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**MOOT PROBLEM**

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**IN THE SUPREME COURT OF INDIA**  
(Civil Appellate Jurisdiction)

**Appeal No. 1**

The Securities and Exchange Board of India		
Southern Rocks Limited	...	Appellants
	v.	
Pacific Crest (India) Securities Private Limited	...	Respondents

**Appeal No. 2**

Southern Rocks Limited	...	Appellants
	v.	
The Securities and Exchange Board of India	...	Respondents

**Appeal No. 3**

Investor Shareholders	...	Appellants
	v.	
Southern Rocks Limited		
Aham Nagaraj		
Brahmasmi Patelia		
Opprime Tiere	...	Respondents

1. Aham Nagaraj (“**Aham**”) is a pioneer in the hospitality industry, and specifically in the luxury resorts segment. While he formally studied medicine in 1990s, Aham was highly enamoured by his close friend Brahmasmi Patelia’s (“**Brahmasmi**”) family business of providing lodges/inns to small businessmen and traders. On lighter days at work, Aham would assist Brahmasmi’s family in managing supplies and maintaining books of accounts for their inns. Through this experience of few years with Brahmasmi’s family, Aham gained considerable insight into the hospitality sector and convinced Brahmasmi to start a separate venture independent from her family business. Aham was a keen observer of the Indian economy

and society and noticed two major future trends during the mid-2000s: (a) That all national political parties of India who were expected to run governments in the next few decades, while being ardent followers of crony capitalism, had adopted and would continue the strategy of giving lip-service to international corporate governance norms and building internationally acceptable regulators to attract maximum foreign investment; and (b) that the Indian middle-class and upper-class society had finally separated morality from the reality of their quality of life and was ready to embrace the culture of staying in resorts and hotels built over displaced slums and forest land.

2. Following the above, Aham and Brahmasmi incorporated a company in 2006 with its registered office in Junagad, Gujarat under the provisions of Companies Act, 1956 and named it 'Southern Rocks Private Limited' ("**Southern Rocks**"). The primary object of Southern Rocks was to carry out business in the hospitality sector. At the time of Southern Rocks' incorporation, Aham and Brahmasmi were its first shareholders and it had a paid-up share capital of ₹ 200 million, with Aham holding two-thirds of its total shareholding. Aham was also appointed as the managing director of Southern Rocks.
3. In 2008, Southern Rocks started taking hotels and guest houses with low occupancy rates on leases in Gujarat. It would refurbish and redesign these hotels into semi-luxury hotels and then offer rooms at competitive prices. Southern Rocks exercised complete control over the day to day operations of these properties by staffing 8-10 employees in each property. Till 2011, Aham and Brahmasmi ran this model very successfully, and as part of natural progression in this sector, they decided to expand by both constructing their own properties and acquiring existing properties which were under financial stress. The type of properties they wanted to construct/acquire were luxury resorts and business hotels.
4. To achieve the abovementioned first wave of expansion, Southern Rocks approached a number of commercial banks and financial institutions for capital infusion. However, only Sansar Chand Finance Limited ("**Sansar Chand**"), a non-banking financial company with its primary focus on financing developers in the hospitality sector, showed interest in Southern Rocks. Sansar Chand's clientele is concentrated around a very limited number of customers. After extensive discussion and rounds of meetings with Aham in Mumbai, Sansar Chand agreed to lend a term loan of ₹ 2,000 million to Southern Rocks. Southern Rocks and Sansar Chand entered into a facility agreement setting out the detailed terms and conditions of the term loan. The principal terms and conditions of the facility agreement are extracted in **Annexure A**. As of March 31, 2019, Southern Rocks formed 65% of the total loan portfolio of Sansar Chand. Additionally, Sansar Chand was Southern Rocks' only lender and had funded around 60% of Southern Rocks' total expenditure on its business since 2011.
5. By utilising the money loaned by Sansar Chand, Southern Rocks constructed two luxury resorts in Uttarakhand and Kerala in the financial year 2012. Over the next one and a half

years, the revenue per room generated by these two luxury resorts was approximately 12% higher than industry standard. Buoyed by this success, Aham and Brahmasmi started planning their second wave of expansion in constructing and acquiring luxury resorts and business hotels, in order to create a huge portfolio of properties in all prominent locations across India.

6. To achieve their second wave of expansion, Aham and Brahmasmi discussed different modes of capital infusion with investment bankers and finally decided to open doors to private equity funds and institutional investors. Aham and Brahmasmi started reaching out to domestic and foreign investors at the end of 2013. In their presentations on Southern Rocks' expansion plans and future business strategies, one of the unique pitches to the prospective investors was their commitment to convert Southern Rocks into a completely professionally managed company, run by a professional team, in the interest of all its shareholders. By the third quarter of financial year 2014, Aham and Brahmasmi secured investments from eight domestic and foreign investors, independent of each other, namely, Wittgenstein Investors, Alain Investors, Kumaruppa Pvt. Ltd., Kabir Pvt. Ltd., Pash Right Ltd., Hegel Light Investments, Langdell Investments and Nagarjuna Ltd. ("**Investor Shareholders**"). All Investor Shareholders carried out their respective due-diligence processes on Southern Rocks and executed a common shareholders' agreement ("**SHA**") and individual share subscription agreements in March 2014. Pursuant to the issuance of shares to the Investor Shareholders in April 2014, the shareholding pattern of Southern Rocks stood as follows:

Sr. No.	Name of the shareholder	Percentage of shareholding in Southern Rocks
1.	Aham	9.28%
2.	Brahmasmi	8.73%
3.	Wittgenstein Investors	9.13%
4.	Alain Investors	9.13%
5.	Kumaruppa Pvt. Ltd.	9.63%
6.	Kabir Pvt. Ltd.	9.63%
7.	Pash Right Ltd.	9.12%
8.	Hegel Light Investments	9.11%
9.	Langdell Investments	9.12%
10.	Nagarjuna Ltd.	9.12%
11.	Other shareholders	8.00%

As a result of the above-mentioned investment by Investor Shareholders and the resultant dispersed shareholding, Southern Rocks converted into a professionally managed company.

7. The SHA was executed between the Investor Shareholders, Aham, Brahmasmi and Southern Rocks after several rounds of negotiations. All the inter-se transfer rights and protective

rights in the SHA were incorporated into the article of association of Southern Rocks. Summary/excerpts of certain rights are as following:

- a. Promoters: *‘The essential and indispensable nature of Southern Rocks is that of a professionally managed company and this nature of a professionally managed company will guide all its business activities and organisational actions.’*
  - b. Right of first refusal: Under the SHA, all Investor Shareholders received a right of first refusal on the shares held by Aham and Brahmasmi. The right of first refusal clause read as follows *‘in case either Aham or Brahmasmi or both decide to transfer all or any part of their shares held by them (such number of shares as held by them at that relevant time) to any person, Aham or Brahmasmi or both, as the case may be, hereby unconditionally and irrevocably grant to each Investor Shareholder, a prior right to purchase such number of shares in proportion of each Investor Shareholder’s shareholding in Southern Rocks.’*
  - c. Composition of the board of directors: Under the SHA, the board must consist of ten directors, in the following manner: (i) one managing director, preferably Aham, subject to agreements entered into by Southern Rocks; (ii) four non-executive nominee directors representing the following four groups of Investor Shareholders: (a) Wittgenstein Investors and Kumarappa Pvt. Ltd.; (b) Kabir Pvt. Limited and Hegel Light Investments; (c) Langdell Investments and Pash Investments; and (d) Pash Right Ltd. and Alain Investors.; (iii) one non-executive director who would also be the chairman of the board of directors; and (iv) four independent directors.
  - d. Entrenchment: Under the SHA, the percentage of votes of members required to pass any item for which a special resolution is required under applicable law, was increased and entrenched from the statutory requirement of 75% of the votes casted to 90% of the votes casted.
  - e. Initial Public Offering of shares: Under the SHA, Southern Rocks is required to complete an initial public offering of its shares on a recognised stock exchange (“**IPO**”) by the end of Financial Year 2020, at a valuation agreed upon by all the Investor Shareholders. In the event Southern Rocks fails to complete the IPO within the time period stipulated above, then Southern Rocks is obligated to compensate all Investor Shareholders in accordance with the compensation clause in the SHA.
8. After securing capital infusion by Investor Shareholders, Southern Rocks went on an acquisition and construction spree for the next four years. By the end of financial year 2019, Southern Rocks had a portfolio of 10 medium and small luxury resorts and four business hotels in India. Out of these, four luxury resorts are located in Kerala, and contributed 55% to the total revenue contribution of the luxury resort portfolio. This acquisition and construction spree was also fuelled by further loans provided by Sansar Chand in two

tranches in 2015 and 2018, respectively. The facility agreement dated June 6, 2011 was suitably amended. At various occasions during the tenure of the facility agreement, Southern Rocks had breached financial and operational covenants under the facility agreement, including the revenue per available room covenant. While Sansar Chand waived off such defaults, they secured certain extra rights through amendments to the facility agreement in the years 2015, 2016 and 2018. One such instance of exercise of these new rights was seen in 2018, when for the appointment of a certain individual as its chief financial officer, Southern Rocks requested approval of Sansar Chand. After a week of consideration, Sansar Chand orally communicated to Southern Rocks that while they have not reached upon a final decision on the approval request, they would advise Southern Rocks to reconsider the appointment of the concerned person as its chief financial officer. Following this, before the Sansar Chand could arrive at a final decision, Southern Rocks proposed another individual as its chief financial officer and the same was approved by Sansar Chand.

9. In April 2019, a year before the contractual cut-off date for the initial public offering, Southern Rocks initiated preparations for its initial public offering of its shares (“**IPO**”). As is customary in IPO transactions, Southern Rocks contacted prospective merchant bankers, held meetings with them and shortlisted Kamra Securities Private Limited as its lead merchant banker, along with Pacific Crest (India) Securities Private Limited (“**Pacific Crest**”) as the other merchant banker (together as “**Merchant Bankers**”). Pacific Crest and Kamra Securities Private Limited entered into an ‘offer agreement’ (“**Offer Agreement**”) with Southern Rocks, to provide their services as merchant bankers in the IPO. The Offer Agreement laid out the terms of the IPO, representations by Southern Rocks on due-diligence items and the duties of Southern Rocks and the Merchant Bankers. The relevant terms and conditions of the Offer Agreement are extracted in **Annexure D**.
10. Pacific Crest is registered with the Securities and Exchange Board of India (“**SEBI**”) as a merchant banker and is the Indian arm of Pacific Crest Group, Inc. (“**PC Group**”), a globally recognised and well-regarded investment banker firm. Pacific Crest is one of PC Group’s most important arms, financially and reputation-wise. Pacific Crest’s importance is underlined by the fact that Pacific Crest is the only arm which has been licensed to use PC Group’s brand name. Pacific Crest is engaged in investment banking, investment management of securities, and other financial services and has a significant presence in the investment banking space with the entity involved in various marquee fund raising deals over the years. Pacific Crest’s clientele comprises foreign portfolio investors through its global associations.
11. During Pacific Crest’s discussion with Southern Rocks, Pacific Crest also got in touch with another company in the hospitality industry, named Fig Leaf Hotels Private Limited (“**Fig Leaf**”) for a possible initial public offering of Fig Leaf’s shares. The possible issue size of the initial public offering of Fig Leaf was touted to be ₹ 1,500 million, which would then be used

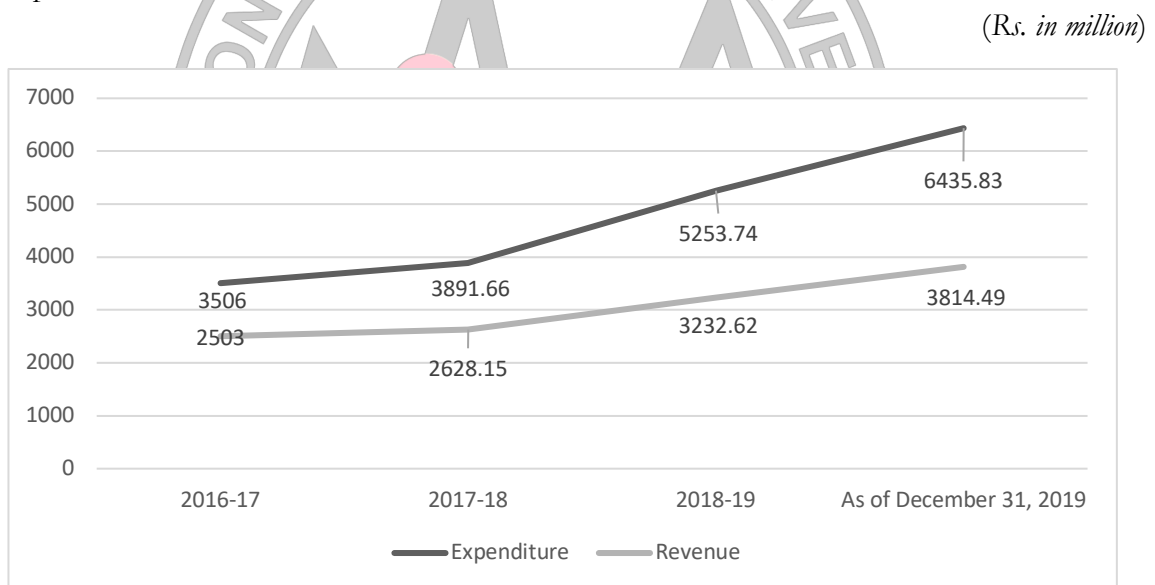
to repay the lenders of Fig Leaf. Fig Leaf is one of the largest hotel companies by number of hotels and has one of the most geographically diverse portfolio of 30 luxury as well as business hotels in India. However, Pacific Crest saw higher possibility of a successful initial public offering with Southern Rock and hence decided to be their lead merchant banker.

12. In May 2019, the merchant bankers and their lawyers initiated due-diligence processes on Southern Rocks to prepare the draft red herring prospectus (“**DRHP**”) for the IPO. The due-diligence process involved extensive discussions with Southern Rocks about their business model and future strategies, review of their statutory filings, capital structure, agreements as well as loan documentation. As part of the statutory requirement for an IPO, Southern Rocks converted from a private limited company to a public limited company in November, 2019. The Investor Shareholders and their lawyers also reviewed those parts of the DRHP that were relevant to them as part of the IPO process. The offer in the IPO consisted of a fresh issue of shares to raise up to ₹ 3,250 million and an offer of sale by all Investor Shareholders to the extent of 10% of their pre-IPO shareholding. The finalised DRHP, which consisted of 626 pages, was prepared over the next six months and was electronically filed with the Securities and Exchange Board of India on January 3, 2020.
13. On January 5, 2020, all the Investor Shareholders received anonymous letters, bringing their attention to a specific disclosure in the DRHP concerning a certain shareholders’ agreement entered into between Aham and Opprime Tere, a small shareholder of Southern Rocks (such individual to be referred to as “**Opprime**” and this shareholders’ agreement to be referred to as “**A-O SHA**”), under which Aham had granted Opprime a right of first refusal over his shares and Opprime had granted Aham a right of first refusal over his shares (such right to be referred to as “**RoFR**”). The Investor Shareholders immediately reached out to Aham and Southern Rocks on this issue. Over the next ten days, it came to light that before the first wave of expansion of Southern Rocks, Aham and Brahmasmi used to regularly reach out to their friends and relatives to cover small-sized expenditures. In return for this financial support, Aham and Brahmasmi would get Southern Rocks to issue a small number of shares to such friends and relatives (such friends and relative to be referred to as “**Small Shareholders**”), and just to formalise the arrangement, Aham would enter into a shareholder agreement with boilerplate clauses, with these Small Shareholders. Such shareholder agreements were never negotiated or discussed between Aham and the Small Shareholders and nor were the terms ever incorporated into the articles of association of Southern Rocks. Opprime was one such friend of Aham who had subscribed to 0.73% (shareholding percentage on a fully diluted basis, as of January 4, 2020) of Southern Rocks’ shares for ₹ 20 million in 2010 and had entered into one of the abovementioned shareholders’ agreement with Aham. A copy of the A-O SHA was provided to the Investor Shareholders on January 13, 2020 after their prolonged insistence. The principal terms and conditions of the A-O SHA agreement are extracted in **Annexure C**. Following this, two meetings were held

between Aham and the Investor Shareholders, which turned into heated exchanges. However, no definite resolution was reached upon.

14. Meanwhile in mid-January, SEBI officials requested the merchant bankers to meet them at their offices. At this meeting held on January 17, 2020, SEBI raised concerns about certain disclosures in the DRHP. The merchant bankers responded to these concerns promptly in the meeting itself. Subsequent to the meeting, the Merchant Bankers in their unofficial capacity reached out to investors in different jurisdictions with whom they have had past associations in order to gauge their response towards the IPO. The Merchant Bankers informed the investors about Southern Rocks' achievements, financial performance and possible business strategies. However, the investors gave a tepid response and softly indicated that they are tying-up most of their yearly funds allocated for the hospitality sector for the possible initial public offer of Fig Leaf.
15. Meanwhile in January, 2020, a new disease called *Advorsus* began developing in South Asia. The presence of hot humid climates along with concentrated housing and high population levels in this area caused the disease to spread quickly. This disease was characterised by the growth of rapid boils all over one's body, with high fever. Scientists across the world were horrified at this development, and likened it to the smallpox epidemic. Most countries issued warnings against travel to Asian countries that reported confirmed cases of the outbreak including India. India also banned the entry of any individual (other than Indians) who were in South Asia during the outbreak period. No cure for this disease was in sight, and scientists were working hard to discover how it was transmitted. Most of the outbreak in India was limited to coastal states, causing many to fear a link between humidity and the disease. Nearly 3,000 cases were reported in January 2020 in solely the state of Kerala. Some medical journals like the *Medicine Today* Journal reported studies claiming that this disease was transmitted by skin contact, while others like the *Greys Anatomy Journal* reported that it was transmitted through the respiratory system. However, one thing was certain- this disease was incomparable to any other ever seen by the Asian world.
16. *Advorsus* led to the first economic slowdown concentrated in the South Asian Region, with prominent business journals predicting a Great Depression like situation in the region. LibGen LLP, a South Asian consulting firm known for its market research in the hospitality industry and its accuracy in predictions of future trends, published a report on the impact of *Advorsus* on the hotel industry in India on January 26, 2020. A relevant excerpt of the same is extracted as **Annexure E**. Soon after the break-out of news of *Advorsus*, there was a sudden steep downturn in the stocks of many sectors including automobile, hospitality and travel, manufacturing, in Asia. People began spending less, and the overall consumer demand in the economy was at an all-time low.

17. Following the outbreak, the Merchant Bankers met Southern Rocks’ officials met on January 28, 2020 and discussed the impact of *Advorsus* on their business, specifically in relation to their luxury resorts. The officials clearly communicated the following two impacts to the Merchant Bankers: (a) that their luxury resorts in Kerala have been very hard hit by *Advorsus*; and (b) approximately 50% of their revenue in their business hotels segment was dependent on the South Asian corporate clientele whom they have had recent tie-ups with (they had entered into tie-ups with their South Asian corporate clientele in March 2018), which has now been completely decimated due to the travel bans implemented by the Indian government.
18. Southern Rocks also conveyed in passing that they have received a letter from Sansar Chand on the likelihood of breach of certain financial and operational covenants in the future owing to impact of *Advorsus* on the Company’s financials. However, they assured the Merchant Bankers that the above is not going to affect Southern Rocks’ financial in the long term and the Merchant Bankers communicated their satisfaction to the officials of Southern Rocks about the same. Following is the expenditure and revenue graph for Southern Rocks from April 1, 2016 till December 31, 2019.



19. Thereafter, at noon on January 31, Pacific Crest sent a notice to Southern Rocks to terminate the Offer Agreement stating the following, ‘*Pacific Crest is of the view that Advorsus has severally impacted the operations and financial condition of Southern Rocks and the same amounts to a ‘material adverse change’ under the Offer Agreement. Therefore, under Clause 21.2 read with Clause 2(n) of the Offer Agreement, Pacific Crest hereby terminates its services for the initial public offering of Southern Rocks with immediate effect.*’ Along with this termination notice, Southern Rocks was also apprised that in the last week of January 2020, Fig Leaf released a press note announcing that it is in advanced stages of selecting investment bankers for its initial public offer in India. Also, on February 1, 2020, there were certain unsubstantiated reports in business newspapers that Fig Leaf has



reached out to Pacific Crest to act as its lead merchant banker for its initial public offer and Pacific Crest agreed to the same in-principle. Reacting to these reports, the Chairman of the Association of Eminent Investment Bankers of India (which is a registered self-regulatory organisation with SEBI) strongly condemned Pacific Crest's move of backing out of the IPO to service Fig Leaf's initial public offer.

20. Following the surprising events in the first half of January 31, 2020, SEBI sent a rejection order rejecting the DRHP under the SEBI (Framework for Rejection of Draft Offer Documents) Order, 2012 at 4 p.m. on the same day. SEBI provided the following two reasons for rejecting the DRHP: 1) That it is wrongly stated in the DRHP that Southern Rocks is a professionally managed company, as Southern Rocks failed to identify Sansar Chand as its promoter; and 2) That it does not agree with Southern Rocks' analysis in Risk Factor No. 7 (refer to **Annexure B**) that Aham is unlikely to be disqualified to act as the managing director of Southern Rocks and that imminent likelihood of Aham being disqualified to act as the managing director of Southern Rocks will adversely affect the interests of prospective investors.
21. Shocked by the events that took place on January 31, Southern Rocks undertook the following two steps on February 4, 2020:
  - a. In relation to the termination notice by Pacific Crest: It instituted a complaint with SEBI against Pacific Crest, alleging that Pacific Crest had invoked the material adverse change clause with a *mala-fide* intention and so as to free itself to service a competitor's initial public offer, thereby violating the duties and conduct that Pacific Crest must have followed under applicable law.
  - b. In relation to SEBI's rejection order: It instituted an appeal ("**SAT Appeal**") before the Securities Appellate Tribunal, Mumbai ("**SAT**"), arguing that the DRHP cannot be rejected as i) Sansar Chand cannot be characterised as the promoter of Southern Rocks; and ii) reiterated its legal stand that Aham will not be disqualified from acting as a director on the board of Southern Rocks.
22. In the intervening period, in relation to the second reason for the rejection of the DRHP, it came to the Investor Shareholders' knowledge that the positive legal opinion (issued by a senior advocate of the Delhi High Court) provided to them by Southern Rocks on the issue of Aham's qualification to act as a director on the board of Southern Rocks (provided to the Investor Shareholders in November, 2019 to provide them comfort in relation to the possible disqualification), was not the only legal opinion that the Company obtained in this regard. Before they received the positive legal opinion, Southern Rocks had approached a senior advocate of the Bombay High Court, who had orally communicated an unfavourable legal opinion (opining that there is a high likelihood of Aham getting disqualified), following which

Southern Rocks went to the senior advocate of the Delhi High Court, who also happened to be a regular legal representative of Kamra Securities Private Limited in the courts of Delhi.

23. Following this, on February 6, 2020, all the Investor Shareholders instituted a class action under the Companies Act, 2013 before the National Company Law Tribunal (“**NCLT**”), praying for a direction that in light of the right of first refusal provided to the Investor Shareholders and in the interest of the essential nature of Southern Rocks, Aham should be forced to nullify the RoFR provided to Opprime under the A-O SHA, thereby upholding the articles of association of Southern Rocks. Additionally, the Investor Shareholders also claimed damages to the tune of ₹ 2,000 million from Aham and Brahmasmi for their fraudulent conduct. The Investor Shareholders also impleaded Opprime in the proceedings.
24. After a month of silence, SEBI on March 10, 2020 passed an order (“**SEBI MB Order**”) in relation to the complaint instituted by Southern Rocks against Pacific Crest. In its order, SEBI found that Pacific Crest had violated relevant securities regulations by failing act as a securities market intermediary and fulfilling their statutory duties as a merchant banker. SEBI noted that Pacific Crest triggered the material adverse change clause wrongfully and surreptitiously to end its association with the IPO. The SEBI MB Order barred Pacific Crest from carrying out activities in the capacity of a merchant banker for nine months. Pacific Crest instituted an appeal against the SEBI MB Order before SAT, which overturned the SEBI MB Order. SEBI and Southern Rocks instituted an appeal against SAT’s order (“**Appeal No. 1**”) before the Supreme Court of India.
25. On April 1, 2020, SAT pronounced its judgment on the SAT Appeal, where it upheld SEBI’s rejection order. Facing a grave crisis, Southern Rocks instituted an appeal against SAT’s order before the Supreme Court of India (“**Appeal No. 2**”). Meanwhile, NCLT pronounced its judgment in relation to the class action on April 2, 2020 where they rejected both the prayers on the grounds that the Investor Shareholders (a) failed to prove the ingredients of a class action; and (b) failed to prove that the RoFR is required to be nullified. The NCLT accepted Aham’s argument that the RoFR has no legal effect and is in fact dead letter. Post NCLT’s judgment, the Investor Shareholders were still of the view that the RoFR has the force of law and that it is essential to get it nullified. They approached the National Company Law Appellate Tribunal (“**NCLAT**”) against NCLT’s order, which on June 30, 2020, upheld NCLT’s order. Facing this double disappointment, the Investor Shareholders preferred an appeal against NCLAT’s order before the Supreme Court of India (“**Appeal No. 3**”).
26. In light of Appeal No. 1, Appeal No. 2 and Appeal No. 3 arising from common facts and interdependent interests, the Supreme Court of India decided to club all the three appeals and hear them together on the date of the oral rounds. None of the parties has raised any issue regarding the jurisdiction of the court, which they all accept.

***Annexure – A***

**Excerpts of the facility agreement dated June 6, 2011 between Southern Rocks (the “Borrower”) and Sansar Chand (the “Lender”), as amended from time to time.**

Clause 17.1 – Undertakings - The Borrower shall not undertake any of the following actions without the prior written consent of the Lender:

- 17.1.1 Changing the authorised share capital, issued, subscribed or paid-up share capital (including any equity securities) of the Borrower; or
- 17.1.2 Raising any unsecured debt (other than in relation to trade creditors); or
- 17.1.3 Materially changing the compensation or roles and responsibilities of the chief financial officer and chief executive officer of the Borrower<sup>1</sup>;
- 17.1.4 Acquiring of any new hotel property exceeding an amount of ₹ 800 million; or
- 17.1.5 Undertaking any type of guarantee obligations on behalf of any person or any third party; or
- 17.1.6 Acquiring any company or any shares or any partnership interest or securities, business, assets or undertaking or make any investment other than in the ordinary course of business; or
- 17.1.7 Any re-organisation, merger, arrangement, or recapitalisation of the share capital, or cancellation or otherwise re-organising; or
- 17.1.8 Incurring indebtedness (including by way of guarantee) exceeding an amount of ₹ 500 million for borrowed money, otherwise than in accordance with the ordinary course of business; or
- 17.1.9 Creation of subsidiaries whether by formation, acquisition or otherwise; or
- 17.1.10 The commencement, defence or settlement by the Borrower of any litigation, arbitration or other proceedings which may give rise to a claim or liability in excess of an amount of ₹ 20 million; or
- 17.1.11 Declaring or paying any dividend;
- 17.1.12 Make any change to the general nature of its business as being carried out as of June 6, 2011; or
- 17.1.13 Prepay any indebtedness incurred from any entity and/ or person other than the Lender; or
- 17.1.14 Enter into any lease deed with an owner any hotel property wherein the annual rent for such hotel property is more than 20% of the net revenue from that hotel property; or<sup>2</sup>
- 17.1.15 Enter into or permit to subsist any other preferential arrangement having a similar effect; or
- 17.1.16 Convey, sell, lease, transfer or assign or otherwise dispose of (or agree to any of the foregoing) all or any part of its hotel assets or right, title or interest to or in any hotel assets; or

<sup>1</sup> Inserted through third amendment to the facility agreement, with effect from December 7, 2018.

<sup>2</sup> Inserted through first amendment to the facility agreement, with effect from May 3, 2015.

17.1.17 Enter into any partnership, profit sharing, royalty or other such arrangement by which the income or the profit relating to the hotel assets might be shared with any third parties; or

17.1.18 Make any amendments to the charter documents of the Borrower;

Clause 17.2 - In the event of any vacancy in the position of independent director(s) or chief executive officer of the Borrower, the Borrower shall request the Lender for a list of recommendations and thereafter choose independent director(s) or the chief executive officer from such list. The appointment of the chief financial officer of the Borrower will always be subject to the written approval of the Lender.<sup>3</sup>

Clause 17.3 - In the event of any vacancy in the position of managing director of the Borrower, the Borrower shall request the Lender for a list of recommendations and thereafter choose a managing director from such list. However, in case the Borrower appoints a managing director from outside the list of recommendations, then such appointment will be subject to the written approval of the Lender.<sup>4</sup>

Clause 17.4 - The Borrower shall, as and when required by a written notice from the Lender, shall consider changes in the positions of the managing director, chief financial officer, suitable technical, financial and executive staff holding key posts.<sup>5</sup>

Clause 17.5 - The Borrower shall constitute such committees of the board of directors with such composition and functions as may be required by the Lender for close monitoring of different aspects of its operations and working.<sup>6</sup>

Clause 17.6 – The Lender shall have the right to appoint, whenever they consider necessary, any person, firm, company or association of persons engaged in technical, management or any other consultancy business to inspect and examine the working of the Borrower and its hotels and to report the same to the Lender.<sup>7</sup>

Clause 17.7 - The Borrower shall ensure that the revenue per available room (“**RevPar**”) of the Hotels shall be a minimum of the rates provided hereunder at the end of each of the time periods as mentioned below and the Lender shall be entitled to monitor/ review the RevPar below on a half-yearly basis:<sup>8</sup>

Period	January 1, 2020 – December 31, 2020	January 1, 2020 – December 31, 2021	January 1, 2022 – December 31, 2022	January 1, 2023 – December 31, 2023	January 1, 2024 – December 31, 2024
Rate	₹ 2195/-	₹ 2415/-	₹ 2657/-	₹ 3075/-	₹ 3897/-

<sup>3</sup> Inserted through third amendment to the facility agreement, with effect from December 7, 2018.

<sup>4</sup> Inserted through third amendment to the facility agreement, with effect from December 7, 2018.

<sup>5</sup> Inserted through third amendment to the facility agreement, with effect from December 7, 2018.

<sup>6</sup> Inserted through third amendment to the facility agreement, with effect from December 7, 2018.

<sup>7</sup> Inserted through first amendment to the facility agreement, with effect from May 3, 2015.

<sup>8</sup> Inserted through first amendment to the facility agreement, with effect from May 3, 2015.

Clause 18.1 – Operating Plan - Before 30 days prior to the end of each calendar year during the term of this agreement, the Borrower undertakes to provide a proposed operating plan (including operating expenses and capital expenditure) for the next calendar year.<sup>9</sup>

Clause 18.2 - Such operating plan shall include (i) monthly profit and loss forecasts with comparison to the prior calendar year; (ii) monthly cash flow forecasts; (iii) sales and marketing plan; (iv) budget for ordinary repairs and maintenance budget; and (v) budget for all repairs, alterations, improvement, replacements, renewals, and additions to the structure or exterior faced of the hotel premises (“**Capital Expenditure**”).<sup>10</sup>

Clause 18.3 – Upon receipt of the aforesaid operating plan, the Lender will have the right to provide any reasonable suggestions thereto within a period of 10 days. Further, if such reasonable suggestions are not incorporated, the Borrower will provide reasons for the same. However, if there is any suggestion with respect to the Capital Expenditure, such suggestion will necessarily be required to be incorporated in the operating plan before giving effect to it.<sup>11</sup>

Clause 20.1 - Consequences of default - In the case of any event, act, omission or condition which is or which amounts to non-compliance of any of the obligations under this agreement, the Lender may at any time with immediate effect by a notice in writing to the Borrower:

- (a) accelerate the repayment of the debt; or
- (b) declare all outstanding amounts/ monies/ amounts due, owing or outstanding under this agreement as being immediately due and payable or otherwise payable on demand; or
- (c) convert at its option the whole of the outstanding amount of the loan amount (principal, interest and other amounts due and payable thereon) whether due or not into fully paid-up equity shares of the Borrower, in accordance with the applicable laws, by giving a notice in writing to the Borrower. Such conversion shall never be less than 10% of the paid-up capital of the Borrower at the time of the conversion.<sup>12</sup>

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<sup>9</sup> Inserted through second amendment to the facility agreement, with effect from January 3, 2016.

<sup>10</sup> Inserted through second amendment to the facility agreement, with effect from January 3, 2016.

<sup>11</sup> Inserted through second amendment to the facility agreement, with effect from January 3, 2016.

<sup>12</sup> Inserted through third amendment to the facility agreement, with effect from December 7, 2018.

*Annexure - B*

**Excerpts of the Risk Factors section from the draft red herring prospectus of Southern Rocks Limited**

Risk Factor No. 7: Aham Nagaraj, our Managing Director is currently disqualified from one of the companies where he is a director, and he may be required to vacate his directorship from the Board of Directors of our Company.

Our managing director, Aham Nagaraj, is a non-executive director on a company named Nero Private Limited (“Nero”). For the financial years 2016 and 2017, Nero had three directors on its board – a) Mr. Kobe as an executive director; b) Mr. Bryant as a non-executive director; and c) Aham Nagaraj. In September 2017, due to certain reservations with respect to certain related party transactions entered into by Nero in financial year 2016, Mr. Bryant declined to sign the financial statements of Nero for financial year 2016. Mr. Kobe and Aham Nagaraj, after satisfying themselves about the legality of the related party transactions, tried their best to persuade Mr. Bryant about the legality of the controversial related party transactions. However, Mr. Bryant did not change his stand and declined to sign any of the statutory filings, including the financial statements till financial year 2018. Mr. Kobe retired by rotation in the financial 2017. After Mr. Kobe vacated his directorship, no more board meetings were held and therefore no new director was appointed to Nero’s board.

Due to the failure of filing of statutory filings for Nero as mentioned above, we believe that Aham Nagaraj might be disqualified from acting as a director on the board of Nero. However, since there was no non-feasance or mal-feasance on the part of Aham Nagaraj while carrying out his duties as a director of Nero, we believe that Aham Nagaraj is not disqualified from acting as director on the board of other companies.

However, in case Aham Nagaraj is found to be disqualified by any governmental, regulatory or judicial body, considering his influence in the growth, goodwill and operations of the Company, his disqualification will have a material adverse impact on our business, financial results and results of operation.

*Annexure – C*

**Excerpts of the Shareholders' Agreement dated September 2010 between Aham Nagaraj and Opprime Tiere.**

Clause 2(c) – Definition of a 'Company' – For the purposes of this Shareholders' Agreement, Southern Rocks Private Limited will be referred to as the 'Company'.

Clause 2(k) – Definition of a 'Share' – For the purposes of Clauses 2, 3.3, 4, 5, 6, 7 and 9, a 'share' means, as existing from time to time, the equity shares, preference shares, warrants, options, rights or any other similar instruments of the Company.

Clause 3.4 - Right of First Refusal on all shares held by Aham Nagaraj – Subject to applicable laws of the Republic of India, in the event Aham Nagaraj ("**Transferor**") decides to transfer (directly or indirectly) all or part of the shares ("**Transfer Shares**") held by him to any person, the Transferor hereby unconditionally and irrevocably grants to Opprime Tiere ("**Right Holder**"), a prior right to purchase such number of Transfer Shares and the remaining number of the shares held by the Transferor.

Clause 3.5 - Right of First Refusal on all shares held by Opprime Tiere - Subject to applicable laws of the Republic of India, in the event Opprime Tiere ("**Transferor 2**") decides to transfer (directly or indirectly) all or part of the shares ("**Transfer Shares**") held by him to any person, the Transferor 2 hereby unconditionally and irrevocably grants to Aham Nagaraj, a prior right to purchase such number of Transfer Shares.

Clause 3.7 – Consideration for acquisition of shares by the Right Holder under Clause 3.4 – In case the Right Holder decides to exercise its right under Clause 3.4, then the consideration to be paid to the Transferor to buy each share will be the valuation of a single share as reached upon according to the valuation procedure enumerated in Clause 3.8 of this agreement, plus ten percent of such valuation. For example, if the valuation of a single share, as calculated under Clause 3.8 is ₹ x, then the consideration for such a share to be paid by the Right Holder to the Transferor for such a share will be ₹ x + ₹ 0.1x.

Clause 6 – Termination – This Shareholders' Agreement will terminate on the earliest occurrence of: (a) the date on which this Shareholders' Agreement is terminated mutually by all parties; or (b) one hundred and twenty two months from the date of completion of the issuance of shares to Opprime Tiere under this Shareholders' Agreement; or (c) the date on which Opprime Tiere ceases to hold any shares in the Company.

Clause 7.9 – Survival – Clauses 2, 3.1 and 5 shall survive the termination of this Shareholders' Agreement.

***Annexure – D***

**Excerpts of Offer Agreement dated January 2, 2020 executed amongst Southern Rocks, Investor Shareholders, Pacific Crest and Kamra Securities Private Limited**

Clause 2(c) – Definition of a ‘Company’ – For the purposes of this Offer Agreement, Southern Rocks Private Limited will be referred to as the ‘Company’.

Clause 2 (n) – Definition of a ‘Material Adverse Change’ – It means any change, event, development, condition, or effect that, individually or when taken together in the aggregate, has had and could as reasonably be expected to have a material adverse change, as determined by the Merchant Bankers in their sole discretion acting reasonably, severally and not jointly, on the assets, liabilities, financial conditions, revenue, business, management, operations, or prospects of the Company, whether or not arising in the ordinary course of business, or (b) in the ability of the Company to conduct their businesses; or (c) in the ability of the Company to perform its obligations under, or to consummate the transactions contemplated by, this Offer Agreement, including the issuance and allotment of the shares contemplated herein or therein.

Clause 21.1 - Term and Termination - The Merchant Bankers' engagement have commenced from May 19, 2020, and shall, unless terminated earlier pursuant to the terms of this Offer Agreement, continue until (i) the listing of the shares on the stock exchanges pursuant to the IPO, or (ii) such other date as may be mutually agreed to between the parties to this agreement. In the event this agreement is terminated before the listing of the shares on the stock exchanges, the parties to this agreement agree that the draft red herring prospectus, the red herring prospectus and/or the prospectus, as the case may be, will be withdrawn from the Securities and Exchange Board of India as soon as practicable after such termination.

Clause 21.2 - Notwithstanding anything contained in Clause 21.1 above, each Merchant Banker may, unilaterally terminate this agreement, by a written notice to the Company, in respect of itself, if there shall have occurred any Material Adverse Change that makes it, at the sole discretion of the concerned Merchant Banker (which shall be exercised reasonably), impracticable or inadvisable to proceed with the offer, sale, allotment, delivery or listing of the shares.

Clause 21.3 - In the event, any of the Merchant Bankers terminates this agreement, such Merchant Banker will not act as a merchant banker for any other company engaged in the similar business as of the Company, for a period of next three (3) months from the date of the aforesaid written notice. However, in case any of the Merchant Bankers terminates this agreement pursuant to a Material Adverse Change, then it shall be free to act as a merchant banker for any other company, including for companies engaged in similar business.



***Annexure - E***

**Excerpts of the report on the impact of *Advorsus* on the hotel industry in India dated January 26, 2020.**

*“The outbreak of Advorsus which is yet to peak, has already caused loss of human lives and disruption to society. Its impact, both at macroeconomic and individual corporation level, is expected to be more severe and far reaching. As it continues to spread around the world, businesses are starting to see the effects of the same on the economy. There could be possible economic losses to the travel, tourism and intensive manufacturing sectors. The hospitality and travel industry is facing the rapid spread of Advorsus with direct consequences. Hospitality and other stocks across the world are in downward spiral. India had recently become a welcome destination for several tourists particularly owing to its soothing climate in the months of January-April in its attractive Southern destinations. Several South Asian families found it more affordable to make an overseas trip to India, rather than travelling to Europe or America. Further, increasing business ties between India and South Asia made business trips to India much more frequent ... With respect to effect of global events, historically it has been witnessed that hotels which cater to business travellers are prone to the macro-economic indicator whereas hotels which cater to leisure travellers show a greater sensitivity to non-economic factors such as terror attacks, health related travel warnings, etc. For instance, in FY 2008-09, the hotel industries faced a slow down on account of the Mumbai terror attacks and the swine flu linked travel advisories. Consequently, the average revenue per room of ten major states of India (including Delhi, Maharashtra, and Kerala) had registered a steep decline in FY 2008-09 and 2009-10... Tourism in India may be hit hard by travel restrictions and fears of contagion, including a ban on both domestic and international tour groups, however the full effects are still uncertain and unfolding. These may depend on new discoveries about the nature of Advorsus which may lead way to a hopeful possible cure...”*