

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM : PRASHANT SARAN, WHOLE TIME MEMBER**

Decision in the proceedings initiated in compliance with the directions of the Hon'ble Supreme Court of India made vide Order dated May 07, 2012 in Interlocutory Application (I.A.) No. 2 in Petition for Special Leave to Appeal (Civil) No. 14740 of 2011 - Bhushan Energy Limited vs. Orissa Sponge Iron and Steel Limited and others

Dates of personal hearing :

December 19, 2012, February 12, 2013, March 13, 2013, June 14, 2013, July 19, 2013 and July 26, 2013.

Appearance of parties :

For the promoter group (TRFI Group) of OSIL and OSIL:

1. Mr. J. J. Bhatt, Senior Advocate
2. Mr. Pravin Samdhani, Senior Advocate
3. Mr. Zal Andhyarujina, Advocate
4. Mr. Shriraj Dhruv, M/s. Dhruv & Co.
5. Mr. Rishi Agarwal, M/s. Dhruv & Co.
6. Mr. Mitesh Naik, M/s. Dhruv & Co.
7. Mr. Manish Acharya, Advocate
8. Ms. Shikha Ginodia, M/s. Dhruv & Co.
9. Mr. Sunil Mittal, M/s. Dhruv & Co. and
10. Mr. Ankit Diwanjee, M/s. Dhruv & Co.
11. Mr. Akshay Ringe, Advocate

For Bhushan Energy Limited :

1. Mr. P.N. Modi, Senior Advocate
2. Mr. Nitin Johri, its Chief Financial Officer
3. Mr. O.P. Daura, Company Secretary
4. Ms. Ranjana Roy Gawai, Advocate
5. Ms. Vasudha Sen, Advocate
6. Mr. Nevill Lashkari, Advocate
7. Mr. Rajiv Pandey, Advocate
8. Mr. Anshul Gupta, Manager

For the Securities and Exchange Board of India :

1. Mr. Anindya Kumar Das, Deputy General Manager
 2. Ms. Anitha Anoop, Deputy Legal Advisor
 3. Ms. Divya Veda, Deputy General Manager
 4. Mr. T. Vinay Rajneesh, Assistant Legal Advisor
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1. The instant proceeding is in compliance with the directions of the Hon'ble Supreme Court of India made vide Order dated May 07, 2012 in I. A. No. 2 in Petition for Special Leave to Appeal (Civil) No. 14740 of 2011 (*Bhushan Energy Limited vs. Orissa Sponge Iron and Steel and others*). Vide the aforesaid Order, the Hon'ble Supreme Court, *inter alia* observed and directed the Securities and Exchange Board of India ("the SEBI") as follows :

" Whether conversion of 35,00,000 Warrants into Shares could result in transfer of Management in favour of Bhushan Energy Limited is the question, which is required to be decided either by the Company Law Board or Security and Exchange Board of India [SEBI]?

Learned advocates on both sides, on instructions, consent to the above question being adjudicated upon by SEBI.

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Learned counsel for Bhushan Energy Limited undertakes to delete Ground [d] of its Letter to SEBI dated 3rd May, 2012. The deletion be done within one week from today.

We make it clear that, on the afore-stated issue of conversion of 35,00,000 Warrants and Takeover, SEBI will decide the matter uninfluenced by the observations made in the impugned judgment of the High Court dated 22nd February, 2011, after taking into consideration the submissions and contentions advanced by both sides. We express no opinion.

The interlocutory application are disposed of accordingly ."

[Emphasis supplied]

2. In terms of the Order of the Hon'ble Supreme Court, SEBI is directed to decide whether the conversion of 35,00,000 warrants into shares could result in transfer of management in favour of Bhushan Energy Limited. The Hon'ble Court has also observed that Bhushan Energy Limited would delete ground (d) in its letter dated May 03, 2012 filed with SEBI. The Hon'ble Supreme Court has also advised SEBI to decide the issue of conversion of 35,00,000 warrants and takeover without being influenced by the observations made by the Hon'ble High Court in its order dated February 22, 2011, after taking into consideration the submissions and contentions advanced by both sides. The Hon'ble Supreme Court has referred to a letter dated May 03, 2012 filed by Bhushan Energy Limited ("BEL" or "Bhushan" or "Bhushan Energy") and of which clause (d) to be deleted. In the said representation, Bhushan had *inter alia* stated the following :

- (i) Bhushan Energy is a public limited company having its registered office at F-Block, 1st Floor, International Trade Tower, Nehru Place, New Delhi – 110019. It is the holder of 35,00,000 warrants issued by Orissa Sponge Iron and Steel Limited ("OSIL" or "the Company" or "the Target Company").

- (ii) OSIL is a listed public limited company and its shares are widely traded in leading stock exchanges including the Bombay Stock Exchange Limited ("the BSE").
- (iii) The warrants were purchased by Bhushan Energy after the expiry of mandatory one year lock-in period in January 2009 from the original allottee namely, Prakausali Investment (India) Private Limited ("Prakausali"). The warrants were issued by OSIL on preferential basis under the provisions of section 81(1A) of the Companies Act, 1956 on December 20, 2007 pursuant to special resolutions passed by the shareholders of OSIL in terms of the notice dated September 14, 2007 of the Annual General Meeting and postal ballot notice dated October 08, 2007. In terms of the issuance of the warrants and as per clause 13.3.1(c) of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 ("the DIP Guidelines"), Prakausali had the right to sell the warrants after the expiry of initial lock-in period of one year to any third party. The above said terms pertaining to lock-in period also finds mention on the face of the certificate of warrants.
- (iv) The warrants (35,00,000) were issued vide Certificate No. 3 for 15,00,000 warrants (bearing distinctive nos. 2598918 to 4098917) and Certificate No. 5 for 20,00,000 warrants (bearing distinctive nos. 7098918 to 9098917), which were issued pursuant to shareholders' resolutions dated October 15, 2007 and November 08, 2007.
- (v) After filing C. P. No. 05/2009 on March 02, 2009 before the Company Law Board ("the CLB"), Principal Bench at New Delhi, OSIL duly registered the said warrants in the name of Bhushan thereby endorsing the *bonafide* purchase of warrants by Bhushan from Prakausali.
- (vi) As per the terms of issuance, the warrants could have been converted into equity shares ranking *pari passu* with the existing equity shares upon payment of 90% of the balance amount on or before June 19, 2009. Accordingly, Bhushan exercised its right for conversion of warrants on April 16, 2009 and tendered the original warrant certificate along with a demand draft for ₹ 54,13,50,000/- (towards the 90% balance payment). However, OSIL refused to accept the warrants and the demand draft on the ground that such conversion would lead to change in management control of OSIL. The aspect of non-acceptance of warrants was duly recorded in the interim order dated May 26, 2009 passed by the CLB in C. P. No. 05/2009.
- (vii) Bhushan was constrained to take recourse to legal remedies, the details of such action are as under :
 - a) **Company Petition No. 05/2009 before the CLB** – In this petition, the issues relating to acts of oppression and mismanagement with respect to non-conversion of warrants into equity shares by OSIL and violation of section 77 of the Companies

Act by the promoters of OSIL, were for consideration. Initially, the issue pertaining to transfer of warrants was being agitated in this Company Petition and after the refusal by OSIL to convert warrants, the said issue was also agitated by way of an application in this Company Petition before the CLB.

The said Company Petition was disposed off by a final order dated October 06, 2009, wherein the allegation of mismanagement including violation of section 77 of the Companies Act was dismissed. However, the act of non-conversion was decided in favour of Bhushan and accordingly the CLB directed OSIL to convert the warrants into shares. The CLB categorically held that on such conversion there will be no change in management control of OSIL.

- b) **Cross appeals filed before the Hon'ble Orissa High Court against the Order dated October 06, 2009 of the CLB** – The Hon'ble High Court vide its common order dated February 22, 2011, reversed the findings and directions of the CLB, with respect to the issue of conversion of warrants and upheld the decision of CLB regarding the alleged violation of section 77 of the Companies Act. The Hon'ble Court was also of the opinion that conversion of the warrants might result in change in the management control of OSIL although no finding was given thereof and it was held that the grievance of Bhushan ought to be decided by way of a civil suit.
- c) **SLP (Civil) No. 14740/2011 and SLP (Civil) No. 15034-35/2011** – Being aggrieved by the direction of the Hon'ble High Court, two SLPs were filed. One was SLP (C) No. 14740 of 2011, which pertained to the non-conversion of warrants into equity shares. The other SLP i.e., SLP (C) No. 15034-35 of 2011 was with respect to the violation of section 77 of the Companies Act, 1956 by the promoters of OSIL. As regards SLP (C) No. 14740 of 2011, various hearings took place and by Order dated March 26, 2012, the Hon'ble Supreme Court directed the following :
- "A serious issue has been raised in this interlocutory application, whether SEBI has authority to decide the consequence of conversion of thirty five lakhs warrants into shares? The consequence being, whether on such conversion, there would be transfer of Management in favour of Bhushan Energy Limited. Whether that issue should be decided by CLB or SEBI is the issue which requires to be gone into at the appropriate stage. We do not wish to express any opinion at this stage in that regard.*
- However, the fact remains that Bhushan Energy Limited has filed a writ petition, bearing No.20526 of 2010, in the Orissa High Court challenging the communication of SEBI dated 4th*

November, 2010, requiring them to proceed with the Public Offer. There is also a stay granted by the Orissa High Court on 6th December, 2010. In order to check the bonafides of Bhushan Energy Limited, in the first instance, we direct them to withdraw the pending Writ Petition No.20526 of 2010 before the Orissa High Court and to implement the communication dated 4th November, 2010, issued by SEBI. We make it clear that Bhushan Energy Limited will withdraw the writ petition within one week from today and they will make the Open Offer within fifteen days from the date of withdrawal of the writ petition in accordance with Takeover Regulations and as directed by SEBI.

The interlocutory application shall stand over for four weeks. "

- (viii) In compliance with the above order, the Writ Petition (C) No. 20526/2010 pending before the Hon'ble High Court was withdrawn on March 30, 2012. IDFC Capital Limited (the merchant banker of Bhushan) sent a letter dated April 04, 2012 to SEBI bringing on record the above facts as well as its intention to proceed with the open offer in light of the above order dated March 26, 2012 as passed by the Hon'ble Supreme Court.
- (ix) On April 17, 2012, Bhushan submitted an updated version of the Draft Letter of Offer ("DLOF") to SEBI through IDFC for approval. The DLOF was in accordance with SEBI guidelines and comments of SEBI vide letter dated March 09, 2010.
- (x) Bhushan has complied with the order of the Hon'ble Supreme Court dated March 26, 2012 and in this regard an affidavit of compliance dated April 18, 2012 was also filed. Subsequently, the matter was taken up for hearing by the Hon'ble Supreme Court on April 27th and 30th, 2012.
- (xi) At the hearing on 30.04.2012, the parties informed the Hon'ble Supreme Court that the issue as to whether conversion of 35,00,000 warrants would result in change in management control of OSIL can be decided by SEBI. It is also relevant that the Open Offer being made with regard to the said company is also before SEBI. The Hon'ble Supreme Court observing that representation before SEBI requesting conversion of the 35,00,000 warrants and as to whether denial of the conversion of the same on the ground that it would result in change of management control had not yet been placed before SEBI by BEL, has adjourned the case to 07.05.2012.
- (xii) In the light of the abovementioned facts and circumstances, BEL made the representation/application dated May 03, 2012 before SEBI so that the following issues may be examined and decided accordingly:

- (i) Whether conversion of 35,00,000 warrants held by BEL into equal number of equity shares would lead to change in management control of OSIL ; and
 - (ii) If answer to the issue (i) above is negative, then a direction be made to OSIL to convert the Warrants into equal number of equity shares in favour of BEL.
- (xiii) Bhushan also put on record the shareholding pattern of OSIL as per the information available on BSE website as of 31.03.2012.
- (xiv) Bhushan further submitted that OSIL in the explanatory statement (as appended to the postal ballot notice dated 08.10.2007) as was circulated to its shareholders, had categorically stated that promoters' holding after conversion of all warrants issued including the Warrants (i.e. 35,00,000 warrants held by BEL) would be well above 50% of the total holding of OSIL. The same was calculated on the basis of diluted share capital of 3,05,00,000 of OSIL. Therefore, admittedly and under no circumstances there can be an event of change in management control of OSIL until and unless the promoters of OSIL themselves decide and dilute their shareholding in OSIL.
- (xv) BEL requested SEBI to hear the matter, for the just and proper adjudication of the above mentioned issues and/ or to supply any additional information or documents as may be necessary in this regard.

MODIFICATION TO APPLICATION DATED MAY 3, 2012 FILED BY BHUSHAN ENERGY LIMITED

- (i) BEL, vide letter dated May 9, 2012, submitted before SEBI that pursuant to the filing of the application dated May 3, 2012, an Application in Special Leave Petition being SLP (C) No. 14740 of 2011 was listed before the Hon'ble Supreme Court on May 7, 2012.
 - (ii) During the proceedings before the Hon'ble Supreme Court, the counsel for BEL undertook to delete ground (d) in para 7 C of the application within one week from May 7, 2012. Accordingly, BEL, requested SEBI to consider the application dated May 3, 2012, in exclusion of the said sub para (d) in para 7C of the application.
3. Bhushan Energy, as mentioned above, had filed its applications before SEBI along with the modification as directed by the Hon'ble Supreme Court. OSIL, on receipt of the submissions of Bhushan Energy, made its detailed submissions vide letter dated August 16, 2012. Subsequently, Bhushan Energy made its additional submissions vide letter dated August 21, 2012. Thereafter,

further submissions were made by the Company vide letters dated September 05, 2012 and e-mail dated October 09, 2012. The Company also submitted the shareholding pattern as on August 31, 2008 vide e-mails dated September 18, 2012 and October 01, 2012. Bhushan also made further submissions vide letter dated September 12, 2012.

4. Personal hearings were held in the matter on different dates i.e., on December 19, 2012, February 12, 2013, March 13, 2013, June 14, 2013, July 19, 2013 and July 26, 2013, when the parties through their respective authorised personnel including Senior Advocates appeared and made submissions. The parties were also granted liberty to file additional/written submissions in the matter, if they desired. OSIL along with its promoters i.e. Torsteel Research Foundation of India, TRFI Investments Pvt. Ltd. (TRFI), Dr. P.K. Mohanty and Mr. Munir Mohanty are collectively referred to as "the TRFI Group" or the "Mohanty Group" alternately. The Mohanty group of OSIL filed their written submissions vide e-mail dated August 03, 2013. Bhushan filed its written submissions on August 26, 2013. Vide e-mail dated September 04, 2013, the Mohanty group of OSIL filed rejoinder submissions to the written submissions dated August 26, 2013 filed by Bhushan.

THE SUBMISSIONS MADE BY THE PARTIES HAVE BEEN SUMMARISED AND MENTIONED UNDER THE FOLLOWING HEADS :

I. SCOPE OF THE PROCEEDINGS –

Submissions made by TRFI Group:-

- (i) The TRFI Group in its submissions has referred to the Applicant, i.e., Bhushan Energy Limited as the Bhushan Group along with all its declared Persons acting in Concert (PACs).
- (ii) The TRFI Group has submitted that the approach of BEL to pursue its remedies before the Company Law Board has been held to be totally not maintainable admittedly even by BEL and consequently the orders of the Company Law Board cannot come to the rescue of the Bhushan Group. Thus, the Hon'ble Supreme Court of India has ordered that these proceedings to be commenced uninfluenced by the proceedings before the Company Law Board and the Hon'ble Orissa High court. The approach of BEL before the Company Law Board and the higher forum in regard to the conversion of 35 lakh warrants is of no cause or effect and cannot be referred to. The TRFI Group has submitted that it is a matter of law that if limitation expires in pursuing a particular remedy, the pursuit of such remedy cannot be taken as an excuse of limitation unless so allowed by statute specifically.

- (iii) The TRFI Group has submitted that the exercise by SEBI is only to find out as a fact finding body whether conversion could result in change in management i.e. is there a possibility and not beyond that. This exercise by SEBI is not an exercise of any of its statutory powers or regulations but is only under the orders of the Hon'ble Supreme Court of India.
- (iv) SEBI is not performing any of its statutory functions in determining the question referred to it. As a necessary corollary it has no power, jurisdiction or authority to issue any direction either for conversion or for non-conversion of the warrants. On the finding by SEBI, the parties are required to be relegated to their remedies available at law.

Submissions of Bhushan Energy Ltd (BEL)

BEL has filed its application dated 3.5.2012 before SEBI and had framed issues regarding conversion of warrants and whether such conversion could lead to change in control, which is cited in previous paragraph 3(xii) above.

Regarding, deletion of clause (d), BEL submitted that the same was done by it in terms of its undertaking before the Hon'ble Supreme Court as the same was objected to by the respondents (i.e., OSIL/TRFI)

According to BEL, on a bare perusal of the Order of the Hon'ble Supreme Court dated 07.05.2012, SEBI was to decide the **“matter”** and not just the issue framed i.e. whether conversion could result in a transfer of management.

With respect to its application dated May 03, 2012, BEL submitted that the only correction directed by the Hon'ble Supreme court was to delete ground (d) of the said letter, and therefore the rest of the Application and its contents were clearly approved by the Hon'ble Supreme Court.

BEL has submitted that the contention of the Respondents that SEBI cannot exercise any statutory powers or powers under any regulations etc, are grossly incorrect and denied. Bhushan group had moved the CLB to ascertain its right to have the warrants converted into shares. CLB's Order was in favour of the Bhushan group. The Hon'ble Orissa High Court in appeal held that the issue was not within the jurisdiction of the CLB. In the Bhushan group's appeal, the Supreme Court passed the said Order, by consent of both parties, holding that it was for SEBI to decide the same.

BEL has submitted that the said submission by TRFI is *ex facie* only an unfair attempt to avoid the obvious consequence of an adverse determination of the first issue and thereby render the entire proceeding before SEBI as being meaningless and nugatory.

BEL submitted that SEBI alone has the power to regulate the securities market and has the power to give appropriate directions for the same under the SEBI Act and the various Regulations, including that of direction to convert the warrants, if it comes to a conclusion that the conversion of warrants will not amount to a transfer of management.

II. “WOULD” Vs “COULD”

Submissions made by TRFI group

The issue laid by the Hon’ble Supreme Court was whether the conversion of the warrant “could” result in change of management. If, TRFI Group’s own shareholding goes below the shareholding of the Bhushan group, then the issue will be answered against the Bhushan group as the TRFI group can then be immediately removed from management and control of the company. The TRFI group has submitted that the whole purpose of objecting to the conversion of warrants was that the Mohanty Group/ TRFI group which has developed the company over last three decades ought not to be exited from the Company through the conversion of the 35 lacs warrants in favour of Bhushan group.

The TRFI Group has submitted that the question to be determined is whether the conversion “could” result in the change in management (i.e. is there a possibility in change in management contrasted with whether it “would” result in change in management showing certainty in the change in management.) TRFI Group has relied upon the judgement in the case of Harish Chandra Bajpai V. Triloki Singh AIR 1957 SC 444.

The TRFI Group has submitted that the term “*would*” is defined in the Blacks Law Dictionary as under:

“A word sometimes expressing what might be expected or preferred or desired. Often interchangeable with the word “should” but not with “could”.”

Submissions of Bhushan

BEL has submitted that the direction to convert the warrants into shares is the necessary and automatic consequence of the first issue, i.e. whether conversion of the warrants would/could result in the change of management. Therefore, as a mere consequential relief

it is bound to follow. Further the fact that the Hon'ble Supreme Court perused the said Application and directed deletion of only the said para (d) is admitted and evident from the said Order. The submission that there were no arguments in Court as to the distinction between “would” and “could” is not disputed by anyone. BEL has submitted that the Applicants' submissions are in respect of the correct interpretation of the Order of the Hon'ble Supreme Court and it is untenable to allege that any words be put in the mouth of any party or the Hon'ble Court.

BEL has submitted that the decision of the Hon'ble Supreme Court in *State of Maharashtra vs. Ramdas Shrinivas* (1982) 2 SCC 463 is not applicable in the present case as in the present case no “.....*statement of the Judges...*” is at all sought to be “...*contradicted at the bar or by affidavit and other evidence...*” as in that case.

BEL has submitted that the Hon'ble Supreme Court has repeatedly held that the law should be interpreted to make it effective and to sub-serve the purpose which it is intended to fulfil, rather than imposing a construction which makes the provision in-operative or inept.

BEL has submitted that even courts do not decide merely hypothetical questions. The Hon'ble Supreme Court has also held that “...*the law would fail to protect community if it admitted fanciful possibilities to deflect the course of justice. Technicalities should not stand in the way of courts doing substantive justice.*”

BEL has submitted that SEBI is required to ascertain as to whether on the present date, conversion of the said warrants into shares “would” or “could” result in a change in management. Therefore, even for the sake of argument, any alleged “possibility” in transfer of management has to be judged on the basis of the presently existing facts and not on the basis of what may or may not happen on some future uncertain date.

BEL has submitted that the TRFI group have relied upon the judgment in *Harish Chandra Bajpai vs. Triloki Singh* (AIR 1957 SC 444)- para 20. It is pertinent to note that it was therein held that “*The word “could” can only mean that the Respondents were in a position to enlist the support of Government servants. It does not amount to an averment that in fact, they so enlisted their support.*” Thus, even the said judgment deemed both “would” and “could” to be operative in the present time and not as being a future uncertain hypothetical event. BEL has submitted that even based on the said judgment, at the highest, SEBI is only required to ascertain as to whether on the present date, conversion of the said warrants into shares “would” or “could” result in a change in management.

III. GROUNDS FOR OSIL's REFUSAL TO CONVERT WARRANTS

Submissions made by TRFI Group

The TRFI Group has submitted that by virtue of Resolutions dated 15.10.2007 and 8.11.2007, the Company had allotted 35 lakh warrants (in two tranches) to Prakausali under section 81(1A) of the Companies Act. The relevant portion of the said resolution dated 8.11.2007 is as follows:

“2. To consider and, if thought fit, to pass the following Resolution as a Special Resolution:

“Resolved that pursuance to the provisions of Section 81(1A) and other applicable provisions, if any, of the Companies Act, 1956 (including any statutory modification(s) or re-enactment thereof for the time being in force), the Securities and Exchange Board of India (Disclosure and Investor protection) Guidelines, 2000 (SEBI Guidelines) as in force,..... and subject to fulfilment of such conditions, if any as may be required to be fulfilled in obtaining or as may be stipulated by the Concerned Authorities from time to time in granting, any such approvals, consents, permissions, or sanctions, which may be agreed to by the Board of Directors of the Company.....the consent of the Company be and is hereby granted to the Board to create, offer, issue and allot, from time to time in one or more tranches, 40,00,000(forty Lacs) warrants to TRFI Investments India Pvt. Ltd. a promoter group company incorporated under the laws of India, and 20,00,000 (twenty lacs) warrants to Prakausali Investments India, on preferential basis, with each warrant carrying a right to subscribe to one fully paid equity share of Rs. 10 in the equity capital of the company (hereinafter referred to as the warrants), at a price of Rs. 225 (Rupees two hundred and twenty five only) per share including Rs. 215 (Rupees two hundred and fifteen only) per share as share premium, in such manner and on such terms and conditions as may be determined by the Board in accordance with the provision of Chapter XIII of the SEBI Guidelines or other provisions of the law as may be prevailing at the time of allotment of shares.”

The above Resolution is based upon a Notice inviting the shareholders for an Extraordinary General Meeting under Section 173 of the Companies with, *inter alia*, the following Explanatory Statement.

“vii. Other Terms of Issue:

(B) Issue of warrants to TIPL and Prakausali

- 1. The proposed allottee of the warrants shall, on or before the date of allotment of warrants, pay an amount equivalent at least 10% of the total consideration per warrant.*
- 2. The holders of each warrant will be entitled to apply for and obtain allotment of one equity share against such warrant at any time after the date of allotment but on or before the expiry of 18 months from the date of*

allotment, in or more tranches. At the time of exercise of entitlement, the warrant holder shall pay the balance of the consideration towards the subscription to each equity share.

.....

Due to above preferential allotment of equity shares and/or the warrants and the resultant issue of equity shares, no change in management control is contemplated.
The aforesaid allottee(s) shall be required to comply with the relevant provisions of SEBI (Substantial Acquisition of Share and Takeovers Regulations), 1997, if applicable consequent to the allotment of shares/warrants as proposed above.

In view of the above, it is proposed to issue 40,00,000 equity shares of Rs. 10 each fully paid-up in equal proportion to IDFC, Quantum, BIL and SHL, and 40,00,000 and 20,00,000 warrants (convertible into equivalent number of equity shares of Rs. 10 each fully paid up) to Rupees two hundred and twenty five only) per share including Rs. 215 (Rupees two hundred and fifteen only) as share premium which is higher than the minimum issue price calculated in accordance with the criteria given under the SEBI Guidelines.”

The Resolution dated 15.10.2007 is similarly worded except to the extent of number of warrants and the premium to be paid on the said warrants.

In respect of the Resolution dated 15.10.2007, the 15 lakh warrants issued to Prakausali were issued with the condition that ₹ 91/- ought to be paid on conversion. The other allotment for 20 lakh warrants dated 8.11.2007 was issued with the term that ₹ 215/- should be paid.

In accordance with the above Resolutions, two Warrant Certificates were issued in favour of Prakausali having Certificate Nos. 3 and 5 having distinctive Nos. 2598918 to 4098917 and 7098918 to 9098917 respectively totalling 35 lakh warrants. The said warrants were subject to a lock-in which was expiring on 19.12.2008 as per the SEBI (DIP) Guidelines. Further, the warrants could be converted into equity shares only by 19.6.2009 and not thereafter.

In this regard, the following language mentioned on the warrant certificate is of importance:

“The holder(s) of this Warrant Certificate is/ are entitled to apply, pay for and seek allotment of one equity share of Rs. 10 of the company per Warrant at a premium of Rs. 215 in accordance with the conditions mentioned Overleaf or any amendment thereof as may be intimated by the company.

This is to certify that the person(s) named below or the last transferee (s) whose name(s) is/are duly recorded in the memorandum of Transfers on the reverse is/are the registered Holder(s) of the within mentioned Warrant bearing the Distinctive Numbers herein, issued and allotted in terms of the resolution passed by the

shareholders of the Company through Postal ballot on 08.11.2007 and subject to the Memorandum and Articles of Association of the company.”

.....

“2. The holder(s) of these warrants will have a right against each warrant to apply, pay for and seek allotment of one equity share of Rs. 10 per warrant at a premium of Rs. 215/- such option shall be exercisable within 18 months from the date of allotment of these warrants, i.e. on or before June 19, 2009.

3. The equity shares when issued and allotted against these Warrant shall be subject to the Memorandum and Articles of Association of the Company and shall rank pari pasu with the existing Equity shares of the company.”

The TRFI Group has submitted that BEL along with other Persons Acting in Concert which are companies forming part of the Bhushan Group have made a Public Announcement under the provisions of SEBI Takeover Code, to take over the control and management of the Company.

The endorsement of Bhushan group's name on the warrant was done in an unauthorised manner by an employee of OSIL and was without Board approval.

The TRFI Group has submitted that Bhushan Energy has come into possession of 35,00,000 warrants of the Company without complying with the provisions of the SEBI Takeover Code and for a malafide purpose and in a clandestine manner where the role of IDFC-SSKI Securities Ltd. (*the Merchant Banker of the Bhushan Group*) also deserves to be investigated.

The TRFI Group has submitted that the present application filed by Bhushan Energy is not maintainable in law because the warrant certificate upon which BEL is relying upon expired on 19.6.2009 and it can no more be operated upon. This is for the reason that as per the terms of the warrant certificate, the same had to be converted on or before 19.6.2009 failing which the said warrant can neither be recognised by OSIL or by SEBI under the SEBI(DIP) Guidelines as a valid instrument.

The warrant is admittedly an Option Contract and a financial instrument issued under the SEBI (DIP) Guidelines (hereinafter referred to as the “DIP Guidelines”). This instrument is not under any other law but only the Contract Act and the SEBI (DIP) Guidelines. If a breach of the terms of the warrant is alleged the only remedy can be that of damages and no

specific performance can be sought especially where it is shown by the Company and its promoters that there is a *malafide* purpose behind acquisition of shares/ warrants. Thus, it is required to be construed strictly as per the SEBI(DIP) Guidelines, Indian Contract Act and particularly clause 13 of the DIP Guidelines which defines the currency of financial instrument to be 18 months from the date of issue of the relevant instrument.

The TRFI Group has submitted that a warrant is an instrument which is primarily issued to a friendly party with an option to convert into equity shares so as to avoid any possible attempt by a third party to take over the Company in a hostile manner. In the instant case such a safeguard was taken by the Company by clearly mentioning in the Explanatory Statement to the Notice for the shareholders stating that the said warrants may not be used to effect a change in control and management of the Company. In spite of the above express condition, BEL who is the purported transferee of the warrant is seeking to use the warrants to effect a change in control and management of the company. Such an act is clearly barred by the terms of the warrant and as such the Company is rightly refusing to convert the warrant into shares. According to BEL, it purchased the warrants from Prakausali (a Unitech Company) on 11.2.2009 after Mr. Sanjay Singhal (brother of Mr. Neeraj Singhal) through his company had made a public announcement on 7.2.2009 to acquire shares of OSIL. Near the date of purchase of these warrants, the other holdings of the Unitech Group have also been transferred to the Bhushan Group either in their own or in the name or in the name of hidden companies and persons with Bhushan's money.

The TRFI Group has submitted that a warrant certificate entitles only those persons to seek conversion into equity shares who is either issued the warrant or a transferee thereof, who do not have any "intention" of seeking change in management during the validity of the warrant certificate as is clearly evident from the terms on which warrants were issued. Thus assuming but not admitting that the validity of the warrant certificate had not expired, still it would be in the larger interest of thousand of shareholders of OSIL that warrants are not converted into equity shares as they are admittedly to be used for changing the control of management of the Company. Relevant extract of the Public Announcement dated 27.02.2009 (made by Bhushan Energy along with its PACs is reproduced hereinafter which would show the admitted purpose of the Bhushan Group:

"1.3 In addition to the Equity Shares held by the BEL and the PACs as above, BEL has also acquired a total of 35,00,000 warrants of OSIL as given below:

- a. 15,00,000 warrants entitling the holder of each warrant to subscribe to one Equity Share against each warrant at a price of Rs. 101 per Equity Share against each warrant at a price of Rs. 101 per Equity Share (including premium of Rs. 91 per Equity Share) within 18 months from the date of issue, i.e., until June 19, 2009, convertible into 4.92% of the Diluted Capital of the Target Company;
- b. 20,00,000 warrants entitling the holder of each warrant to subscribe to one Equity Share against each warrant at a price of Rs. 225 per Equity Share (including premium of Rs. 91 per Equity Share) within 18 months from the date of issue, i.e., until June 19, 2009, convertible into 6.56% of the Diluted Capital of the Target Company;"

"1.6 The Acquirer and PACs intend to acquire a majority shareholding in the Target Company accompanied with a change in control of the Target Company. Consequently, this Offer is being made in compliance with Regulation 10 and 12 of the Regulations. The Acquirer and/or the PACs may acquire additional Equity Shares of the Target Company, including from the open market, through negotiation or otherwise, in accordance with the Regulations up to 7 working days prior to closure of the Offer. Furthermore, the Acquirer may decide to exercise warrants mentioned under paragraph 1.3 above up to 7 working days prior to closure of the Offer. The Acquirer has requested OSIL for registering the warrants in its name."

"3.6 The Acquirer and PACs intend to acquire a majority shareholding in the Target Company accompanied with a change in control of the Target Company. Consequently, this Offer is being made in compliance with Regulation 10 and 12 of the Regulations. The Acquirer and/or the PACs may acquire additional Equity Shares of the Target Company, including from the open market, through negotiation or otherwise, in accordance with the Regulations up to 7 working days prior to closure of the Offer. Furthermore, the Acquirer may decide to exercise warrants mentioned under Paragraph 1.3 above up to 7 working days prior to closure of the Offer. The Acquirer has requested OSIL for registering the warrants in its name."

"7.2 The acquisition of equity shares will enable the acquirer (taken together with the shareholding of the PACs in the target company) to get a substantial ownership in the target company. The Bhushan Group has considerable interest in the Indian steel industry including the manufacture of value added auto grade steel products within increasing presence in the primary steel sector. The acquisition will enable **the Bhushan Group to scale up its business operation by further expanding its presence in the primary steel sector, and providing access to upstream iron ore mines.** In addition, the acquisition will also result in synergies for the target company, including sharing of best practices in manufacturing and quality assurance systems and processes, enhanced human capital and managerial talent, and potential financial, operational synergies."

Without prejudice to the above, on 11.6.2009, the Company had applied to SEBI to extend the validity of the warrants in view of the fact that BEL by filing an Application in the Company Petition before the Company Law Board was seeking the conversion of the

warrant into equity shares and the TRFI Group before the Company Law Board were contesting the same on the ground that a warrant could not be converted in favour of a person who had an intention of taking over the Company in a hostile manner. In response, BEL wrote that the validity of the warrant ought not to be extended. SEBI on 3.7.2009 informed the TRFI Group that the warrant ought to be converted as per its own terms and refused to extend the validity of the said warrants. The said order was not challenged by any party and has now become final.

The TRFI Group has submitted that once the validity of the warrants stands un-extended, the entire proceeding before SEBI is totally infructuous and non maintainable. Even if SEBI finds that the conversion of warrants would not result in change in management, since the validity of the warrants has expired, the findings of SEBI cannot lead to conversion of the warrants. It is pertinent to mention that BEL till date has not sought any extension of the validity of the warrants. Even in the present application by Bhushan Group there is no prayer seeking extension of the validity of warrants.

During the pendency of the proceedings before the Company Law Board, OSIL issued a notice for holding an EGM on 27.7.2009 of the Company with the following resolution:

“AS SPECIAL BUSINESS

To consider and if thought fit to pass the following with or without any modification(s) as a Special Resolution:

“RESOLVED THAT the transfer of 35,00,000 warrants originally allotted to Prakausali Investments (India) Private Limited, sold by Prakausali Investments (India) Private Limited to Bhushan Energy Limited, and their subsequent conversion into equivalent number of Equity Shares of the Company, be and is hereby accepted.”

The Company Law Board by an order dated 20.7.2009 and 24.7.2009 allowed the holding of the EGM in the presence of an independent observer appointed by the Company Law Board. The said order reads as follows:

“Heard on the application to avoid any controversy in relation to the proposed holding of or holding of EOGM on 27.07.2009. I appoint Sh. C.R. Das, Former Member, CLB as an observer to report on the proceedings of the meeting. Company will also arrange for video coverage of the meeting. This order is subject to any order that may be passed by Orissa High Court. The Company will pay to the observer a sum of Rs. 35,000/- in addition to the meeting his travel/ boarding expenses. The observer will send his report by 02.08.2009.”

This Order of the Company Law Board was challenged by BEL by way of a Company Appeal under Section 10F before the Orissa High Court being Co. Pet. No. 31 of 2009. The Orissa High Court passed the following interim order dated 24.7.2009 in the said petition :

“The impugned order passed by the company law Board is an innocuous one. Since argument of Mr. S.S. Das, Learned Counsel has not been concluded, it is provided that aforesaid order of the Company Law Board shall be given effect. However, all actions taken pursuant to the impugned order shall be subject to further orders of this Court.

The CLB has fixed the matter on 11.8.2009 for hearing. Therefore, list this case on 20.8.2009 for further argument.”

Finally, the said appeal was withdrawn by BEL. Further, since the Company Law Board proceedings are of no effect in view of the orders by the Hon’ble Supreme Court of India, the EGM of the Company is now 'perfected' and 'remains unchallenged'.

The TRFI Group has submitted that the decisions taken through its general body of shareholders by the Company on the Resolution hereinabove mentioned is to be treated as the final decision of the Company and is required to be given effect to under any circumstance. Thus, once the Company had decided not to convert the warrants into equity shares by rejecting this resolution, in view of corporate democracy and as per will of the shareholders who are supreme authority of the company and the amendment of the terms of the warrants through the General Body’s resolution, the same cannot be converted.

Submissions of Bhushan

BEL has submitted that it is completely false that the shareholders of OSIL voted to allot the warrants with the condition of no change in management. It was only in the Explanatory Statement to the Postal Ballot Notice/ AGM Notice for approval of the issue of the said warrants, that the management of OSIL made the said statement that “...no change in management control is contemplated.” as required by the then existing DIP Guidelines, 2000. The same was never a pre-condition for conversion of the warrants. Further, the stipulations in the explanatory statement as to the compliance with the Takeover Code made it clear that the holder of the said warrants will have to comply with the Takeover Code, if applicable.

BEL has denied that warrant is an instrument which is primarily issued to a friendly party for the alleged purpose. Such contention is completely contrary to the fundamental principle of free transferability of securities of a public company.

Admittedly, the Bhushan Group had applied for conversion of the warrants on April 16, 2009, before their expiry. BEL has submitted that OSIL wrongly refused to convert the same which has resulted in the prolonged litigation through the CLB, the Orissa High Court, the Hon'ble Supreme Court and now before SEBI. OSIL cannot take advantage of its own wrong and take such plea. If such a contention is allowed, it would result in giving license to the companies to breach terms of warrants issued, further breach of DIP Guidelines and SEBI's directions under the Takeover Code and contend to sue for damages. This contention would render all proceedings in Hon'ble CLB, Hon'ble High Court and Hon'ble Supreme Court as otiose.

Further, the contention that the warrants cannot be converted in view of lapse of the time within which the same ought to have been converted does not meet with reason in view of the question categorically framed by the Hon'ble Supreme Court. If such contention is to be appreciated, the entire exercise of framing the question by the Hon'ble Supreme Court and sending the matter for adjudication by the Hon'ble Board would be a futile measure.

The certificates of the Warrants provide that they were transferable/assignable only after expiry of the lock-in period of one year, which expired on December 19, 2008. BEL acquired the Warrants after the expiry of lock in period from M/s. Prakasali Investment (India) Pvt. Ltd. Thereafter, on March 2, 2009, the Warrants were duly registered in the name of the Applicant. The same was communicated to BEL vide letter dated March 3, 2009.

BEL has submitted that it exercised the option under clause 2 of the conditions as mentioned on the certificates of the Warrants, within the time stipulated therein on April 16, 2009 and tendered the due consideration of ₹ 54,13,50,000 towards conversion of the Warrants into equity shares as per its entitlement.

It may be noted that there exist no terms or conditions in the certificates of Warrants by virtue of which OSIL may refuse conversion, once the option is exercised by the Warrants holder. Further, there is no provision in the DIP Guidelines or ICDR Guidelines, which entitle OSIL to refuse to convert the Warrants into shares and on the contrary, the guidelines makes it mandatory for OSIL to compulsorily convert the Warrants and allot the requisite number of shares.

It is pertinent to mention that the 70,00,000 warrants issued in the same period to TRFI, a promoter of OSIL, were converted into equivalent number of equity shares on or around February 28, 2009 and March 4, 2009.

IV. SHARES UNDER LITIGATION – HON’BLE DELHI HIGH COURT AND HON’BLE SUPREME COURT

Submissions made by TRFI Group

The TRFI Group has submitted that none of the charts (*of shareholding in OSIL and classification thereof*) submitted by the Bhushan Group consider the disputes raised directly/indirectly by the Bhushan Group before the Hon’ble Supreme Court of India and the Hon’ble Delhi High Court. The fate of 53,88,916 shares of OSIL held by TRFI Group is yet to be decided by the Hon’ble Supreme Court and Hon’ble Delhi High Court. The said number of shares forms 19.96% of the share capital without the conversion of the warrant in favour of the Bhushan Group.

The TRFI Group has submitted that the Hon’ble High Court by an order dated 6.3.2009 had restrained TRFI from exercising voting rights in respect of 30,00,000 shares held by TRFI. Therefore, the said shares should not be included in the computation.

The TRFI group has submitted that the issue and allotment of 23,88,916 shares of OSIL to TRFI is under challenge in SLP No. 15034-35 of 2011 before the Hon’ble Supreme Court and therefore the same also should be excluded from the computation.

The TRFI Group has submitted that the BEL has suppressed from SEBI many crucial facts. The TRFI Group has submitted that one of the major facts which have been suppressed from SEBI is the pendency of a Civil Suit before the Delhi High Court in which Bhushan group has a stay in their favour being CS(OS) No. 424 of 2009 though the same has been mentioned in the above writ petitions as a circumstance affecting the ownership and control of the company. The other relevant proceeding is before the Hon’ble Supreme Court which also may have a prejudicial effect on the TRFI Group holding and consequently increasing the holding of the Bhushan Group.

Submissions of Bhushan Energy :

In the disclosure made by the New Promoter (i.e., Monnet Ispat & Energy Limited) in the Post Offer Public Announcement dated August 2, 2012, the shareholding of the New

Promoter and its declared PACs i.e., TRFI, TRFI Investment Pvt. Ltd is 51.57%. It is to be noted that this disclosure is made post closure of the Open Offer, on the total diluted share capital of 3,05,00,000 shares (comprising of existing 2,70,00,000 equity shares and 35,00,000 warrants in question).

However, the above disclosure is inconsistent with the fact that the shareholding of the Promoter Group is 56.84% on the total diluted share capital of 3,05,00,000 share (comprising of existing 2,70,00,000 equity shares and 35,00,000 warrants in question). Admittedly, the shareholding disclosed by OSIL on the BSE website as on June 30, 2012, Dr. P.K.Mohanty, Ms. Mahmooda Mohanty and IPICOL are the declared promoters of OSIL. The shareholding of the above mentioned promoters has not been included in the shareholding as disclosed in the Post Offer Public Announcement dated August 2, 2012. On adding the shareholding of these promoters to the above declared percentage of 51.57%, the total shareholding of the Promoter Group would increase to 56.84% on the total diluted share capital of 3,05,00,000 shares (comprising of existing 2,70,00,000 equity shares and 35,00,000 warrants in question).

BEL has submitted that as of date, TRFI is in fact the registered shareholder in respect of the 30,00,000 shares. However, at present, because of the said interim order dated 6.3.2009, TRFI cannot vote in respect of the said shares. Consequently, the same could appropriately be kept out of the computation at present.

BEL has submitted that even if the said 30 lakh shares on which voting has been enjoined temporarily by the interim order of the Hon'ble Delhi High Court are excluded from computation, the promoter group would still hold 52.14% and thus there can be no change in management of OSIL in favour of BEL.

BEL has submitted that the issue of the said shares to TRFI had been challenged by Bhushan before the CLB, on the ground that the same had been funded by the company itself in violation of Section 77 of the Companies Act. TRFI continues to be the duly registered holder of the said 23,88,916 shares without any condition or restraint, and the same are fully votable. Therefore, there is no justification or ground to exclude the same from the computation of the promoter holding.

V. PERSONS ALLEGED TO BE ACTING IN CONCERT WITH BEL

Submissions made by TRFI Group:

The TRFI Group has submitted that the total votable capital of the company as on 27.7.2009 was 2,40,00,000 Equity Shares taking into account an order of the Hon'ble Delhi High Court in C.S. (OS) No. 424 of 2009 whereby an injunction had been issued on the voting on 30,00,000 shares held by TRFI Investments Pvt. Ltd. The total number of shares on which vote was cast (*on the proposal of conversion of 35 lakh warrants, which proposal was rejected by the company*) were 2,08,65,875. The number of votes cast in favour of Bhushan Energy Group were 85,21,619 which represented 40.84% of the total number of shares on which the votes had been cast. The 35 lakh warrants represent approximately 12.72% of the votable capital with the conversion of the warrants. If the Bhushan group was holding further 35,00,000 shares (converted from 35 lakh warrants) then it would have come into control and management.

The TRFI Group has submitted that in these votes cast in favour of Bhushan Group, the following major shareholders also cast their vote in favour of the Bhushan Group though they are not shown as persons acting in concert as on that date before SEBI/ or Company Law Board either through the public announcement or in any other form.

Ballot No.	Name	Number of shares	% of Total vote casted
61	Multistar Construction Pvt. Ltd.	999900	4.792
185	Ultra Modern Exports Pvt. Ltd	999900	4.792
205	Matchless Infrastructure Pvt. Ltd.	803298	3.850
183	Bina Kedia (Originally purchased 5,22,900)	568023	2.722
13	BNS Tour & Travels (P) Ltd.	513951	2.463

The TRFI Group has submitted that a complaint was filed before SEBI by one Pruthviraj Patnaik stating that companies, namely, Multistar Construction Pvt.. Ltd, Ultra Modern Exports Pvt. Ltd., Matchless Infrastructure Pvt. Ltd. and Travels (P) Ltd. are holding shares of OSIL on behalf of the Bhushan Energy Group although they have not been disclosed in the Public Announcement by BEL as Persons Acting in Concert as on 27.2.2009. The TRFI Group has submitted that these companies and persons are clearly in concert with the Bhushan Group. A Special Leave Petition was filed by BBN Transportation Pvt. Ltd. before the Hon'ble Supreme Court of India being SLP (C) No. 7880-81 of 2009.

The TRFI Group has submitted that SEBI on 18.1.2010 found that the Bhushan Group had suppressed the status of BNS Tours & Travels Pvt. Ltd. to be that of a person acting in

concert in their public announcement dated 27.2.2009 therefore full facts were not disclosed by the Bhushan Group. This order however, was challenged before the Hon'ble Appellate Tribunal in Appeal No. 65 of 2010 and the Appellate Tribunal on 28.12.2010 passed an order allowing the appeal again on suppression of facts. Both the orders were ex-parte without affording any opportunity to the TRFI Group or OSIL. But it is significant to note that BNS Tours & Travels Pvt. Ltd. has not been shown as a PAC fraudulently. There are common directors of BNS Tours & Travels Ltd., with other companies such as Brightsun Merchants Pvt. Ltd. and Moonstar Securities Trading and Finance Pvt. Ltd. Further Mr. B.B. Singhal and Mr. Neeraj Singhal were earlier directors in M/s. BNS Tours & Travel Pvt. Ltd. who resigned subsequently. The purchases of OSIL's shares had been achieved during the time the Bhushan group had interest in BNS Tour and Travels Pvt. Ltd., the sale of BNS Tour & Travel Pvt. Ltd. to a purported third party is also false and fraudulent, since the control remains with the Bhushan group.

The TRFI Group has submitted that the above companies/ persons along with Brightsun Merchants Pvt. Ltd. are intricately related to the Bhushan Group and these companies have been throughout acting in concert with the Bhushan Group yet have not been declared as PACs with the Bhushan Group. Mrs. Bina Kedia supported Bhushan Group in the General Meeting dated 27.7.2009. The TRFI Group has submitted that all through the Bhushan Group has been playing hide and seek with SEBI and the various courts and forum as well as the Stock Exchanges.

The TRFI Group has submitted that the Bhushan Energy Group consists of more than 100 companies held by the Bhushan Group directly, indirectly as also inter se. The above companies which are holding almost 40 lakh of shares of OSIL, are directly or indirectly held by the Bhushan Group. The TRFI Group has submitted that there are about 19 companies which are admitted to be Bhushan Group companies in Company Appeal No. 26 of 2007 filed before the Hon'ble High Court. The Bhushan Group has been making different claims before different authorities at different times. The TRFI Group has submitted that the Bhushan Group has been conveniently acquiring shares through their own funds in a web of companies having cross holdings.

The TRFI Group has submitted that the other companies which are all found in the various Balance Sheets of declared and non-declared Bhushan group companies having cross holdings, share application money as also other connections through common directors, none of them have any human being as a shareholder and shareholders are companies,

which are also held in turn by companies. Their directors have no stake in the companies and are clearly not having any networth to support huge transactions of monies coming in and going out of the companies. The TRFI Group has submitted that clearly these companies are a creation of fraud to hide the ultimate truth. The purpose of the Takeover Code and putting up limitations under the Takeover Code are actually as and by way of protection of Public Interest, Shareholders interest and the interest of the company itself. The Takeover Code was brought into force to clear the malaise of hostile takeovers by unknown persons in a clandestine manner. However, the Bhushan Group through the above maze of companies is whittling this very objective of the Takeover Code. The TRFI Group has submitted that in such a situation the corporate veil of all these companies deserves to be lifted so that the truth can be ascertained.

The TRFI Group has submitted that by keeping the above companies in the shadows while making a Public Announcement and Offers without disclosing the truth is like doing a lip service to the entire Takeover code. The entire Takeover Code machinery and SEBI is being taken for a ride by the Bhushan Group in this fraudulent manner. The TRFI Group has submitted that a serious investigation into the affairs of the Bhushan group who has been making a fool out of the general public and the various Authorities through various public offerings within their own company or in respect of takeover offers deserves to be carried out under Regulation 38 of the Takeover Code against each of the above companies, their directors and shareholders and as well as their ultimate shareholders and also applicants for shares who have remained hidden through a fraudulent process. The guidelines on Anti Money Laundering standards also deserve to be invoked against the above parties and the Bhushan Group. The TRFI Group has submitted that till the investigation is completed against the above companies and the Bhushan Group, which would clearly show that the conversion of 35 lakh warrants would change management in favour of the Bhushan Group in OSIL, the application of Bhushan Group in this regard deserves to be kept in abeyance. All the above companies deserve to be made parties for a fair, proper and a complete adjudication of the above aspects which has been so ordered by the Hon'ble Supreme court of India on 7.5.2012.

It has been submitted that some of these companies (which are admitted to be Bhushan Group companies but have been kept hidden and not declared to SEBI) hold indirect interest in the above 6 companies or that the above 6 companies directly or indirectly hold 'shareholders' interest' in those admitted companies. Some of these entities have huge share application money of crores of rupees, which money has been ultimately utilized to purchase

shares of OSIL. These companies have no business of their own. The TRFI group has submitted that the Bhushan Group has created a web of inter-holding companies (*a chart has been presented in that regard*) to evade proper identification of the above 6 companies in one way or the other, though they have links with the admitted Bhushan Group companies in some way or the other. The TRFI Group has submitted that huge funds running into hundreds of crores of rupees are required to purchase such a huge shareholding of OSIL. Apparently, the 6 companies have no business of their own and are mere investment companies and clearly the purpose of these companies was to hide the transaction of shares so as to evade the Takeover Code. There is a clear fund flow from and to some of the 6 companies to companies admittedly to be Bhushan Group companies. There are directors of some of these six companies who hold provident fund account numbers as employees of the Bhushan Group companies thus establishing that the control is directly is that of the Bhushan Group companies in these undeclared companies. The directors of these companies do not have any stake in these companies and are nominee directors. The TRFI Group has also submitted the circular transactions and the cross holding structures. In the scam, the Hon'ble Supreme Court has commented upon such cross holding structures as a means of hiding the truth and the Authorities are looking into such structures. SEBI may investigate the role of each of the persons involved in these companies as also the fund flow from and into these companies clearly showing the nexus between these companies and the Bhushan group. These persons who have been clandestinely involved in the management of affairs in these investment companies deserve to be called by SEBI, by filing appropriate statements on oath regarding their role, involvement, sources of income, and their connection with the Bhushan Group.

The TRFI Group has submitted that there are holdings, cross holdings as well as inter holdings between these 6 companies and other 100 companies, all companies deserve to be investigated and their corporate veil deserve to be pierced to find out who these persons are. Without the investigation it is impossible to come to a conclusion as to whether the conversion of 35,00,000 warrant would convert the management and control of OSIL in favour of the Bhushan Group. For purchase of more than 40,00,000 shares by these 6 persons/ companies, approximately ₹100 crores have been utilized, though these companies have no independent source of income or business.

The TRFI Group has submitted that the clear indication of the fact of their being acting in concert is the voting pattern in the EGM of OSIL on 27.7.2009. The TRFI Group has submitted that on 11.2.2009 and 13.2.2009, fraudulent purchases of shares was made by the

Bhushan Group to consolidate its position against OSIL and its promoters in the following manner:

- a. On 30.1.2009 IDFC-SSKI Securities Ltd. purchased 2422900 shares of OSIL from Prakausali which is a Unitech company. On 13.2.2009, IDFC-SSKI Securities Ltd. sold these very shares to Bhushan Energy Ltd. and Bina Kedia through off-market transactions which is required to be investigated.
- b. On 13.2.2009 Basana Investments Ltd. having 10,00,000 shares sold 9,99,900 shares to Multistar Construction Pvt. Ltd. Basana Investments Ltd. is a Unitech Company. Therefore, it is circumstantial that Multistar Construction Pvt. Ltd. which is held through a web of companies is a Bhushan Group company. This transaction is also not reflected on the Stock Exchange and is clearly an off market transaction which is required to be investigated.
- c. On 13.2.2009 Strepera Holdings Ltd. having 10,00,000 shares sold 9,99,900 shares to Ultra Modern Exports Pvt. Ltd. Strepera Holdings Ltd. is a Unitech Company. Therefore, it is circumstantial that Ultra Modern Exports which is held through a web of companies having incidents of Bhushan Group is also a Group company. This transaction also not reflected on the Stock Exchange and is clearly an off market transaction which is required to be investigated.
- d. Matchless Infrastructure Pvt. Ltd. achieved to purchase 782539 shares of OSIL on 13.2.2009 yet its name does not figure in the transaction before the Stock Exchange. Thus, this company has also purchased shares through off market transactions evidently from HB Stock Holdings Ltd., Pisces Portfolio Pvt. Ltd. Other persons who seem to have sold their shares to Matchless Infrastructure Pvt. Ltd., which is an undisclosed Bhushan Group company.
- e. BNS Tour & Travel Pvt. Ltd was holding 5,13,926 shares. Admittedly this company was a Bhushan Group company until it was sold to an alleged third party. However, it would be clear that those third parties are also related to the Bhushan Group and the Bhushan Group has only misled SEBI into believing that BNS Tour & Travel Pvt. Ltd. ceased to be a Bhushan Group of company.

The TRFI Group in view of the above and further material as regards the status of various companies being now disclosed as investment companies of Bhushan Group as recorded in various court orders including the Hon'ble Delhi High Court, has sought an investigation into the affairs of the Bhushan Group who have been successful in evading the Takeover Code and other applicable laws by giving false pictures before the Court and SEBI as regards

declared acquisition of OSIL shares. If the acquisition of shares by these companies is taken into consideration then the Bhushan Group would have reached the Takeover Code threshold well before the date of 28.2.2009. The TRFI Group has submitted that the Bhushan Group has not only misled SEBI but also the general public. The corporate veil of all these companies deserves to be lifted and it is required to be shown as to how such huge funds were raised by these 6 companies to purchase the shares of OSIL.

Re : Matchless Infrastructure Pvt. Ltd. ('Matchless')

- a. The TRFI Group has submitted that this company presently holds 8,03,298 shares of OSIL. On 13.2.2009 it became a shareholder of OSIL for the first time with a holding of 7,82,539 shares. Matchless is clearly an investment company of the Bhushan Group through a web of cross holding companies.
- b. The TRFI Group has submitted that for purchasing 7,82,539 shares on 13.2.2009, Matchless required huge amount of funds. However, there is no explanation as to how such a huge amount of money was obtained by Matchless for purchasing the shares. It is clear that the monies were obtained from the Bhushan Group, supplying such huge amounts through a web of companies.
- c. TRFI Group has stated that it has obtained a bank statement of Matchless in Punjab National Bank having account no. 0133002100083221 as of 10.2.2009. The said bank statement clearly reveals a huge inward remittance of ₹ 13.85 crores on 4.2.2009 to 6.2.2009 which has been later on utilized for making payments to various parties including, Mr. Nitin Sabharwal and Mr. Chetan Sabharwal clearly for the purchase of shares from them. This clearly proves that there was an off market transaction between Mr. Chetan Sabharwal and Mr. Nitin Sabharwal and Matchless because the payment had not been made through a stock broker. Further, there are payments made to a Kedia family which TRFI Group believes is closely related to Bina Kedia. There are other persons mentioned like Collage Trading who has been paid a huge sum of ₹ 2,90,86,420/- who also is required to be investigated upon.
- d. The TRFI Group has submitted that Matchless is held by a web of companies which ultimately reach the Bhushan Group. It is submitted that the signatories to the Bank accounts of Matchless would clearly reveal as to who is in control of this company. Further, the DP number of Matchless is 10544436 which would clearly show the control of these shares because OSIL's shares were dematerialized long back. The company is managed by persons who have no stake in the company.

- e. The TRFI Group has submitted that Matchless is held by Prominent Hospitals Pvt. Ltd., Navjyoti Farming Pvt. Ltd. and Titanic Developers and Builders Pvt. Ltd. Prominent Hospitals Pvt. Ltd. has two major shareholders BNS Capital Services Pvt. Ltd. and Shubham Capital & Leasing Pvt. Ltd. which are admittedly Bhushan Group companies. Navjyoti Farming Pvt. Ltd. is held by Prominent, Matchless and Titanic. It is further submitted that Navjyoti Farming's directors at the relevant point in time were Puneet Bansai and Chanderkant Mahadev Jadhav, who were holding provident fund account numbers as employees of Bhushan Steel Ltd having PN/1740-202. Thus, both Navyug and Prominent were majority shareholders of Matchless. Thus, Matchless is a Bhushan Group company though evidently not shown as such through a fraudulent cross holding structure which deserves to be unravelled. Thus, an investigation deserves to be ensued on both the bank accounts and the Depository Participant Numbers of Matchless by SEBI.

The TRFI group has submitted similar connections between the Bhushan Group and Ultra Modern Exports Pvt. Ltd., Multistar construction Pvt. Ltd., Bina Kedia and BNS Tours & Travel Pvt. Ltd., Venus and Brightsun.

As regards the 6 entities which have been said by OSIL to be the undeclared PACs/Benami/Front Companies of the Bhushan Group, TRFI group *inter alia* submitted that :

- (a) They cannot be considered to be independent since they have the common objective and purpose of substantial acquisition of shares with voting rights for gaining control over OSIL with the Bhushan Group since they voted in favour of Bhushan Group in the EGM held on 27.07.2009 of OSIL. As explained in the detailed replies/pleadings made by Mohanty Group and on which the Mohanty Group relies, these companies are sham companies with no real owners, having certain persons controlling these companies who are some way or the other related to the Bhushan Group.
- (b) The purchase, by these 6 entities, of such substantial shareholding in 2009 of OSIL required huge funds. The source of funds is not disclosed and it is apprehended that it belongs to the Bhushan Group. These companies do not have any business to sustain such huge investments and the money has been circulated through them for purchase of OSIL shares even from Bhushan's own merchant banker i.e., IDFC Capital Services.
- (c) The proximity and timing of purchases of such substantial share with the purchase of stake by Bhushan Group and the threat to the Mohanty Group shows that these are hidden

investments, waiting for the culmination of the present proceedings, so that they, in common objective with the Bhushan Group, can swoop down on the Mohanty Group and wrestle management control.

- (d) Only with this background, the Hon'ble Supreme Court referred the issue as whether the Bhushan Group "could" come into management on conversion of warrants. The Mohanty Group has already applied for cross-examination of these persons, however Bhushan Group which purports, not to be speaking for these entities, still has been trying to stone-wall every proceedings against these companies. Due notice deserves to be issued to their companies for a proper adjudication of the present issue.
- (e) The reference of the Bhushan Group to previous investigation where no participation of the Mohanty Group was even suggested by SEBI, and skirting reference to the ongoing investigation by SEBI, shows Bhushan Group's keenness to scuttle all investigation against them while praying for orders on the conversion of warrants. The Hon'ble Supreme Court has only referred one issue to this authority to make a report as to whether conversion of 35,00,000 warrants into shares "could" result in transfer of management in favour of Bhushan Energy Limited.
- (f) Brightsun cannot be considered as independent as it has the common objective or purpose of substantial acquisition of shares or voting rights for gaining control over OSIL with the Bhushan Group. Further it purchased shares from Bina Kedia who had voted in favour of the Bhushan Group during the EGM held on 27.07.2009 of OSIL after allegations were made against Bina Kedia.

The TRFI Group has submitted that Bhushan group has been reporting to different Authorities, a different set/ group of companies to be associated with it as a "Persons Acting in Concert"/ Group Companies. In a Company Appeal, Bhushan Group has informed the Hon'ble Delhi High Court a different set of companies to be its group/ investment Companies. Before the Bombay Stock Exchange, a different set of companies is shown by Bhushan Energy Ltd. in 2008. Further, in the Public Announcement dated 28.2.2009 by Bhushan Group, a different set of companies is shown and in the final Public Offer dated 18.4.2012, a completely new set of companies is shown suppressing some of the companies shown in the other sets. There is a huge amount of share application money with these companies and are used for applying for shares in other companies which are admittedly Bhushan group companies. Though some of the companies are owning hundreds

of crores worth of shares in OSIL, companies are not declared as PACs with the Bhushan Group. The TRFI Group has submitted that a huge shareholding of almost 40 lakh shares and 30,00,000 warrants has been kept hidden by the Bhushan Group, though, the purchase of the said shares is financed indirectly by the Bhushan Group. The TRFI Group through its own investigation based upon documents available with the Registrar of Companies' website has alleged that there is an unholy connection between more than 100 companies and monies have been routed through them to acquire shares of OSIL in a clandestine, fraudulent and a mischievous manner to evade the rigors of the Takeover Code as well as other applicable laws. The TRFI Group has submitted that all these companies deserve to be called for due declaration, evidence and cross examination due to the fraud committed by the Bhushan Group with assistance from these companies, to unravel the truth.

The TRFI Group has submitted that a totally fraudulent litigation before the Delhi High court is perpetrated by Moonstar Securities Trading and Finance Company Pvt. Ltd. Being CS(OS) No. 424 of 2009, which concerns 30 lakh shares issued to the TRFI group where, an interim order has been obtained by Moonstar Securities Trading and Finance Company Pvt. Ltd. (Moonstar) blocking the voting power on the said shares. This statement has been suppressed by Bhushan group from its Public Offer where it is falsely purported that the voting capital of the target company is 270,00,000 shares although actually presently the votable capital is only 240,00,000 shares. Further, Moonstar is indirectly a Bhushan Group Company. This company is admittedly the single largest non-promoter shareholder of Bhushan Energy. This Company figures in various companies which are directly or indirectly controlled by the Bhushan Group.

The TRFI Group has submitted that all bank statements of 6 undisclosed persons/ companies between August 2007 and August 2012 holding huge number of shares of OSIL for the benefit of the Bhushan Group deserve to be called for and investigated which would clearly prove that the said companies are related to the Bhushan Group.

The TRFI Group has submitted that sources of funds for buying such huge quantity of shares of OSIL of the 6 companies as mentioned hereinafter deserves to be investigated upon. The income tax returns/ financial statements of these companies, its directors as also its shareholders deserve to be called for and investigated upon. In view of the grave fraud committed by the Bhushan group, the present application made by the Bhushan group deserves to be rejected.

The TRFI Group has submitted that a chart has been filed by it alongwith the present reply showing nexus between more than 100 companies of the Bhushan Group in one way or the other. All these approximately 100 companies deserve to be investigated upon for a money laundering action as also for showing that the purchases of shares during August 2007 to February 2009 in an undisclosed manner belong to the Bhushan Group. That these 100 companies need to be investigated for finding out the flow of funds amongst these companies to facilitate acquisition of shares by undeclared PACs of OSIL in a clandestine manner to avert the SEBI Takeover code and other applicable laws.

The TRFI Group has submitted that the Bhushan Group has deliberately given a half picture to SEBI with an intent of misleading. The Bhushan Group is fraudulently seeking a direction against the company for converting 35,00,000 warrants into equity shares with a false submission that such conversion shall not result in change in management/ control and would only result in increase of its holding by 12% to about 30%. This picture is clearly false because if the shareholding of persons who are kept in hiding is also taken into consideration then the Bhushan Group would become the single largest shareholder of OSIL. Such conversion ought to be refused because on investigation it would be found that the averments made by the Bhushan group are totally false.

Voting in EoGM:- The company had an EGM on 27.7.2009, under the supervision of an independent observer appointed by Hon'ble Company Law Board, Principle Bench, Delhi, when 40.84% shareholders present and voting had voted in favour of conversion of the said 35,00,000 warrants into shares. The conversion of the warrants would result in Bhushan's shareholding increasing by 12.72% and that 53.56% (40.84%+12.72%) would then vote in favour of Bhushan, which would result in a change in management.

The pattern of purchase of huge quantity of shares of OSIL and retaining the same by some of those companies who voted in favour of Bhushan Group is obviously to help the Bhushan Group in getting control of the company in the present circumstances.

The TRFI Group has submitted that the lawyers appearing for the Moonstar and the Bhushan Group are the same as that of Bhushan Group's lawyers before the CLB, Orissa High court, Supreme Court of India and now before SEBI. Both Moonstar and BEL (including its disclosed and undisclosed PACs) have common interest of gaining more and more shares in the Company to change management. It is a multipronged attack which has been unleashed by the Bhushan Group against OSIL in order to take it over in a hostile

manner in violation of Takeover Code and other applicable laws. The modus operandi of the Bhushan Group seems to be that they should get more and more shares by seeking conversion of warrants into shares and at the same time try and dilute the shareholding of the existing promoters of OSIL by means of the Delhi High Court suit and the Civil Appeal before the Supreme Court. In case, the Bhushan Group succeeds in their nefarious litigation then the shareholding of the existing promoters will come down drastically which in turn will benefit the Bhushan group. As a result, Bhushan group would come in management.

The TRFI Group has submitted that the Bhushan Group before the Hon'ble High Court of Orissa in Writ Petition No. 202526 of 2010 has pleaded that the effect of various litigations before the Hon'ble High Court of Delhi and Hon'ble Supreme Court would have a direct impact on their capability of acquiring the management and control of OSIL.

The TRFI Group has submitted that BEL had filed two writ petitions before the Orissa High Court challenging the directions of this Authority (SEBI) to open the Public Offers under the SAST. The said two writ petitions filed by BEL and other persons acting in concert with BEL are Writ Petition No. 13821 of 2010 and Writ Petition No. 20526 of 2010. In both the writ petitions, the Bhushan Group has provided 4 scenarios where under Bhushan Group itself has acknowledged on affidavit that if the warrants are converted into shares it shall allow the Bhushan to change management of the company in its own favour.

The TRFI Group has therefore submitted that since there is every chance of a change in management in favour of the Bhushan Group in case they got ownership of 35 lacs shares through the conversion of warrant so therefore there can be no conversion of the warrant in favour of BEL.

Submissions of Bhushan Energy

BEL has submitted that the reference to the averments in Writ Petition No. 20526 of 2010 (BNR Infotech Pvt. Ltd. vs. Union of India & Ors.) is irrelevant and meaningless. It is not in dispute that the various pending litigations could have an impact on the shareholding pattern of OSIL at some future uncertain date. It is also not in dispute that the Bhushan group hopes to acquire control over OSIL at some future uncertain date. The computations/ scenarios in the said Writ Petition are as of the year 2010. The current status is as per the charts/ scenarios submitted with the Applicants submissions. Further, the said Writ Petition No. 20526 of 2010 has been dismissed as withdrawn.

On an express inquiry by the Ld. Whole Time Member, TRFI's Sr. Counsel expressly admitted that none of the said six companies were controlled by an over 50% holding by the Bhushan group. It was however his submission that there were connections between the said six companies and the Bhushan group. In the absence of a controlling interest however, it cannot be concluded that these six companies would vote in favour of any change in management.

BEL has denied the allegations of various "connections" and that the said 6 companies are PAC's of Bhushan and that SEBI has already investigated the same in detail and concluded that only BNS Tours & Travels was a PAC of the Bhushan group. This finding also was set aside by the Hon'ble SAT.

BEL has submitted that the only party not covered by the said investigation and orders, is Brightsun Merchants Pvt. Ltd, as no allegations were earlier made against them. Even now, no allegations have been made to show any "connection" whatsoever between Brightsun and Bhushan. There are no allegations of any cross holdings or common directors, or common address or any other connection. In fact there is none.

BEL has submitted that the shareholdings of the said 6 companies cannot be added to the Bhushan Group Holding.

As regards TRFI Group's submission that Moonstar should be deemed to be connected to Bhushan, BEL has submitted that the allegation is incorrect and in any event irrelevant. Admittedly, Moonstar does not hold any shares of OSIL till date.

Voting in EoGM:- BEL has submitted that 40.84% who allegedly voted in favour of the resolution was the percentage of those shareholders present and voting who voted in favour of the resolution and not a percentage of the entire share capital. If the same is computed as against the fully diluted capital post conversion, the same would only be 27.94% out of which 15.13% belongs to BEL and the balance is of other public investors.

Further, BEL has submitted that the converted shares would only amount to 11.48% of the fully diluted capital post conversion. It is not even alleged that every person who voted in favour of the resolution was a PAC of or "connected" to the Bhushan Group. In any event, even if all such persons who voted in favour of conversion are aggregated with the post conversion shares, the same only comes to 39.42% (27.94% + 11.48%). BEL has submitted that this includes the said six companies which are alleged to be Bhushan group companies.

BEL has submitted that even if one were to deduct the aforesaid 30,00,000 shares (*for which voting has been frozen by the Hon'ble Delhi High Court*) from the total diluted capital, , even then the 40.84% who voted in favour of the said resolution would amount to 12.72%, bringing the aggregate to only 43.71%.

VI. CLASSIFICATION OF PROMOTER GROUP OF OSIL – IPICOL and MONNET ISPAT & ENERGY LTD

Submissions made by TRFI Group:

The TRFI Group has submitted that “Promoter” does not mean “person acting in concert”. A promoter shareholder is not bound to vote in a particular manner however, a person acting in concert is deemed to be associated with the other persons acting in concert in a manner that both vote together. TRFI Group has relied upon the following judgements in this regard:-

- a. K.K. Modi Vs. Securities Appellate Tribunal, (2002) 2 Bom CR 523;
- b. Vodafone International Holdings BV Vs Union of India, (2012) 6 SCC 613;

The TRFI Group has submitted that the Bhushan group has with a *malafide* intention included IPICOL as an existing promoter of OSIL. The TRFI Group has submitted that for the present purposes IPICOL cannot be considered a part of the TRFI Group since IPICOL itself has been taking decisions independent of the TRFI Group. For the general meeting held on 27.7.2009, directed by the Company Law Board, for deciding whether the warrant of the Bhushan Group deserves to be converted or not, IPICOL abstained from the meeting clearly showing that it is not concerned with the present issue. Thus, IPICOL deserves to be considered as an independent group as a government financial institution having no allegiance to the TRFI group. The Monnet Group similarly is also not bound to act in support of the TRFI group in the present situation though it may be adversely affected by any decision taken by SEBI. The TRFI Group has submitted that the reference to “existing promoter”, “new promoter” and “promoter group” deserves to be ignored and only two groups need be mentioned in the present situation i.e. TRFI Group and the Bhushan Group.

The TRFI Group has submitted that before the Company Law Board in C.P. No. 5 of 2009, the Bhushan Group itself had not included IPICOL as one of the Respondents and had not considered the said Government organisation to be a part of the TRFI Group. This position was continued by the Bhushan Group even till the litigation before the Hon'ble Supreme

Court of India. However, suddenly, the Bhushan Group in order to mislead SEBI has sought to include IPICOL as part of the TRFI Group.

The shareholding patterns relied upon by the Bhushan Group as filed before the Bombay Stock Exchange has no concern to the present facts since this is a matter directed to be adjudicated by SEBI on the directions of the Hon'ble Supreme Court of India and not on the basis of statutory filings made, but on the basis of facts of the case and contentions made before SEBI as permitted by the Hon'ble Supreme Court. SEBI has to consider and take into account all the facts stated by answering respondent in its reply.

Submissions of Bhushan Energy :

BEL has submitted that the TRFI's contention that even though IPICOL is a co-promoter there is no assurance that IPICOL will support the rest of the promoter group since IPICOL is controlled by the State Govt. and not the Mohanty Group, is untenable.

BEL has submitted that the admitted facts as hereinabove stated show that IPICOL and the rest of the Promoter group are intimately connected and have always supported each other :

- (i) Admittedly OSIL is a Joint Venture between IPICOL and the Mohanty Group and was set up pursuant to a Joint Sector Agreement dated 28.12.1977 between TRFI (admitted promoter) and IPICOL. In the agreement it is *inter alia* agreed that IPICOL shall be entitled to have their directors of the Board and that IPICOL shall have the right to nominate the Chairman of OSIL. The Agreement also stipulates that until OSIL's IPO, IPICOL and TRFI would hold equal quantities of shares, and that after the IPO, IPICOL should hold 26% and TRFI and its associates should hold 25%.
- (ii) 3 nominees of IPICOL and 4 nominees of TRFI were the subscribers to the Memorandum and the Articles of Association of OSIL.
- (iii) The Articles of Association *inter alia* provide that:
 - i. Neither IPICOL nor TRFI could transfer their shares without the consent of the other, who would have the first right to take any such shares;
 - ii. That the first Board of Directors was to have 50% nominated by each of the parties;
 - iii. That the Chairman would always be the nominee of IPICOL.

- iv. That at all times at least $\frac{1}{4}$ of the Board would be nominees of IPICOL and $\frac{1}{4}$ would be nominees of TRFI;
 - v. That TRFI and IPICOL would each have at least one nominee in all committees of the Board;
 - vi. That the Managing Director would be appointed by TRFI in consultation with IPICOL;
- (iv) On 25.03.2003, a Supplementary Agreement was executed between IPICOL, TRFI and OSIL, which *inter alia* provides that even if IPICOL's shareholding falls below 26%, IPICOL still would have all its other rights including its right to appoint one fourth of the directors and the Chairman.
- (v) The Chairman of OSIL has always been a nominee of IPICOL. Since its incorporation, three or two nominees of IPICOL have always been on the Board of OSIL. Even for the last several years, TRFI, IPICOL have had approximately equal representation on the Board. Thus, IPICOL is and has always been a promoter and PAC of the rest of the Promoter group and IPICOL has been acting together with the Promoter group since the last 33 years. OSIL being jointly managed by IPICOL since the last 33 years, and they cannot be excluded from the promoter group, and it cannot be concluded that they do not support the rest of the promoter group.
- (vi) At all points in time, IPICOL has always been disclosed to the stock exchanges, SEBI and in other public documents as being part of the "promoter group", along with the other promoters. Until the present arguments before SEBI, the promoters have never alleged that IPICOL does not support them.

As regards the alleged S.L.P. (C) No. 27811 of 2009 (*earlier a writ petition was filed in the Orissa High Court in W.P. No. 4155 of 2009*) in the Hon'ble Supreme Court filed by the Mohanty's against IPICOL, in between Mohanty's and IPICOL, BEL has submitted that:-

- (i) They are not a party to the same and were never aware of the same. The same was disclosed by the Promoter group only for the first time during their oral arguments in reply. That too, the relevant record and pleadings have still not been disclosed, in particular the affidavits of IPICOL have not been disclosed. On this ground alone, the same ought to be disregarded.
- (ii) The Promoter group disclosed and relied on a judgment dated 12.8.2009 of the Orissa High Court in WP No. 4155 of 2009. The said judgment records that the said

Writ Petition had been filed by TRFI against the State of Orissa and IPICOL, inter alia praying that IPICOL be restrained from selling their shares to Bhushan in the open offer or to anyone else without first offering the shares to TRFI as per the Articles of Association of OSIL. Para 5 of the said judgment records the stand of IPICOL, including that IPICOL had not yet taken any decision about selling any shares, and that if it decided to sell, ”....*IPICOL would sell through the Bombay Stock Exchange.....*”and that if TRFI was willing to buy the shares, IPICOL had no reservation to sell to TRFI. Therefore, clearly the said judgment proves that IPICOL was not taking any stand adverse to the Promoter group as falsely argued.

- (iii) BEL has submitted that the only reason for the said litigation appears to be that as recorded in para 7 of the judgment, TRFI had forwarded some legal opinion to IPICOL that a direct sale of such shares from IPICOL to TRFI would violate section 13 of the SCRA. The said judgment holds that the said opinion is incorrect.
- (iv) BEL has submitted that it cannot be alleged that IPICOL’s shareholding in OSIL is not to be counted as part of the promoter group shareholding along with the other promoter shareholders.

BEL has submitted that on the one hand the Promoter Group alleges that IPICOL should not be counted with them since the 'Mohantys' do not “control” IPICOL. Yet for the “six further entities”, it is alleged that even though they are not “controlled” by the Bhushan Group, they should be counted with the Bhushan group. BEL has submitted that the standard must be the same for both the sides. Thus, if IPICOL is counted with the Promoter group, and if for the sake of argument, the said 6 further entities are counted with the Bhushan group, yet the respective holding post conversion would be Promoter Group: 52.14% and Bhushan Group : 44.03%.

If both are to be respectively excluded, then 14.49% has to be deducted from the Bhushan Group holding and 5.29% from the Promoter group holding. The same would result in the Promoter Group having an even larger proportion. BEL has submitted that in either event and method of computation, the inescapable conclusion is that the conversion of the warrants would not result in any change/ transfer in management of OSIL.

BEL has submitted that the concept of “a person acting in concert’ is only in the SAST Regulations, which has no application to the present case. In support of the TRFI Group allegation that “promoter” does not mean “person acting in concert”, the promoters have relied upon the judgement in *K.K Modi vs. Securities Appellate Tribunal 2002(2) Bom CR 523*.

However, a bare perusal of the judgement shows that where “..... *the promoters share the common objective or purpose of substantial acquisition of shares or voting rights for gaining control over the target company.....*”, then they are clearly persons acting in concert.

Similarly, even the judgement in the case of *Daiichi Sankyo Co. Ltd.* [2010(7)SCC 449] as relied upon by the promoters, it was held that “*There can be no “persons acting in concert” unless there is a shared common objective or purpose between two or more persons of substantial acquisition of shares, etc. of the target company.*” (para 49).

BEL has submitted that the admitted facts as herein below show that IPICOL and the rest of the Promoter Group definitely acted in concert with “*the common objective or purpose of substantial acquisition of shares or voting rights for gaining control over the target company.*”

BEL has submitted that in the website of OSIL, the following is stated :

“The company was promoted by Tortsteel Research Foundation in India (TRFI) in joint sector with Industrial Promotion and Investment Corporation of Orissa Limited (IPICOL), a wholly owned company of the State Government of Orissa to set up the first commercial coal based sponge iron plant in India in the backward district of Keonjhar, Orissa.”

BEL has submitted that at all points of time, IPICOL has always been disclosed to the stock exchanges, SEBI and in other public documents as being part of the “promoter group”, along with the other promoters. Until the present arguments before SEBI, the promoters have never alleged that IPICOL does not support them. It cannot be alleged that IPICOL’s shareholding in OSIL is not to be counted as part of the promoter group shareholding along with the other promoter shareholders.

As regards the claim that IPICOL abstained from voting in the EoGM held on 27.07.2009, and therefore TRFI Group has claimed that IPICOL will support Bhushan and will not support the rest of the Promoter Group, BEL has made the following submissions in this regard.

The Resolution which was proposed/put to vote was framed in the following manner:

“RESOLVED THAT the transfer of 35,00,000 warrants, originally allotted to Prakasali Investments (India) Pvt. Ltd., sold by Prakasali Investments (India) Pvt. Ltd. to Bhushan Energy Ltd., and their subsequent conversion into equivalent number of Equity Shares of the Company, be and is hereby accepted.”

Therefore, if IPICOL did not vote, it cannot be alleged that IPICOL had chosen to support the Bhushan Group. Admittedly the above Resolution was rejected. In any event, there is nothing on record to show as to why IPICOL did not vote. It is not even alleged that IPICOL's authorised representative was present. There may have been any number of other reasons why IPICOL did not vote. Therefore it can never be assumed that they did not vote so as to support Bhushan in some way.

TRFI Group submitted that the nominee director of IPICOL wrote a letter to object that the Board Meeting dated 04.03.2009 was not convened with proper notice. This shows that there are disputes between the promoters and IPICOL.

BEL has submitted that the said allegation is untenable. The MD of IPICOL, who was the nominee director of IPICOL in OSIL and the Chairman of OSIL, had by his letter dated 4.3.2009, recorded that a Board meeting had been sought to be convened without any written notice or agenda, and therefore the same should be rescheduled with proper notice and agenda. This can never be construed to be a dispute between IPICOL and the rest of the promoters. BEL has submitted that there is nothing to show or even imply that IPICOL in any manner is supporting Bhushan or that it has now chosen not to support the promoters. In fact, for the last 33 years, they have acted together as the JV partners without any dispute.

The TRFI Group has stated that at the time of issuance of warrants, IPICOL did not subscribe to the warrants, which proves that IPICOL would support Bhushan. BEL has stated that no letter or document has been provided by OSIL to show that the warrants were even offered to IPICOL or that IPICOL declined to subscribe to the same. The fact that IPICOL supported the decision of issuance of warrants to TRFI clearly indicates that IPICOL in fact supported the promoter group to take more shares, even though the same could result in TRFI getting a larger proportion of shares than IPICOL.

The TRFI Group submitted that IPICOL is not a party to the Agreement between Mounteverest (now Monnet) and therefore is not a PAC with the Mohantys/ promoters. It was orally argued that in 2009, the promoters had to bring in Monnet as a "strategic investor" without support of IPICOL, which is why in Monnet's Public announcement, IPICOL is not shown as a PAC. In this regard, BEL has stated that Monnet merely bought some of the shares held by TRF/TRFI. There was no fund inflow or benefit to the company. Therefore, it is even incorrect to show Monnet as a "strategic investor". BEL has

submitted that IPICOL must have supported the deal with Monnet, since under the Articles of Association IPICOL would have had to give its express prior written consent to TRF/TRFI selling any of their shares.

BEL has submitted that it would appear that in Monnet's Public Announcement only TRF/TRFI are shown as a PACs, because Monnet bought the shares from them. In fact, even the Mohantys, are not shown as PACs, although they are admittedly in the promoter group and are the Trustees of TRF. *Ex facie* IPICOL has supported the promoters, since it also agreed to Monnet appointing its nominee director on the Board.

5. The TRFI/Mohanty Group has requested SEBI to dismiss the application filed by Bhushan Energy, whereas, Bhushan Energy has requested SEBI to hold that conversion of the warrants into shares "would not" and "could not" result in a change in the management of OSIL in favour of Bhushan and to direct OSIL to accept the balance consideration of ₹ 54,13,50,000/- from Bhushan Energy and convert the said 35 lakh warrants into an equal number of equity shares in favour of Bhushan Energy Limited within such other time as SEBI considers just and fit .

6. I have carefully read the Order of the Hon'ble Supreme Court, considered the submissions made by the parties and the material available on record.

7. As mentioned in paragraph no. 1 of this decision, this proceeding is in compliance with the directions of the Hon'ble Supreme Court made vide its order dated May 07, 2012 in I. A. No. 2 in Petition for Special Leave to Appeal (Civil) No. 14740 of 2011. In the said order, SEBI has been directed by the Hon'ble Supreme Court **to decide whether the conversion of 35 lakh warants into shares could result in the transfer of management in favour of Bhushan Energy Limited.** It was also observed therein that **with respect to the issue of conversion of the warrants and Takeover, SEBI will decide the matter uninfluenced by the observations made in the impugned judgment of the High Court dated February 22, 2011, after taking into consideration the submissions and contentions advanced by both sides.** On a reading of the said order, it also observed that the Hon'ble Supreme Court has noted the letter dated May 03, 2012 filed by Bhushan Energy with SEBI and had directed that ground [d] of the said letter be deleted. Accordingly, Bhushan Energy requested SEBI to consider the application dated May 03, 2012, in exclusion of the said sub para (d) in para 7C of the application.

8. The learned counsel for OSIL/promoter group made elaborate submissions on the interpretation of the word "could", which has been used by the Hon'ble Supreme Court in its aforementioned Order. In short, according to the learned counsel, the scope of the word "could" is

wider in its import as compared to the word "would". TRFI group has submitted that the question to be determined is whether the conversion "could" result in change in management (is there a possibility in change in management contrasted with whether it "would" result in change in management showing certainty in the change in management). Therefore, it is the submission of the counsel that SEBI should decide the question keeping in view all the possible situations that may arise in view of the litigations (as mentioned above) and how such situations along with the conversion of 35 lakh warrants into equity shares could bring about a change in the management in favour of Bhushan Energy Limited.

9. Bhushan Energy has stated that the Hon'ble Supreme Court has directed SEBI to decide the "matter" and not just the issue framed. According to it, the Hon'ble Supreme Court by directing it to delete ground [d] has approved the other contents of the said letter. Bhushan Energy has contended that the submissions of TRFI group made in this regard are an unfair attempt to make the proceedings before SEBI as meaningless and nugatory. Bhushan Energy has time and again, in this proceeding, indicated that it is desirous of taking over the control in OSIL and would make its efforts in that direction.

10. I have considered the submissions made by the parties. In order to understand the scope of this proceeding, I once again refer to the Order of the Hon'ble Supreme Court. The relevant portion is again reproduced herein below for convenience:

" Whether conversion of 35,00,000 Warrants into Shares could result in transfer of Management in favour of Bhushan Energy Limited is the question

We make it clear that, on the afore-stated issue of conversion of 35,00,000 Warrants and Takeover, SEBI will decide the matter uninfluenced....., after taking into consideration the submissions and contentions advanced by both sides. We express no opinion....."

The above quoted portion and more particularly the underlined portion makes it very clear that the Hon'ble Supreme Court has directed SEBI to decide on the question whether the conversion of 35 lakh warrants into shares could result in the transfer of management in favour of Bhushan Energy Limited. The only situation which needs to be considered for deciding the primary question of whether there could be a transfer of management in favour of Bhushan Energy is the conversion of the 35 lakh warrants held by Bhushan Energy.

11. Thus, SEBI shall take into account, as on date, the shareholding pattern of the Target Company, the holding by the promoters and promoter group along with their PACs and the shareholding/voting rights enjoyed by the Bhushan Energy Limited group and its PACs and then

come to a conclusion, based on the facts, whether the conversion of 35 lakh warrants into equity shares in favour of Bhushan Energy could result in a change in management in favour of Bhushan Energy in OSIL.

12. With respect to the issue "whether the conversion of 35,00,000 warrants into shares could result in transfer of management in favour of Bhushan Energy", I also note the argument of TRFI/Mohanty group regarding "change" in the management of OSIL and the reasons why there should be no change. In this regard, it needs to be seen that the Takeover Regulations (of 1994, 1997 and 2011) recognise and regulate substantial acquisition of shares in a listed company and the takeover of management control in a company. The Takeover Regulations do not prohibit or consider takeover of management control in a company as undesirable. As long as the required statutory prescriptions are complied with in that regard, SEBI does not interfere with the commercial decisions/conduct of an acquirer who proposes to acquire substantial shares for effecting a legitimate change in control in a listed company.

13. Before proceeding any further, I must delineate clearly the interpretation of the phrase "transfer of Management in favour of Bhushan" in the mandate given to SEBI by the Hon'ble Supreme Court. The incumbent management, in my opinion, can continue to be in control even when it may lose the largest shareholder status, if a sufficient number of other shareholders are not disinclined that the incumbent should continue. Therefore, in order to consider the management to have been transferred to any person, that person's shareholding should exceed 50% or there is a clear indication that a segment of the remaining shareholders are likely to support the challenger in forcing the incumbent to quit. My exercise now would be to find whether Bhushan Energy would be able to enjoy more than 50% of voting rights/shareholding, if the 35 lakh warrants are converted into equity shares in its favour, with its own shareholding and likely supporters. In short, what the Hon'ble Supreme Court has asked SEBI to find out is 'whether there could be a transfer of management in favour of Bhushan?' and not 'whether Bhushan Energy could become the largest shareholder'.

14. In this regard, the following facts become relevant :

- (a) The warrants were initially allotted to Prakasauli, which were subsequently purchased during January 2009 by Bhushan Energy Limited after the lock-in period.
- (b) OSIL had on March 02, 2009 registered the said warrants in the name of Bhushan Energy without any reservation or protest, after Bhushan Energy filed a company petition. Though the TRFI group claims that the endorsement of Bhushan's name on the warrants was done in an unauthorised manner by an employee of OSIL and was without Board's approval, it

has failed to show any material that such endorsement was corrected or cancelled or that Bhushan was put on notice regarding that. Therefore, there could be no dispute now regarding the possession of such warrants by Bhushan in its name.

- (c) The warrants were sought to be converted by Bhushan Energy when the Company i.e., OSIL refused the same on the ground that such conversion would lead to change in management control of OSIL which was against the terms of issuance of the warrants.
- (d) There were litigations between the aforesaid parties first before the CLB and then in the Hon'ble Orissa High Court. The matter was taken finally to the Hon'ble Supreme Court when SEBI was directed by the Hon'ble Court to decide whether such conversion of warrants could result in a management change in favour of Bhushan Energy.

15. During the personal hearing, the parties were advised to first agree on a common list of shareholders of OSIL and the numbers of shares held by them and then the parties were advised to indicate the shareholders who belong to the promoter group of OSIL and Bhushan Group and independent in their opinion. The parties were further advised, that for those shareholders for whom there is a disagreement as to the classification, to give arguments why a particular shareholder should not belong to his group or why it should belong to the other group. The parties after agreeing to the common list of shareholders and the numbers of shares held by them have submitted their classification of shareholders.

The classification by TRFI/Mohanty group is given below : According to OSIL/TRFI group, the total votable shares are 24,000,000 (*against the total shareholding of 27,000,000 shares*) as the Hon'ble High Court of Delhi has, in Civil Suit being O.S. No. 424/2009 filed by the Bhushan Group has passed an order staying exercise of all rights, including voting rights in respect of 30 lakh shares. Therefore, the total number of shares would exclude the said 30 lakh shares.

S.No.	Name of the shareholder	Before conversion of warrants		After conversion of warrants	
I.	Promoter/Mohanty Group expecting change in management through conversion of warrants				
1	TRFI Investment Private Limited	55,02,190	22.93%	55,02,190	20.01%
		[total holding (85,02,190) – freeze of voting rights (30,00,000)]			
2	Torsteel Research Foundation in India	1,38,500	0.58%	1,38,500	0.50%
3	Prasanta Kumar Mohanty	1,15,555	0.48%	1,15,555	0.42%

4	Prasanta Kumar Mohanty on behalf of TRFI	3,012,089 *	12.55%	3,012,089 *	10.95%
	* Out of the 3,012,089 shares, 23,88,916 shares are prayed to be declared as null and void by the Bhushan Group on the alleged ground that they are hit by section 77 of the Companies Act, 1956. The said matter along with application for interim stay is before the Hon'ble Supreme Court in Civil Appeal No. 6314-6315 of 2011.				
5	Mahmooda Mohanty	38,600	0.16%	38,600	0.14%
Total Mohanty Group		88,06,934	36.70%	88,06,934	32.03%
II. Strategic Investor					
1	Monnet Ispat Energy Limited	40,74,633	16.98%	40,74,633	14.82%
III. Independent and not PAC					
1	Industrial promotion and Investment Corporation of Orissa Limited (IPICOL) #	14,55,999	6.07%	14,55,999	5.29%
IV. Declared Bhushan Group					
1	Mr. B.B. Singal	2,67,705	1.12%	2,67,705	0.97%
2	Mr. Neeraj Singal	2,34,699	0.98%	2,34,699	0.85%
3	Bhushan Energy Limited	35,54,692	14.81%	70,54,692	25.65%
4	BBN Transportation Private Limited	2,93,398	1.22%	2,93,398	1.07%
5	BNR Consultancy Services Private Limited	74,556	0.31%	74,556	0.27%
6	BNR Infotech Private Limited	88,230	0.37%	88,230	0.32%
7	BNS Steel Trading Private Limited	1,10,002	0.46%	1,10,002	0.40%
Total declared Bhushan Group:		46,23,282	19.26%	81,23,282	29.54%
V. Bhushan Group – Undeclared PACs/Benami/Front companies **					
1	Multistar Construction Private Limited	9,99,900	4.17%	9,99,900	3.64%
2	Ultra Modern Exports Private Limited	9,99,900	4.17%	9,99,900	3.64%
3	Matchless Infrastructure Private Limited	8,03,298	3.35%	8,03,298	2.92%
4	Venus Recruiter Private Limited	20,000	0.08%	20,000	0.07%
5	BNS Tours & Travels Private Limited	5,13,951	2.14%	5,13,951	1.87%

6	Brightsun Merchants Private Limited	6,47,936	2.7	6,47,936	2.36%
Total Bhushan Group/undeclared PACs/Benami/Front Companies		39,84,985	16.60%	39,84,985	14.49%
VI. Independent Shareholders - Public					
1	Public	10,54,167	4.39%	10,54,167	3.83%

["# - IPICOL is a Orissal Govt. undertaking. It is not a PAC for the purposes of the Takeover Regulations, 1997, although is a founder promoter of OSIL. IPICOL did not participate in the EGM dated 27.07.2009 where the conversion of 35 lakh warrants in favour of Bhushan had to be decided. IPICOL has not participated in any manner with the takeover offers of Mobanty Group. Their shares were not even included in the public announcements as part of the Mobanty Group. IPICOL has not agreed to follow the common objective of Mobanty Group and consequently it cannot be added to the Mobanty Group."]

The classification according to the **Bhushan Group** is as given below :

S. No.	Name of the Shareholder	Before conversion of warrants		After conversion of warrants	
		Total no. of shares	27,000,000	Total no. of shares	30,500,000
		Number of shares	Percentage of shares	Number of shares	Percentage of shares
I. Promoter Group					
1	TRFI Investment Private Limited	8,502,190	31.49%	8,502,190	27.88%
2	Torsteel Research Foundation in India	138,500	0.51%	138,500	0.45%
3	Prasant Kumar Mohanty	115,555	0.43%	115,555	0.38%
4	Prasant Kumar Mohanty on behalf of TRFI	3,012,089	11.16%	3,012,089	9.88%
5	Mahmooda Mohanty	38,600	0.14%	38,600	0.13%
6	Monnet Ispat Energy Limited	4,074,633	15.09%	4,074,633	13.36%
7	Industrial Promotion & Investment Corporation	1,455,999	5.39%	1,455,999	4.77%
Total Promoter Group holding		17,337,566	64.21%	17,337,566	56.84%
II. Bhushan Group					
1	Mr. B.B. Singal	267,705	0.99%	267,705	0.88%
2	Mr. Neeraj Singal	234,699	0.87%	234,699	0.77%
3	Bhushan Energy Limited	3,554,692	13.17%	7,054,692	23.13%
4	BBN Transportation Private Limited	293,398	1.09%	293,398	0.96%
5	BNR Consultancy	74,556	0.28%	74,556	0.24%

	Services Private Limited				
6	BNR Infotech Private Limited	88,230	0.33%	88,230	0.29%
7	BNS Steel Trading Private Limited	110,002	0.41%	110,002	0.36%
Total Bhushan Group holding		4,623,282	17.12%	8,123,282	26.63%
III. Independent shareholders					
1	Multistar Construction Private Limited	999,900	3.70%	999,900	3.28%
2	Ultra Modern Exports Private Limited	999,900	3.70%	999,900	3.28%
3	Matchless Infrastructure Private Limited	803,298	2.98%	803,298	2.63%
4	Venus Recruiter Private Limited	20,000	0.07%	20,000	0.07%
5	BNS Tours & Travels Private Limited *	513,951	1.90%	513,951	1.69%
6	Brightsun Merchants Private Limited **	647,936	2.40%	647,936	2.12%
7	Others	1,054,167	3.90%	1,054,167	3.46%
Total Independent Shareholders' Holding		5,039,152	18.66%	5,039,152	16.52%
Total Shareholding : I+II+III =					
		27,000,000	100%	30,500,000	100%

[** Part of independent public shareholding vide SAT Order dated 28.12.2010 in the matter of Appeal No. 65 of 2010 read with SEBI Adjudication Order No. SM/AO-01/2010 dated 18.01.2010]

** This new shareholder acquired shares only in the quarter ended June 2010 as evident from the shareholding pattern taken from BSE website.

With respect to these companies mentioned at 1-4 of III in the table above (i.e., Multistar Construction Private Limited, Ultra Modern Exports Private Limited, Matchless Infrastructure Private Limited and Venus Recruiter Private Limited), an independent inquiry was conducted by SEBI and the matter stands concluded vide adjudication order dated 18.01.2010. "]

16. I have considered such shareholding details and the classification provided by both the parties and the submissions made by them as to why a particular entity should either be or not be seen as a PAC/member of a group. As already stated, it would be necessary to determine whether Bhushan group would be able to exercise more than 50% voting rights pursuant to the conversion of the 35 lakh warrants into equity shares in its favour. The first question that needs to be decided here is what should be the total shares against which the individual shareholding of the parties concerned and the others should be calculated against. It is noted that 2,70,00,000 shares are the shares that has been issued by the Company as on date. Out of the same, it has been submitted that

with respect to 30,00,000 shares of TRFI (*of its total shareholding of 85,02,190 shares*), the Hon'ble High Court of Delhi has passed an Order in O.S. No. 424/2009 staying the exercise of all rights, including voting rights.

17. As regards the said 30 lakh shares of TRFI, I note the following from the submissions made by TRFI group : Special resolutions were passed by OSIL in terms of section 81(1A) of the Companies Act, 1956 on 15.10.2007 and 08.11.2007 with respect to the issuance of convertible warrants in favour of TRFI (a promoter of OSIL) and Prakausali. A total of 1,05,00,000 convertible warrants were issued by OSIL from time to time. 70 lakh warrants were issued to TRFI and 35 lakh warrants were issued to Prakausali. Out of the 70 lakh warrants issued in favour of TRFI, 30 lakh warrants were pledged by TRFI with an entity called Pisces Portfolios Pvt. Ltd. as a security for loan of ₹3.10 crores availed by TRFI. On 11.02.2009, Pisces who was in possession of 30 lakh warrants, as a pledgee, allegedly assigned the loan in favour of Moonstar Securities Trading & Finance Co. Ltd. ("Moonstar") and also handed over the warrant certificates. The Mohantys' were informed of the same on 14.02.2009. On 18.02.2009, a suit was filed by TRFI in the Hon'ble Calcutta High Court against Pisces and Moonstar seeking a direction that the assignment deed was illegal. In the said suit, the director Mr. Saurabh Mittal of Moonstar made a statement that it will not deal with or dispose of the said warrant certificates. Further, on 03.03.2009, Moonstar through Sunil Gupta filed a suit before the Hon'ble Delhi High Court for declaration that Moonstar has duly acquired the 30 lakh warrants from Pisces. Moonstar obtained an ex-parte interim order that there should be status quo on 30 lakh warrants. According to TRFI, this Order was not informed to them or OSIL. On 04.03.2009, while relying on the statement made by Mr. Saurabh Mittal, TRFI Investments redeemed the pledge by tendering payment and got the 30 lakh warrants converted into 30 lakh equity shares by making payment of ₹27.27 crores to OSIL. This corporate action was informed by OSIL to the BSE. Subsequently, on 06.03.2009, Moonstar filed another application in the suit before Delhi High Court praying that TRFI should be restrained from further dealing with the converted shares. The Hon'ble Court passed an order restraining TRFI from exercising voting rights in respect of the said shares.

18. In case TRFI wins the case, it would retain the 30 lakh shares and would be eligible for exercising the voting rights attached to such shares. On the contrary, if the decision is in favour of Moonstar, then it would retain the 30 lakh warrants (*as only warrant certificates were transferred to it and not equity shares*) and may need to do further acts, as applicable, for converting them into equity shares.

19. According to OSIL/its promoters, such 30 lakh shares of which voting rights cannot be exercised should be deducted to arrive at the total votable shares. Therefore, according to OSIL/its

promoters, the total numbers of votable shares of OSIL would be 2,40,00,000 shares. Bhushan Energy has also submitted that the 30 lakh shares could be excluded from the computation of total shares as voting rights in respect of those shares cannot be exercised in view of the court order. The question as framed by the Hon'ble Supreme Court is whether there could be a change in management control in favour of Bhushan Energy on conversion of the 35 lakh warrants into equity shares. For deciding this question, it would be reasonable to take into consideration only those shares of which voting rights could be exercised by all parties concerned. Both the parties have agreed for keeping the base at 2,40,00,000 shares (*pre-conversion*). Therefore, as the voting rights in respect of the 30,00,000 shares cannot be exercised by TRFI, the same can be reduced from the total voting shares of the Company and also from the total shareholding/voting rights of TRFI. The base would therefore be 2,40,00,000 equity shares (*pre-conversion*) and 2,75,00,000 shares (*post-conversion of warrants*). It is made clear that the above manner of computing shall not act as a standard or guide for other cases and is adopted only in context of a specific direction given by the Hon'ble Supreme Court and consent of both the parties to use the aforesaid base.

20. It is also stated by the TRFI group that out of the 30,12,089 shares held by Prasanta Kumar Mohanty on behalf of TRFI, 23,88,916 shares are prayed to be declared as null and void by the Bhushan. The said matter along with application for interim stay is presently *sub-judice* before the Hon'ble Supreme Court in Civil Appeal No. 6314-6315 of 2011. As there is no stay over the exercise of voting rights on such shares, the same could be taken for computation.

21. As regards, Moonstar, I note that this entity is a non-promoter shareholder in Bhushan Energy as per the filing of Shareholding Pattern of Bhushan Energy Limited as of December 2013, which is noted from the website of the BSE. Moonstar holds 4.49% of the equity in Bhushan Energy and is shown as an entity belonging to the "public" holding (in Bhushan Steel) more than 1% shares. Further, from the shareholding pattern of OSIL, it is noted that Moonstar does not figure in the list of shareholders holding either more than 1% or 5% of the shares. It also seems to be an admitted position that Moonstar, as on date, does not hold any shares of OSIL. Therefore, for further argument, I am not considering Moonstar at all. If there is a possibility that Moonstar may win and might support Bhushan, there is an equal possibility that TRFI may win and augment its voting power by that much. Both these possibilities are adequately covered by keeping the base capital at 2,40,00,000 shares.

22. Considering the above, the chart as provided by the TRFI group could accordingly be used as a reference for noting the shareholding percentages of entities/groups because it is based on votable capital of 2,40,00,000 shares. I have observed earlier that after conversion of the 35 lakh warrants into equity shares in favour of Bhushan Energy, the incumbent management can continue

to be in control even after it loses the 'largest shareholder' status, if the other shareholders do not force it to quit. Therefore, the management can be considered to have been transferred to any person if his holding along with shareholders who are known to be either sympathetic to the challenger or inimical to the incumbent exceeds 50%. TRFI group has given its own view about the likely shareholding pattern of OSIL which excludes the 30,00,000 shares under dispute and after conversion of the 35,00,000 warrants, as under:

Total Mohanty Group	:	32.03%
Monnet Ispat – Strategic Investor	:	14.82%
IPICOL	:	5.29%
Declared Bhushan Group	:	29.54%
Entities alleged to be Bhushan Group	:	14.49%
Public	:	3.83%

As per TRFI Group's submission, Bhushan Group can command 44.03% shares of the expanded share capital/voting rights at the most. I am of the opinion that to force any change of management, Bhushan group will have to take support of Monnet and IPICOL. During the entire lengthy arguments, the counsel for TRFI Group went on to plead why Monnet, their strategic partner and IPICOL, their co-promoter should not be considered as a part of the TRFI group. However, they have not at all indicated whether there is any understanding between these entities and Bhushan Group and also if, they are likely to vote along with the Bhushan Group or absent themselves from voting at the instance of the Bhushan Group.

In this regard, I also note that in terms of the public announcement dated February 24, 2009 made by Mount Everest Trading and Investment Limited (*this entity subsequently merged with Monnet in terms of Order of the Hon'ble Chhatisgarh High Court*) and Monnet Ispat Energy Limited along with certain promoters of OSIL, the following are noted :

- (a) The competitive bid was made by Mount Everest (the Acquirer) along with its PACs, namely, TRFI, TRFI Investment and Monnet Ispat. Mount Everest and its PACs (collectively referred therein as "Acquirers") for acquiring 61,00,000 equity shares of OSIL for a price of ₹310/- per equity share.
- (b) TRFI, TRFI Investment and Monnet are the Persons Acting in Concert with the Acquirer for the purpose of this Competitive Bid. It has also been stated that due to the operation of regulation 2(1)(e)(2) of the Takeover Regulations, there could be other entities who could be deemed to be persons acting in concert with the Acquirers.

- (c) The Acquirer, i.e., Mount Everest had entered into a SPSA with TRFI and TRFI Investment for purchase of 54,20,000 equity shares which represented 17.77% of the equity share capital at a price of ₹283/- per share in cash.
- (d) Mount Everest would be classified as the 'new promoter' of OSIL in addition to the sellers (TRFI and TRFI Investment) as existing 'promoters of the OSIL.
- (e) The Acquirer would have the right to nominate directors on the board of the Company.
- (f) Pursuant to the completion of the competitive bid, the combined shareholding of the Acquirers would be 73.39% resulting in substantial acquisition of shares and change in control of the Target Company in terms of the Takeover Regulations. Further, the transactions as contemplated in the SPSA would lead to the joint control of the Target Company by the Acquirer and PAC3 i.e., Monnet Ispat with the existing promoters of OSIL.

As regards IPICOL, it is one of the promoter entities of OSIL. As per the latest filing (as of March 31, 2014) of the shareholding pattern of OSIL, IPICOL holds 14,55,999 shares (5.39%). IPICOL is shown as a promoter entity along with the others of the promoter group of OSIL, namely, TRFI Investment Private Limited, Prasanta Kumar Mohanty on behalf of TRFI, TRFI, Dr. Prasanta Kumar Mohanty and Mahmooda Mohanty. Even as per the TRFI group, IPICOL was a founding promoter of OSIL. Further, in terms of the Takeover Regulations, 2011 [regulation 2(1)(q)(2)(iv)], promoters and members of the promoter group are deemed to be persons acting in concert with other persons within the same category, unless the contrary is established.

In view of the above observations, IPICOL, being a co-promoter and part of OSIL management and Monnet, being a strategic investor and an acquirer with the incumbent promoters as its PACs (*in terms of the public announcement dated 24.02.2009*) brought in by the incumbent management, a scenario that includes their support to Bhushan Energy, cannot be contemplated without clear evidence.

23. As regards Mrs. Bina Kedia (*according to TRFI group this shareholder had voted in favour of Bhushan Energy in the EoGM dated 27.07.2009 and from whom Brightsun had purchased OSIL shares*), the TRFI group has submitted Mrs. Bina Kedia had purchased huge quantity of shares on 13.2.2009 from IDFC-SSKI Securities Ltd. (the Merchant Banker of Bhushan Group) through an off-market transaction and that she has voted in favour of the Bhushan group in the EGM held on 27.07.2009. Apart from such submissions, there is no evidence to show that Mrs. Bina Kedia is a PAC of the Bhushan Group. I also note that as per the shareholding pattern of OSIL as on December 2013, she does not even figure in the list of shareholders who hold more than 1% shares in the Company. Currently, her shareholding is negligible in OSIL.

24. The TRFI group has also submitted that in the EoGM held on 27.07.2009, 40.85% shareholders present and voting, had voted in favour of the Bhushan Group and that if the warrants were converted, 53.56% would vote in favour of the Bhushan Group, resulting in the change of management. At the outset, the percentage of the shareholders present and voting in favour of Bhushan is out of those present in the EoGM. This has nothing to do with the total holding of a group as a percentage of the total capital. Therefore, this can be no indicator of any possible change in management in favour of the Bhushan group. The above percentages mentioned by the TRFI group are only to speculate regarding change of management. The Takeover Code does not recognise patterns in voting, for or against a resolution, in a meeting of shareholders of a company for determining whether a person is a PAC or not of an acquirer. It should also be appreciated that past voting patterns are no indicators of future behaviour. If a shareholder votes in favour of the management with respect to a particular resolution, he may not necessarily vote in favour of the management in another resolution. The same could apply in this case also. Further, if all the non-TRFI shareholders were to vote together, the present promoter group could lose its control over the OSIL, even without the conversion of warrants in favour of Bhushan Energy. I, therefore give no credence to this argument. Further, the allegations of money laundering appears to be in no way relevant to the issue on hand i.e., whether the conversion of 35,00,000 warrants into shares could result in transfer of management in favour of Bhushan Energy.

25. In view of the above reasons and observations, I am of the considered opinion that the act of conversion of 35,00,000 warrants cannot effect a change of management in favour of Bhushan Energy.

26. TRFI has submitted that the tenure of the warrants was 18 months and that since the warrants have already expired in the year 2009, they cannot be converted into equity shares. Another submission of the TRFI group is that the 'warrant' is an option contract and a financial instrument issued under the SEBI (Disclosure and Investor Protection) Guidelines, 2000 ("the DIP Guidelines"). According to them, this instrument is therefore governed by the provisions of the Contract Act and the DIP Guidelines (*specifically clause 13 which provides that the tenure of a warrant is only 18 months*) and therefore if there is a breach of the terms of the warrants, the only remedy can be that of damages and no specific performance can be sought. With respect to these submissions, I note that the conversion of warrants was under litigation, first before the CLB, then before the Hon'ble High Court of Orissa and thereafter before the Hon'ble Supreme Court. The Hon'ble Supreme Court while disposing off the application (I.A. No. 2 in Petition for Special Leave to Appeal (Civil) No. 14740 of 2011 – Bhushan Energy vs. OSIL and others) has framed a specific question i.e., *Whether conversion of 35,00,000 Warrants into Shares could result in transfer of Management in*

favour of Bhushan Energy Limited?, for SEBI to decide. In view of such specific question to be decided by SEBI, it has to be considered that the warrants are valid. It is also noted that when OSIL sought more time for conversion of warrants, SEBI had, vide letter dated July 03, 2009, denied such request and directed the Company to comply with the provisions of the DIP Guidelines.

27. TRFI group has also submitted a chart during the personal hearing in the matter, showing a web of companies and submitted that the Bhushan Group has created a web of inter-holding companies to evade proper identification of the above 6 companies (said to be the undeclared PACs of Bhushan) in one way or the other, though they have links with the admitted Bhushan Group companies in some way or the other. The TRFI Group has submitted that huge funds running into hundreds of crores of rupees are required to purchase such a huge shareholding of OSIL and that the 6 companies have no business of their own and are mere investment companies. It is also *inter alia* submitted that there are directors of some of these six companies who hold provident fund account numbers as employees of the Bhushan Group companies thus establishing that the control is directly that of the Bhushan Group companies in these undeclared companies. The directors of these companies do not have any stake in these companies and are nominee directors. These arguments have no relevance as far as deciding on the question framed by the Hon'ble Supreme Court, as I have already counted the entire disputed shareholding by the six companies (*alleged by the TRFI group to be the undisclosed PACs of the Bhushan group*) in the possible holding of the Bhushan group. However, I am of the view that such opaque structure of web of companies do not provide any clarity as far as public shareholders are concerned and that SEBI may investigate whether the said companies/Bhushan Energy have allegedly failed to make disclosures, if any, under the Takeover Regulations or any other regulations.

28. For the above said reasons, I, in compliance with the Order dated May 07, 2012 [made in Interlocutory Application (I.A.) No. 2 in Petition for Special Leave to Appeal (Civil) No. 14740 of 2011 - Bhushan Energy Limited vs. Orissa Sponge Iron and Steel Limited and others] of the Hon'ble Supreme Court of India, hereby conclude that the conversion of 35,00,000 warrants into equity shares in favour of Bhushan Energy Limited could not result in the transfer of management in favour of Bhushan Energy Limited, in the target company, i.e., Orissa Sponge Iron and Steel Limited.

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date : JUNE 12, 2014
Place : Mumbai