



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2016/01/368)

30.03.2016

Notice filed under sub-section (2) of Section 6 of the Competition Act, 2002 bearing registration no. C-2016/01/368, by:

- a.) **Broad Street Investments (Singapore) Pte. Ltd; and**
- b.) **MBD Bridge Street 2015 Investments (Singapore) Pte. Ltd.**

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

CORAM:

Mr. Devender Kumar Sikri
Chairperson

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. M.S. Sahoo
Member

Mr. G. P. Mittal
Member

Legal Representative: Nishith Desai, Associates

1. On 19.01.2016, the Competition Commission of India (“**Commission**”) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”) jointly given by Broad Street Investments (Singapore) Pte. Ltd (“**BSIPL**”) and MBD Bridge



COMPETITION COMMISSION OF INDIA



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Street 2015 Investments (Singapore) Pte. Ltd. (“**MBD**”). Hereinafter, BSIPL and MBD are together referred to as the “**Acquirers**”. The notice has been filed pursuant to the execution of: (a) Investment Agreement (“**IA**”) amongst BSIPL, MBD, Amber Enterprises (India) Private Limited (“**Amber**”) and its promoters (“**Promoters**”)¹; and (b) Share Purchase Agreement amongst BSIPL, MBD, Reliance Alternative Investments Fund – Private Equity Scheme – I acting through its trustee Fairwinds Trustees Services Private Limited (“**Fairwinds**”), Mr. Kartar Singh, Amber and its promoters. Both these agreements were executed on 09.01.2016.

2. The proposed combination relates to: (a) subscription by BSIPL and MBD of 200,000 compulsorily convertible preference shares (“**CCPS**”) to be issued by Amber, pursuant to the IA; and (b) acquisition by BSIPL and MBD of 36 per cent equity share capital of Amber from Fairwinds and Mr. Kartar Singh², pursuant to the execution of a SPA.
3. The proposed combination falls under Section 5(a) of the Act.
4. While filing the notice, the Acquirers 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/documents by 01.02.2016. The said information/documents were filed by the Acquirers on 21.01.2016. Further, in terms of Regulation 14 of the Combination Regulations, *vide* letter dated 10.02.2016, the Acquirers were required to remove certain defects and provide information/document(s) by 15.02.2016. The Acquirers filed their response on 22.02.2016, after seeking extension of time.
5. Both BSIPL and MBD are stated to be investment holding companies incorporated in Singapore which ultimately belongs to The Goldman Sachs Group, Inc. (The Goldman Sachs Group, Inc. and its group companies are hereinafter referred to as the “**GS**”

¹ Mr. Jasbir Singh, Mr. Daljit Singh

² Fairwinds and Mr. Kartar Singh are existing shareholders of Amber.



- Group**”). The GS Group is stated to be a global investment banking, securities and investment management firm providing a wide range of financial services.
6. Amber is stated to be a private limited company incorporated in India. It manufactures air-conditioners and its components and is also a backward integrated original equipment manufacturer of room air conditioners. The promoters and promoter group hold 66 per cent of its equity share capital and the rest is held by Fairwinds. Amber also has a wholly owned subsidiary i.e. PICL India Private Limited (“**PICL**”) which is primarily engaged in the business of manufacturing electric motors.
 7. It has been submitted that BSIPL, MBD and the GS Group are neither involved in the manufacture or sale, in India, of any of the products manufactured by Amber nor do they have investments in companies engaged in the manufacture or sale of such products in India. Further, there is no upstream or downstream overlap between the parties to the combination. In view of the foregoing, it is observed that there are no horizontal or vertical overlaps between the activities of the parties to the combination in India.
 8. The IA contains a non-compete covenant which provides that during the period commencing from the consummation of the proposed combination and for so long as BSIPL or MBD hold any share in Amber or its subsidiaries, the Promoters and their affiliates or nominees shall not *inter alia* engage in activities that are, could be or will be, in competition, directly or indirectly, with the business of Amber or its subsidiaries. Further, the Promoters cannot, either directly or indirectly or through any of their affiliates or nominees, be involved in the day-to-day affairs and activities of any other person or take up any active executive role with any other persons even if that person is engaged in non-competing business with that of Amber.
 9. During the assessment of the proposed combination, the Acquirers were required to provide a clarification and justification on certain aspects of the non-compete obligations contained in the IA including the geographic scope of the non-compete covenant. The Acquirers, while providing clarifications on the non-compete obligations, *vide* letter submitted on 26.02.2016, in terms of sub-regulation (2) of



COMPETITION COMMISSION OF INDIA



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Regulation 19 of the Combination Regulations, proposed certain modifications to the non-compete covenant in the IA. The said modifications were revised and clarified by the Acquirers vide their emails dated 10.03.2016 and 30.03.2016 and letter dated 11.03.2016. The modification proposed by the Acquirers are as follows:

- a.) The non-compete covenant as per the IA will be applicable till the Acquirers or their affiliates collectively ceases to own beneficially 10 per cent of the equity shares of Amber or the Promoters collectively ceases to own beneficially 5 per cent of the equity shares of Amber, whichever is earlier;
 - b.) The non-compete covenant shall apply only with respect to territories in which Amber and/or its subsidiaries operate; and
 - c.) The Promoters cannot, either directly or indirectly or through any of their affiliates or nominees, be involved in the day-to-day affairs or take up any active executive role with any other person only if that person is engaged in activities that is, could be or will be, in competition, directly or indirectly, with the business of Amber or its subsidiaries.
10. The Commission accepts the above said modifications offered by the Acquirers under sub-regulation (2) of Regulation 19 of the Combination Regulations and directs the Acquirers to make necessary amendment(s) in the IA and submit a copy of the amendments to the IA 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 Acquirers in the IA under sub-regulation (2) of Regulation 19 of the Combination Regulations, the Commission is of the 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.



COMPETITION COMMISSION OF INDIA



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