



भारतीय प्रतिभूति
और विनियोग बोर्ड
Securities and Exchange
Board of India

Deputy General Manager
Corporation Finance Department
Division of Policy and Development
Email: rajkd@sebi.gov.in

No.: SEBI/HO/CFD/P/OW/2023/22380

May 31, 2023

To

NTPC Limited
NTPC Bhawan, Scope Complex, 7
Institutional area, Lodi Road
New Delhi - 110003

Sir,

Kind attention: Mr. Arun Kumar (Company Secretary)

Sub: Request received from NTPC Limited in form of informal guidance by way of an “interpretive letter” under Securities and Exchange Board of India (Informal Guidance) Scheme, 2003

1. This is with reference to your letter dated March 03, 2023 (“Application”) seeking guidance by way of an interpretive letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 (“Scheme”) with respect to Related Party Transactions (RPTs) under Regulation 23 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”).
2. You have requested the Securities and Exchange Board of India (“SEBI”) to provide “Informal guidance – interpretive letter” with respect to the Related Party Transactions (“RPTs”) under Regulation 23 of LODR Regulations by seeking clarification on three aspects as mentioned below:
 - a. Issue 1 - Validity of Shareholders approval
 - i. *Whether the approval of multiyear agreement with JVC taken from the shareholders in the 39th AGM held on 18th September 2015 is still valid?*
 - ii. *Whether the ratification / post facto approval of RPTs with JVC by Audit Committee under POSMA pursuant to approval taken from the shareholders considering approval of extension accorded by audit*

सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बांद्रा-कुला कॉम्प्लेक्स, बांद्रा (पूर्व), मुंबई - 400 051.
दूरभाष : 2644 9950 / 4045 9950 (आई.टी.आर.एस.), 2644 9000 / 4045 9000 फैक्स : 2644 9019 से 2644 9022 वेब : www.sebi.gov.in

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committee in March 2021 for the period from April 2021 to March 2026, are in order?

iii. Can company rectify the disclosures already made under Regulation 23(9) of SEBI (LODR) Regulations, 2015 based on the interpretation given by SEBI in (i) & (ii) above or can it be disclosed in current folio?

b. Issue 2 – RPTs with companies where government nominee directors are on the board of directors of related party:
Whether the approval of audit committee of NTPC is required for transactions between NTPC and PTC India Limited & EESL, where nominee directors are appointed by Government of India?

c. Issue 3 – Applicability of ICSI guidance note on exemptions of certain transactions with related party:
Whether the above guidance given by ICSI can be applied and included in the RPT policy of the Company?"

3. The facts and various submissions made in your letter have been considered. Without necessarily agreeing with your analysis, our views on the queries raised in your letter are as under:

4. **Issues at 2 (a):** With respect to this issue, the relevant text of Regulation 23 of the LODR Regulations is reproduced below:

"23. (2) All related party transactions and subsequent material modifications shall require prior approval of the audit committee of the listed entity.

23. (3) Audit committee may grant omnibus approval for related party transactions proposed to be entered into by the listed entity subject to the following conditions, namely.

[.....]

e) Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year.

23. (4) All material related party transactions and subsequent material modifications as defined by the audit committee under sub-regulation (2) shall require prior approval of the shareholders through resolution and no related party shall vote to approve such resolutions whether the entity is a related party to the particular transaction or not."



5. In addition to the said provisions, the SEBI circular dated April 8, 2022 on 'Clarification on applicability of Regulation 23(4) read with Regulation 23(3)(e)' provides guidance on the aforementioned issue. The same is appended below:

"[.....]

4. *In order to facilitate listed entities to align their processes to conduct AGMs and obtain omnibus shareholders' approval for material RPTs, it has been decided to specify that the shareholders' approval of omnibus RPTs approved in an AGM shall be valid upto the date of the next AGM for a period not exceeding fifteen months.*

5. *In case of omnibus approvals for material RPTs, obtained from shareholders in general meetings other than AGMs, the validity of such omnibus approvals shall not exceed one year."*

6. You have stated in your Application that NTPC is having a 50:50 Joint Venture Company with a Private Company ("JVC") with which it has signed a multiyear Power Station and Office Maintenance Agreement ("PSOMA" or "Agreement"). You have also mentioned the approvals taken by NTPC for the above Agreement in the course of time.

7. Furthermore, you have mentioned that at the beginning of FY 2022-23, the estimated transaction value as per multiyear contract with JVC was not expected to cross the ceiling prescribed for material related party transaction. However, it was observed and assessed subsequently that the multiyear contract with JVC was likely to exceed the ceiling of Rs. 1000 crore in the FY 2022-23.

8. In view of the above, as per the SEBI circular dated April 8, 2022, the validity of the omnibus approval for material related party transaction shall not exceed 1 year.

9. You may note that Paragraph 10 of Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 enunciates that "*SEBI shall not be under any obligation to respond to a request for guidance made under this scheme, and shall not be liable to disclose the reasons for declining to answer the request.*" Hence, the Issues at 2(a) cannot be proceeded with through the issuance of an interpretive letter.

10. **Issue at 2 (b):** The relevant text of Regulation 23(5) of the LODR Regulations is reproduced below:

"The provisions of sub-regulations (2), (3) and (4) of LODR Regulations, 2015 shall not be applicable in the following cases:

a) transactions entered into between two government companies. ..."



As observed above, regulation 23(5) of LODR Regulations states that the transactions entered into between two government companies are exempted from taking prior approval of audit committee and shareholders for related party transactions. As stated in your application, Energy Efficiency Services Limited ("EESL") is a joint venture of 4 public sector undertakings (PSUs)—NTPC, POWERGRID, REC and PFC. NTPC is also awarding contracts to EESL for the purchase of LED lights. NTPC holds 4.05% stake in PTC India Limited ("PTC"). NTPC has transactions with PTC India Limited for receipt of dividend and sitting fees of nominee directors appointed by NTPC in the board of PTC and that consent of NTPC is required for appointment of Managing Director of PTC. As stated by you in your letter, Government nominee directors are appointed by Government of India on the board of PTC and EESL. However, neither EESL nor PTC are government companies as defined under sub-section (45) of section 2 of the Companies Act, 2013. Hence, exemption under Regulation 23(5) is not applicable and prior approval of audit committee as per the provisions of Regulation 23 would be required for RPTs with PTC or EESL, as the case may be.

11. **Issue at 2 (c):** The LODR Regulations clearly specify the types of transactions with related parties which are not to be considered as a related party transaction. Therefore, any transactions specified by Institute of Company Secretaries of India or any other authority in their suggested RPT policy, in so far as they are at variance with the express provision under Regulation 2 (1) (zc) of the LODR Regulations, are not relevant for the purpose of granting an exemption from the purview of Related Party Transactions.
12. The above position is based on the facts and circumstances described by you in your application. Further, this letter does not express a decision of the Board on the questions referred.
13. You may also note that the above position is expressed only with respect to the guidance sought in your letter under reference in respect of the Regulation as referred above and does not affect the applicability of any other law or requirement of any other SEBI Regulation, Guidelines and Circulars administered by SEBI or the laws administered by any other authority.

Yours faithfully,

Raj Kumar Das