



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2021/12/884)

29th December 2021

Notice under Section 6(2) of the Competition Act, 2002 jointly given by NTPC Limited & Secured Financial Creditors comprising of Axis Bank Limited, Bank of India, Life Insurance Corporation of India, Punjab National Bank, State Bank of India, UCO Bank, Union Bank of India, Power Finance Corporation Limited and REC Limited

CORAM:

Mr. Ashok Kumar Gupta

Chairperson

Ms. Sangeeta Verma

Member

Mr. Bhagwant Singh Bishnoi

Member

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

1. On 1st December 2021, the Competition Commission of India ('**Commission**') received a Notice under Section 6 (2) of the Competition Act, 2002 ('**Act**'), jointly given by NTPC Limited ('**NTPC**') & Secured Financial Creditors comprising of Axis Bank Limited, Bank of India, Life Insurance Corporation of India ('**LIC**'), Punjab National Bank, State Bank of India, UCO Bank, Union Bank of India, Power Finance Corporation Limited and REC Limited ('**SFCs**') [Hereinafter, NTPC and SFCs shall be collectively referred to as the '**Acquirers**'].



2. The Notice was filed pursuant to the Revised Resolution Plan submitted on 14th June 2021¹ by NTPC (in accordance with its discussions with the SFCs) in the Corporate Insolvency Resolution Proceedings ('CIRP') initiated against Jhabua Power Limited ('Jhabua Power' / 'Target') under the Insolvency and Bankruptcy Code, 2016 ('IBC'). [Hereinafter, the Acquirers and Target shall collectively be referred to as 'Parties'].
3. The Revised Resolution Plan proposed extinguishing equity shares held by the existing shareholders of Jhabua Power. It is further envisaged that Jhabua Power shall issue fresh equity shares and non-convertible debentures ('NCDs') to NTPC and the Trust, settled by Jhabua Power for the benefit of the SFCs ('Trust'). As stated, the Proposed Combination would involve issuance of: (a) 50% of equity shares and NCDs to NTPC; and (b) 50% of equity shares and NCDs to the Trust ('Proposed Combination').
4. The Acquirers, *vide* their emails dated 14th December 2021 and 22nd December 2021, submitted certain additional information by way of voluntary submissions.
5. NTPC is a listed public sector undertaking categorized as a 'Maharatna' company. It is under the administrative control of the Ministry of Power, Government of India, which holds 51.10% of its total paid-up share capital. It is an energy conglomerate having presence in the entire value chain of the power generation business and its principal business activity is electric power generation through coal based thermal power plants. Besides power generation through thermal power plants, NTPC is also engaged in power generation from hydro and renewable energy sources. Further, NTPC has diversified into the fields of consultancy, power trading training for power professionals, rural electrification, ash utilisation and coal mining. At present NTPC has an installed capacity of 65.810 GW and as stated, it is targeting to increase the said capacity to 130 GW by 2032.

¹ It is noted that NTPC had earlier submitted a resolution plan for acquisition of 100% of the equity share capital of Jhabua Power on 30th December 2019, which was also notified to the Commission (Combination Reg. No. C-2020/02/728). The Commission had assessed the same and passed an Order dated 1st April 2020 under Section 31(1) of the Act.



6. The SFCs are the Committee of Creditors, as constituted by the Resolution Professional appointed for the insolvency proceeding of the Target. The SFCs consist of (i) banks *viz.*, Axis Bank Limited, Bank of India, Punjab National Bank, State Bank of India, UCO Bank and Union Bank of India engaged in provision of various banking and financial services; (ii) LIC, a statutory body, incorporated under the Life Insurance Corporation Act, 1956 and engaged in the provision of various schemes of life insurance to retail and corporate consumers; (iii) Power Finance Corporation Limited ('PFC') and REC Limited ('REC'), infrastructure finance companies organized as a non-banking financial companies, under the administrative control of the Ministry of Power, Government of India, engaged in provision of credit facilities to entities in the power sector (and its allied sectors) as well as certain consultancy and advisory services.
7. The Target is a private limited company based in the Seoni district of Madhya Pradesh, engaged in the business of power generation. The principal business activity of the Target is generation of power through coal based thermal power stations.
8. Considering the activities of the NTPC, SFCs (directly or through their investee entities) and that of the Target, it is noted that the Proposed Combination leads to horizontal overlaps in the business of power generation at the broader level and potential vertical relationships considering the business of power generation of Jhabua Power and considering the presence of (i) SFCs in the business of deployment of credit for the industry; (ii) certain investee entities of some SFCs in business of manufacturing transformers, conductors and cables; and (iii) PFC and REC in the provision of consultancy services in the power sector.
9. The Commission in its decisional practice has considered generation, distribution and transmission of power as separate relevant product markets and has further segmented the market for generation of power based on source of power generation such as thermal, nuclear, hydro, solar and other renewable sources. In relation to the relevant geographic market, the Commission has observed that the relevant geographic market for both power generation and transmission activities may be defined as the entire territory of



India. However, the Commission has left the question of precise definition of relevant market as open. The Commission is of the view that the same approach can be followed for the purposes of review of the Proposed Combination as the Proposed Combination is not likely to cause an appreciable adverse effect on competition in any of the relevant markets that can be delineated for the reasons given hereunder.

10. The Commission in an earlier case² relating to power generation sector had observed that as both the existing and pipeline capacities underlying the market share estimates are committed for the long term (around 25 years) under the PPAs and considering the general functioning of the power generation sector relating to the execution of PPAs on the basis of bidding, market shares appear to have limited relevance. Accordingly, the Commission had considered the information in relation to capacities participated, won by the parties in total capacity auctioned to assess the impact of the transaction on competition dynamics.
11. In the instant case, based on the submissions of the Parties, it is observed, that the overall presence of the Target as reflected in its existing market share or the bidding activity for power generation projects during the CIRP is insignificant. Accordingly, the increment in existing market share or the incremental ability to win power generation projects resulting from the Proposed Combination is also insignificant to cause any change in competition dynamics in any plausible relevant market horizontally or in vertically in the production chain of power generation.
12. Considering the material on record, including the details provided in the Notice and the assessment of the Proposed Combination based on the factors stated in Section 20(4) of the Act, the Commission is of the opinion that the Proposed Combination is not likely to have any appreciable adverse effect on competition in India.
13. This order may be revoked if, at any time, the information provided by the Acquirers is found to be incorrect.

² Adani Green Energy Limited/S.B. Energy Holding Limited (Combination Reg. No. C – 2021/05/837)



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14. The information provided by the Acquirers shall be treated as confidential in terms of and subject to provisions of Section 57 of the Act.
15. The Secretary is directed to communicate to the Acquirers accordingly.