



COMPETITION COMMISSION OF INDIA

20th June 2023

Proceedings against Bank of Baroda under Section 43A of the Competition Act, 2002

CORAM:

Ms. Ravneet Kaur
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

Appearances

For Bank of Baroda: Senior Advocate Mr. Rajshekhar Rao, Advocate Meherunnisa Anand Jaitley (Senior Advocate's junior counsel), Advocate Akshay Nanda (Partner, Saraf and Partners), Advocate Praniti Ganjoo (Associate, Saraf and Partners), Advocate Aditye Arora (Associate, Saraf and Partners)

Order under Section 43A of the Competition Act, 2002

1. This Order shall dispose of the proceedings under Section 43A of the Competition Act, 2002 (**Act**), initiated against Bank of Baroda (**B.O.B**) pertaining to the acquisition of 21% of shares of India First Life Insurance Company Limited (**IFLIC**) from Union Bank of India (**UBI**) (hereinafter, this transaction is referred to as **Combination**).



Description of the Parties

Bank of Baroda

2. B.O.B, a public sector bank, is headquartered in Gujarat, India. It provides various banking and financial services, such as commercial banking, investment banking, retail banking and wealth management. It is engaged in providing services related to home loans, personal loans, vehicle loans, education loans, etc. B.O.B provides agri-gold loans to farmers and retail gold loans. B.O.B is also engaged in the distribution of insurance products such as life insurance, general insurance, health insurance and government sponsored insurance schemes such as the Pradhan Mantri Jeevan Jyoti Bima Yojana and Pradhan Mantri Suraksha Bima Yojana.

India First Life Insurance Company Limited

3. IFLIC is a public company limited by shares incorporated in India and has the licence to transact life insurance business in India from the Insurance Regulatory and Development Authority of India. It carries on business in the areas of life insurance, health insurance and pension. This business spans individual and group products and covers participating, non-participating and unit linked lines of businesses.

Background

4. On 02.05.2022, B.O.B filed a Form-III under Section 6(5) of the Act with the Commission in relation to the Combination. Subsequently, on 11.07.2022, B.O.B was informed that the provisions of Section 6(4) and 6(5) of the Act were not applicable to the Combination and a notice ought to have been filed with the Commission in accordance with Section 6(2) of the Act. Thereafter, *vide* letter dated 18.07.2022, B.O.B, *inter alia*, requested the Commission for withdrawal of Form-III and undertook to file the notification of the Combination to the Commission within a



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period of one month from the date of their application (**Application**). The Commission, in its meeting held on 18.07.2022, took note of the Application.

5. On 18.08.2022, B.O.B filed a notice in Form I (**Form I Notice**) with the Commission. Based on the information provided in Form I Notice, it was observed that the Combination had been consummated on 31.03.2022, pursuant to which B.O.B held 65% shareholding in IFLIC, Union Bank of India held 9% shareholding and Carmel Point Investment India Private Limited held 26% shareholding.
6. On 29.09.2022, the Commission, approved the Combination¹ under sub-section (1) of Section 31 of the Act. However, the said approval was without prejudice to any proceeding under Section 43A of the Act.

Initiation of proceedings and issue of SCN

7. The Commission, in its meeting held on 29.09.2022, considered the material on record, including information provided in Form I notice, and was of opinion that the notice under Section 6(2) of the Act read with Regulation 5 of the Competition Commission of India (Procedure in Regard to the Transaction of Business relating to Commission) Regulations, 2011 (**Combination Regulations**) ought to have been filed with the Commission before consummation; however, B.O.B had failed to comply with the statutory requirement of Section 6(2) and 6(2A) of the Act. Consequently, the Commission decided to issue a show cause notice (**SCN**) to B.O.B under Section 43A of the Act read with Regulation 48 of the Competition Commission of India (General) Regulations, 2009 (**General Regulations**), to explain, in writing, as to why B.O.B should not be found to be in contravention of the provisions of the Act and why no penalty in terms of Section 43A of the Act should be imposed upon it.
8. On 04.11.2022, B.O.B submitted its response to SCN. Subsequently, on 24.11.2022, B.O.B requested for grant of an oral hearing before the Commission.

¹ Registration No. C-2022/08/962.



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Response to SCN

9. In its response, B.O.B submitted that the belated filing of the Form I notice with the Commission was based on an erroneous interpretation of Section 6(4) of the Act by B.O.B and, as such, was a bonafide error on its part.
10. Further, B.O.B explained that it was of the view that *“Section 6 of the Act is not applicable to any acquisition by a bank”* and that any bank acquiring a company is only required to intimate the Commission post the acquisition in Form-III in accordance with Section 6(5) of the Act. Since the acquisition was being carried out by a bank pursuant to the Shareholders Agreement dated 04.03.2008 between B.O.B, Andhra Bank (which subsequently amalgamated with Union Bank of India) and Legal & General Group PLC, which enabled B.O.B to acquire shares of IFLIC from other existing shareholders, under their Right of First Offer, B.O.B took the view that the provisions of Section 6(4) and 6(5) of the Act would apply to the Combination, and the Combination would fall under the ambit of *‘acquisition undertaken by a bank pursuant to any covenant of an investment agreement’* under Section 6(4) of the Competition Act and thus, would be exempt from filing a prior notification with the Commission under Section 6(2) of the Act and an intimation would be required to be made to the Commission post the consummation of the Combination.
11. Further, B.O.B submitted that the Combination was triggered on account of the amalgamation of Andhra Bank with Union Bank of India, which was carried out in public interest and in furtherance to the statutory obligation on Union Bank of India to reduce its shareholding in IFLIC below 10% to avoid conflict of interest. As such, B.O.B did not have any intent of increasing its shareholding in IFLIC and to profit or benefit from the increased shareholding.
12. In addition, B.O.B stated that this is the first instance of alleged violation of the provisions of the Act by it. B.O.B is not a repeat offender, and there has been no



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malafide intention on its part to evade compliance with the provisions of the Act. Further, it has fully cooperated with the Commission, actively engaged in meetings with the Commission and diligently complied with all prescribed timelines for filing of Form I notice. It has also responded to the information/clarifications sought by the Commission in a comprehensive and timely manner.

13. In view of the above, B.O.B prayed that no penalty be imposed on it in the instant matter, and in case the Commission decides to impose a penalty under Section 43A of the Act, a minimal or nominal penalty be imposed, considering that B.O.B is a nationalised bank largely focusing on the poor and rural sectors of the economy. Further, B.O.B is actively engaged in contributing to the economic development of the country.

Oral Hearing before the Commission

14. The Commission, *vide* its order dated 18.05.2023, decided to hear B.O.B on 01.06.2023 through video conference. On 01.06.2023, the Commission heard B.O.B's oral submissions and arguments advanced by their legal counsels.

Commission's Analysis and Finding

15. Upon considering the submissions of B.O.B as well as the arguments advanced by the legal counsel, it is evident that B.O.B was required to give a notice of the Combination to the Commission under Section 6(2) of the Act before consummating the same. However, B.O.B failed to comply with the statutory requirement and instead filed Form III after consummation.
16. In this regard, it is pertinent to mention here the provisions of Section 6(2) of the Act, which provides that, "...any person or enterprise, who or which proposes to enter into a combination, [shall] give notice to the Commission...." Further, Section 6(2A) of the Act provides that "No combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the



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Commission under sub-section (2) or the Commission has passed orders under Section 31, whichever is earlier.” Thus, the statute clearly lays down a mandatory requirement to file a notice with the Commission of a proposed combination, which cannot come into effect until 210 days have passed from the date of filing notice or order is passed by the Commission under Section 31 of the Act, whichever is earlier.

17. In the instant matter, based on the submissions of B.O.B, it is apparent that B.O.B consummated the Combination on 31.03.2022, *i.e.*, much before filing Form-III as well as Form I notice with the Commission. In its defense, B.O.B stated that it made an erroneous interpretation of Section 6(4) of the Act and subsequently fully cooperated and complied with the directions of the Commission. Further, it has stated that this was its first instance of contravention and there was no malafide intent on its part. Also, no penalty should be imposed on it in the matter as the Combination was carried out in public interest. The Commission is of the opinion that, while such factors can, at best, be considered mitigating factors, they do not absolve B.O.B of its obligation to file a notice prior to the consummation of the Combination.
18. Thus, in light of the above, the Commission finds that B.O.B, by consummating the Combination without filing a notice with the Commission in terms of Section 6(2) of the Act, has contravened the provisions of Section 6(2A) of the Act and hence, is liable for penalty under Section 43A of the Act, which reads as under:

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

19. It is to be noted that Section 43A of the Act prescribes the extent of penalty that can be levied for failure to file notice; however, the Commission has sufficient discretion to consider the conduct of the parties and circumstances of the case to arrive at an appropriate penalty.



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20. In the instant matter, the Commission notes that B.O.B filed Form-III with the Commission in relation to the Combination voluntarily. Subsequently, upon being informed of the requirement to file notice under Section 6(2) of the Act, it filed Form I notice and fully cooperated during the inquiry, supplying all requisite material/documents to the Commission, which formed the basis of the findings of contravention.
21. Thus, considering the facts and circumstances of the case and the conduct of B.O.B, the Commission decides to impose a penalty of INR 5,00,000/- (Rupees Five Lakh only) on B.O.B. The B.O.B, shall pay the penalty within 60 days from the date of receipt of this order.
22. The Secretary is directed to inform B.O.B, accordingly.