



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2015/12/356)



28.03.2016

Notice under Section 6 (2) of the Competition Act, 2002 given by:

- **Mandala Rose Co-Investment Limited; and**
- **Mandala PrimRose Co-Investment Limited**

Order under Section 31(1) of the Competition Act, 2002

CORAM:

Mr. Devender Kumar Sikri
Chairperson

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: M/s Luthra & Luthra Law Offices, New Delhi

1. On 18.12.2015, the Competition Commission of India (hereinafter referred to as the “**Commission**”) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”) from Mandala Rose Co-Investment Limited (“**Mandala Rose**”) and Mandala PrimRose Co-Investment Limited (“**Mandala PrimRose**”) (collectively referred to as “**Acquirers**”). The notice has been filed pursuant to the execution of (a) Debenture Subscription Agreement (“**DSA**”) executed by and between Jain Irrigation Systems Limited



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(“**Jain Irrigation**”) and Mandala Rose; and (b) Securities Subscription and Shareholders Agreement (“**SSHA**”) executed by and between, Mandala PrimRose, Jain Irrigation, Jain Farm Fresh Foods Limited (“**Jain Farm**”), Jain Processed Foods Trading and Investments, and the promoters¹ of Jain Farm, each dated 14.12.2015. (Hereinafter, Jain Irrigation and Jain Farm are referred to as ‘**Targets**’)
(Hereinafter, Acquirers and Targets are together referred to as ‘**Parties**’)

2. The proposed combination entails the following transactions:

- Acquisition of newly-issued compulsorily convertible debentures (“**CCDs**”) of Jain Irrigation by Mandala Rose². (“**Transaction 1**”)
- Acquisition of newly-issued equity shares and newly-issued CCDs of Jain Farm by Mandala PrimRose³. (“**Transaction 2**”)

3. In this regard, it has been stated that as a condition precedent, prior to Transaction 2, Jain Irrigation would transfer Food Business⁴ currently carried on by it to Jain Farm.

4. The proposed combination falls under Section 5 (a) of the Act.

5. At the time of filing, certain deficiencies were found in the notice and the authorised representatives of the Acquirers undertook to provide the requisite information under Regulation 14 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (‘**Combination Regulations**’). The requisite information was furnished on 28th December 2015.

6. As per information given in the notice, Mandala Rose and Mandala PrimRose, both private limited companies formed under the laws of Mauritius, are wholly controlled by Mandala Capital Limited (“**Mandala Capital**”) which is a PE investment company based in

¹As specified in Schedule 1 of the SSHA.

² Upon conversion of CCDs in to ordinary shares; the same would amount to a maximum of 7.55% of the current ordinary shareholding of Jain Irrigation. As per information in notice, Transaction 1 is a passive investment by Mandala Rose without any veto rights.

³ Mandala PrimRose would be acquiring 11.19% shareholding by way of the equity shareholding and upon full conversion of the CCDs, it shareholding would amount to 14.27% or 17.35% in Jain Farm. As per notice, Post combination, control of Jain Farm is undergoing change in view of certain rights being acquired by Mandala PrimRose in Jain Farm which amount to an acquisition of control.

⁴ ‘Food Business’ means the business of food processing comprising of fruit processing and vegetable processing / dehydration businesses being undertaken by Jain Irrigation and its subsidiaries.



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Mauritius. The Acquirers have stated that they are engaged in the business of investing in equity and equity linked securities in the food and agriculture related sectors in India. In this regard, it has been stated in the notice that the Acquirers have not made any investments till date and the proposed combination represents the first business activity of the Acquirers in India. However, it has been observed that prior to the proposed combination, Mandala Capital, through its various funds, has investments in four companies⁵ operating in the food and agriculture related sectors in India (**'Portfolio Companies'**).

7. Jain Irrigation, a company incorporated under the Companies Act, 1956 and listed on BSE Ltd. and NSE Ltd, is engaged in businesses related to irrigation systems, pipes and fittings, plumbing systems, tissue culture plants, renewable energy, fruit and vegetable processing etc.
8. Jain Farm, a newly company incorporated company under the Companies Act, 1956, is a wholly owned subsidiary of Jain Irrigation and does not carry any business activities on its own. As already stated, Jain Farm will carry the Food Business transferred to it from Jain Irrigation.
9. The Commission noted that Transaction 1 and Transaction 2 comprise the proposed combination and are interconnected since the closing of Transaction 1 is a condition precedent to the closing of Transaction 2. In this regard, the Commission observed that according to Regulation 9(4) of the Combination Regulations, Transaction 1 is not a standalone transaction and therefore, is not exempt from notification to the Commission under category 1 of Schedule I of the Combination Regulations. Regulations 9 (4) of the Combination Regulations states:

“Where the ultimate intended effect of a business transaction is achieved by way of a series of steps or smaller individual transactions which are inter-connected or inter-dependent on each other, one or more of which may amount to a combination, a single notice, covering all these transactions, shall be filed by the parties to the combination.”

⁵ Godavari Biorefineries Limited, Sustainable Agro-Commercial Finance Limited, Gati Kausar India Limited and Tunip Agro Limited (**'Tunip'**)



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Fair Competition
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10. It has been stated in the notice that there are no horizontal overlaps between the activities of the Acquirers and the food processing business to be carried out by Target 2. In this regard, it is further observed that Portfolio Companies of Mandala Capital are operating in the food and agriculture related sectors in India; accordingly, horizontal overlaps have also been examined between the Food Business to be carried out by Jain Farm and the Portfolio Companies. In this regard, it is observed that Food Business, to be transferred to Jain Farm, will be engaged in the business of fruit processing⁶. On the other hand, Tunip, a Portfolio Company of Mandala capital, is engaged in the manufacture and sale of fruit juice under the brand name 'Onjus' in India. It is observed that presence of a number of significant players such as Dabur, PepsiCo, Parle, Godrej and Fresh Gold, in the business of fruit juices rule out the possibility of any competition concern in segment of fruit juices in India due to proposed combination.
11. The Acquirers have stated that there are no existing vertical relationships between the activities of Acquirers or the Portfolio Companies and Jain Farm.
12. The Commission considered and assessed the proposed combination in its meeting held on 12th January, 2016 and noted that the non-compete clause in the SSHA restricts Jain Irrigation, its promoters, affiliates or any other entities controlled by it from competing in the 'Food Business' as well as any post-harvest processing of fruits and vegetable processing in the Indian sub-continent until Mandala Primrose remains a shareholder of Jain Farm, irrespective of its percentage of shareholding. Accordingly, the Commission called the Acquirers for oral hearing to justify the 'Non-compete clause'. The Commission heard the submissions of the authorised representatives of the Acquirers ('AR') on 3rd February 2016. In this regard, the AR submitted that they would also give certain additional written submissions. Vide their letter dated 5th February 2016, the Acquirers furnished additional written submissions along with the modification in respect of the non-compete clause. It has been proposed that the non-compete clause as contained in Clause 10 of the SSHA shall cease to apply in the event the shareholding of Mandala PrimRose in the paid-up equity share capital of Jain Farm, on a fully diluted basis, falls below 10%.
13. In its meeting held on 24th February 2016, considering the facts on record, 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, written and oral submissions of the Acquirers from time to time and modification proposed on the

⁶ Food Business of Jain Irrigation is engaged in processing fruits like mango, banana, pomegranates into purees, concentrates, juices etc.



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aspect of non-compete, the Commission was of the opinion that the proposed combination is not likely to have an appreciable adverse effect on competition in India. Accordingly, the Commission approved the proposed combination under sub-section (1) of Section 31 of the Act, subject to carrying out of the modification proposed to the SSHA.

14. The Commission also took note of a letter received from Acquirers dated 9th March 2016, vide which it has been informed that an amendment has been executed to the SSHA by and between Parties on 8th March 2016 by way of which Section 13.7 has been inserted to the effect that the provisions of Section 10.1.1, Section 10.1.2 and 10.1.14 of the SSHA (relating to non-compete) shall cease to apply in the event of shareholding of Mandala PrimRose in the paid-up equity share capital of Jain Farm, on a fully diluted basis falls below 10%.
15. This order shall stand revoked if, at any time, the information provided by the Acquirers is found to be incorrect.
16. The Secretary is directed to communicate to the Acquirers accordingly.