WTM/AB/CFID/CFID-SEC3/30578/2024-25

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992

In respect of:

Name of the Noticee	PAN
Linde India Ltd.	AAACB2528H

1. Securities and Exchange Board of India ("**SEBI**") passed an *Ad Interim Ex Parte Order* dated April 29, 2024 ("**Interim Order**"), addressing certain *prima facie* issues raised in complaints received against Linde India Ltd. ("**LIL / Company**"). The complaints predominantly concerned various transactions and agreements the Company had entered into with Praxair India Pvt. Ltd. ("**PIPL**") and Linde South Asia Services Pvt. Ltd. ("**LSASPL**"), which are related parties of the Company.
2. The Interim Order was passed based on the preliminary findings of the initial examination conducted by SEBI, directed as under:
    a. LIL shall test the materiality of future *RPTs* as per the threshold provided under Regulation 23(1) of the SEBI (Listing Obligations and Disclosure Requirements) (LODR) Regulations, 2015 ("**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 Regulations.

c. NSE shall appoint a registered valuer to carry out a valuation of the business foregone and received, including by way of geographic allocation, in terms of Annexure IV of the Joint Venture and Share Holders' Agreement ("**JV&SHA**").

3. The Company preferred an appeal against the SEBI Order before the Hon'ble Securities Appellate Tribunal ("**SAT**"). The SAT vide its Order dated May 22, 2024 ("**SAT Order**"), set aside the SEBI Order. It was noted by the Tribunal that *"it would not be just and appropriate to continue the impugned Interim Ex-Parte Order any further keeping in view that:*

- *the appellant has been directed to file reply within 21 days; and*
- *SEBI has made a statement before us to pass orders within 30 days from the date of conclusion of hearing and in the event of any adverse order, SEBI is enjoined with all powers to pass appropriate directions including an order of disgorgement."*

4. The Tribunal, while allowing the Appeal, directed LIL to appear before SEBI for inspecting the records on May 27, 2024 and, thereafter, file its reply within a week. The representatives of LIL availed the opportunity of inspection on May 27, 2024, and subsequently filed written submission vide letter dated June 4, 2024.

5. The Company was granted an opportunity of personal hearing on June 12, 2024. The company vide email dated June 07, 2024, requested that the hearing be rescheduled to June 13, 2024 and the request was acceded to. Subsequently, vide email dated June 11, 2024, the authorised representative for the Company requested for the postponement of the hearing citing non-availability of the Senior Counsel representing the Company. It was requested that the hearing be held on June 21, 24, 25 or on any date post July 1, 2024.

6. The request made on behalf of the Noticee was acceded to and the hearing was scheduled on June 21, 2024, the earliest date indicated by the Noticee. The Noticee was represented by Mr. Venkatesh Dhond, Senior Advocate. After the hearing, the Company filed additional written submissions dated July 8, 2024. The written and oral submissions made by the Noticee are discussed in subsequent paragraphs.

Preliminary Objections

7. It was argued by the Noticee that the SAT Order clearly recognises that there was no urgency in the present matter warranting issuance on *Ad Interim Ex Parte Order*. The Company, therefore, contended that SEBI should complete its investigation and thereafter, based on findings, consider issuing a show cause notice if the situation so warranted. In this regard, it is noted that the SAT Order clearly recognises the power of SEBI to proceed with this matter. It has been specifically noted in the Order that:

   "SEBI has made a statement before us to pass orders within 30 days from the date of conclusion of hearing and in the event of any adverse order, SEBI is enjoined with all powers to pass appropriate directions including an order of disgorgement."

8. Further, it has also been noted that direction of the Hon'ble SAT was to grant an opportunity of hearing to the Noticee before passing an Order. The Hon'ble SAT has in no way restrained SEBI from passing directions at this stage. Given the same, I do not find any merit in the preliminary objection advanced by the Noticee.

Findings

9. As the *prima facie* findings in the Interim Order relate to transactions/ contracts entered by LIL with related parties, a brief background of the entities involved, extracted from the Interim Order, is provided below for ease of reference.

10. LIL (formerly BOC India Ltd.) has been listed on the National Stock Exchange of India Ltd. ("**NSE**") and BSE Ltd. ("**BSE**") since June 1999. LIL is engaged in the business of:

    i) Gases and Related Products comprising manufacturing and sale of industrial, medical and special gases, equipment as well as related products; and

    ii) Project Engineering Division comprising manufacturing and sale of cryogenic and non–cryogenic vessels as well as designing, supplying, testing, erecting and commissioning of projects across diverse industries.

11. LIL was a subsidiary of BOC Group Ltd., an unlisted UK-based company. Linde AG (a German company) acquired BOC Group Ltd. in 2006. Consequently, BOC India Ltd. changed its name to LIL in February 2013.

12. In 2018, there was a global merger between Linde AG and Praxair Inc. This resulted in the formation of Linde Plc., which is a NASDAQ-listed entity. Praxair Inc. had an unlisted subsidiary in India – PIPL, which was also predominantly engaged in the production and supply of various gases. Pursuant to the merger, Linde Plc had two subsidiaries operating in India – (i) LIL which was a listed entity wherein it held 75% of the beneficial ownership and (ii) PIPL which was a 100% step-down subsidiary.

13. LIL and PIPL, subsequently, entered into a JV&SHA, whereby both LIL and PIPL were to hold a 50% stake in LSALPL, a company engaged in providing administrative and support services to both LIL and PIPL.

14. Consequent to the announcement by the Company about entering into the JV&SHA, SEBI started receiving investor complaints alleging that the business allocation between LIL and PIPL, which was part of the JV&SHA, was not in the interest of the public shareholders of LIL. Based on these complaints, SEBI started an investigation.

Issues for consideration

15. There were two broad issues which were considered in the Interim Order. I am now proposing to examine the same in light of the replies submitted by the Noticee and other material available on record. The two issues are

    a. Failure of LIL in obtaining shareholder approvals for material related party transactions ("***RPTs****")* undertaken with PIPL.
    b. Irregularities alleged in respect of a business agreement entered by LIL with PIPL wherein certain products and geographic areas were allocated between the companies.

Related Party Transactions

16. The main allegation in the complaints pertained to alleged material–*RPTs* being undertaken by LIL with PIPL without seeking the approval of the shareholders of the Company. Section 2(zb) of the LODR Regulations, which defines the

term *"Related Party"*, adopts the definition provided under Section 2(76) of the Companies Act, 2013, with certain modifications. The text of the relevant provisions is reproduced below:

"(zb) "related party" means a related party as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards:

Provided that:

(a) any person or entity forming a part of the promoter or promoter group of the listed entity; or

(b) any person or any entity, holding equity shares:

(i) of twenty per cent or more; or

(ii) of ten per cent or more, with effect from April 1, 2023;

in the listed entity either directly or on a beneficial interest basis as provided under section 89 of the Companies Act, 2013, at any time, during the immediate preceding financial year;

shall be deemed to be a related party:

Provided further that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s)

(76) "related party", with reference to a company, means—

(i) a director or his relative;

(ii) a key managerial personnel or his relative;

(iii) a firm, in which a director, manager or his relative is a partner;

(iv) a private company in which a director or manager or his relative is a member or director;

(v) a public company in which a director or manager is a director or and holds along with his relatives, more than two per cent of its paid-up share capital;

(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act: Provided that nothing in sub-clauses (vi) and

(vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any body corporate which is—

(A) a holding, subsidiary or an associate company of such company;

(B) a subsidiary of a holding company to which it is also a subsidiary; or

(C) an investing company or the venturer of a company;

Explanation.—For the purpose of this clause, "the investing company or the venturer of a company" means a body corporate whose investment in the Company would result in the Company becoming an associate company of the body corporate.

(viii)…

(ix) such other person as may be prescribed."

17. Related parties, it can be noted, are entities which may have influence over or are associated with the decision makers of a given company. Given the same, the LODR Regulations, recognising the possibility that transactions entered with such entities may not be at arm's length or such transactions could potentially be utilised for diverting assets of the company, impose higher decisional and disclosure thresholds (for such transactions). The higher decisional thresholds imposed for such transactions, under the LODR Regulations, is in recognition of the inherent conflict of interest involved if such transactions come within the decisional purview of interested controlling persons.

18. Norms governing *RPTs* are primarily contained in Regulations 23 of LODR Regulations, which read as under:

"Related party transactions.

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. …"

…

(4) All material related party transactions and subsequent material modifications as defined by the audit committee under sub-regulation (2) shall require prior approval of the shareholders through resolution and no related party shall vote to approve such resolutions whether the entity is a related party to the particular transaction or not:"

19. As per Regulation 23 of the LODR Regulations, *RPTs* can be undertaken by a listed company with the prior approval of the Audit Committee. The Regulations, however, impose a higher decisional threshold for '*material' RPTs* by making prior approval from shareholders mandatory for such class of *RPTs*. It can, therefore, be noted that *RPTs* are categorised into two buckets with each having a different approval requirement – (a) material *RPTs* that have to be approved by the shareholders and (b) non–material *RPTs* which only require Audit Committee approval.

20. The issue at hand in respect of the first issue involves determining how the *'materiality threshold'*, provided in the *proviso*[1] to sub-regulations (1) of Regulation 23, is to be calculated. The Interim Order held that *RPTs* are deemed to be material if their value during a financial year exceeds 10% of the company's turnover during the previous financial year. The Company, on the other hand, contended that only transactions executed under a common contract should be considered while determining this 10% threshold.

[1] Proviso to Regulation 23(1) was inserted vide the SEBI (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2021, w.e.f. 1.4.2022. The proviso replaced the following explanation:

"Explanation. -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 ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity."

21. As the issue involves interpreting the *proviso* to Regulation 23(1) of LODR Regulations, it is important to carefully examine the text of the regulatory provision, which is extracted below:

"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"

22. It can be noted that a plain reading of the *proviso* would indicate that no restriction that confines the calculation to transactions under a common contract can be found in the text. It is well established that the primary rule for interpretation of statutes, including regulations framed by statutory bodies, is the literal rule. In this context, G.P Singh's *Principles of Statutory Interpretation,* the seminal work in this field in India, relying on a catena of cases, notes that *"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*."[2]

23. I, therefore, note that a plain literal interpretation of the statutory provision does not support the interpretation advanced by the Company. The *proviso* is explicit in its directive: it establishes a clear and unambiguous criterion for materiality based on the 10% threshold relative to the company's annual turnover. It is, therefore, noted that there is no textual basis, within the *proviso*, for confining the calculation of the *'materiality threshold'* only to transactions under a common contract, as sought to be contended by the Company.

24. The Company of the other hand, in support of its contention that only contracts of a similar nature need to be added up while considering the *materiality threshold*, relies on three separate *Legal Opinions* dated September 7, 2021, December 22, 2022, and December 27, 2022, obtained from Mr. Sandeep Parekh, Advocate, Mr. Abhishek Manu Singhvi, Senior Advocate, and Justice (Retd.) B.N. Srikrishna, former Judge, Supreme Court of India, respectively. It,

[2] G.P Singh, Principles of Statutory Interpretation, 15th Edition, Page 64

therefore, becomes imperative to examine these opinions to understand whether the interpretation advanced by the Company has merit.

25. It is noted that all the three *Legal Opinions* essentially adopt the same approach to arrive at the interpretation adopted by Linde. Their reading relies heavily on the words "*in a contract*" appearing in the definition of *RPT*. The opinions argue that the use of the words "*in a contract*" denotes that the only transactions under a common contract fall within the definition of *RPT*s and, consequently, while computing the *materiality threshold* only such transactions, which come within the definition of *RPT*, can be considered.

26. In support of this position, the *Legal Opinions* rely on a Guidance Note issued by the Institute of Company Secretaries of India ("**ICSI**") dated March 20, 2019. While the validity of relying on a Guidance Note issued by ICSI in respect of provision of the LODR, where there is no apparent ambiguity, is itself questionable, however for the purpose of this examination, I am proceeding to consider the same as it has been extensively relied upon by the Noticee.

27. To examine the guidance relied upon by the Noticee, it would be useful to extract the same:

"Further, Regulation 23 requires that all material related party transactions shall require approval of the shareholders through a resolution and no related party shall vote to approve such resolution whether the entity is a related party to the particular transaction or not. Such approval is required irrespective of whether the transaction is in the ordinary course of business or whether the same is on arm's length basis.

In this connection, it may be noted that Regulation 2(1)(zc) of the Listing Regulations provides that a transaction with a related party shall be construed to include a single transaction or a group of transactions in a contract. <u>In other words, for the purpose of computing the 10% limit, such transactions would be aggregated as they are undertaken under a single contract</u>

The Act provides for individual thresholds for each type of related party transaction for the purpose of taking shareholder's approval through ordinary resolution. However, the Listing Regulations prescribe a common threshold i.e.

10% of annual consolidated turnover for transaction(s) to be termed as material related party transaction. ***For which approval of shareholders is required. For this purpose, it is noteworthy that all such transactions are to be taken together, provided the said transactions are undertaken under a common contract.*** *In some cases, this might lead to a situation in which a transaction, which otherwise would be exempt from shareholder's approval under the Act, might have to be approved by the shareholders under the Listing Regulations, or vice versa."*

28. It must be highlighted that the even the Guidance Note relies on the words *"in a contract"* appearing in the definition of *RPT* to note that transactions under a common contract are to be taken together while examining the materiality of *RPTs*. As noted above, this interpretation appears to be at odds with the interpretation emerging from a plain reading of the provision.
29. In this context, I note that SEBI in the context of an Informal Guidance issued on May 31, 2023, has clearly stated that any guidance given by ICSI or any other authority which is at variance with the express provisions of the LODR Regulations is not relevant and cannot be taken into consideration. Given the same, I note that while such guidance can offer interpretative support, it cannot supersede the explicit mandate under a Regulation.
30. The *Legal Opinions*, relying on the above Guidance Note, takes the position that while determining the materiality of any contract vis-a-vis the *Materiality threshold*, only those transactions can be considered which are executed under a common contract. The Opinions then move on to consider various case laws providing guiding principles for determining the kinds of transactions that can be considered to be falling under a common contract.
31. Having considered case laws cited in the *Legal Opinions*, I am of the view that they need to be considered only in the event the interpretation advanced by the company is accepted. If the said interpretation does not hold then the case laws contained in the *Legal Opinions* would not be applicable to the present context. Given the same, I am moving on to consider the arguments made on behalf of the Company in light of definition of *RPTs* in the LODR Regulations.

32. It is noted that all the three *Legal Opinions* along with the Guidance Note relies on the words *"in a contract"* appearing in the definition of the term *RPTs*. To understand the import of these words, the relevant portion of the definition is being extracted below to place the said words in their proper context:
"transaction" with a related party shall be construed to include a single transaction or a group of transactions in a contract.

33. It is noted that relying on the use of the words *"in a contract"* in the definition of *RPTs*, the *Legal Opinions* try to advance the position that word *"transactions"* appearing in the *proviso* to Regulation 23(1) of the LODR Regulations, would also be restricted to transactions under a common contract and therefore, while testing the *materiality threshold* only such transactions can be considered.

34. It can be noted from the aforesaid discussion that the interpretation of the *proviso*, advocated by Linde, essentially boils down to the meaning that is to be attributed to the term *"transactions"* appearing in the *proviso* to Regulation 23(1) of the LODR Regulations.

35. The *Legal Opinions* have gone to great lengths to put across the view that the meaning to be attributed to the term *"transactions"* should be the same as the term *"transaction"* (in the singular) appearing in the definition of *RPT* under the LODR Regulations. Even assuming that this interpretation is accepted, the contention advanced by the Company does not factor the use of the term in plural in the definition. The aforesaid usage (of the term in plural), it can very well be argued, reflects the regulatory intent to include more than one transaction, of the kind argued by the Noticee, within the ambit of the *proviso*. Such a reading would provide that all transactions – i.e. grossing up all the individual transactions under common contracts – would be required while computing the *materiality threshold*.

36. It is further noted that the words *"in a contract"* is preceded by the word *"includes"* and not *"means"*. It is a well settled positon of law that the word *"include"* appearing in a definition clause serves to expand the scope or meaning of the words occurring in the body of a Statute/Regulation. If this interpretation is adopted, it would posit that the words *"in a single transaction or group of transactions in a contract"* appearing in the definition merely serve

to clarify that multiple contracts appearing within the same contract will get covered under the definition of *RPTs* under the LODR Regulations. Given the same, I am of the considered view that the interpretation that prevails is the one adopted by SEBI in the Interim Order.

37. Any other reading of the *proviso*, in my considered view, militates against not just the plain reading of the *proviso* but also the regulatory intent behind introducing such a *proviso*. As stated earlier, the LODR Regulations, taking into account the inherent potential that such transactions are not to be in the interest of non-controlling shareholders or non-related parties, takes the decision in respect of such transactions out of the Board and places it in the hands of the Audit Committee, which as per LODR Regulations need not just be headed by an Independent Director ("**ID**") but the Committee also has to have a majority of IDs. Further, with respect to material *RPTs*, the LODR Regulations impose an even higher decisional threshold, and mandates obtaining shareholder approval.

38. It can be noted that the LODR Regulations, unlike the Companies Act, 2013, consciously avoids excluding transaction undertaken at an arm's length while computing *RPTs*. Similarly, for calculating material *RPT*s, the LODR Regulations provide a clear bright line rule i.e. *whether the transactions taken together exceed 10% of the turnover of the preceding year*. The Company /Noticee cannot be permitted to read in additional restrictions to this definition where none exist. Neither the text of the *proviso* to Regulation 23(1) of the LODR Regulations nor the legislative intent supports such a reading.

39. It can also be noted that if the interpretation adopted by the Company is adopted, then it would be possible for a given company to structure all its transactions as RPTs and such a move would not need to be placed before the shareholders for approval. All that will be required will be for the company to ensure that such transactions are entered pursuant to different contracts.

40. It would also be useful to examine how other companies have understood this provision. For this purpose, the practice adopted by other listed companies where IDs of LIL serve on the Board is brought out as under:

Jyotin Kantilal Mehta			
	Company	*RPT Policy aligns with interpretation in Interim Order*	*RPT Policy aligns with interpretation advanced by LIL*
1.	*JSW Ispat Special Products Limited*	✓	
2.	*Suryoday Small Finance Bank Limited*	✓	
3.	*Amal Ltd*	✓	
4.	*Epack Durable Limited*	✓	
5.	*Westlife Foodworld Ltd.*	✓	

Shalini Sarin			
	Company	*RPT Policy aligns with interpretation in Interim Order*	*RPT Policy aligns with interpretation advanced by LIL*
1.	*Kirloskar Oil Engines Limited*	✓	
2.	*ISMT Limited*	✓	
3.	*Kirloskar Ferrous Industries Limited*	✓	

*******Arun Balakrishnan was noted to be not serving on the Board of any other listed company as on date.*

41. The findings unequivocally demonstrate that these companies adhere to the practice of aggregating all *RPTs*, regardless of whether they are under a single contract or multiple contracts, while determining the *materiality threshold*. This uniform approach aligns with the clear and unambiguous language of the statutory provision specified by SEBI under the LODR Regulations.

42. Given the above, it is noted that the interpretation advanced by the Company— limiting the calculation of material *RPTs* to transactions under a common contract— finds no support in the statutory language or practice adopted by companies listed above and is contrary to the regulatory intent and established principles of statutory interpretation. The interpretation advanced by the Company can be termed as an exercise in semantics which is contrary to letter and spirit of regulatory provision under question.

43. Finally, the interpretation adopted by the Company in respect of how the *"materiality threshold"* was to be calculated prior to obtaining the *Legal Opinions,* was what really mattered. It was noted in the Interim Order that *"LIL had, in fact, sought shareholder approval for RPTs to be entered with PIPL at its 85th AGM held on June 24, 2021. This resolution was rejected by the shareholders with approximately 93.94% of the votes cast by eligible shareholders being against the resolution.*" The Interim Order also noted that *"the first Legal Opinion dated September 7, 2021, was obtained in the backdrop of the failure by LIL to get shareholder approval for the RPTs."*

44. The Company in its reply vigorously contended that this prima facie finding recorded in the Interim Order was not borne out by the facts on record. The reply of the Company on this point is extracted below:

"92. *At the foremost, it is submitted that SEBI misconstrued the nature of the resolutions of the 85th AGM and made bald innuendos in its Order to claim that the Company had taken similar interpretation of Regulation 23 as SEBI at its 85th AGM. It is clarified that the resolution proposed at the 85th AGM was for an omnibus approval of transactions owing to the specified sub-limits for RPTs prescribed under Section 188 of the Companies Act, 2013 read with Rule 15 of the Companies (Meeting of Board and its Powers) Rules, 2014 ("Companies Rules")."*

45. The answer to the question as to whether SEBI resorted to making *bald innuendos* and had misconstrued the nature of the resolution put before the 85th AGM, as contended by the Company, can be obtained from the Explanatory statement to the Notice placed before the AGM. In the said Notice, it has been categorically stated by the Company that the resolution was being put before the shareholders for approval as the transactions with Praxair and LSASPL are being considered material under LODR Regulations as they as they exceed 10% of the annual consolidated turnover of the company. The relevant portion of the statement (on page 20) is worth quoting in full and is therefore being extracted below

*"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.

Considering the dynamic business environment and the need to pursue growth opportunities in the Gases and Project Engineering business of the Company, ***the aggregate of all transactions entered into by the Company during any financial year with Praxair India Private Ltd.*** *(a wholly owned subsidiary of the Linde PIc 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****."*

46. Given the above, the contention raised on behalf of the Company that the resolution proposed at the AGM was *"only out of apprehension that such RPTs might breach the specified sub-limits given under the Companies Act, 2013 read with the Companies Rules or that the value of a single contract with Praxair might cross the Materiality Threshold at a later date owing to the pandemic"* can, at its charitable best, be termed as dishonest and misleading. It can unequivocally be noted that the contentions raised in this respect before me is contradictory to the written record; the explanatory statement to the Notice mentioned in paragraph 45. The statement extracted above leaves no room for doubt that the understanding of the Company, regarding the interpretation of the materiality threshold, was earlier in alignment with interpretation adopted by SEBI in the Interim Order.

47. Given the above, I am firmly of the view that the only interpretation that can be reasonably ascribed to the proviso to Regulation 23(1) of the LODR Regulations is the one being advanced by SEBI in the Interim Order.

Joint Venture agreement and allocation of business between LIL and PIPL.

48. I am now going to address the second issue: the allocation of business between Linde India Limited ("**LIL**") and Praxair India Private Limited ("**PIPL**"). Before delving into the specifics of this allocation, it is important to briefly review the

events leading up to this issue. Following the merger, which has already been discussed in this Order, the promoters attempted to delist LIL. However, this attempt was unsuccessful as the discovered price, through the Reverse Book Building process, was significantly higher than the floor price indicated by the Promoters. The relevant background provided in the Interim Order is extracted below:

"The announcement of the global merger between Linde AG and Praxair, Inc. triggered a requirement for making a mandatory open offer to the public shareholders of LIL. The open offer was announced on 24 October 2018 and the promoters along with the open offer also conveyed their intention to voluntarily delist the Company. The offer price, discovered under the Reverse Book Building process mandated under the SEBI (Delisting of Equity Shares) Regulations, 2009 was Rs. 2,025/-. The acquirers rejected the discovered price and the equity shares of LIL continued to remain listed on the stock exchanges. Subsequent to the failure to delist the Company, the promoters of LIL began exploring options for achieving operational synergy between LIL and PIPL. It is noted from the records that at the meeting of the Board held on December 17, 2019, options for potential integration between LIL and PIPL were discussed. Moloy Banerjee, Head – South Asia Linde Group PLC, attended the meeting as a special invitee. He informed the Board that various options were explored for the potential integration between LIL and PIPL and four options, given below, have been shortlisted for the consideration of the Board: -

Option 1	*LIL and PIPL to remain separate entities and operate independently*
Option 2:	*Remain Separate Entities – Set up a New JV company between LIL and PIPL to render Operation & Management services to the two companies*
Option 3	*Consolidation of overlapping Gases business at unlisted subsidiary level*
Option 4	*Consolidation at listed entity level - merger of LIL into PIPL*

49. The management, it is noted, recommended Option 2 to the Board of LIL as the most attractive option considering the costs involved. Option 2, apart from the forming of a JV, also involved product and geographical allocation between LIL and PIPL. In this context, it is important to emphasise that the discussion at the Board Meeting pertaining to the potential integration between LIL and PIPL was led by the representative of Linde Plc, who was a special invitee to the Board Meeting. The IDs of the Company, it is noted from the minutes, raised questions regarding the impact on the future growth prospects of LIL due to the split of business between LIL and PIPL. It is also noted that as per the minutes, the Board had directed the management to place before it a comprehensive proposal in respect of Option 2 for consideration at the next Board meeting.

50. At the next meeting of the Board of LIL held on March 24, 2020, the approval for execution of the **JV&SHA** with PIPL and LSASPL, was granted. Pursuant to the execution of the JV&SHA, LIL and PIPL were to each hold 50% of the equity share capital of LSASPL. The JV&SHA also contained a clause which provided for the product allocation and geographical allocation of the businesses of LIL and PIPL ("**Business Allocation**") which provided:

a) Geographic Allocation (north, east and west 2 regions were allotted to Linde whereas south, central and west 1 regions were allotted to PIPL), and

b) Product Allocation [Linde got exclusivity with respect to the Project Engineering Business and PIPL got exclusivity in HyCO, Hydrogen, Carbon Monoxide and CO2 including carbon capture businesses ("**HyCO**").]

51. Subsequent to the decision of the Board of LIL to delineate the businesses, SEBI started receiving complaints from the shareholders of the Company alleging that the business allocation, referred to above, essentially involved granting promising future business opportunities to PIPL, which was a related party. The complaints also alleged that the business allocation would require shareholders' approval under the applicable regulatory provisions. The Company, however, it is noted, was of the view that the business allocation did not provide for or contemplate the transfer of any existing assets to PIPL and, therefore, did not require the approval of its shareholders.

52. Given the above, the issue that arises for consideration is the decisional threshold applicable for a transaction of this nature – *is the Board of LIL competent to approve the transaction or would shareholder approval be required?*

53. Before addressing the decisional threshold question, it is useful to examine the details of the *transaction* under question. The records indicate that the air gases business was identified as the only area where both LIL and PIPL had significant overlap. The other businesses, PED and HyCO, were considered unique to either LIL or PIPL. Consequently, it was decided that these unique businesses would remain with the respective companies. For the air gases business, a geographic division was proposed, granting each company exclusive rights to operate in distinct geographic areas. The intention behind this allocation was to ensure that within any given geographic area, only one company would operate in each vertical, thereby preventing competition between LIL and PIPL.

54. It is noted that the Board took the decision to demarcate business between LIL and PIPL without the benefit of a Valuation Report. Records do not indicate any material being placed before the Board to help determine the gain or loss for LIL and PIPL resulting from this business allocation. The driving factor behind the merger appears to be operational synergy at the holding company level. While this objective might benefit the Promoters, it may not always align with the interests of LIL's public shareholders.

55. The complaints received by SEBI had gone into significant detailing regarding the importance of HyCO business to the Company and how the allocation of the said business to PIPL would adversely affect the future prospects of the Company. The Interim Order had captured the concerns expressed in the complaints in some detail. It is, however, noted that it may not be necessary to get into the actual mechanics of the business allocation to answer the question before us. The issue to be considered is whether Board of LIL, without conducting a valuation exercise to understand the impact of the business allocation, could have approved this transaction with a related party.

56. The overarching question that therefore needs to be considered is whether transactions of this nature undertaken with a related party get covered within the

ambit of *RPTs*? While answering this question it needs to borne in mind that the rationale for requiring a higher threshold for *RPT*s is to ensure that disinterested shareholders have a vote in *'material'* transactions involving interested parties.

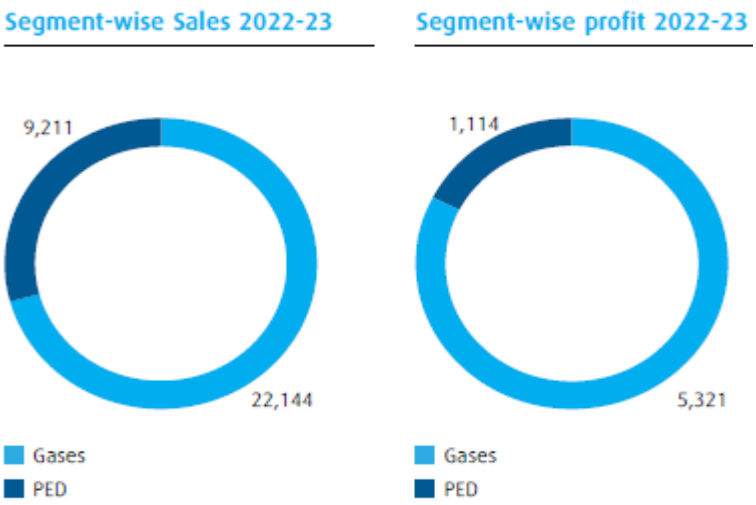
57. In this respect, the Interim Order notes that relinquishing the rights to carry on a future business and the consequent opportunities of growth, earnings and cash flows can be considered equivalent /synonymous to the transfer of business / resources /assets. The effect of both actions on the balance sheet of the Company would be similar.

58. The company submitted a detailed response elaborating the rationale for undertaking the business allocation. It was submitted that the allocation was in the interest of the Company. It was contented that to classify the business allocation as *RPT,* it would be necessary to establish that such allocation was a *"transfer of resources, services or obligations"*. The reply stated that business allocation is distinct from transferring assets since the same would not have any implications on the current or future revenues of either entity until such business is actually undertaken and materialized.

59. The Company's argument that the agreement to divide future businesses does not constitute a *RPT* because it does not involve a direct exchange of assets or services is not tenable in my considered view. Allocation of a revenue generating product vertical of a Company is bound to have an impact on the financials of the Company. The nature and extent of the impact can be best understood by undertaking a valuation or an impact assessment exercise.

60. To accept the Company's argument would entail that the Board is within its rights to hive off an entire vertical of the Company in favor of related party without having to approach the shareholders. Further, the potential impact of the transaction cannot be estimated because the Company contends that there is no requirement of conducting a valuation exercise prior to undertaking such allocation. This scenario can be better explained by way of an illustration. As noted earlier, the Company had two main business segments – Gases and related products and Projects Engineering Division. The segment-wise sales and profits reported by the Company for FY 23 are given below:

(In Rs. million)



61. It can be noted from the above that a significant portion of the sales and profits of the Company is accounted for by the *'Gases and related products'* segment, which under the business allocation proposal, in coming years, will be restricted to certain defined geographic areas. This decision, the Company contends, can be approved by the Board even without carrying out a valuation exercise. If this argument, made by the Company, is extended a little further, it would imply that the Board of LIL would be within its rights to reserve the entire gases and related products segment for a related party in the coming years, without getting shareholder approval. Surely, this cannot be allowed to be the likely outcome. To argue otherwise, would be a troubling overreach of board authority, undermining the safeguards provided under the LODR Regulations intended to protect shareholders' interest.

62. Given the facts before me, it is evident that the business allocation, though characterized as a division of future business rather than a current transaction, effectively alters the distribution of business opportunities between the related parties. Such arrangements can result in a redistribution of corporate business and opportunities that would otherwise benefit the company. This seemingly benign but arbitrary reallocation of business presents a potential risk to the future growth prospects of LIL, which may not serve the best interests of the public shareholders.

63. Transactions of this nature must be subjected to rigorous scrutiny and require approvals akin to traditional *RPT*s to ensure that investor interests are safeguarded. The business allocation between LIL and PIPL *prima facie* constitutes a transfer of resources by a listed company to a related party. This transfer should have been preceded by a valuation exercise or financial impact analysis to enable the Board of LIL to make an informed decision. Even LIL's own assessment indicated that activities relating to Hydrogen had significant future potential, underscoring the necessity for a proper valuation before the Board's decision.

Conclusion

64. It has been clearly brought out in the preceding paragraphs that the only reasonable interpretation that can be imputed to the proviso to Regulation 23(1) is the one adopted by SEBI in the Interim Order. The *proviso* clearly lays downs that for computing the *materiality threshold*, transaction entered into individually or taken together with previous transactions during a financial year should be taken into consideration while testing the *'materiality threshold'.* The *proviso* does not restrict the definition to transactions of a similar nature or any such other qualifying or limiting criteria while calculating the threshold.

65. The endeavour of LIL to go ahead with transactions that had been voted down by the shareholders, by taking cover of the *Legal Opinions*, in my considered view, cannot be allowed to pass muster. The attempt to colour the *prima facie* findings made in this regard in the Interim Order as *'bald innuendos'* can, therefore, only be looked at as an elaborate effort on the part of the Company to cover up its earlier actions. The explanatory statement shows that the *Legal Opinions* were obtained by the Company as part of a desperate attempt to override the shareholders' vote. To contend otherwise, to put it mildly, would be a self-repudiation of the written record.

66. In respect of the second issue, it is noted that a valuation exercise would have illuminated whether the decision required approval solely from the Audit Committee or necessitated shareholder approval as well. In light of these considerations, it is my view that the business allocation between LIL and PIPL, a related party, is fundamentally flawed because a valuation exercise was not conducted prior to the Board granting approval for the transaction.

67. Given the above, I propose to issue directions which are remedial in nature. Directions which, as contemplated in the LODR Regulations, restore the voice of the shareholders in transactions undertaken with related parties.

Directions

68. Keeping in view the findings recorded in the preceding paragraphs, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B read with Section 19 of the SEBI Act, 1992, hereby direct as under:

    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 *RPTs*, 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 Regulations.

    c) NSE shall appoint a registered valuer to carry out a valuation of the business foregone and received, including by way of geographic allocation, in terms of Annexure IV of the JV&SHA.

69. LIL shall reimburse the expenses incurred by NSE in respect of the valuation to be carried out as per the directions at paragraph 67 above.

70. LIL and its management and their statutory auditors shall extend full cooperation and provide necessary assistance to the valuer appointed by NSE in compliance with the directions contained in this Order.

71. NSE shall share the valuation report received from the valuer appointed in compliance with the directions contained in this Order with the Company and SEBI.

72. LIL shall within two weeks of receiving the valuation report place it before the Audit Committee and the Board.

73. LIL shall make a disclosure on the stock exchanges providing a summary of the key observations in the valuation report along with management comments on the same.

74. The above directions shall take effect immediately.

75. The issue in respect of determining *materiality* of *RPTs* (as discussed in the preceding paragraphs) attain finality with this Order. In respect of the allegations concerning the business allocation under the JV&SHA, further course of action will be determined post receipt of the valuation report. The role/ culpability of the Directors/ Officers of LIL, if any, for issues covered under this Order, will also be addressed separately.

76. A copy of this order shall be served upon the Company, its Statutory Auditors, and NSE for necessary action and compliance with the above directions

Place: Mumbai
Date: July 24, 2024

ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

SECURITIES AND EXCHANGE BOARD OF INDIA

CORRIGENDUM TO THE ORDER DATED JULY 24, 2024 BEARING REFERENCE NUMBER WTM/AB/CFID/CFID-SEC3/30578/2024-25 IN THE MATTER OF LINDE INDIA LIMITED.

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1. SEBI issued an order dated July 24, 2024 bearing reference number WTM/AB/CFID/CFID-SEC3/30578/2024-25 (hereinafter referred to as "the Order").
2. In Para 69 of the Order, the word and figures "*paragraph 67*" shall be read as "*paragraph 68*".
3. The Order shall always be read with this Corrigendum.
4. A copy of this Corrigendum shall be served on Linde India Ltd.

PLACE: MUMBAI
DATE: July 25, 2024

ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA