



COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2015/08/304)

08.12.2015

Notice given by KKR Credit Advisors (US) LLC under sub-section (2) of Section 6 of the Competition Act, 2002

Order under sub-section (1) of Section 31 of the Act

CORAM:

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. M.S. Sahoo
Member

Mr. G. P. Mittal
Member

Legal Representative: Cyril Amarchand Mangaldas

1. On 31.08.2015, the Competition Commission of India (“**Commission**”) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”) filed by KKR Credit Advisors (US) LLC (“**KKR Credit**” or the “**Acquirer**”). The proposed combination relates to the acquisition of 20 per cent equity share capital of JBF Industries Limited (“**JBF Industries**”) and 12,210,527 Series A Compulsorily Convertible Preference Shares of JBF Global Pte Ltd. (“**JBF Singapore**”), a wholly owned subsidiary of JBF Industries by KKR Credit, through KKR Jupiter Investors Pte



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- Ltd. (“**KKR Jupiter**”)¹ (JBF Industries and JBF Singapore are hereinafter collectively referred to as the “**Targets**”). As stated in the notice, KKR Credit, through certain wholly owned subsidiaries, is the investment manager of three fund vehicles, which collectively hold 100 per cent of KKR Jupiter. It has been submitted in the notice that the rights proposed to be acquired by the KKR Credit in the Targets amount to an acquisition of control in the Targets.
2. The notice has been filed pursuant to execution of: (a) Share Subscription Agreement (“**India SSA**”) and Shareholders Agreement (“**India SHA**”), entered into amongst JBF Industries, promoters of JBF Industries and KKR Jupiter; and (b) Share Subscription Agreement (“**Singapore SSA**”) and Shareholders Agreement (“**Singapore SHA**”) entered into and amongst JBF Singapore, JBF Industries, promoters of JBF Industries and KKR Jupiter on 03.08.2015.
 3. The proposed combination falls under Section 5(a) of the Act.
 4. While filing the notice, the Acquirer submitted an undertaking under Regulation 14 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (“**Combination Regulations**”) to provide certain information at the earliest; the same was filed on 04.09.2015. Further, in terms of Regulation 14 of the Combination Regulations, *vide* letter dated 15.09.2015, the Acquirer was required to remove certain defects and provide information/document(s) by 18.09.2015. The Acquirer filed its response through two separate submissions on 21.09.2015 and 28.09.2015, after seeking an extension of time. However, the said responses were incomplete and therefore in terms of sub-regulation (3) of 14 of the Combination Regulations, *vide* letter dated 06.10.2015, the Acquirer was again required to remove these defects and provide complete information by 09.10.2015. The Acquirer filed its responses on 12.10.2015 and 23.10.2015, after seeking extension of time. The Acquirer also filed certain additional details/clarifications on 05.11.2015. The Acquirer thereafter submitted two voluntary

¹ As per the information given in the notice, on the date of issuance, these preference shares will be convertible on a one to one basis into ordinary shares of JBF Singapore and will entitle KKR Jupiter to exercise 14.5 per cent of the total voting rights of JBF Singapore attributable on an as-converted, fully diluted basis.



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- submissions dated 04.12.2015 and 07.12.2015, under sub-regulation (2) of Regulation 19 of Combination Regulations, proposing modifications in the non-compete clause(s) as provided in the India SHA and Singapore SHA.
5. KKR Credit is stated to be an investment manager, primarily providing investment management services to institutional investors, high net worth individuals, pooled investment vehicles, etc. It is an indirect subsidiary of KKR & Co. L.P. (“**KKR**”) which is stated to be a limited partnership registered in Delaware, United States. As per the information given in the notice, KKR is a global asset management firm which provides a range of alternative asset funds and other investment products to investors. As stated in the notice, KKR affiliated private equity funds invest in portfolio companies in various sectors.
 6. JBF Industries, a public limited company incorporated in India, is stated to be engaged in the manufacture and sale of certain products in the polyester value chain i.e. Polyethylene Terephthalate (“**PET**”) chips (bottle grade, textile grade and film grade) and Yarn (which is manufactured from PET chips). JBF Singapore is a private limited company incorporated under the laws of the Republic of Singapore and is a wholly owned subsidiary of JBF Industries. It has been stated in the notice that JBF Singapore does not conduct any business activity on its own and is the holding company for wholly owned subsidiaries of JBF Industries that are engaged in various businesses, essentially involving the same products as that of JBF Industries.
 7. It has been submitted that KKR neither holds any controlling investments nor does it participate in the decision making process (either through board representations or voting rights arrangements) in any entity operating in the polyester value chain in India. In view of the foregoing, it is observed that there are no horizontal overlaps or vertical relationships between the activities of the parties to the combination in India.
 8. The India SHA contains a non-compete covenant which provides that until the earlier of: (i) KKR Jupiter, or (ii) the promoters of JBF Industries² (“**Promoters**”) ceasing to own beneficially 5 per cent of the equity shares of JBF Industries, the Promoters and their affiliates shall not *inter alia* engage in any business that produces products in the

² As defined in India SHA



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- polyester value chain, in those geographies where JBF Industries and its subsidiaries operate. The Singapore SHA contains a similar non-compete restriction which is applicable until the earlier of: (a) KKR Jupiter ceasing to own beneficially 5 per cent of JBF Industries, or (b) JBF Industries ceasing to own beneficially certain specific securities of JBF Singapore.
9. During the assessment of the proposed combination, the Acquirer was required to provide a clarification and justification on certain aspects of the non-compete obligations contained in the India SHA and the Singapore SHA. The Acquirer, while providing its clarifications on the duration and the scope of the business activities restricted under the non-compete obligations, *vide* its letters submitted on 04.12.2015 and 07.12.2015, proposed the following modifications to the non-compete covenant provided by the India SHA and the Singapore SHA, in terms of sub-regulation (2) of Regulation 19 of the Combination Regulations:
- a.) The non-compete covenant as per the India SHA will be applicable until the earlier of: (i) KKR Jupiter ceasing to own beneficially 10 per cent, or (ii) the Promoters ceasing to own beneficially 5 per cent of the equity shares of JBF Industries; and
- b.) The non-compete covenant as per the Singapore SHA will be applicable until the earlier of: (a) KKR Jupiter ceasing to own beneficially 10 per cent of JBF Industries, or (b) JBF Industries ceasing to own beneficially certain specific securities of JBF Singapore.
10. The Commission hereby accepts the above said modifications offered by the Acquirer under sub-regulation (2) of Regulation 19 of the Combination Regulations and directs the Acquirer to make necessary amendment(s) in the India SHA and the Singapore SHA and submit a copy of the amended India SHA and the amended Singapore SHA to the Commission, within one month from the date of receipt of this order.
11. Considering the facts on record and details provided in the Notice given under sub-section (2) of Section 6 of the Act, assessment of the proposed combination on the basis of factors stated in sub-section (4) of Section 20 of the Act and the modifications proposed by the Acquirer in India SHA and the Singapore SHA under sub-regulation (2) of Regulation 19 of the Combination Regulations, the Commission is of the



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opinion that the proposed combination is not likely to have appreciable adverse effect on competition in India and therefore, the Commission hereby approves the same under sub-section (1) of Section 31 of the Act.

12. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.
13. The Secretary is directed to communicate to the Acquirer accordingly.