



Stakeholders Empowerment Services

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Proxy Advisory Report (Addendum) Varun Beverages Ltd

ABOUT SES

Stakeholders Empowerment Services (SES) is a Corporate Governance research and advisory firm. SES assists investors to analyze governance practices including matters relating to sustainability, prevalent at listed entities and empower Investors to undertake meaningful engagement with Investee entities.

SES SERVICES

E-BRSR Tool: Online web-based platform to create BRSR Report by the Company and generate XBRL in seamless, cost and time effective manner.

[Read More](#)

Contact for Demo –

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SES AIMS:

Designed primarily for Institutional investors to carry out their stewardship activities in an efficient manner.

[Read More](#)

Proxy Advisory:

Advises investors on the matters that require shareholder approval at listed entities and identify Governance issues. [Read More](#)

ESG Scores:

Analyze sustainability initiatives of Companies based on various environmental, social and governance factors.

[Read More](#)

Corporate Governance Score (CGS):

CGS model measures the Company's compliance and also evaluates the governance practices with respect to global benchmarks. [Read More](#)

E-Ballot:

One stop solution for investors – Online Vote Management System to cater to requirements of Institutional Investors. [Read More](#)

COMPANY INFORMATION

BSE CODE: 540180

NSE SYMBOL: VBL

ISIN: INE200M01013

Industry: Other Beverages

Email: complianceofficer@rjcorp.in

Phone: +91 11 41706720

Registered Office: F-2/7, Okhla Industrial Area, Phase I, New Delhi, 110020

MEETING DETAILS

Meeting Type: AGM

Meeting Date: 27th March, 2023 at 11:00 AM

Venue: Video Conferencing (VC) facility or other audio-visual means (OAVM)

Notice Date: 6th February, 2023

Notice: [Click here](#)

Annual Report: [FY 2022](#)

SES PA Report (Last AGM): [Report](#)

E-VOTING DETAILS

e-Voting Platform: [NSDL](#)

Cut-off Date: 20th March, 2023

Remote E-voting:

- **Start:** 24th March, 2023
- **Ends:** 26th March, 2023

ADDENDUM REPORT RELEASE DATE: 25th March, 2023

RESEARCH ANALYST: Amit Panchal

CONFLICT DISCLOSURE: SES – No Conflict | ANALYST - No Conflict

PROXY ADVISORY REPORT | FOR LIMITED CIRCULATION



ADDENDUM

This Addendum is being issued based on the e-mail dated 24th March, 2023 sent by Varun Beverages Ltd ('the company') w.r.t Proxy Advisory Report ('[PA Report](#)') issued by SES in relation to the upcoming AGM of the Company having e-voting deadline on 26th March, 2023

There is no change in any of SES recommendations.

BACKGROUND

SES, as per its policy, had e-mailed its PA Report to the Company on 16th March, 2023 in respect of the upcoming AGM of the Company having e-voting deadline 26th March, 2023

Post release of the PA Report, SES received an email from the Company providing its view point, which is reproduced in the end in **blue text** along with the SES Response (**in black**).

SES COMMENTS ON COMPANY'S RESPONSE

Resolution No. 3: To appoint Mr. Ravi Jaipuria, who retires by rotation and being eligible, offers himself for re-appointment as a Director.

Company's Response:

Legal Provision:

Section 152(6)(c) of the Companies Act, 2013 provides that "At every Annual General Meeting, 1/3rd of such of the Directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office"

VBL Position:

In VBL, all Directors (other than Independent Directors) are liable to retire by rotation. Further, to comply with the aforesaid provisions of Section 152 of the Companies Act, 2013, 1/3rd of total strength of Executive Directors (including Non-Executive Chairman) are retired and e-appointed at every Annual General Meeting on a rotation basis.

In view of above, the aforesaid proposed re-appointment of Mr. Ravi Jaipuria is in compliance with the applicable provisions of the Companies Act, 2013.

SES comment:

SES re-emphasizes that the concern identified with the proposed appointment is a governance concern and not a compliance concern which relates to NED Chairman being related to Executive Director.

SES reiterates that no concern is raised on compliance on requirement of directors being liable to retire by rotation. The same has mentioned in SES PA report page no.2 in SES observation i.e. **LC** (Legally Compliant) and on page no. 19 of the report under SES Rationale:

"Compliant with law. Governance Concern: NED Chairman related to Executive Director."

No concern is identified on the merit of the Director. SES, as per policy, raises governance concern over Chairperson of the Company being related to the Executive Director.

In advocating good corporate governance, SES raises concern on account of subsistence of relationship between Board Chairperson and Executive Directors, since such position may lead to concentration of power and may blur the demarcation between Board and Management.

In view of this, there is no change in recommendation for Resolution.



Resolution No. 5, 6 & 7:

#5: To approve re-appointment of Ms. Sita Khosla as an Independent Director of the Company for a second term.

#6: To approve re-appointment of Dr. Ravi Gupta as an Independent Director of the Company for a second term.

#7: To approve re-appointment of Ms. Rashmi Dhariwal as an Independent Director of the Company for a second term.

Company's Response:

Item Nos. 5, 6 & 7 - Re-appointment of Ms. Sita Khosla, Dr. Ravi Gupta and Ms. Rashmi Dhariwal as Independent Directors for a second term of upto 5 years

Legal Provision:

Section 149 of the Companies Act, 2013 provides that "An Independent Director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for re-appointment on passing of a special resolution by the company"

Reg. 17(1C) of Listing Regulations provides that "the listed entity shall ensure that approval of shareholders for appointment of a person on the Board of Directors is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier"

Point no. 2.1(b) of the Consultation Paper of SEBI provides that "Re-appointment of an Independent Director (2nd term) to be approved by the shareholders through a special resolution"

The aforesaid provisions of the Companies Act, 2013 and Listing Regulations only requires shareholder's approval by way of special resolution in case of re-appointment of Independent Directors and does not mention "PRIOR" approval of shareholders by way of special resolution.

Further, the aforesaid provision of Listing Regulations even gives 3 months time to the listed entity to take shareholder's approval for appointment of Director.

Guidance Note on Independent Directors issued by Institute of Company Secretaries of India are only recommendatory in nature and not mandatory under the provisions of the Companies Act, 2013 and Listing Regulations. Accordingly, the aforesaid guidance note cannot over-ride the applicable provisions of the Companies Act, 2013 and Listing Regulations.

VBL Position:

The aforesaid proposed re-appointments of Ms. Sita Khosla, Dr. Ravi Gupta and Ms. Rashmi Dhariwal as Independent Directors for a second term of upto 5 years is in compliance with the provisions of the Companies Act, 2013 and Listing Regulations.

SES Comment:

SES would like to highlight, that it has not raised compliance concern with respect to SEBI LODR, but rather raised compliance concern with respect to Section 149 (10) of the Companies Act, 2013.

*Subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but **shall be eligible for reappointment** on passing of a special resolution by the company and disclosure of such appointment in the Board's report.*

Though the law does not explicitly use the term 'prior', however, the word 'eligible' itself intends to mean pre-requisite or precondition. Therefore, eligibility cannot be ratified at a later date. As a result, Ms. Sita Khosla, Dr. Ravi Gupta and Ms. Rashmi Dhariwal are not eligible for re-appointment with shareholders' approval, by way of a special resolution, post completion of their term.

It may be noted that the provisions legislated by the Parliament viz., the Companies Act, 2013 will always override all SEBI Regulations (unless regulations are stricter). Regulations are sub-ordinate to the Act and are to be read with the Act, in harmonious construction.

Further, it may be noted that, Guidance Note on Independent Directors issued by the Institute of Companies Secretaries of India (ICSI), has also addressed the issue regarding re-appointment of Independent Directors



Meeting Type: 28th AGMMeeting Date: 27th March, 2023

Relevant extract of the Guidance Note is reproduced herein below for immediate reference:

*"If the shareholders' approval by special resolution for his **reappointment for second term is not taken as on the last date of the first term**, then such Independent Director cannot be re-appointed by Board as an Additional Director for second term, as he does not possess the eligibility to get reappointed for second term and hence, **he ceases to be a director at the end of his first term.**"*

Therefore, SES does not agree with the interpretation of the Company and reiterates its view.

In the present case, the term of Ms. Sita Khosla has already ended on 15th February, 2023, therefore, she has ceased to be director of the Company unless re-appointed by the shareholders **prior to her term coming to end.**

Further, the term of Dr. Ravi Gupta and Ms. Rashmi Dhariwal will come to an end on 18th March, 2023 and **the AGM will be conducted on 27th March, 2023 i.e. post their term end. So, as on AGM date i.e. 27th March, 2023 both Dr. Ravi Gupta and Ms. Rashmi Dhariwal will cease to be the directors of the company unless re-appointed by the shareholders prior to their term coming to end.**

Therefore, there is no change in SES Analysis, however, **shareholders may take note of the Company's email and take an informed decision.**



COMPANY'S EMAIL

Dear Sir,

As per your discussion with Ravi Sir, the following business items to be transacted at the scheduled Annual General Meeting of Varun Beverages Limited on March 27, 2023 is in compliance with the applicable provisions of the Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations"):

Item No. 3 - Re-appointment of Mr. Ravi Jaipuria as a Director, who retires by rotationLegal Provision:

Section 152(6)(c) of the Companies Act, 2013 provides that "At every Annual General Meeting, 1/3rd of such of the Directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office"

VBL Position:

In VBL, all Directors (other than Independent Directors) are liable to retire by rotation. Further, to comply with the aforesaid provisions of Section 152 of the Companies Act, 2013, 1/3rd of total strength of Executive Directors (including Non-Executive Chairman) are retired and re-appointed at every Annual General Meeting on a rotation basis.

In view of above, the aforesaid proposed re-appointment of Mr. Ravi Jaipuria is in compliance with the applicable provisions of the Companies Act, 2013.

Item Nos. 5, 6 & 7 - Re-appointment of Ms. Sita Khosla, Dr. Ravi Gupta and Ms. Rashmi Dhariwal as Independent Directors for a second term of upto 5 yearsLegal Provision:

Section 149 of the Companies Act, 2013 provides that "An Independent Director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for re-appointment on passing of a special resolution by the company"

Reg. 17(1C) of Listing Regulations provides that "the listed entity shall ensure that approval of shareholders for appointment of a person on the Board of Directors is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier"

Point no. 2.1(b) of the Consultation Paper of SEBI provides that "Re-appointment of an Independent Director (2nd term) to be approved by the shareholders through a special resolution"

The aforesaid provisions of the Companies Act, 2013 and Listing Regulations only requires shareholder's approval by way of special resolution in case of re-appointment of Independent Directors and does not mention "PRIOR" approval of shareholders by way of special resolution.

Further, the aforesaid provision of Listing Regulations even gives 3 months time to the listed entity to take shareholder's approval for appointment of Director.

Guidance Note on Independent Directors issued by Institute of Company Secretaries of India are only recommendatory in nature and not mandatory under the provisions of the Companies Act, 2013 and Listing Regulations. Accordingly, the aforesaid guidance note cannot over-ride the applicable provisions of the Companies Act, 2013 and Listing Regulations.

VBL Position:

The aforesaid proposed re-appointments of Ms. Sita Khosla, Dr. Ravi Gupta and Ms. Rashmi Dhariwal as Independent Directors for a second term of upto 5 years is in compliance with the provisions of the Companies Act, 2013 and Listing Regulations.

Regards,



Meeting Type: 28th AGMMeeting Date: 27th March, 2023

Disclaimer Sources

Only publicly available data has been used while making the report. Our data sources include Notice of Shareholders' Meeting, BSE, NSE, SEBI, Capitaline, MCA, Moneycontrol, Businessweek, Reuters, Annual Reports, IPO Documents and Company Website.

Analyst Certification

The Analyst(s) involved in development of this Report certify that no part of the Research Analyst's compensation was, is, or will be directly or indirectly related to the specific recommendations or views expressed by the Research Analyst(s) in this Report. The concerned Research Analyst(s) and Director(s) do not have any pecuniary relationship with the Reported Company, except that they may be holding miniscule shares in the Company which does not impact their independence in respect of this Report.

SES may be a shareholder in the Company holding equity shares as disclosed on its [website](#). The objective of SES' investment is solely to obtain Shareholders' communications from the Company as a shareholder.

CAUTIONARY STATEMENT

The recommendations made by SES are based on publicly available information and conform to SES's stated Proxy-Advisory Guidelines. SES opinion is based on SES's interpretation of law and governance benchmarks, which may differ from opinion/ benchmarks of other analysts or practitioners. Further, SES analysis is recommendatory in nature and reflects how SES would have voted if it was a shareholder. Therefore, SES expects that the clients will evaluate the effect of their vote on their investments independently and diligently and will vote accordingly. Subscribers may also carry out an impact analysis of their votes and keep the same as an addendum for their records. In our opinion, Institutional investors are positioned significantly differently from other shareholders due to their ability to engage the board and the management to bring out desired result. As a firm, it is our endeavour to improve the level of corporate governance while not causing any disruption in company's proceedings and therefore we respect the independence of investors to choose alternate methods to achieve similar results.

Disclaimer

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This report in no manner constitutes an offer, solicitation or advice to buy or sell securities, nor solicits votes or proxies on behalf of any party. SES, which is a not-for-profit Initiative or its staff, has no financial interest in the companies covered in this report except what is disclosed on its website. The report is released in India and SES has ensured that it is in accordance with Indian laws. Person resident outside India shall ensure that laws in their country are not violated while using this report; SES shall not be responsible for any such violation.

All disputes shall be subject to jurisdiction of High Court of Bombay, Mumbai.

Concern terminology

NC – Compliance Concern: The Company has not met statutory compliance requirements

FC – Fairness Concern: The Company has proposed steps which may lead to undue advantage to a particular class of shareholders and can have adverse impact on non-controlling shareholders including minority shareholders

GC – Governance Concern: SES questions the governance practices of the Company. The Company may have complied with the statutory requirements in letter. However, SES finds governance issues as per its standards.

TC - Disclosures & Transparency Concern: The Company has not made adequate disclosures necessary for shareholders to make an informed decision. The Company has intentionally or unintentionally kept the shareholders in dark.

Company Information



Stakeholders Empowerment Services

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