal Orchid*' in Jaipur. The said hotel is a 50:50 Joint Venture (JV) between ROHL and the Tambi Group. ROHL and the Tambi Group both hold 50% stake in KDSPL and accordingly, it has been claimed by ROHL that both the entities had equal voting rights in KDSPL.

3.5. It is observed that ROHL and Tambi Group executed the MoU on April 18, 2007 for operating and managing the said hotel property. Clause 16 of the MoU provides that the Board of Directors of KSDPL will have a Chairman from ROHL.

3.6. Further, the AoA of KSDPL dated May 19, 1995 and modified on March 30, 2018, stipulates that in case of an equality of votes, the Chairman shall be entitled to a second or casting vote. In this regard, Clause 63 of the AoA is reproduced hereunder:

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

3.7. Thus, the MoU executed between ROHL and Tambi Group and further, the AoA of KDSPL *inter alia* state that the right of appointment of Chairman of KSDPL's Board shall be with ROHL, and the Chairman, appointed by ROHL, shall be entitled to a second or casting vote in case of an equality of votes in

the a meeting of the Board of KSDPL. In this regard, it is observed that ROHL appointed its CFO (Amit Jaiswal) as the Chairman of the KSDPL. Notably, he is still designated as Chairman even after ROHL ceased to consider KSDPL as its subsidiary.

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

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

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

3.10. With respect to the ROHL's right to remove or appoint Directors on KSDPL's Board, the following were observed:

Right to appoint majority of Directors

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

"76A. Board of Directors in the company shall constitute of 5 Directors of which 3 Directors shall be nominated by Royal Orchid Hotels Limited and 2 Directors shall be nominated by Tambi Group. The number of Directors can be increased to 9 Directors, of which 5 Directors shall be nominated by Royal Orchid Hotels Limited, and 4

Directors by Tambi Group. However, if and when any need arises, then Independent Directors per se or of any Financial Institution/ PSU Bank/ Private Bank may be taken on the Board of Directors of the Company”

Right to removal of Director

3.10.2. Section 169 (1) of the Companies Act, 2013, which deals with the removal of Directors *inter-alia* provides that a company may, by ordinary resolution, remove a Director.

3.10.3. Therefore, in terms of the abovementioned Clause 16 of the MoU (paragraph 3.5) and Clause 63 of the AoA of KSDPL (paragraph 3.6) read with the provisions of Section 114(1) (paragraph 3.9) and Section 169(1) (paragraph 3.10.1) of the Companies Act, 2013, it is observed that ROHL, by exercising the second or casting vote through the Chairman of KSDPL, who holds decisive voting right, has the power to pass an ordinary resolution, enabling ROHL to remove a director from KSDPL's Board at its discretion.

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

3.10.5. In this regard, it is important to mention that two Independent Directors appointed on the KSDPL Board w.e.f. March 02, 2022, have neither been re-appointed for a second term under section 149 of the Companies Act,

2013, nor is KSDPL a listed entity. So, a special resolution would not be required to remove these Independent Directors. Also, as the Independent Directors have been appointed through ordinary resolution, unless they are re-appointed for a second term under Section 149 of the Companies Act, 2013, they can be removed through ordinary resolution, which is well within the rights and control of ROHL.

3.10.6. In view of the above, ROHL holds the right to remove as well as appoint majority of Directors on the KSDPL Board. Hence, the claim of ROHL stating that there was no clause in KSDPL's AoA which provided any right to any party, ROHL or Tambi Group, to remove a director, is not correct.

3.10.7. Further, ROHL has also claimed that the composition of the Board of KSDPL formed the basis of the Holding-Subsidiary relationship between ROHL and KSDPL. However, Section 2 (87) of the Companies Act, 2013 clearly states that the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors. Hence, the contention of ROHL that the composition of KSDPL Board was the basis for the Holding-Subsidiary relationship instead of the control on the composition of KSDPL Board is also not correct.

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

3.11. ROHL and Tambi Group executed the MoU with respect to the operation of Royal Orchids Hotel - Jaipur through KSDPL. As per the MoU, a brief summary of the rights/controls in respect of the various activities/aspects of Royal Orchids Hotel – Jaipur exercised respectively by ROHL and the Tambi Group is provided hereunder:

Table – 2

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

- 3.12. As indicated in the above table, it is observed that the rights/control relating to operations, management, supervising, service & directions, etc. of the hotel are with ROHL. Further, ROHL also had the capacity of taking major decisions including construction, architecture, having the sole responsibility of completing the hotel project in all aspects and commencing the operations, statutory audit and appointment of Chairman of KSDPL.
- 3.13. Further, ROHL vide letter dated January 28, 2023 *inter alia* has admitted that it was able to direct relevant activities viz. selling and purchasing of goods or services, managing financial assets during their life, selecting acquiring or disposing of assets and determining a funding structure or obtaining funding in accordance with IND AS 110, in respect of KSDPL.
- 3.14. In this regard, Amit Jaiswal, Chairman of KSDPL and also CFO of ROHL, in his statement recorded on February 23, 2023 has *inter alia* stated that all the operations of KSDPL were being taken care of by ROHL. Further, the key persons who head the operations of KSDPL and who are also the employees of ROHL are as follows:
- 3.14.1. Perkin Rocha-Senior Vice President, who looks after the operations of north India, including KSPDL in Rajasthan;
 - 3.14.2. Sachin Souvarna, CFO of KSDPL;
 - 3.14.3. Mr. Ajit Prasad-Area General Manager of KSDPL, Rajasthan.
- 3.15. Further, CK Baljee, CMD of ROHL in his statement submitted that *“As per the MOU dated April 18, 2007, operations and management right were with ROHL, and therefore, in addition to the Chairman of KSDPL, General Manager (GM - operations) to look after whole operations of KSDPL has been appointed by ROHL to have control on the hotel operations. With respect to revenue/ sell, the property has been doing good except COVID duration, However, profit of KSDPL was negative on account of certain major expenditure items such as depreciation, interest etc.”*
- 3.16. In view of the above, it is observed that KSDPL’s operations are significantly in the hands of ROHL as decisions/rights on critical and significant portion of

the hotel activities viz. operations, management, services, repair, maintenance, etc. are taken by ROHL. Thus, ROHL being the operator of the hotel operations of KSDPL was evidently capable to direct the relevant activities of KSDPL. Hence, ROHL has existing rights that give it ability to direct the relevant activities, i.e. activities that significantly affect KSDPL's returns.

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

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

ROHL's ability to use its powers to affect returns

3.18. The list of rights vested with ROHL and its employees working in senior positions viz. CFO, Head-operations, clearly indicate that ROHL has greater amplitude of rights/powers, variability with its economic interests/remunerations in respect of the hotel property being operated by KSDPL in the name of 'Royal Orchid Hotel'. The same also establishes ROHL as a principal entity and therefore, a decision maker. Further, ROHL has also the ability to use its power (removing/appointing Director) over KSDPL to affect the amount of its returns/ profitability.

3.19. It is evident that ROHL has substantive powers/control on the composition of the KSDPL Board. It has the power/authority to appoint majority of the Directors of KSDPL and also to remove the Directors on KSDPL's Board of Directors, which is the governing body that directs the relevant activities of KSDPL. Further, having been involved in relevant activities of KSDPL, it has also exposure/rights to variable returns. The company is also having current and

practical/ unconditional ability to exercise its decisive power in the form of casting vote by the Chairman of KSDPL (Amit Jaiswal, who is also designated as CFO of ROHL) to affect the returns.

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

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

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

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

“Ksheer Sagar Developers Private Limited (“subsidiary company”) has suffered a loss of Rs. 524.35 lakhs during the year and has an accumulated deficit Rs. 6,053.66 lakhs as at 31 March 2021. The subsidiary company's current liabilities exceed its current assets by ₹3,461.01 lakhs as on the Balance Sheet date. While these factors would normally indicate the existence of a material

uncertainty which may cast significant doubt about the Company's ability to continue as a going concern, the Company is taking steps towards improving operating cash flows through term loan restructuring plan for improving operating cash flows through cost synergies, exploring avenues of enhancing revenues, operational and financial support from its shareholders...."

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

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

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

4.3. Thus, pursuant to the announcement made by ROHL on March 04, 2022 of not considering KSDPL as its subsidiary, ROHL de-recognised all the assets and liabilities of KSDPL from the date of loss of control i.e. March 02, 2022. Accordingly, ROHL treated KSDPL as an associate company and recorded a measurement gain of Rs. 23.16 crore under exceptional item in the Consolidated Financial Statements for FY 2021-22.

4.4. In this regard, it is observed that for FY 2020-21 ROHL had consolidated losses after tax of Rs. 40 crore. However for FY 2021-22, it declared a net profit after tax of Rs. 26.78 crore. This significant improvement i.e. 166.94% rise in the net profit was majorly attributable to re-measurement gain of Rs. 23.16 crore on account of treating KSDPL as an associate company instead of a

subsidiary. A brief impact analysis on ROHL's consolidated financial statements is given below:

Table – 3

(INR in Lakhs)

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

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

4.6. In this regard, Regulation 33(3)(b) of the LODR Regulations *inter alia* stipulates that in case the listed entity has subsidiaries, it shall also submit quarterly/year-to date consolidated financial results. Also, Regulation 48 of the SEBI (LODR) Regulations, 2015 states that "The listed entity shall comply with all the applicable and notified Accounting Standards from time to time."

4.7. Further, Section 129(3) of the Companies Act, 2013 also *inter alia* states that a company having subsidiaries including associate company and joint venture, shall prepare a consolidated financial statements in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement.

4.8. Thus, ROHL should have reported a consolidated profit of Rs. 3.63 crore instead of the profit of Rs. 26.78 crore. Had the company considered KSDPL as its subsidiary in the consolidated financial statements, the investors would have been aware about the actual consolidated net profit of Rs. 3.63 crore which was 6 times less than the profit reported by ROHL. Therefore, incorrect and false information regarding the profit was disclosed to the investors/shareholders based on which they take decisions to buy/ sell stocks. Hence, the consolidated financial statements as prepared and published by ROHL for FY 2021-22 did not depict the true and fair financial position of the Company.

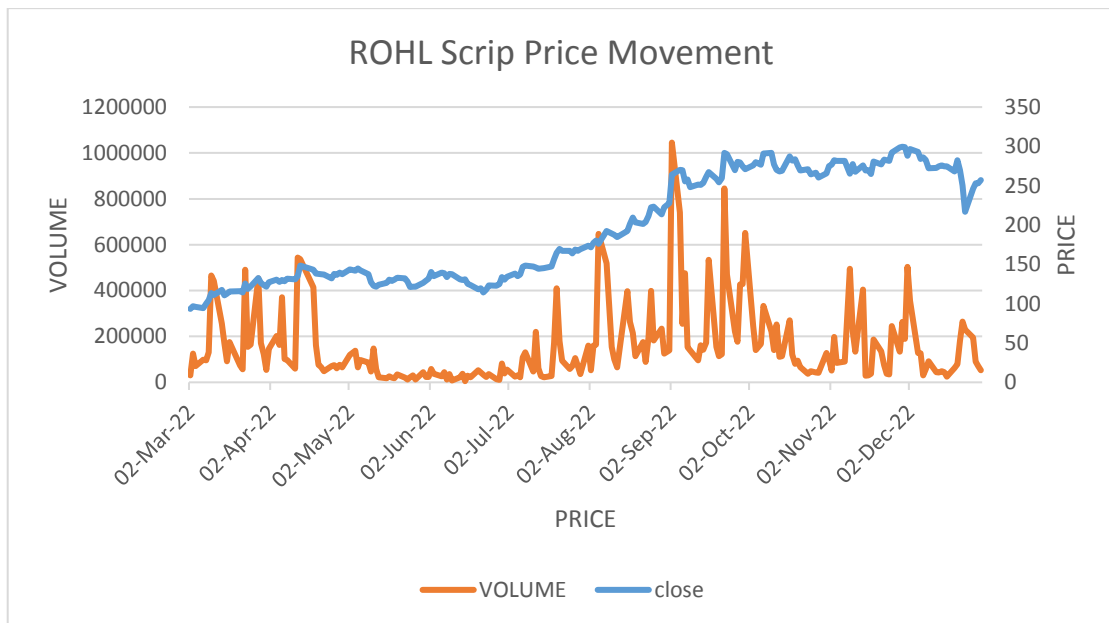
4.9. In light of the same, it is alleged that ROHL was under obligation to consolidate its accounts with KSDPL as a subsidiary instead of an associate company. However, it failed to do so which led to misrepresentation/misstatement of the Company's consolidated net profit/loss for FY 2021-22.

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

—

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

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



5.3. Considering the steep rise in the price of ROHL's scrip, all the announcements made by the ROHL at the exchange platform during January 2022 to December 2022 were analysed. It is observed that no event or announcement had been made by the Company during the period that could cause/ create such positive sentiments in the securities market resulting in a price surge of 171%.

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

6. Share offloaded by ROHL's Promoters for making gains –

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

6.2. The promoters' shareholding in ROHL reduced from 67.78% in January 2022 to 63.60% in December 2022. It is observed that CK Baljee, Promoter & CMD

and Keshav Baljee, Promoter & Director of ROHL offloaded large number of their shares between March 2022 to November 2022.

- 6.3. CK Baljee offloaded a total of 8,04,336 shares. He sold 7,04,336 shares at a weighted average price between Rs. 124.50 and Rs. 275.45 in the open market during March-November, 2022 and the remaining 1,00,000 shares were transferred to his wife, Sunita Baljee (through gift) in an off market transaction. More pertinently, C K Baljee purchased 37,878 shares at an average price of Rs. 132.22 on June 29/30, 2022. Further, Keshav Baljee disposed of all his holding in ROHL i.e. 4,40,916 shares at the weighted average price of Rs. 275.49 in two trading days i.e. September 28 and 30, 2022.
- 6.4. Based on the scrip price on the date of the Company's announcement for not considering KSDPL as a subsidiary and the date of selling the shares, quantum of gains made by CK Baljee and Keshav Baljee are estimated below.

CK Baljee's gains:

Table — 4

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

Keshav Baljee's gains:

Table – 5

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

6.5. In this regard, CK Baljee in his statement has *inter alia* submitted that –

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

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

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

profit accrued to CK Baljee and Keshav Baljee amounts to Rs. 12.92 crore and Rs. 7.91 crore respectively.

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

7. Alleged Violations of the Company and Promoters/Directors –

Alleged Violations by the Company

- 7.1. As discussed above, ROHL wrongly classified KSDPL as an associate company instead of a subsidiary and published financial statements for FY 2021-22, thereby showing an overstated/ inflated consolidated profit of Rs. 26.78 crore instead of Rs. 3.63 crore (Table 1).
- 7.2. Influenced by the overstated profit of ROHL, the scrip price surged multiple times (171% from March 04, 2022 to December 30, 2022) and based on this significant price rise, the promoter group entities, viz. CK Baljee and Keshav Baljee, offloaded their holding and made total gain of Rs. 20.83 crore.
- 7.3. Hence it is alleged that ROHL misrepresented/misstated/manipulated its consolidated financial statements for FY 2021-22 to defraud the investors for implementation of a plan, device and artifice in violation of Section 12A (a), (b), (c); Regulations 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations; and Regulations 4(1), 33(1)(a), 33(1)(c), 33(3)(b), 34(2)(b), 34(3) and 48 of LODR Regulations.

Alleged Violations by the Promoters/Directors/KMPs

Violations by Promoters/Directors (Chander K Baljee / Keshav Baljee)

7.4. It is noted that investigation has examined the individual roles of the above mentioned Noticees, who were Directors / Promoters / KMPs and were at the helm of affairs of the Company during the relevant times/ investigation period.

7.5. The details of the board meetings attended by Chander K Baljee and Keshav Baljee during the FY 2021-22 and FY 2022-23 (till December 31, 2022) are provided below.

Table – 6

Name of the Director	Designation	Particulars of Attendance of Board Meeting.	
		FY 2020-21	FY 2021-22
Chander K Baljee	Chairman & Managing Director	6	4
Keshav Baljee	Director	5	4

(Source: ROHL's email)

7.6. CK Baljee is a Promoter, Chairman and Managing Director and also a KMP of the Company as per the Companies Act 2013 and the SEBI (LODR) Regulations, 2015. Further, being a Promoter and the CMD, he has been associated with ROHL since 2010, and has attended all the Board meetings of ROHL held during the investigation period.

7.7. Further, Keshav Baljee is Non-Executive Non-Independent Director and also one of the Promoters. He is also a KMP of the company in terms of the Companies Act 2013 and the SEBI (LODR) Regulations, 2015. He joined the

Company in 2019 and attended most of the Board meetings held during the investigation period.

- 7.8. CK Baljee and Keshav Baljee are the signatories of the consolidated financial statements for FY 2021-22. Further, CK Baljee also signed the Certificate as required under Regulation 17(8) of SEBI (LODR) Regulations, 2015, stating that financial statement presents true and fair view and is in compliance with existing accounting standards, applicable laws and regulations.
- 7.9. Being CMD and Director on the ROHL Board, they were in-charge of operations and decision making process, it is therefore their responsibility to ensure that the company's financial statements present true and fair picture of the company's financial status and that correct financial statements are published. However, preparation and publication of misreported financial statements reflecting substantial overstated /inflated consolidated profit in the financial statements, which could not have taken place without their approval (either written or oral) or knowledge, provide that they failed to perform their duties and obligations.
- 7.10. It is pertinent to note that the misreported and inflated profits resulted in increase in the price of the scrip of ROHL and taking advantage of the significant surge in price, both the Promoters/Directors, CK Baljee and Keshav Baljee offloaded huge volumes of shares at high price, earning profit at the cost of retail investors.
- 7.11. In view of the above, it is alleged that CK Baljee and Keshav Baljee, were involved and responsible for furnishing incorrect/misstated financial statements to the Board of Directors of ROHL which led to publication of misleading financials of the Company. Further, it is alleged that they made total gain of Rs. 20.83 crore by selling their shares at prices which were impacted/ influenced by the misstated financials of ROHL. Thus, it is alleged that both C.K Baljee (promoter) and Keshav Baljee (director) used the Company for

implementation of a plan, device and artifice to defraud the investors by manipulating/ misrepresenting the financial statements.

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

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

Violation by Amit Jaiswal, CFO of ROHL

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

7.15. A CFO is a person heading and discharging the finance function of a listed entity. Therefore, a CFO is expected to exercise his powers in a *bona-fide* manner and in the interest of all stakeholders of the company. The CFO is expected to exercise due care and diligence in ensuring that the financial statements of a company give true picture of the financial health of the company and is in the best interests of the company, including its minority

shareholders. In the instant matter, financial statements were not prepared as per applicable accounting standards and net profit of the Company was overstated, as a result of non-consolidation of the financial statement of KSDPL as a subsidiary company with ROHL.

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

7.17. Therefore, Amit Jaiswal, CFO of ROHL is responsible for furnishing misstated and manipulated financial statements to the company's Board as required under Regulation 17(8) of the LODR Regulations, 2015.

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

8. Urgency and Need for the Issuance of an Interim Order –

8.1. Having examined the findings of investigation and the material available on record, I note that the facts of the case *prima facie* show that there has been misstatement/misrepresentation of the financial statements showing inflated

profit. The published financial statements of a listed company, a publicly available document, are expected to present a true picture about the financial health of that company which are relied upon by the investors to make an informed decision regarding investment in that company, which is mandated under Regulation 4 (1) of the LODR Regulations.

8.2. The Hon'ble Supreme Court of India in the matter of *N. Narayanan Vs. Adjudicating Officer, Securities and Exchange Board of India (Civil Appeal Nos 4112-12 of 2012- Date of Decision- April 26, 2013)*, has *inter alia* emphasised the adverse impact of incorrect information, including inflation of profits, on the markets. Similarly, Hon'ble SAT in the matter of *V. Natarajan vs. SEBI*, in Appeal No.104 of 2011 (Order dated June 29, 2011), had held that the publication of false and misleading financial statements would amount to unfair trade practice thereby attracting provisions of the PFUTP Regulations. The Hon'ble SAT has also held that such misleading information which may induce the public to sell or purchase securities would also come within the ambit of unfair trade practice in securities.

8.3. It has already been brought out that the non-consolidation of the financials of KSDPL as subsidiary with that of ROHL for FY 2021-22 resulted in the profits of ROHL for the said FY being inflated by 166.94%. Additionally, it is seen that the share price of ROHL surged by 171% consequent to the publication of the financial statements for FY 2021-22. This clearly brings out the impact of the misleading information on the markets in this case. Also, since FY 2022-23 is coming to a close, ROHL may continue to prepare and publish its financials by showing KSDPL as an associate and not as a subsidiary. This will not present a true and fair financial status in respect of ROHL.

8.4. SEBI has been able to gather evidence which makes out a *prima facie* case against the entities for having conceived and implemented a fraudulent scheme through misstatement of financial statements. There is a *bona fide* apprehension and genuine possibility that there can be attempts to thwart the regulatory action or erase the traces of such *mala fide* scheme.

8.5. In view of the seriousness of the issues as discussed above, this presents a case for taking immediate measures by way of issuance of interim directions, in order to preserve the market integrity and to enable investors to take an informed decision while dealing in securities of ROHL.

9. Directions –

9.1. I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B (1) read with Section 19 of the SEBI Act, 1992 hereby issue by way of this *Interim order cum show cause notice*, the following directions, which shall be in force until further orders: -

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

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

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

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

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

9.2. The foregoing *prima facie* observations contained in this Order, are made on the basis of the material available on record. The said *prima facie* findings shall also be considered as a show cause notice and the *Noticees* are directed to show cause as to why suitable directions/prohibitions under Sections 11 (1), 11 (4) and 11B (1) of SEBI Act, including the directions for restraining them from accessing the securities market, associating with any listed company or registered intermediary and disgorgement of gains made from the sale of shares should not be issued against them.

9.3. Further, the *Noticees* are also called upon to show cause as to why inquiry should not be held against them in terms of Rule 4 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and penalty be not imposed on them under Sections 11 (4A) and 11 B (2) read with Section 15HA and/or 15HB of the SEBI Act, 1992 for the above alleged violations of provisions of the SEBI Act, LODR Regulations and PFUTP Regulations.

9.4. The *Noticees* 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.

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

9.6.A copy of this order shall be served upon Noticees, Stock Exchanges, Registrar and Transfer Agents and Depositories for necessary action and compliance with the above directions.

Place: Mumbai

ASHWANI BHATIA

Date: March 31, 2023

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA