



COMPETITION COMMISSION OF INDIA

Combination Registration No. C-2024/04/1139

07th March 2025

Proceedings under section 43A of the Competition Act, 2002 (Act) in relation to notice filed under sub-section (2) of section 6 of the Act by Matrix Pharma Private Limited, Mudhra Labs Private Limited, Mudhra Lifesciences Private Limited, Mudhra Pharmacorp LLP, Kotak Strategic Situations India Fund II - a fund managed by Kotak Alternate Asset Managers Limited, and Kingsman Wealth Fund PCC Aurisse Special Opportunities Fund

CORAM:

Ms. Ravneet Kaur
Chairperson

Mr. Anil Agrawal
Member

Ms. Sweta Kakkad
Member

Appearances: Mr. Abhik Ghosh, Advocate

Order under Section 43A of the Competition Act, 2002

A. BACKGROUND

1. The Competition Commission of India (**Commission**) in its meeting held on 28th May 2024 had considered the notice dated 23rd April 2024 (**Notice**) received under sub-section (2) of Section 6 of the Competition Act, 2002 (**Act**) filed by Matrix Pharma Private Limited (**Acquirer**), Mudhra Labs Private Limited (**Mudhra Labs**), Mudhra



Lifesciences Private Limited (**Mudhra Lifesciences**), Mudhra Pharmacorp LLP (**Mudhra Pharmacorp**), Kotak Strategic Situations India Fund II (**KSSIF/ Investor 1**), Kotak Alternate Asset Managers Limited (**KAAML/ Investor 2**), and Kingsman Wealth Fund PCC Aurisse Special Opportunities Fund (**Kingsman**) [hereinafter, Mudhra Labs, Mudhra Lifesciences, and Mudhra Pharmacorp are collectively referred to as the **Acquirer Holding Entities**; Investor 1 and Investor 2 are collectively referred to as the **Investors**; and, the Acquirer, Acquirer Holding Entities, Investors, and Kingsman are collectively referred to as **Acquirers/ Notifying Parties**] and passed an order under subsection (1) of Section 31 of the Act approving the Proposed Combination (as defined below), without prejudice to any proceeding under Section 43A of the Act (**Order**).

Description of the Parties

2. **Acquirer:** The Acquirer is a private limited company incorporated in India in 2022 for the purpose of acquisition of the Tianish Laboratories Private Limited (**Target**). It does not have any subsidiaries or affiliates and does not presently carry out any business activity either in India or outside India [hereinafter, the Acquirers and the Target are together referred to as **Parties**].
3. **Acquirer Holding Entities:** Mudhra Lifesciences and Mudhra Pharmacorp are the shareholders of Mudhra Labs, which is the direct holding company of the Acquirer. In other terms, Mudhra Labs is a subsidiary of Mudhra Lifesciences and an affiliate of Mudhra Pharmacorp, and the Acquirer is a subsidiary of Mudhra Labs. Mudhra Lifesciences and Mudhra Pharmacorp are controlled by Mr. Venkata Pranav Reddy Gunupati (**Pranav**) who is also the majority owner in both entities. Accordingly, Pranav is the ultimate beneficial owner and person in control of the Acquirer and the Acquirer Holding Entities, which are all part of the same group.
4. **Acquirer Group:** Pranav together with certain of his family members, also holds direct and indirect investments in several other companies, several of which have been made



through IQuest, which is also a party to the SPA. Accordingly, the entities over which Pranav (including his family members) has: (a) direct or indirect shareholding of 10% or more; or (b) a right or ability to exercise any right not available to ordinary shareholders (including any advantage of a commercial nature); or (c) a right or ability to nominate a director or observer, have been considered as the ‘**Acquirer Group**’.

5. **Investor 1:** Investor 1 is a scheme of Kotak Strategic Situations Trust, a trust set up under the Indian Trust Act, 1882 and registered with Securities and Exchange Board of India (**SEBI**) as a Category-II Alternate Investment Fund.
6. **Investor 2:** KAAML is the settlor and manager of Investor 1. Kotak Mahindra Bank Limited holds, directly and indirectly, 100% of its shareholding. It acts as an investment manager, engaged in the business of managing and advising funds across various asset classes.
7. **Kingsman:** Kingsman is incorporated as a protected cell public company limited by shares in Mauritius and holds a Global Business License issued by the Financial Services Commission (**FSC**), Mauritius. It is regulated by the FSC as an open-ended fund classifying as a self-managed expert fund for the purposes of the Securities Act, 2005 and the Securities (Collective Investment Schemes and Closed-End Funds) Regulations, 2008. It is also registered as a foreign portfolio investor with SEBI.
8. **Target:** The Target is a private limited company incorporated in India in 2023. It is a wholly owned subsidiary of Mylan India, which in turn is an indirect subsidiary of Viatris Inc. (**Viатris**), the ultimate parent company of the Viатris group (**Viатris Group**). The Target does not have any subsidiaries or affiliates. The Target has taken over the active pharmaceutical ingredients (**API**) manufacturing business (**API Business**) of Mylan Laboratories Limited (**Mylan India**) and is engaged in the manufacture of APIs in India, which business was formerly carried out by Mylan India and transferred to the Target



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pursuant to a scheme of demerger which was made effective from 1st March 2024. Currently, the API Business of the Target comprises 290 APIs in its portfolio.

Transaction

9. The Notice was filed with the Commission for approval of the following Combination:
 - i. Purchase of equity shares of the Target by the Acquirer, constituting 100% of the issued and paid-up share capital of the Target on a fully diluted basis (**Proposed Acquisition**);
 - ii. Proposed subscription to optionally convertible debentures of Mudhra Labs by Investors (**Proposed KSSIF/KAAML Investment**);
 - iii. Subscription to compulsorily convertible preference shares of Mudhra Lifesciences by Kingsman (**Kingsman Funding**).

Since the Acquirer was receiving funding pursuant to the Proposed KSSIF/KAAML Investment and Kingsman Funding, both were considered as inter-connected with the Proposed Acquisition [together, the **Combination**].

10. In addition to above, it was submitted in the Notice that in order to ensure funding for the Acquirer to undertake the Proposed Acquisition, the Acquirer Holding Entities had partly funded the Acquirer by way of investments from: (i) Mudhra Lifesciences by way of subscription to equity shares and compulsorily convertible preference shares (**CCPS**) in Mudhra Labs and (ii) Mudhra Pharmacorp by way of subscription to equity shares in Mudhra Labs. Mudhra Labs in turn invested the proceeds of these investments received by it in the Acquirer by way of subscription to equity shares, to be utilized by the Acquirer for its acquisition of the Target in the Proposed Acquisition. The investments by Mudhra Lifesciences and Mudhra Pharmacorp in Mudhra Labs and by Mudhra Labs in the Acquirer are collectively referred to as the '**Acquirer Funding**'.



11. Regarding entities investing in Mudhra Lifesciences, it was mentioned that other than Kingsman, Mudhra Lifesciences had received equity investment from Pranav, who is the ultimate beneficial owner and person in control of Mudhra Lifesciences.
12. Regarding entities investing in Mudhra Pharmacorp, it was stated that the minority partners of Mudhra Pharmacorp are Govipri Infra LLP and Sujatha Ravuri, who had contributed capital to Mudhra Pharmacorp in accordance with the Amended and Restated Limited Liability Partnership Agreement dated 5th April 2024 entered into between Pranav, Govipri Infra LLP and Sujatha Ravuri. Govipri Infra LLP is wholly owned by family members of Mr. Pranav Reddy. Other than the above, Mudhra Pharmacorp LLP had not received investments from any other person or entity.
13. Regarding investment by Investors in Mudhra Labs through Optionally Convertible Debentures (OCDs), it was submitted that the amount to be invested by the Investors towards subscription of the OCDs was not yet remitted to Mudhra Labs and accordingly, OCDs were yet to be issued by Mudhra Labs. It was stated that the investment amount will be remitted and the OCDs will be issued only after all the conditions precedent to the closing of the proposed investment by the Investors had been satisfied, including obtaining the approval of the Commission. Upon receipt of the investment from the Investors towards subscription of the OCDs, this amount would be further invested by Mudhra Labs in the Acquirer, towards subscription of Compulsorily Convertible Debentures. Further, it was clarified that the Investors' knowledge of the Proposed Acquisition was only limited to its own investment in Mudhra Labs which had not been completed.
14. The Parties confirmed that certain considerations relating to Acquirer Funding had been paid prior to the filing of the Notice, as set out below:
 - i. **Kingsman Funding:** On 5th April 2024, the investment by Kingsman in Mudhra Lifesciences by way of subscription to CCPS was completed after being deemed to



have been approved by the Commission pursuant to the submission of a notice in Form I (bearing registration no. C-2024/04/1130) under the green channel (**Green Channel Notice**) which was acknowledged by the Commission on 4th April 2024.

ii. **Acquirer Funding**

a. **Investment by Mudhra Lifesciences in Mudhra Labs:** It was stated that the entire investment that was proposed to be made by Mudhra Lifesciences in Mudhra Labs by way of subscription/ purchase of 44.23% equity shareholding of Mudhra Labs (on a fully diluted basis) and by way of subscription to CCPS (constituting 30.33% equity shareholding of Mudhra Labs on a fully diluted basis) was completed by 6th April 2024. Further, other than the rights available to it as an equity shareholder of Mudhra Labs and in terms of the CCPS, there were no other rights available to Mudhra Lifesciences with respect to Mudhra Labs.

b. **Investment by Mudhra Pharmacorp in equity shares of Mudhra Labs:** It was stated that the entire investment that was proposed to be made by Mudhra Pharmacorp in Mudhra Labs by way of subscription to 25.44% equity shareholding of Mudhra Labs was completed by 6th April 2024. Further, other than the rights available to it as an equity shareholder of Mudhra Labs, there were no other rights available to Mudhra Pharmacorp with respect to Mudhra Labs.

c. **Investment by Mudhra Labs in equity shares of the Acquirer:** Regarding investment by Mudhra Labs in equity shares of the Acquirer, it was submitted that on 1st March 2024 the consideration was paid for secondary purchase from original shareholders of the Acquirer and on 16th April 2024 the consideration was paid and allotment was completed on the same date. The percentage of equity shareholding held by Mudhra Labs in Acquirer was 100%.

iii. **Investment by Pranav in Mudra Lifesciences:** It was stated that the investment by Pranav in Mudhra Lifesciences was made towards subscription of 54,79,99,999



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equity shares (out of which 1,00,09,999 equity shares were fully paid-up). Further, a portion of the investment by Mudhra Lifesciences in Mudhra Labs had been funded through debt, where Mudhra Lifesciences had borrowed by issuing unlisted, secured, redeemable, non-convertible debentures to institutional investors. However, this was a pure debt transaction and none of the institutional investors had any voting rights, control or any special rights over Mudhra Lifesciences. Regarding the pre and post shareholding in Mudhra Lifesciences, it was stated that while Pranav held 100% of the outstanding equity share capital and Kingsman only held CCPS, upon conversion of the CCPS Kingsman would receive equity shares amounting to 42.75% of the post-conversion equity share capital on a fully diluted basis, whereas Pranav' equity shareholding would be diluted to 57.25%.

- iv. **Capital Contribution in Mudhra Pharmacorp by the partners of Mudhra Pharmacorp:** It was stated that the following partners of Mudhra Pharmacorp had contributed the capital: (i) Mr. Pranav Reddy, (ii) Govipri Infra LLP, and (iii) Ms. Sujatha Ravuri. It was submitted that notwithstanding the capital contribution ratio, the partners of Mudhra Pharmacorp had agreed that Pranav has the right to control and manage the affairs and assets/investments of Mudhra Pharmacorp and other than their respective partnership interest, neither Govipri Infra LLP nor Sujatha Ravuri enjoy any rights or control in Mudhra Pharmacorp.

15. Pertinently, the Acquirer and the Investors had earlier submitted a notice in Form I (bearing Registration No. C- 2024/01/1100 (**Original Notice**)) seeking approval from the Commission for the Acquirer's acquisition of the Target and investment by the Investors in the Acquirer to fund such acquisition. The Commission granted approval for this transaction by way of an order dated 13th February 2024. However, subsequent to the receipt of the said approval the structure of the transaction underwent a change.
16. The Acquirer submitted that such change was pursuant to commercial discussions between the Acquirer and the Investors. It was submitted that further to the Acquirer's efforts to secure funding for the acquisition, in particular, the Kingsman Funding and



Acquirer Funding (as described above) became necessary to capitalise the Acquirer sufficiently to complete the Proposed Acquisition, whereas the subscription of OCDs by the Investors had to take place at the Mudhra Labs level rather than the Acquirer level (as was envisaged in the Original Notice) as per the requirements of the lenders to the Acquirer.

B. ISSUE OF SHOW CAUSE NOTICE (SCN)

17. The Commission considered the matter in its meeting held on 28th May 2024 and observed that subsequent to the approval by the Commission of the Original Notice, the structure of the transaction had undergone a considerable change.
18. The Commission noted that pursuant to the change though the direct acquiring entity of the Target continued to be Matrix Pharma, the shareholding and control structure of Matrix Pharma had changed. As per the Original Notice, Matrix Pharma was directly owned and controlled by Pranav and his wife Mrs. Swati Reddy Gunupati, who collectively held 99.26% of the shareholding of the Acquirer. However, as per the instant Notice, Mrs. Swati Reddy Gunupati had ceased to hold any shareholding in Matrix Pharma and Pranav held only indirect shareholding. Direct 100% equity shareholding in Matrix Pharma was now held by Mudhra Labs, in which Mudhra Lifesciences held 74.56% (on a fully diluted basis) and remaining was held by Mudhra Pharmacorp. In Mudhra Lifesciences, Pranav held 100% equity shareholding and Kingsman held CCPS (amounting to 42.75% of the post-conversion equity share capital on a fully diluted basis) and in Mudhra Pharmacorp, Govipri Infra LLP and Sujatha Ravuri were partners along with Pranav. It was noted that the change in structure of Transaction and Acquirer Funding had been carried out and completed without notifying to the Commission.
19. Considering that the purpose of the Acquirer Funding was to ensure funding for the Acquirer to undertake the Proposed Acquisition, it was observed that the transactions forming part of the Acquirer Funding were interconnected to the Proposed Acquisition



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and hence to the Proposed Combination in terms of Regulation 9(4) and 9(5) of the Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations, 2011 (**Combination Regulations**). Likewise, Kingsman Funding, investment by Pranav in Mudhra Lifesciences and capital contribution in Mudhra Pharmacorp by the partners of Mudhra Pharmacorp *i.e.*, (i) Pranav, (ii) Govipri Infra LLP and (iii) Ms. Sujatha Ravuri and Proposed KSSIF/KAAML Investment by the Investors were also interconnected with the Proposed Combination. Accordingly, a single notice covering all these interconnected transactions ought to have been given to the Commission prior to consummation. However, the Acquirers had failed to do so.

20. Thus, considering the above, the Commission was of the *prima facie* opinion that there was a contravention of the provisions of sub-section (2) of Section 6 and sub-section (2A) of Section 6 of the Act in the matter. Accordingly, the Commission decided to issue SCN to the Acquirers under Section 43A of the Act read with Regulation 48 of the Competition Commission of India (General) Regulations, 2009.
21. Accordingly, an Order dated 28th May 2024 (**SCN Order**) was passed by the Commission directing the Acquirers to show cause in writing within 15 days of receipt of the SCN Order as to why: (i) they should not be found in contravention of the provisions of the Act and (ii) no penalty in terms of Section 43A of the Act should be imposed upon them. The SCN Order was communicated to the Acquirers *vide* letter dated 12th July 2024 and the Acquirers submitted their response on 29th July 2024 (**SCN Response**).

C. RESPONSE TO SCN

22. It is stated in the SCN Response that the change in the structure of the transaction for the purposes of acquisition of the Target was not anticipated at the time of filing of the Original Notice. Besides, despite the inclusion of Acquirer Holding Entities which were



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not previously part of the Acquirer's holding structure, the only material change in ownership is on account of the investment by Kingsman, being an unrelated third-party investor, as the other changes in the transaction structure as disclosed in the Notice did not lead to any change in the competitive assessment as undertaken by the Commission for the Original Notice.

23. Though Swati was disclosed as a shareholder of the Acquirer in the Original Notice, she is no longer a shareholder either in the Acquirer or the Acquirer Holding Entities as disclosed in the Notice. However, this is not a material change as the investments by Swati have been considered for the purposes of the competitive assessment analysis in both the Original Notice and the instant Notice.
24. Thus, notwithstanding the change in the transaction structure compared to the structure described in the Original Notice, there is no material change in the ultimate ownership of the Acquirer and there is a change only in the layers of ownership and the level at which the Investors would be making their investment, while the basic objective of the transaction *i.e.*, acquisition of the Target, remains the same.

(i) Submissions with respect to Acquirer Holding Entities:

25. It is submitted that as originally envisaged and disclosed in the Original Notice, the Acquirer was wholly owned by Pranav and his wife Swati, and would receive investment from the Investors in order to fund the acquisition of the Target. However, as per the requirements of the lenders to the Acquirer, the Acquirer could not issue OCDs to the Investors and therefore, it became necessary to create an additional holding entity above the Acquirer that would issue such OCDs to the Investors *i.e.*, Mudhra Labs.
26. Further, in order to secure sufficient funding for the Proposed Acquisition, it became necessary to raise equity from alternate sources. Accordingly, a commercial decision was taken for Kingsman to invest in Mudhra Life sciences, which would become the holding



company of Mudhra Labs. Pranav was also able to secure investments from certain family and friends *i.e.*, Govipri Infra LLP (wholly owned by family members of Pranav) and Sujatha Ravuri in Mudhra Pharmacorp, which also became a minority shareholder in Mudhra Labs.

27. However, notwithstanding the inclusion of additional persons not envisaged in the Original Notice approved by the Commission, the only material change in ownership was on account of the investment by Kingsman. This is on account of Pranav retaining the majority ownership and control over Mudhra Lifesciences (and thus indirectly over Mudhra Labs and the Acquirer). Even in Mudhra Pharmacorp, while Govipri Infra LLP and Sujatha Ravuri have their respective partnership interests, neither Govipri Infra LLP nor Sujatha Ravuri enjoy any rights or control in Mudhra Pharmacorp, and have specifically agreed in the Amended and Restated Limited Liability Partnership Agreement dated 5th April 2024 (**LLP Agreement**) that Pranav has the right to control and manage Mudhra Pharmacorp, its affairs and its assets /investments.
28. Nevertheless, despite Govipri Infra LLP and Sujatha Ravuri not having any control or influence over the Acquirer or Target by virtue of their being partners in Mudhra Pharmacorp, an overlap assessment of their respective investments has been undertaken and it is confirmed that neither Govipri Infra LLP and Sujatha Ravuri have any portfolio investments that cross the Materiality Threshold, and therefore do not impact the competitive assessment of the Proposed Combination.

(ii) Submissions with respect to Kingsman:

29. The changes in the Acquirer structure did not lead to any material changes in the ultimate ownership and control over the Acquirer, which remained with Pranav, except on account of the investment by Kingsman, which is an unrelated third-party investor.



30. Therefore, after the Original Notice received approval from the Commission and the necessity for additional investment from Kingsman was identified, a notice in Form I was filed by Kingsman with the Commission prior to completion of the investment by Kingsman in Mudhra Lifesciences. This notice disclosed that the ultimate purpose of Kingsman's investment was for the Acquirer's acquisition of the Target, and was submitted under the green channel and hence deemed to be approved by the Commission upon submission. The investment by Kingsman was only completed after receipt of such deemed approval from the Commission. Further, given that Kingsman does not have any investments that overlap with the Target's activities, even the introduction of Kingsman did not impact the overlap analysis set out in the Original Notice.

(iii) Submissions with respect to Inter-connected Transactions:

31. The Acquirer Funding and the Kingsman Funding were necessary for the Acquirer to complete its acquisition of the Target. However, the Acquirers have been fully transparent with the Commission as to the transactions being undertaken, including clarifying where certain steps had been carried out prior to filing of the Notice.
32. It is submitted that certain steps were carried out prior to the filing of the Notice on account of the commercial imperatives to complete the acquisition of the Target as quickly as possible once the demerger of the API Business from Mylan India to the Target became effective from 1st March 2024. As communicated by Viatrix Inc., Mylan India's parent company, once the demerger became effective there came about an urgent necessity and exigency to ensure the prompt closure of the Transaction and for the Acquirer to take control over the business operations of the Target and to bring in the necessary efficiencies in the operations of the Target as well as fund the operations of the Target on a continual basis. Since the Target manufactures antiretroviral drugs which are extremely important in the global (and India's) fight against AIDS, it became imperative that the Acquirer complete the acquisition of the Target at the earliest and take control over the API Business to ensure that the supply of such critical drugs is not



disrupted given the impacted permits, licenses and stakeholder expectations on supply from the Acquirer.

33. It was in the above context that the Acquirer Funding and Kingsman Funding were completed prior to the filing of the Notice in good faith and with the best of intentions, under the *bona fide* impression that the Proposed Acquisition and the investment by the Investors having already been notified to the Commission by way of the Original Notice, and approved unconditionally by way of an order dated 13th February 2024, the subsequent changes in the Acquirer's structure were not material given that there was no material change in the ultimate ownership of the Acquirer. Furthermore, while the Kingsman Funding involved an unrelated third-party investor at the Mudhra Lifesciences level, the same was only completed after receiving the deemed approval of the Commission.

(iv) Mitigating Circumstances

34. It is submitted that while the Acquirer Funding and the Kingsman Funding were completed prior to the filing of the Notice, the following mitigating circumstances be considered:
- a. There has not been any intention on the part of the Notifying Parties to omit any material facts from the Commission, and the changes in the structure of the transaction have only arisen subsequent to receipt of approval for the Original Notice. Rather, the Acquirer Holding Entities and Kingsman had disclosed the status of the Acquirer Funding and the Kingsman Funding in the Notice, acting in good faith and in the interests of complete disclosure to the Commission.
 - b. The Notifying Parties have sought to comply with the spirit of the Act by ensuring that notwithstanding the changes in the structure of the transaction as originally envisaged in the Original Notice, the person in ultimate control of the Acquirer *i.e.*,



Pranav, remained the same, and furthermore by assessing potential overlaps with the Target on account of investments of Kingsman, Govipri Infra LLP and Sujatha Ravuri. It may be noted that no additional potential overlaps have been identified in the Notice pursuant to the revised structure than what had been disclosed in the Original Notice and already approved by the Commission.

- c. The Acquirer Funding was completed prior to the filing of the Notice in good faith and with the best of intentions, under the *bona fide* impression that the Proposed Acquisition and the investment by the Investors having already been notified to the Commission by way of the Original Notice and approved unconditionally by way of an order dated 13th February 2024, the subsequent changes in the Acquirer's structure were not material given that there was no material change in the ultimate ownership of the Acquirer.
- d. The completion of Acquirer Funding was also necessitated due to commercial considerations for the transactions, and potential impact for the Target's business in the event that the time period between the demerger of the API Business into the Target and acquisition by the Acquirer became extended.
- e. Given that the revised structure saw the addition of Kingsman as an investor, a notice in Form I (bearing Registration No. C-2024/04/1130) was filed by Kingsman under the green channel, and only after receipt of deemed approval of the Commission for this filing was the Kingsman Funding completed.
- f. With respect to the Investors, no steps were taken towards consummating investments whether in the Acquirer or in Mudhra Labs, until the receipt of approval of the Commission pursuant to the Notice. Further, as clarified in the Notice, the Investors were not aware of, nor did they have any knowledge, visibility nor hold any responsibility with respect to, the completion of the Acquirer Funding and the Kingsman Funding.



- g. The Notifying Parties have a track record of compliance with the provisions of the Act, as evidenced by the notifications by way of the Original Notice as well as with respect to the Kingsman Funding. Further, the Notifying Parties had pre-filing consultations to apprise the Commission of the changes in the transaction structure, thus demonstrating an intention to show full transparency before the Commission and to comply with the spirit of the Act. Further, this is the first instance of alleged violation of the provisions of the Act by the Notifying Parties, and that the Notifying Parties are not repeat offenders and that there has been no *mala fide* intention on the part of the Notifying Parties to evade compliance with the provisions of the Act, rather the Notifying Parties have proactively disclosed to the Commission all pertinent facts and circumstances.
- h. The ultimate objective of the transactions described in the Original Notice and the Notice remained the same *i.e.*, acquisition of the Target by the Acquirer. Any steps undertaken in furtherance of the Acquirer Funding and the Kingsman Funding prior to filing of the Notice were only taken after receipt of approval from the Commission (a) unconditionally for the transactions described in the Notice; and (b) under the green channel for the Kingsman Funding.
- i. Accordingly, the Notifying Parties have sought to ensure at all times that notwithstanding the changes in the structure, the basis of the transaction that was initially approved unconditionally by the Commission pursuant to the Original Notice remained the same.

(v) Prayer

35. The Commission is requested, to take a lenient view considering the conduct of the Notifying Parties and in light of the circumstances of the transaction, prays that no penalty in terms of Section 43A of the Act be imposed upon any of the Notifying Parties.



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Furthermore, if the Commission decides to impose a penalty in terms of Section 43A of the Act, it is prayed that in light of the conduct of the parties and other mitigating circumstances as described above, a minimal or nominal penalty be imposed.

D. Observations of the Commission

36. The Commission has considered the material on record and heard the arguments of the learned counsel in the matter on 7th January 2025. Given the submissions made in the Notice, the response to the SCN and arguments presented before the Commission, the observations of the Commission on the issue of contravention of the provisions of Section 43A read with Section 6(2) and Section 6(2A) of the Act in the instant matter are set forth in following paras.

I. Investment by Pranav in Mudra Lifesciences/ capital contribution in Mudhra Pharmacorp by the partners of Mudhra Pharmacorp/ Acquirer Funding for the purposes of Proposed Acquisition

37. Based on the submissions in the notice and response to SCN, it is apparent that subsequent to order of the Commission dated 13th February 2024 whereby the Proposed Combination notified *vide* Original Notice was approved, the structure of the transaction underwent change. The pre-filing consultations in relation to the changes in the transaction structure were sought only subsequent to completion of the Acquirer Funding and Kingsman Funding. Although the Acquirers filed a fresh notice on 23rd April 2024, certain steps had already been completed prior to the filing of the Notice. The learned counsel has not denied the same but has explained the circumstances and cited the commercial exigencies for consummation of such steps without filing notice with the Commission.

38. During the hearing as well as in the response to the SCN, it is submitted that the subsequent changes in the transaction structure were not significant as there was no



material change in the ultimate ownership of the Acquirer as Pranav continued to retain ownership in the Acquirer and the only change was the change in layers of ownership. Given the facts of the case, it is apparent that while Pranav has continued to have ultimate ownership interest in the Acquirer after the change in transaction structure, there are other entities such as Kingsman, Govipri Infra LLP and Sujatha Ravuri which have also acquired ultimate ownership interest therein, in place of Swati. As per the Original Notice, ownership interest in the Acquirer *i.e.*, Matrix Pharma was held by only two individuals, namely, Pranav and Swathi; however, as per the instant Notice, the Acquirer is directly held by Mudhra Labs, which in turn is held by Mudhra Lifesciences (where Pranav currently holds 100% and Kingsman holds CCPS) and Mudhra Pharmacorp (where Pranav is a partner alongwith Govipri Infra LLP and Sujatha Ravuri). Materially, in terms of ownership interest in the Acquirer there are two significant changes, first, there are new entities that have acquired ownership interest in the Acquirer and second, Swathi has ceased to hold any ownership interest in the Acquirer. Considering that the entities holding ownership interest in the Acquirer are no longer the same as in the Original Notice, the Commission finds that the transaction structure has materially changed from what was approved by the Commission in Original Notice.

39. Further, it is noted that though Pranav holds 100% shareholding in Mudhra Lifesciences, Kingsman also has an ownership interest therein along with Pranav. As stated earlier, upon conversion of CCPS, Kingsman would receive equity shares amounting to 42.75% of the post-conversion equity share capital on a fully diluted basis, whereas Pranav's shareholding would be diluted to 57.25%. Likewise, in Mudhra Pharmacorp, while Govipri Infra LLP and Sujatha Ravuri have specifically agreed that Pranav has the right to control and manage the LLP, its affairs and its assets/investment; it cannot be said that Govipri Infra LLP and Sujatha Ravuri would not have any rights in Mudhra Pharmacorp. As partners who have contributed capital to Mudhra Pharmacorp, Govipri Infra LLP and Sujatha Ravuri have certain ownership interest. Further, they would also have certain information rights, such as, rights to access the books of account and records of the LLP, *etc.* as well as other rights and duties under the Limited Liability Partnership Act, 2008



and Rules made thereunder. Thus, it cannot be said that the change in transaction structure is not material. In the instant Notice, in addition to Pranav, other entities, such as, Kingsman, Govipri Infra LLP and Sujatha Ravuri have also acquired ownership interest in the Acquirer through Mudra Lifesciences, Mudhra Pharmacorp and Mudhra Labs, for which the competition assessment was not provided in the Original Notice.

40. Further, the learned counsel has argued before the Commission that no additional overlaps have been identified between the Parties pursuant to the revised structure. While this may be so, it is also to be borne in mind that mere absence of overlaps does not obviate the fact that the transaction structure that was notified to the Commission in the Original Notice underwent a change subsequent to the approval. The change in transaction structure ought to have been notified to the Commission as a proposed combination, instead at the time the Notice was given to the Combination, certain steps of the Combination had already been consummated.
41. It is pertinent to note that the merger control regime in India is mandatory and suspensory in nature. This means that combinations are notifiable unless they can avail any exemptions and cannot be consummated, either entirely or in part, before an approval from the Commission has been obtained. Section 5 of the Competition Act provides the assets and turnover criteria for acquisitions of control, shares, voting rights or assets as well as mergers and amalgamations that amount to a combination. Section 6(2) of the Competition Act requires/ mandates parties to give notice in respect of their proposed combination. Section 6(2A) of the Act provides that a combination notified to the Commission shall not come into effect for a period of 210 days from the date of notification or approval by the Commission, whichever is earlier.
42. It is clear from the submissions in the Notice that the Combination was a notifiable transaction and was neither exempted by any Government of India notification nor covered under Schedule I of Combination Regulations. Thus, it was incumbent upon the Acquirers to be in conformity with all relevant provisions of the Act and applicable



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Regulations. However, there was a part-consummation of the combination as certain steps interconnected with the Combination *i.e.*, Acquirer Funding, investment by Pranav in Mudra Lifesciences and capital contribution in Mudhra Pharmacorp by the partners of Mudhra Pharmacorp, were consummated prior to filing notice with the Commission.

43. It is also pertinent to mention here that the mandatory regime for notifying a proposed combination to the Commission is applicable, irrespective of whether the combination causes appreciable adverse effect on competition in India or not. The Commission, in its order relating to penalty proceedings under Section 43A of the Act against Intellect Design Arena Limited, has already observed: “... *the Act clearly provides, irrespective of whether there is any appreciable adverse effect on competition in India or not, there is mandatory regime for notifying a combination to the Commission.*”

II. Kingsman Funding

44. With respect to the Kingsman Funding, which involved a third-party investor at the Mudhra Lifesciences level, the Parties have submitted that the same was notified vide Green Channel Notice by Kingsman and deemed to be approved by the Commission by way of acknowledgment issued on 4th April 2024. After the green channel approval, the Kingsman Funding was completed on 5th April 2024.
45. It appears from the submissions in the Notice that the Acquirers were aware that the Kingsman Funding was inter-connected to the Combination. In such a case, in accordance with the provisions of Regulation 9(4) of the Combination Regulations, a single notice covering all transactions including Acquirer Funding, investment by Pranav in Mudra Lifesciences and capital contribution in Mudhra Pharmacorp by the partners of Mudhra Pharmacorp, which were in contemplation at the same time as Kingsman Funding, ought to have been filed with the Commission.



सत्यमेव जयते



46. However, in light of the facts and circumstances of the case and keeping in view of the fact that a Green Channel Notice was filed with the Commission by Kingsman with respect to the Kingsman Funding and the same was consummated only after the deemed approval of the Commission, the Commission does not find Kingsman Funding to be in contravention of any of the provisions of the Act.

III. Proposed KSSIF/KAAML Investment

47. Regarding the Proposed KSSIF/KAAML Investment by the Investors proposed to be made in Matrix Pharma in Original Notice and in Mudhra Labs in the instant Notice, it is noted that no steps were taken towards consummating the investment and the same was yet to be completed subject to the approval of the Commission. The Investors have submitted in the notice as well as response to SCN that they were not aware of, nor did they have any knowledge, visibility with respect to, the completion of the Acquirer Funding and the Kingsman Funding. Therefore, the Commission finds that the Investors are not in violation of the provisions of the Act.

IV. Contravention and Penalty

48. In view of the foregoing, the Commission is of the opinion that there is contravention of the provisions of sub-section (2) of Section 6 and sub-section (2A) of Section 6 of the Act as a result of the part-consummation of the combination prior to filing Notice with the Commission.
49. It is to be noted that failure to give notice in accordance with sub-section (2) of Section 6 of the Act attracts penalty under Section 43A of the Act. Section 43A of the Act states:

“Power to impose penalty for non-furnishing of information on combinations
43A. If any person or enterprise who fails to give notice to the Commission under sub- section (2) of section 6, the Commission shall impose on such person or



सत्यमेव जयते



enterprise a penalty which may extend to one percent, of the total turnover or the assets, whichever is higher, of such a combination.”

50. The Hon’ble Supreme Court in ‘*Competition Commission of India v Thomas Cook (India) Ltd. & Anr.*’¹ has held that: “*For the imposition of penalty under section 43A, the action may not be mala fide in case there is a breach of the statutory provisions of the civil law, penalty is attracted simpliciter on its violation.*” In terms of Section 43A of the Competition Act, a maximum penalty of one per cent of the combined value of turnover of the Parties in India can be imposed.
51. It is to be noted that Section 43A of the Act prescribes the maximum extent of penalty that can be levied for failure to file notice; however, the Commission can consider the conduct of the parties and circumstances of the case to arrive at an appropriate amount of penalty.
52. In the instant matter, the part-consummation of the Combination without filing a notice contravened the provisions of Section 43A read with Section 6(2) and Section 6(2A) of the Act and Combination Regulations. Therefore, the contravening parties cannot be exculpated of their statutory obligation thereunder. However, the Commission has considered the mitigating factors mentioned in para 34 above and the conduct of the parties whereby they disclosed the change in transaction structure voluntarily and extended cooperation and provided the material/documents as sought by the Commission.
53. Thus, considering the facts and circumstances of the case and the conduct of the parties in the matter, the Commission decides to take a lenient view and impose a nominal penalty of INR 5,00,000 (INR Five Lakh only) in the matter. The penalty shall be paid within 60 days from the date of receipt of this order.

¹ Civil Appeal No.13578 OF 2015 (17 April 2018)



54. It is made clear that nothing used in this order shall be deemed to be confidential or deemed to have been granted confidentiality, as the same has been used for the purposes of the Act in terms of the provisions contained in Section 57 thereof.
55. The Secretary is directed to communicate to the Acquirers, accordingly.