



एनटीपीसी लिमिटेड

(भारत सरकार का उद्यम)

NTPC Limited

(A Govt. of India Enterprise)

केन्द्रीय कार्यालय/ Corporate Centre

Dated: 24th February 2023

General Manager
Corporate Finance Department
The Securities and Exchange Board of India
G Block, Plot No. C-4A, G Block Road
Bandra Kurla Complex, Bandra East
Mumbai, Maharashtra - 400051

Subject: Request for informal guidance by way of an interpretative letter under Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in connection to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 as amended from time to time.

Dear Sir/Ma'am

We submit this application seeking informal guidance from the Securities and Exchange Board of India ("SEBI") in the form of an interpretative letter under the Informal Guidance Scheme with respect to the provisions of *Regulation 23 – Related Party Transactions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI (LODR) Regulations")*.

The details pertaining to factual background, legal requirement and query in respect of which clarification is being sought are enclosed as "Annex-I i.e. **Brief for seeking guidance on Related Party Transaction (RPT) from SEBI under SEBI (Informal Guidance) Scheme 2003**".

Request for Interpretative Letter

In light of the submission made in the brief and the relevant regulations cited therein, we request to issue an informal guidance by way of an interpretative letter under paragraph 5(ii) of the Informal Guidance Scheme in respect of Regulation 23 – Related Party Transactions of SEBI (LODR) Regulations.

Compliance with Paragraph 6 of the Informal Guidance Scheme

In accordance with paragraph 6 of the Informal Guidance Scheme, the payment for an amount of Rs.25,000/- (Rupees Twenty Five Thousand Only) (Plus 18% GST) has been made vide UTR No. SBIIN123054193904 dated 24th February 2023 at the Bank Account Number – 012210210000007 of Bank of India.

पंजीकृत कार्यालय : एनटीपीसी भवन, स्कोप कॉम्प्लेक्स, 7, इन्स्टीट्यूशनल एरिया, लोधी रोड नई दिल्ली-110003

कार्पोरेट पहचान नम्बर : L40101DL1975GOI007986, टेलीफोन नं.: 011-24387333, फैक्स नं.: 011-24361018, ईमेल: ntpccc@ntpc.co.in, वेबसाइट: www.ntpc.co.in

Registered Office : NTPC Bhawan, SCOPE Complex, 7 Institutional Area, Lodi Road, New Delhi-110003

Corporate Identification Number : L40101DL1975GOI007986, Telephone No.: 011-24387333, Fax No.: 011-24361018, E-mail : ntpccc@ntpc.co.in

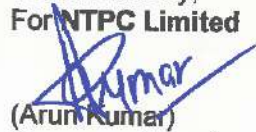
Website : www.ntpc.co.in

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The undersigned shall be pleased to furnish any additional information as may be required in support of this application. Kindly arrange for an early response.

Thanking you,

Yours faithfully,
For NTPC Limited



(Arun Kumar)
Company Secretary
Encl.: As above

A. Brief for seeking guidance on Related Party Transaction (RPT) from SEBI under SEBI (Informal Guidance) Scheme 2003:

I. Validity of Shareholders approval

FACT OF THE CASE:

1. NTPC Limited is a Government Company u/s 2 (45) of Companies Act 2013, incorporated on 7th November 1975 in accordance with the provision of the Companies Act, 1956. Presently, President of India is holding 51.1% of the paid-up share capital of the Company.
2. NTPC is having a 50:50 Joint Venture Company (JVC) with a Private Company (JVC). NTPC is assigning jobs on contract basis, for sundry works in plants/stations/offices to JVC under a multiyear Power Station and Office Maintenance Agreement (PSOMA) through a JVC between NTPC and a private company. The PSOMA with JVC is in place since 1999.
3. The JVC inter-alia undertakes jobs such as overhauling, repair, refurbishment of various mechanical and electrical equipment of power stations on cost plus basis. NTPC is currently paying margin of 7% over and above the cost incurred by JVC as per the agreement. As per disclosure made in Annual Report of the Company through AOC-2, transactions made with JVC are not on arms' length basis since margin was not fixed on competitive basis.
4. After enactment of Companies Act, 2013, as per provisions of Section 188 read with Rule 15 of the Companies (Meetings of the Board and its Powers) Rules 2014 (applicable at that time) – approval of shareholders was required if the value of transactions to be entered during a financial year exceeded 10% of the turnover of the company of preceding financial year or Rs. 50 Crore, whichever was lower.
5. Accordingly, approval of Shareholders was sought for entering into multiyear PSOMA with JVC subject to ceiling of 2% of the annual turnover of the Company as per the Audited Annual Financial Statement of the preceding financial year or Rs.1000 Crore, whichever is more, in any financial year in 39th AGM held on 18/09/2015 for the financial year 2014-15.
6. After approval of shareholders, the Audit Committee and the Board had accorded approval for entering into PSOMA w.e.f. 15.10.2015 to 14.10.2020 in their respective meetings held on 29.09.2015. Thereafter, individual contracts awarded under the PSOMA were placed for ratification/ post facto approval of the Audit Committee so as to keep check on the ceiling approved by the shareholders.
7. The provision of Rule 15 of the Companies (Meetings of the Board and its Powers) Rules 2014 was amended in vide Companies (Meeting of Board and its Power) Amendment Rules, 2019 dated 18/11/2019 and limit for approval of shareholders were enhanced to ten per cent of turnover.

The Board in its 490th Meeting held on 02.11.2020, considered and accorded approval for extension of the PSOMA with JVC from 15.10.2020 to 31.03.2021 on the existing terms and conditions. Later the Board of Directors in its 496th meeting & audit Committee in its 151st meeting had accorded approval for extension of PSOMA with JVC for a period of 5 years from 01.04.2021 to 31.03.2026, on the terms and conditions, as contained in the



Memorandum submitted before the Board. The Board further authorised CMD to approve the terms & conditions of the PSOMA.

8. Transactions entered into as per PSOMA were not material RPT as on 01.04.2021 as per definition applicable at that time.
9. At the beginning of financial year 2022-23, as per the multiyear contract with JVC the estimated transaction value at that time 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 is likely to exceed the ceiling of Rs. 1000 Crore in the FY 2022-23.

LEGAL PROVISIONS:

10. SEBI LODR was amended w.e.f. 01.04.2022. As per amendments:
 - a. 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.
 - b. **Material RPT means**, *a transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds rupees 1000 crore or ten per cent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower.*” i.e. Rs.1000 crore in case of NTPC.
 - c. As per the NTPC’s RPT Policy:
"Material Modifications" means any modification to the existing Related Party Transaction which has the effect of increasing or decreasing the value of original contract by 35% or more.
11. Regulation 23(6) of SEBI LODR provides that the provisions of regulation 26 shall be applicable to all prospective transactions.
12. Clarification dated 30.03.2022 by SEBI, provides as under:

Regulation 23(8) of the LODR specifies that all existing material related party contracts or arrangements entered prior to the date of notification of these regulations, and which may continue beyond such date shall be placed for approval of the shareholders in the first General Meeting subsequent to notification of these regulations.

In accordance with the said regulation, an RPT that has been approved by the audit committee prior to April 1, 2022 which continues beyond such date and becomes material as per the revised materiality threshold shall be placed before the shareholders in the first General Meeting held after April 1, 2022. However, approval in the annual general meeting held on 30th August 2022 was not taken from shareholders.

13. As per clarification dated 08.04.2022 by SEBI, 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. In case approval is taken in AGM, then approval shall be valid upto next AGM, subject to maximum 15 months.

This process of obtaining approval of shareholders every year or in each AGM may impose uncertainty on the ongoing contracts. The Company can go for annual contract only, not for multi-year contract.

Keeping in view above, clarification may be provided by SEBI under SEBI Informal Guidance Scheme, 2003, whether;

- (i) *approval of multiyear agreement with JVC taken from the shareholders in the 39th AGM held on 18th September 2015 is still valid?*
- (ii) *ratification/ post facto approval of RPTs with JVC by Audit Committee under PSOMA pursuant to approval taken from the shareholders considering approval of extension accorded by Audit committee in March 2021 for the period from April 2021 to March 2026, are in order?*
- (iii) *Can Company rectify 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?*

II. Related party transactions with companies where government nominee directors are on the Board of Related Party

1. NTPC has invested in PTC India Ltd in the equity shares along with PGCIL, PFC and NHPC as promoter contribution. NTPC is currently holding 4.05% stake in PTC India Ltd. and same percentage of shares are held by other three promoters. Total shareholding of promoters in PTC India limited is 16.22% and remaining 84.78% shareholding is with foreign institutions, financial institutions, banks, mutual funds and general public. NTPC has transactions with PTC India Ltd. for receipt of dividend and sitting fees of nominee directors appointed by NTPC on Board of PTC India Ltd. NTPC has one nominee director on the Board of PTC and consent of NTPC is required for appointment of Managing Director of PTC.
2. Energy Efficiency Services limited [EESL] is a joint venture of 4 public sector undertakings (NTPC-33.334%, POWERGRID- 33.334%, REC-15.681% & PFC-17.651%). NTPC is awarding Contracts to EESL for purchase of LED lights.
3. Government nominee directors are appointed by Government of India on board of PTC India Limited and EESL.

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4. A question has arisen whether exemption available under SEBI LODR for transactions between two government companies, can be availed for above transaction.

Keeping in view above, clarification may be provided by SEBI under SEBI Informal Guidance Scheme, 2003, Whether 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.

III. Applicability of ICSI Guidance note on exemptions

As per the guidance provided in the **Guidance note on related party transactions (RPT) issued by ICSI on the suggested RPT policy**, following Related Party Transactions shall not require any separate approval under this Policy:

- Any transaction pertaining to appointment and remuneration of Directors and KMPs that require approval of the Nomination and Remuneration Committee of the Company and the Board;
- Transactions that have been approved by the Board on the specific provisions of the Companies Act, 2013 e.g. inter-corporate deposits, borrowings, investments etc. with or in wholly owned subsidiaries or other Related Parties;
- Payment of Dividend;
- Transactions involving corporate restructuring, such as buy-back of shares, capital reduction, merger, demerger, hive-off etc. which are approved by the board and carried out in accordance with the specific provisions of the Companies Act, 2013 or the Listing Regulations, 2015;
- Contribution towards Corporate Social Responsibility (CSR) within the overall limits approved by the Board that require approval of the CSR Committee.

Keeping in view above, clarification may be provided by SEBI under SEBI Informal Guidance Scheme, 2003 whether the above guidance given by ICSI can be applied and included in the RPT policy of the Company.

Further, any other guidance as deemed appropriate may be given for ensuring better compliance with the provisions of Companies Act and SEBI LODR.



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