

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER**

INTERIM ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of Assam Company India Ltd.

Background of the case:

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) was in receipt of a letter no. F. No. 03/73/2017-CL-II dated June 9, 2017 from the Ministry of Corporate Affairs (hereinafter referred to as “MCA”) vide which MCA had annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. MCA had also annexed the letter of Serious Fraud Investigation Office (hereinafter referred to as “SFIO”) dated May 23, 2017 which contained the data base of shell companies along with their inputs.
2. SEBI as a market regulator is vested with the duty under section 11(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act”) to protect the interests of the investors in securities and to promote the development of and regulations of securities markets by appropriate measures as deemed fit.
3. SEBI was of the view that the companies identified as shell companies by SFIO and MCA could be potentially involved in:
 - (a) Misrepresentation including that of their respective financials and businesses and possible violations of SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015 (hereinafter referred to as “LODR Regulations”) and/or

- (b) Misusing their respective books of accounts/funds including facilitation of accommodation entries to the detriment of minority shareholders and therefore reneging on the fiduciary responsibility cast on the board, controlling shareholders and key management person (KMP)
4. SEBI was also of the view that investors should be alerted on the possible enforcement actions by various authorities leading to potentially significant impact on the price of the stock.
5. Therefore, in the interest of investors, SEBI took the pre-emptive interim measures under section 11(1) of SEBI Act in respect of listed shell companies including Assam Company India Limited (hereinafter referred to as “ACIL” / “Company”), vide its letter dated August 7, 2017, based on the view stated at para 3 and 4 above. SEBI placed trading restrictions on promoters/directors so that they do not exit the company at the cost of innocent shareholders. In view of the said objective, SEBI vide the letter dated August 7, 2017 also placed the scrip in the trade to trade category with limitation on the frequency of trades and imposed a limitation on the buyers by way of 200% deposit on the trade value, so as to alert them on trading in the scrip. The said measures were initiated by SEBI pending final determination after verification of credentials and fundamentals by the stock exchanges, including by way of audit and forensic audit, if necessary. The measures also envisaged, on the final determination, delisting of companies from the stock exchange, if warranted. By virtue of these measures, trading in the scrip was not suspended but allowed under strict monitoring so that investors could take informed investment decisions till SEBI and stock exchanges complete their detailed examination of such companies.
6. Pursuant to the above, all the recognized stock exchanges, vide notice dated August 7, 2017, addressed to all its market participants, initiated actions envisaged in the SEBI letter dated August 7, 2017 in respect of all the listed companies as identified by MCA and communicated by SEBI, with effect from August 8, 2017.
7. With regard to the said letter dated August 7, 2017, ACIL, vide letter dated August 8, 2017 represented the following to SEBI:
- “... We are shocked and surprised and state and submit that there appears to have been a mistake since our Company is a fully operating Tea Company having*

fourteen number of Tea Estates & factories, in the State of Assam. Assam Company India Limited (ACIL) was established in the year 1839, by a Deed of British Parliament and was the first tea company in the world. The Company produces about 11 Million Kgs. of premium Tea and employs about 20,000 labours across all its Tea Estates in Assam. ...

Apart from Tea, our Company is engaged in the exploration and production of oil and gas (hydrocarbon) in the State of Assam. Our Company has been filing statutory returns from time to time required to be filed under various laws, i.e., Plantation & Labour Act, Income Tax, Sales Tax, Companies Act, Listing Agreement etc. ...

It may further be mentioned that the Company has been regularly publishing its quarterly financial results and filing the same with the stock exchanges as would also be evident from the quarterly results published from time to time. ... From the attached AFR for the period 2016-17, you may note that ACIL is a full fledged operating Company with an Annual Turnover of Rs. 211.61 Crores.

It may further be noted that the Annual Return of the Company have been filed from time to time every year with the MCA ... It may please be noted that the Company have about 58,000 Shareholders and its shares are actively traded in NSE & BSE.

It is thus evident that inclusion of our Company in the said list of so called "suspected shell companies" is a result of non-application of mind. In the circumstances, it is not understood on what basis the allegation has been made that ours is a "suspected" shell company especially when the data provided hereinabove show to the contrary. Such an exercise of power by SEBI is totally uncalled for and unwanted in so far as our Company is concerned. This has caused serious prejudice to the Company as well as all its Stakeholders.

It appears that the name of our Company has been included inadvertently by mistake.

We, accordingly, request you to kindly look each of the documents provided under this letter and forthwith clarify that we are not a shell company as suspected

or otherwise. We also call upon you to withdraw such direction on our Company and allow the normal trading as was being done. “

8. On August 9, 2017, SEBI further advised the Stock Exchanges to submit a report after seeking auditor's certificate, from all such listed companies, providing the status of certain aspects of the company like company's compliance with Companies Act, whether company is a going concern, its business model, status of compliance with listing requirements, etc. In this regard, the concerned stock exchange i.e. National Stock Exchange of India Ltd. (“NSE”) vide its report dated September 26, 2017 submitted the following observations regarding ACIL:

- a. “Company is compliant with five clauses of Listing Regulations specified in SEBI Circular dated November 30, 2015 on Standard Operating Procedures. However penalty of Rs. 13000 was levied to the company for delay in submission of Shareholding pattern for the quarter March 2016. Company has paid the penalty amount.*
- b. Auditor has certified that the company has for the financial periods ending on 31-12-2014, 31-03-2016 and 31-03-2017, complied with all the compliance requirements under the company’s act 2013 and except the matters detailed in Secretarial Audit Report issued pursuant to Section 204(1) of the Companies Act, 2013 and rule no.9 of the Companies (Appointment and Remuneration Personnel) Rules 2014. The Company has also complied with The Companies (Accounts) Rules, 2014; The Companies (Acceptance of Deposits) Rules 2014; Accounting Standards specified under Section 133 of the Act, read with Rule 7 of the Companies (Accounts) Rules 2014 and the amendments made thereto from time to time. Further the auditor certified that the details provided by the company in respect to compliance relating to filing of annual return ... is correct.*
- c. The Auditor certified that the Company has filed annual income tax return for last 3 assessment years (i.e. 2014-15, 2015-16, and 2016-17). The due date for filing the Income tax Return in respect to the Assessment Year 2017-18 is September 30, 2017.*
- d. Auditor has provided pending disputes appeal filed with Income Tax Department*
- e. The Auditor has certified that the company at present is a going concern.*

- f. The Auditor has certified that the status of default of the company to the banks and financial institution provided by the company ... is correct.*
- g. Number of shareholders are 58,800 as on June 30, 2017.*
- h. Average number of trades in last 3 months are 6,64,780 per day in NSE.*
- i. The Company was in trade for trade from January 19, 2017 to March 06, 2017.”*

It is noted that the observations of NSE have been made on the basis of the filings made by ACIL to it. However, it is also essential to analyze the contents and representations made in the filings of ACIL to arrive at *prima facie* findings of any misrepresentation therein.

9. Vide a letter dated August 22, 2017, SEBI asked for the following information from ACIL:

- “1. Summary of dealings of the Company with or through Mr. Vijay Kumar Gupta and Mr. Sanjay Khandelwal, either directly or indirectly, including the nature and quantum thereof. Provide details of the all transactions alongwith supporting documents.*
- 2. Details of Association of the company, whether direct or indirect, with Mr. Vijay Kumar Gupta and Mr. Sanjay Khandelwal.*
- 3. Details of employees on the rolls of the Company, their respective roles, remuneration received qualifications and experience for the job. Details of Provident Fund contributions made by the Company for the aforesaid employees. For ease of furnishing the information, broad categories of roles: Blue collar, Junior management, Middle management, senior management, may be given in a consolidated manner.”*

10. The company filed its reply to SEBI's letter dated August 22, 2017 vide letter dated September 12, 2017 and stated as under:

- “1. Mr. Sanjay Khandelwal, Independent Director of the Company, is entitled to receive Sitting Fees only for attending Board Meetings and various Committee Meetings of the Board.*
 - 2. There is no Association of the Company, whether direct or indirect, with Mr. Sanjay Khandelwal.*
- Note : Mr. Vijay Kumar Gupta is not a Director of the Company.*

3. *The details of the employees are provided ...*”

11. Subsequently, vide letter dated September 20, 2017, ACIL also filed following additional reply to SEBI’s letter dated August 22, 2017:

“Re. 1 & 2: *The Company is not aware of any Mr. Vijay Kumar Gupta and has had no dealings or association with him. Mr. Sanjay Khandelwal is an Independent Director of the Company and is also co-opted on the Audit Committee, Nomination and Remuneration Committee, Stakeholders Relationship Committee and Risk Management Committee. There have been no transaction by and between the Company and Mr. Sanjay Khandelwal save and except payment of Sittings Fees to him for the meetings attended by him. Statement showing Sitting Fees paid to him for the Financial Year 2016-17 is annexed herewith...*

Re. 3: *Statement furnishing details of employees on the rolls of the Company as on date, comprising Senior Management, Middle Management and Junior Management showing their respective role, remuneration received, qualification and experience for the job, details of Provident Fund contribution made by the Company for each of the aforesaid employee is annexed hereto ... The details of the permanent workers employed at the Tea Estates of the Company will run into several pages and will take some time for compilation and preparation. Please do let us know if you want us to undertake this exercise as well. For your convenience, we attach herewith ... the consolidated statement showing total number of permanent workers engaged at each of the Tea Estates of the Company, remuneration paid to them including the Provident Fund.”*

12. In the meantime, aggrieved by the aforesaid letter dated August 7, 2017 issued by SEBI, ACIL filed an appeal No. 196 of 2017 before Hon’ble Securities Appellate Tribunal (hereinafter referred to as “SAT”). Hon’ble SAT vide order dated August 21, 2017 directed the following:-

“2. Similar question was raised in the case of J. Kumar Infraprojects Ltd. (Appeal No. 174 of 2017) and by our order dated 10.08.2017 we have stayed direction

1(a) & (b) contained in the impugned communication of SEBI dated 07.08.2017 qua the appellant therein.

3. In view of the facts set out in the Memorandum of Appeal and other documents tendered at the time of hearing relating to annual turnover of the appellant company for last three years, which even according to SEBI prima facie appear to be correct, we extend the said stay to the case of the appellant company herein and direct the stock exchanges to reverse their decision in respect of the appellant company as expeditiously as possible.

4. Appellant company is at liberty to make a representation to SEBI against the impugned communication of SEBI dated 07.08.2017. If representation is made, SEBI shall dispose of the said representation in accordance with law.

5. It is made clear that this order shall not come in the way of SEBI as well as the stock exchanges to investigate the case of the appellant company and initiate proceedings if deemed fit.”

13. Pursuant to the order of Hon'ble SAT, ACIL vide letter dated August 29, 2017, *inter alia*, submitted the following:

“... In addition to our earlier representation, dated 8th August, 2017, we would also like to highlight further points to show that we are not a shell Company but a fully operating Company. Accordingly, the following documents are hereby being enclosed for your ready reference:

(i) Copies of the latest e-Receipts for Central Excise Tax payments, made against the cess levied on tea manufactured by the Company at its various Tea Estates, annexed hereto ...

(ii) Provident Fund Contribution along with the latest Returns for the year ended 31st December, 2016 under the Plantation and Labour Act, 1951, in respect of its Tea Estates, show that the Company is carrying on manufacturing and production of tea and has been employing more than 20,000 workers at its various tea estates. Copies of the Provident Contribution along with the Returns under the Planation and Labour Act, 1951, is collectively annexed hereto ...

(iii) The majority of its manufactured tea is transported from its Tea Estates in Assam to its godown in West Bengal. Copies of the Waybills evidencing shipment of goods by the Company from Assam to its godown in West Bengal is annexed hereto ... The goods received in West Bengal are then sold in the domestic market. Copies of the latest VAT filings in relation to sale of tea from the State of West Bengal are annexed herein ...

(v) The Company is also selling tea through various tea auctioneers as well entering into private sale arrangements with customers. A copy of the latest printed catalogue of Associated Brokers Pvt. Ltd., Guwahati, tea auctioneers wherein, the tea manufactured by the Company at its various tea estates are listed for auction along with copies of the invoice evidencing the private sale arrangement for tea by the Company are collectively annexed hereto ...

(vi) Besides manufacturing tea, the Company has also forayed into exploration and production of oil and gas (hydrocarbon) in the State of Assam. The Company had entered into Production Sharing Contract dated 23 February 2001 ("PSC") with the Ministry of Petroleum and Natural Gas, Government of India and Joshi Technologies International Inc. in respect of the Amguri Fields for exploration of oil and gas which was subsequently amended on 26 July 2004. Further, pursuant to an arbitration award, the terms of the said contract were modified and the Company has now entire participating interest in the PSC in respect of the Ainguri Fields. A copy of the earlier PSC dated 23 February 2001 and the last amended contract dated 7 June 2017 without annexures is collectively annexed hereto ...

In light of the above and our earlier representation, we reiterate that we are not a 'shell company' and are a fully operating tea manufacturing company. We are unable to comprehend the basis on which MCA had declared us as a "suspected shell company". That we are an operating company would be further evident from a bare perusal of our Annual Report for the last three years which is being annexed hereto ...

We would request you to kindly, peruse the documents provided herein and withdraw your communication to the Stock Exchanges identifying our Company

as one of the "suspected shell companies" and issue the necessary clarification to this effect ..."

14. It is noted that Hon'ble SAT in the matter of *J. Kumar Infra Projects Limited vs. SEBI* (order dated August 10, 2017) held that the measure taken by SEBI vide its letter dated August 07, 2017 was in the nature of quasi-judicial order and the same has been passed without investigation. Without prejudice to the powers enumerated in section 11(1) of SEBI Act, SEBI has been granted power under section 11(4) and 11B of SEBI Act, 1992 to pass orders in the interests of investors or securities market by taking any of the measures enumerated therein either pending investigation or inquiry or on completion of such investigation or inquiry. The inquiry under section 11B of the SEBI Act can also be caused to be made by SEBI.

Hearing and Reply:

15. An opportunity of personal hearing was granted to ACIL on September 13, 2017 when its authorized representative appeared and made submissions in line with its written representations on record. During the hearing, ACIL was asked to provide the information / response on the following points (supported by documentary evidence) as early as possible and latest by September 20, 2017:

- 1) *An Affidavit from the Promoter, Shri A. K. Jajodia on the following:*
 - a) *Who are the promoters and largest shareholders in the Mauritius based company holding 49 percent stake in Gujarat Hydrocarbons and Power SEZ Ltd. (subsidiary of Assam Company India Ltd.);*
 - b) *With whom Shri Jajodia interacts and has substantive interactions in the Mauritius based company (mentioned in point a);*
 - c) *Whether Shri Jajodia knows/has ever spoken to Shri Vijay Kumar Gupta and if yes, provide the details and subject matter of such conversations.*
- 2) *An Affidavit from Shri Sanjay Khandelwal on the following:*
 - a) *Whether in letter and spirit, he was a director of the company or not;*
 - b) *Whether he has been regularly receiving Board agenda for the board meetings and whether he has been actively participating in such meetings and getting the minutes of such meetings, if not, provide explanation for the same;*

- c) *Whether he knows/ever spoken to Shri Vijay Kumar Gupta and if yes, provide the details and subject matter of such conversations.*
- 3) *Submit breakup of the following financial items as on March 2016 along with supporting documents:*
 - a) *Non-current investments of Rs. 28 crore*
 - b) *Long-term Loans and Advances of Rs.29 crore*
 - c) *Other Non-current assets of Rs.13 crore*
 - d) *Short term Loans and Advances of Rs.95 crore.*

SEBI also sent a reminder e-mail to the company asking for the above information.

16. The company vide email dated September 20, 2017 has submitted, *inter alia*, the following response to the above mentioned queries: -

Query 1: *An Affidavit from the Promoter, Shri A. K. Jajodia on the following:*

- a) *Who are the promoters and largest shareholders in the Mauritius based company holding 49 percent stake in Gujarat Hydrocarbons and Power SEZ Ltd. (subsidiary of Assam Company India Ltd.);*
 - b) *With whom Shri Jajodia interacts and has substantive interactions in the Mauritius based company (mentioned in point a);*
 - c) *Whether Shri Jajodia knows/has ever spoken to Shri Vijay Kumar Gupta and if yes, provide the details and subject matter of such conversations.*
- The Company submitted an affidavit from Shri A. K. Jajodia, promoter of Assam Company India Ltd., stating, *inter alia*, that
 - (a) the Assam Company India Ltd. holds 51 % shares in its subsidiary Gujarat Hydrocarbons and Power SEZ Ltd. The remaining 49 % shares in Gujarat Hydrocarbons and Power SEZ Ltd. is held by one Cromwell Securities Limited (CSL), a company duly incorporated under the laws of Mauritius. The promoters and the shareholders in CSL are International Securities Ltd. and International Trustees Ltd., who are holding shares on behalf of AIL Holdings Ltd, as nominee shareholders;
 - (b) Shri Jajodia's dealings with CSL as regards the working of Gujarat Hydrocarbons and Power SEZ Ltd. are with Ms. Dilshaad Rajabalee and Ms. Panir Pushpoon Soobiah, who are the directors of CSL and

(c) Shri Jajodia does not know nor had he spoken to any person by the name of Mr. Vijay Kumar Gupta.

- Further, Shri Jajodia stated that *“Sanjay Khandelwal is an independent director of the company having been inducted on the Board of Directors of the Company on and from 5th February, 2015. As an independent director, the involvement of said Sanjay Khandelwal is limited to attending and participation in the board meetings and the meeting of the various committees of which he is one of the members. My interaction with the said Sanjay Khandelwal is limited to participation at the Board and the committee meetings wherein we both are there.”*

Query 2: *An Affidavit from Shri Sanjay Khandelwal on the following:*

- a) *Whether in letter and spirit, he was a director of the company or not;*
 - b) *Whether he has been regularly receiving Board agenda for the board meetings and whether he has been actively participating in such meetings and getting the minutes of such meetings, if not, provide explanation for the same;*
 - c) *Whether he knows/ever spoken to Shri Vijay Kumar Gupta and if yes, provide the details and subject matter of such conversations.*
- The Company submitted an affidavit from Shri Sanjay Khandelwal, Independent Director of ACIL, inter alia, stating that
 - (a) as an Independent director, he is neither concerned nor involved in day to day affairs of the company and his involvement is limited to attending and participation at the meetings of the Board of directors and its committees;
 - (b) he is regularly receiving notices of Board meetings, agendas and minutes; and
 - (c) he knows one Mr. Vijay Kumar Gupta. He is a director in one company (Dyuti Jewellery Ltd.) where Mr. Vijay Kumar Gupta is also a Director. Further, he had no business dealings either with Mr. Vijay Kumar Gupta or the said company and his interaction was limited to participation at the board meetings of the said company wherein they both are holding posts.

Query 3: *Submit breakup of the following financial items as on March 2016 along with supporting documents:*

- a) *Non-current investments of Rs. 28 crore*

- b) *Long-term Loans and Advances of Rs.29 crore*
- c) *Other Non-current assets of Rs.13 crore*
- d) *Short term Loans and Advances of Rs.95 crore*

- The Company submitted the breakup of the above financial items but did not submit any supporting documents. Further, on three rounds of follow-up with the company, the company submitted certain documents in the form of legal contract/agreement/share certificates.

Consideration of issues:

17. On perusal of the material available on record, the following issues arise for consideration.

- 1) Whether there is *prima facie* evidence of misrepresentation by ACIL including that of its financials and/or its business?
- 2) Whether there is *prima facie* evidence to show that the company is misusing the books of accounts / funds including facilitation of accommodation entries, to the detriment of minority shareholders and therefore the board, controlling shareholders and KMP are reneging on the fiduciary responsibility cast on them?
- 3) In view of the determination on the above issues and the order of SAT in the aforesaid appeal, whether, in light of the representation of the company, the action envisaged in SEBI letter dated August 7, 2017 needs reconsideration?

18. On the basis of documents available on record, my observations on above issues are as under:

Issue No. 1. *Whether there is prima facie evidence of misrepresentation by ACIL including that of its financials and/or its business?*

Issue No.2. *Whether there is prima facie evidence to show that the company is misusing the books of accounts / funds including facilitation of accommodation entries, to the detriment of minority shareholders and therefore the board, controlling shareholders and KMP are reneging on the fiduciary responsibility cast on them?*

19. Based on the material available on record, my *prima facie* observations are as under:

OBSERVATIONS OF THE SECRETARIAL AUDIT REPORT

1) Following is reported in the Secretarial Audit Report [Annual report (“AR”) 2016-17]:

- a. *The Board of Directors have duly constituted Committees of Directors like Audit Committee and Stake Holders Relationship Committee. However, the Nomination and Remuneration Committee was not properly constituted and there is a shortfall of one Non-Executive Director.*
- b. *The Company has made loans and investments, or given guarantees or provided securities to other bodies corporate in compliance with the provisions of the Act and has made necessary entries in the Register kept for the purpose. However, the Company did not charge the interest on inter-corporate loan according to Section 186 of the Companies Act, 2013.*
- c. *The Company has not appointed any Women Director in the Board.*
- d. *We are unable to comment on the status of the huge number charges appeared in the Website of the Ministry of Corporate Affairs, since the related documents were not made available to us.*
- e. *The Company had issued Foreign Currency Convertible Bonds (FCCB) and the last date of repayment was 31.03.2015. The Company did not repay the said FCCB during the reporting period under review.*
- f. *Submission of half yearly compliance report to stock exchange, Reconciliation of share capital Audit report and shareholding pattern for the period ended 31st March 2016 was submitted beyond the stipulated time period as required under the LODR, 2015.*
- g. *There are irregularities in relation to depositing of the amount with the authority as required under Provident Fund Act, 1952.*
- h. *The Company was unable to pay the Gratuity amount within thirty days from the date of relinquishment of the service of the employees.*

Thus, it is noted that significant violations of Companies Act, 2013, LODR Regulations and other laws have been noticed in the secretarial audit report which raise serious doubt regarding governance of ACIL.

OBSERVATIONS OF THE INDEPENDENT AUDITOR'S REPORT

- 2) Following are reported in the Independent Auditor's Report as 'Emphasis of Matter' (AR 2016-17):
- a. *Regarding Contingent Liability in relation to the Bilateral Agreement with Oil & Natural Gas Corporation Limited for operationalization of Amguri Field: As the quantum of this Contingent Liability is not ascertainable at present, no provision for liability has been made in respect to this "Onerous Contract".*
 - b. *Regarding interest free loans of Rs. 279.07 Crores given to 8 Subsidiaries and 1 step-down Subsidiary. According to Section 186(7) of the Act, "No loan shall be given under this Section at the rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closer to the tenor of the loan". The impact of this contravention on the profit / loss and the liability is not ascertainable readily. The loans are interest free and repayable on demand and since the loans are repayable on demand and no call has been made, no amount is overdue.*
 - c. *No cost record has been maintained with respect to its Oil and Gas products.*
 - d. *The Company has defaulted in repayment of Bank Term Loans of Rs.158.63 Crores, which fell due on various dates during the year ending on 31st March, 2017. The Company has also defaulted in repayment of principal part of the matured Foreign Currency Convertible Bonds amounting to USD 3.1 Million (Rs.20.10 Crores).*
 - e. *As the documented policy and procedures on Internal Financial Control are yet to be fully implemented, we are unable to evaluate the effectiveness of communication and dissemination of information on the same across the organization.*
 - f. *The evaluation of procurement process, conducted by the Management, reveals that the system of tender / multiple quotations to ensure unbiased decision is absent. The process of ensuring compliance to law and regulatory requirements needs improvement.*

As noted in the independent auditor report, ACIL has given interest free loans to 8 subsidiaries and has not made a demand for repayment of the said loans, while on the other hand, ACIL itself had defaulted in repayment of bank loans and principal part of the matured FCCBs. Further, in one of the subsidiaries namely, Gujarat Hydrocarbons and Power SEZ Ltd., only 51% shares are held by SCIL and 49% is held by another entity.

Thus, extension of an interest free loan to Gujarat Hydrocarbons and Power SEZ Ltd. compromises the interests of minority shareholders of ACIL. Further, the auditor has noted absence of controls in the procurement process of ACIL. From the above, it is noted that significant governance issues in respect of ACIL have been raised by the independent auditor. This leads to the suspicion of misuse of funds by ACIL.

ANALYSIS OF LONG TERM LOANS AND ADVANCES

- i) It is noted that with regard to the Related Parties, as mentioned in the AR-2016-17 of ACIL, it has 8 subsidiaries and 3 Step-down Subsidiaries. As per ACIL's AR for FY 2016-17 a total of Rs. 279.06 cr. and for FY 2015-16 a total of Rs. 259.66 cr. is due from subsidiaries. Out of the total loan due from subsidiaries, 90 percent is due from Gujarat Hydrocarbons and Power SEZ Ltd. (GHPSL), which, as noted above, could be the subject of significant governance issues.
- ii) Regarding the details of Long term Loans and Advances (Consolidated basis) (of Rs. 29 cr.) the following particulars have been provided by ACIL:
 - a) *Copy of Certificate from ABC Tea Workers Welfare Services showing break-up of Rs.1.05 cr.*
 - b) *Break-up of Deposits at the 14 Tea Estates of Rs. 1.74 cr.*
 - c) *Breakup of Security Deposit of Rs. 0.001 cr.*
 - d) *Copy of Account confirmation by Followel Engineering Ltd., for FY 2015-16 shows credit of interest @ 14 % of Rs. 0.79 cr. and TDS debited @10% of Rs. 0.079 cr. on interest credited. However, the copy of the account confirmation does not state Rs. 5.26 cr. as principal, Rs. 2.16 cr. as long term interest receivable, Rs. 0.83 cr. as short term interest receivable and Rs. 0.46 cr. considered as doubtful, as stated by the company.*
 - e) *Rs. 1.37 cr. pertaining to William Jacks & Co. India Ltd.*
 - f) *Copy of statement of Account from Supama Financial Services Ltd. for FY 2015-16, specified principal amount of Rs. 2.1 cr. and interest thereon @ 9 % and TDS @ 10% on interest credited.*
 - g) *Break-up of Advance to employees of Rs. 0.25 cr*
 - h) *Break-up of Sundry Advance of Rs. 0.89 cr.*

I note that no documentary evidence / supporting documents have been provided by ACIL in its submissions with regard to the/particulars / items mentioned above despite being specifically asked during the personal hearing.

iii) With regard to Gujarat Hydrocarbons and Power SEZ Ltd. (GHPSL), the subsidiary of ACIL in which it holds 51% shares, the following particulars have been provided by ACIL in its submissions:

a) Regarding the loan of Rs. 3.41 cr. to Link Holdings Pvt. Ltd, ACIL only submitted several communication letters (dated 2007-2009) indicating expression of interest for land development work located at Vilayat Gujarat Industrial Development Corporation Estate in Bharuch district by Link Holdings Pvt. Ltd and negotiating the contract terms thereafter. It is noted that Link Holdings Pvt. Ltd. vide letter dated July 14, 2008 intimated GHPSL, loss of Rs. 10 lakhs (demurrage charges), on account of default of GHPSL and further vide letter dated August 08, 2008 communicated that our contracts will no more stands valid and the amount paid by GHPSL *“as advance would be treated as forfeited and cancelled”*. However, the amount paid as advance is not mentioned in the letter and later vide letter dated May 17, 2009, GHPSL insisted on fresh contract for execution of work to be done. In this regard, it is noted that no document has been submitted by ACIL to evidence whether in 2017 the above issue was resolved or not, and therefore whether the advance needs to be written off or not. Thus, there is a suspicion of misrepresentation of financials by ACIL in this regard.

b) With regard to an amount of Rs. 3.65 cr pertaining to Ruhi India Ltd, ACIL only submitted communication letters (dated 2007-2009) indicating expression of interest for land development work located at Vilayat Gujarat Industrial Development Corporation Estate in Bharuch district by Ruhi India Ltd and negotiating the contract terms thereafter. It is noted that Ruhi India Ltd. vide letter dated June 02, 2008 intimated GHPSL, demurrage charges on account of default of GHPSL (no amount is mentioned) and further vide letter dated August 01, 2008 communicated that our contracts will no more stand valid and the amount paid by GHPSL *“as advance would be treated as forfeited and cancelled.”* However, the amount paid as advance is not mentioned in the

letter and later vide letter dated May 17, 2009, GHPSL insisted on fresh contract for execution of work to be done. It is noted that as per the MCA website, the company status is shown as “*Strike off*”.

From the above, it is noted that despite being asked for providing supporting documents in support of its submissions, ACIL has provided vague particulars of the entries appearing in the books of GHPSL and has failed to provide documentary evidence / supporting documents such as actual contracts, proofs of disbursement to entities, etc. It gives rise to a strong suspicion that the amounts shown as “long term loans and advances” have been misused. Specifically, in respect of the amount shown as loan due from Ruhi India Ltd, in my view, there is prima facie evidence of misuse of funds / accounts and a suspicion of misrepresentation of financials by ACIL since as per MCA records, the name of Ruhi India Ltd, has been struck off, which shows that loan has been shown against an entity which does not exist.

ANALYSIS OF NON-CURRENT INVESTMENTS

- 3) From the consolidated Annual report 2016-17, it has been observed that ACIL has made major non-current investments in securities of its own subsidiaries amounting to Rs. 7.6 cr. in Duncan Macneill Natural Resources Ltd.-UK, Rs. 2.9 cr. in Assam Oil & Natural Gas Ltd. and Rs. 24.95 cr. in Mexia Resources Ltd. showing in the books of Duncan Macneill Power India Ltd. (subsidiary of ACIL). In this regard, it is noted that ACIL has failed to submit certificates/evidence showing investment in compulsory convertible preference shares of Rs. 24.95 cr. of Mexia Resources Ltd. The independent auditor report of Duncan Macneill Power India Ltd. and auditor report of ACIL also made a qualification in this regard. Thus, there is a strong suspicion regarding the genuineness of the investment of Rs. 24.95 cr. made by ACIL in Mexia Resources Ltd. and consequent misrepresentation of financials by ACIL.

ANALYSIS OF NON-CURRENT ASSETS

- 4) ACIL submitted some of the details for *Other Non-current Assets* of Rs. 13 cr. as on March 31, 2016. However, it is noted that ACIL has failed to submit adequate documentary evidence / supporting documents to show the genuineness of the same.

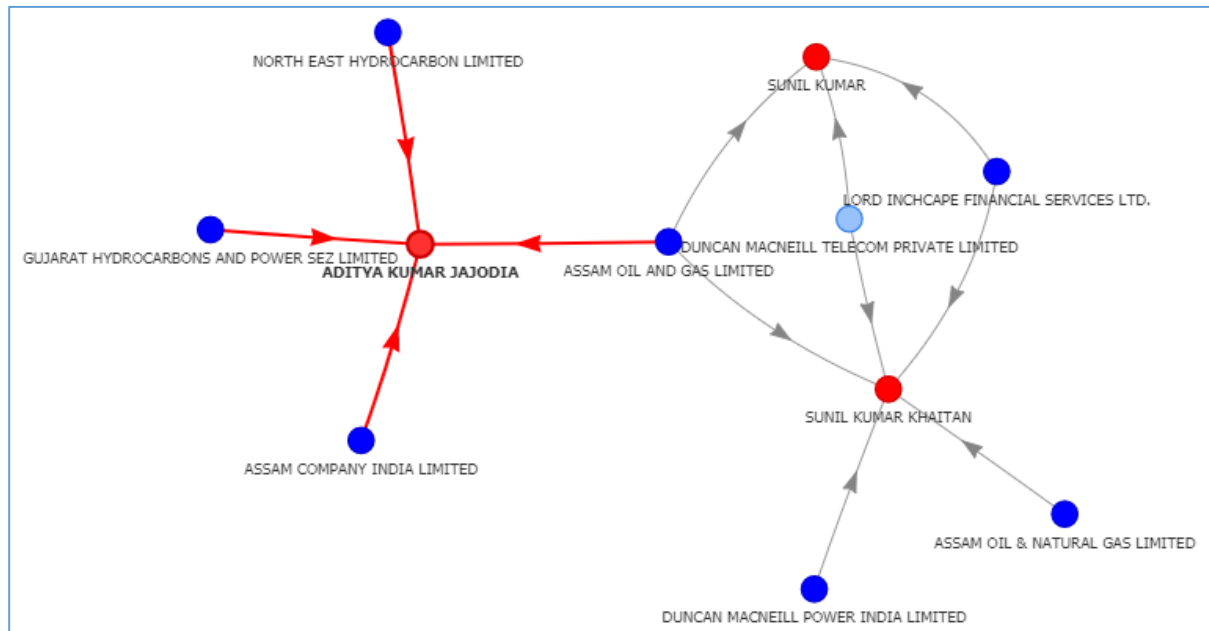
ANALYSIS OF SHORT TERM LOANS AND ADVANCE

- 5) With regard to amounts in the books of Gujarat Hydrocarbons and Power SEZ Ltd. (GHPS), the following is noted:
- a) As regards the amount of Rs. 7.15 cr. pertains to Aditya Dekoramik Pvt. Ltd, ACIL only submitted communication letters (dated 2007-2009) indicating expression of interest for land development work located at Vilayat Gujarat Industrial Development Corporation Estate in Bharuch district by Aditya Dekoramik Pvt. Ltd and negotiating the contract terms thereafter. Vide letter dated July 28, 2008, Aditya Dekoramik Pvt. Ltd acknowledged a payment of Rs. 5 cr. towards the advance payment of the contract but vide letter date August 08, 2008 stated that *“our contracts will no more stands valid and the amount paid by you as on date as advance would be treated as forfeited and cancelled”*. However, ACIL failed to submit the contract or any signed agreement between the parties showing the actual transaction of Rs. 5 cr. It is noted that Aditya Dekoramik Pvt. Ltd vide letter dated August 08, 2008 communicated to GHPSL that the contracts will no more stand valid and the amount paid by GHPSL as advance would be treated as forfeited and cancelled. However, later, vide letter dated May 17, 2009, GHPSL insisted on fresh contract for execution of work to be done. In this regard, it is noted that no document has been submitted by ACIL to evidence whether in 2017 the above issue was resolved or not, and therefore whether the advance needs to be written off or not. Thus, there is a suspicion of misrepresentation of financials by ACIL in this regard.
 - b) As regards the amount of Rs. 69.69 cr. pertaining to Duncan Macneill Telecom Pvt. Ltd. (DMTPL), ACIL submitted a copy of agreement between GHPSL and DMTPL dated April 05, 2011 to set up a world class SEZ in the fields of Hydrocarbons and Power, for a period of 2 years which shall be renewed automatically for a further period of 1 year unless terminated. In the agreement, DMTPL acknowledged receipt of Rs. 65 cr. on account of supply of materials and Rs. 14.28 cr. on account of various services rendered from time to time. The agreement is of the amount Rs. 79.28 cr. however, ACIL submitted break up for only Rs. 69.69 cr. ACIL did not submit any other document indicating whether such agreement was in existence as on 2016 as the above agreement is reported under

'short term loans & advances' in annual report of 2015-16 even though the contract is entered in 2011 for a period of 2 years extendable to further 1 year, if not terminated.

It is noted that DMTPL is a company connected with ACIL as shown in the figure below:

Fig 1: Connection between DMTPL with Assam Company India Ltd.



Source: <https://www.tofler.in/visualization?cin=U64201WB1995PTC068152>

It is noted from the figure that the directors of DMTPL are associated with subsidiaries of ACIL like Duncan Macneill Power India Ltd. and Lord Inchcape Financial Services Ltd. which *prima facie* shows that loans and advances are disbursed to associated entities where directors are common.

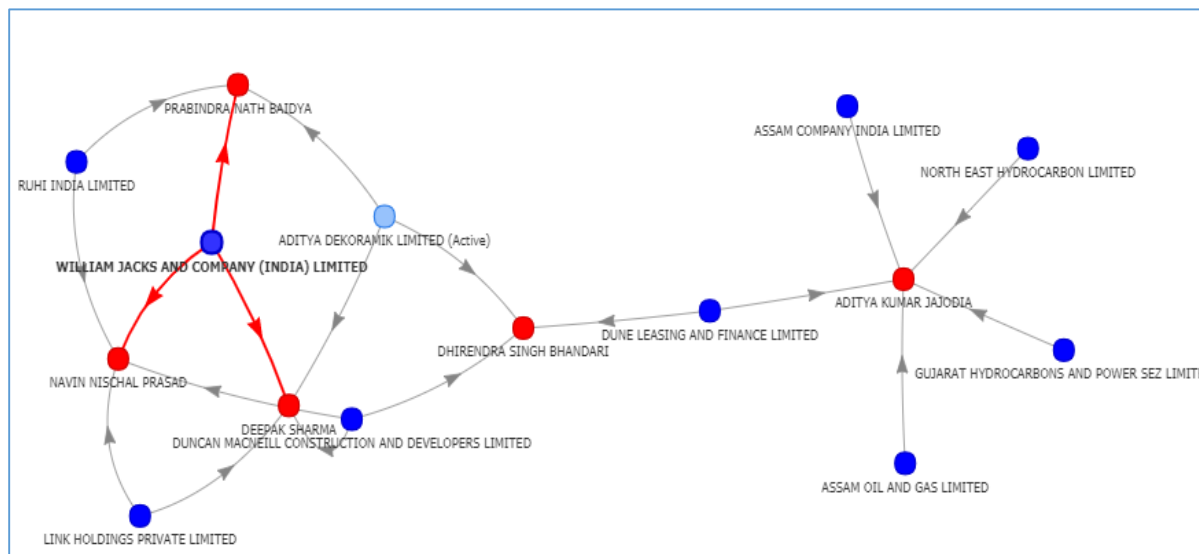
- 6) I note that ACIL has extended short term loans / long term loans and has entered into contracts with various entities which appear to be connected to it. I note that companies namely, Link Holdings Pvt. Ltd, Ruhi India Ltd., Aditya Dekoramik Pvt. Ltd., Duncan Macneill Telecom Pvt. Ltd., GHPSL, Lord Inchcape India Financial Ltd and Duncan Macneill Power India Ltd. have the same registered office address or

communication address as that of ACIL i.e. 52, Chowringhee Road, Kolkata - 700071. The connection if ACIL with few of these companies, with whom ACIL had association is illustrated below:

- Link Holdings Pvt. Ltd .(Long-term Loans and advances in the books of GHPSL)
- Ruhi India Ltd.(Long-term Loans and advances in the books of GHPSL)
- William Jacks & Co. India Ltd. (Long-term Loans and advances in the books of Assam Company India Ltd.)
- Aditya Dekoramik Pvt. Ltd (Short-term Loans and advances in the books of GHPSL)

As shown in Figure below, the above four entities are connected with each other through a common director Mr. Navin Nischol Prasad and Prabindra Nath Baidya.

Fig 2: Connection with Assam Company India Ltd.



Source: <https://www.tofler.in/visualization?cin=U64201WB1995PTC068152>

- 7) I note that provision of short term and long term loans and contractual relationships with companies which are associated with ACIL without adequate supporting documents raise a suspicion regarding genuineness and *bona fide* of the transactions.

8) It is further noted that vide order dated October 26, 2017, the National Company Law Tribunal, Guwahati Bench has ordered the commencement of Corporate Insolvency Resolution Process against ACIL which is in progress.

20. In view of the above, I observe that ACIL has failed to submit adequate documents to substantiate the figures disclosed in its financials and to establish their genuineness. In respect of explanation sought from it regarding Long Term and Short Term Loans and Advances, Non-Current Investments and other Non-Current Assets, ACIL has only provided vague particulars without providing actual documents such as contracts, disbursement records, agreements, etc. It is noted that the secretarial audit report has highlighted several non-compliances of provisions of Companies Act and other applicable laws by ACIL. ACIL has also not provided any cogent explanation regarding the adverse findings of the secretarial audit report. The independent auditor in his report has also highlighted significant governance issues in respect of ACIL and has also noted absence of controls in the procurement process of ACIL. Considering the above, in my view, there is *prima facie* evidence of misuse of books of accounts/funds by ACIL and a strong suspicion regarding misrepresentation of financials by ACIL.

Issue No. 3. *In view of the determination on the above issues, pursuant to SAT Appeal and the order of SAT in the said appeal, whether, in view of the representation of the Company, the action envisaged in SEBI letter dated August 7, 2017 needs reconsideration.*

21. In view of the *prima facie* observations regarding misuse of books of accounts/funds by ACIL, and the suspicion regarding misrepresentation of its financials, the persons who are in control of the company and the directors of the company are *prima facie* liable for action by SEBI and should not be permitted to exit the company at the cost of innocent shareholders.

22. Further, on account of the *prima facie* observations regarding misuse of books of accounts/funds by ACIL, and the suspicion regarding misrepresentation of its financials, it is also imperative that in the interest of investors, the financials of the company be independently audited to establish their genuineness.

23. Further, pending enquiry/audit, considering the interest of public shareholders involved in ACIL, I find it is appropriate to revert the trading in the securities of ACIL to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI.

24. In light of the above, I am of the view that following urgent interim actions are required to be taken, pending audit/further enquiry.

INTERIM ORDER

25. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me under sections 11, 11(4), 11A and 11B read with section 19 of the Securities and Exchange Board of India Act, 1992, hereby, modify the actions envisaged in SEBI's letter dated August 7, 2017 and the consequential actions taken by Stock Exchanges against ACIL and direct as under:

- i. The trading in securities of ACIL shall be reverted to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI.
- ii. Stock Exchange shall appoint an independent forensic auditor, *inter alia*, to verify:
 - a) Misrepresentation including of financials and/or business of ACIL,
 - b) Misuse of the funds/books of accounts of ACIL.
- iii. The promoters and directors in ACIL are permitted only to buy the securities of ACIL. The shares held by the promoters and directors in ACIL shall not be allowed to be transferred for sale by the depositories.
- iv. The other actions envisaged in SEBI's letter dated August 7, 2017 in para 1 (d), as may be applicable, and the consequential action taken by Stock Exchanges shall continue to have effect against ACIL.

26. The 'directors' for the purpose of directions above shall mean and include:

- a) the persons who are acting as directors on the date of this order, or
- b) the persons who were acting as directors of this company as on August 7, 2017, who ceased to be directors by way of disqualification by any other authority or by way of resignation or by any other means, on or after August 7, 2017.

27. Accordingly, the representations dated August 8, 2017 and August 29, 2017 made by ACIL are disposed of.
28. The above directions shall take effect immediately and shall be in force until further Orders.
29. The findings in this order have been rendered on the basis of the *prima facie* evidence available at this stage. However, detailed examination / forensic audit needs to be undertaken to unearth the entire extent of violations. In this context, ACIL is advised to file its reply/objections to this order, if any, within 30 days from the date of receipt of this order and may also indicate whether it desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard in the reply/objection. In the event ACIL fails to file its reply or to request for an opportunity of personal hearing within the said 30 days, the preliminary findings of this order and *ad-interim* directions shall stand confirmed against ACIL automatically, without any further orders.
30. Copy of this order shall be forwarded to the recognized stock exchanges and depositories for their information and necessary action. A copy of this order shall also be forwarded to the Ministry of Corporate Affairs and Serious Fraud Investigation Office for their information.

Sd/-

DATE: December 8, 2017
PLACE: MUMBAI

MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA