



COMPETITION COMMISSION OF INDIA

9th August 2023

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

CORAM:

Ms. Ravneet Kaur
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

Appearances during the hearing:

For Axis Bank Limited : Mr. Rajshekhar Rao, Senior Advocate with Mr. Sagardeep Rathi, Ms. Alisha Mehra, Mr. Harshil Wason and Mr. Yashraj Samant, Advocates along with Mr. Sapan Siddharth and Mr. Rahul Jain, representatives of Axis Bank Limited

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**) against Axis Bank Limited (**Axis Bank**) in relation to its acquisition of stake in CSC e-Governance Services India Limited (**CSC e-Governance**).

Transaction and the Parties

2. The transaction under consideration comprised acquisition of 9.91% stake in CSC e-Governance by Axis Bank (**Axis-CSC e-Governance Acquisition**). The Axis-CSC e-Governance Acquisition was closed on 23rd November 2020. No notice was given to the Commission, under Section 6(2) of the Act, in relation to the Axis-CSC e-Governance Acquisition.
3. It has been submitted that Axis Bank is a banking company and CSC e-Governance is a special purpose vehicle (**SPV**), established to oversee implementation of the Common



Service Centres (CSC) Scheme. CSC Scheme is a project under the Digital India Programme of the Ministry of Electronics and Information Technology (MEITY), Government of India (GoI), to provide access points for the delivery of essential public utility services, social welfare schemes, healthcare, financial, education and agriculture services, and a host of business-to-consumer services to the people in rural and remote areas.

Initiation of Proceedings

4. The Commission in its meeting held on 29th December 2021, in order to assess whether further proceeding is required under Section 20(1) and/or Section 43A of the Act, in relation to acquisition of stake in CSC e-Governance by Axis Bank, under Section 36(4) of the Act, directed Axis Bank to furnish certain information and documents within specified time. Axis Bank submitted its response *vide* communication dated 21st February 2022 (**Response I**).
5. Upon perusal of the Response I, it was considered necessary to obtain further information from Axis Bank. In response to communication dated 23rd August 2022, Axis Bank submitted further information, *vide* its response dated 26th August 2022 (**Response II**).
6. The Commission considered Response I, Response II and other materials available on record.

Transaction and its Rationale

7. Axis Bank entered into a Share Subscription Agreement on 4th November 2020 (SSA) with CSC e-Governance for the Axis–CSC e-Governance Acquisition.
8. Article 4.2 of the SSA provides as under:

4.2 On the Closing Date:

...

4.2.2. *Further, the Investor [i.e., Axis Bank] shall procure and deliver to the Company [i.e., CSC e-Governance] a letter from an identified person, consenting to his/her appointment as director on the board of the Company and such other documents as may be required by the Company for same.*

...

4.2.4. *Upon delivery of requisite documents to the Company in terms of Article 4.2.2, the Company shall include the following agenda in the meeting of the board of director of*



the Company to be held under Article 4.2.3 [i.e., meeting held for allotment of shares]:

(a) To consider the appointment of the person identified in Article 4.2.2 above as a director on the board of director of the Company; and

(b) Authorising the company secretary of the Company to make necessary filing with the Registrar of Companies ("ROC") and to provide certified copies of the resolutions passed pursuant to this Article 4.2.4.

(emphasis supplied)

9. It has been submitted by Axis Bank that it proposed the nomination of Mr. Sumit Bali as a director on 1st December 2020. The board of CSC e-Governance appointed him as an additional director in the board meeting dated 28th December 2020, and regularised it in the annual general meeting held on 30th November 2021. Mr. Sumit Bali held directorship in CSC e-Governance from 28th December 2020 to 17th February 2022. Again, on 1st February 2022, Axis Bank proposed the nomination of Mr. Munish Sharda as a director, replacing Mr. Sumit Bali. The board of CSC e-Governance appointed Mr. Munish Sharda as an additional director in the board meeting dated 17th February 2022. It was submitted that Mr. Munish Sharda has been holding directorship in CSC e-Governance since 17th February 2022.
10. With regard to the objective of the Axis–CSC e-Governance Acquisition, it has been submitted by Axis Bank that CSC e-Governance, being a government-backed entity and having a pan-India presence in deep rural areas, would be well positioned for delivery of government-led initiatives towards the financial inclusion of people living in such areas and implementing direct benefit transfer schemes. Further, the investment would also help the bank gain knowledge and expertise towards the financial inclusion through its association with the company. The investment was aligned with the bank's focus of looking to expand outreach to deeper rural geographies and towards priority sector lending. Further, Axis Bank, in its disclosure made to stock exchanges (*viz.*, BSE Limited and National Stock Exchange of India Limited) on 5th November 2020, stated that the Axis–CSC e-Governance Acquisition is a strategic investment by Axis Bank.

Issue of Show Cause Notice

11. The Commission was of *prima facie* opinion that the Axis–CSC e-Governance Acquisition required a notice by Axis Bank to the Commission in terms of the provisions of Section 6(2) of the Act. Accordingly, the Commission *vide* its order dated 19th September 2022 (SCN), directed Axis Bank 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(2) of the Act, read with Section 43A thereof, for not notifying the transaction to the Commission. The Commission also allowed Axis Bank to make its submissions on the quantum of penalty which may be levied by the Commission, in the event it is to be held in contravention of the provisions of the Act. The SCN was communicated to Axis Bank, *vide* communication dated 29th September 2022. Axis Bank furnished its response to the SCN, *vide* submission dated 14th October 2022.

12. Axis Bank requested for an oral hearing in the matter before the Commission. On 4th July 2023, the Commission heard the submissions and arguments of Axis Bank.

Submissions of Axis Bank

13. The contentions of Axis Bank are summarised as follows:

Bona fide error in assessing the applicability of the De Minimis Exemption

14. It has been submitted that at the time of deliberation and in-principal approval of the transaction in the year 2020, Axis Bank internally assessed the requirement for a notice under the Act. While doing so, Axis Bank relied upon the financials of CSC e-Governance for the financial year (FY) ending March 2019 (FY 2019). Turnover of CSC e-Governance for FY 2019 stood at INR 919.77 crore which fell below the *De Minimis* Exemption (*i.e.*, the exemption granted from the provisions of section 5 of the said Act under notification no. S.O. 988(E) dated 27th March 2017 read with notification no. S.O. 1192(E) dated 16th March 2022 issued by the Ministry of Corporate Affairs, Government of India, under Section 54 of the Act) turnover threshold of INR 1,000 crore. Axis Bank, under the *bona fide* belief that the transaction benefitted from the *De Minimis* Exemption, commenced with the execution of the SSA and closing of the transaction. However, the consolidated turnover of CSC e-Governance for FY 2020, *i.e.*, INR 1095.78 crore, exceeded the *De Minimis* Exemption turnover threshold only marginally. Axis Bank inadvertently failed to consider the financials of FY 2020. Axis Bank's oversight in revisiting the notifiability assessment was also a consequence of the transaction size (*i.e.*, INR 36.38 crore) and insignificance of the transaction to Axis Bank's broader corporate strategy.

Without prejudice, the benefit of the Item 1 of Schedule I of the Combination Regulations is available to the transaction

15. It has been submitted that benefit of the Item 1 of Schedule I of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (**Combination Regulations**) (**Item 1 Benefit**) is available, where: (i) an acquisition is made "solely as an investment" or "in the ordinary course of business", (ii) the acquirer does not hold 25% or more shareholding, (iii) the



acquisition does not confer “control”. Further, the Explanation to Item 1 of Schedule I of the Combination Regulations (**Explanation to Item 1**) treats the acquisition to be “solely as an investment”, if: (i) the acquisition involves less than 10% shareholding; (ii) acquirer gets only those rights that are exercisable by the ordinary shareholders of target to the extent of their shareholding; (iii) acquirer does not intend to participate in the affairs or management of target; and (iv) acquirer is not a member of the board of director of target or does not have a right or intention to nominate a member on the board of director of target. The Axis–CSC e-Governance Acquisition need not have been notified to the Commission as it meets the criteria for the Item 1 Benefit, based on Explanation thereto, as follows:

- The transaction involves a minority investment of 9.91% which falls below the 10% threshold;
- The rights exercisable by Axis Bank in CSC e-Governance are “ordinary” shareholder rights. That is to say, Axis Bank has the same rights as all other shareholders of CSC e-Governance except the GoI, which has 1 golden share¹. For instance, any shareholder of CSC e-Governance, including Axis Bank, can propose an individual to be appointed on the Board of Directors of CSC e-Governance. The Board of Directors of CSC e-Governance, at its sole discretion, can approve the appointment of any person.
- Axis Bank has no intention to participate in the affairs or management of CSC e-Governance. The affairs and management of CSC e-Governance are firmly driven by the GoI initiatives. This becomes even more evident from the MoA of CSC e-Governance wherein: (i) the GoI is granted a golden share, (ii) the GoI has the right to nominate two directors, and (iii) the GoI director is nominated on a non- rotational basis and can only be removed by the relevant office of GoI, unlike ordinary shareholders whose directors are liable to retire by rotation. Therefore, Axis bank’s investment could not have been to control or manage the affairs of CSC e-Governance;
- With respect to the fourth requirement, Axis Bank has admittedly nominated a member to the board of CSC e-Governance. However, this should not be construed in the same light as the right to appoint a director on the board of an entity. Ordinarily, the right to appoint a director on the board of an enterprise is limited to select shareholders and the decision is driven by commercial interests. However, in the case of CSC e-Governance, other than the GoI, no

¹ The “golden share” of the GoI entitles it to, *inter alia*, veto decisions in relation to the Specified Matters (as defined in the Memorandum of Association (**MOA**) of CSC e-Governance) by voting against any resolution so proposed.



other shareholders have such specific rights, and any shareholder can choose to nominate a director which would be subject to the approval of Board of Directors of CSC e-Governance at their sole discretion. There is no certainty that such nominated person would get appointed by the Board of Directors and hence, this should not be construed as a specific right to such shareholder.

16. It has also been submitted that simply because a transaction does not meet the criteria under the Explanation to Item 1, it does not mean that the transaction cannot avail the Item 1 Benefit. Axis Bank acquired 9.91% equity shareholding of CSC e-Governance which is well below the 25% threshold prescribed under the Item 1 Benefit. Axis Bank does not have any special rights, like affirmative voting rights/veto rights, in CSC e-Governance and has the same rights as available to all other shareholders. CSC e-Governance is a MEITY-backed SPV and its decisions are driven by the GoI initiatives and the outlines of the CSC Scheme. Further, the GoI enjoys a golden share to ensure that the operations of CSC e-Governance remain squarely aligned with the CSC Scheme. For these reasons, the transaction did not confer any control to Axis Bank. For the abovementioned reasons, the transaction satisfies the requirements of the Item 1 Benefit.

Analysis and Findings

17. The Commission has considered the written and oral submissions of Axis Bank. Axis Bank has largely argued that it made a *bona fide* error in assessing the applicability of the *De Minimis* Exemption, and without prejudice, the Axis-CSC e-Governance Acquisition is eligible for Item 1 Benefit: (i) based on Explanation thereto, and (ii) otherwise also, *i.e.*, without considering the Explanation to Item 1.
18. Before delving into issues for determination, it is relevant to refer to relevant statutory provisions. Section 6(2) of the Act provides that any person or enterprise who or which proposes to enter into a combination shall give notice to the Commission. Section 6(2A) of the Act provides that no combination shall come into effect until 210 days have passed from the day on which the notice has been given to the Commission under Section 6(2) of the Act or the Commission has passed orders under Section 31, whichever is earlier. However, Section 54 of the Act empowers the Central Government to grant exemption from the application of the Act, or any provision thereof. Further, Regulation 4 of the Combination Regulations provides that, since the categories of combinations mentioned in Schedule I are ordinarily not likely to cause an appreciable adverse effect on competition in India, notice under Section 6(2) of the Act need not normally be filed. Section 43A of the Act provides that if any person or enterprise fails to give notice to the Commission under Section 6(2) of the Act, the Commission shall impose on such person or enterprise a penalty which may extend to 1% of the total turnover or the assets, whichever is higher, of such a combination.



19. From the above, it is apparent that a person or enterprise proposing to enter into a combination needs to give notice to the Commission unless the requirement has been dispensed with. After notice to the Commission, parties to the combination are required to observe a standstill obligation for 210 days from the date of notice to the Commission or approval by the Commission, under Section 31 of the Act, whichever is earlier.
20. In terms of Section 5 of the Act, an acquisition of shares is a combination if any of the assets or turnover based threshold prescribed therein is met. The consolidated total assets and income of Axis Bank for FY 2019–20 are more than nine lakh crore and eighty thousands crore, respectively. The consolidated total assets and turnover of CSC e-Governance for the same FY are INR 1,556.81 crore and INR 1,095.78 crore, respectively. The combined assets as well as combined turnover of Axis Bank and CSC e-Governance exceed the threshold prescribed under Section 5(a) of the Act. Accordingly, the Axis–CSC e-Governance Acquisition is a combination in terms of Section 5 of the Act. Further, both the assets and turnover of CSC e-Governance are higher than the threshold prescribed for *De Minimis* Exemption. Thus, the Axis–CSC e-Governance Acquisition did not appear to be eligible for the benefit of the *De Minimis* Exemption.
21. With regard to submissions of Axis Bank that it made a *bona fide* error in assessing the applicability of the *De Minimis* Exemption, it is pertinent to refer the provisions of Section 43A of the Act, which provides that, *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....*”. The provisions of Section 43A of the Act make it abundantly clear that its provisions get attracted if there is failure to give notice to the Commission under Section 6(2) of the Act. It is immaterial whether failure to give notice under Section 6(2) of the Act is *bona fide* or *mala fide*; or it was inadvertent or intentional. Error, if any, made in assessing applicability of the *De Minimis* Exemption to the transaction does not negate the fact that transaction was not eligible for the benefit of *De Minimis* Exemption. The argument about error is not a relevant argument for determining whether Section 43A of the Act gets attracted to a case or not. Axis Bank does not get absolved from the duty cast upon it by the provisions of the Act, merely on the ground of an error.
22. With regard to applicability of the Explanation to Item 1, it is observed that one of the conditions to avail benefit of the Explanation to Item 1 is that the Acquirer is not a member of the board of directors of the enterprise whose shares or voting rights are being acquired; does not have a right or intention to nominate a director on the board of directors of the enterprise whose shares or voting rights are being acquired; and does not intend to participate in the affairs or management of the enterprise whose shares or voting rights are being acquired.



23. The SSA *inter alia* provided that Axis Bank shall procure and deliver to CSC e-Governance, a letter from an identified person, consenting to his/her appointment as director on the board of CSC e-Governance and such other documents as may be required by CSC e-Governance for the same. Axis Bank proposed the nomination of Mr. Sumit Bali as a Director on 1st December 2020. The board of CSC e-Governance appointed him as an Additional Director in its meeting dated 28th December 2020, and it was regularised in the Annual General Meeting held on 30th November 2021. He held the directorship from 28th December 2020 to 17th February 2022. Axis Bank proposed the nomination of Mr. Munish Sharda, replacing Mr. Sumit Bali on 1st February 2022. The board of CSC e-Governance appointed Mr. Munish Sharda as an Additional Director in its meeting dated 17th February 2022. He held the directorship from 28th December 2020 to 17th February 2022. It was submitted that he has been holding directorship since 17th February 2022. From the above, it is abundantly clear that Axis Bank had/has representation on the board of the enterprise whose shares were acquired. Further, latest by the date of execution of the SSA, Axis Bank had intention to have representation on the board of directors of CSC e-Governance and participate in its management or affairs. Thereby, Axis Bank is not eligible for the benefit of the Explanation to Item 1.
24. With regard to applicability of the Item 1 of Schedule I, it is observed that to avail the benefit of the Item 1 of Schedule I of the Combination Regulations, *inter alia*, the acquisition should be solely as an investment or in the ordinary course of business.
25. With regard to ordinary course of business, the Commission *vide* its order dated 23rd March 2022, in the Combination Registration No. C-2022/02/905 observed as under:

8. In this regard, the Commission observed that in the order dated 11th May 2018 issued under Section 43A of the Act in relation to Combination Registration No. C-2017/05/509 the Commission has noted that The term “ordinary course of business” also is meant to refer to transactions which are frequent, routine and usual and therefore it may be said that the term “ordinary course of business” corresponds to revenue transactions for the competition law purposes. Transactions in ordinary course of sale and purchase of securities are done solely with the intent to get benefited from short term price movement of securities. From the Notice, the Commission noted that the purpose of the Proposed Combination is not to get benefited solely from short term price movement. Therefore, Proposed Combination cannot be considered to be done in ordinary course of business, for the purpose of Item 1 of Schedule I of the Combination Regulations.



9. *Further, acquisition in ordinary course of business of sale and purchase of securities neither entails right or ability of any of the party to the acquisition (including their affiliates) to participate in decision making process of another party(ies) to the acquisition (including its affiliates) nor result into access to commercially sensitive information nor envisages any other agreement or understanding having commercial significance. These agreements or understanding could be related to strategic course of business, or any domains of operation such as procurement, production, marketing, distribution, technology, research and development, sales, etc. In the instant matter, TPG SF would have right to nominate a director on the board of directors of Xpressbees and participate in the matters requiring consent of certain threshold of the investors. Therefore, again the Proposed Combination cannot be considered to be done in ordinary course of business, for the purpose of Item 1 of Schedule I of the Combination Regulations.*

(emphasis supplied)

26. Regarding the objective of the Axis–CSC e-Governance Acquisition, it has been submitted by Axis Bank that *CSC e-Governance, thus being a government-backed entity and having a pan India presence in deep rural areas, would be well positioned for delivery of government led initiatives towards financial inclusion of people living in such areas and implementing direct benefit transfer schemes. Further, **the investment would also help the bank gain knowledge and expertise towards the financial inclusion sector through its association with the company. The investment was aligned with the bank’s focus of looking to expand the outreach to deeper rural geographies and towards priority sector lending*** (emphasis supplied). Further, Axis Bank had/has representation on the board of directors of CSC e-Governance and participates in the affairs of CSC e-Governance.
27. In view of the above, it is apparent that the acquisition of stake in CSC e-Governance by Axis Bank was neither solely as an investment nor can be considered to be in ordinary course of business. Therefore, the Axis–CSC e-Governance Acquisition is not eligible for the benefit of the Item 1 of Schedule I and accordingly, it is immaterial whether the transaction led to acquisition of control or not. Thus, the Commission observes that no determination is warranted whether transaction led to acquisition of control or not in this matter.
28. Accordingly, the Commission finds that in relation to the Axis–CSC e-Governance Acquisition, Axis Bank failed to comply with the provisions of Section 6(2) of the Act and is liable for penalty under Section 43A of the Act.



29. Axis Bank has submitted the following as mitigating factors:
- Axis Bank did not intend to circumvent the jurisdiction of the Commission and the non-notification of the transaction was a *bona fide* error;
 - Axis Bank extended full cooperation to the Commission and has not fallen foul of the Act previously; and
 - The transaction was entered to support the GoI initiative towards financial inclusion.
30. Section 43A of the Act empowers the Commission to determine the appropriate amount of penalty in a matter, subject to maximum of 1% of the total turnover or assets, whichever is higher, of such combination. Considering the facts and circumstances of the case in *toto*, including mitigating factors submitted by Axis Bank, the Commission considers it appropriate to impose a penalty of INR 40,00,000 (INR Forty Lakh only) on Axis Bank. Axis Bank shall pay the penalty within 60 days from the date of receipt of this order.
31. It is made clear that nothing contained in this order shall be deemed to be confidential, as the same has been used for the purposes of the Act in terms of the provisions contained in Section 57 of the Act.
32. The Secretary is directed to communicate this order to Axis Bank.