COMPETITION COMMISSION OF INDIA

Combination Registration No. C-2025/03/1254

8th September 2026

Proceedings under Section 43A of the Competition Act, 2002 in relation to notice filed under sub-section (2) of Section 6 of the Competition Act, 2002 by Lloyds Metals and Energy Limited and Others

CORAM:

Ms. Ravneet Kaur
Chairperson

Ms. Sweta Kakkad
Member

Mr. Deepak Anurag
Member

Appearances during the hearing: Mr. Samar Bansal, Senior Advocate; Ms. Atreyee Sarkar, Mr. Ritesh Puri, Mr. Aryan Uppal, Ms. Pranika Goel, Mr. Dilip Kumar Niranjan, Ms. Anshika Saxena, Advocates; and Mr. Gaurav Jangle, Senior Executive – Legal, Lloyds Metals and Energy Limited

Order under Section 43A of the Competition Act, 2002

A. FILING OF NOTICE AND APPROVAL OF COMBINATION

1. On 5th March 2025, the Competition Commission of India **(Commission**) received a notice **(Notice**), under sub-section (2) of Section 6 of the Competition Act, 2002 (**Act**), jointly given by Lloyds Metals and Energy Limited (**LMEL**), and Thriveni Earthmovers and Infra Private Limited (**TEIL**). In response to a communication issued under Regulation 14 of the Competition Commission of India (Combinations) Regulations, 2024 (**Combination Regulations**), Prakar Estates and Promoters LLP, Naaval Prakar Farms LLP, Aeon Trading LLP, Lloyds Enterprises Limited, Mahaprabhu Ventures Private Limited, and Indrani Patnaik (collectively, '**Additional**

Investors') also became notifying parties to the Notice. The Notice was given pursuant to execution of the Share Subscription Agreement entered amongst LMEL, Additional Investors, and TEIL on 17th February 2025 (**SSA**); and the Demerger Scheme filed with the National Company Law Tribunal (**NCLT**), Chennai on 9th October 2024 (**Demerger Scheme**).

2. The Combination as notified to the Commission envisaged the following:
   - *Subscription to the shares of TEIL*: LMEL will subscribe to certain equity shares, representing 79.82% of the total issued, subscribed and paid-up equity share capital of TEIL. Further, the remaining equity shares, representing 20.18% of the total, issued, subscribed and paid-up equity share capital of TEIL shall be held by Additional Investors;
   - *Merger of MDO Business*: The mining development and operations (**MDO**) business (**MDO Business**) of Thriveni Earthmovers Private Limited (**TEMPL**) will be demerged from TEMPL to TEIL. As consideration for the demerger, TEIL will issue fully paid-up 9.5% non-cumulative non-convertible redeemable preference shares (**RPS**) to the shareholders of TEMPL (**TEMPL Shareholders**); and
   - *Acquisition of Lloyds Surya*: TEIL will acquire 99.83% shareholding in Lloyds Surya Private Limited (**Lloyds Surya**).

3. The Commission in its meeting held on 13th May 2025 approved the Combination under Section 31(1) of the Act.

B. SUBJECT MATTER OF SECTION 43A PROCEEDINGS, ISSUE OF SHOW CAUSE NOTICE AND FILING OF RESPONSE THEREOF BY LMEL

4. During the course of review of the Combination, the Commission had noted that it has been agreed that until completion of the demerger of the MDO Business and issuance of RPS to shareholders of TEMPL, LMEL would issue guarantee of upto INR 2,500 crore of principal amount (and any returns for the same) to any party from which TEMPL Shareholders directly or through their controlled entity may seek borrowing, subject to a counter-guarantee being provided by TEMPL. In this regard, following observations were made:

- LMEL, as a corporate guarantor, entered into a deed of corporate guarantee on 12th March 2025 in favour of Catalyst Trusteeship Limited for a principal amount of INR 1,745 crore (**Corporate Guarantee**).
- The Corporate Guarantee is provided in relation to the proposed issuance of senior, secured, redeemable non-convertible debentures (**Debentures**) by Mahaprabhu Projects Private Limited (**MPPL**), a company controlled by Mr. Prabhakaran Sooryanarayanan (a TEMPL Promoter).
- Further, a counter-guarantee dated 12th March 2025 (**Counter Guarantee**) is issued by TEMPL in favour of LMEL for an equal amount of the Corporate Guarantee given by LMEL to Catalyst Trusteeship Limited. As submitted, the Counter Guarantee will be withdrawn upon receiving the approval of the Commission and National Company Law Tribunal, Chennai and issuance of the RPS by TEIL to the TEMPL Shareholders.
- The Debentures were issued by MPPL to certain institutional investors in due course.

5. As regards the Corporate Guarantee, the Commission observed that Section 6(2A) of the Act provides that no combination shall come into effect until one hundred and fifty days had passed from the day on which the notice was given to the Commission under Section 6(2) of the Act or the Commission has issued any order under Section 31 of the Act, whichever is earlier. When LMEL issued the Corporate Guarantee as well as when the Debentures were issued neither one hundred and fifty days had passed from the day on which the Notice was given to the Commission, nor the Commission had passed any order under Section 31 of the Act.

6. In view of the above, the Commission formed a *prima facie* opinion that LMEL has contravened Section 6(2A) of the Act. Accordingly, the Commission, *vide* Order dated 13th May 2025 (**SCN**), directed LMEL, under Regulation 49 of the Competition Commission of India (General) Regulations, 2024, to show cause in writing within 15 days of receipt of the SCN, as to why it should not be held in contravention of the provisions of Section 6(2A) of the Act for giving effect to a part of the Combination by providing Corporate Guarantee before expiry of the standstill obligation prescribed

under Section 6(2A) of the Act, and penalty not be imposed on it under Section 43A of the Act. The SCN was communicated to LMEL on 26th May 2025. LMEL submitted the response to SCN on 8th July 2025 after seeking extension of time (**Response**). Along with the Response, LMEL also requested for an oral hearing in the matter. The Commission heard LMEL at length on 18th August 2026 (**Oral Hearing**). Further, LMEL also made additional written submissions dated 21st August 2026 (**Additional Submissions**).

C. SUBMISSIONS OF LMEL

7. LMEL has submitted that by issuing the Corporate Guarantee (and the subsequent issuance of the Debentures), it has not given effect to any part of the Combination and is therefore not in violation of Section 6(2A) of the Act. The key submissions made by LMEL as a part of the Response, Oral Hearing and Additional Submissions are set out below.

I. Matter of commercial necessity

8. The consideration for the demerger of the MDO Business from TEMPL into TEIL is the RPS to be issued by TEIL to the shareholders of TEMPL, which are redeemable after six (6) years from the date of issuance. As a result, payment to TEMPL for the transfer of the MDO Business is not immediate but rather deferred for six (6) years. Given the deferred payment mechanism, it was important to provide security or assurance that TEIL would actually pay the consideration when it becomes due in six (6) years to TEMPL Promoters and / or their external lenders. Therefore, by issuing the Corporate Guarantee, LMEL (which will hold 79.82% shareholding in TEIL), as TEIL's parent post the Combination, had agreed to provide the promoters of TEMPL (**TEMPL Promoters**) with the requisite degree of comfort that its subsidiary will pay the deferred consideration. Accordingly, as submitted, the provision of the Corporate Guarantee and the issuance of the Debentures were only a form of credit-support measures to secure the deferred element of consideration for the MDO Business (*i.e.*, the RPS proposed to be issued by TEIL).

9. The second set of arguments in support of the Corporate Guarantee as a matter of commercial necessity hinge on the valuation. As submitted:

- The provision of the Corporate Guarantee and the issuance of the Debentures was highly time sensitive and commercially necessary given the following factors— (i) The shareholders of LMEL, a listed company where 36.53% equity shares are held by public shareholders (as on 31st March 2025), had already given their approval for all the necessary steps of the Combination; and (ii) The appointed date of the acquisition of the MDO Business by TEIL was fixed as 1st April 2025. This appointed date was significant because it served as the reference point for the transfer of the MDO Business for accounting purposes.
- As such, it was imperative that the Corporate Guarantee be provided by LMEL and the Debentures be issued by MPPL before the close of FY 2024-25 (*i.e.*, by 31st March 2025) to align with the agreed timeline and to ensure that the value of the Combination is captured extant as at that date, as approved by the shareholders of LMEL. This is an important aspect because the value of a business / undertaking can fluctuate due to various factors, such as market conditions, operational performance, or regulatory changes.
- By finalising the Corporate Guarantee and Debentures' issuance before the close of the financial year, the parties could ensure that the valuation used for the Combination accurately reflected the business's status as on 31st March 2025. As businesses continue to develop and perform well, their overall worth (or enterprise value) rises. Accordingly, if the provision of the Corporate Guarantee and / or the issuance of the Debentures had been delayed until the commencement of the following financial year, the value of the MDO Business would likely increase because of its ongoing growth and expansion activities.

II. Conditional and transient nature of Corporate Guarantee as a safeguard

10. As submitted, to ensure compliance with standstill obligations, the arrangements are typically structured with appropriate safeguards. In this case, the Counter Guarantee acts as a safeguard. Therefore, while the provision of the Corporate Guarantee and the issuance of the Debentures were necessary terms of the Combination to ensure

alignment between the parties' commercial expectations, the reciprocal Counter Guarantee effectually negated any potential risk or liability for LMEL.

11. As regards how the Counter Guarantee is an effective safeguard, it has been submitted that:

- The Counter Guarantee provided by TEMPL was for an equal amount as the Corporate Guarantee, and it could be triggered immediately and automatically if there was any attempt to enforce the Corporate Guarantee before the necessary regulatory approvals were obtained. In substance, therefore, if any potential liability or obligation had arisen for LMEL to discharge under the Corporate Guarantee before the required regulatory approvals were obtained, it would have been immediately offset by the Counter Guarantee.
- Even with the Debentures' proceeds having been received, the arrangement was fully reversible and contingent on regulatory approvals, with the Counter Guarantee neutralising any risk to LMEL. As such, LMEL did not assume any financial risk by way of the Corporate Guarantee given the arrangement was temporary and reversible in nature due to the Counter Guarantee from TEMPL.

Basis the aforesaid, it has been submitted that the arrangement was designed to be fully reversible and contingent on regulatory approvals, preventing any effective pre-payment of consideration or conferment of control.

12. LMEL submitted that the parties were guided by the extant decisional practice of the Commission to the effect that a standalone guarantee without any safeguard would not be compliant with the law as held in UltraTech Cement Limited (**UltraTech**)/Jaiprakash Associates Limited (**JAL**)[1]. LMEL submitted that in UltraTech / JAL, the Commission held that the corporate guarantee extended by UltraTech to Axis Bank Limited on behalf of JAL (the seller) was in substance pre-payment of consideration and while arriving at this conclusion, the Commission noted that no safeguards were in place to prevent the competition-distorting effects of the corporate guarantee. Further, in UltraTech / JAL, the guarantee directly funded the acquisition

[1] UltraTech / JAL, Combination Registration No. C-2015/02/246, order under Section 43A of the Competition Act dated 12 March 2018

price for the target's benefit. Here, MPPL and TEIL (the target) are separate entities (albeit MPPL being controlled by a TEMPL Promoter), and the debenture proceeds received by MPPL were not consideration for the Combination. Accordingly, it has been submitted that as such, holding LMEL guilty of violating the Act would be tantamount to rewriting the section itself as the standstill obligation applies to the Proposed Combination (between LMEL and TEIL) and not to independent transactions by related party companies (in the present case, MPPL).

13. With a view to emphasise the safeguard element in the Corporate Guarantee, LMEL submitted that the parties contemplated two options to provide the necessary comfort to the TEMPL Promoters — (i) A guarantee for a principal amount of INR 2,500 crore to be provided by LMEL to the TEMPL Promoters to secure the redemption of the RPS; or (ii) A guarantee for a principal amount of INR 2,500 crore to be provided by LMEL to an external lender of the TEMPL Promoters or any other company controlled by the TEMPL Promoters, to be backed by a counter guarantee of an equal amount to be provided by TEMPL to LMEL. As submitted, the parties consciously implemented option (ii), which provided for the Counter Guarantee, in order to comply with Section 6(2A) of the Competition Act. The Counter Guarantee operated as a safeguard against premature implementation of the Proposed Combination during the standstill period. The fact that the Counter Guarantee would be released upon the receipt of regulatory approvals and issuance of RPS, demonstrates that the parties implemented the arrangement to ensure compliance with Section 6(2A) of the Act.

III. No violation of standstill obligations for mere preparatory steps

14. The legal standard for triggering a violation of Section 43A of the Act is the actual implementation or transfer of control prior to receipt of the Commission's approval. It is well established that undertaking merely preparatory or contingent steps do not constitute as implementation of a combination unless they result in the actual exercise of control or integration of businesses.

IV. Absence of premature change in control

15. A guarantee, counter-guarantee or debenture arrangement, by its very nature, is a credit support mechanism. It does not, in itself, confer any rights to participate in, veto, or otherwise influence the management or strategic commercial decisions of any entity. Unless the guarantee / debentures are accompanied by specific contractual rights that allow the guarantor to intervene in the affairs of the enterprise (for example, through board representation, veto rights on budgets, business plans, or key appointments), the mere existence of a guarantee does not amount to *de jure* control.

16. In the present case, there is no evidence that the back-to-back guarantee arrangement comprising the Corporate Guarantee and the Counter Guarantee or the Debentures are accompanied by any such rights. The arrangement does not provide LMEL with any legal entitlement to participate in or influence the management or policy decisions of MPPL (the entity to whom the Corporate Guarantee was given) or any other entity controlled by the TEMPL Promoters. Therefore, the arrangement does not result in *de jure* control.

17. Further, as submitted, the parties have maintained status quo in terms of their management and operations and have not exercised any form of control, and continue to operate independently pending regulatory approvals. There have been no changes in the ownership pattern, or conferment of any rights of management, control, or economic benefit to any of the parties before receipt of the Commission's approval. Therefore, there is no indication that LMEL or any other entity is, in fact, using the Corporate Guarantee arrangement or the Debentures' issuance to direct or influence the affairs of MPPL / any other entity. Accordingly, there is no change in *de facto* control of any of the parties. The existing management of the relevant entities continue to exercise control as before.

18. LMEL is part of the Lloyds Group, while the Thriveni Group, to which TEMPL belongs, also holds a substantial (approximately 32%) shareholding in LMEL. Furthermore, LMEL and Lloyds Surya are both part of the Lloyds Group, and following Step 1 of the Combination, TEIL (which is currently a part of the Thriveni Group) will

become a subsidiary of LMEL and thus also part of the Lloyds Group. Given the existing relationships, the entities were already subject to significant inter-linkages and common interests through cross shareholdings. As such, the provision of the Corporate Guarantee and the issuance of the Debentures did not alter the degree of independence or the incentives of the parties to compete or act autonomously. The Parties' incentives and ability to act independently were already influenced by these structural connections, and the relevant arrangements did not introduce any new alignment of incentives or reduction in competitive independence.

19. Accordingly, the provision of the Corporate Guarantee and the issuance of the Debentures could not possibly have had any impact on the Parties' independence or their conduct in their respective markets in any manner. Therefore, there has been no change in the status quo, and the parties remain entirely independent, with no impact on competition or market structure.

20. Such a contingent arrangement, which did not result in any change of control over any enterprise or asset and did not confer any rights or benefits to any of the concerned parties, cannot be viewed as amounting to "giving effect" to the Combination under Section 6(2A) of the Competition Act.

V. Other Submissions

21. This arrangement enabled the Thriveni Group to secure legitimate business funding, thereby supporting ongoing operational efficiency. However, it is important to note that for the TEMPL Promoters, LMEL's role in obtaining the funding was primarily administrative. The guarantee to secure external borrowing could, in principle, have been provided by any other group company of the TEMPL Promoters. In fact, considering that the amount of the guarantee was not significant relative to the overall valuation of TEMPL, TEMPL could have directly provided a guarantee to the Debenture-holders. LMEL's role was not unique or indispensable in this context, but rather a matter of business convenience and group structure.

22. As regards the issuance of the Debentures by MPPL, it has been stated that it was a necessary and independent financial transaction, undertaken to ensure that the TEMPL Promoters could meet their financial obligations and maintain business continuity during the interim period pending completion of the demerger and the subsequent issuance of RPS by TEIL. Thus, it has been stated that the issuance of the Debentures was, therefore, a standalone financial arrangement, distinct from the implementation of the Combination.

23. Further submissions have been made on the Corporate Guarantee and Counter Guarantee arrangement satisfying the inherence-proportionality test and that the same does not amount to pre-payment of consideration. As submitted,

- The actual consideration for the demerger of MDO Business is the issuance of RPS by TEIL in favour of shareholders of TEMPL and the same was explicitly reserved to occur only after all regulatory approvals have been received.
- Further, the proceeds of the Debentures received by MPPL were not consideration for the Combination, but merely an independent financial arrangement, fully risk mitigated by the Counter Guarantee. At all times, the entities remained independent and there was no change or alignment in economic incentives.
- There is a clear temporal and procedural separation between the provision of the Corporate Guarantee and the issuance of the Debentures (which is an ancillary step to provide comfort to the TEMPL Promoters), and the consummation of the Combination. All steps relating to the actual transfer of value or control were contractually and practically deferred until after receipt of all regulatory approvals. As such, the economic effects of the Combination remained notional until regulatory approval was received.

24. The Corporate Guarantee is inherent to the Proposed Combination as a means of securing the deferred consideration (as RPS are payable after 6 years) and locking the transaction value to prevent renegotiation or withdrawal by promoters of TEMPL. The arrangement is proportionate because it is fully safeguarded by the Counter Guarantee (which is of an equal amount, immediately and automatically enforceable), ensuring no

premature implementation of the Combination or alteration of the competitive landscape.

VI. Mitigating factors

25. LMEL has submitted that in the event that the Commission finds a violation, it is submitted that no / only a nominal penalty should be imposed in this case, based on the various mitigating circumstances *viz*., cooperation of LMEL demonstrating transparency and proactiveness, no prior findings of contravention against LMEL, no *malafide* intention to evade compliance of the provisions of the Act, lack of appreciable adverse effect on competition *etc.*

D. Observations and Findings of the Commission

26. The Commission observed that considering the submissions of LMEL, it is clear that the parties were well aware of the standstill obligations contained under Section 6(2A) of the Act and accordingly actively deliberated on the structuring of the arrangement so as to meet their commercial necessities and comply with the standstill obligations. Thus, the only issue for determination is whether the provision of Corporate Guarantee and Counter Guarantee can be considered as inherent and proportionate to the commercial objectives of the parties and consistent with the standstill obligations.

27. The first submission made by LMEL justifying its issuance of Corporate Guarantee in relation to the Debentures proposed to be issued by MPPL is rooted in the fact that payment to TEMPL for the transfer of the MDO Business as a part of the Combination is not immediate but rather deferred for six (6) years. Accordingly, it has been stated that it was important to provide security or assurance that TEIL would actually pay the consideration when it becomes due in six (6) years to TEMPL Promoters and/or their external lenders.

28. The Commission observed that while it may be considered inherent for the parties to provide corporate guarantees in transactions involving deferred consideration from the security or assurance of payment perspective, there are two (2) key elements which

indicate that Corporate Guarantee was neither inherent nor proportionate to this objective.

29. The first element is the timing of Corporate Guarantee coming into effect. While the general practice is to settle payment on closing (if there is no deferred payment envisaged), the Corporate Guarantee came into effect even before closing of the Combination. Thus, settlement/payment of consideration in all transactions remain 'deferred' during the period from signing of transaction documents to closing of the transaction. Accordingly, the question of providing 'security' or 'assurance' to the sellers ordinarily arises on closing in cases where the consideration is discharged in a form where the payment settlement gets deferred. Thus, while any such arrangement to provide 'security' for deferred consideration which comes into effect on closing of a transaction and covers the period over which settlement remains pending may be considered as inherent to the commercial objectives of the parties involved, the arrangement in the nature of Corporate Guarantee which was implemented even before closing of the Combination cannot be considered as inherent to the objective of provision of 'security' or 'assurance' for deferred consideration.

30. The second element is timing of issue of Debentures. LMEL has submitted that "*it was important to provide security or assurance that TEIL would actually pay the consideration when it becomes due in 6 years*…". However, for all practical purposes, the arrangement of Corporate Guarantee has allowed the TEMPL Promoters to gain funds even before closing and effectively their consideration did not remain 'deferred' to the extent of issuance of Debentures at all. Thus, the arrangement is not proportionate to the stated objective of LMEL which is limited to provision of security or assurance that TEIL would actually pay the consideration when it becomes due in six (6) years.

31. The Commission also observed that in order to emphasise the inherence and proportionality of Corporate Guarantee, LMEL has expanded the objective "*to provide security or assurance that TEIL would actually pay the consideration when it becomes due in 6 years to TEMPL Promoters and / **or their external lenders**".* The reference to '*external lenders*' appears to be an afterthought and is not tenable. If including the

assurance towards external lenders also was the original objective, it would mean and imply that the Corporate Guarantee and issuance of Debentures were always envisaged to allow the flow of funds to TEMPL Promoters immediately while LMEL discharges its payment obligation after six (6) years which implies that the arrangement was always designed to function as a transfer of consideration.

32. The Commission noted that in order to emphasise the Corporate Guarantee as a commercial necessity, LMEL has made submissions on its role in locking the valuation of MDO Business. Some points made by LMEL are noteworthy and reproduced hereunder:

i. "*The appointed date of the acquisition of the MDO Business by TEIL was fixed as 1st April 2025*".
ii. "*The primary purpose of LMEL providing the Corporate Guarantee (conditional upon the Counter Guarantee, effective until the necessary regulatory approvals were obtained) was to lock in the value of the Combination…*".
iii. "*By finalising the Corporate Guarantee and Debentures' issuance before the close of the financial year, the Parties could ensure that the valuation used for the Combination accurately reflected the business's status as at 31st March 2025*".

33. The Commission observed that while LMEL has made the above points to stress commercial necessity of the arrangement, it also brings out the fact that settling the consideration immediately was critical to the parties and because the same was envisaged to be settled by issuance of RPS, an arrangement which *de facto* allows the sellers of MDO Business to gain immediate funds in lieu of agreed valuation and sale of MDO Business was worked out. Thus, in effect, what the Corporate Guarantee framework has achieved is that the sellers got a part of consideration and LMEL locked the valuation and terms of merger of MDO Business with TEIL. Importantly, this is substantively the effect of payment or discharge of consideration and thus, it appears that the Corporate Guarantee framework was always intended and has in effect functioned as a mechanism for prepayment of consideration.

34. Notwithstanding the aforesaid observations which clearly suggest that the Corporate Guarantee framework was neither inherent nor proportionate to the objectives of providing security for the deferred consideration to the TEMPL Promoters and locking valuation of MDO Business for LMEL, and the Corporate Guarantee framework is in fact a mechanism for prepayment of consideration, the Commission considered the submissions of LMEL on the efficacy of Counter Guarantee as a safeguard which allows to ensure alignment between the Parties' commercial expectations while effectually negating any potential risk or liability for LMEL and prevent premature implementation of the Combination or alteration of the competitive landscape.

35. In this regard, firstly, it may be noted that the key concern behind standstill obligations is the risk of competition distortions and not the financial risk of the parties to a combination. The Commission has noted in its decisional practice that arrangements which allow for prepayment of consideration may result in the parties to the combination not acting independently as they are required to do till the combination is approved by a competition authority and in the event a transaction is not consummated and such arrangement is restored, the competition remains harmed in the interim time period. The Commission in its decisional practice relating to instance of prepayment of consideration has observed that pre-payment of consideration is considered significant as such an arrangement is potentially likely to facilitate tacit collusion which is considered to be the worst form of collusion and therefore cannot be allowed. The sources of harm have been identified as acquirer gaining a strategic advantage over the target, reduction in incentive or will of the target to compete *etc*. Thus, any stated 'safeguard' is required to be assessed on these parameters.

36. Accordingly, the aspects of the Counter Guarantee neutralising any risk to LMEL or LMEL not assuming any financial risk by way of the Corporate Guarantee are inconsequential to assessment of contravention of standstill obligations. In terms of how the arrangement will safeguard the premature implementation of the transaction, no submissions other than reversibility and neutralising of LMEL financial risk have been made. The only submission made on the aspect of competition distortions (or lack thereof) is rooted in the existing relationships between Lloyds and Thriveni Groups. As submitted, the entities involved were already subject to significant inter-linkages and

common interests through significant cross shareholdings and as such, the parties' incentives and ability to act independently were already influenced by these structural connections, and the relevant arrangements did not introduce any new alignment of incentives or reduction in competitive independence.

37. In this regard, the Commission noted that the common and cross shareholdings do not mean and imply an inference of a single economic entity with common incentives. Control is a matter of degree and a change in degree of control is also of relevance as the instance of acquisition of control/influence. The entities at the core of the impugned framework are independent and must be driven by their own strategic imperatives and as such it does not appear tenable to say that the newer transactions between entities having structural/financial linkages do not cause any change in their intent or competition dynamics or that standstill obligations do not apply to such transactions.

38. The Commission further considered the submissions of LMEL on the back-to-back guarantee arrangement comprising the Corporate Guarantee and the Counter Guarantee being a novel structure and consequently the situation being distinct from Ultratech/JAL. In Ultratech/JAL, the Commission had noted that loan amount was repayable irrespective of the combination. However, the Commission had considered the intent of the parties in that case to decide if the arrangement was in fact a prepayment of consideration. Moreover, it was also noted that even if the loan amount is repayable, the same does not mitigate violation of the standstill obligations. The key issue is that such an arrangement may result in the parties to the combination not acting independently as they are required to do till the combination is approved by a competition authority. In the event a transaction is not consummated and such arrangement is restored, the competition would have still been harmed in the interim time period. The yardstick as applied in Ultratech/JAL is also applicable to the present case. As examined above, regardless of the form of instrument and the procedure followed, the key aspect is that the acquirer shall not prepay the consideration as it entails the possible competition distortion effects. The safeguards if any need to be efficacious to prevent such possible competition distortions and mere reversibility of payments is not sufficient. The Commission's analysis has revealed that the framework of Corporate Guarantee was intended and effectively functioned as a means of

prepayment of consideration. With the Corporate Guarantee been found to be an effective instrument of prepayment of consideration, the other issues raised by LMEL with an intent of making a distinction from UltraTech / JAL, *viz*., in Ultratech/JAL, the guarantee directly funded the acquisition price for the target's benefit while here, MPPL and TEIL (the target) are separate entities (albeit MPPL being controlled by a TEMPL Promoter) and the standstill obligations not applicable to independent transactions by related party companies (in the present case, MPPL) are internally inconsistent with LMEL submissions and inconsequential to assessment. On one hand, LMEL argued for significant cross shareholdings between the Lloyds and Thriveni Groups as a factor to suggest no change in competition landscape, on the other hand, it is arguing for MPPL to be an independent company. The key is that the arrangement was pursuant to the Combination and it was structured that LMEL would issue Corporate Guarantee in favour of debentures to be issued by MPPL and the Counter Guarantee would be given by TEMPL.

39. As regards the submissions on the arrangement being akin to preparatory steps, the Commission finds the same untenable considering the effect of Corporate Guarantee and issuance of Debentures is substantive in effect and has led to prepayment of consideration.

40. LMEL has also argued on lack of any premature change in control. The submissions are not relevant as it has never been alleged that LMEL has acquired control over the MDO Business. The Commission in its decisional practice has maintained that while there are many aspects of a combination that may require parallel activities on the part of the parties to a combination, the objective of standstill obligations is to ensure that the parties remain as independent competitors as they were before the proposed transaction. Accordingly, all the activities/actions which may reduce or have the potential to reduce the degree of independence or the incentives of the parties to compete may be considered to be in contravention of Section 6(2A) of the Act. It is important to note that whether or not a particular conduct of the parties can be regarded as gun jumping in contravention of Section 6(2A) of the Act is a subject matter of examination as consummating a part of a combination may, in substance, have impact

similar to consummation of the combination itself. The Corporate Guarantee framework has been assessed accordingly.

41. The Commission observed that LMEL has also submitted on its role being administrative and that the guarantee to secure external borrowing could, in principle, have been provided by any other group company of the TEMPL Promoters. It has also been stated that considering that the amount of the guarantee was not significant relative to the overall valuation of TEMPL, TEMPL could have directly provided a guarantee to the Debenture-holders. While LMEL has submitted that its role was not unique or indispensable in this context, but rather a matter of business convenience and group structure, the Commission observed that firstly the issue is irrelevant and secondly LMEL's role in the arrangement is central. Pursuant to the Combination, LMEL's shareholding in TEIL is increasing to ~79% and MDO Business is to merge with TEIL and accordingly the consideration was supposed to move from LMEL and in that backdrop the fact that LMEL provided the Corporate Guarantee indicates the actual role of LMEL.

42. On the basis of the aforesaid, the Commission is of the opinion that the Corporate Guarantee framework and issuance of Debentures by MPPL have had the effect of contravention of standstill obligations contained under Section 6(2A) of the Act and by agreeing and implementing the framework, LMEL has contravened the provisions of Section 6(2A) of the Act and is liable to penalty under Section 43A of the Act. Section 43A of the Act provides that if any person or enterprise contravenes Section 6(2A) of the Act, the Commission may impose on such person or enterprise, a penalty which may extend to one per cent of the total turnover or assets or the value of transaction referred to in clause (*d*) of section 5, whichever is higher, of such a combination. Thus, Section 43A of the Act empowers the Commission to determine the appropriate amount of penalty in a matter, subject to the maximum of 1% of the total turnover or the assets, or the value of transaction, whichever is higher.

43. Considering the facts and circumstances of the instant matter and the conduct of LMEL during the proceedings, the Commission considers it appropriate to impose a penalty of

INR 15,00,000 (INR Fifteen Lakh Only) on LMEL. LMEL is directed to pay the penalty within 60 days from the date of receipt of this order.

44. 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.

45. The Secretary is directed to communicate to LMEL accordingly.