BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No.: Order/GR/PU/2021-22/15035-15043]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of:

S.No.	Noticee (s)	PAN
1	Mr. R V Ravikumar	ACZPR4932K
2	Ravikumar Properties Pvt. Ltd.	AACCR8692L
3	Ms. R Amrithavalli	ADJPA9449B
4	Mr. S. Rajendran	ADKPR1050J
5	Nandlal Vyapaar Pvt. Ltd.	AACCN7327E
6	Siva Sankar V	ANIPS7843J
7	Ms. V Chitra	Not Available
8	BPJ Holding Pvt. Ltd.	AAECM8553H
9	Chiraag Suppliers Pvt. Ltd.	AADCC3261F

In the matter of
Ravi Kumar Distilleries Limited.,

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1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted an examination of Ravi Kumar Distilleries Limited (hereinafter referred to as 'RKDL / the Company'), a company listed on the Bombay Stock Exchange Limited (hereinafter referred to as 'BSE') and National Stock Exchange Limited (hereinafter referred to as 'NSE'). The examination was to ascertain whether there was any violation of the provisions of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as '**SAST Regulations, 2011**') by the promoters and/or Persons acting in concerts (PACs) of the company during the period December 01, 2011 to December 31, 2012.

2. During the examination, it was observed as under:

   a. R V Ravikumar (one of the promoter of RKDL) along with PACs Ravikumar Properties Pvt. Ltd., Ravikumar Amrithavalli, S Rajendran, R Ramanujam, V Sivasankar, V Chitra, and

G Ramaraja acquired shares of RKDL indirectly by acquiring firms BPJ and Chiraag on September 10, 2012, which held shares of RKDL, thereby breaching the 25% shareholding threshold for open offer. RV Ravikumar along with said PACs failed to make a public announcement of open offer and hence violated Regulation 3(1) of the SAST Regulations, 2011.

b. RV Ravikumar along with Ravikumar Properties Pvt. Ltd., Ravikumar Amrithavalli, S Rajendran, R Ramanujam, V Sivasankar, V Chitra, G Ramaraja, BPJ and Chiraag acquired shares of RKDL indirectly by acquiring firm, Nandlal Vyapaar Pvt. Ltd. on September 12, 2012 which held 5.23% of shares of RKDL, thereby breaching the 5% shareholding creeping limit for open offer. R V Ravikumar along with said PACs including Mr. R. Ramanujam failed to make a public announcement of open offer and hence violated Regulation 3(2) of the SAST Regulations, 2011.

c. RV Ravikumar along with PACs Ravikumar Properties Pvt. Ltd., Ravikumar Amrithavalli, S Rajendran, R Ramanujam, V Sivasankar, V Chitra, G Ramaraja, BPJ, Chiraag and Nandlal acquired shares of RKDL thereby breaching the 5% shareholding creeping limit for open offer on October 3, 2012 and December 7, 2012. R V Ravikumar along with said PACs failed to make a public announcement of open offer and hence violated Regulation 3(2) of the SAST Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI appointed Shri Santosh Shukla as the Adjudicating Officer ('**AO**') vide communication order dated February 04, 2019, under Section 19 read with Section 15-I of SEBI Act and under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter, '**Adjudication Rules**') to enquire into and adjudge under Section 15H(ii) of the SEBI Act, 1992, the alleged violation of of Regulations 3(1) and 3(2) of the SAST Regulations, 2011 by the Noticees. Subsequently, Shri Amit Pradhan was appointed as the AO in the matter in the place of Shri Santosh Shukla. Thereafter, pursuant to the transfer of Shri Amit Pradhan, the undersigned was appointed as the AO vide communique dated June 21, 2021 in the present matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A common Show Cause Notice dated February 28, 2019 (hereinafter, "**SCN**") was issued by the erstwhile AO to 11 entities including the aforesaid 9 Noticees, under Rule 4 of the Adjudication Rules, calling them to show cause as to why an inquiry should not be held and penalty be not imposed on them under Section 15 H(ii) of the SEBI Act for alleged violations specified in the said SCN. Out of which two entities, namely Mr. G. Ramaraja and Mr. R. Ramanujam, to whom SCNs were duly delivered, had expired, therefore, the proceedings initiated against them were disposed of vide separate orders dated March 25, 2019 and August 14, 2020, respectively.

5. Therefore, the present proceedings is against the remaining 9 entities / Noticees . The said SCN was duly served through SPAD upon the Noticees namely, 1. Mr. R V Ravikumar, 2. Ravikumar Properties Ltd., 3. Ms. R Amrithavalli, 4. Mr. Mr. S. Rajendran, 5. Siva Sankar V and 6. BPJ Holding Pvt. Ltd., and through affixture for Noticees namely, 1. Nandlal Vyapaar Pvt. Ltd., 2. Ms. V Chitra and 3. Chiraag Suppliers Pvt. Ltd., as the SCNs issued to them had returned undelivered. In response to this, all the Noticees except Ms. V. Chitra, submitted their common replies in the matter vide letters dated February 28, 2019, March 21, 2019 and February 11, 2021.

6. Further, in the interest of natural justice, an opportunity of personal hearing was granted to the Noticees, on December 22, 2021 vide the email dated December 07, 2021. The authorized representative, of all Noticees except Ms. V. Chitra, requested to prepone the said personal hearing vide e-mail dated December 13, 2021. Accordingly, the opportunity of personal hearing was granted to them on December 20, 2021 vide e-mail dated December 15, 2021. However, it is noted that Noticee, Ms. V. Chitra, has neither responded to the SCN nor attended the personal hearing scheduled in the matter, despite the SCN and the hearing notice being duly served.

7. From the above, I am of the view that the principles of natural justice have been adhered to, as the SCN and the Hearing Notice were duly served upon the Noticee Ms. V. Chitra and sufficient opportunity was granted to it to reply to the SCN and appear for the personal hearing. Considering

the fact that she has neither filed any reply nor has availed the opportunity of personal hearing despite service of notices upon it, I am of the view that she has nothing to submit in terms of Rule 4(7) of the Adjudication Rules and the matter may be proceeded ex parte on the basis of material available on record. In the absence of any response to the SCN, I presume that the Noticee Ms. V. Chitra has admitted the charges levelled against her.

8. In this regard, it is pertinent to note that the Hon'ble SAT in the matter of **Classic Credit Ltd. vs. SEBI** (Appeal No. 68 of 2003 decided on December 08, 2006) has, inter alia, observed that, "......*the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*".

9. Further, the Hon'ble SAT in the matter of **Sanjay Kumar Tayal & Others vs SEBI** (Appeal No. 68 of 2013 decided on February 11, 2014), has also, inter alia, observed that: *"........... appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...*"

10. Additionally, the same position has been reiterated by the Hon'ble SAT in the matter of **Dave Harihar Kirtibhai vs SEBI** (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon'ble SAT observed as under: *"...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non- receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal...*".

11. In view of the observations made by the Hon'ble SAT, I find no reason to take a different view and accordingly, I deem it appropriate to proceed against the Noticee, Ms. V. Chitra, ex parte, based on the material available on record.

12. The replies dated February 28, 2019, March 21, 2019 and February 11, 2021, submitted to the SCN, by the remaining 8 Noticees are summarised as under:

- The complainant Company i.e. M/S. Comfort Intech Ltd. belongs to Shri Anil Agarwal, who is also the main promoter of the said company which was the BRLM of the public issue of M/s. RKDL. Mr. Anil Agarwal has indulged in several illegal manipulations post the public issue. M/s. Comfort Securities Ltd. is the depository participant in respect of shares of RKDL.

- The Public Issue of RKDL took place in December 2010. As per the Prospectus of the Public Issue, the post-issue shareholding of the promoter group of Shri R.V. Ravi Kumar and his associates was to be 52.08%. Immediately after the Public Issue, the Company's RTA, M/s Karvy Computershare Pvt. Ltd., by a letter dated 27.12.2010 confirmed the creation of lock-in for three years against 48 Lakhs Equity Shares of M/s RKDL standing in the name of Shri R.V Ravi Kumar and a further lock-in of one year against the remaining shareholding of 77 Lakhs Equity Shares standing in the names of Shri R.V. Ravi Kumar and his associates. The lock-in had come into effect from 18th December 2010, during when Shri Anil Agarwal had obtained certain blank signed papers from Shri R.V. Ravi Kumar and fraudulently used them to create a pledge of shares in his favour, which was totally illegal in terms of Regulation 39 of SEBI (ICDR) Regulations 2009. The pledge was supposedly created in respect of a loan of Rs.6.84 Crores, which Shri R.V. Ravi Kumar had allegedly taken from Shri Anil Agarwal. In fact, there was no such liability owed by Shri R.V. Ravi Kumar to Shri Anil Agarwal. When the information relating to the creation of this fraudulent pledge reached Shri R.V. Ravi Kumar, he immediately took up the matter with Shri Anil Agarwal and also filed complaints with SEBI, the Stock Exchanges, CDSL and also the Economic Offences Wing, Mumbai. Using the fraudulent pledge forms, Shri Anil Agarwal transferred to himself and his associates a large chunk of the shares of M/s RKDL thereby reducing the stake of Shri R.V. Ravi Kumar and his associates to a mere 23.04%, i.e., 29.76% of the share capital had been fraudulently transferred by Shri Anil Agarwal to himself and his associates. In the process, the shareholding of the main promoters, Shri R.V. Ravi Kumar and his associates, reduced to a minority of below 25% and Shri Anil Agarwal threatened a hostile takeover of the company RKDL.

- Several negotiations were held by Shri R.V. Ravi Kumar with Shri Anil Agarwal to get back the shares taken over fraudulently and Shri Anil Agarwal was demanding a huge pound of flesh to return the RKDL Shares fraudulently taken over from Shri R.V. Ravi Kumar and his associates. In the end, in order to retain control over M/s RKDL, which was a company which he had built up from scratch, Shri R.V. Ravi Kumar had to part with Rs.7.50 Crores and one of his other companies – M/s Liquors India, Hyderabad, and Shri Anil Agarwal handed back the fraudulently taken over shares during the period from September 2012 to December 2012 in several lots. As a part of this handing back, the control of three companies, which held shares in M/s RKDL and had no other business - M/s BPJ Holdings Pvt. Ltd., Chiraag Suppliers Pvt. Ltd. and Nandlal Vyapaar Pvt. Ltd. were handed over to Shri R.V. Ravi Kumar. In short, these three companies were virtually thrust upon Shri R.V. Ravi Kumar. It can be clearly seen from the above facts that there has only been handing back of the shares fraudulently taken by Shri Anil Agarwal and his associates and that there has been no acquisition of shares by Shri R.V. Ravi Kumar and his associates.

- After the abovementioned handing back of shares has been completed, the shareholding of Shri R.V. Ravi Kumar and his associates has reached the level of around 52%, which is just the same as was contemplated in the Prospectus. Only an earlier wrong has been righted. Since there has been no acquisition of Shares and no change in the management of the Company, the need for making an Open Offer in accordance with SAST Regulations, 2011 did not arise.

- The primary purpose of Open Offer is to provide an Exit Option to the Shareholders of the target company on account of the change in control or substantial acquisition of Shares occurring in the target company. In this case, a portion of shares which were already with Shri R.V. Ravi Kumar and his associates were fraudulently taken over by Shri Anil Agarwal and his associates and they were subsequently handed back to the original Owners. The shareholding of the promoter group has also not increased beyond what was contemplated in the Prospectus for the Public Issue. In view of this, it is humbly submitted that the facts of the case could be seen in proper perspective and a conclusion arrived at that the alleged violations of Regulations 3(1) and 3(2) of SAST Regulations, 2011 are non-existent.

- It is alleged in Para 30 of the Show Cause notice that on September 10, 2012, Shri R.V. Ravi Kumar and the persons acting in concert (M/s BPJ Holding Pvt. Ltd. and Chirag Suppliers Pvt. Ltd. In this case), acquired 13.8 % of shares in M/s RKDL and as a result of this, their shareholding in M/s RKDL went up from 23.04% to 36.94% and thus crossed the threshold limit of 25% for making an Open Offer. Similarly, it is alleged that with regard to M/s Nandlal Vyapaar Pvt. Ltd., Shri R.V. Ravi Kumar along with the persons acting in concert acquired 5.30% of shares in M/s RKDL on 12.09.2012 and thereby violated Regulation 3(2) SAST Regulations of 2011. In this regard, it may be seen that Shri R.V. Ravi Kumar and his associates obtained the management control of M/s BPJ Holding Pvt. Ltd., Chiraag Suppliers Pvt. Ltd. and Nandlal Vyapaar Pvt. Ltd. only subsequent to 10.09.2012 and 12.09.2012 respectively, and hence, the three companies cannot be deemed to have been Persons Acting in Concert with Shri R.V. Ravi Kumar. Hence, there would be no violation of Regulation 3(1) and 3(2) of SAST Regulation of 2011 as alleged in Para 30 of the show cause notice.

- None of the Noticees have made any profit out of the failure to disclose the alleged acquisitions.

- The Promoters of the Company have no information about the present whereabouts of Mrs. V. Chitra. She was only a Director of the Company at time of its formation, but subsequently vacated office as Director prior to the IPO as disclosed in the RHP.

- The quantitative details of the shares held, shares taken over and shares returned have been provided along with the details of the amount pooled into the books of BPJ, Chiraag and Nandlal depicting the rounding trip to cover the takeover of Liquors India Liquid, a company acquired by RKDL).

ISSUES FOR CONSIDERATION AND FINDINGS

13. I have carefully perused the submissions made by the Noticees and documents available on record, and the issues that arise for consideration in the present case are:

    a. *Whether the Noticees have violated the provisions of Regulations 3 (1) and 3 (2) of SAST Regulations, 2011?*

    b. *Does the violation, if any, on the part of the Noticees attract monetary penalty under Section 15 H(ii) of the SEBI Act?*

    c. *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15 J of the SEBI Act?*

14. Before moving forward, it is pertinent to refer to the relevant provisions of SAST Regulations 2011, which reads as under:

> ***Substantial acquisition of shares or voting rights.***
>
> *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.*
>
> *(2) No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:*
>
> ***Provided*** *that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.*
>
> *Explanation.—For purposes of determining the quantum of acquisition of additional voting rights under this sub-regulation,—*
>
> *(i) gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company.*

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

CONSIDERATION OF ISSUES

15. During the examination, it was observed that RV Ravikumar (one of the promoter of RKDL) acquired BPJ Holding Pvt. Ltd. (BPJ) and Chiraag Suppliers Pvt. Ltd. (Chiraag) on September 10, 2012 and Nandlal Vyapaar Pvt. Ltd. (Nandlal) on September 12, 2012, and their respective shareholding in RKDL before the Memorandum of Understanding (MoU) dated September 10, 2012 in the case of BPJ and Chiraag and September 12, 2012 in case of Nandlal were as per following table:

Sr. No.	Name of the Company	No. of Shares of RKDL held	% of shareholding of RKDL
1	BPJ Holding Pvt. Ltd	20,26,000	8.44
2	Chiraag Suppliers Pvt. Ltd	13,08,906	5.45
3	Nandlal Vyapaar Pvt. Ltd.	12,54,000	5.23

16. Further, it is observed that as per Regulation 2(q)(2)(iv) of the SAST Regulations, promoters and members of promoter group are deemed to be persons acting in concert. The shareholding of promoter group prior to the MoU of BPJ, Chiraag and Nandlal were as following:

Sr. No.	Name of the Promoter	No. of Shares of RKDL held by the entity	% of shareholding of RKDL
1	R V Ravikumar	53,81,696	22.42
2	R Amrithavalli	1,45,497	0.61
3	Siva Sankar V	2,872	0.01
4	S Rajendran	0	0
5	R Ramanujam	0	0
6	Ravikumar Properties Pvt. Ltd.	0	0
7	V Chitra	0	0
8	G Ramaraja	0	0
Total shareholding by promoters		**55,30,065**	**23.04**

17. Pursuant to the acquisition of the abovementioned 3 companies, the shareholding of RV Ravikumar and PACs in RKDL were as per following table:

Sr. No.	No. of shares of RKDL held by Ravikumar and other existing promoters PRE ACQUISITION (A)	% of total shareholding	Name of the Company acquired	No. of Shares of RKDL held by company acquired in column A (B)	% of shareholding of RKDL	Date of Acquisition by RaviKumar	No. of shares of RKDL held by Ravikumar and other existing promoters POST ACQUISITION (A +B)	% of total shareholding
	Pre- Acquisition		Acquisition				Post-Acquisition	
1	55,30,065	23.04	BPJ and Chiraag	33,34,906	13.89	Sept 10,2012	88,64,971	36.94
2	88,64,971	36.94	Nandlal	12,54,000	5.23	Sept 12,2012	1,01,18,971	42.17

18. It is observed from the demat statements obtained from CDSL and NSDL and quarterly shareholding pattern uploaded on BSE website, that the shareholding of BPJ, Chiraag and Nandlal in RKDL continued to change until December, 2012 but not more than 5% upto March, 2013. Therefore, an analysis of subsequent acquisition i.e. after September 12, 2012 until December, 2012 was carried out. All the acquisitions made by BPJ, Chiraag and Nandlal in RKDL were made off-market. Following table highlights the date wise acquisition in RKDL:

Sr. No.	Number of shares held (A)	% of share holding	Name of acquirer	Date	Number of shares acquired (B)	% of shareholding	Number of shares held (A+B)	% of share holding	Cumulative change in percentage shareholding (reset after breaching 5%)
	Pre-Acquisition		Acquisition				Post- Acquisition		
1	10118971	42.17	BPJ	Sept 17,2012	220000	0.92	10338971	43.09	0.92
2	10338971	43.08	BPJ	Sept 18,2012	175000	0.73	10513971	43.82	1.65
3	10513971	43.81	BPJ	Sept 20,2012	150000	0.63	10663971	44.45	2.28
4	10663971	44.43	BPJ	Sept 21,2012	50000	0.21	10713971	44.66	2.49
5	10713971	44.64	Nandlal and Chiraag	Sept 24,2012	130000	0.54	10843971	45.20	3.03
6	10843971	45.18	BPJ	Sept 25,2012	115000	0.48	10958971	45.68	3.51
7	10958971	45.66	BPJ	Sept 26,2012	40000	0.17	10998971	45.85	3.68
8	10998971	45.83	BPJ, Chiraag, and Nandlal	September 27,2012	150000	0.63	11148971	46.48	4.31
9	11148971	46.45	BPJ and Nandlal	Sept 28,2012	65000	0.27	11213971	46.75	4.58
10	11213971	46.72	BPJ	Oct 1, 2012	80000	0.33	11293971	47.08	4.91
11	**11293971**	**47.08**	**BPJ**	**Oct 3,2012**	**40000**	**0.17**	**11333971**	**47.25**	**5.08**
12	11333971	47.25	BPJ, Chiraag, and Nandlal	Oct 4, 2012	136000	0.57	11469971	47.82	0.57
13	11469971	47.82	BPJ	Oct 9,2012	115000	0.48	11584971	48.30	1.05
14	11584971	48.30	BPJ	Oct 11, 2012	140000	0.58	11724971	48.88	1.63
15	11724971	48.88	BPJ	Oct 12, 2012	30000	0.13	11754971	49.01	1.76
16	11754971	49.01	BPJ	Oct 16,2012	65000	0.27	11819971	49.28	2.03
17	11819971	49.28	BPJ	Oct 17,2012	64900	0.27	11884871	49.55	2.30
18	11884871	49.55	BPJ	Oct 19,2012	90000	0.38	11974871	49.93	2.68
19	11974871	49.93	BPJ	Oct 23,2012	85100	0.35	12059971	50.28	3.03
20	12059971	50.28	BPJ	Oct 25,2012	45000	0.19	12104971	50.47	3.22
21	12104971	50.47	BPJ	Nov 6,2012	25000	0.10	12129971	50.57	3.32
22	12129971	50.57	BPJ	Nov 7,2012	20000	0.08	12149971	50.65	3.40
23	12149971	50.65	Chiraag	Nov 12,2012	20000	0.08	12169971	50.73	3.48
24	12169971	50.73	Chiraag	Nov 16,2012	45000	0.19	12214971	50.92	3.67
25	12214971	50.92	Chiraag	Nov 21,2012	61000	0.26	12275971	51.18	3.93

Sr. No.	Number of shares held (A)	% of share holding	Name of acquirer	Date	Number of shares acquired (B)	% of shareholding	Number of shares held (A+B)	% of share holding	Cumulative change in percentage shareholding (reset after breaching 5%)
	Pre-Acquisition		Acquisition				Post- Acquisition		
26	12275971	51.18	Chiraag	Nov 26,2012	40000	0.17	12315971	51.35	4.10
27	12315971	51.35	Chiraag and Nandlal	Nov 27,2012	4000	0.02	12319971	51.37	4.12
28	**12319971**	**51.37**	**BPJ and Chiraag**	**Dec 7,2012**	**220000**	**0.92**	**12539971**	**52.29**	**5.04**

19. From the above, it is observed that the following disclosure were required to be made by the acquirer along with the PACs:

a. R V Ravikumar along with PACs Ravikumar Properties Pvt. Ltd., Ravikumar Amrithavalli, S Rajendran, R Ramanujam, V Sivasankar, V Chitra, and G Ramaraja acquired shares of RKDL indirectly by acquiring the firms BPJ and Chiraag on September 10, 2012, which held shares of RKDL, thereby breaching the 25% shareholding threshold for open offer, requiring RV Ravikumar along with said PACs to make a public announcement of open offer under Regulation 3(1) of the SAST Regulations, which was not done.

b. R V Ravikumar along with PACs Ravikumar Properties Pvt. Ltd., Ravikumar Amrithavalli, S Rajendran, R Ramanujam, V Sivasankar, V Chitra, G Ramaraja, BPJ and Chiraag acquired shares of RKDL indirectly by acquiring firm, Nandlal on September 12, 2012 which held 5.23% of shares of RKDL, thereby breaching the 5% shareholding creeping limit for open offer requiring R V Ravikumar along with said PACs to make a public announcement of open offer under Regulation 3(2) of the SAST Regulations, 2011, which was not done.

c. Further, RV Ravikumar along with PACs Ravikumar Properties Pvt. Ltd., Ravikumar Amrithavalli, S Rajendran, R Ramanujam, V Sivasankar, V Chitra, G Ramaraja, BPJ, Chiraag and Nandlal acquired shares of RKDL thereby breaching the 5% shareholding creeping limit for open offer on October 3, 2012 and December 7, 2012, requiring R V Ravikumar along with said PACs to make a public announcement of open offer under Regulation 3(2) of the SAST Regulations, 2011, which was not done.

20. I note that RKDL had come out with its IPO in December 2010 for issue of 1,15,00,000 equity shares. The Book Running Lead Manager (BRLM) / Merchant Banker for the said IPO was Comfort Securities Pvt Ltd [now known as Comfort Securities Ltd (CSL)]. From the shareholding pattern of the company as available on the BSE Website, it is noted that the shareholding of the promoters, viz. RV Ravi kumar and PACs immediately after the IPO, i.e. as on December 18, 2010 was 52.08%. It is further noted that the promoters continued to hold the same shareholding of 52.08% till September 30, 2011. However, the said promoter shareholding changed to 20.31% and 23% as on December 31, 2011 and March 31, 2012 respectively.

21. I further note that certain shares held by promoters of RKDL were pledged by them with Comfort Intech Ltd (CIL, a group company of CSL, also belonging to Anil Agrawal Group) on December 3, 2011. Later CIL invoked the said pledge and sold the shares in the market. With regard to the same, CIL had filed a disclosure dated 05.12.2011 under Regulation 29(1) of the SAST Regulations, 2011 informing about pledge on 12424719 shares (51.769%) of RKDL in favour of CIL as available on the BSE website.

22. It is noted from the subsequent complaint dated April 15, 2014, received from CIL, and the reply letters dated 15.12.2011 and 27.12.2011, submitted by RKDL to BSE, that the abovementioned fall in the shareholding of the promoter group of RKDL from 52.08% to 23.04% as on June 30, 2012, as referred to in the SCN, can be directly attributed to the alleged fraudulent pledge transaction and the Noticees had disputed the said charges of the pledge transactions since its inception. I also note that the Noticees have not denied the said transactions and have admitted the fact that the shares were indirectly acquired through transfer of control in BPJ, Nandlal and Chiraag, they have contended that the said transactions were merely executed to reverse the illegal transfer of shares by Shri Anil Agarwal and associates based on fraudulently executed pledges and that the same should not be taken as triggering open offer obligations.

23. Also, I note from the quantitative details of shares provided by the Noticees that post the indirect acquisition of shares of RKDL through acquisition of control of BPJ, Nandlal and Chiraag, as

referred to in the SCN, the Promoters' shareholding in RKDL as on December 07, 2012 had reached 52.29% which is close to the post IPO shareholding of 52.08%, indicating that the said transactions were aimed at getting back the shares which were taken over by Anil Agrawal through allegedly fraudulent pledge of shares.

24. Further, it is seen from records that while the Anil Agrawal Group had complained to SEBI regarding the alleged breach of threshold limits under the SAST Regulations, 2011, there are counter-allegations levelled by RKDL and Ravikumar that Anil Agrawal Group itself had breached such threshold limits on certain days.

25. With regard to the same, I note that, a number of cases, both civil and criminal, are pending before various forums and courts, including Economic Offences Wing, where the said allegation of unauthorized creation and invocation of pledge by Anil Agrawal forms part of the facts of those cases and are being contested between both the parties indicate that the said dispute had continued.

26. I have also perused the order of the Ld. WTM of SEBI dated February 02, 2021 in parallel 11B proceedings against the Noticees, in the same subject matter, wherein the facts of the case are similar and the Ld. WTM has disposed of the proceeding qua Noticees stating "*Since the facts of this case and the transactions in question are intertwined with the allegations and counter-allegations of fraud and forgery which are yet to be conclusively determined, this matter cannot be treated in the same way as any other matter involving the question trigger of open offer obligations under the SAST Regulations, 2011. The provisions of the SAST Regulations, 2011 do not operate in vacuum and must be interpreted and enforced keeping in mind the attendant circumstances and the peculiar facts and circumstances of each case. Considering all these factors in totality, I dispose of the present proceedings against the Noticees, initiated vide the SCN dated January 31, 2019, without any direction.*"

27. Further, I also note that the Noticees, in their e-mail dated December 21, 2021, while confirming the minutes of the personal hearing, have quoted Paras 45 (b) and 46 of the abovementioned order

of the Ld. WTM of SEBI dated February 02, 2021 to draw attention to the fact that the 11B proceedings initiated against them have been disposed of under certain specified circumstances.

28. Considering the fact that there is no material on record different from what has been made available to the Ld. WTM in the proceedings under Section 11B of the SEBI Act, I conclude that till the time the allegations and counter-allegations of fraud and forgery as discussed above is adjudicated upon and laid to rest by a competent court of law, the issue pertaining to the requirement of making an open offer, cannot be adjudicated upon. Therefore, I conclude that the present adjudication proceedings initiated against the Noticees vide SCN dated February 28, 2019, cannot be proceeded with.

ORDER

29. In view of the above, pursuant to consideration of all the facts and circumstances of the case noted in the preceding paragraphs and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby dispose of the Adjudication Proceedings initiated against Noticees, vide SCN dated February 28, 2019, without any directions.

30. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Date : February 21, 2022 **G. Ramar**

Place : Mumbai **Adjudicating Officer**