

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 13th August, 2015
Judgment delivered on: 20th October, 2015

+ **W.P.(C) 3557/2014**

ROCKLAND HOTELS LTD Petitioner

versus

INCOME TAX SETTLEMENT COMMISSION
PRINCIPAL BENCH, & ORS. Respondents

and

+ **W.P.(C) 3558/2014**

MONA INFOTECH PVT LTD Petitioner

Versus

INCOME TAX SETTLEMENT COMMISSION,
PRINCIPAL BENCH & ORS. Respondents

and

+ **W.P.(C) 3559/2014**

AVEE MEDI SURGICAL PVT.LTD Petitioner

versus

INCOME TAX SETTLEMENT COMMISSION,
PRINCIPAL BENCH, & ORS. Respondents

and

+ **W.P.(C) 3752/2014**

AKHIL MEDITECH PVT. LTD Petitioner

Versus

INCOME TAX SETTLEMENT COMMISSION,
PRINCIPAL BENCH & ORS.

..... Respondents

and

+ **W.P.(C) 3753/2014**

HITESH CONSTRUCTIONS PVT. LTD

..... Petitioner

Versus

INCOME TAX SETTLEMENT COMMISSION,
PRINCIPAL BENCH & ORS.

..... Respondents

and

+ **W.P.(C) 3754/2014**

RADHIKA SURGICAL PVT. LTD

..... Petitioner

Versus

INCOME TAX SETTLEMENT COMMISSION,
PRINCIPAL BENCH & ORS.

..... Respondents

and

+ **W.P.(C) 3755/2014**

KUNAL MEDICARE PVT. LTD.

..... Petitioner

versus

INCOME TAX SETTLEMENT COMMISSION,
PRINCIPAL BENCH & ORS.

..... Respondents

and

+ **W.P.(C) 3756/2014**

GLORY LIFESCIENCE PVT. LTD

..... Petitioner

Versus

INCOME TAX SETTLEMENT COMMISSION,
PRINCIPAL BENCH & ORS.

..... Respondents

and

+ **W.P.(C) 3757/2014**

UMESH PHARMACEUTICALS PVT. LTD.

..... Petitioner

versus

INCOME TAX SETTLEMENT COMMISSION,
PRINCIPAL BENCH & ORS.

..... Respondents

and

+ **W.P.(C) 3758/2014**

LIPI FINSTOCK LTD.

..... Petitioner

versus

INCOME TAX SETTLEMENT COMMISSION,
PRINCIPAL BENCH & ORS.

..... Respondents

and

+ **W.P.(C) 3759/2014**

HIMANSHU MEDICARE PVT. LTD.

..... Petitioner

versus

INCOME TAX SETTLEMENT COMMISSION,
PRINCIPAL BENCH & ORS.

..... Respondents

and

+ **W.P.(C) 3761/2014**

AESTHETICA ENTERPRISES PVT. LTD.

..... Petitioner

Versus

INCOME TAX SETTLEMENT COMMISSION,
PRINCIPAL BENCH & ORS.

..... Respondents

and

+ **W.P.(C) 3762/2014**

ADITYA MEDICOS PVT. LTD

..... Petitioner

Versus

INCOME TAX SETTLEMENT COMMISSION,
PRINCIPAL BENCH & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Ajay Vohra, Senior Advocate with Mr S.R.Wadhwa,
Mr Vaibhav Kulkarni and Ms Kavita Jha, Advocates.

For the Respondents : Mr Rohit Madan, Mr Akash Vajpai and Mr Zoheb
Hussain, Advocates.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. These 13 Writ Petitions arise out of a common Judgment dated 23.04.2014 passed by the Income Tax Settlement Commission (hereinafter referred to as the Settlement Commission), in a batch of 25 settlement applications filed under section 245C (1) of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act'). Out of the 25 applications, 12 applications were admitted and allowed to be proceeded with under section 245D(1) of the act and 13 applications were held to be not fit for admission as having been filed by persons who were not covered in the definition of related parties as per explanation to sub-section (1) of section 245C of the Act for the purposes of clause (ia) of the Proviso to sub-section (1) and have been dismissed.

2. The question that arises for consideration in these petitions is whether the petitioner in each of these petitions is a related party of the respective specified person under section 245C(1)(ia) of the Act ?

3. Before advertng to the facts of each of the cases, it would be expedient to examine the provisions of section 245C of the Act to ascertain as to who qualifies as a related party in terms of clauses (a)(v) and (a)(vi)(B) of the Explanation to sub-section (1) to section 245C. Since the petitioners in these petitions claim themselves to be

related parties in terms of the above referred clauses only, so the examination is restricted to only these clauses.

4. Section 245C of the Act reads as under:

Application for settlement of cases.

245C. (1) An assessee may, at any stage of a case relating to him, make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived, the additional amount of income-tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided :

Provided that no such application shall be made unless,—

- (i) in a case where proceedings for assessment or reassessment for any of the assessment years referred to in clause (b) of sub-section (1) of section 153A or clause (b) of sub-section (1) of section 153B in case of a person referred to in section 153A or section 153C have been initiated, the additional amount of income-tax payable on the income disclosed in the application exceeds fifty lakh rupees,
- (ia) in a case where—
 - (A) the applicant is related to the person referred to in clause (i) who has filed an application (hereafter in this sub-section referred to as "specified person"); and
 - (B) the proceedings for assessment or re-assessment for any of the assessment years referred to in clause (b) of sub-section (1) of section 153A or

clause (b) of sub-section (1) of section 153B in case of the applicant, being a person referred to in section 153A or section 153C, have been initiated,

the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees,

- (ii) in any other case, the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees,

and such tax and the interest thereon, which would have been paid under the provisions of this Act had the income disclosed in the application been declared in the return of income before the Assessing Officer on the date of application, has been paid on or before the date of making the application and the proof of such payment is attached with the application.

Explanation.—For the purposes of clause (ia),—

(a) the applicant, in relation to the specified person referred to in clause (ia), **means**,—

- (i) where the specified person is an individual, any relative of the specified person;
- (ii) where the specified person is a company, firm, association of persons or Hindu undivided family, any director of the company, partner of the firm, or member of the association or family, or any relative of such director, partner or member;
- (iii) any individual who has a substantial interest in the business or profession of

the specified person, or any relative of such individual;

(iv) a company, firm, association of persons or Hindu undivided family having a substantial interest in the business or profession of the specified person or any director, partner or member of such company, firm, association or family, or any relative of such director, partner or member;

(v) a company, firm, association of persons or Hindu undivided family of which a director, partner or member, as the case may be, has a substantial interest in the business or profession of the specified person; or any director, partner or member of such company, firm, association or family or any relative of such director, partner or member;

(vi) any person who carries on a business or profession,—

(A) where the specified person being an individual, or any relative of such specified person, has a substantial interest in the business or profession of that person; or

(B) where the specified person being a company, firm, association of persons or Hindu undivided family, or any director of such company, partner of such firm or member of the association or family, or any relative of such director, partner or member, has a

substantial interest in the business
or profession of that person;

(b) a person shall be deemed to have a substantial
interest in a business or profession, if—

(A) in a case where the business or
profession is carried on by a company,
such person is, on the date of search, the
beneficial owner of shares (not being
shares entitled to a fixed rate of dividend,
whether with or without a right to
participate in profits) carrying not less
than twenty per cent of the voting power;
and

(B) in any other case, such person is, on the
date of search, beneficially entitled to not
less than twenty per cent of the profits of
such business or profession.

(1A) For the purposes of sub-section (1) of this section , the additional amount of income-tax payable in respect of the income disclosed in an application made under sub-section (1) of this section shall be the amount calculated in accordance with the provisions of sub-sections (1B) to (1D).

(1B) Where the income disclosed in the application relates to only one previous year,—

- (i) if the applicant has not furnished a return in respect of the total income of that year, then, tax shall be calculated on the income disclosed in the application as if such income were the total income;
- (ii) if the applicant has furnished a return in respect of the total income of that year, tax shall be calculated on the aggregate of the total income returned and the income disclosed in the

application as if such aggregate were the total income.

(1C) The additional amount of income-tax payable in respect of the income disclosed in the application relating to the previous year referred to in sub-section (1B) shall be,—

- (a) in a case referred to in clause (i) of that sub-section, the amount of tax calculated under that clause;
- (b) in a case referred to in clause (ii) of that sub-section, the amount of tax calculated under that clause as reduced by the amount of tax calculated on the total income returned for that year;

(1D) Where the income disclosed in the application relates to more than one previous year, the additional amount of income-tax payable in respect of the income disclosed for each of the years shall first be calculated in accordance with the provisions of sub-sections (1B) and (1C) and the aggregate of the amount so arrived at in respect of each of the years for which the application has been made under sub-section (1) shall be the additional amount of income-tax payable in respect of the income disclosed in the application.

(2) Every application made under sub-section (1) shall be accompanied by such fees as may be prescribed.

(3) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant.

(4) An assessee shall, on the date on which he makes an application under sub-section (1) to the Settlement Commission, also intimate the Assessing Officer in the prescribed manner of having made such application to the said Commission.

(highlight & underlining supplied)

5. From a reading of clause (a) (v) of the Explanation to sub-section (1) to section 245C, it emerges that the following twelve categories of persons are covered in the definition of related parties for the purposes of clause (ia) of the Proviso to sub-section (1) to section 245C of the Act under that clause.

- (i) **a company, a director of which, has a substantial interest in the business or profession of the specified person; or**
- (ii) a firm, a partner of which, has a substantial interest in the business or profession of the specified person; or
- (iii) an association of persons, a member of which, has a substantial interest in the business or profession of the specified person; or
- (iv) a Hindu undivided family, a member of which, has a substantial interest in the business or profession of the specified person; or
- (v) **any director, of such a company or**
- (vi) any partner, of such a firm or
- (vii) any member, of such an association of persons; or
- (viii) any member, of such a Hindu undivided family; or
- (ix) **any relative of such a director of such company; or**
- (x) any relative of such a partner of such firm; or

- (xi) any relative of such a member of such association of persons; or
- (xii) any relative of such a member of such Hindu undivided family.

(highlight & underlining supplied)

6. From a reading of clause (a) (vi) of the Explanation to sub-section (1) to section 245C, it emerges that, if,

- (i) **the specified person (being a company), that company; or**
- (ii) the specified person (being a firm), that firm; or
- (iii) the specified person (being an association of persons), that association; or
- (iv) the specified person (being a Hindu undivided family), that family; or
- (v) **any director of such specified person (company); or**
- (vi) any partner of such specified person (firm); or
- (vii) any member of such specified person (association of persons); or
- (viii) any member of such specified person (Hindu undivided family); or
- (ix) **any relative of such director of such a specified person (company); or**

- (x) any relative of such partner, of such a specified person (firm); or
- (xi) any relative of such member, of such specified person (association of persons); or
- (xii) any relative of such member, of such specified person (Hindu undivided family),

(highlight & underlining supplied)

has a substantial interest, in the business and profession of any person, who carries on a business or profession, then, such person is also covered in the definition of related parties for the purposes of clause (ia) of the Proviso to sub-section 1 to section 245C of the Act.

7. So, under clause (a)(v), only if a director of the applicant company has a substantial interest in the specified person (company), then, the applicant company, its directors and relatives of its directors qualify as related parties. A company would not qualify as a related party merely because any relative of one of its directors has a substantial interest in the specified person. However, under clause (a)(vi), the applicant would qualify as a related party, if a specified person (company) or any of its directors or any relative of any of its directors have a substantial interest in the applicant.

8. The following flow chart would explain the provision graphically:

Clause (a)(v)

Specified Person (SP)	←	Related Party (RP)	Qualified
Director of SP		Director of RP	Qualified
Relative of Director of SP		Relative of Director of RP	Qualified

Clause (a)(vi)

Specified Person (SP), or	→	Related Party (RP)	Qualified
Director of SP, or	→	Director of RP	-----
Relative of Director of SP	→	Relative of Director of RP	-----

(where → signifies having a substantial interest)

9. We may also note that the Explanation uses the word “means”. *It is trite to say that when in the definition clause given in any statute the word “means” is used, what follows is intended to speak exhaustively. When the word “means” is used in the definition, to borrow the words of Lord Esher, M.R. in Gough v. Gough [(1891) 2 QB 665 : 60 LJQB 726 : 65 LT 110] it is a “hard-and-fast” definition and no meaning other than that which is put in the definition can be assigned to the same. (Also see P. Kasilingam v. P.S.G. College of*

Technology[1995 Supp (2) SCC 348 : AIR 1995 SC 1395] .) On the other hand, when the word “includes” is used in the definition, the legislature does not intend to restrict the definition: it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise.¹ The words “means and includes”, on the other hand, indicate “an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions”. (See : *Dilworth v. Commissioner of Stamps* [1899 AC 99, 105-106 : (1895-9) All ER Rep Ext 1576] (Lord Watson); *Mahalakshmi Oil Mills v. State of A.P.* [(1989) 1 SCC 164, 169 : 1989 SCC (Tax) 56].² Therefore, the use of only the word “means” without the word “includes” is clearly indicative of the legislative intent that it is a hard and fast definition and no meaning other than which is put in the definition can be assigned to the same.

10. Further from a reading of clause (b) of the Explanation to sub-section (1) to section 245C it emerges that a person shall be deemed to have a substantial interest in a business or profession, where if, the business or profession is carried on by a company, then on the date of search, such person is the beneficial owner of shares (not being shares

1 . *Bharat Coop. Bank (Mumbai) Ltd. v. Employees Union*, (2007) 4 SCC 685 at page 695
 2. *P. Kasilingam v. P.S.G. College of Technology*, 1995 Supp (2) SCC 348 at page 355

entitled to a fixed rate of dividend, whether with or without a right to participate in profits) carrying not less than twenty per cent of the voting power and in any other case, such person is, on the date of search, beneficially entitled to not less than twenty per cent of the profits of such business or profession.

11. Out of the 25 applicants, the following two applicants fall in the category of specified persons:

- (i) M/s Somya Constructions Pvt. Ltd.
- (ii) M/s Rockland Hospitals Ltd.

12. Now let us examine the facts of each of the petitions to determine whether the respective petitioner qualifies as a related party to the claimed specified person.

WP(C) 3557of 2014 (M/s Rockland Hotels Ltd.)

13. The Petitioner claims itself to be a related party to M/s Somya Constructions Pvt. Ltd. on the ground that both the companies are substantially controlled by the Srivastava and the Bhandari families and has common shareholding and directorship. It is also contended that more than 20% of the equity share capital of the specified person M/s Somya Constructions Pvt. Ltd. was held by Mrs. Mala Srivastava wife of Mr. Rajesh Srivastava a director of the petitioner. It claims to be covered by clause (a)(v) of the explanation.

14. The Settlement Commission, qua the petitioner, by the impugned judgment has held as under:

“The matter has been examined. Explanation (a)(v) as referred to above makes a company a related person if any of its Directors has a substantial interest in the business of a specified person. It is seen that none of the Directors of Applicant Company has any shareholding in M/s. Somya Constructions Pvt. Ltd. and accordingly clause (v) is not attracted. For purposes of explanation (a)(v), it is necessary that any Director of the applicant company should have substantial interest in the business of specified person. Holding of shares by the relatives of such Director either singly or jointly is of no significance. Accordingly, holding of more than 20% shares of M/s. Somya Constructions Pvt. Ltd. by Smt. Mata Srivastava and Smt. Sushmita Srivastava is of no significance. As no Director of the applicant, company holds any substantial interest in the business of M/s. Somya Constructions Pvt. Ltd., it cannot be said that the conditions of explanation (a)(v) are satisfied. We are of the opinion that M/s. Rockland Hotels Ltd. is not related to M/s. Somya Constructions Pvt. Ltd. From the examination of the application of M/s. Rockland Hospitals Ltd., it is seen that no person holds substantial interest in that company as the highest shareholding by any person is less than 20% of total shareholding. As no Director of the applicant company holds substantial interest in the business of M/s. Rockland Hospitals Ltd. applicant is also not related to M/s. Rockland Hospitals Ltd.

Accordingly, it is held that M/s. Rockland Hotels Ltd. is not a related person either to Somya Constructions Pvt. Ltd. or to M/s. Rockland Hospitals Ltd.”

(underlining supplied)

15. Holding a substantial interest in the specified person, by a director of the applicant, is a necessary qualifying condition. If the legislature had intended to enlarge the ambit of the qualifying condition by including a relative of the director it would have specifically provided so. Wherever the relative of a director is intended to be included, the legislature has specifically provided so. As held in **Bharat Coop. Bank Ltd. (Supra)**, use of word ‘means’ implies that it is a ‘hard and fast’ definition. The court cannot enlarge the ambit of the qualifying condition and read into it what is not so specifically provided by the legislature.

16. For M/s Rockland Hotels Ltd. to qualify as a related party, one of its directors must hold a substantial interest in the specified person M/s Somya Constructions Pvt. Ltd.. Admittedly that is not the case and the said condition is not satisfied. None of the directors of M/s Rockland Hotels Ltd. hold substantial interest in M/s Somya Constructions Pvt. Ltd. Merely because a relative of one of the directors of the applicant/petitioner is stated to be holding a substantial interest in the specified person would be of no avail. We do not find any infirmity with the reasoning of the Settlement

Commission. Since the conditions of Explanation (a)(v) are not satisfied, the Writ Petition is thus liable to be dismissed.

WP(C) 3559/2014 (M/s. Avee Medi Surgical Pvt. Ltd.)

WP(C) 3752/2014 (M/s. Akhil Meditech Pvt. Ltd.)

WP(C) 3753/2014 (M/s. Hitesh Construction Pvt. Ltd.)

WP(C) 3754/2014 (M/s. Radhika Surgical Pvt. Ltd.)

WP(C) 3755/2014 (M/s. Kunal Medicare Pvt Ltd.)

WP(C) 3756/2014 (M/s. Glory Lifescience Pvt. Ltd.)

WP(C) 3758/2014 (M/s. Lipi Finstock Ltd.)

WP(C) 3759/2014 (M/s. Himanshu Medicare Pvt. Ltd.)

WP(C) 3761/2014 (M/s. Aesthetica Enterprises Pvt Ltd.)

17. The Settlement Commission qua the petitioners hereinabove has held as under:

“The AR claims that clause (vi) of the Explanation is attracted in respect of these 9 companies. Examination of the explanation (a)(vi)(B) reveals that it is applicable to a person where the specified person being a company itself holds or any Director of such company holds or any relative of such Director holds a substantial interest in the business or profession of that person. In other words, first it is necessary to find out who are the persons who hold substantial interest in the business of applicants.

Examination of the application of **M/s. Avee Medi Surgical Pvt. Ltd.** reveals that its total shareholding is of 4,63,922 shares, with M/s. Rockland Pvt. Ltd. holding 4,41,422 shares which comes to 95% of shares. Thus, M/s. Rockland Pvt.

Ltd. is the only shareholder having substantial interest in M/s. Avee Medi Surgical Pvt. Ltd. Neither M/s. Rockland Hospitals Ltd. nor any of its Directors or their relative hold any substantial interest in the applicant company.

Examination of the application of **M/s. Radhika Surgical Pvt. Ltd.** reveals that its total shareholding is of 18,72,500 shares, with M/s. Rockland Pvt. Ltd. holding 18,62,500 shares which comes to 99% of shares. Thus, M/s. Rockland Pvt. Ltd. is the only shareholder having substantial interest in this company. Neither M/s. Rockland Hospitals Ltd. nor any of its directors or their relative hold any substantial interest in the applicant company.

Examination of the application of **M/s. Akhil Meditech Pvt. Ltd.** reveals that its total shareholding is of 17,73,750 shares, with M/s. Rockland Pvt. Ltd. holding 17,61,250 shares which comes to 99% of shares. Thus, M/s. Rockland Pvt. Ltd. is the only shareholder having substantial interest in this company. Neither M/s. Rockland Hospitals Ltd. nor any of its Directors or their relative hold any substantial interest in the applicant company.

Examination of the application of **M/s. Hitesh Construction Pvt. Ltd.** reveals that its total shareholding is of 4,44.847 shares, with M/s. Rockland Pvt. Ltd. holding 4,34,847 shares which comes to 97% of shares. Thus, M/s. Rockland Pvt. Ltd. is the only shareholder having substantial interest in this company. Neither M/s. Rockland

Hospitals Ltd. nor any of its Directors or their relative hold any substantial interest in the applicant company.

Examination of the application of **M/s. Himanshu Medicare Pvt. Ltd.** reveals that its total shareholding is of 18,72,500 shares, with M/s. Rockland Pvt. Ltd. holding 18,62,500 shares which comes to 99% of shares. Thus, M/s. Rockland Pvt. Ltd. is the only shareholder having substantial interest in this company. Neither M/s. Rockland Hospitals Ltd. nor any of its Directors or their relative hold any substantial interest in the applicant company.

Examination of the application of **M/s. Aesthetica Enterprises Pvt. Ltd.** reveals that its total shareholding is of 15,57,500 shares, with M/s. Rockland Pvt. Ltd. holding 15,47,500 shares which comes to 99% of shares. Thus, M/s. Rockland Pvt. Ltd. is the only shareholder having substantial interest in this company. Neither M/s. Rockland Hospitals Ltd. nor any of its Directors or their relative hold any substantial interest in the applicant company.

Examination of the application of **M/s. Kunal Medicare Pvt. Ltd.** reveals that its total shareholding is of 20,04,250 shares, with M/s. Rockland Pvt. Ltd. holding 19,94,250 shares which comes to 99%, of shares. Thus, M/s. Rockland Pvt. Ltd. is the only shareholder having substantial interest in this company. Neither M/s. Rockland Hospitals Ltd. nor any of its Directors or their

relative hold any substantial interest in the applicant company.

Examination of the application of **M/s. Glory Lifescience Pvt. Ltd.** reveals that its total shareholding is of 16,74,750 shares, with M/s. Rockland Pvt. Ltd. holding 16,64,750 shares which comes to 99% of shares. .Thus, M/s. Rockland Pvt. Ltd. is the only shareholder having substantial interest in this company. Neither M/s. Rockland Hospitals Ltd. nor any of its directors or their relative hold any substantial interest in the applicant company.

Examination of the application of **M/s. Lipi Finstock Pvt. Ltd.** reveals that its total shareholding is of 15,58,200 shares, with M/s. Rockland Pvt. Ltd. holding 15,57,400 shares which comes to 99% of shares. Thus, M/s. Rockland Pvt. Ltd. is the only shareholder having substantial interest in this company. Neither M/s. Rockland Hospitals Ltd. nor any of its Directors or their relative hold any substantial interest in the applicant company.

Accordingly, it is clear that in all 9 companies, M/s. Rockland Pvt. Ltd. is the only shareholder-having substantial interest. Explanation (a)(vi)(B) requires that either M/s. Rockland Hospitals Ltd (specified person) should hold substantial interest in the applicant companies or any of its Directors or any relative of Directors should hold substantial interest in the applicant company. The examination made above reveals that M/s. Rockland Hospitals Ltd. does not hold any shares in these 9

companies. None of the Directors of M/S. Rockland Hospitals Ltd. hold any substantial interest in these 9 companies. None of the relatives of the directors of Rockland Hospitals Ltd. hold any substantial interest in these 9 companies. M/s. Rockland Pvt. Ltd. is neither a Director in M/s. Rockland Hospitals Ltd. nor a relative of Directors. Thus, conditions mentioned in explanation (a)(vi)(B) are not satisfied. Accordingly, it cannot be held that the 9 applicant companies are related to M/s. Rockland Hospitals Ltd.

Regarding the issue of beneficial shareholding, explanation (b) to proviso below section 245C(1) defines when a person is deemed to have a substantial interest. In the case of a company, sub-clause (A) defines that a person who is a beneficial owner of shares (not being shares entitled to a fixed rate of dividend, whether with or without a right to participate in the profits), carrying not less than 20% of voting power, is deemed to have substantial interest. So the section envisages a situation where a shareholder has a right to participate in the profits and has voting power. It is only the equity shareholders who are normally entitled to voting power and participate in the profits. Such an equity shareholder may hold shares in his own name or in the name of his relatives or associates, but be the beneficial owner of such shares. In such a situation, the shareholding of such a person both in his own name or in the name of other persons will be clubbed to find out whether he has 20% voting

power or not. But in the case of above 9 applicant companies, Rockland Pvt. Ltd. holds substantial interest, 3 directors of Rockland Hospitals Ltd. are claimed to have substantial interest in Rockland Pvt. Ltd. individually. The issue is whether these 3 directors have substantial interest in the cases of 9 applicant companies also. These 3 Directors either do not have shareholdings in these 9 companies or their shareholding in less than 9%. Consequently, voting power of these Directors in 9 applicant companies is either zero or of a percentage less than 20%. Rockland Pvt. Ltd. is an independent company and exists on its own as a legal entity. The company is a legal person entirely, different from its shareholders even if there is only one shareholder. Rights and liabilities of a company are different from the rights and liabilities of its shareholders. Participation in profits of Rockland Pvt. Ltd. in 9 applicant companies is not the same thing as the participation in profits of 9 applicant companies by three Directors. The dividend, which may accrue to Rockland Pvt. Ltd. from the shareholding in the above 9 applicant companies does not pass to the shareholders of Rockland Pvt. Ltd. automatically. Shareholders of Rockland Pvt. Ltd. having right of participation in profits of Rockland Pvt. Ltd., have no right of participation in profits of the companies in which Rockland Pvt. Ltd. has a substantial interest. Thus, the Directors of Rockland Hospitals neither participate in the profits of the above 9 applicant companies nor have any voting power in these companies. We are accordingly of the view that the definition of beneficial owner of the share in explanation (b)

applies only to shares held in a company by a person either in his own name or in the name of other, persons. But this does not apply to the situation in the applicant's case, we are accordingly of the view that even if 3 Directors of Rockland Hospitals Ltd. holds substantial interest in Rockland Pvt. Ltd. and Rockland Pvt. Ltd. in turn holds substantial interest in 9 applicant companies, it cannot be said that 3 Directors hold substantial interest in 9 applicant companies.

The argument that M/s. Rockland Pvt. Ltd. holds substantial interest in these 9 companies and the Directors of M/s. Rockland Hospitals Ltd. hold practically the entire share capital of M/s. Rockland Pvt. Ltd. and therefore these 9 companies are related to Rockland Hospitals Ltd. is to be rejected as it is without any substance. The definition of related person has been provided in the Explanation (a) to proviso below section 245C(1). The words used are “the applicant, in relation to specified person referred to in clause (ia), means”. Thus, the definition provided in Explanation is a complete definition and does not provide for any inclusive definition. Thus, if any person satisfies any of the conditions mentioned in clauses (i) to (vi), that person would be a related person. If any person does not satisfy any of these conditions, that person would not be a related person. In the case of applicant, Rockland Pvt. Ltd. holds substantial interest in the applicant companies. But M/s. Rockland Hospitals Ltd., any of its Directors or any relative of Director does not hold substantial interest in the applicant company.

Accordingly, conditions of clause (vi) are not satisfied. None of the Directors of these 9 companies holds substantial interest in M/s. Rockland Hospitals Ltd., a specified person. Accordingly, conditions of clause (v) of the Explanation are also not satisfied. Clause (i) and (iii) of Explanation are not applicable. Similarly, clauses (ii) and (iv) are also not applicable. Thus, under the facts and circumstances of the case, there is no relationship of these 9 companies with M/s Rockland Hospitals Ltd. within the meaning of Explanation (a) to proviso below section 245C(1). Accordingly, these 9 companies cannot be treated as related persons.”

(Highlight and underlining supplied)

18. Applying the parameters of clauses (a)(v) and (a)(vi), only if a director of the petitioner companies has a substantial interest in the specified person (company), then, the petitioner companies, their directors and relatives of their directors qualify as related parties. The Petitioner companies would not qualify as a related party merely because any relative of one of its directors has a substantial interest in the specified person. Further, the petitioner companies would qualify as a related party, if a specified person (company) or any of its directors or any relative of any of its directors have a substantial interest in the petitioner companies.

19. In the case of the abovementioned 9 petitioners clause (a)(vi) is stated to be applicable and they are stated to be related parties to M/s

Rockland Hospitals Ltd. Therefore the specified person (i.e. M/s Rockland Hospitals Ltd.) or any of its directors or any relative of any of its directors should have a substantial interest in the petitioner companies. Admittedly, neither M/s. Rockland Hospitals Ltd. nor any of its directors or their relatives hold any substantial interest in the applicant companies. In all the 9 petitioners, M/s. Rockland Pvt. Ltd and not the specified person (M/s Rockland Hospitals Ltd.) is the only shareholder having substantial interest. Though, 3 directors of the specified person (M/s Rockland Hospitals Ltd.) claim to have substantial interest in Rockland Pvt. Ltd. Individually, however, these 3 Directors either do not have shareholdings in the 9 petitioners or their shareholding is less than 9%. Consequently, these Directors do not have a substantial interest in either of the 9 petitioners. The plea that the directors of the specified person (M/s Rockland Hospitals Ltd.) hold an indirect share in the Petitioner company, i.e. through M/s Rockland Pvt. Ltd. and is thus qualified, in our view, is not sustainable in as much as we have held that the use of the word “means” signifies the intention of the legislature to make the definition “hard and fast”. If the intention of the legislature had been to permit scope of the same to be enlarged to include having substantial interest indirectly through another entity, the legislature would have specified so as has been done in the case of Explanation (b)(A).

20. Beneficial owner of the share as referred to in Explanation (b)(A) refers to shares held in a company by a person either in his own name or in the name of other, persons. A corporate entity is a separate legal entity. Merely because a director of the specified person holds shares in a company which in turn holds shares in the Petitioner would not make the director the beneficial holder of the shares of the Petitioner and thus qualify the petitioner as a related party. We do not find any infirmity with the reasoning of the Settlement Commission. Since the conditions of Explanation (a)(vi)(B) are not satisfied, these writ petitions are thus liable to be dismissed.

WP(C) 3558 of 2014 (M/s Mona Infotech Pvt. Ltd.)

WP(C) 3757 of 2014 (M/s. Umesh Pharmaceuticals Pvt. Ltd.)

WP(C) 3762 of 2014 (M/s. Aditya Medicos Pvt Ltd.)

21. The Settlement Commission qua the petitioners hereinabove has held as under:

“The AR has referred to clause (vi) of the Explanation to apply in respect of these 3 companies. Examination of the explanation (a)(vi)(B) reveals that it is applicable to a person where the specified person being a company itself holds or any Director of such company holds or any relative of such Director holds a substantial interest in the business or profession of that person. In other words, first it is necessary to find out who are the persons who hold a substantial interest in the business of applicants.

Examination of the application of **M/s. Mona Infotech Pvt. Ltd.** reveals that its total shareholding is of 6,74,875 shares. 20% of holding comes to 1,34,975 shares. The details of shareholding filed with the application reveals that there is no shareholder holding 20% of shares. Thus there is no person having substantial holding in M/s. Mona Infotech Pvt. Ltd.

Examination of application of **M/s. Aditya Medicos Pvt. Ltd.** reveals that total shareholding of this company is of 7,62,375 shares. 20% of shareholding comes to 1,52,475. Details of shareholding have been filed with the settlement application. Examination of the shareholding details reveals that there is no shareholder having substantial interest in this company.

Examination of the application of **M/s. Umesh Pharmaceuticals Pvt. Ltd.** reveals that the total shareholding of the company is of 7,40,625 shares. 20% of shareholding comes to 1,48,125 shares. Examination of the shareholding details provided in the settlement application reveals that there is no shareholder having substantial shareholding in this company.

Accordingly, it is clear that in none of the 3 companies there is any shareholder having substantial interest. Explanation (a)(vi)(B) requires that either M/s. Rockland Hospitals Ltd. (specified person) should hold substantial interest in the applicant companies or any of its Directors or any relative of Directors should hold substantial interest in the applicant company. As there is no

person holding substantial interest in these 3 companies, conditions mentioned in explanation (a)(vi)(B) are not satisfied. Accordingly, it cannot be held that the above 3 applicant companies are related to M/s. Rockland, Hospitals Ltd.

The argument of AR that cumulative holding of the Directors of M/s. Rockland Hospitals in the above companies exceeds 20% and therefore they have substantial interest, cannot be accepted. The provisions of Explanation (a) very clearly define the relationship based on any Director or his relative having substantial interest. The provisions of the Explanation do not provide that cumulative holding of 2 or more Directors can be taken into account for purpose of establishing the substantial interest. Explanation (b) provides definition of a person having a substantial interest in the business or profession of another person. This definition is applicable in respect of a person and not in respect of 2 or more persons having cumulative interest. Had the intention of Legislature been to provide for cumulative holding of 2 or more persons to decide whether they have substantial interest, the definition of substantial interest and also the definition of related person as provided in Explanation (a) and (b) would have suitably provided for it. The present definition is very clearly applicable only in respect of a person having a substantial interest. Two or more persons cumulatively having substantial interest cannot be read into the present definition. We accordingly find no merit in the argument that cumulative holding of Directors should be taken into account

to determine whether they have substantial interest in the business of applicant. As mentioned above, conditions mentioned in Explanation (a)(vi)(B) are not satisfied and therefore we hold that the above 3 applicant companies are not related to M/s. Rockland Hospitals Ltd. Since, tax payments in these 3 applications are less than Rs. 50 lakh and therefore these cases cannot be admitted u/s 245D(1).”

(highlight and underlining supplied)

22. In the case of the abovementioned 3 petitioners also clause (a)(vi) is stated to be applicable and they are stated to be related parties to M/s Rockland Hospitals Ltd. Therefore the specified person (i.e. M/s Rockland Hospitals Ltd.) or any of its directors or any relative of any of its directors should have a substantial interest in the petitioner companies. Admittedly, neither M/s. Rockland Hospitals Ltd. nor any of its directors individually or their relatives individually hold any substantial interest in the applicant companies.

23. The finding of the Settlement Commission is that there is no shareholder having substantial interest in this company i.e. there is no shareholder having more than 20% shares in the Petitioner companies. As there is no person holding substantial interest in these 3 companies, conditions mentioned in Explanation (a)(vi)(B) are not satisfied. The words used are “any director of such company” and “any relative of such director”. If the intention of the legislature of

had been to cumulatively consider the shareholding of more than one directors or more than one relative of such directors to constitute substantial interest, then it would have specified so. Since the legislature has not provided for clubbing of the shareholding of different persons to determine substantial interest, the same cannot be considered. The fact that the legislature has catered for a situation of beneficial ownership of shares shows that the omission of clubbing of shareholding is not unintentional.

24. The alleged fact that four directors of the specified person (M/s Rockland Hospitals Ltd.) hold 50% shares of the petitioner companies does not satisfy the condition. The requirement is that an individual director must hold more than 20% shares, which apparently is not the case. The further plea that the family members of Srivastava family and the Bhandari Family hold more than 20% of the shares of the specified person (M/s Rockland Hospitals Ltd.) and the petitioner companies and further that the petitioner companies have invested 100% share capital in the specified person (M/s Rockland Hospitals Ltd.) is of no avail. As elucidated hereinabove, under clause (a)(v), only if a director of the Petitioner companies had a substantial interest in the specified person (M/s Rockland Hospitals Ltd.), then, the petitioner companies, their directors and relatives of their directors qualify as related parties. Under clause (a)(vi), the petitioner

companies would qualify as related parties, if the specified person (M/s Rockland Hospitals Ltd.) or any of its directors or any relative of any of its directors had a substantial interest in the petitioner companies. This is clearly not the case. Thus, we do not find any infirmity with the reasoning of the Settlement Commission. These writ petitions are also liable to be dismissed.

25. In view of the above, all the 13 Writ Petitions are dismissed, leaving the parties to bear their own costs.

SANJEEV SACHDEVA, J.

OCTOBER 20, 2015
HJ

BADAR DURREZ AHMED, J.