



Proxy Advisory Report (Addendum) Thomas Cook (India) Ltd

BSE Code: 500413 | NSE Symbol: THOMASCOOK | ISIN: INE332A01027

Sector: Miscellaneous | Meeting Type: Extraordinary General Meeting

Notice Date: 1st March, 2021

e-Voting Platform: [CDSL](#)

Cut-Off date to be eligible for voting: 19th March, 2021

e-Voting Period: From 23rd March, 2021 to 25th March, 2021

Meeting Date: 26th March, 2021 at 11:00 AM

Meeting Venue: Not Applicable, as EGM being conducted through Video Conferencing ("VC") / Other Audio-Visual Means ("OAVM")

Notice: [Click here](#) | Annual Report: [FY 2019-20](#) | Proxy Advisory Report: [Click here](#)

Company's Email/Secretarial Email: shareddept@in.thomascook.com

Company's Phone: +91 22 4242 7000

Company's Registered Office: Thomas Cook Building, Dr Dadabhai Naoroji Road, Fort, Mumbai, Maharashtra - 400 001

Research Analyst: Akansha Parashar | Varun Krishnan

ADDENDUM

This Addendum is issued in response to e-mail dated 21st March, 2021 received by SES from Thomas Cook (India) Limited ('the Company') w.r.t. Proxy Advisory Report (PA Report) issued by SES in relation to the Extraordinary General Meeting of the Company to be held on 26th March, 2021.

There is no change in any of SES' recommendation.

BACKGROUND

SES, as per its policy, had mailed on 16th March, 2021 its PA Report to the Company relating to its EGM.

Post release of PA Report, SES received email from the Company in response to the governance concern highlighted by SES in PA Report related to Agenda Item #2.

#2: Preferential Issue of Optionally Convertible Cumulative Redeemable Preference Shares to Fairbridge Capital (Mauritius) Limited on a private placement basis.

It may be noted that the email of the Company (as per SES policy framed to comply with SEBI Circular dated 3rd August, 2020) has already been forwarded to SES clients as it is, without any inputs from SES on 22nd March, 2021. This Addendum provides appropriate responses of SES, wherever required.

SES RESPONSE TO COMPANY'S COMMENT

Text in *blue* are the relevant extract from the Company's email. Entire email of the Company is provided at the end of this Addendum.

Resolution #2

Issue #1 raised by the Company:

Relevant Extract of SES Original PA Report (as reproduced in email of the Company):

The Company has not provided any information relating to the Open Offer in the Notice. This disclosure is important since the trigger for Open Offer lies with the Company (and not the Promoters), as the right to convert Preference Shares into Equity rests with the Company. SES is of the view that the Company should have disclosed possibility of breaching the limit and since the conversion option rests with the Company, consent of promoters to make an open offer should have been taken, as in case the Company opts for conversion, the onus of making open offer will fall on promoters. Since it is no body's case that conversion will happen with consent of promoter, such an undertaking is must, unless the Company will seek permission from Promoters for conversion, in that case the OCCRP are not convertible at option of Company but the promoters and it amounts to wrong disclosure, unless we take it for granted that the Company will follow dictate of promoters.

| Company's Comment | SES Response |
|--|---|
| <i>The disclosure on the Open Offer you are referring to is not legally required at this point of time. It is based on future developments and is subject to many other factors relevant for future and not appropriate to talk about it at this point of time. Just to reiterate, the option for conversion lies with the company and not the investor.</i> | <p>Since the trigger for Open Offer rests with the Company as option to convert rests with the Company and not the investor (Promoters), therefore, if entire securities issued are converted it will trigger an open offer. Will the promoter accept liability of open offer? How shareholders would know and in case promoters do not take liability of open offer there will be issue of non-compliance.</p> <p>SES is of the view that in this case promoters are the security holders as well as in control of the board, therefore decision to convert will be effectively a decision of promoter although not explicitly stated.</p> |

Issue #2 raised by the Company:

However, shareholders may note that:

- The OCCRPS carry an effective coupon rate of 10.69% which according to SES is on a higher side.
- Additionally, dividend on these OCCRPS is cumulative which makes them akin to payment of interest. Dividend shall accumulate in case of non-payment in any financial year.
- Its pertinent to note that the Company did not declare dividend to equity shareholders last year, however, the Company will now be forced to pay dividend on preference shares to the Promoters since the same is cumulative.

Board Report of FY 2019-20 stated that:

The Board thought it fit to conserve cash for continuing its business operations smoothly, as far as may be, given the uncertainties associated with the nature of COVID-19 pandemic and its duration, and, therefore, did not recommend any dividend for the financial year 2019-20.

SES wonders, what has suddenly changed that the Company is now willing to pay 7% dividend to Promoters?

| Company's Comment | SES Response |
|---|---|
| <p>There is a complete disclosure about how the effective coupon rate of 10.69% is arrived at. You may note that this is the minimum rate that will ensure the arms length principle prescribed and also to ensure compliance with the RBI ECB regulations applicable for the transaction of this type since the promoter happens to be a non resident.</p> <p>The impact of pandemic is still very much ongoing and the Board has to take all steps to protect the interests of the company and its stakeholders. The promoter, with an anticipation of recovery of the industry, is willing to invest in the Company subject to compliance of arms length principle, which is being clearly followed by the Company. You would also appreciate that every funding made is with a cost/ return and nothing comes for free. We are surprised that you expect someone to invest in a company at no cost or at a cost which is not at an arms' length.</p> <p>We are sure that you understand the difference between equity dividend and preference dividend. We need to be in compliance of the requirements of the applicable laws.</p> | <p>The issue is not as to how effective rate of interest is computed, nor whether the rate arrived at, is arm's length or not. The core issue is whether all-inclusive cost is fair or not?</p> <p>10.69% all-in-cost is certainly not fair if looked into in holistic manner taking into account equity nature of the instruments and cannot be looked into in isolation.</p> <p>The issue remains as the promoters are taking equity at current price but after earning 10.69% yield annually. Why not take direct equity and save the company's interest cost?</p> |

Resolution #3 & #4:

Company email: Regarding your views on the other agenda items, we cannot comment on your views, while we believe that everything is in compliance with the requirements of the law.

SES Comments: The Company is probably referring to resolution #3 & #4, on which SES raised compliance issue. SES would reiterate that the re-appointment of Independent Directors as proposed are not in accordance with law. Both IDs were ineligible for second terms.

Attention of the Company is drawn towards the Guidance Note on Independent Directors issued by the Institute of Companies Secretaries of India (ICSI), which has also addressed the issue regarding re-appointment of Independent Directors:

Relevant extract of the Guidance Note is reproduced hereinbelow 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.”

In view of the above, SES reiterates that the re-appointment of IDs is not in accordance with law.



COMPANY'S E-MAIL DATED 21ST MARCH, 2021 TO SES

From: *****

Date: Sun, Mar 21, 2021 at 12:42 PM

Dear sir/ madam,

Reference to your below email and the attached Report, below are our responses:

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The Company has not provided any information relating to the Open Offer in the Notice. This disclosure is important since the trigger for Open Offer lies with the Company (and not the Promoters), as the right to convert Preference Shares into Equity rests with the Company. SES is of the view that the Company should have disclosed possibility of breaching the limit and since the conversion option rests with the Company, consent of promoters to make an open offer should have been taken, as in case the Company opts for conversion, the onus of making open offer will fall on promoters. Since it is no body's case that conversion will happen with consent of promoter, such an undertaking is must, unless the Company will seek permission from Promoters for conversion, in that case the OCCRPS are not convertible at option of Company but the promoters and it amounts to wrong disclosure, unless we take it for granted that the Company will follow dictate of promoters.

Our response: The disclosure on the Open Offer you are referring to is not legally required at this point of time. It is based on future developments and is subject to many other factors relevant for future and not appropriate to talk about it at this point of time. Just to reiterate, the option for conversion lies with the company and not the investor.

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- Its pertinent to note that the Company did not declare dividend to equity shareholders last year, however, the Company will now be forced to pay dividend on preference shares to the Promoters since the same is cumulative.

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SES wonders, what has suddenly changed that the Company is now willing to pay 7% dividend to Promoters?

Our response: There is a complete disclosure about how the effective coupon rate of 10.69% is arrived at. You may note that this is the minimum rate that will ensure the arms length principle prescribed and also to ensure compliance with the RBI ECB regulations applicable for the transaction of this type since the promoter happens to be a non resident.



The impact of pandemic is still very much ongoing and the Board has to take all steps to protect the interests of the company and its stakeholders. The promoter, with an anticipation of recovery of the industry, is willing to invest in the Company subject to compliance of arms length principle, which is being clearly followed by the Company. You would also appreciate that every funding made is with a cost/ return and nothing comes for free. We are surprised that you expect someone to invest in a company at no cost or at a cost which is not at an arms' length.

We are sure that you understand the difference between equity dividend and preference dividend. We need to be in compliance of the requirements of the applicable laws.

Regarding your views on the other agenda items, we cannot comment on your views, while we believe that everything is in compliance with the requirements of the law.

We therefore, suggest you to revisit your comments and convey your suggestions/ recommendations only after considering our responses.

Regards



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

While SES has made every effort, and has exercised due skill, care and diligence in compiling this report based on publicly available information, it neither guarantees its accuracy, completeness or usefulness, nor assumes any liability whatsoever for any consequence from its use. This report does not have any approval, express or implied, from any authority, nor is it required to have such approval. The users are strongly advised to exercise due diligence while using this report.

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

Concern terminology

C - Compliance: The Company has not met statutory compliance requirements

F - Fairness: 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

G - Governance: 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.

T - Disclosures & Transparency: 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

SEBI Reg. No. INH000000016

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