IN THE SECURITIES APPELLATE TRIBUNAL AT MUMBAI

DATED THIS THE 5TH DAY OF DECEMBER 2025

CORAM: Justice P. S. Dinesh Kumar, Presiding Officer
Ms. Meera Swarup, Technical Member
Dr. Dheeraj Bhatnagar, Technical Member

Appeal No. 527 of 2024
And
Misc. Application No. 911 of 2024
And
Misc. Application No. 941 of 2024
And
Misc. Application No. 1065 of 2024

Between

Linde India Ltd.
Oxygen House, P-34 Taratala Road,
Kolkata, West Bengal - 700088 …. Appellant

By Mr. Janak Dwarkadas, Senior Advocate with Mr. Kunal Dwarkadas, Ms. Tamanna H.V., Mr. Prasad Shenoy, Mr. Sandeep Parekh, Mr. Anil Choudhary, Mr. Parker Karia, Ms. Navneeta Shankar, Mr. Manas Dhagat, Advocates i/b Finsec Law Advisors for the Appellant.

And

Securities and Exchange Board of India
Plot No.C-4A, G Block, Bandra Kurla Complex, Bandra (E),
Mumbai - 400 051. …. Respondent

By Mr. D. J. Khambata, Senior Advocate with Mr. Mihir Mody, Advocate with Ms. Vidhi Shah Ajmera, Mr. Yash Sutaria, Mr. Tushar Bansod, Mr. Aavish Shetty, Mr. Karthik K. P., Mr. Vijay Chockalingam, Advocates i/b. K Ashar & Co. for the Respondent.

Mr. Akshay Petkar, Advocate with Mr. Harsh Kesharia, Advocate for the Intervener (MA No. 941 of 2024).

THIS APPEAL IS FILED UNDER SECTION 15T OF SEBI ACT, 1992 TO SET ASIDE ORDER DATED JULY 24, 2024 PASSED BY THE WHOLE TIME MEMBER, SEBI.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDERS ON JULY 7, 2025 COMING ON FOR PRONOUNCEMENT OF ORDER THIS 5TH DAY OF DECEMBER 2025, THE TRIBUNAL MADE THE FOLLOWING:

ORDER

[Per: Dr. Dheeraj Bhatnagar, Technical Member]

This appeal is directed against IO[1] dated July 24, 2024, passed by the WTM[2] of SEBI[3], thereby issuing the following directions against the Appellant (LIL)[4]:

> *"a) LIL shall test the materiality of future RPTs as per the threshold provided under Regulation 23(1) of the LODR Regulations on the basis of the aggregate value of the transactions entered into with any related party in a financial year, irrespective of the number of transactions or contracts involved.*
>
> *b) In the event the aggregate value of the related party transactions, calculated as provided in clause (a), exceeds the materiality threshold provided under Regulation 23(1), LIL shall obtain approvals as mandated under Regulation 23(4) of the LODR.*
>
> *c) NSE shall appoint a registered valuer to carry out a valuation of the business foregone and received,*

[1] Impugned Order
[2] Whole Time Member
[3] Securities and Exchange Board of India
[4] Linde India Ltd.

including by way of geographic allocation, in terms of Annexure IV of the JV&SHA".

2. The chequered history of the issue as emanating from the record is as follows:

2.1 BOC[5] (now LIL) is listed on the NSE[6] and BSE[7] since June 1999. The primary business of LIL is manufacturing and sales of Gases and Related Products. Subsequently, LIL became a subsidiary of Linde AG (a German company), following Linde AG's acquisition of BOC Group Ltd. in 2006. Consequently, BOC was renamed Linde India Ltd. (LIL) in February 2013.

2.2 Later, in 2018, through a scheme of global merger between Linde AG (a German company) and Praxair Inc. (an American company), Linde Plc. (a NASDAQ-listed entity) was formed. Linde Plc. inherited two subsidiaries in India i.e., (a) LIL (a listed entity) with 75% beneficial ownership held by Linde Plc., therein and (b) PIPL[8], a 100% step-down subsidiary of Linde Plc. through Praxair Inc., both engaged in the production and supply of gases.

The merger being a combination under Section 5(c)(i)(A) of the Competition Act[9], was approved by the CCI[10] vide notification dated January 1, 2018, by which directions were issued to LIL to divest its business in southern India and to PIPL to divest its business in eastern India. The said merger was completed on October 31, 2018.

[5] BOC India Ltd.
[6] National Stock Exchange of India Ltd.
[7] BSE Ltd.
[8] Praxair India Pvt. Ltd.
[9] Competition Act, 2002
[10] Competition Commission of India

2.3 In 2019, the group decided to form LSASPL[11], a joint venture company of LIL and PIPL with 50% stakes each of both. A JV&SHA agreement and an O&M Agreement[12] dated March 24, 2020 was executed amongst LIL, PIPL, and LSASPL. The **Annexure-IV** of the said JV & SHA agreement, lays down the principles for product allocation and **geographical allocation** of business between LIL and PIPL, (in respect of overlapping merchant gas business). In terms of the said agreement, geographical allocation of all new business was made to LIL in respect of Eastern, Northern, and Western India (excluding industrial bulk business in Maharashtra), while PIPL was allocated South India, Central India, and industrial bulk business in Maharashtra.

In terms of **product allocation**, the project engineering business was assigned exclusively to LIL, while the CO2, HYCO, and green energy businesses went to PIPL. Expansions and renewals followed the principle of incumbency, with new businesses determined geographically.

2.4 Following this, LIL sought public shareholder's approval by ordinary resolution in 85th AGM seeking omnibus approval under Section 188, in respect of all RPTs from January 1, 2021 to December 31, 2023 likely to be entered with PIPL and LSASPL, which were, in aggregate, likely to exceed the materiality threshold prescribed under Regulation 23(1) of the LODR Regulations, 2015. This was turned down by the public shareholders. Therefore, the company based on certain legal opinions obtained by it, decided not to aggregate all transactions with a Related Party, as in its view, aggregation was to be made only of such transactions, which

[11] Linde South Asia Services Pvt. Ltd.
[12] Operation and Management Services Agreement

pertain to a single contract in terms of its interpretation of definition of RPT, as per Section 2(1)(zc) of the LODR Regulations.

2.5 Following this, the SEBI received investor complaints alleging that the business allocation was detrimental to LIL's public shareholders. On January 6, 2022, NSE forwarded complaints alleging that LIL, instead of merging with PIPL, had established a JV[13] structure and executed RPTs[14] with PIPL without shareholder's approval, in violation of the LODR Regulations. Thereafter, there were correspondences between the Appellant, NSE and the SEBI in the matter.

2.6 SEBI appointed the IA[15] on October 19, 2023, in this regard. The Appellant and its IDs[16] filed two separate writ petitions before the Hon'ble Bombay High Court against the said investigation. In the meantime, pending investigation, the SEBI passed an interim *ex-parte* order dated April 29, 2024, with certain directions. The Appellant challenged the interim *ex-parte* order before this Tribunal, and the said order was set aside vide order dated May 22, 2024 with the directions to SEBI to grant inspection of documents to the Appellant and pass the order within 30 days.

2.7 In furtherance of the same, inspection of document was granted and reply was filed by the Appellant. Personal hearing was given on June 21, 2024 and additional submissions were filed by the Appellant. Following this, the SEBI passed the impugned order dated July 24, 2024, by which directions

[13] Joint Venture
[14] Related Party Transactions
[15] Investigating Authority
[16] Independent Directres

referred to in paragraph No. 1 above were issued which are the subject-matter of the present Appeal.

3. We have heard Mr. Janak Dwarkadas, learned senior advocate with Mr. Kunal Dwarkadas, Ms. Tamanna H.V., Mr. Prasad Shenoy, Mr. Sandeep Parekh, Mr. Anil Choudhary, Mr. Parker Karia, Ms. Navneeta Shankar, Mr. Manas Dhagat, learned advocates for the appellant.

The respondent was represented by Mr. D. J. Khambata, learned senior advocate with Mr. Mihir Mody, Ms. Vidhi Shah Ajmera, Mr. Yash Sutaria, Mr. Tushar Bansod, Mr. Aavish Shetty, Mr. Karthik K. P., Mr. Vijay Chockalingam, learned advocates. Mr. Akshay Petkar, learned advocate with Mr. Harsh Kesharia, learned advocate made submissions on behalf of the Intervener.

4. Mr. Janak Dwarkadas, learned senior advocate for the appellant made the following submissions:

4.1 The primary issue in the impugned order is 'whether for the purpose of testing *materiality threshold* of transaction(s) with a related party in terms of proviso to Regulation 23(1) aggregate of all transactions pertaining to the said Related party are to be considered or transactions pertaining to a single contract only are to be taken into account in view of the definition of RPT as given in Regulation 2(1)(zc) of the LODR Regulations.

4.2 The allegation that by executing transactions with its related party (Praxair) without shareholder's approval, the appellant has violated Regulation 23(1) of the LODR Regulations is based on misinterpretation of the LODR Regulations. He submitted that keeping in view the definition

of 'related party transactions' as in Regulation 2(1)(zc) of the LODR Regulations, transactions under a 'single contract' only need to be considered to test the materiality threshold for complying with the requirements of Regulation 23 of the LODR Regulations. Further, since each transaction with Praxair was an independent contract, which was executed at arm's length in the ordinary course of business, and none of the said transaction individually breached the threshold, the same does not require shareholders' approval in terms of section 188 of the Companies Act, 2013.

4.3 Mr. Dwarkadas submitted that the threshold limit for a RPT transactions is to be considered, taking into account definition of 'related party transaction' under Regulation 2(1)(zc) of the LODR Regulations which specifies '*a single transaction or a group of transactions in a contract*'. He submitted that the SEBI's interpretation, which implies aggregation of ALL transactions regardless of nexus, may lead to impractical and absurd outcomes, such as requiring shareholders' approval for each and every insignificant transaction once the 10% turnover threshold is exceeded. This may unduly burden business operations and substitute the board's routine decision-making with shareholder oversight.

4.4 He submitted that legal opinions support the Appellant's view that *materiality* requires some connection between transactions, and the IO reflects non-application of mind by failing to address these points. There are legal opinions that cite the Guidance Note issued by Institute of Company Secretaries of India (ICSI), a recognized professional expert body, which interprets '*RPTs*' for materiality assessment under Regulation 23(1) of the LODR Regulations as only those

transactions, which are executed under a 'common contract'. Thus, the learned WTM's reliance on SEBI's internal non-binding Informal Guidance Note dated May 31, 2023 is without any basis.

4.5 The WTM improperly relied on the practices of eight other listed companies in respect of RPTs, in which the Appellant's IDs served as IDs. Cherry-picking these few instances is insufficient to hold the Appellant's interpretation erroneous. Therefore, differing approaches followed by other companies do not invalidate the Appellant's position.

4.6 As an aid to interpreting Regulation 23(1) of the LODR Regulations alongside the definition of 'related party transactions' in Regulation 2(1)(zc), reference may be made to the fourth proviso and second Explanation to Section 188(1) of the Companies Act, which exempts transactions in ordinary course that are at arm's length, defined as 'dealings between related parties as if unrelated to avoid conflicts of interest, requiring only board approval for unlisted public companies without general body consent.'

4.7 Similarly, Rule 15 of the Companies (Meetings of Board and Powers) Rules, 2014 specifies distinct thresholds for various contract types such as sales, purchases, leasing, or services, each at ten percent or more of turnover or net worth, which are applicable to individual or combined transactions but without mandating aggregation across different contract classes, thus providing separate limits for each category.

4.8 Accepting SEBI's position would necessitate aggregating all contracts irrespective of type or class to assess the 10 percent threshold, which is in breach of the provisions of

Companies Act read with the Regulation 2(1)(zc) of LODR Regulations, which encompassed *'transfer of resources, services, or obligations'*, and further clarified by use of the phrase *transaction with a related party to include single transaction or group of transactions in a contract'.* It emphasizes that such transactions must be contained within one contract to qualify.

4.9 Further, SEBI had issued a consultation paper dated August 4, 2025, proposing therein certain amendments in regulation 23(1) of LODR Regulations including substitution of the words *"transaction(s) with related party"* with the words "*related party transaction(s) with a related party"*. This amendment was not carried out but the proposal suggests that there was clear distinction between the two terms, otherwise, there would have been no reason to propose the aforementioned substitution in the Consultation Paper.

4.10 Learned senior advocate submitted that the resolution for 85th AGM dated August 12, 2019 seeking omnibus approval from shareholders under Section 188 of the Companies Act was proposed to prevent potential breaches of specific sub-limits for various kind of transactions provided in Rule 15 of the Companies (Meetings of the Board) Rules, 2014[17]. The same was amid anticipated huge medical oxygen demand during Covid-19 epidemic. Further, the Appellant's interpretation of Regulation 23 of LODR Regulations poses no circumvention risk due to safeguards in Section 188 of the Companies Act and Rule 15 of the Companies (Meetings of Board and Powers) Rules, 2014, which impose specific sub-limits on various transactions.

[17] Companies (Meetings of Board and its Powers) Rules, 2014 ("Companies Rules")

4.11 The business allocation as per JV&SHA between the Appellant with Praxair serves shareholders' best interests, as both entities share a common ultimate parent. In order to optimize synergies and collaboration, the option of formation by a JV company was considered as the most beneficial option enabling operation and management services on an arm's length basis. The business allocation between LIL and PIPL was based on sound business principles and logistics efficiency, which also protected the Appellant's interests without benefiting Praxair at its expense. The same is evidenced by the Appellant's rising share value, enhanced sales and operating profits.

4.12 In terms of Section 2(1)(zc) of LODR Regulations, business allocation under the JV&SHA does not constitute transfer of *resources, services or obligations* from the Appellant to its related party (Praxair). It involves only prospective and speculative future business opportunities rather than actual existing tangible assets or resources. The finding that the said business allocation *prima facie* constitutes *'transfer of resources'*, without resolving whether it qualifies as a RPT mandating a valuation exercise, is untenable and impractical based on speculative projections and historical data absences. There is no statutory obligation under relevant laws to conduct such a valuation, and the SEBI exceeds its authority by imposing valuation exercise and interfering in the internal business affairs of appellant.

Mr. Dwarkadas submitted that the decision regarding the formation of a new JV company with Praxair constitutes a pure management decision by their respective boards of directors and does not justify interference by the SEBI. Such

allocation was influenced by directives from the CCI for approval of the global merger of Linde AG and Praxair Inc.

4.13 He contended that the IO violates the established business judgment rule which protects board decisions taken in good faith and for the company's benefit without any *mala fide* intent. To support this contention, he placed reliance on the ratio laid down by the Hon'ble Supreme Court in ***Miheer H. Mafatlal v. Mafatlal Industries Ltd.***[18] and the decision of NCLT[19] in ***Shri Fidaali Moiz Mithiborwala and Anr. v. Aceros Fortunate Industries Pvt. Ltd. and Ors.***[20] and decisions of Supreme Court of other jurisdictions.

5. Mr. Darius Khambata, learned senior advocate for the respondent made the following submissions:

5.1 The clear language of the statute mandates aggregating all transactions between related parties in a financial year for *materiality threshold* determination, with no ambiguity warranting deviation from the literal rule of statutory interpretation. While Regulation 23(1) grants Board of directors, a discretion in policy formulation, the proviso thereto imposes a mandatory limit of ten percent of turnover for materiality threshold testing in respect of aggregate value of ALL transactions with a related party during a financial year. If we accept the Appellant's view of testing *materiality* based on transactions pertaining to a single contract only, it would enable entities to structure their transactions across multiple contracts to evade materiality threshold and will foster mischief, which is contrary to the objectives of safeguarding non-interested shareholders in high-value RPTs

[18] (1997) 1 SCC 579
[19] National Company Law Tribunal
[20] CA 144/2016 in CP 64/2015

in conflict of interest situation. In this regard, reliance was placed on the ratio of Supreme Court in ***Novartis AG v. Union of India***[21].

5.2 The provision of Regulation 23 provide for method to determine whether **RPTs** with a related party exceed threshold during a financial year and the manner of dealing with RPTs. The plain wording of the charging provision of Regulation 23 does not confine *materiality* to be tested on single-contract dealings only, and the Appellant's own interpretation of the definition of RPT by importing language from Regulation 2(1)(zc) cannot alter the unambiguous meaning of substantive provisions of regulation 23(1), with the proviso's distinct phrase ***'transactions with a related party'*** **.**

5.3 Indeed, the Appellant itself has acknowledged this in the explanatory statement to the notice for its 85th annual general meeting stating that aggregate transactions irrespective of contracts exceeding the threshold would require shareholders' approval, as under :-

> *"Although, your Company always seeks to enter into transactions with related parties in the ordinary course of business and at arm's length basis, yet as per the amended Regulation 23 of the SEBI Listing Regulations, 2015, all related party transactions even though exempted under Section 188(1) of the Companies Act, 2013, have to be approved by the Members by way of an ordinary resolution in case such transactions are of material nature as defined in Regulation 23 of the SEBI Listing Regulations, 2015, i.e. the transactions exceed 10% of annual consolidated turnover... the aggregate of all transactions entered into by the Company during any financial year with Praxair India Private Ltd. (a wholly*

[21] AIR 2013 SC 1311

> *owned subsidiary of the Linde Plc Group) and Linde South Asia Services Private Ltd., the JV Company, may meet the criteria of materiality as aforesaid at any time during the validity of this resolution. The Company is therefore, under an obligation to seek the approval of its shareholders by way of an ordinary resolution...*
>
> *……*
>
> *It is therefore, proposed to seek approval of the aforesaid related party transactions, which are either existing or are likely to be entered into by the Company with Praxair India Private Ltd. and Linde South Asia Services Private Ltd. from the financial year commencing from 1 January 2021 till the financial year ending on 31 December 2023 for an aggregate limited of Rs. 9,500 million for each financial year for all such transactions, with individual limits for each related party set out in the table below."*

5.4 The resolution so proposed for shareholder's approval was ultimately rejected by AGM comprising non-interested shareholders. Mr. Khambata submitted that the Appellant's assertion that the purpose of seeking approval of the 85th annual general meeting was solely for anticipated breaches under the Companies Act, is misleading and dishonest. In the said explanatory statement, while it was explicitly stated that the company always conducts Related Party Transactions in the ordinary course of business and at arm's length, which exempts them from any Board or shareholder approval under 4th proviso to Section 188(1) of the Companies Act. However, despite of this, members' approval was still sought under Regulation 23, on the ground of *potential materiality* based on aggregate transactions likely to exceed 10 percent of annual consolidated turnover. This clearly indicates that the company itself had addressed *materiality* under the LODR

Regulations, while going to its shareholders in the General Meeting.

On the other hand, the appellant has produced no records from prior audit committee or board meetings evidencing discussions on such anticipated single-contract breaches. The Appellant's change in stand emerged only after it failed to obtain shareholders' consent.

5.5 Even without prejudice, the Appellant's reading of *"in a contract"* in Regulation 2(1)(zc) overlooks the plural transactions in the proviso to Regulation 23 and the inclusive nature indicated by the term *"include"*, rendering the definition inclusive.

Further, the LODR Regulations reinforce the provisions of Section 188 read with Rule 15 of the Companies (meetings of the Board) Rules, 2014, which provides for aggregation of all related party transactions for thresholds, without restricting to a single contract.

5.6 The reliance on ICSI guidance notes by disregarding clear provision of law is misplaced, as Guidance notes serve only as external interpretative aids, which may be useful in ambiguous cases but are unnecessary in the present case as provisions of Regulation 23 have ample clarity. In this regard, reference was made to the SEBI's informal guidance dated May 31, 2023, which clarifies that guidance note can offer interpretative support but cannot supercede the explicit provisions. The Appellant fails to contest the IO's findings on industry practices, based on practice of eight companies (who have same independent directors as in the appellant company) of aggregating all RPTs regardless of being relating to a single contract or not.

5.7 Mr. Khambata submitted that adopting the Appellant's interpretation of Regulation 23 of the LODR Regulations would enable companies to routinely circumvent the *materiality threshold* for shareholder approval by framing each RPT as independent contracts, by slightly varying commercial terms, as evidenced by the Appellant's own conduct of executing 45 separate contracts with its related party Praxair across 45 locations, each potentially covering 1000 to 5000 transactions, each of which singularly, do not breach the *materiality threshold*.

5.8 The Appellant's claim that the business allocation in terms of JV&SHA dated March 24, 2020 between the Appellant and Praxair is equitable and beneficial to the company and its minority shareholders, remains unsubstantiated in the absence of a valuation exercise. The Appellant should have no objection to a valuation that would validate its position, if accurate. It is no coincidence that the SEBI received numerous complaints from shareholders alleging the promoters favoring Praxair by allocating future business opportunities in specific regions and products, at the cost of public shareholders of LIL. This necessitates proper valuation.

5.9 The Appellant's reliance on the CCI's order to justify the geographical allocation is misplaced, as the parties themselves had proposed the same to address competition concerns. In any case, the same does not exempt it from the requirement of compliance with securities laws such as Regulation 23 of LODR Regulations.

5.10 Mr. Khambata submitted that the Appellant's grounds for appeal are vague and lack substance. He submitted that

the SEBI has duly complied with the principles of natural justice and pointed out that following an *ex-parte* order, this Tribunal had directed the Appellant to respond within 21 days, treating the order as an SCN. In compliance of the same, the Appellant was given two opportunities to inspect relied-upon documents, and the appellant filed written submissions, participated in a personal hearing, and post-hearing filed written submissions, which evidences satisfying natural justice requirements.

6. Mr. Akshay Petkar, learned advocate for the intervener supporting the IO, submitted that the company's actions influenced by its majority shareholders, directly harm the interests of minority shareholders, including the intervener who have a vital stake in the appeal's outcome, as the SEBI's directions impact shareholders' rights, including liquidity and transparent price discovery. These concerns were consistently raised during the company's annual general meetings and based on the same, regulator issued the order.

7. We have carefully considered the facts of the case and considered the rival submissions and material made available to us.

8. In order to decide the appeal, the following questions are framed :-

I. Whether transactions pertaining to a single contract or aggregate of transaction pertaining to all contracts a financial year are to be considered while testing the materiality threshold in under Regulation 23(1) of the LODR Regulations?

8.1 The short point in the matter is whether for the purpose of approval by non-interested shareholders under Regulation 23(4) of the LODR Regulations, ALL transactions with *'a related party'* during a financial year, are to be aggregated or only *'a transaction or a group of transactions in a contract'* is to be considered. As per proviso to Regulation 23(1), in case of a listed company, a transaction with a related party shall be considered material, if the transaction(s) to be entered into by it, individually or taken together with previous transactions during a financial year, exceed(s) Rupees one thousand crore or 10% of its annual consolidated turnover, whichever is lower. In the view of the appellant, the definition of the term 'related party transaction' as in Regulation 2(zc) of the LODR Regulations, restricts such aggregation to 'a single transaction or a group of transactions in a contract'.

The appellant has drawn our attention to the Regulation 2(1)(zc) of the LODR Regulations, 2015 as under :-

> *"related party transaction" means a transaction involving a transfer of resources, services or obligations between :*
>
> *(i) A listed entity or any of its subsidiaries on one hand and a related party of the listed entity or any of its subsidiaries on the other hand; or*
>
> *(ii) A listed entity or any of its subsidiaries on one hand, and any other person or entity on the other hand, the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries, with effect from April 1, 2023;*
>
> *regardless of whether a price is charged and a* ***"transaction" with a related party shall be construed to include a single transaction or a group of transactions in a contract:"***
>
> ***[Emphasis supplied]***

8.2 The respondent however took the view that in order to test whether a RPT exceeds the above referred materiality threshold, and hence will require shareholders' approval (after audit committee's approval), all previous transactions with the Related party during the financial year, are to be considered.

8.3 On a careful consideration of the rival submissions and taking into account the authorities cited by both sides, we find merit in the reasoning given by the respondent that for the purpose of testing the materiality of a transaction with 'a related party' during a financial year, under Regulation 23(1), ALL transactions with the said related party are to be considered. The appellant has emphasised on restricting the RPTs to transactions in respect of a single contract only. In our considered view, the definitional clause 2(1)(zc) only provides the generic meaning of the term *'a related party transaction'* and is not in the nature of the machinery provision for laying down the procedure of testing the materiality threshold or the manner of dealing with RPTs by a listed company, which have been elaborately provided in the Regulation 23 of the LODR Regulations.

8.4 The Regulation 2(1)(zc) defining a 'Related Party Transaction' comprises of the following three limbs :-

(a) Related party transaction to mean a transaction involving a transfer of *resources, services or obligations;*

(b) to be between a listed entity (or any of its subsidiary) on one hand AND related party of the said listed entity (or any of its subsidiary) on the other hand.

(c) The third limb is in the nature of two sub-clarifications as under :-

i. the RPT is regardless of whether the price is charged (in respect of such a transaction); and

ii. a 'transaction' to include a 'single transaction or a group of transactions *in a contract'.*

8.5 In the appellant's submission, by importing the part (ii) of the clarificatory third limb in the language of proviso to Regulation 23(1), transaction(s) with a related party, pertaining to a 'single contract' alone need to be aggregated for testing the materiality threshold. In this regard, the appellant has also relied upon the ICSI Guidelines, as an external aid for interpretation.

8.6 However, we are not persuaded to agree with this interpretation. The Regulation 23(1) (with the heading "Related Party Transactions") explicitly uses the term 'Related party transactions' (emphasis on plural) at several places, particularly while putting obligation on the listed entity in formulating a policy on materiality of **related party transactions** and on the manner of dealing with the **related party transactions.**

In our considered view, clause 2(1)(zc), while defining the term 'RPT' in a generic manner, clarifies that "*a transaction with a Related Party*" means to include *a 'single or a group of transactions in a contract'*. This limb of definition only clarifies that where in respect of a contract

between two related parties, there have been group of transactions, each one of them shall be treated as RPTs and the listed entity shall be governed in respect of all of them by the same procedural requirement as for a single RPT transaction. The ostensible purpose of such a clarification is to ensure that each transaction in a contract, needs to be treated and dealt with in the same manner provided for a 'related party transaction'. This is intended for investor protection.

8.7 The machinery provisions of Regulation 23 provide for the manner in which such RPTs are to be treated by a listed entity. It is noteworthy that the Regulation 23(1) consistently uses the plural term 'related party transactions' for addressing RPTs for aggregation, which implies that all transactions qua 'a related party' are to be considered for testing the materiality' (and not qua a single contract). It implies that all transaction(s) undertaken during a financial year with a specific related party, are to be aggregated in terms of Regulation 23(1). The said proviso to the Regulation 23(1) reads as under :-

> *"……*
>
> *Provided that* ***a transaction with a related party shall be considered material, if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year,*** *exceeds rupees one thousand crore or ten per cent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower."*
>
> ***[Emphasis supplied]***

It is evident that for testing a RPT transaction, whether the materiality threshold of Rs. 1000 crore or 10% of the annual consolidated turnover has been reached, will be ascertained by including '*all previous transactions*' undertaken during a financial year with that related party.

8.8 In arriving at this, we are in agreement with the respondent that keeping in view the literal interpretation of this term, there is no need to rely upon purposive interpretation of this term. Relying upon a catena of cases, the G.P Singh's Principles of Statutory Interpretation, guides as under:

> *"The words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary."*

8.9 The appellant has also argued that in terms of Section 188 of the Companies Act, 2013 read with Rule 15 of the Companies (Meeting of board and its powers), Rules, 2014, there is no need for aggregation of value of multiple contracts entered with a related party. It was also submitted that in the said Rule 15, separate thresholds for different categories of transactions *inter-alia,* sales, purchase or supply of any goods or material, disposing off or buying property, availing or rendering of any services, etc. have been given. Further, it is also submitted that Section 188 also allows exemption from the requirement of shareholders' approval, if the transaction is in ordinary course of business and at arms' length with the related party.

8.10 In our considered view, though the provisions of Section 188 are applicable to both listed and unlisted companies, keeping in view the specialised nature of the LODR Regulations applicable for a listed entity considering implications for public shareholders, higher standard of disclosure is made necessary. Therefore, in the case the appellant, a listing entity provisions of LODR are binding.

8.11 We also note that the appellant had taken the same view as extended by the SEBI in these proceedings, at the time of 85th Annual General Meeting, when the management went to the shareholders seeking their omnibus approval in respect of all RPTs with PIPL and LSASPL, over 3 years (January 2021–December 2023) by aggregating all transactions as per proviso to Regulation 23(1), in respect of all contracts with these two RPs.

It is evident that the shareholders did not approve the proposal of the appellant company seeking omnibus approval in 85th AGM. In our considered view, in terms of LODR Regulations, RPTs are to be dealt with in the manner provided under the said Regulations. Since in appellant's own view, it needed shareholder' approval and once the same has been denied, there was no further authority for subsequently ratifying the non-compliance with the LODR Regulations.

8.12 In view of the above, it is evident that the compliance requirements with respect to 'related party transactions' as provided in Regulation 23(1) of the LODR Regulations, 2015 clearly require that the materiality threshold is to be tested in respect of *"all transactions entered individually and taken together, with previous transactions during a financial year".* It does not provide for a situation that may restrict such

testing only in respect of transactions pertaining to a single contract only.

8.13 It is noteworthy that the LODR Regulations specifically excludes certain transactions with RPs for materiality threshold testing. Certain RPTs are defined as not RPTs under Regulation 2(1)(zc), and are to be excluded. Further, Regulation 23(1A) defines separate *materiality threshold* in respect of other category of transactions being in the nature of payment for **Brand usage or royalty,** where the threshold is kept low at 5% of the annual consolidated turnover.

Therefore, these transactions are the only transactions to be excluded from the prescribed threshold under Proviso to Regulation 23(1). There is no provision for excluding transactions of one contract for calculating materiality of other contract.

8.14 Keeping in view the above, we are in agreement with the learned WTM that the appellant should test materiality threshold by aggregating value of all transactions with the related party whether for transfer of *resources, services or obligations* during the financial year and if the same exceeds materiality threshold, Linde will have to seek the shareholders' approval in terms of Regulation 23 of the LODR Regulations.

In view of this, Question-I is answered in ***Negative.***

9. The second question, which too effectively emanates from the first issue, is framed as under :-

II. Whether the business allocation between LIL & PIPL in terms of JV&SHA dated March 24, 2020,

amounts to transfer of *resources, services, or obligations* to be treated as a RPT?

9.1 The appellant LIL and PIPL (its Related Party) are both engaged in the business of producing and selling industrial gases in India. In order to optimise potential synergy and incumbent collaboration in terms of agreement dated March 24, 2020, the two formed a Joint Venture company, namely, Linde South Asia Services Pvt. Ltd. (LSASPL), in which both have 50% shareholding. **Annexure-IV** of the said agreement defines principles of allocation of existing and new business.

9.2 The issue requires ascertaining whether any shareholders' approval in pursuance of Regulation 23(1) was needed for approving the JV&SHA dated March 24, 2020 by which business allocation was made between both the related entities. The said JV&SHA resulted in business foregone and business gained for both related parties. Several arguments have been extended by the appellant as to why the direction issued by the learned WTM for getting the valuation done in respect of the value of business foregone and/or business gained through this agreement, is impractical and uncalled for.

9.3 In the opinion of the learned WTM, such geographical and product allocation of the business between LIL with PIPL, needs to be tested against material threshold in terms of proviso to Regulation 23(1) of the LODR Regulations and accordingly, would require shareholders' approval, if the value of the said transaction is found exceeding the materiality threshold.

9.4 In this regard, following key arguments are extended by the appellant:

i. No transaction whatsoever, was carried out being in the nature of transfer of *resources, services or any obligations* through such business allocation agreement;

ii. Valuation of the future business (foregone/gained) cannot be made;

iii. The business allocation agreement was for improving synergy and efficiency of business operations between the 2 related parties of the same group, which has eventually led to higher revenues, profits and business growth.

9.5 In our considered view, the argument (i) that business allocation is not transfer of resources does not have force. The said JV&SHA, geography-wise allocates businesses between LIL and PIPL, as under :-

Scenario	**Geographical Allocation**
1. Merchant Business (as per incumbent positions)	
1a) Regions South, Central & West 1	*Praxair (PIPL)*
1b) Regions East, North & West 2	*Linde (LIL)*
2. On site Business	
2a) with Significant Merchant Credit	*As per allocation of merchant business*
2b) With Limited Merchant Credit	*As per incumbency; else based on technology advantage /competitiveness*

Further, Product Allocation has also been made between LIL and PIPL in such a way that the **Project Engineering** business remains with LIL whereas all new company business, for **manufacturing of HYCO and CO2 business gas** goes to PIPL. Also the existing customers continue with incumbent parties, who have clear incumbency (company having share of 2/3rd of business in the last 12 months).

9.6 It is evident that through the business allocation agreement, certain geographies and products, in which Linde was operating had foregone in favour of PIPL, which was the dominant player in those territories. It is apparent that the existing business of Linde at South, Central and West-1 regions have been assigned to PIPL without any consideration paid to Linde. At the same time, Linde has gained the entire business of East, North and West-2 geographies at the cost of Praxair in those regions.

9.7 Undoubtedly, prior to coming into effect of the said business allocation agreement, both the parties, namely; Linde and PIPL were operating as independent business undertakings in these regions and product-lines. Each had independent manufacturing and/or distribution facilities with respective goodwill and brands, respective order books for present and future and business plans for future. It is evident that through the said Business Allocation agreement, there was a transfer of an entire business undertaking from Linde to Praxair and *vis-a-vis* in different geographies and product lines. Thus, we hold that it amounts to a clear cut transfer of 'profit making apparatus' from one entity to another and *vice-versa* along with all assets and liabilities including intangibles (goodwill, brands), order book and future cash flow.

Hence, there is no merit in the plea of appellant that the business allocation cannot be treated as a transaction, tantamounting to a RPT under Regulation 2(1)(zc).

9.8 The second argument that valuation of the future business cannot be undertaken, is also without any basis. Generally, for the purpose of transfer of business undertakings, mergers and acquisitions, whether pursuant to corporate restricting or otherwise, due diligence and prior independent valuation of the business is carried out by both sides. Based on the same, successful transaction is concluded at an agreed price. These principles apply to Related parties as well. Various methods of valuation are used for that purpose, the most commonly used method being Discounted Cash Flow method (DCF), which is based on estimation of cash flow over future years. Based on the value of such cash flow plus the terminal value, discounted net present value of the business under transfer is worked out, which serves as the basis for negotiated price in an unrelated transaction.

9.9 In the instant case, it is evident that Linde had exited from several geographies and product lines without having received any compensation, whatsoever, in pursuance of the JV&SH Agreement based on the decision by their parent company.

Undoubtedly, such business allocation will result in losses or/and gains in different geographies and product-lines which will have a definite value impact and, therefore, in our view, the learned WTM was justified in issuing direction for valuation of such a business allocation. In case such a value exceeds the materiality threshold as in Regulation 23(1), the

appellant would be required to obtain the shareholders' approval.

Without prejudice, since this matter encompasses transactions pertaining to a single contract ("JV&SHA"), the interpretational dispute relating to Regulation 2(1)(zc) also does not come in the way, as evidently the business allocation is through one single contract dated March 24, 2020.

9.10 In view of the above, we uphold the direction No. 3 issued by the learned WTM in respect of which, this Tribunal had also not given any stay vide our earlier orders dated September 13, 2024 and April 17, 2025 respectively. Accordingly, the question No. II is answered in ***affirmative.***

Dr. Dheeraj Bhatnagar
Technical Member

I agree

Ms. Meera Swarup
Technical Member

Per: Justice P. S. Dinesh Kumar, Presiding Officer

10. I have had the benefit of reading the draft order authored by the learned Hon'ble Technical Member. Two points have been formulated and answered by the Hon'ble Member. I agree with the final decision, but wish to record separate reasons so far as first point is concerned.

11. The points framed by the Hon'ble Technical Member are as follows:

I. Whether transactions of a single contract or aggregate of all contracts is to be considered while testing the materiality threshold in a financial year under Regulation 23(1) of the LODR Regulations?

II. Whether the business allocation between LIL & PIPL in terms of JV & SHA dated March 24, 2020, amounts to transfer of resources, services or obligations to be treated as a RPT?

12. Undisputed facts of the case are, appellant and Praxair are related parties. SEBI had received complaints against the appellant with regard to related party transactions and had sought appellant's reply. On receipt of reply, SEBI passed an *ex parte* interim order and directed the appellant to test the materiality of future RPT[22] transactions in terms of Regulation 23(1) of SEBI LODR Regulations, on the basis of aggregate value of transactions with any related party in a financial year, irrespective of number of transactions. Appellant challenged the said order before this Tribunal. After conclusion of first round of litigation, SEBI has passed the impugned order directing the appellant to test the materiality of future related party transactions as per Regulations. In these facts, the point that falls for consideration is ***'whether***

[22] Related Party Transactions

each transaction must be considered independent or aggregate of all transactions must be considered for the purpose of related party transactions under Regulation 23(1)'?

13. The answer to the point framed for consideration hinges upon the interpretation of Regulation 23(1) of LODR Regulations.

14. Regulation 23(1) reads as follows:

> *"23. (1) The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions including clear threshold limits duly approved by the board of directors and such policy shall be reviewed by the board of directors at least once every three years and updated accordingly:*
>
> *Provided that a transaction with a related party shall be considered material, if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds rupees one thousand crore or ten per cent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower."*

15. Appellant's first contention is, SEBI has relied upon the literal interpretation of the language employed in Regulation 23(1) and ignored the words "in a contract" appearing in Regulation 2(1)(zc) of LODR Regulations.

16. Appellant's second contention is, SEBI has proceeded on the basis that the terms 'related party transactions' and 'transaction with a related party' are different and this is incorrect for the same reason that SEBI ignores the words 'in a contract' in Regulation 2(1)(zc).

17. Appellant's third contention is, the language of Regulation 23(1) is contextual. To support this argument, appellant relied upon SEBI's working group committee's report which had rejected a proposal to delete the words 'in a contract'.

18. On behalf of SEBI, it was argued by Shri Khambata that Regulation 23(1) is a facilitating provision. The language of the Regulation is clear and broadly worded to include the aggregate value of all transactions.

19. A careful reading of the Regulation leaves not much scope for interpretation. The proviso to the Regulation makes it clear that the 'transaction with the related party' shall be considered material, if the transaction(s) to be entered into individually or taken together with the previous transactions during a financial year exceeds ₹1000 crores or 10% of the annual consolidated turnover as per the audited financial statement, whichever is lower.

20. In Craies on Statute Law relied upon by Shri Khambata, it is stated thus:

> *"Another important rule with regard to the effect of an interpretation clause is,* ***that an interpretation clause is not to be taken as substituting one set of words for another****, or as strictly defining what the meaning of a term must be under all circumstances, but rather as declaring what may be comprehended within the term where the circumstances require that it should be so comprehended……..."*
>
> *(emphasis supplied)*

21. In ***Swantraj v. State of Maharashtra[23],*** the following quotation from Maxwell[24] is quoted.

[23] (1975) 3 SCC 322
[24] HLC 594 – Maxwell on the Interpretation of Statutes – 12th Ed. p. 137

> *"There is no doubt that '**the office of the Judge is, to make such construction as will suppress the mischief, and advance the remedy**, and to suppress all evasions for the continuance of the mischief. To carry out effectually the object of a statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined: quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud."*

22. In *Swantraj*, the question was "whether appellant's act of temporarily storing drugs not for immediate sale, but intended for ultimate sale in parts of the state. The Court found that the language in the statute permits two alternative interpretations- one which permits abuse through loopholes and second, which tightens up but loads the dealer with expenses and need for more licenses. However, given that the risk to life and health (which is the objective of the statute concerned) is avoided by the latter interpretation, the Hon'ble supreme Court of India upheld the latter interpretation.

23. Shri Khambata also relied upon the following passage[25] of Lord Denning quoted in ***Bangalore Water Supply & Sewerage Board v. A. Rajappa & Ors.*[26],** it is stated thus:

> *"He must set to work in the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature.... A judge should ask himself the question, how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out?*

[25] Paragraph No.19 of Bangalore Water Supply & Sewerage Board v. A. Rajappa & Ors.
[26] (1978) 2 SCC 213

He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

24. Appellant's contend that "related party transaction" is defined in Regulation 2(1)(zc) and strongly rely upon the words 'in a contract' to buttress its argument that for the purpose of Regulation 23, the transaction with regard to each contract has to be separately considered. Therefore, the question is how Regulation 23(1) has to be interpreted and whether the words 'in a contract' found in Regulation 2(1)(zc) have any bearing.

25. A careful examination of Regulation 23(1) in the light of the settled law on interpretation of statutes, leads to only one interpretation that whenever a transaction or transactions are entered into between related parties either individually or taken together, if it exceeds ₹1000 Crores or 10% of annual consolidated turnover, the listed entity shall formulate a policy on the materiality of related party transactions.

26. The crux of the matter in this case of related party transactions is the approval by the shareholders of appellant company. By drawing strength from the words 'in a contract' found in Regulation 2(1)(zc), it is canvassed that each contract will have to be considered independently. In my view, approval by shareholders is mandated in related party transactions when it crosses a threshold limit to avoid any possible favouritism. This appears to be the purpose of the Regulation and it is indeed so. Therefore, to split the transactions to bring them below the threshold limit by taking recourse to the words 'in a contract' found in Regulation 2(1)(zc) would certainly defeat the purpose of the Regulation.

27. We may record that, one of the authorities relied upon by Shri Janak Dwarkadas, ***Raghunath Rai Bareja and Anr. v. Punjab National Bank and Ors.***[27] supports the rule of literal interpretation. It is held in paragraph No. 46 thereof, that the rules of interpretation other than the literal rule to come into play only if there is any doubt with regard to the express language used or if the plain meaning would lead to absurdity. It is also held that where the words are unequivocal, there is no scope for importing any rule of interpretation. In ***Km. Shehnaj Begum v. State of U.P. and Ors.***[28]***,*** it is held that it is well settled principle of interpretation of statutes that a statutory provision should not be construed in a manner which would lead to manifest absurdity, futility, or anomaly or chaos. In this case, there is no ambiguity in the language employed in Regulation 23(1) including the proviso. If the argument of the appellant were to be accepted, each individual transaction between the related parties would be the criteria and such an interpretation is absurd and cannot be countenanced because it defeats the entire purpose of the Regulation. In my considered view, what is required to be looked into is the 'transaction' between the 'two related parties' as a 'whole' and they cannot be dissected into several transactions to circumvent the law. Accordingly, the point framed by me above is answered holding that aggregate transactions must be considered.

28. Hence, I find no error in the impugned order and this appeal must fail.

[27] (2007) 2 Supreme Court Cases 230
[28] 2013 SCC OnLine All 14026

29. Hence, the order of the **Tribunal**:

ORDER

i. Appeal is ***dismissed***.

ii. All (pending) interlocutory application(s), if any, stand disposed of.

iii. No costs.

Justice P. S. Dinesh Kumar
Presiding Officer

Ms. Meera Swarup
Technical Member

Dr. Dheeraj Bhatnagar
Technical Member

05.12.2025
PTM