

APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

MP-FE-65/CHN/2021 (Stay)
FPA-FE-33/CHN/2021

Union of India
Through Assistant Director
Directorate of Enforcement, Chennai ... Appellant

Versus

1. The Commissioner of Customs
(Appeals-I), Chennai ... Respondent
2. Shri S. Jagathrakshakan ... Respondent
3. Smt. Anusuya (Deceased) ... Respondent
4. Ms. J Sri Nisha ... Respondent
5. Shri J Sundeep Aanand ... Respondent

Advocates/Authorized Representatives who appeared

For the Appellant (ED) : Mr. Pranav Mishra, Advocate
Mr. Mohd. Wasay Khan, Adv.

For the Respondent : Mr. R. Venkatesh, Advocate
Mr. K. Suresh, Advocate

CORAM

SHRI BALESH KUMAR : MEMBER
SHRI RAJESH MALHOTRA : MEMBER

FINAL ORDER
21.05.2026

This Order disposes of the Appeal No. FPA-FE-33/CHN/2021 filed by the Union of India, through Assistant Director, Directorate of Enforcement, Chennai against the Order No. 01/2021 dated 03.02.2021 (Impugned Order) passed by the Competent Authority, Commissioner of Customs (Appeals-I), Chennai under Section 37 A (3) of Foreign Exchange Management Act, 1999 (FEMA). Ld. Competent Authority (CA) vide the Impugned Order has set aside the Seizure Order dated 11.09.2020. Vide the Seizure Order dated

11.09.2020 seizure had been effected of the properties held in the name of Shri S. Jagathrakshakan in India, valued at Rs. 17,23,59,458/- as listed in the Annexure-A to the said Order; also effected seizure of the properties held in the name of Ms. J Anusuya in India valued at Rs. 26,60,87,017/- as listed in the Annexure-B to the said Order, also effected seizure of the properties held in the name of Ms. J Sri Nisha in India valued at Rs. 23,23,57,523/- as listed in the Annexure-C to the said Order, and also effected seizure of the properties held in the name of Shri J. Sundeep Aanand in India valued at Rs. 22,11,17,507/- as listed in the Annexure-D to the said Order.

2. Ld. Counsel for the Appellant submitted that based on the election affidavit made to the Election Commission of India by Shri S. Jagathrakshakan regarding investments made in M/s Silver Park International Pte. Ltd., Singapore, the Appellant Directorate initiated inquiries under FEMA. Enquiries were caused with Reserve Bank of India (RBI) vide letter dated 28.02.2019 regarding the ODI applications filed by Sh. S. Jagathrakshakan and his family members. RBI vide email dated 04.03.2019 had informed that no entity by name 'M/s Silver Park International Pte. Ltd., Singapore' was available as per their records.

3. Ld. Counsel for the Appellant Directorate submitted that in his statement dated 27.08.2019, Sh. S. Jagathrakshakan (Respondent No. 2 in the Appeal) had stated that, he is a resident Indian holding Indian Passport No. 23507494. He has been in social service and

has been director of few private limited companies. He was then the Member of Parliament representing Arakonam constituency in Tamil Nadu. When questioned about the shares held by him in M/s. Silverpark International Pte. Ltd., Sh. S. Jagathrakshakan had inter-alia stated that he held 70,00,000 shares in M/s. Silverpark International Pte. Ltd., Singapore from 15.06.2017 to 15.09.2018. The nominal value of each share was SGD 1/-. The shares were ordinary equity shares. 70,00,000 equity shares were not paid for and he had gifted them to his family members, Smt. Anusuya Jegathrakshakan (45,00,000 shares), Smt. J. Sri Nisha (22,50,000 shares) and Sh. Sundeep Aanand (2,50,000 shares). The said shares were gifted vide Gift Deed dated 15.09.2018. When questioned whether, being a person resident in India, he had obtained RBI permission to invest in M/s. Silver Park International Pte. Ltd., Singapore by subscribing to the Memorandum, Sh. S. Jagathrakshakan had stated that he did subscribe to the shares of the Company in Singapore. He believed that RBI permission was required for sending the subscription amount towards the shares in the Singapore Company and that since he had not sent any money towards the subscription of shares, he had not taken permission from RBI under FEMA.

4. Ld. Counsel for the Appellant further submitted that in his statement dated 13.09.2019, Sh. Sundeep Aanand (Respondent No. 5 in the Appeal) stated that he is a resident Indian holding Indian Passport No. 21762667. He had subscribed to the shares of M/s.

Silver Park International Pte. Ltd., Singapore to the extent of 20,00,000 ordinary shares on 15.06.2017. When questioned whether he had received 2,50,000 shares of M/s. Silver Park International Pte. Ltd., Singapore from his father Sh. S. Jagathrakshakan, Sh. Sundeep Aanand had stated that he had received 2,50,000 shares of M/s. Silver Park International Pte. Ltd., Singapore from his father Sh. S. Jagathrakshakan vide Gift deed dated 15.09.2018. The shares were transferred on 'as is where is' basis and that the transferee i.e. Sh. Sundeep Aanand had to make payment for the said 2,50,000 shares when called upon by the Company. When enquired whether he had taken any RBI approval for the transfer of the said shares, Sh. Sundeep Aanand had stated that he was of the bona fide belief that only when money had been paid, the permission of RBI was required. Further since the transfer of shares were made by his father Sh. S. Jagathrakshakan, a resident Indian to him, another resident Indian, he believed that gifting of shares from father to son did not require any prior approval of the RBI.

5. Ld. Counsel for the Appellant submitted that in her statement dated 16.09.2019, Ms. J. Anusuya (Respondent No. 3 in the Appeal and since deceased) stated that, she was a resident Indian holding Indian Passport No. 22947878. Her husband, Shri S. Jagathrakshakan had transferred 45,00,000 unpaid shares of M/s. Silver Park International Pte. Ltd., Singapore to her vide Gift deed dated 15.09.2018. She had transferred her holdings in M/s. Silver

Park International Pte. Ltd., Singapore equally to her son Sh. Sundeep Aanand & her daughter Ms. Sri Nisha for a consideration of SGD 1/- each share. In respect of the 45,00,000 shares transferred to her son and daughter, the liability to make payments for the said shares stood transferred to her son and daughter. When questioned whether she had sought RBI permission for the said transfer of 45,00,000 shares from her husband Sh. S. Jagathrakshakan to her and for the transfer of 22,50,000 shares on 02.05.2019 to each of her children Sh. J. Sundeep Aanand & Ms. J. Sri Nisha, Ms. J. Anusuya stated that, she was of the belief that only when the monies had been paid, the permission of RBI was required. The transfer of 45,00,000 shares were made by her husband, Sh. S. Jagathrakshakan, a resident Indian to her, another resident Indian which were subsequently transferred to her children, both being resident Indians. Therefore, she was under bona-fide impression that the transfer of shares between resident individuals does not require any prior RBI approval and therefore, no RBI approval was sought.

6. Ld. Counsel for the Appellant submitted that in her statement dated 16.09.2019, Ms. J. Sri Nisha (Respondent No. 4 in the Appeal) stated that, she is a resident Indian holding Indian Passport No. 22674302. Her father Sh. S. Jagathrakshakan had transferred 22,50,000 unpaid shares of M/s. Silver Park International Pte. Ltd., Singapore vide Gift deed dated 15.09.2018 to her. Her mother Ms. J. Anusuya had transferred 22,50,000 unpaid shares of M/s. Silver

Park International Pte. Ltd., Singapore, for a consideration of SGD 1/- per share. When called upon by the Company, she has to pay the money SGD 45,00,000/- to the Company in respect of the 45,00,000 shares received by her from her father and mother. When questioned whether she had sought RBI approval for the transfer of 22,50,000 shares from her father Sh. S. Jagathrakshakan and transfer of 22,50,000 shares from her mother Ms. J. Anusuya, Ms. J. Sri Nisha stated that, she was under the bona fide belief that only when the money had been paid, the permission of RBI was required. As the transfer of shares were between resident Individuals, she was under the belief that it does not require any prior RBI approval.

7. Ld. Counsel for the Appellant further submitted that vide letters dated 18.09.2019, Sh. S. Jagathrakshakan, Ms. J. Anusuya, Ms. J. Sri Nisha & Ms. J. Sundeep Aanand had submitted copies of Board resolution of M/s. Silver Park International Pte. Ltd., Singapore dated 15.09.2018, approving transfer of 70,00,000 shares held by Sh. S. Jagathrakshakan to his family members, i.e. 45,00,000 shares to his wife, Ms. J. Anusuya, 22,50,000 shares to his daughter, Ms. J. Sri Nisha and 2,50,000 shares to his son, Sh. J. Sundeep Aanand. A copy of Board resolution of M/s. Silver Park International Pte. Ltd., Singapore dated 02.05.2019, approving transfer of 45,00,000 shares held by Ms. J. Anusuya to her children. i.e. 22,50,000 shares to her daughter Ms. J. Sri Nisha & 22,50,000 shares to her son, Sh. J. Sundeep Aanand was also submitted. Ld. Counsel further submitted that vide letter dated 23.09.2019, Sh.

Sundeep Aanand had submitted copy of Gift deed dated 15.09.2018, where from it was revealed that Sh. S. Jagathrakshakan had subscribed to 70,00,000 shares of M/s. Silver Park International Pte. Ltd., Singapore and that he had gifted 2,50,000 shares to his son, Sh. Sundeep Aanand. Sh. Sundeep Aanand appeared again on 10.10.2019 and tendered his statement. When questioned about the receipt of 22,50,000 shares of M/s. Silver Park International Pte. Ltd., Singapore from his mother Ms. J. Anusuya for a consideration of SGD 1/- per share, Sh. Sundeep Aanand stated that he had purchased 22,50,000 shares of M/s. Silver Park International Pte. Ltd., Singapore from his mother Ms. J. Anusuya for a consideration of SGD 1/- per share and that the payment of SGD 1/- per share had not yet been made to his mother. When questioned whether RBI approval was obtained for the purchase of 22,50,000 shares from his mother Ms. J. Anusuya, Sh. Sundeep Aanand had stated that since the transfer of shares was from a resident Indian to another resident Indian, he was under the impression that no RBI approval was necessary and hence no RBI approval was obtained.

8. Ld. Counsel for the Appellant stated that the Authorised Officer had reasons to believe that the foreign security situated outside India was suspected to have been held and transferred in contravention of Section 4 of FEMA, and therefore after recording the reasons in writing, he seized the properties in India under Section 37 A (1) of FEMA of the following values for each of the person involved as listed below:

Sl. No.	Name of the Person	Number of Shares held and transferred in Contravention	Amount of Contravention in INR	Value of the Properties seized in INR
1.	S. Jagathrakshakan	1,40,00,000	69,31,40,000	17,23,59,458
2.	J. Anusuya	90,000	46,47,15,000	26,60,87,017
3.	J. Sri Nisha	45,000	23,23,57,500	23,23,57,523
4.	J. Sundeep Aanand	45,000	22,11,17,500	22,11,17,507

9. Ld. Counsel for the Appellant Department clarified that during the pendency of the proceedings before the Ld. Competent Authority, Ms. J. Anusuya demised and therefore in respect of the properties seized from her, the liability devolved on the legal heirs viz Shri S. Jagathrakshakan, Ms. J. Sri Nisha and Shri J. Sundeep Aanand. Since the Ld. Competent Authority vide the Impugned Order set aside the Seizure Order dated 11.09.2020, the Appeal was filed before this Tribunal. Ld. Counsel argued that the Ld. Competent Authority had misinterpreted the provisions of Section 4 of FEMA to state that the terms ‘acquire, hold, own, possess or transfer’ of foreign security were only in respect of paid-up shares. Ld. Counsel contended that the provisions of Section 4 have no relevance to the fact whether foreign security was paid-up or not. Section 2 (o) of FEMA defines foreign security as follows:

“Foreign Security means any security, in the form of shares, stocks, bonds, debentures or any other instruments denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian Currency.”

Again, the Ld. Competent Authority misinterpreted the acquisition/ transfer of foreign security having referenced it to the Companies Act rather than Section 2 (o) of FEMA.

10. Ld. Counsel for the Appellant Department alleged that the Ld. Competent Authority failed to consider the material placed on record by the Appellant. The Relied Upon Documents submitted before the Ld. CA in the Petition filed under Section 37A (2) evidenced the fact that the shares of M/s Silver Park International Pte. Ltd. were fully paid up was ignored. Not only the financial statement of M/s Silver Park International Pte. Ltd. for the period from 15.06.2017 to 30.06.2018 revealed that the shares were fully paid up, it was corroborated by the cash flow statement for the above period which reported that the proceeds from issuance of shares was SGD 1,00,00,000/- which amply proved that the shares were indeed fully paid-up. Ld. Counsel stated that as per Section 2 (e) of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004,

“Direct Investment Outside India” means investment by way of contribution to the capital or subscription to the Memorandum of Association of a foreign entity or by way of purchasing existing shares of a foreign entity either by market purchase or private placement or through stock exchange, but does not include Portfolio Investment”.

The Ld. CA failed to appreciate the fact that in terms of Regulation 2(e) of Foreign Exchange Management (Transfer or Issue of any

Foreign Security) Regulations, 2004, subscription to the Memorandum of Association of a foreign entity will be treated as direct investment outside India. The Ld. CA failed to consider the fact that in terms of Regulation 5 of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004, no person resident in India shall make any direct investment outside India. Further, the Reserve Bank of India (RBI) in Frequently Asked Questions bearing Reference No. 63, while clarifying " whether an Indian Party/ resident Indian acquire shares of a Foreign entity without upfront payment or on deferred payment basis", stated as 'No'. The provisions of Notification No. FEMA 120/RB-2004 dated 07.07.2004 as amended from time to time, do not permit acquisition of foreign shares without payment or deferred payment basis. In as much as the Respondents acquired the foreign security without obtaining prior RBI approval to make Direct investment outside India, in terms of the above Regulations they have contravened the provisions of Section 4 of FEMA.

11. Ld. Counsel for the Appellant Department stated that the provisions of Section 2 (ze) of FEMA, which defines transfer as inclusive of sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien are applicable to the facts of the case in as much as the Respondent No.2 transferred the foreign security to Respondent Nos. 3, 4 & 5 without RBI approval and therefore had contravened the provisions of Section 4 of FEMA. Acquisition of foreign security and transfer of

foreign security are two independent transactions effected between different persons at different material points of time and hence the contravention under Section 4 of FEMA, needs to be treated separately for each such transaction. By subscribing to the shares of a foreign entity and transferring the said shares to resident Indians without RBI approval, the Respondent Nos. 2, 3, 4 & 5 herein had contravened the provisions of Section 4 of FEMA.

12. Ld. Counsel for the Appellant Department contended that the findings of the Ld. CA are erroneous in as much as the case laws cited in the impugned order pertained to erstwhile FERA and Customs Act, 1962 which are irrelevant and hence the ratios of the cited cases are inapplicable to the facts of the present case dealt under FEMA. The Ld. CA failed to uphold the Principles of Natural Justice by not serving copy of the written submissions filed by the Respondents Nos. 2, 3, 4 & 5 on the Appellant, thereby denying the Appellant an opportunity to counter the issues raised by the Respondents. Ld. Counsel therefore pleaded to allow the Appeal.

13. Ld. Counsel for the Respondents raised the preliminary objection that the Appeal is not maintainable in view of the provisions of Sections 37A (3) and 37A (4) of FEMA, which use the expressions 'representatives of the Directorate of Enforcement' and 'the aggrieved person' separately and differently in contrast to Section 37A (5) of FEMA, which only uses the expression any aggrieved person. Thus, the legislature was conscious that both the expressions were different and have to be used and understood in

this manner only, unless stated otherwise. Wherever the legislature intended to include the Department also as an aggrieved party authorised to contest an Impugned Order, it has chosen to specifically make a mention about conferment of right of appeal upon the concerned Government Department against any order with, which such Department may be aggrieved. On a prudent understanding of Section 19 of FEMA, it would be clear that the Act empowers both the Central Government as well as an aggrieved person to file an Appeal against the order of an Adjudicating Authority or the first Appellate Authority, as the case maybe, before this Tribunal. This would imply that the terms Central Government and aggrieved person are different and are not interchangeable. Ld. Counsel argued that once the order is placed before the CA i.e. Respondent No. 1 in the present proceedings and the Respondent No. 1 gives a finding, after appreciation of facts, the order attains finality and as such no appeal shall lie against the said order. Ld. Counsel emphasized that Section 37A (5) of FEMA provides for an Appeal to the Appellate Tribunal only by 'any person aggrieved'. Since provisions of Section 37A (5) of FEMA do not mention the Central Government, Ld. Counsel argued that the Union of India/the Department could not have filed Appeal in the Tribunal against the Order of the Ld. CA.

14. Ld. Counsel for the Respondents submitted that a set of papers on 05.05.2026 comprising of Application for incorporation on behalf of Silver Park International Pte. Ltd., Confirmation of

Incorporation issued by ACRA, Appointment of Company Secretary by Silver Park International Pte. Ltd. and MOA and AOA of Silver Park International Pte. Ltd. Ld. Counsel submitted that in view of the papers and the replies already filed, he shall be comprehensively covering all the points on behalf of the Respondents during the course of the final arguments. Ld. Counsel for the Respondents submitted that as no money had been paid by the Respondents there was no case to seize the property and at worst it could be a case of contravention of Foreign Security Regulations. Unless there was a call by the Company M/s Silver Park International Pte. Ltd. Singapore, no money could have been paid by the Respondents. Ld. Counsel stated that RBI permission was not required since no subscription amount was sent for shares of the Company in Singapore. As per the Singapore Companies Act, there is no time limit for calling of payment. Ld. Counsel state that since the Company was struck off in 2020, no obligation is existed to pay any unpaid shares. Moreover, if no consideration had been paid the Company has the right of lien towards all those unpaid shares. Ld. Counsel argued that the Respondents had become the member of the Company by subscribing to the Memorandum of Association of the Company which meant that the Respondents had subscribed/undertaken/ promised to bring in some capital to the Company as and when it required in the future. The Foreign Company was formed with purpose to make investments and execute projects in the field of petroleum and mining all over the world. It had not commenced its full-fledged operation in the period

in which Shri S. Jagathrakshakan was the Director of the Company from 15.06.2017 to 15.09.2018. However, M/s Accord Distilleries and Breweries Pvt. Ltd. India, in which the Respondent No. 2 was a Director, in order to become a Member of the Company through the mode of allotment, for subscription of equity shares had remitted US \$ 1000 and US \$ 5000 to Singapore Company through their Authorised Dealer, State Bank of India, Chennai. They also made necessary application for Overseas Direct Investment (ODI) for approval from the RBI. Thus, the RBI approval was sought only at the stage where the money had to be remitted Overseas.

15. Ld. Counsel for the Respondents submitted that by subscribing to the capital, the Respondents were neither entitled to any 'dividend' declared by the Company from time to time nor had absolute and exclusive right to the documents they held. Unpaid subscribed capital and the paid-up shares cannot be treated on the same footing and the provisions of FEMA are applicable to only paid-up securities. "Unpaid subscribed Capital" are more in nature of a simple promise of payment given by one private person to another in the form of private contract. The said promise cannot even be treated as "financial commitment" as it had not been backed by any Bank Guarantee from any Indian Banks nor the Financial Institutions. The word "Share" is not defined under Section 2 of FEMA. Therefore, the meaning of the term "shares" has to be drawn from "The Companies Act, 2013". Shares has been defined under

Section 2 (84) of the Companies Act. The definitions of Section 2 (84) and Section 2 (86) are extracted below:

2(84) "Shares" means a share in the share capital of a company and includes stocks"

2(86) "Subscribed Capital" means such part of the capital which for the time being subscribed by the members of a company".

As the applicant had only subscribed to the shares of the company, without actual remittance, he only falls under the definition of Section 2 (86). Subscribing to shares is not the same as purchase of shares for purposes of Company Act. The paid-up Capital is the real capital raised by the Company. By merely subscribing to the shares of the company the Respondents do not even have right to dividends, exclusive selling rights etc., leave along having a share (verb) in the share capital which is pre-requisite for a share (noun). From the above it can be seen that legally the Respondent was only holding documents pertaining to the Subscribed Capital, wherein he enjoys certain rights agreed to by him and the Company i.e. by two private parties and it cannot be construed as Shares or Foreign security as specified under Section 4 of FEMA. As the provisions of FEMA comes into operation only when the subscribed capital blossoms into paid shares, the transfers made thereafter will also come under the purview of FEMA or Regulations after the shares have been paid for. At this stage the transfer (as a gift) of rights related to subscribed shares by the Respondent No. 2 Shri S. Jagathrakshakan to his family members will exclusively fall under

the domain of the Respondent No. 2, his family members and the AoA of the Company. The above submissions made for the Respondent No. 2 were applicable to his wife Ms. J. Anusuya, (deceased) Respondent No. 3, son Shri J. Sundeep Anand Respondent No. 5, and his daughter Ms. J. Sri Nisha, Respondent No. 4 as well.

16. Ld. Counsel for the Respondents submitted that the following questions were framed by the Ld. CA in order to examine legality of the Order of Seizure dated 11.09.2020 issued by the Assistant Director/ Authorised Officer:

- a) Whether "share" has been defined in FEMA ?
- b) Whether there is any direct evidence collected by the Enforcement Directorate ?
- c) Whether there is any evidence on record regarding gift of shares between the respondents ?
- d) Whether there is any provision to attach properties twice on the same security being gifted by one of the respondents to other respondents ?

Ld. Counsel stated that it is on record that the Respondents 2 & 5 have originally subscribed to the Memorandum of Association of Singapore Company, viz M/s. Silver Park International Pte. Ltd. Respondent No. 2 & 5 happened to be the Directors in the above said Company at the time of incorporation. Ld. Counsel argued that the Ld. CA has made specific finding that in the Note 10 of the Financial Statement relating to the period 15.06.2017 (i.e., date of

incorporation) to 30.06.2018, it has been stated that Singapore \$ 9,994,000 was "other receivables" and the amounts were due from the Directors. Therefore, Ld. CA inferred that the Respondents had not paid for the shares earmarked for them as Directors of the Company, to infuse capital. From the documents available, Ld. CA concluded that no money in Singapore \$ had been paid for 90,00,000 shares by both the Respondents 2 & 5. Therefore, those 90,00,000 shares remained as such unpaid. Hence, the Respondents had neither acquired or owned or held the paid shares, thus, it can't be said that they violated Section 4 of FEMA.

17. Ld. Counsel for the Respondents cited paragraph 23 of the Impugned Order as follows:

“23. Section 37A heading very clearly states that the provision is related to "assets held" outside India in contravention of Section 4. As it is argued by the learned counsel on record, the meaning of "hold" has to be considered. 37A uses the word "held". The meaning of "hold" as per Law lexicon is "to have or keep as one's own". In this case the respondents have subscribed only on paper. As per the records filed with the Singapore authorities respondent (1) & respondent (2) [Respondents No. 2 & 3 in this Appeal] have already gifted the non-paid shares. Therefore, no liability can be cast upon them on the zero value. As no evidence has been placed on record to show that the respondents 2 & 5 acquired and held 90,00,000 shares in Singapore equivalent to Singapore \$9,000,000/-, the only inference that can be drawn in the matter is that there was no violation of Section 4 of

FEMA by these two respondents i.e., Respondents 1 & 4 [Respondents No. 2 & 5 in this Appeal]. Thus questions 1) & 2) (raised in Para 15 of this Order) are answered.”

For clarification, questions 1) and 2) referred above are questions a) and b) of para 16 of this Order.

18. Ld. Counsel for the Respondent argued that it is on record that the gift of shares and change in Directorship has been informed to the Singapore authority i.e., Accounting and Corporate Regulatory Authority (ACRA) vide business file Authentication No. F188968020 dated 27.12.2018 under Receipt No. ACRA181226051957. In that document only Ms. Anusuya, Shri Sundeep Aanand and Ms. Sri Nisha are shown as Directors. In Singapore authority's document, only the 2 Respondents Shri Sundeep Aanand and Ms. Sri Nisha are shown as Directors. Therefore, it is stated that ample evidence is available revealing the gift of shares between the Respondents. Thus, question c) of para 16 of this Order, is answered.

19. Ld. Counsel for the Respondents, with the reference to question no. d mentioned in para 16 of this Order submitted that the Authorised Officer has not shown any provision to charge twice on the value of shares on the purported contravention, first when the Respondent No. 2 was the Director between 15.06.2017 to 15.09.2018 and second time on gifting those subscribed shares to his wife (Respondent No. 3) and wards (Respondents Nos. 4 & 5) by way of gift deed. Even Respondent No. 3 has also gifted her shares as per the minutes of the meeting of the Company upon resolution

dated 02.05.2019, the properties equivalent to Singapore \$ 45,00,000/- could not have been seized for a second time. Ld. Counsel argued that there is no legal basis for attaching property for a second time equivalent to the value (in this case gifted shares) suspected to be held outside.

20. Ld. Counsel for the Respondents further contended that even if gifting of shares is a contravention, the issue to be decided here is the attachment of equivalent value of property. If the shares are gifted and no value can be attributed to that act, then arriving at an equivalent value is not legally possible. The investigating Directorate has not produced any positive evidence for payment made for the shares. On that account too, the value taken/arrived at by the authorised officer is not supported by any evidence, and no cause has been made out for attaching the properties of Respondent No.2 and Respondent No.3 for gifting of shares. Respondent Nos.4&5 have received gift of shares from the Respondent Nos.2&3 and became Directors in M/s Silver Park International Pte. Ltd. In the earlier paragraphs it has been demonstrated that the shares had no value. Therefore, it cannot be said that Respondent Nos.4&5 contravened Section 4 of FEMA, and held valuable securities in Singapore Company. Ld. Counsel contended none of the Respondents was holding any foreign security since the value of the foreign security at any point of time was merely on paper. None of the documentary evidences in this matter has been countered by the Appellant Directorate. The Enforcement Directorate has not proved

by way of evidence that the money indicated in the "subscribed shares" have been paid either "legally or illegally". As held by the Hon'ble Supreme Court in the matter of M/s Century Metal Recycling Pvt. Ltd. vs. UOI [2019 (367) E.L.T. 3 (S.C.)], the suspicion must be reasonable i.e. have a degree of objectivity and basis/foundation for the suspicion must be based on certain reasons. Ld. Counsel submitted that in the considered opinion of the Ld. CA, unless it was shown by the investigating department that "something" was "held" in contravention of Section 4 of FEMA, Section 37A (1) will not come into play. In this case no share of any value was held in Singapore. Therefore, suspicion has no foundation. Ld. Counsel therefore pleaded to dismiss the Appeal.

21. We have considered the rival submissions and the material on record. **The Hon'ble Supreme Court vide its Judgment dated 01.04.2026 in Civil Appeal Nos. of 2026 arising out of SLP (Civil) No(s). 23415 of 2025, SLP (Civil) No(s). 3469 of 2025, SLP (Civil) No(s). 23416 of 2025 and SLP (Civil) No(s). 23417 of 2025 [2026 SCC OnLine SC 517]** has observed and ordered in paragraphs 38, 39 & 40 of the Judgment as follows:

“38. In effect, the Adjudicating Authority has undone the order of the Competent Authority even while the appeal against the said order is pending. Such a course of action, in the opinion of this Court, tantamounts to abdicating the powers of the Appellate Authority, even when the order of the Competent Authority was still under challenge in appeal at the instance of the department.

39. *In wake of the above discussion, we are of the opinion that the impugned order dated 23rd July, 2024 passed by the Division Bench of the High Court and so also the order of the learned Single Judge of the High Court dated 30th November, 2023, rejecting the writ petition preferred by the appellants and as a consequence, the final order dated 26th August, 2024 passed by the Adjudicating Authority imposing penalty and ordering confiscation of the property held by appellants are declared to be arbitrary and contrary to law. The same are hereby set aside. The proceedings are revived from the stage of the SCN.*

40. *As an upshot, we provide that the Appellate Authority shall first decide the appeal preferred by the Department against the order of the Competent Authority under Section 37A (5) of FEMA after hearing the parties and by passing a reasoned order within a period of two months from today. Pursuant to the disposal of the appeal pending before the Appellate Authority, the proceedings arising out of the SCN may be commenced and shall be taken to their logical conclusion without being prejudiced by any of the observations made hereinabove or in the orders passed by the High Court.”*

This Tribunal as a consequence of the Judgment (supra) of the Hon’ble Supreme Court of India, has disposed of as infructuous, the Appeals Nos. FPA-FE-89/CHN/2024 filed by Shri S. Jagathrakshakan LRs of Late Smt. J. Anusuya, FPA-FE-90/CHN/2024 filed by Ms. J. Sri Nisha LRs of Late Smt. Anusuya, FPA-FE-91/CHN/2024 filed by Shri J. Sundeep Aanand, FPA-FE-94/CHN/2024 filed by M/s Accord Distilleries and Breweries Pvt. Ltd.

India, FPA-FE-95/CHN/2024 filed by Shri S. Jagathrakshakan, FPA-FE-96/CHN/2024 filed by Ms. J. Sri Nisha and FPA-FE-97/CHN/2024 filed by Shri J. Sundeep Aanand LRs of Late Smt. Anusuya. These seven Appeals had been filed in this Tribunal against the Order-in-Original No. SDE/SRO/CEZO-II/11/2024 dated 26.08.2024 passed by the Special Director, Southern Regional Office, Directorate of Enforcement, Chennai.

22. Ld. CA vide the Impugned Order dated 03.02.2021 has set aside the Seizure Order dated 11.09.2020 issued by the Assistant Director, Enforcement Directorate, Chennai. The seizure was effected under Section 37A (1) of FEMA, of the properties in India of the four Respondents (Nos. 2 to 5) in the present Appeal, on the grounds that the Authorised Officer, (the Assistant Director) had reasons to believe that foreign security was suspected to be held by the four Respondents in contravention of Section 4 of FEMA. It is therefore important to reproduce Section 4 and Section 37A of FEMA as follows:

“4. Holding of foreign exchange, etc.—Save as otherwise provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

37A. Special provisions relating to assets held outside India in contravention of section 4.—(1) Upon receipt of any information or otherwise, if the Authorised Officer prescribed by the Central Government has reason to believe that any foreign

exchange, foreign security, or any immovable property, situated outside India, is suspected to have been held in contravention of section 4, he may after recording the reasons in writing, by an order, seize value equivalent, situated within India, of such foreign exchange, foreign security or immovable property:

Provided that no such seizure shall be made in case where the aggregate value of such foreign exchange, foreign security or any immovable property, situated outside India, is less than the value as may be prescribed.

(2) The order of seizure along with relevant material shall be placed before the Competent Authority, appointed by the Central Government, who shall be an officer not below the rank of Joint Secretary to the Government of India by the Authorised Officer within a period of thirty days from the date of such seizure.

(3) The Competent Authority shall dispose of the petition within a period of one hundred eighty days from the date of seizure by either confirming or by setting aside such order, after giving an opportunity of being heard to the representatives of the Directorate of Enforcement and the aggrieved person.

Explanation.—While computing the period of one hundred eighty days, the period of stay granted by court shall be excluded and a further period of at least thirty days shall be granted from the date of communication of vacation of such stay order.

(4) The order of the Competent Authority confirming seizure of equivalent asset shall continue till the disposal of adjudication proceedings and thereafter, the Adjudicating Authority shall pass appropriate

directions in the adjudication order with regard to further action as regards the seizure made under subsection (1):

Provided that if, at any stage of the proceedings under this Act, the aggrieved person discloses the fact of such foreign exchange, foreign security or immovable property and brings back the same into India, then the Competent Authority or the Adjudicating Authority, as the case may be, on receipt of an application in this regard from the aggrieved person, and after affording an opportunity of being heard to the aggrieved person and representatives of the Directorate of Enforcement, shall pass an appropriate order as it deems fit, including setting aside of the seizure made under subsection (1).

(5) Any person aggrieved by any order passed by the Competent Authority may prefer an appeal to the Appellate Tribunal.

(6) Nothing contained in section 15 shall apply to this section.”

23. Ld. Counsels for the Respondents have contested the present Appeal on the grounds that it is not maintainable in view of the provisions of Section 37A (5) of FEMA. Ld. Counsel emphasized that Section 37A (5) of FEMA provides for an Appeal to the Appellate Tribunal only by ‘any person aggrieved’. Since provisions of Section 37A (5) of FEMA do not mention the Central Government, Ld. Counsel argued that the Union of India/the Department cannot file Appeal in the Tribunal against the Order of the Ld. CA. Ld. Counsel further argued that on reading of Section 37A (3) and Section 37A

(4) of FEMA distinction from Section 37A (5) of FEMA becomes obvious since in both the Sections 37A (3) & (4) of FEMA opportunity of being heard has been provided to the representative of the Directorate of the Enforcement which is not so in Section 37A (5) of FEMA. Further he argued that even in Section 19 of FEMA it is explicitly mentioned that the Central Government, besides any person aggrieved, can file an Appeal to this Tribunal against the Order of the Adjudicating Authority. On consideration of these arguments on maintainability, we first and foremost note from the Judgment (supra) dated 01.04.2026 of the Hon'ble Supreme Court of India the following first sentence of paragraph 40 of the Judgment:

“As an upshot, we provide that the Appellate Authority shall first decide the appeal preferred by the Department against the order of the Competent Authority under Section 37A (5) of FEMA after hearing the parties and by passing a reasoned order within a period of two months from today.”

Thus, there is an explicit direction by the Hon'ble Supreme Court of India for this Tribunal to decide the present Appeal which has been filed by the Union of India through the Assistant Director, Directorate of Enforcement, under Section 37A (5) of FEMA. Reading of any of the Sub-Section of Section 37A of FEMA in an isolated manner, independently of the context of other 5 Sub-Sections may militate against the true meaning and intention of the Section and its Sub-Sections. Having given an opportunity of hearing to both the opposing parties to the dispute, in the earlier

Sub-Sections 37A (3) & 37A (4) and thereafter to deny the opportunity to file Appeal to either of the two parties shall result in serious infringement of the principles of natural justice. Therefore, Section 37A of FEMA cannot be read in parts. Sub-Sections of Section 37A of FEMA must be read as a whole and construed harmoniously. By reading and appreciating the provisions of each Sub-Section in the context of the other Sub-Sections, we avoid misinterpretation of its provisions.

24. In this regard, the Hon'ble Supreme Court of India in the Judgment dated 17.12.2002 in the matter of **CIT v. Hindustan Bulk Carriers, (2003) 3 SCC 57 : (2003) 259 ITR 449 : 2002 SCC OnLine SC 1226 at page 74** has observed the following:

“16. The courts will have to reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. (See Salmon v. Duncombe [(1886) 11 AC 627 : 55 LJPC 69 : 55 LT 446 (PC)] AC at p. 634, Curtis v. Stovin [(1889) 22 QBD 513 : 58 LJQB 174 : 60 LT 772 (CA)] referred to in S. Teja Singh case [AIR 1959 SC 352 : (1959) 35 ITR 408] .)

17. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result. (See Nokes v. Doncaster Amalgamated Collieries [(1940) 3 All ER 549 : 1940 AC 1014 : 109

LJKB 865 : 163 LT 343 (HL)] referred to in Pye v. Minister for Lands for NSW [(1954) 3 All ER 514 : (1954) 1 WLR 1410 (PC)] .) The principles indicated in the said cases were reiterated by this Court in Mohan Kumar Singhania v. Union of India [1992 Supp (1) SCC 594 : 1992 SCC (L&S) 455 : (1992) 19 ATC 881 : AIR 1992 SC 1] .

18. *The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.*

19. *The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. (See R.S. Raghunath v. State of Karnataka [(1992) 1 SCC 335 : 1992 SCC (L&S) 286 : (1992) 19 ATC 507 : AIR 1992 SC 81] .) Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act. (See Sultana Begum v. Prem Chand Jain [(1997) 1 SCC 373 : AIR 1997 SC 1006] .)*

20. *Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be lightly assumed that Parliament had given with one hand what it took away with the other.*

21. *The provisions of one section of the statute cannot be used to defeat those of another unless it is*

impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a “useless lumber” or “dead letter” is not a harmonised construction. To harmonise is not to destroy.”

We therefore observe that the Appeal against the Order of the Ld. CA is to be disposed of by this Tribunal on merit after having given opportunity to both the sides of being heard.

25. It is on record that M/s Silver Park International Pte. Ltd. was incorporated on 15.06.2017 in Singapore. We also note from the Memorandum of Articles of the same date of the Company, that shares were allotted as follows:

1. Shri S. Jagathrakshakan, 70,00,000 ordinary shares.
2. Shri J. Sundeep Anand, 20,00,000 ordinary shares.
3. Shri Thiayagarajan V. T., 10,00,000 ordinary shares.

Shri S. Jagathrakshakan in his declaration before the Election Commission of India had stated that he was the Director of the Company from 15.06.2017 till 15.09.2018. He was thus Director of the Company from the time of its incorporation. Shri S. Jagathrakshakan in his statement tendered on 27.08.2019 not only admitted holding 70 lakh shares of Singapore Company, but that the said shares were ordinary equity shares and the nominal value of each share was SGD 1. He further stated that he had gifted the shares to his family members viz 45,00,000 shares to Smt. J Anusuya, his wife, 22,50,000 shares to Smt. J. Sri Nisha, his daughter and 2,50,000 shares to Shri Sundeep Aanand, his son. He

said that he had gifted the shares vide Gift Deed dated 15.09.2018. However, he stated that he neither sent any money towards the subscription of shares nor had taken permission from RBI for the subscription of shares. Smt. J. Anusuya in her statement on 16.09.2019 corroborated the statement of her husband of Shri S. Jagathrakshakan. However, she added that she had transferred 45,00,000 shares to her son and daughter in the ratio of 50 percent each for a consideration of SGD 1 per share. She also admitted of not having taken permission of RBI under belief that the same was not required for transfer of shares to another resident Indian. Ms. J Sri Nisha in her statement dated 16.09.2019 corroborated the statement of her father and mother and admitted having received in all 45,00,000 shares of which her mother had transferred 22,50,000 shares for the consideration of SGD 1 per share. Shri Sundeep Aanand in his statement dated 13.09.2019 admitted having subscribed to 20,00,000 ordinary shares on 15.06.2017 and thereafter had received 2,50,00,000 shares from his father vide Gift Deed dated 15.09.2018. No permission was taken from RBI since he too believed that such permission was required only when money had to be paid towards the subscription. In his further statement on 10.10.2019 he admitted having received 22,50,000 shares from his mother for consideration of SGD 1 per share. He stated that he had not made such payment and no RBI approval was taken, because he believed the transfer of shares from another resident Indian does not require any such permission. The Respondents had also submitted a copy of Gift Deed dated 15.09.2018 and the Board Resolution

dated 02.05.2019 of M/s Silver Park International Pvt. Ltd., Singapore approving transfer of 45,00,000 shares held by Smt. J. Anusuya to her daughter and son in the ratio of 50 percent each. It is pertinent to note that the statements tendered under Section 37 of FEMA have been corroborated by the aforementioned documents. From the aforementioned factual matrix emanating from the statements of the four Respondents and the said documents, it is clear that even the subscription to shares was understood among the allottees to bear nominal value of SGD 1 per share.

26. In paragraph 16 of the Impugned Order, it has been observed that in the Note 10 of the Financial Statement relating to the period 15.06.2017 to 30.06.2018, SGD 9,994,000 has been reflected as amounts due from Directors. Ld. Counsel for the Appellant Department has pointed out from the said Financial Statement that the number of ordinary shares as on 30.06.2018 was 1,00,00,000 which have been shown as fully paid. In view of the contending claims about whether the shares had been paid for by the shareholders or not, we have scrutinized the afore mentioned Financial Statement of the Company. The documents submitted by the Ld. Counsel for the Respondents relating to the Company are not in contradiction with the Financial Statement. Certain relevant pages of the Financial Statement for the period from 15.06.2017 to 30.06.2018 of M/s Silver Park International Pte. Ltd. along with certain relevant Notes to the Financial Statement are being reproduced as follows:

SILVER PARK INTERNATIONAL PTE. LTD.

[UEN: 201716853W]

Financial Statements

Period from 15 June 2017 (Date of incorporation) to 30 June 2018

DIRECTORS' STATEMENT

The directors present their report together with the unaudited financial statements of the Company for the financial period from 15 June 2017 (Date of incorporation) to 30 June 2018.

In the opinion of the directors,

a) the financial statements of the Company as set out on pages 4 to 23 are drawn up so as to give a true and fair view of the financial position of the Company as at 30 June 2018, and of the financial performance of the business, changes in equity and cash flows of the Company for the financial period then ended; and

b) at the date of this statement, there are reasonable grounds to believe that the Company will be able to pay its debts as and when they fall due.

Directors

The directors of the Company in office at the date of this report are as follows:

Jegath Rakshagan Sundeep Anand Appointed on 15 June 2017.
Jagathrakshakan Sri Nisha Appointed on 15 September 2018.
Jagathrakshakan Anusuya Appointed on 15 September 2018.
Thiayagarajan V T Appointed on 15 June 2017.

Arrangements to enable directors to acquire shares and/or debentures

Neither at the end of nor at any time during the financial period was the Company a party to any arrangement whose object is to enable the directors of the Company to acquire benefits by means of the acquisition of shares in, or debentures of, the Company or any other body corporate.

Directors' interest in shares or debentures

According to the register of directors' shareholdings kept by the Company under Section 164 of the Companies Act Cap.50, none of the directors holding office at the end of the financial period had any interest in the shares or debentures of the Company, except as follows:

SILVER PARK INTERNATIONAL PTE. LTD.	At	At
No. of ordinary shares, fully paid	30.06.2018	15.06.2017
Jegath Rakshagan Sundeep Anand	2,250,000	2,250,000
Jagathrakshakan Sri Nisha	2,250,000	2,250,000
Jagathrakshakan Anusuya	4,500,000	4,500,000
Thiayagarajan VT	<u>1,000,000</u>	<u>1,000,000</u>

Share options

There were no options granted during the financial period to subscribe for unissued shares of the Company.

No shares have been issued during the financial period by virtue of the exercise of options to take up unissued shares of the Company.

There were no unissued shares of the Company under option at the end of the financial period.

SILVER PARK INTERNATIONAL PTE. LTD.

[UEN: 201716853W]

Financial Statements

Period from 15 June 2017 (Date of incorporation) to 30 June 2018

DIRECTORS' STATEMENT (Cont'd)

The Board of Directors authorized these financial statements for issue on

On behalf of the Board of Directors,

Jegath Rakshagan Sundeep Anand
Director

Jagathrakshakan Sri Nisha
Director

Singapore,

SILVER PARK INTERNATIONAL PTE. LTD.

[UEN: 201716853W]

Financial Statements

Period from 15 June 2017 (Date of incorporation) to 30 June 2018

STATEMENT OF COMPREHENSIVE INCOME FOR THE FINANCIAL PERIOD FROM 15 JUNE 2017 (DATE OF INCORPORATION) TO 30 JUNE 2018

	Note	2018 S\$
SALES	4	0
COST OF SALES	5	0
GROSS PROFIT		0
OTHER INCOME	6	0
OPERATING EXPENSES		
Administrative	7	(3,300)
Finance	7	0
NET TOTAL LOSS BEFORE INCOME TAX		(3,300)
Income tax expense	8	0
NET TOTAL LOSS AFTER INCOME TAX		(3,300)
TOTAL COMPREHENSIVE LOSS		(3,300)

The accompanying notes form an integral part of these financial statements.

SILVER PARK INTERNATIONAL PTE. LTD.

[UEN: 201716853W]

Financial Statements

Period from 15 June 2017 (Date of incorporation) to 30 June 2018

STATEMENT OF FINANCIAL POSITION AS AT 30 JUNE 2018

	Note	2017 S\$
ASSETS		
Current assets		
Cash and cash equivalents	9	6,000
Trade and other receivables	10	9,994,000
Inventories	11	0
		<u>10,000,000</u>
Non-current asset		
Property, plant and equipment	12	<u>0</u>
		<u>0</u>
Total assets		<u>10,000,000</u>
LIABILITIES		
Current liabilities		
Trade and other payables	13	3,300
Current tax payable	8	0
		<u>3,300</u>
Total liabilities		<u>3,300</u>
NET ASSETS		<u>9,996,700</u>
EQUITY		
Capital and reserves attributable to equity holders of the Company		
Share capital	14	10,000,000
Accumulated loss		<u>(3,300)</u>
TOTAL EQUITY		<u>9,996,700</u>

The accompanying notes form an Integral part of these financial statements.

SILVER PARK INTERNATIONAL PTE. LTD.

[UEN: 201716853W]

Financial Statements

Period from 15 June 2017 (Date of incorporation) to 30 June 2018

STATEMENT OF CHANGES IN EQUITY FOR THE FINANCIAL PERIOD FROM 15 JUNE 2017 (DATE OF INCORPORATION) TO 30 JUNE 2018

	Note	Share capital S\$	Accumulated loss S\$	Total attributable to equity holder of the Company S\$
2018				
Balance at beginning of financial period (Date of incorporation)		0	0	0
Issuance of shares	14	10,000,000	0	10,000,000
Total comprehensive loss for the period		0	(3,300)	(3,300)
Balance at end of financial period		10,000,000	(3,300)	9,996,700

The accompanying notes form an integral part of these financial statements.

SILVER PARK INTERNATIONAL PTE. LTD.

[UEN: 201716853W]

Financial Statements

Period from 15 June 2017 (Date of incorporation) to 30 June 2018

**STATEMENT OF CASH FLOWS FOR THE FINANCIAL PERIOD FROM 15 JUNE 2017
(DATE OF INCORPORATION) TO 30 JUNE 2018**

	Note	2017 S\$
Cash flows from operating activities		
Net total loss before tax		
Adjustments for:		(3,300)
- Depreciation of property, plant and equipment	12	0
Operating cash flow before working capital changes.		(3,300)
Changes in working capital		
- Trade and other receivables		(9,994,000)
- Inventories		0
- Trade and other payables		3,300
Cash expended by operations		(9,994,000)
Income tax paid	8	0
Net cash used in operating activities		(9,994,000)
Cash flows from investing activity		
Purchase of property, plant and equipment	12	0
Net cash used in investing activity		0
Cash flows from financing activity		
Proceeds from issuance of shares	14	10,000,000
Net cash provided by financing activity		10,000,000
Net increase in cash and cash equivalents		6,000
Cash and cash equivalents at beginning of financial period (Date of incorporation)		0
Cash and cash equivalents at end of financial period	9	6,000
Cash and cash equivalents comprise:		
Cash and bank balances		6,000
	9	6,000

The accompanying notes form an integral part of these financial statements.

NOTES TO THE FINANCIAL STATEMENTS FOR THE FINANCIAL PERIOD FROM 15 JUNE 2017 (DATE OF INCORPORATION) TO 30 JUNE 2018

These notes form an integral part of and should be read in conjunction with the accompanying financial statements.

1. General information

The Company is incorporated and domiciled in Singapore. The address of its registered office and principal place of business of the Company is at 18 Roberts Lane #03-01 Goodland Building Singapore 218297.

The principal activities of the Company are those of wholesale trade of a variety of goods without a dominant product.

These financial statements are presented in Singapore Dollar, which is the functional currency of the Company.

2. Significant accounting policies

2.1 Basis of preparation

These financial statements have been prepared in accordance with Singapore Financial Reporting Standards ("FRS") under the historical cost convention, except as disclosed in the accounting policies below.

The preparation of financial statements in conformity with FRS requires management to exercise its judgement in the process of applying the Company's accounting policies. It also requires the use of certain critical accounting estimates and assumptions. The areas involving a higher degree of judgement or complexity, or areas where assumptions and estimates are significant to the financial statements are disclosed in Note 3.

Interpretations and amendments to published standards effective in 2017

On 15 June 2017, the Company adopted the new or amended FRS and Interpretations of FRS ("INT FRS") that are mandatory for application for the financial period. Changes to the Company's accounting policies have been made as required, in accordance with the transitional provisions in the respective FRS and INT FRS.

The adoption of these new or amended FRS and INT FRS did not result in substantial changes to the accounting policies of the Company and had no material effect on the amounts reported for the current or prior financial periods.

Standard issued but not yet effective

New standards, amendments to standards and interpretations that are not yet effective for the financial period ended 30 June 2018 have not been applied in preparing these financial statements.

None of these will have a significant effect on the financial statements of the Company.

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2. Significant accounting policies (Cont'd)

2.13 Currency translation

Transactions denominated in a currency other than Singapore Dollar ("foreign currency") are translated into Singapore Dollar using the exchange rates prevailing at the dates of the transactions. Currency translation gains and losses resulting from the settlement of such transactions and from the translation at the closing rate at the reporting date of monetary assets and liabilities denominated in foreign currencies are recognized in the income statement.

2.14 Cash and cash equivalents

Cash and cash equivalents include cash in hand, deposits with financial institutions, which are subject to an insignificant risk of change in value.

2.15 Share capital

Ordinary shares are classified as equity. Incremental costs directly attributable to the issuance of new ordinary shares are deducted against the share capital account.

2.16 Related parties

A related party is defined as follows:

- (a) A person or a close member of that person's family is related to the Company if that person:
- (i) Has control or joint control over the Company;
 - (ii) Has significant influence over the Company; or
 - (iii) Is a member of the key management personnel of the Company or of a parent of the Company;
- (b) An entity is related to the Company if any of the following conditions applies:
- (i) The entity and the Company are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others);
 - (ii) One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member);
 - (iii) Both entities are joint ventures of the same third party;
 - (iv) One entity is a joint venture of a third entity and the other entity is an associate of the third entity;
 - (v) The entity is a post-employment benefit plan for the benefit of employees of either the Company or an entity related to the Company. If the Company is itself such a plan, the
 - (vi) sponsoring employers are also related to the Company; The entity is controlled or jointly controlled by a person identified in (a);
 - (vii) A person identified in (a)(i) has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity)
 - (viii) The entity, or any member of a group of which it is a part, provides key management personnel services to the reporting entity or to the parent of the reporting entity.

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SILVER PARK INTERNATIONAL PTE. LTD.

[UEN: 201716853W]

*Financial Statements**Period from 15 June 2017 (Date of incorporation) to 30 June 2018***10. Trade and other receivables**

	2018 S\$
<i>Trade receivables</i>	
- <i>Related parties</i>	0
- <i>Outside parties</i>	0
<i>Less: Allowance for impairment of receivables</i>	0
	<hr/>
<i>Net receivables</i>	0
 <i>Other receivables</i>	
- <i>Other receivables</i>	0
- <i>Deposits</i>	0
- <i>Prepayments</i>	0
- <i>Amounts due from directors</i>	9,994,000
	<hr/>
	9,994,000
	<hr/>

The non-trade amounts due from directors are unsecured, interest-free and repayable on demand.

At the reporting date, the carrying amounts of trade and other receivables approximate their fair value.

11. Inventories

	2018 S\$
<i>Finished goods</i>	0
	<hr/>
	0
	<hr/>

The cost of inventories recognized as an expense and included in "cost of sales" amounted to S\$NIL

At the reporting date, the carrying amounts of inventories approximate their fair value.

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SILVER PARK INTERNATIONAL PTE. LTD.

[UEN: 201716853W]

*Financial Statements**Period from 15 June 2017 (Date of incorporation) to 30 June 2018***14. Share capital**

	No. of shares Issued and fully paid	2018 S\$
<i>Beginning of financial period (Date of incorporation)</i>	0	0
<i>Issuance of shares</i>	10,000,000	10,000,000
<i>End of financial period</i>	<u>10,000,000</u>	<u>10,000,000</u>

Under the Companies (Amendment) Act 2005 that came into effect on 30 January 2006, the concept of par value and authorized share capital are abolished. The shares have no par value.

15. Related party transactions

Key management personnel compensation for the financial year were as follows:

	Note	15.06.17 to 30.06.18 S\$
<i>- Directors' remuneration</i>	7	<u>0</u>
		<u>0</u>

Balance with related parties as at the reporting date is set out in Note 10.

16. Financial risk management

The Company is mainly exposed to currency risk, interest rate risk, credit risk and liquidity risk.

Risk management is carried out under policies approved by the Board of Directors. The Board provides written principles for overall risk management, as well as written policies covering specific areas, such as currency risk, interest rate risk, credit risk and liquidity risk use of derivative financial instruments and investing excess liquidity.

Currency risk

The Company is not exposed to foreign exchange risk as most of its transactions are in Singapore Dollar.

Interest rate risk

The Company is exposed to interest rate risk through the impact of rate changes on interest bearing assets and liabilities. The interest-bearing assets comprise bank balances that are short-term in nature. Any short-term fluctuation in interest rates will not significantly affect the Company. No sensitivity analysis is prepared as the Company does not expect any material effect on the Company's profit or loss arising from the effects of reasonably possible changes in interest rates on interest-bearing financial instruments at the end of the reporting period.

16. Financial risk management (Cont'd)Credit risk

Credit risk is the potential financial loss resulting from the customer defaulting on its contractual obligations to the Company. The Company has no significant concentrations of credit risk. The Company has policies in place to ensure that sales are made to customers with an appropriate credit history and credit standing.

The Company's maximum exposure to credit risk is represented by the carrying amount of financial assets recorded in the financial statements, net of allowances of losses.

Liquidity risk

Liquidity risk is the risk that the Company will encounter difficulty in meeting its financial obligations due to shortage of funds. The Company exposure to liquidity risk arises primarily from mis-matches of the maturities of financial assets or liabilities.

Management monitors and ensures that the Company maintains a level of cash and cash equivalents deemed adequate to finance the Company's operations.

The table below summarises the maturity profile of the Company's financial assets and liabilities at the end of the reporting period based on the contractual undiscounted repayment obligations:

	Within one year S\$	Later than one year but not later than five years S\$	Total S\$
2018			
Financial assets			
Cash and cash equivalents	6,000	0	6,000
Trade and other receivables (excluding prepayments)	9,994,000	0	9,994,000
	<u>10,000,000</u>	<u>0</u>	<u>10,000,000</u>
Financial liability			
Trade and other payables	(3,300)	0	(3,300)
	<u>(3,300)</u>	<u>0</u>	<u>(3,300)</u>
Net financial assets	<u>9,996,700</u>	<u>0</u>	<u>9,996,700</u>

Fair values

The carrying amounts of the financial assets and liabilities recorded in the financial statements of the Company approximate their fair values due to their short-term nature.

17. Capital management policy

The primary objective of the Company is to ensure it maintains sufficient cash in order to support its activities. Its approach to capital management is to balance the allocation of cash and the incurrence of debt. Available cash is deployed primarily to cover operational requirements.

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27. We find the following salient features from the afore cited Financial Statement and Notes:

(i) Shri J Sundeep Aanand and Shri V. T. Thiayagarajan were appointed as Directors of the Company on 15.06.2017. Smt. Anusuya and Ms. Sri Nisha were appointed as Directors on 15.09.2018. According to the register of Directors' shareholding, it is stated that M/s Silver Park International Pte. Ltd. had 'ordinary shares, fully paid' as on 30.06.2018 distributed whereby Shri Sundeep Aanand held 2,250,000, Ms. Sri Nisha held 2,250,000, Smt. Anusuya held 4,500,000 and Shri V. T. Thiayagarajan held 10,00,000.

(ii) The Board of Directors authorised the Financial Statement, which were signed by Shri Sundeep Aanand and Ms. J Sri Nisha as Directors.

(iii) The Statement as on 30.06.2018 mentions Trade and other receivables of the amount SGD 9,994,000 and Share Capital of the amount as SGD 10,000,000.

(iv) This is further corroborated by the Statements of Changes in Equity for the Financial Period from 15.06.2017 to 30.06.2018 showing the Balance at the beginning of the Financial Period i.e. the date of incorporation Share Capital as zero. The issuance of Shares at the end of the period is shown as Share Capital of 10,000,000 SGD and the amount attributable to equity holder of the Company as SGD 10,000,000.

(v) The Statement of Cash Flows for the said period mentions Proceeds from the issuance of Shares as SGD 10,000,000.

(vi) Paragraph 2.15 of the Notes to the Financial Statement shows that the Share Capital comprised of Ordinary Shares, classified as equity. Incremental costs directly attributable to the issuance of new ordinary shares were deducted against the share capital account.

(vii) While Note 10 to the Financial Statement shows as 'Other Receivables' an amount of SGD 9,994,000 as amounts due from the Directors. Under Note 10 there is also a mention that the non-trade amounts due from Directors are unsecured, interest free and repayable on demand. It is also mentioned that at the reporting date, the carrying amounts of trade and other receivables amount approximate their fair value.

(viii) Note No. 14 to the Financial Statement is titled as Share Capital and states zero amount at the date of incorporation. However, the issuance of shares at the end of the Financial Period i.e. 30.06.2018, is reflected as the number of shares issued and fully paid as 10,000,000 and the amount against is shown as SGD 10,000,000.

(ix) In Note No. 16 to the Financial Statement reflecting Financial Risk Management, it is stated that Trade and Other Receivables (excluding pre-payments) is SGD 9,994,000. It is also mentioned that the carrying amounts of the financial assets and liabilities

recorded in the Financial Statements of the Company approximate their fair values due to their short-term nature.

(x) Under Note No. 17 titled as Capital Management Policy, it is mentioned that the primary objective of the Company is to ensure it maintains sufficient cash in order to support its activities. Its approach to Capital Management is to balance the allocation of cash and the incurrence of debt. Available cash is deployed primarily to cover operational requirements.

28. While we refrain from drawing a firm conclusion as to whether the Respondents had paid for the shares, it is clear without any doubt from the aforementioned Financial Statement along with its Notes, that the Share Capital of the Company stood at SGD 10,000,000 through issuance of shares which were in the nature of ordinary shares classified as equity. It is also clear that these shares as on 30.06.2018 stood in the names of Shri Sundeep Aanand holding 2,250,000, Ms. Sri Nisha holding 2,250,000, Smt. Anusuya holding 4,500,000 and Shri V. T. Thiayagarajan holding 10,00,000. Even if the value of SGD 1 per share is regarded as nominal value it cannot be stated that the shares were of zero value. The arguments of the Respondents that the Company had been 'struck off' subscription does not impact the aforementioned inference that at the relevant time the subscription to Memorandum of Association/ shares were valued at SGD 1 per share even in the Financial Statement of the Company.

29. We are unable to agree with the conclusion of the Ld. CA in the Impugned Order that:

“In this case no share of any value was held in Singapore.”

It has been argued by the Respondents, which has been accepted by the Ld. CA that it was the case of merely the subscription of shares by the Respondents without having paid money to infuse the Capital in the Company. As pointed out in the preceding paragraph of this Order that in the Statement of Cash Flows there is mention about the amount SGD 10,000,000 as proceeds from issuance of shares and net cash provided by the financing activity being SGD 10,000,000. Even for argument's sake, if it is taken that the Respondents had merely made subscription of shares, it cannot be ignored that such subscription entailed the preemptive rights to the allottee to hold on to such subscriptions unless the allottee failed to meet certain obligations like making further payment to the Company against the subscription. Besides the shares being of value SGD 1 per share from the time of the incorporation of the Company on 15.06.2017, it is also on record that the subscription of shares bestowed certain rights and entitlements. Moreover, without acquisition and holding on to the subscription of shares, the allottee could not have been appointed as Director of the Company. It is also on record that the subscription of shares was transferred as gift which in itself demonstrates value inherent in the subscription of shares. In certain transfers a claim was created for obtaining a

consideration of SGD 1 per share, even though actual payment may not have been made.

30. The Hon'ble Supreme Court of India in the **Judgment dated 25.08.2014 in the matter of Manohar Lal Sharma vs. Principal Secretary [(2014) 9 SCC 516 : 2014 SCC OnLine SC 878]** observed the following in paragraphs 63 and 65 of the Judgment:

“63. It is argued by the learned Attorney General that the allocation letter does not by itself confer the right to work mines and the identification of the coal block does not impinge upon the rights of the State Government under the 1957 Act. The learned Attorney General argues that allocation of coal block is essentially an identification exercise where coal blocks selected by CIL for captive mining were identified by the Screening Committee for development by an allocatee, after considering the suitability of the coal block (in terms of exercise and quality of reserve) vis-à-vis the requirements of the end-use plant of the applicant. It is submitted by the Attorney General that a letter of allocation is the first step. It entitles the allocatee to apply to the State Government for grant of prospecting licence/mining lease in accordance with the provisions of the 1957 Act. The right to apply for grant of prospecting licence/mining lease does not imply that with the issuance of allocation letter the allocatee automatically gets the clearances and approval required under the 1957 Act, the 1960 Rules, the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986, etc.

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65. *There seems to be no doubt to us that allocation letter is not merely an identification exercise as is sought to be made out by the learned Attorney General. From the position explained by the State Governments concerned, it is clear that the allocation letter by the Central Government creates and confers a very valuable right upon the allottee. We are unable to accept the submission of the learned Attorney General that allocation letter is not bankable. As a matter of fact, the allocation letter by the Central Government leaves practically or apparently nothing for the State Government to decide save and except to carry out the formality of processing the application and for execution of the lease deed with the beneficiary selected by the Central Government. Though, the legal regime under the 1957 Act imposes responsibility and statutory obligation upon the State Government to recommend or not to recommend to the Central Government grant of prospecting licence or mining lease for the coal mines, but once the letter allocating a coal block is issued by the Central Government, the statutory role of the State Government is reduced to completion of processual formalities only. As noticed earlier, the declaration under Section 1-A of the CMN Act does not take away the power of the State under Section 10(3) of the 1957 Act. It is so because the declaration under Section 1-A of the CMN Act is in addition to the declaration made under Section 2 of the 1957 Act and not in its derogation. The 1957 Act continues to apply with the same rigour in the matter of grant of prospecting licence or mining lease of coal mines but the eligibility of persons who can carry out coal mining operations is restricted to the persons specified in Section 3(3)(a) of the CMN Act.”*

In paragraph 23 of the Impugned Order following finding has been made

“In this case the respondents have subscribed only on paper. As per the records filed with the Singapore authorities respondent (1) & respondent (2) have already gifted the non-paid shares. Therefore, no liability can be cast upon them on the zero value.”

However, it is clear that the subscription of shares or for that matter even subscriptions of Memorandum of Association created and conferred a very valuable right upon the allottee. Not only the allotment of subscription of shares bestowed certain rights and privileges on to its holders, but also paved the way for the future operations of the Company formed for the purpose to make investments and execute projects in the field of petroleum and mining all over the world. Therefore, the conclusion that the subscription of shares was mere piece of paper with zero value is erroneous.

31. A question has been raised about the nature of subscription being foreign security or not. Section 2 (o) of FEMA states the following:

2. Definitions.—*In this Act, unless the context otherwise requires,—*

(o) “foreign security” means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return

such as interest or dividends is payable in Indian currency;

Argument that has been made is that under the facts and circumstances of the present case wherein it is contended that subscription was made to the Memorandum of Association/share and since no payment was made as the Company had not called for such payment, there was no share in existence and hence there was no foreign security. We have already examined the Financial Statement of the Company and have found that not only there was ascription of value of SGD 1 for each share, but also the subscription bestowed certain rights and privileges to its holder. Moreover, Regulation 2 (e) of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 states the following:

“Definitions

2. In these Regulations, unless the context otherwise requires:

(e) "Direct investment outside India" means investment by way of contribution to the capital or subscription to the Memorandum of Association of a foreign entity or by way of purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange, but does not include portfolio investment.”

It is clear that even subscription to the Memorandum of Association of a foreign entity has been regarded as direct investment outside India on par with purchase of existing shares of a foreign entity. We

therefore infer that even if the subscription is for Memorandum of Association of a foreign entity, it shall be covered as foreign security. The Respondents have also admitted that no permission was taken from RBI to hold such foreign security.

32. The following finding made in paragraph 16 of the Impugned Order is without any reasonable basis:

“From the documents available, it emerges that no money in Singapore \$ has been paid for 9,000,000 shares by both the respondents 1 & 4 (Respondents 2 & 5 in this Appeal). Therefore, those 90,00,000 shares remain as such unpaid. As both the respondents have neither acquired or owned or held the paid shares, it can't be said that they have violated Section 4 of FEMA.”

On reading of Section 4 of FEMA, it is obvious that there is no requirement therein as to mandate payment to acquire, hold, own, possesses or transfer any foreign exchange, foreign security or any immovable property situated outside India. As is obvious from the Financial Statement that the shares were held by the four Respondents to this Appeal. Respondent No. 2 acquired 70,00,000 shares at the time of incorporation of the Company. Respondent No. 3 acquired 45,00,000 shares through gift from Respondent No. 2. Respondent No. 4 acquired 45,00,000 shares through gift of 22,50,000 shares from her father (Respondent No. 2) and through gift of 22,50,000 shares from her mother (Respondent No. 3). Respondent No. 4 acquired 20,00,000 shares at the time of incorporation of the Company, 2,50,000 shares as gift from his

father Respondent No. 2 and 22,50,000 shares as gift from his mother (Respondent No. 3). Irrespective of whether the shares were paid for or not, it is clear that the four Respondents held the shares of the Company. We do note that Respondent No. 2 after having acquired 70,00,000 shares transferred his shares to his wife, daughter and son. The statements of the Respondents along with the Board Resolution also bring out that Respondent No. 3 had also transferred the shares to Respondent No. 4 & 5. Therefore, the Authorised Officer viz the Assistant Director, Enforcement Directorate did have reasons to believe to suspect the contravention of Section 4 of FEMA.

33. From the reading of Section 37A of FEMA it can be made out that the Section was introduced on 08.09.2015 as a measure to secure the foreign exchange, foreign security or any immovable property situated outside India held by resident Indians, than otherwise provided under FEMA. Enactment of Section 37A enabled the Authorities under FEMA to effect seizure of value equivalent situated within India. Section 37A (4) of FEMA provides for confirmation of the seizure till the disposal of the adjudication proceedings by the Adjudicating Authority under Section 16 of FEMA. It is therefore a temporary measure, which is also obvious from the proviso to Section 37A (4) of FEMA where setting aside of the seizure is provided for on disclosure that the foreign exchange, foreign security or immovable property has been brought back to India.

34. Since the penalty for the contravention of Section 4 of FEMA and for the contravention of any other provision of the Act which are invoked in the Show Cause Notice issued in the case, is to be determined under Section 13 and Section 13 (1A) of FEMA, a caution needs to be exercised so that the seizure is made only of the 'value equivalent' situated within India of the foreign security situated outside India and not of value more than that. We observe that the foreign security held outside India by the four Respondents herein was of value 90,000,000 SGD. Transfer through gifting only meant that while the transferee gained in terms of holding more of foreign security, the transferor lost that much of the holding. We also note that the Respondent No. 3 Smt. J Anusuya has since demised. It is also on record that Shri S. Jagathrakshakan had no holding of foreign security as he had transferred his holding to his family members. It would therefore follow that the Respondent No. 4 & 5 i.e. Ms. Sri Nisha and Shri Sundeep Aanand each was holding 4,500,000 SGD. We reject the argument of the Appellant Department that acquisition of foreign security and transfer of foreign security are two independent transactions effected between different persons at different material points of time and hence the contravention under Section 4 of FEMA, needs to be treated separately for each such transaction.

35. The objective of Section 37A is met if value equivalent in India of foreign security situated outside is secured through seizure under the provisions of Section 37A of FEMA. The said provisions do not

provide for seizure in India which exceeds value equivalent of foreign security held outside India. Transfer of such foreign security may invite penalty if the contravention is found established in the Adjudication Proceedings under Section 16 of FEMA, but under Section 37A of FEMA, another seizure of properties is not permitted, if properties in India that have already been seized are of value equivalent. Hence, value equivalent situated in India of foreign security can only remain seized. Therefore, the Impugned Order is set aside to the extent of vacating the seizure of the properties in India of value Rs. 23,23,57,523/- and Rs. 22,11,17,507/- in the name of Ms. J Sri Nisha and Shri J. Sundeep Aanand respectively. We uphold the Impugned Order vacating the seizure of the properties in India in the names of Shri S. Jagathrakshakan and Late Smt. J Anusuya.

36. In view of the aforementioned discussions and analysis, we partly allow the Appeal No. FPA-FE-33/CHN/2021 filed by Union of India, through Assistant Director, Directorate of Enforcement, Chennai. Applications pending, if any, stand disposed of accordingly.

(Rajesh Malhotra)
Member

(Balesh Kumar)
Member

New Delhi
21st May, 2026
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