THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

CP/253(MB)2025

Section 212(14A) of the Companies Act, 2013

UNION OF INDIA, THROUGH SERIOUS FRAUD INVESTIGATION OFFICE (SFIO),

...**Petitioner**

V/s

SUNEETA REDDY & OTHERS

…**Respondent**

Order delivered on: 07.07.2026

***Coram**:*

Shri Prabhat Kumar Hon'ble Member (Technical)	**Shri Sushil Mahadeorao Kochey** Hon'ble Member (Judicial)

Appearances:

For the Applicant	:	Adv. Uttam Dubey a/w Adv. Mehendhar Aithe, Adv. Rajuram Kuleria, Adv. Shubham Sharma i/b Adv. Mahendhar Aithe
For the Respondent 1 to 3	:	Adv. Shyam Kapadia a/w Adv. Shamant Satiya a/w Adv. Manasi

		Joglekar and Adv. Sushmita Das & Adv. Chirag Kamadan
For the ROC, Mumbai-1	:	Ms. V. Madhumitha, AROC

ORDER

1. The Company Petition CP 253 of 2023 is filed by Union of India through the Serious Fraud Investigation Office (SFIO), Ministry of Corporate Affairs, duly signed by Shri Prabhu. K., Senior Assistant Director, SFIO Office, Chennai, seeking following reliefs :

   a. Declare that Respondents 1, 2 & 3 were knowingly parties to the fraudulent conduct in the manner as stated above in the petition and holding the Respondents jointly and severally liable without any limitation of liability on account of fraud perpetrated by them.

   b. Appropriate orders may be passed for disgorgement of assets of Respondents 1, 2 & 3 to the tune of Rs.100.50 Cr. along with the interest at rate that this Hon'ble Tribunal deems lit.

   C. That the interim reliefs may please be confirmed finally and attached movable properties including bank accounts & securities and immovable properties of Respondents may be encashed/realized and the same may be paid to the victims of the fraud in a manner and procedure as may be directed by this Hon'ble Tribunal;

   d. That Petitioner craves leave of the Hon'ble Tribunal to file documents / records or any other papers that may be relevant for the purpose of the present petition as per NCLT Rules at any future appropriate times.

   e. Further, the Petitioner also craves leave of the Hon'ble Tribunal to file any documents in order to supplement /enlarge/ amend/ modify the present petition, including addition to the array of respondents. as per the NCLT Rules.

   (f) Pass any other order(s) as deemed fit and proper under the circumstances by the Hon'ble Tribunal.

2. Respondent No. 1, Suneeta Reddy ("SR")) was the Chairperson of Board of Directors of Companies Under Investigation (CUIs), namely (i) Aircel Limited, (ii) Aircel Cellular Limited & (iii) Dishnet Wireless Limited), also referred as "Aircel Group" collectively, between 21-Mar-2006 to 10-Feb-2018, and had incorporated Sindya Securities & Investments Private Limited, Respondent No. 3 ("SSIPL") on 19.01.2006 along with her husband Dwaraknath Reddy, Respondent No. 2, ("DR"). She had functioned as director of SSIPL between 19.01.2006 to 24.01.2011. She functioned as Director of Deccan Digital Networks Private Limited (DDNPL) between 25.03.2006 to 14.02.2018. DR had acted as the director of SSIPL from 21-Mar-2006 onwards holding 99% of shares of SSIPL.

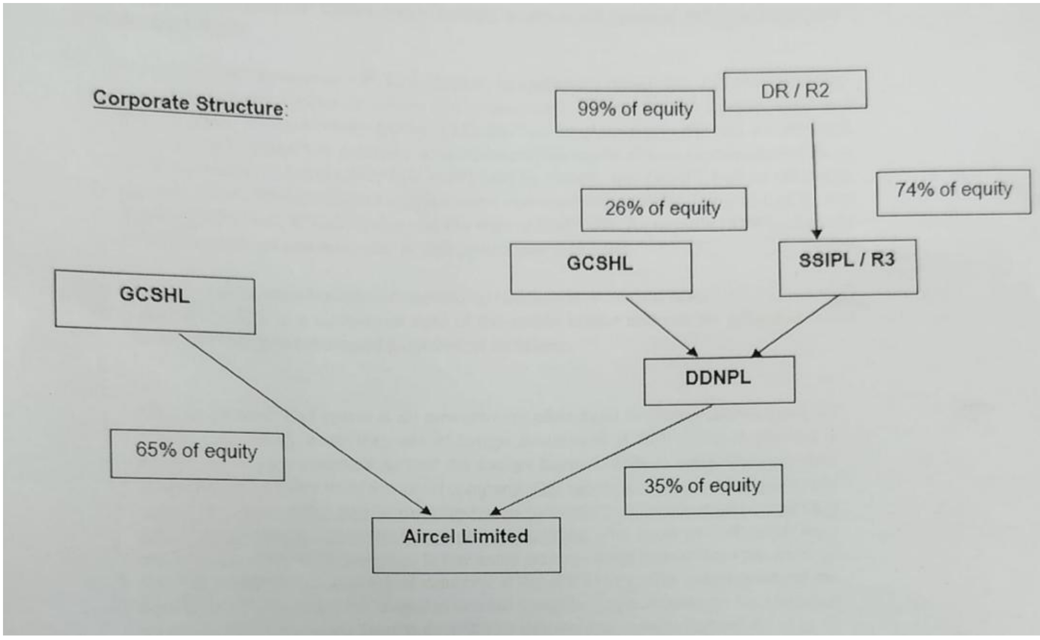
2.1. The Annual Returns of SSIPL for FY 2009-10 shows equity shares were held by SR and DR equally, and from 2013-14 onwards, DR held 99% and Aditya Reddy, their son, held 1%, and. The board of Directors of SSIPL was entirely composed of the family of SR, comprised of DR, her son and daughter Aditya Reddy & Sindoori Reddy from 19.01.2006.

3. It is stated that the primary business of Aircel Group was to provide Cellular Mobile Telephone Services (2G), 3G service to customers spanning over two decades i.e. from 1995 to 2018. In March 2018, Aircel Group was brought into Corporate Insolvency Resolution Process (CIRP) voluntarily by the respective Board of Directors.

4. It is further stated that Aircel Limited was promoted by C. Siva Sankaran through Sterling Infotech Limited (SITL), subsequently Aircel Group acquired the business of RPG Cellular Services Limited. The entire holding of Aircel Group was sold by Siva Sankaran to Maxis Group (Malaysia) and Sindya Securities & Investments Pvt Ltd (Indian Partner/IP) in the year 2006. Maxis Communication

Berhad, a Malaysian company, through Global Communication Services Holding Ltd (GCSHL) had applied with FIPB vide application dated 25.01.2006, seeking investment of 74% into Aircel Limited. The Indian partner was SSIPL, a special purpose vehicle established by "Reddy Family" founder of the Apollo Hospitals Group.

4.1. The Shares of Aircel Group were acquired by Maxis Group directly through CSHL, and through a joint venture company by name Deccan Digital Networks Private Limited ("DDNPL"), incorporated in India, with an Indian partner which would obtain the remaining 35% of Aircel Limited from ATL. GCSHL would subscribe to 25.714% of DDNPL and Indian Partner would subscribe to 74.286% of DDNPL.GCSHL, thus making an Indirect purchase of 8.999% of equity shares of AL. Thus, Maxi Group, directly and indirectly, held about 74% in Aircel Group and 26% were held indirectly by SSIPL, through its interest in DDNPL. The shareholding of Aircel Group is depicted in the following picture :



4.2. During takeover of Aircel Limited by Maxis Group based out of Malaysia, a total of ten (10) agreements/ term sheets were signed between eight (8) parties

(Annexure 13 to 22) in four tranches between 23.12.2005 to 20.01.2006 details of the parties and the agreements are as given below :

a. Maxis Communications Berhad (Maxis) a company registered in Malaysia;

b. Aircel Limited (AL) a company registered in India;

c. Aircel Televentures Limited (ATL) a company registered in India;

d. Sterling Infotech Limited (SIL) a company registered in India;

e. Global Communication Services Holding Ltd (GCSHL) a company registered in Mauritius;

f. Deccan Digital Networks Private Limited (DDNPL) an Indian Company incorporated on 16.01.2006;

g. Sindya Securities & Investments Private Limited (SSIPL) an Indian company incorporated on 19.01.2006;

h. Suneeta Reddy, MD of Apollo group of companies and Chairman of BOD of Aircel Limited from 2006 onwards;

4.3. It is stated that the total cost of purchase of shares of Aircel Limited from Aircel Televentures Limited ("ATL") is Rs. 3565.91 Cr, Maxis Group had paid Rs. 3531 Cr and IP had only paid Rs.34.17 Cr. After adding the cost of subscription of Rs. 6.32 Cr Aircel Equity Shares of Rs. 10 each at a price of Rs. 202 per Share i.e. Rs. 1276.64 Cr, the total cost of purchase for Maxis group was Rs.4842 Cr and the cost paid by IP (SSIPL) for purchase of 26% of Aircel Shares was only Rs.34.17 Cr.

4.4. SSIPL and DDNPL had also entered into an IP Call option agreement dated 20.01.2006 where by GCSHL was vested with a right to purchase 24,324,324 or 10% Aircel Shares from DDNPL on payment of agreed consideration, and GCSHL, SSIPL and DDNPL were signatories to this agreement. The IP Call Option agreement is valid for a period of five years from the date of completion of the share purchase agreement i.e. 21.03.2006 as defined in Para 1.1. Call Option Period, further extendable by the parties in writing.

5. It is case of the Petitioner that SSIPL received a sum of Rs. 100.50 Cr on 21.09.2016 from GCSHL for consenting to terminate the call agreement and for consenting to voting arrangement. The receipt of Rs. 100.50 Cr in exchange of rights derived from the pledged shares is part of the Collateral and ought to have been appropriated to the banks in lieu of the outstanding adjudicated liabilities of Rs. 19,788.77 Cr, the receipt of Rs. 100.50 Cr is a fraud played on the banks for the following reasons :

a. The IP Option Agreement was not disclosed to the banks, even though as per the 3rd Share Purchase Agreement ("3rd SPA") 100% Aircel Shares held by DDNPL & GCSHL were pledged to the banks.

b. Deliberate false representations were made to the banks stating that there exists no such Option agreement in all three (3) Share Pledge Agreements.

c. As per the Share Pledge Agreements, all the shares, agreements (including option agreements) and rights associated with the shares are part of the collateral and are already pledged with the banks.

d. Once 100% shares are pledged to the banks, the IP Option Agreement has no validity, not only because it was deliberately hidden from the banks, but also because exercise of such option for obtaining pledged shares is not possible as the 100% share were already pledged.

e. While the IP Option Agreement was between SSIPL and DDNPL, the payment was received from GCSHL. While SSIPL was promoted by Suneeta Reddy and her husband Dwaraknath Reddy in the year 2006, DDNPL was a special purpose company incorporated to acquire the shares of Aircel Limited and Suneeta Reddy was its director from 25.03.2006 to 14.02.2018. GCSHL a Malaysian company, not bound by the IP Option Agreement, had made the payment to SSIPL.

f. The Shareholder Agreement between GCSHL and SSIPL w.r.to DDNPL shares has a crippling effect on the functioning of DDNPL, virtually providing a VETO to GCSHL despite being a minority shareholder and further rights associated with 35% Aircel Shares held by DDNPL are also pledged to the banks and hence SSIPL cannot profiteer by consenting to voting arrangement, as the right is pledged to the bank.

6. The Respondents raised preliminary objection and also advanced their submissions on the merits of the case. The Respondents contended that :

   a. The allegation in the SFIO Report that the Respondents have committed a fraudulent transaction does not fall within the ambit of Section 212(14A) Companies Act, 2013 ("Companies Act") as the lenders had no entitlement to the amount, there can be no allegation of "undue advantage or benefit" as contemplated under Section 212(14A) of the Companies Act;
   b. No offense of fraud under Section 447 of the Companies Act, 2013 ("Companies Act"). as IP Call Option Agreement neither involved Aircel, nor did it involve any property of Aircel, and a company being distinct from its shareholders, it cannot be said that the alleged fraud is in relation to the affairs of Aircel or the CUIs;
   c. The Investigation Order dated 12th June 2018 ("Investigation Order") is bad in law and is vitiated on account of non-application of mind and non-compliance with Section 212 of the Companies Act;
   d. the Investigation Order does not extend to the Respondents and the SFIO had no jurisdiction to investigate;
   e. Companies under investigation ("CUIs") and Lenders have not been impleaded as Respondents, who are proper and necessary parties;
   f. The IP Call Option never formed a part of the lenders' security under the pledge agreements;
   g. Alleged non-disclosure of IP option agreement did not cause any prejudice whatsoever to Aircel's lenders as, inter-alia, the rights of SSIPL/R3 did not form the subject matter of the pledge agreements;

h. IP Call Option Agreement continued to be valid even after 100% of the shares of Aircel were pledged and SSIPL/R3 was entitled to the consideration flowing inter-alia from its termination;

i. As part of the proposed RCOM Merger, GCSHL had decided to give an exit to SSIPL/R3 from the Aircel Group, thus IP Call Option Agreement was terminated as DDNPL would no longer exist as an entity post the proposed RCOM Merger and such Agreement was between SSIPL and DDNPL;

j. The IP Call Option vested purely a contractual right in favour of SSIPL/R3, and was neither an asset of DDNPL, nor a right belonging to DDNPL in respect of shares of Aircel held by it, hence, no loss was caused to lenders of Aircel on account of the said Payment.

7. Heard the Learned Counsel and perused the material on record.

7.1. Section 212(14A) of the Companies Act, 2013 provides that :

"*Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability*".

7.2. On bare perusal of aforesaid section, the following ingredients are necessary for passing an order in terms of Section 212(14A) of the Companies Act, 2013 :

i. SFIO report u/s 212(11) or (12) has concluded commission of a fraud in a company; and

ii. In course of commission of such fraud, any director, key managerial personnel, other officer of the company or any other person or entity has taken undue advantage or benefit in any manner;

7.3. In the case of Aircel Group, the SFIO was asked to investigate into the affairs of Aircel Group, comprising companies namely Aircel Limited, Aircel Cellular Limited and Dishnet Wireless Limited. The relevant part of the Order dated 12.6.2018 issued by Central Government is reproduced hereinbelow :

> *3. Now, therefore, in exercise of powers conferred under Section 212 (1) (a) of the Act, the Central Government has formed an opinion that the affairs of the above referred companies need to be Investigated and hereby orders investigation into the affairs of Dishnet Wireless Limited (Formerly Known as Dishnet DSL Limited), Aircel Limited and Aircel Cellular Limited, to be carried out by officers of the Serious Fraud Investigation office as may be designated by Director, SFIO.*

7.4. It is stated in the investigation report that the scope of investigation was "*to analyze how CUIs borrowed monies from banks and how these bank borrowings were utilized by CUIs and what led to the default of Rs 15,970.88 Cr to Indian Banks and Financial Institutions.*

The scope includes

a) Verification of equity contribution by promoters both foreign and Indian

b) Identification of diversion or siphoning of bank borrowings, if any

c) Identification of unlawful gain made by any person in connection to the affairs of CUI

d) Identification of instances of mis-management of CUIs

e) Verification of whether accounting standards have been followed in preparation of financial statements

7.5. Pursuant to the order dated 12.6.2018, the SFIO submitted its Investigation Report dated 31.08.2023, wherein DDNPL and SSIPL are listed as 'Other Related Companies", and it is concluded by SFIO in its Investigation Report that

> *4.196 there existed an IP Call Option Agreement 20.01.2006 executed between Sindya Securities & Investments Private Limited (SSIPL) and Deccan Digital Networks Private Limited (DDNPL) and this had been deliberately kept outside the purview of the banks, and a false representation was also made to the banks vide Share Pledge Agreement (SPA) dated 26.04.2014, stating no such option existed. That SSIPL, DDNPL, GCSHL & IP Promoters (P. Dwarkanath Reddy & Suneeta Reddy) hand entered into "Call Option Termination Agreement" dated 14.09.2016, where in a consideration of Rs. 100.50 Cr was paid on 21.09.2016 by GCSHL to SSIPL for consenting to terminate the call agreement and for consenting to voting arrangement. Since 100% shares of Aircel, Option agreements and the rights associated with both the shares and options are pledged to the banks for obtaining Rs.13,729 Cr for Rupee Loan facility and Rs. 3,750 Cr in respect of the Non-fund Based Facilities. The receipt of Rs. 100.50 Cr in exchange of rights derived from the pledged shares is part of the Collateral and ought to have been appropriated to the banks in lieu of the outstanding adjudicated liabilities of Rs. 19,788.77 Cr, the receipt of Rs. 100.50 Cr is a fraud played on the banks.*
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> *4.197 The payment of Rs. 100.50 Cr to the Indian partner defrauding the banks is nothing but a consideration obtained by Indian Partner for being a mute spectator while affairs of Aircel Limited was remote controlled by Maxis, when Suneeta Reddy was remained the Chairman of Board of Directors of Aircel Limited from 2006 to 2017. The investigation report had thus concluded that fraud has taken place in*

the CUIs and due to such fraud any Suneeta Reddy, a director of CUI and Dwaraknath Reddy, director and shareholder of SSIPL and SSIPL has taken undue benefit in the form of Rs. 100.50 Cr consideration received on 21.09.2016.

7.6. One of the part of said report is titled as "***IP Call Option Agreement — Unlawful Gain to Promoters***". Para 4.178 and 4.180 of the Investigation Report under the heading "*Finding, Charges and Recommendations*" reads as under :

"4.178 Investigation revealed that while Maxis group had paid Rs.4842 Cr for obtaining of 74% stake in Aircel Limited, the Indian Partner had paid only Rs.34.17 Cr for obtaining the remaining 26% stake. Investigation had revealed that Aircel Limited was not managed by its board of directors, but rather was closely controlled and operated by Maxis Group through the top management i.e. CEO & CFO's who were appointed by the Maxis, Malaysia. Since the Indian Partner SSIPL did not have any substantial stake or financial interest in the affairs of Aircel Limited and had only lent their name to obtain FDI Approval for enabling acquisition by Maxis, Suneeta Reddy remained a mute spectator as the Chairperson of BOD of Aircel and during this period Aircel Limited made a cumulative loss of Rs. 41,345 Cr between FY 2006-07 to FY 2016-17. Eventually, Aircel Limited became an insolvent and the adjudicated liabilities under Insolvency and Bankruptcy Code for financial creditors alone stood at Rs. 19,788.77 Cr and the valuation of the assets of CUIs stood at about Rs. 2800 Cr, thus causing a haircut of over 85% to the financial creditors.

……………………………………

4.180 The false representations made by DDNPL to the various lending bank through share pledge agreement dated 26.04.2014 is after the date of notification of section 36(C) of Companies Act, 2013 (i.e. 12.09.2013). The section states that "Any person who, either knowingly *or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into any agreement for, or with a view to, obtaining credit facilities from any bank or financial institution shall be liable for action under section 447*"

7.7. On perusal of complete investigation report, it is noted that the allegation of fraud is founded on huge hair cut, the financial creditors had to take, to the credit exposure to Aircel Group, and the final findings in relation to fraudulent conduct of affairs reveal two wrongful acts i.e. (i) Payment of Rs. 100.50 cr. By GCSHL to SSIPL in lieu of termination of IP Call Option Agreement, and (ii) Non-provisioning of New Site Agreements (NSA) in the financial statements, and NSA being onerous to Aircel and one-sided favoring Chennai Network Infrastructure Limited (CNIL), the infrastructure provider, at the cost of Aircel Group. Further, there are allegations of evergreening of loan for which RBI is look into further; and sharing of investigation report to CBI for investigation into conduct of bankers and to CEIB, and Investigation into the affairs of GTL and Related Entities.

7.8. Explanation (i) to Section 447 of the Companies Act, 2013 defines fraud in an inclusive manner, and states that *"fraud" in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss*".

7.9. It is evident from the definition of Fraud that a fraud includes an act of omission or concealment with an intent to deceive or to gain undue advantage from the company or its shareholders or its creditors or any person. For this purpose, the SFIO has based its conclusion on alleged acts of omission or concealment on the part of the DDNPL, GCSHL and Respondent No. 2 in not disclosing the IP Call Option Agreement to the lenders of Aircel. The definition of 'Fraud' as contained in Explanation to section 447 is inclusive and said definition includes acts of commission and omission in relation affairs of a Company, in whose affairs the fraud is alleged to be committed. Though, a transaction between two shareholder(s) or two person(s) in relation to shares of the Company can be said to be a transaction in relation to the affairs of the Company, however, it is pertinent to note that Section 212(14A) makes it explicit that the fraud has to take place in the company and not in relation to its affairs.

7.10. It is also submitted by the Petitioner that the false representations made by DDNPL to the various lending bank through share pledge agreement dated 26.04.2014 is after the date of notification of section 36(c) of Companies Act, 2013 (i.e. 12.09.2013). The section states that "*Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into any agreement for, or with a view to, obtaining credit facilities from any bank or financial institution shall be liable for action under section 447.*

7.11. It is noted that the allegation of concealment of existence of IP Call Option Agreement is qua to the lenders. It is not in dispute that no amount of Rs. 100.50 crores had flown from the Aircel Group entities who had borrowed from the lenders. Indubitably, a call option was vested in favor of SSIPL by DDNPL, of which SSIPL was a majority shareholder, vide an Agreement dated 20.01.2006 whereby SSIPL can acquire 24,324,324 shares held by DDNPL in Aircel Entities, and the signatory to said Call Option agreement were DDNPL and SSIPL, wherein SSIPL was represented by SR and DR. Clause 2 thereof states that "*Deccan hereby irrevocably grants to IP an option to purchase from Deccan, on a spot delivery basis, the Call Option*

Shares, for the Consideration (payable in Rupees), during the Call Option Period, in one or more tranches, provided, however, the number of Equity Shares purchased pursuant to each tranche shall be not less than 25 (twenty five) % of the Call Option Shares and on the terms and conditions contained in this Agreement (hereinafter referred to as the "Call Option")."Further clause 3.1 of said Call Option Agreement is reproduced hereinbelow :

> "*3.1 During the pendency of the Call Option Period, IP shall have the right to issue a Notice to Deccan for exercising its option to purchase, on a spot delivery basis, the Call Option Shares ("Called Shares"), specifying therein: (i) the number of the Called Shares, (ii) the day on which such sale and purchase of the Called Shares shall occur, which day shall be 30 (thirty) days from the date of the Call Option Notice (as hereinafter defined) (hereinafter, the "Call Option Exercise Date") and (iii) the Consideration payable per Called Shares ("Call Option Notice").".*

7.12. This Call Option Agreement came to be terminated in terms of Call Option Termination Agreement dated 14.9.2006. The recital of this agreement states that :

> *"B. With a view to achieving the foregoing purpose, ROM and Reliance Telecom Limited ("RTL") wish to demerge and transfer the RCOM Wireless Business into AL and DWl, under the Scheme, in consideration for the allotment and issue of the new Equity Shares by Al to RCOM ("RCOM Merger"). Pursuant to the Scheme and simultaneous with Via RCOM Merger, it is also intended to achieve the Shareholder Loan/RPS Reorganisation as contemplated by the Merger Agreement, the merger of SACPL INTO AL ("SACPL Merger"). and the merger of Deccan into AL ("Deccan Merger", and together with the RCOM Merger the SACPL Merger and the Shareholder Loan/RPS Reorganization, "Proposed Transaction").*

C. IP has a call option over 24,324,324 (twenty four million three hundred and twenty four thousand three hundred and twenty four) Equity Shares held by Deccan in AL ("IP Call Option") under the IP Call Option Agreement and GCSHL has a call option over all of IP's equity shares ("GCSHL Call Option Shares") n Deccan ("GCSHL Call Option") under the GCSI Call Option Agreement,

D. The rights of Deccan and GCSHL as shareholders of Al are governed by the Airtel SHA and the rights of IP, Deccan and GCSHL as shareholders of Deccan are governed by the Deccan SHA.

E. The Parties have decided to enter into this Agreement to govern the termination of the Call Option Agreements, the Deccan SHA and the Aircel SHA and to record the voting and support arrangement to be provided by IP and the IP Promoters to GCSHL for the consummation of the Proposed Transaction"

7.13. The aforesaid recitals contained in the Termination Agreement make it amply clear that the termination of IP Call Option Agreement took place consequent to an understanding between RCOM and GCSHL to merge their telecom business(es). The recital in the said agreement are in conformity with the statement of SR tendered to SFIO during investigation proceedings, wherein it is recorded that "*Since GCSHL was the major investor in the Aircel Shareholding held by DDNPL and it wanted to consolidate their investments to facilitate the proposed merger with Reliance Communications, it became a party to the call option termination agreement, as a major stake holder in DDNPL and made the payments directly to SSIPL. As they were exiting from the Aircel investment arrangement, they had no responsibility to disclose the above transaction to the Board of Aircel as well as the Banks of Aircel*."

7.14. SSIPL was an option holder to acquire shares held by DDNPL besides other rights vested in DDNPL as enshrined in SHA. SSIPL was a majority shareholder of DDNPL, whose shareholding in the Aircel entities, was subjected to Call Option. GCSHL was having majority shareholding in Aircel

Entities, but a minority shareholding in DDNPL, and it required active support of DDNPL to implement proposed scheme of merger with RCOM, it had to gather the support of SSIPL, the majority shareholder of DDNPL, to sail through the approvals, consents or resolutions required for implementation of proposed scheme of merger. Accordingly, GCSHL agreed to pay to SSIPL a consideration for termination of the said agreement so that SSIPL allows to vote DDNPL in the manner required for implementation of proposed scheme of merger. It clearly shows that the transaction was between shareholder of ATVL (Aircel Companies's holding company) and shareholder of DDNPL, and the said transaction took place to achieve broad objective to merge the telecom business of RCOM and Aircel, though, later on the said objective could not materialise for some reasons, which are not relevant here.

7.15. It was argued by Ld. Counsel for the Petitioner that Clause 4.1.3. of Shareholder Agreement dated 20.1.2006 provides that "*GCSHL agrees and undertakes that in the event that the IP exercises the Call Option (as defined in the IP Option Agreement) under the IP Call Option Agreement and issues the Call Option Notice (as defined in the IP Option Agreement), it shall ensure that the Call Option Shares (as defined in the IP Option Agreement) shall be made free and clear of all Encumbrances, including, without limitation, by pledging the Equity Shares that GCSHL holds in AL with the lenders of AL",* and the call option shares were subjected to encumbrance in favor of Lenders, accordingly, SR and DR were obligated to disclose this fact to the lenders while executing the Share Pledge Agreement in favor of lenders to secure the credit facilities extended to Aircel entities. Accordingly, the failure to disclose the same tantamount to omission/concealment of a fact in the affairs of the Aircel Entitites and such omission/concealment resulted into a undue advantage accruing to SSIPL on termination of call option agreement.

7.16. It is noted that the first share pledge agreement was entered into on 21.3.2006 amongst GCSHL, DDNPL, Industrial Development Bank of India Limited (IDBI) acting and on behalf of the banks and financial institutions set out in Schedule 1 thereto, and Aircel Limited (borrower). The recital F thereto reads as "*The Lenders have since approved the change of management and transfer of Shares by the existing promoters in favour of the Pledgors, inter alia, on the condition that the Pledgors shall pledge at least 51% of the equity shares of the capital of the Borrower. The Pledgors intend to pledge the Shares in the proportion as provided in Appendix A.*". Neither SR nor DR has signed this agreement on behalf of DDNPL. The definition of "Collateral" stated in clause 1.1. of the said agreement does not include 'option' in its ambit. Further, clause 2.2. of said agreement mandates that "*If the Pledgors acquire (by subscription, purchase, conversion, redemption, substitution, rights, bonus, preference, option or otherwise) any additional Shares at any time, or from time to time, after the date hereof, the Pledgors shall (i) pledge such additional Shares as security in favour of IDBI for the benefit of all the Pledgees,……*" On holistic reading of this Agreement, it can not be said that there can be a case of any omission or concealment on part of SR or DR, without delving into an inquiry whether it, if there was any, was with an intent to deceive lenders or take any undue advantage from hiding IP Call Option Agreement.

7.17. Second Share Pledge Agreement was executed on 14.6.2011 amongst GCSHL, SBICAP Trustee Company Limited in its capacity as Security Trustee to the Secured Parties, and Aircel entities. Recital C thereof states that "*One of the conditions in the Financing Documents is that the Outstandings under the Financing Documents shall be secured by, inter alia, first ranking pari passu pledge over 51% (fifty one percent) Shares of the Company by the Pledgor in favour of the Security Trustee for the benefit of the Secured Parties.*" Further, this agreement also contains clause similar to clause 2.2 of the Agreement dated 21.3.2006. It is evident therefrom that neither DDNPL is a party to the said agreement, nor SR or DR have signed this agreement in any capacity. Hence, it can not be said that there can be a case of any omission or concealment on part of SR or DR, without delving into an inquiry whether it, if there was any, was with an intent to deceive lenders or take any undue advantage from hiding IP Call Option Agreement.

7.18. Third Share Pledge Agreement was executed on 26.4.2014 amongst GCSHL, DDNPL, SBICAP Trustee Company Limited in its capacity as Security Trustee to the Secured Parties, and Aircel entities. Indubitably, SSIPL is not a party to the said agreement. Recital B & C of the said agreement states as follows :

(B) The Parties hereby agree that the Outstandings shall be secured by, inter alia, a first ranking pari passu pledge over 100% (one hundred percent) Shares of the Company by the Pledgors (except for 5 (five) equity shares jointly held with other shareholders and in relation to which First Pledgor is the first holder) in favour of the Security Trustee for the benefit of the Secured Parties.

(C) The Pledgors, accordingly have agreed to pledge in favour of the Security Trustee for the benefit of the Secured Parties the above mentioned Shares, in accordance with the terms and conditions provided herein.

7.19. Pursuant to this agreement dated 26.04.2014, whole of shares held by GCSHL and DDNPL came to be mortgaged in favor of the Lenders. Clause 1.1 of the said agreement defines "Collateral" to mean, *collectively:*

(i) the Pledged Shares;

(ii) the Pledgors' DP Account in relation of the Pledged Shares; and

(iii) in relation to the Pledged Shares, all instruments, records, forms, confirmations, consents, approvals, agreements, writings, power of attorney, deeds and documents in connection with the Pledgors' DP Account at any time, together with all rights in connection therewith or accruing thereto and proceeds arising therefrom from time to time

including (but not limited to) any distributions received / to be received and moneys, including but not limited to:

(a) dividends paid or payable other than in cash in respect of, and instruments and other property received, receivable or otherwise distributed in respect of, or in exchange for any Pledged Shares;

(b) dividends and other distributions paid or payable in cash in respect of or in connection with any liquidation or dissolution or in connection with a reduction of capital:

(c) cash paid, payable or otherwise distributed in respect of buy-back of, or in exchange for, any Pledged Shares, and

and at any time held by the Security Trustee in accordance with the provisions of these presents.

However, the Pledgors shall have the right to receive the dividends and all other monies in accordance with Section 2.4 of this Agreement."

7.20. Further, the agreement dated 26.04.2014 also contains clause similar to clause 2.2 of the Agreement dated 21.3.2006 in relation to pledge extending to subsequently acquired shares and further states that the additional equity shares of the first Pledgor (GCSHL), the same shall be pledged, within 2 (Two) Business Days from the date of receipt of approval from the authorised dealer bank. It is relevant to note clause 2.8 and clause 2.9 of the agreement providing that :

2.8 Discharge of the Pledged Shares

Neither the Pledgors nor any other Person shall be entitled to claim delivery of any of the Pledged Shares nor shall any other person claim any right or interest therein until the Final Settlement Date.

2.9 Record Ownership of Pledged Shares

Unless the Security Trustee exercises any of its remedies on default pursuant to Section 2.5 of this Agreement, the Pledgors shall remain the owner of the Pledged Shares on the records of the Company, and the Pledgors shall within 1 (one) Business Day give the Security

Trustee copies of any notices or other communications received by the Pledgors with respect to the Pledged Shares and which have a material bearing on the rights of the Secured Parties.

7.21. The clause 2.8 of the Agreement dated 26.4.2014 makes it abundantly clear even if SSIPL was to exercise its right under IP Call Option Agreement, the option shares may not have been acquired by SSIPL from DDNPL, as the shares of DDNPL were already under pledge with the lenders and the transferee of those shares is barred from claiming any right or interest in pledged shares. Further, clause 2.9 of the Agreement mandates that the Pledgors shall remain the owner of the Pledged Shares on the records of the Company and Pledgors were obligated to inform Security Trustee copies of any notices or other communications received by the Pledgors with respect to the Pledged Shares and which have a material bearing on the rights of the Secured Parties. Indubitably, no transfer has taken place, hence, no allegation has been made in this regard. Nonetheless, these clause(s) render the exercise of any right by SSIPL in relation to shares of DDNPL under the IP Call Option Agreement redundant, except with the leave of the lenders, as GCSHL and DDNPL having pledged their 100% shareholding in Aircel entities as well as subsequent acquisition, even if there happens one transfer from DDNPL in favor of SSIPL pursuant to said IP Call Option agreement, in terms of clause 2.2 of the Agreement. In our considered view, the clause 2.8 extinguishes all rights vested in favor of any person in respect of pledged shares, and the right if any surviving on the date of execution of said agreement, could not be exercised without consent of the lenders, in the absence of which any transfer of pledged shares is rendered void till the credit facility remains outstanding. Accordingly, clause 2.8 protects and saves the interest of lender(s) in respect of any option vested in existing shareholders (signatories to the agreement) in relation to pledged shares, even if existence of such right is not disclosed.

7.22. It is also noted that clause 16.2 of the Agreement dated 26.4.2014 provides that the obligations of the Pledgors, the Company and the Obligors under this Agreement will not be affected by any act. omission, matter or thing (including whether or not known to the Pledgors, the Company and the Obligors). The Petitioner's case of fraud is founded on the non-disclosure of IP Call Option Agreement and reliance on section 36(c) making a person liable for action under section 447 if he knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into any agreement for, or with a view to obtaining credit facilities from any bank or financial institution.

7.23. At the outset, SSIPL is not a party to the said agreement, and the Petitioner's allegation of non-disclosure on founded on the premises that SR, being director of Aircel Entities and DDNPL at relevant times, ought to have disclosed the same about existence of an Option in favor of SSIPL, which is owned by her family. On perusal of said agreement, we could not find any statement or promise or forecast in the Agreement dated 26.4.2014 which can be said to be false, deceptive or misleading made by DDNPL, while being a party to the said agreement. Further, the concealment of a fact occurs when the parties to an agreement are required to disclose such facts. In this regard, the combined reading of clause 2.2, clause 2.8 and clause 16.2 having been agreed by DDNPL and Aircel Entities, clearly establish that there could not have been case of any false or deceptive inducement in view of express covenants protecting the lenders from such non-disclosure binding DDNPL. Further, SR, whose family held SSIPL and is stated to be director at material time, is an independent person, and is not required to disclose existence of Option held by SSIPL, which is an independent legal entity. We do not find any rationale in the argument of the Petitioner that SR ought to have known what is there in the agreement, as was obligated to disclose the same in the agreement and to the lenders about existence of Option in favor of SSIPL, while SSIPL is an independent legal entity. Hence, we are of considered view no case of fraud in the affairs of Aircel entities, in so far as transaction impugned in the present petition is concerned, is made out.

7.24. The Learned Counsel for the Petitioner heavily relied upon definition of ‘Collateral’ contained clause in Clause 1.1 of the Agreement, which includes all rights in connection with pledged shares or accruing thereto and proceeds arising therefrom from time to time including (but not limited to) any distributions received / to be received and moneys, including but not limited to. It is pertinent to note that SSIPL or SR or DR were not parties to the said pledge agreement, and have not pledged their rights, if any, they had in terms of said agreement. SR is alleged to have knowledge of these pledge agreements, as she was director of DDNPL at the relevant times. We have dealt with in detail in the aforesaid paragraphs that the existence of such option right had no bearing on the perfection of security interest in favor of lender in view of clause 2.8 and clause 16.2 of Agreement dated 26.4.2014. Further as explained in foregoing para, even if SR was director of Aircel entities and DDNPL, she loses her defence against claim of lender(s) that the pledged shares were free from any encumbrances and clause 2.8 and clause 16.2 of the Agreement forecloses existence of any such right, hence, even if she had knowledge of covenants of the pledge agreement, her acquiescence to those covenants shall have the effect of making rights of SSIPL subject to lender’s rights, if the case of petitioner is accepted that SR and SSIPL are not distinct person in the eyes of law.

7.25. As regards vesting of such right in favor of SSIPL is concerned, it is to be understood that the Call Option Termination Agreement, on the other hand, set at rest any claim of SSIPL thus perfecting the rights of the Lenders absolutely. Hence, even if it is considered that SR or DR had any obligation to disclose existence of IP Call Option Agreement, which in our considered view GCSHL and DDNPL may had, it can not be said that such non-disclosure, if constituting act of omission or concealment, was done with an intent to take undue advantage prejudicing the rights of the lenders in any manner. It is noted that GCSHL and DDNPL are not parties to the present petition, hence, the case qua them can not be examined.

7.26. It is further noted that, in terms of clause 5.(i)(c) and (e) of the Agreement dated 26.4.2014, the Pledgors have undertaken not to (i) *create or attempt or agree to create or permit to arise or exist or have outstanding any lien or charge of any kind whatsoever over all or any part of the Collateral or any Security Interest (other than the charge created for the benefit of the Project Lenders on the Collateral) therein or otherwise assign, sale, discount, lend, transfer, deal with or dispose of all or any part of the Collateral*, and (ii) *not grant in favour of any other Person (other than the Project Lenders) any interest in or any option or other rights in respect of any of the Pledged Shares".* These undertakings bar GCSHL and DDNPL to transfer their shares or create any option in relation thereto after execution of this undertaking.

7.27. As discussed above, while clause 2.8 of the Agreement protects the lenders from the existing options if any created in the pledged shares, clause 5(1) bars creation of any option in future. On reading of the agreement dated 26.4.2014 in entirety, we are of considered view that the rights and interest of lender(s) and their rights are not prejudiced in any manner by non-disclosure of existence of IP Call Option Agreement, thus it can not be said IP Call Option Agreement was not disclosed by the persons, if obligated to do so, with an intent to deceive or injure the interests of the lenders.

7.28. The Petitioner's case is the definition of 'Collateral' as provided in agreement dated 26.4.2014 includes "all rights in connection with pledge shares or accruing thereto and proceeds arising therefrom from time to time", hence, the said option agreement also formed part of the 'Collateral', hence, any proceeds therefrom should have been paid to the Lenders. At the outset, it is pertinent to note that the Option right was the property vested in SSIPL and not in DDNPL or SR or DR, hence, any variation in their right could not have taken place without their concurrence. Nonetheless, we have stated in the preceding paras that SSIPL may be precluded from asserting any such vested right to the prejudice of lenders, in the light of SR being director of DDNPL and Aircel entities at the relevant time.

7.29. It is noted that Recital D to Call Option Termination Agreement dated 14.09.2016 states that "*The rights of Deccan and GCSHL as shareholders of Al are governed by the Aircel SHA and the rights of IP, Deccan and GCSHL as shareholders of Deccan are governed by the Deccan SHA,"*. Further, Recital E thereof reads as "*The Parties have decided to enter into this Agreement to govern the termination of the Call Option Agreements, the Deccan SHA and the Aircel SHA and to record the voting and support arrangement to be provided by IP and the IP Promoters to GCSHL for the consummation of the Proposed Transaction.*" Recital B of the said Agreement sets out context which required execution of said agreement. Recital C states about IP Call Option Agreement. It is trite that the Recitals set out the context for which an agreement or contract is made out. It is amply clear from the recital that Call Option Termination Agreement dated 14.9.2016 was entered for termination of (i) Call Option Agreements, (ii) the Deccan SHA and (iii) the Aircel SHA, and to record the voting and support arrangement to be provided by IP and the IP Promoters to GCSHL for the consummation of the Proposed Merger of RCOM and AIRCEL. Clause 2 of the said agreement sets out Voting Arrangement and Grant of Irrevocable Proxy in relation to proposed merger, Clause 3 deals with termination of the Call Option Agreements, and Clause 4 deals with termination of the Deccan SHA and Aircel SHA. This makes is clear that the consideration paid by the GCSHL to SSIPL was for bundles of rights, though termed as Call Option Termination Consideration. The payment made to cause SSIPL to allows DDNPL to vote in a manner required for smooth implementation of proposed scheme of merger in the shareholder's meeting of Aircel entities or to cause nominee(s) of DDNPL to do so in the meeting of Board of Aircel Entities besides for termination of IP Call Option was merely a contractual arrangement between majority shareholder of Aircel entities on one hand and the majority shareholder of minority shareholder of Aircel entities, and the said consideration was paid so as re-define relationship in the affairs of DDNPL so as to cause DDNPL act in a matter beneficial to the proposed merger. Nonetheless, even if the value was ascribed by GCSHL to the option vested in favor of SSIPL, the exercise of which was impossible without consent of lender(s), such payment by GCSHL to SSIPL was nothing but a contractual payment for seeking SSIPL's consent for exercise of vote by DDNPL. Hence, it can not said to be a fraudulent transaction undertaken to take undue advantage or benefit.

7.30. For the aforesaid reasons, we are of considered view that a payment of Rs. 100.50 crores was a transaction between the shareholder of Aircel entities on one hand and shareholder of another shareholder of Aircel entities in respect of its shares, and such transaction can not said to have taken place in the affairs of the Aircel entities, though such transaction may relate share capital issued by Aircel entities. In our considered view, the term 'in relation to affairs of a company' contained in definition of Fraud provided in Explanation (i) to Section 447 of the Company Act, 2013 can not be stretched to include a transaction between two persons in relation to share capital of a company. Further, section 212(14A) of the Companies Act, 2013 requires flow of undue advantage or benefit, in contradistinction to section 447 of the Companies Act, 2013 where it is not relevant whether or not there is any wrongful gain or wrongful loss to a person. Hence, no order of disgorgement can not be passed in terms of Section 212(14A) of the Companies Act, 2013.

7.31. The petitioner has also sought declaration that Respondent No. 1 to 3 were knowingly parties to the fraudulent conduct in the manner as stated in the petition, thereby holding them jointly and severally liable without any limitation of liability on account of fraud perpetrated by them. As we have noted in the preceding paragraphs that a fraud, within meaning of section

36(c) read with section 447 of the Companies Act, 2013, has been committed in the affairs of Aircel entities in so far as payment from GCSHL to SSIPL for termination of IP Call Option Agreement and SHA Agreements, besides vesting of certain obligations in SSIPL in the affairs of DDNPL, is concerned, we are of the considered view a declaration making Respondent No. 1 to 3 liable without any limitation of liability on account of alleged fraud can not be made.

7.32. In view of foregoing discussion, we are of considered view that no case is made out for an order in terms of section 212(14A) of the Companies Act, 2013. Hence, the present company petition CP 253 of 2025 is dismissed and disposed of.

-Sd/-	**-Sd/-**
Prabhat Kumar	**Sushil Mahadeorao Kochey**
Member (Technical)	Member (Judicial)