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Proxy Advisory Report- Addendum

Burger King India Ltd

COMPANY INFORMATION	MEETING DETAILS	E-VOTING DETAILS
BSE CODE: 543248	**Meeting Type:** PB	**e-Voting Platform**: LINKINTIME
NSE SYMBOL: BURGERKING	**Voting Deadline:** 20th January, 2022	**Cut-off Date:** 17th December, 2021
ISIN: INE07T201019	**Notice Date:** 15th December, 2021	**Remote E-voting**
Industry: Restaurants	**Notice:** Click here	**Start**: 22nd December, 2021
Email: investor@burgerking.in	**Annual Report:** FY 2020-21	**Ends**: 20th January, 2022
Phone: +9 1 22 7193 3000	**SES PA Report (PB):** Report	
Registered Office: Unit Nos. 1003 To 1007, 10th Floor, Mittal Commercia, Asan Pada Road, Chimatpada, Marol, Andheri (East), Mumbai – 400 059		

RESEARCH ANALYST: KRUPA HEGDE | ADITI CHANDANI

This Addendum is being issued based on the e-mail dated 13th January 2021 sent by Burger King Ltd ('the Company') w.r.t. Proxy Advisory Report ('PA Report') issued by SES in relation to the ensuing Postal Ballot of the Company.

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 12th January 2022 in respect of upcoming Postal Ballot of the Company with e-voting deadline 20th January 2022.

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

It may be noted that the email of the Company (as per SES policy framed to comply with SEBI Circular dated 3rd August, 2020 SEBI/HO/IMD/DF1/CIR/P/2020/147) has already been forwarded to SES clients 'as it is', without any inputs from SES on 14th January 2022. This Addendum provides appropriate responses of SES, wherever required.

ADDENDUM

SES COMMENTS OF COMPANY'S RESPONSE

Item 2 - Issuance of securities by means of Qualified Institutions Placement, Preferential Issue, and/ or any other permitted mode/ any combination thereof

A: Company's clarification

In this regard, please note that the proposed resolution read with its heading and corresponding explanatory statement, clearly mention that the fund raising may be through QIP, Preferential Issue and/or any other permitted mode or any combination thereof.

- SES in its report has pointed out what appears to be drafting issue or confusing drafting.
  - In the **heading** of the of **Item No. 2** the Company has mentioned "*To issue securities by means of **Qualified Institutions Placement, Preferential Issue, and/ or any other permitted mode**/ any combination thereof".*
  - Further, the Explanatory statement mentions that "*In order to enable the Company to access the capital market **through a public issue or on a private placement basis…**".*
  - SES had made its observation in view of the fact that except at one place, there was no mention of public issue. Construction of any item of agenda must be harmonious and leave no scope for confusion. No doubt that words ' **or any other permitted mode**/ any combination thereof' would include 'Public issue' as well. However once in explanatory statement intention is stated by use of word' Public issue' specifically, one cannot argue that it is contained in general explanation. While there may not be any legal issue on such drafting, yet it is confusing for investors.

On account of the above statements, SES has raised concern in its Report that it is not clear whether the Company is seeking approval for Public Issue as mentioned in the heading or not, since it is not in the main body of the Resolution.

B: Company's clarification

Further, the explanatory statement clearly sets out that the resolution sought to be passed by the shareholders is an enabling special resolution which seeks to empower the board of directors of the Company (or a duly authorized committee thereof) to issue equity shares and/ or other eligible securities as contemplated in the resolution. It further clarifies that *"the Company is yet to identify the investor(s) and decide the type and quantum of securities to be issued to them. Hence, the details of the proposed allottees, percentage of post preferential offer holding that may be held by them and post offer holding pattern of securities of the Company and other details are not available at this point of time and shall be disclosed by the Company under the applicable regulations in due course (at appropriate times and modes)."*

Given the above, it is understood that in case the Company undertakes an issuance that requires an 'investor specific' approval from the shareholders under applicable law, the Company will seek such 'investor specific' approval from the shareholders in accordance with the applicable law.

- SES in its report has only pointed out the information which is required in case the Company opts for a preferential issue for the benefit of the shareholders. SES has categorically also mentioned that. Since, the information as required for Preferential issue is not provided for the resolution in the Notice, therefore, preferential issue of shares cannot be undertaken. ***"However, SES understands that specific resolution in accordance with SEBI ICDR for preferential issue will have to be obtained at a later stage for raising capital."*** SES has not raised any concern in respect of the above in its Report.

C: Company's clarification

With respect to the rationale for the proposed fund raising, the explanatory statement clearly mentions that "*the Company requires additional funding to, inter alia, augment the long-term resources of the Company for meeting funding requirements of its business activities and general corporate purposes. The proceeds of the proposed issue shall be utilized for any of the aforesaid purposes to the extent permitted by law.*" As the fund raising is being undertaken in view of the future outlook of the Company, its growth targets and prospects, hence the utilisation of such proceeds will not be limited to the acquisition of controlling stake of PT Sari Burger

Indonesia ("**BK Indonesia**") and would be for such other requirements of its business activities and general corporate purposes as deemed appropriate by the Board, in compliance with applicable law.

- SES has pointed out in its Report that the Rationale provided only generic information for raising capital, which is universally true when specific use is not identified. However, when the Company in the Conference Call regarding Q2 FY2022 Results had categorically stated that they intended to raise funds via QIP or Preferential Issue mode, it is clear that there is specific use identified, hence good governance requires that specific use or object be stated in the resolution.
- SES understands in addition to funding the acquisition the Company may require capital for other business activities. However, although in the proposed letter the Company is stating that the capital raised would also be used for the funding the acquisition, the Explanatory Statement did not provide this information or details.
- Shareholders may consider Company's clarification in matter of the Rationale for capital raising and vote accordingly.

D: Company's clarification

In so far as the concern regarding excessive dilution is concerned, considering the comparable size and scale of business of BK Indonesia and the Company as explained in detail in Paragraph 3 below, the dilution of approximately 21% is considered reasonable. Further, as mentioned above, please note that the Company requires funds for meeting funding requirements of its business activities, and other general corporate purposes.

- SES has no-where stated whether the dilution is reasonable or not, justified or not. SES has raised concern regarding excessive dilution for following
  - the rationale provided by the Company was generic
  - SES has raised concern regarding the approval of proposed RPT itself in Resolution #4
  - And a Rights issue would not dilute public shareholders.
- Since, SES concerns w.r.t. the RPT transaction remain and its recommendation for Item #4 is not changed (Read more here), SES recommendation for the proposed Resolution in Item 2 remains unchanged.

Item 3 - Increase of the limit prescribed under Section 186 of Companies Act, 2013

A: Company's clarification

As admitted by SES in its Report, nominee directors are not considered as interested person under Section 184 of the Companies Act, 2013 by virtue of them being nominees of a shareholder. Moreover, Section 186 of the Companies Act, 2013 enables the companies to generally increase the limit for making acquisitions, granting loans and/or providing guarantees/security, without restricting/requiring any specifics regarding the end-use. Accordingly, the Company has proposed a general increase in the limits under Section 186. Of course, in seeking this general increase and the extent of the same, the Company has kept in view the potential acquisition of BK Indonesia in order to ensure compliance with Section 186.

Accordingly, Item no. 3 needs to be viewed independently, as a general increase in limits under Section 186. The Company is in compliance with law, in letter and in spirit, in respect of processes followed for seeking approval of the Board for the said resolution.

- SES has not stated that Company is not in compliance with the law. However, SES has elaborated and put forth its argument with interpretation of Interested Party in context of Nominee Directors. SES in its report has referred to the Supreme Court Judgement in case of Tata Vs. Mistry, and pointed out that in its opinion nominee directors are not Independent Directors.
- SES is of the view that Nominee director must be treated as an agent of nominator and hence would be interested party.
- The Company in case of Item no 3 specifically mentioned that the Board approved the increase in investment limit to ₹ 2,500 crores and the said limit would be utilised in the proposed acquisition of BK Indo which is a related party transaction.
- Hence, as per SES one cannot view the increase in investment limit as an independent Resolution when the Company has clearly stated that limit would be utilised in the proposed acquisition of BK Indo. If a director is interested party in part II of an agenda item it can't be a case that he is not interested in part-I, where both Part-I and Part-II are two legs of same transaction.
- Based on the above and since SES is of the view nominee Directors are interested Directors, SES has questioned if Nominee Directors participated in the voting on the matter of Increase in limit for investment.
- Since, SES concerns w.r.t. the RPT transaction remain and its recommendation for Item #4 is not changed (Read more here), SES recommendation for the proposed Resolution in Item 3 remains unchanged.

Meeting Type: Postal Ballot | Voting Deadline: 20th January, 2022

Item 4 - To undertake a related party transaction with QSR Indoburger Pte. Ltd. as part of acquisition of controlling stake in PT Sari Burger Indonesia ('Proposed Acquisition')

A: Company's clarification

We note that in relation to Item 4 of the PB Notice, SES has raised a concern based on (i) the commercial rationale of the Proposed Acquisition; (ii) insufficiency of information, including copy/ details of the valuation report not being included in the PB Notice (even though it states that the copy is available electronically to all shareholders on request); (iii) non-compliance with the memorandum of association of the Company.

- SES would like to point out that SES has not raised a concern w.r.t. *"The commercial rationale of the Proposed Acquisition"* as stated by the Company. Further SES is not competent to comment on commercial matters. SES has raised concern regarding:
  - *Inadequate Disclosures, complete information of the transaction and further infusion of funds is not provided in the Notice, Absence of detailed valuation Report.*
  - *Not in accordance with the existing MOA of the Company*

The Company has provided details of commercial rationale in the Response to SES Report as well as in the presentation on BK Indo a link to which was provided in the Corporate Announcement of the Company. Shareholders can access both the documents from the link provided in above statement.

B: Company's clarification

We would also like to draw your attention to the comparable size and scale of business of BK Indonesia and the Company:

Particulars	BK Indonesia	Burger King India Limited	% of BK Indonesia to Burger King India Limited
Store Count (as at 30 Jun 2021)	174	**270**	64%
Revenue (Rs Million) BK Indonesia (for financial year ended 31 Dec 2019) Burger King India Ltd (for financial year ended 31 March 2020)	7415	8412	88%
Enterprise Value (Rs. Million)	13,725 ($183 million)	54,100	-
Enterprise Value / Sales using the above referred revenues	1.85	6.43	-

Accordingly, in view of the scale of business of BK Indonesia as compared to the Company, the dilution of approximately 21% is considered reasonable.

We would also like to draw your attention to para 6.8.5 of the valuation report submitted by RBSA Capital Advisors LLP, which is also available for inspection by the shareholders, wherein they have provided explanation for the method of valuation used, which is reproduced below:

"we understand that the BK Indonesia is in the growth phase and the outlets are expected to increase from present approximate 177 to approximate 470 outlets in FY 30. Further we understand from the management that the operations of BK Indonesia were affected on account of COVID 19 pandemic and historical performance of CY 20 and CY 21 is not expected to be representative of its expected future performance. Further, the management envisages change in strategy, offerings, and significant margin improvement. Considering this ***we have relied on the Income Approach for the valuation and have considered the forward EV / Revenue and EV / EBITDA multiples of peer companies for broad sense check of valuation outcome****."*

- SES would like to point out that, SES in its report also calculated some relevant ratios for BK India and BK Indo. In fact, SES based on the calculation with limited financial figures concluded that ***"From above figures it appears that Company is acquiring Indonesia arm at less than market value when compared to the Company."*** So, SES on its own stated that apparently valuation was on lower side, if one applies Indian Multiples.
- However, SES calculation was subject to certain limitations such as QSR or Food Business Industry valuation must be based on geographical factor, location of the Restaurants, footfall competitors etc. Additionally, for the Business being acquired in

Indonesia, can one apply multiple that is applied in India. For that matter one cannot apply same multiple within a city if buying a single restaurant. Therefore, atleast country multiple must be considered as correct benchmark, it could be higher or lower than India.

- The concern raised by SES was that Valuation Report which was used by the Board to approve this related party transaction was not available in public domain (*however, can be obtained by shareholder upon request*). (Since provided)
- In fact, extract shared by the Company of the valuation report itself states that *"….we have relied on the Income Approach for the valuation and have considered the forward EV / Revenue and EV / EBITDA multiples of peer companies for broad sense check of valuation outcome."*
- Obviously, since the full valuation report was not available in public domain one did not know if the peers compared by the valuer is QSR Companies in India or Indonesia. Hence, the requirement for the disclosure of valuation report for the shareholders to be able to take informed decision in the matter.

The Company has provided details of the disclosures as required under provisions of the Companies Act, 2013 and the rules thereunder in Response to SES. (Page 5 & 6).

- SES would like to reiterate that SES has not raised any compliance concern w.r.t. the proposed transaction. SES has only raised a Governance concern.
- SES believes that Governance begins where the law ends. Mere compliance does not necessarily result in good corporate governance.

C: Company's clarification

Disclosure of Valuation Report

We submit that the various references in the Report such as "*valuation report not disclosed*" "*absence of detailed valuation report*" are completely incorrect and may have the unintended consequence of causing confusion for the investors.

As mentioned in the explanatory statement to Item 4 of the PB Notice, the Company has clearly provided an option to the members to inspect the valuation report at the registered office of the Company or electronically wherein any member seeking to inspect a valuation report, can send an email to investor@burgerking.in with subject line "Inspection of Documents" and the same shall be sent to the registered e-mail address of such member. In fact, the Company has very consciously and voluntarily complied with the disclosure requirements regarding related party transaction, even though they are not in force currently and are proposed to take effect from April 1, 2022 as prescribed in Paragraph 6(d) of the circular bearing number SEBI/HO/CFD/CMD1/CIR/P/2021/662 dated November 22, 2021 issued by Securities and Exchange Board of India ("**SEBI**"). Therefore, any insinuation that sufficient information regarding valuation is not available to the shareholders is completely incorrect.

Further, with respect to the SES suggestion that the valuation report be necessarily made available on the website of the Company or attached to the notice, please note that neither the law nor good governance require information to be provided to the public on items put to shareholder vote so long as the company is providing the necessary information to the shareholders to enable them to take an informed decision on such items put to shareholder vote.

- SES had sent an email post receipt of Company's mail on 14th January 2022 requesting copy of Valuation Report. The Company has shared a copy of the Valuation Report on 14th January 2022.
- SES would like to point out that that the Company has stated that SES has written in its report the following'
  - *valuation report not disclosed*
  - *absence of detailed valuation report*
- SES would like to point out that at the start of the SES analysis on page 18 of the SES Report has mentioned as below:
  - *SES understands that the Company has stated that it will make the said valuation report available for inspection on shareholders' request by visiting the registered office of the Company or electronically by sending email to designated email address of the Company. However, SES is of the view that the Company should have disclosed the basis of the Report/ method for arriving at the EV in the notice itself for informed decision making by the shareholders. SES is of the view that information in the Notice should be self-contained so that shareholders can arrive at a decision.*

Further, in respect of the Valuation Report SES upon perusal would like to point out that:

- The Valuation Report as usual provide all the wisdom that is available in the world about valuation methodology and process, literature and excellent written English but fail miserably to provide any rationale or logic for the consideration arrived at. After all the theory, at the end the valuer pronounces a valuation for BK Indo. (*Refer Page 12 of the Valuation Report*)
- As per the Valuation Report the Valuers had adopted the Income approach for valuation of BK Indonesia but no details of the process, assumptions etc is provided. Further, the Valuers have stated that under Market approach the valuers compared the EV/EBITDA multiple of comparable companies (after appropriate adjustments) for broad benchmarking for valuation.
- The valuers have not provided details of the peers that were chosen for this comparison or whether such peers were based in Indonesia.
- SES has been highlighting and criticising issue regarding the 'Standard text' in valuation in the past. SES finds that in most of the cases, valuation do not help investors in arriving at a decision. The present valuation report of the Company is no exception.
- Admittedly, the valuation report has valued the target company based on forward looking EBITDA, growth etc. SES is neither a valuation expert nor claims to be one. Yet, a RPT value which is based not on current financial but based on future projections, does require closer scrutiny. And SES reiterates its discomfort as a shareholder especially when this RPT is coming soon after IPO and during pandemic when valuation has become all the more difficult due to uncertainty. Once again SES is making it clear that SES is neither saying valuation is high or low in absence of comparable data of the geography in which target is operating.
- In fact, valuation report does not make a shareholder any more informed or intelligent.

D: Company's clarification

On this aspect, we also note an inconsistency in the approach followed by SES while providing its voting recommendations:

(a) With respect to the extra ordinary general meeting of Exide Industries Limited held on September 29, 2021, SES vide its report released on September 21, 2021 has observed that the valuation report has not been disclosed by the company in its notice. As per the notice, the valuation report was made available for inspection through electronic mode to members who requested the same from the Company. However, SES did not provide a negative recommendation on the proposed resolution;

(b) With respect to the extra ordinary general meeting of HDFC Life Insurance Limited held on September 29, 2021, SES, vide its report released on September 21, 2021, has similarly observed that a valuation report has not been disclosed by the company in the notice. As per the notice, the valuation report was made available for inspection at the registered office of the company or through electronic mode to members who requested the same from the Company. However, SES did not provide a negative recommendation on the proposed resolution.

However, contrary to the approach taken by SES in the above recent instances, SES has provided a negative recommendation in the present case even though the valuation report is available to the shareholders for inspection.

With respect to the above SES has following counter points:

- SES is thankful to the Company for such close scrutiny of SES work, as it keeps SES on its toes. However, SES with due respect has to refute the allegation of inconsistency. Yet SES will not find fault with Company, as Company did not have access to SES full report (this is presumed by SES and SES argument would be partially incorrect if the Company had access to full Report of SES) and conclusion was drawn by reading only SES recommendations and Notice issued by EXIDE/ HDFC Life. Since SES is accused of inconsistency SES is duty bound to clarify.
- In case of the EGM of HDFC Life Insurance Company Limited and Exide Industries Limited, SES had raised a concern on absence of valuation Report in its PA Report. In absence of Valuation Report SES had calculated ratios using comparative methods to check fairness of valuation.
- Since, both the Companies were operating in India and in the same line of business the valuation based on comparable method was possible. Further, since both were listed companies, Financial data of both the companies also the Financial data of the peers was available to do a basic evaluation. Based on comparable method, the valuation appeared fair and hence, SES recommendation was in favour.
- Whereas, in the case of the ensuing PB, sufficient information on financials of BK Indo was not provided in the notice. The valuation report has also not provided any details of the peer or the financials of the peers.

- QSR business is understood to be geographical based business, hence, the comparison of BK Indo with Burger King India multiples would not provide an accurate picture in opinion of SES. SES has very clearly stated that based on data available BK Indonesia was being acquired at lower valuation
- However, SES as a policy does not place reliance on Valuation Report, knowing fully well the process, conflict issue and limited utility and relies on its own analysis wherever possible by evaluating fairness. And in case of Exide & HDFC, SES had precisely done the same. Even in the current Resolution SES attempted doing it but hit the wall as comparative multiples of Indonesian QSR were not available and it would have been foolish for SES to apply Indian multiple to Indonesian Business.
- Therefore, SES has raised a concern w.r.t. the proposed transaction.

E: Company's clarification

Compliance with the Memorandum of Association (MoA)

The explanatory statement to the PB Notice specifically provides that *"the acquisition of equity shares held by QSR Indo in BK Indo and transactions contemplated under the SPA shall be consummated by the parties after receipt of the approval of the Members of the Company, and other necessary approvals and consents (including from the lenders and the franchisor), as may be required and fulfilment of certain other conditions."*

Therefore, the closing of the transaction is subject to receipt of all necessary approvals, including the approval of the shareholders for revision to the object clause of the MoA which has been sought in Item 6 of the PB Notice.

Further the explanatory statement to the Item 6 of the PB Notice also links the said shareholder approval to the Proposed Acquisition, in that *"As the Company is in the process of acquiring controlling stake in Burger King Brand in Indonesia, it is necessary to alter the current object clause to include the flexibility to carry out the business outside India as well."*

Additionally, as per the intimation to stock exchanges dated December 16, 2021 (available here: https://www.bseindia.com/xml-data/corpfiling/AttachHis/f6fd912f-ec34-4ab5-8289-b430dac503e9.pdf), it has been specifically set out that the completion of the transaction is subject to *"fulfilment of certain conditions precedent including the receipt of the approval of the shareholders of the Company and such other approvals and consents (including from the lenders and the franchisor) as may be required."*

In this regard, Clause 4.1.5 of the Sale and Purchase Agreement also specifically sets out the condition precedent that the Company will be required to obtain *"approval of the board of directors and the shareholders of the Purchaser for the transactions contemplated under this Agreement."*

Therefore, as is evident from the above, the Company as part of conditions precedent to the completion of the Proposed Acquisition has sought the approval of the shareholders of Company. It may be noted that the Company, just by virtue of signing the definitive agreements, has not started to carry out business activities outside India. In fact, it is by virtue of these definitive agreements for the Proposed Acquisition and the Board approval for the same, that the requirement to obtain shareholder approval for amendment to the objects clause of the MoA is triggered. The receipt of shareholder approval for the amendment will enable the Company to consummate the Proposed Acquisition and conduct its business activities outside India.

- SES in its report has mentioned that a pre-cursor to the Board's approval of the transaction is that the transaction should be in line with the MOA.
- The MOA as it stands today does not provide power to the Board to enter into a transaction to operate business outside India
- The Company has not specifically mentioned in the Notice or in the Corporate Announcement that the transaction shall be consummated only upon the Shareholders approving the alteration in the Object clause of the MOA. In fact, the statement is more generic that indicates that the transaction in itself is subject to shareholders' approval rather that the Board entering into the transaction is subject to alteration of the MOA which is subject to shareholders' approval.

F: Company's clarification

Furthermore, SES' observation that there is a technical non-compliance when the Board approved the Proposed Acquisition and that the shareholders resolution for alteration of MoA should have been obtained prior to the Board and shareholders' approval for the Proposed Acquisition, suggests that if an analogy is to be drawn with cases of preferential issue by listed companies, SES'

position would be that such company cannot simultaneously seek the approval of its shareholders to approve the issuance of securities on preferential basis and amend the capital clause in the memorandum of association of such company to increase the authorised capital required for such issuance. Such a position seems incorrect and also, contrary to the positions taken by SES on such issues in the past.

Therefore, we submit that the Board approval for the Proposed Acquisition does not suffer from any legal infirmity on the basis of the approval for MoA alteration being sought in the same PB Notice. We would request SES to reconsider this position accordingly.

- SES is of the view that among all the clauses of the MOA, the Object clause is sacrosanct. Alteration of Object clause requires Special Resolution, whereas Capital Clause can be altered by Ordinary Resolution.
- The Board entering a transaction and disclosing the same on stock exchange prior to approval being sought by the Company for alteration of the Object clause is contrary to the Section 179 (1) of the Companies Act (Power of the Board)
- The transaction is material event and hence the Company has made appropriate disclosure on the Stock Exchange.
- However, SES is of the view that those disclosures could have cautioned the shareholders that they would be subject to alteration in the MOA

G: Company's clarification

Further, the SES suggestion that sequentially Item 6 of the PB Notice should have preceded Item 4 of the PB Notice has no basis in law, given that in case of matter put to vote by postal ballot, the resolutions take effect from the last day of voting or last date of receipt of duly completed postal ballot forms as per Secretarial Standard on General Meetings issued by ICSI1 and as such, the sequence of items in a postal ballot is immaterial and inconsequential.

- Suggestion that Item no 6 could have preceded item 4 of the PB was only a proposition for the sake of information and clarity of the shareholders. SES has no where mentioned that the sequence was legally incorrect or non-compliant in any manner.

Items 7, 8 and 9 - Appointment of Mr. Ekrem Ozer as a Non-Executive Director of the Company; Ratification of Article 105 of the Articles of Association of the Company; Ratification of Article 105 of the Articles of Association of the Company

A: In relation to the governance concern, we submit that the right of the specified promoters to nominate directors on the Board under AoA, would be subject to the applicable law and any exercise of rights provided therein, including afore-mentioned nomination rights, is required to be such that the statutory requirements with respect to composition of Board are met. These rights are given to a promoter/significant controlling shareholder considering their position as strategic long-term investors with "skin in the game" and in the present case, are not only linked to the shareholding of the specified promoters in the Company but also factor in their role, contribution and "skin in the game" as promoters. While a vague reference to 'disproportionate right to appoint directors' has been given, no justification regarding the impact of these very standard provisions on the governance of the Company or functioning of the Board, has been provided by SES.

- According to SES, "skin in the game" is on account of the promoters having economic interest in the Company and exposed to the risk, the same way as other shareholders are exposed to the risk.
- However, by controlling majority of the Board as well, it's not just about having their skin in the game, it is capturing the Board with total disregard to rights of other shareholders, that is what SES states disproportionate.
- Disproportionate rights to appoint directors when compared to the shareholding in view of SES is self-explanatory and disproportionate rights in itself indicate governance concerns.
- Disproportionate rights mean that other minority shareholders do not have as much say on the Board nominations when compared to the promoter shareholders, despite promoter shareholding being much lesser when compared to the seats on the Board. Example in case of the Company even with a 25% shareholding of the Company, the promoters would be able to control almost 57% of the Board seats.

B: Company's clarification

Separately, the right to appoint the CEO by the promoter would in any case be subject to rigours of law and process to be followed by the nomination and remuneration committee ("NRC") of the Company. Further, given that such CEO has to be necessarily appointed as a whole time director, the appointment of such person will also be subject to approval of the shareholders of the Company.

Further, with respect to QSR's right to appoint a board observer, the Company does not agree with SES' observation that a board observer, merely by virtue of having the right to participate or speak in a meeting of the Board but without any right to vote, can increase the promoter's control on the Board and lead to "camouflaged reduction in the Independence of the Board in meetings". Given that all decisions of the Board are based on voting by the respective directors, a non-voting position cannot influence the decision making of the Board in any way.

- The term used by the Company in the AOA is not 'nominate' but **'appoint'**.
- Use of the word 'Appoint" leaves no room for interpretation that NRC will have any role in appointment of CEO, when the promoters have the right to appoint.
- The Company is stating the right to appoint CEO would be subject to rigours of the Law, SES would like to understand how and what law? When the NRC does not have any choice in the matter and the Board is controlled by the promoter, which would have no reason to oppose as proposal is made by Promoters? And any argument that shareholders are supreme authority is as hollow as it can be with promoters holding majority shareholding? Are promoters ready to say that they will refrain from voting in shareholder vote? Are promoter directors ready to recuse themselves from board meeting? Is company going to publish dissent note of Ids?
- This provision in the MOA makes a mockery of the NRC as they would have no role to play as they are neither identifying a candidate nor evaluating other than to recommend the name proposed by the promoters to the Board for their approval.

C: **Company's clarification**

Further, with respect to QSR's right to appoint a board observer, the Company does not agree with SES' observation that a board observer, merely by virtue of having the right to participate or speak in a meeting of the Board but without any right to vote, can increase the promoter's control on the Board and lead to "*camouflaged reduction in the Independence of the Board in meetings*". Given that all decisions of the Board are based on voting by the respective directors, a non-voting position cannot influence the decision making of the Board in any way.

As far as the question on whether such 'board observer' (when appointed) is an insider under the SEBI (Prohibition of Insider Trading) Regulations, 2015 is concerned, such determination will be made in accordance with applicable laws and SEBI regulations and is already unambiguously addressed in the said regulations.

- SES does not understand the necessity of a Board Observer when the Board is already majorly formed on the Nominee Directors of the Promoters.
- SES is of the view that voting at board meeting is rare and most items are approved post discussion by recording dissent if any. Therefore, not having a vote is only a cosmetic precaution and not an effective protection.
- SES maintains that effective (not necessarily in legal interpretation) independence would be reduced, at least till the voting stage is reached, hence SES expresses strong governance concern.
- Sharing of documents and information that is shared with the Directors in advance with the observer places him on same pedestal as that one keeps a director, sans the voting power in Board Matters.
- Legally and logically, the Board acts on the basis of application of its mind, thus by allowing 'observer' to speak and participate in Board discussion, one is bringing an outside mind, that is foreign to the Board, which is against the concept as well as procedure of the Board. The concept of collective responsibly gets vitiated as observer has capability to influence Board decision, but is not legally liable.
- Since, the concerns of SES regarding the proposed Articles still remain, there is no change in SES Recommendation.

COMPANY'S EMAIL DATED 13TH JANUARY 2022

Dear Sir/ Madam,

Please find attached response to your voting recommendations.

Kindly consider the same and share our response with all your subscribers and persons to whom the original Report has been circulated to. We sincerely urge you to amend your recommendations on these resolutions based on our response and issue the revised Report under intimation to us.

Shareholders may access the Company's Response by clicking here.

Thanks & Regards,

SES FURTHER COMMUNICATION DATED 14TH JANUARY 2021

Dear Sir/ Madam,

This is in connection with your email dated 13th January 2022 received by SES in regards to its PA Report on the upcoming Postal Ballot of your Company.

We request you to kindly provide us a copy of the Valuation Report submitted by RBSA Capital Advisors LLP regarding valuation of BK Indonesia.

In case you provide such documents only to members, we would like to inform you that we are also a member of Burger King holding 1 equity share in the name of 'Stakeholders Empowerment Services'.

Request you to kindly provide us the same through email by tomorrow 5 pm as we are in the process of issuing an Addendum based on response received from your Company.

Thanking you
Team SES

COMPANY'S RESPONSE TO SES EMAIL- DATED 14TH JANUARY 2022

Dear Team SES,

Please find attached the valuation report submitted by RBSA Capital Advisors LLP.

Password to open file is pass@123.

Shareholders may access the Valuation Report provided by the Company by clicking here.