

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 17.05.2024

Date of Decision : 22.05.2024

Misc. Application No. 631 of 2024

And

Misc. Application No. 638 of 2024

And

Appeal No. 329 of 2024

Linde India Limited
Oxygen House,
P-43 Taratala Road,
Kolkata,
West Bengal – 700 088, India.

..... Appellant

Versus

Securities and Exchange Board of India
SEB Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051.

...Respondent

Mr. Venkatesh Dhond, Senior Advocate with Mr. Prasad Shenoy, Mr. Sandeep Parekh, Mr. Anil Choudhary, Mr. Parker Karia and Ms. Navneeta Shankar, Advocates i/b Finsec Law Advisors for the Appellant.

Mr. Chetan Kapadia, Senior Advocate with Mr. Mihir Mody, Mr. Harshvardhan Melanta, Ms. Vidisha Rohira and Mr. Yash Sutaria, Advocates i/b. K Ashar & Co. for the Respondent.

Mr. Akshay Petkar, Advocate with Mr. Harsh Kesharia, Mr. Aniket Malu, Mr. Pranav Shah and Mr. Aditya Nair, Advocates i/b Harsh Kesharia for Intervener.

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

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

This appeal is directed against order dated April 29, 2024 passed by the SEBI issuing following interim directions:-

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

2. We have heard Shri Venkatesh Dhond, Senior Advocate with Shri Prasad Shenoy, Shri Sandeep Parekh, Shri Anil Choudhary, Shri Parker Karia and Ms. Navneeta Shankar, learned Advocates for the Appellant, Shri Chetan Kapadia, Senior Advocate with Shri Mihir Mody, Mr. Harshvardhan Melanta, Ms. Vidisha Rohira and Shri Yash Sutaria, learned Advocates for the Respondent and Shri Akshay Petkar, learned Advocate with Shri Harsh Kesharia, Shri Aniket Malu, Shri Pranav Shah and Shri Aditya Nair, Advocates for the Interveners.

3. The principal contentions urged by Shri Venkatesh Dhond, leaned Senior Advocate for the appellant are summarized as follows:

- Appellant has understood the Regulations in consonance with the legal opinions obtained by the appellant;
- that the SEBI has passed the impugned interim directions on the premise that appellant has executed Related Party Transactions without obtaining prior approval from the shareholders in terms of Regulation 23(4) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015; that the business allocation between

the Appellant and its related party is vitiated since a valuation exercise was not carried out before the grant of sanction for such allocation; that the business allocation between the Appellant and its related party is a transfer of assets;

- that there is no imminent threat to securities market warranting issue of such directions against the appellant and the same is in violation of the principles of natural justice, without providing an opportunity of hearing prior to issuance of directions; and that the directions are in the nature of a final order, and caused severe prejudice to the appellant.
- that the onus of justifying such orders on grounds of urgency and necessity to take immediate action, without providing the aggrieved parties an opportunity to be heard, lies on the SEBI and SEBI has not discharged the same.

4. In substance, appellant's case is that since the SEBI sent its first communication on August 28, 2020, conveying receipt of representations from investors of the Appellant regarding their 'outstanding commitment' in terms of the Appellant's disclosure dated March 04, 2019, there have been series of correspondence between the appellant and the SEBI,

the impugned order interim ex-parte order has been passed without any tenable reasons.

5. Opposing the appeal, Shri. Kapadia, learned Senior Advocate for the SEBI, submitted that SEBI has examined appellant's case in accordance with law. Appellant has been flagrantly violating the statutory Regulations; SEBI has all the power to pass the interim order in appropriate cases; and this is a case of clear violation of Regulations. Hence the impugned order has been passed to protect the interest of public share-holders as continuance of RPTs without shareholders' approval, will negatively impact them. The directions issued by Respondent are not punitive directions but only remedial directions and not prejudicial inasmuch as they do not require alteration of status quo ante but are (a) confined to future transactions and (b) in operation only till full-fledged hearing takes place upon Appellant filing Reply within 21 days as per the Impugned Order.

6. Learned Advocate for the intervening applicant also argued on similar lines as SEBI stating that in securities regulation, investor protection and market integrity take precedence over the timing of regulatory actions, with SEBI's

interim orders focusing on preventing harm and ensuring fairness despite procedural delays.

7. Though listed for admission, having heard the learned advocates fully, we have taken up the matter for final disposal. In the light of the pleadings on record and the submissions of the learned Advocates, the point that arises for our consideration is *whether the impugned order calls for any interference?*

8. In their pleadings, appellant has averred thus:-

- That the Appellant, Linde India Limited (formerly BOC India Ltd), is a public limited company listed on the Bombay Stock Exchange Limited ("BSE") since January 23, 1992, and the NSE since June 16, 1999;
- That the appellant was a subsidiary of BOC Group Ltd., an unlisted UK-based company. In 2006, 100% shareholding of the BOC Group was acquired by Linde U.K. Holdings Limited and its group entities. Further, 100% shareholding of Linde U.K Holdings Limited is directly or indirectly held by Linde AG, a company registered in Germany;

- That in June 2017, Linde AG entered into a merger with Praxair Inc., an American industrial gases company. In terms thereof, an entity called Linde Plc was incorporated, and Linde AG and Praxair Inc. became subsidiaries of Linde Plc. and the same was notified to the Competition Commission of India on January 01,2018;
- That pursuant to the merger, Linde Plc had two subsidiaries operating in India, Linde India Limited, i.e., the Appellant, a listed company and Praxair India Private Limited ("Praxair"), an unlisted company operating and carrying out business in India. Linde AG, through Linde U.K Holdings Limited and the BOC Group, holds 75% shareholding of the Appellant. Praxair Inc. owns 100% of the shares of Praxair India Private Limited ("Praxair"), a private company incorporated on April 11, 1996 in India. The merger was completed on October 31, 2018. As a result of the merger between Linde AG and Praxair Inc., Praxair is a related party of the Appellant;
- That on August 28, 2020, the SEBI sent an email to the Appellant, inter alia, stating that it was in receipt of representations from investors of the Appellant

regarding their 'outstanding commitment' in terms of the Appellant's disclosure dated March 04, 2019;

- That on January 06, 2022, pursuant to the receipt of certain complaints against the Appellant, NSE forwarded certain extracts of the said complaints to the Appellant and called upon the appellant to respond and the appellant has responded;
- That the complaints alleged that instead of merging Linde India and Praxair, the two entities set up a joint venture structure in India. Pursuant to such integration, the Appellant had sought shareholder approval for the related party transactions to be entered with Praxair which was rejected by the shareholders by approximately 93.94% of the votes cast by the eligible shareholders being against the same. The complaints alleged that despite the rejection of the resolution, the Appellant had executed the Related Party Transactions with Praxair in violation of the LODR Regulation.

9. Pleadings contain exchange of several correspondence.

It appears that there was a crucial development on April 13, 2023, when the SEBI sought some urgent clarifications and information pertaining to the allocation of business between

the Appellant and Praxair. Subsequently, on October 19, 2023, the Investigating Authority ("IA") appointed by the SEBI issued summons to Appellant's Company Secretary and Managing Director to appear before SEBI on November 02, 2023. Some exchange of correspondence ensued between the appellant and the SEBI. On January 03, 2024, fresh summons were issued to the Appellant seeking additional documents and information pertaining to related party transactions executed with Praxair.

10. It appears that appellant again sought time and fresh summons were issued. Appellant and its independent directors challenged the same in WP(L) 2521 of 2024 and WP(L) 2501 of 2024, respectively before the Hon'ble Bombay High Court.

11. Thus, the pleadings indicate that the appellant and SEBI have engaged in series of correspondences since 2020.

12. By the impugned interim ex-parte order, SEBI has issued three directions extracted above. It was submitted by the appellant that, as called upon by the SEBI, in paragraph No. 58 of the impugned order, appellant shall submit their reply and seek an opportunity of personal hearing. Learned

Senior Advocate argued that appellant has been fully cooperating with the SEBI and in view of continuous exchange of correspondence, pending consideration of appellant's reply, there was no imminent hurry in passing the impugned order.

13. Shri Kapadia, Senior Advocate for the respondent submitted that if the reply is filed, SEBI shall consider the same and pass appropriate order within 30 days on conclusion of hearing.

14. In the light of the facts recorded hereinabove, we are of the opinion that *prima facie*, is indubitable that appellant and SEBI were in exchange of correspondence since 2020, although it was vehemently contended by Shri. Kapadia that the relevant date to be reckoned is September 2023. In any event, it cannot be gainsaid that appellants have been called upon to file their reply within 21 days from the date of the impugned order. As recorded hereinabove, Shri Kapadia has submitted that SEBI shall pass orders within 30 days from the date of conclusion of hearing. The Learned Senior Advocate for the appellant is also in agreement with the proposed course of action.

15. In that view of the matter, in our considered opinion, 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.

16. In view of above discussions, we answer the point for consideration in the affirmative and pass the following:

ORDER

- i) appeal is *allowed*;
- ii) order dated April 29, 2024 is set aside;
- iii) without notice, appellant shall appear before the SEBI on May 27, 2024 for inspection of documents, if any, required and file its reply within one week from the date inspection/supply of documents;
- iv) SEBI is directed to grant inspection and supply documents immediately;

- v) No costs.
- vi) All pending miscellaneous applications stand disposed of.

Justice P.S. Dinesh Kumar
Presiding Officer

Ms. Meera Swarup
Technical Member

Dr. Dheeraj Bhatnagar
Technical Member

22.05.2024
msb