



16.07.2015

**Order under Sections 44 and 45 of the Competition Act, 2002 in the notice u/s 6 (2) of the Act
given by Sumitomo Mitsui Trust Bank Limited**

CORAM:

Mr. Ashok Chawla

Chairperson

Mr. S. L. Bunker

Member

Mr. Sudhir Mital

Member

Mr. Augustine Peter

Member

Mr. M.S. Sahoo

Member

Mr. G.P. Mittal

Member

APPEARANCES:

Mr. Nakamura and Mr. Kaiyo, authorised representatives of SMTB

Mr. Samir Gandhi and Mr. Rahul Rai, legal representatives of SMTB

1. On 29th December 2014, the Competition Commission of India (“**Commission**”) received a notice (“**Notice**”) under Section 6(2) of the Competition Act, 2002 (“**Act**”) given by Sumitomo Mitsui Trust Bank Limited (“**SMTB**”) regarding a proposed combination with Reliance Capital Limited (“**RCL**”). The combination relates to the acquisition of 2.77 per cent of the paid up capital of RCL by SMTB pursuant to a Share Subscription Agreement executed on 25th December 2014. The Commission approved the said combination *vide* its order dated 26th February 2015.
2. The Commission, in a meeting held on 26th February 2015, also noted potential contraventions of Section 44 and Section 45 of the Act by SMTB on account of, *inter alia*, the following:



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2014/12/235)



*Fair Competition
For Greater Good*

- (a) Omission to provide information regarding its shareholding in a company in India, viz., Ambit Investment Advisors Private Limited (“**AIAPL**”) and its horizontal overlap with RCL; and
 - (b) Omission to furnish information regarding horizontal overlap between the services provided by SMTB and RCL.
3. Based on the above, the Commission decided to initiate proceedings under Sections 44 and 45 of the Act and to issue a show cause notice to SMTB regarding potential contraventions of the Act on account of omission to furnish material information and making of false statements.
4. Pursuant to the above decision, a show cause notice was issued to SMTB on 19th March 2015 (“**SCN**”), requiring SMTB to explain, in writing, within 15 days of receipt of the SCN, as to why penalty in terms of Section 44 and fine in terms of Section 45 of the Act, should not be imposed on it. SMTB filed its response to the SCN on 1st April 2015 (“**Response to SCN**”). In the Response to SCN, SMTB also requested for an oral hearing. The said request was allowed by the Commission and the oral hearing was scheduled on 16th July 2015. Accordingly, the Commission heard SMTB in its meeting held on 16th July 2015.
5. Having considered the Response to SCN, the facts and circumstances of the case and the averments made by SMTB during the hearing, the Commission is not inclined to impose penalty on SMTB.
6. It may, however, be noted that Section 6(2) of the Act casts a duty upon the parties to the combination to file notice in the prescribed form. The forms of notices are set out in Schedule II of the Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations, 2011 (“**Combination Regulations**”) read with Regulation 5 of the Combination Regulations. The said forms detail the information that is required to be submitted to the Commission for assessment of a combination case. The notifying parties are expected to provide full and correct information regarding the combinations and highest care must be taken by notifying parties in this regard. The information should be provided in response to the relevant paragraphs of the notice and should be coherent and must state the responses unequivocally.
7. The Commission’s assessment of a combination proceeds on the basis that necessary information has been supplied to it at the first instance in the notice. Since the timelines regarding assessment of combination cases is very strict, the Commission cannot waste its time and resources seeking information from the parties to the combination which ought to have been provided in the notice itself.
8. Accordingly, it is reiterated that the notifying parties are expected to provide complete and correct information in the notice, failing which the notice may be invalidated. In addition to the same, penalty may also be imposed under the relevant provisions of the Act, particularly in those combination cases where material information which is required to be provided in the notice is not given and is furnished only upon inquiry by the Commission under Regulation 14 of the Combination Regulations.



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2014/12/235)



*Fair Competition
For Greater Good*

9. The Secretary is directed to communicate to SMTB accordingly.