



NTPC Limited

(A Govt. of India Enterprises)
Corporate Centre

Ref. No.: 01: SEC: LA

Dated: 23/10/2020

To

General Manager
Department of Corporate Services
BSE Limited
Floor 25, Phiroze Jeejeebhoy Towers
Dalal Street
Mumbai-400 001

Manager
National Stock Exchange of India
Limited
Exchange Plaza
Bandra-Kurla Complex
Bandra(E)
Mumbai-400 051

Sub.: Compliance under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Dear Sir,

We would like to inform that NTPC Limited ("Company") had filed an application with Securities and Exchange Board of India (SEBI) on 15th October 2020 seeking exemption/relaxation of provisions of Regulation 24(ii) of the Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018.

SEBI passed an order in this regard dated 23rd October, 2020 and published the same on its website. The order is available on SEBI website at https://www.sebi.gov.in/enforcement/orders/oct-2020/order-in-the-matter-of-ntpc-limited-_47970.html and a copy of the same is enclosed.

Decision on the proposal for buyback of shares will be taken by the Board of Directors at the appropriate time and same will be intimated to the stock exchanges in accordance with the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Thanking you.

Yours faithfully,

(Nandini Sarkar)
Company Secretary &
Compliance Officer

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1) OF THE SEBI ACT READ WITH REGULATION 28 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (BUY-BACK OF SECURITIES) REGULATIONS, 2018.

IN THE MATTER OF BUY BACK OF SECURITIES IN –

COMPANY	NTPC LIMITED
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BACKGROUND –

1. NTPC Limited (“**NTPC/Company**”) is a company incorporated under the provisions of the Companies Act, 1956. The registered office of NTPC is at NTPC Bhawan, SCOPE Complex, 7 Institutional Area, Lodi Road, New Delhi-110003. The shares of NTPC are listed on the BSE Limited (“**BSE**”) and the National Stock Exchange of India Limited (“**NSE**”).
2. NTPC had filed an Application dated October 15, 2020 (“**Application**”) with Securities and Exchange Board of India (“**SEBI**”) seeking exemption/relaxation from the strict enforcement of the requirement contained under Regulation 24(ii) of the SEBI (Buy-back of Securities) Regulations, 2018 (“**Buy-back Regulations 2018**”). The aforesaid Application has been necessitated on account of a Scheme of Amalgamation providing for the merger of NTPC’s wholly owned subsidiaries with itself, which is brought out in the subsequent paragraphs of this Order.
3. As on September 30, 2020, the shareholding in NTPC is as under:

TABLE I – SHAREHOLDING IN NTPC (SOURCE: BSE WEBSITE)			
	NAME	NO. OF SHARES	% SHAREHOLDING
A.	PROMOTER/ PROMOTER GROUP*	5,04,80,97,508	51.02
B.	PUBLIC SHAREHOLDING	4,84,64,59,772	48.98
C.	TOTAL (A + B)	9,89,45,57,280	100.00
*NTPC IS PROMOTED BY THE PRESIDENT OF INDIA THROUGH THE MINISTRY OF POWER, GOVERNMENT OF INDIA WHO HOLDS 51.02% OF THE PAID-UP EQUITY SHARE CAPITAL OF THE COMPANY.			

4. From the Application [filed in compliance with Regulations 28(ii) and 28(iii) of the Buy-back Regulations 2018], the following is noted –
- A. In a meeting held on November 9, 2019, the Board of Directors of NTPC had approved a Scheme of Amalgamation entailing the merger of Nabinagar Power Generating Company Limited ("**Transferor Company 1**") and Kanti Bijlee Utpadan Nigam Limited ("**Transferor Company 2**") (Collectively referred to as "**Transferor Companies**") with the Company under Section 230–232 of the Companies Act, 2013, Circulars issued by SEBI for Scheme of Amalgamation/Merger by listed Companies ("**SEBI Circulars**") and any other statutory provisions.
 - B. In the event the Company proposes to explore the possibility of buying back its equity shares in accordance with the provisions of Section 68 of the Companies Act, 2013 and the Buy-back Regulations 2018 from the existing shareholders (including the Promoter) on proportionate basis through tender offer route, subject to the requisite approval, such buy back will not be permitted under Regulation 24(ii) of the Buy-back Regulations 2018 since there is a Scheme of Amalgamation pending at the time of the public announcement.
 - C. The Transferor Companies are wholly owned subsidiaries of the Transferee Company. The entire share capital of the Transferor Companies is held by the Company. Hence, upon the Scheme becoming effective, no shares of the Company shall be allotted in lieu or exchange of the shares of the Transferor Companies but rather the entire share capital of the Transferor Companies shall be cancelled and extinguished.
 - D. The Scheme of Amalgamation is yet to be filed with the stock exchanges as required under Regulation 37 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations 2015**") or with the Ministry of Corporate Affairs ("**MCA**") under the Companies Act, 2013.

E. NTPC has submitted that:

- i. There is no consideration involved in the Scheme of Amalgamation since the entire shareholding of the Transferor Companies is held by the Company. Hence, there will be no change in the shareholding pattern of the Company pursuant to the Scheme of Amalgamation.
- ii. Vide SEBI Circular no. CFD/DIL3/CIR/2017/21 dated March 10, 2017 and Regulation 37(6) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, SEBI had exempted Schemes involving merger of a wholly owned subsidiary with holding company from various compliances. The rationale for granting exemption appears to be that such mergers are largely internal re-organisation within Group Companies and do not involve any share consideration. Further, the Companies Act, 2013 does not restrict Companies from announcing a buy-back during the pendency of any merger or amalgamation.
- iii. Considering that there is no new issuance of equity shares or change in the shareholding pattern of the Company consequent to the Scheme of Amalgamation, the requirement of Regulation 24(ii) of the Buy-back Regulations 2018 can be viewed as a procedural requirement in the present circumstances.
- iv. Further, the Application is in the interests of investors as the shareholders of the Company (especially small shareholders) will benefit from return of surplus cash through the buy-back program.

5. Subsequently, vide an e-mail dated October 22, 2020, SEBI had sought certain clarifications from NTPC in connection with the Scheme of Amalgamation. A point-wise reply was provided by NTPC vide e-mails dated October 22, 2020 and October 23, 2020, which are reproduced as under:

a. SEBI's query: *Has the proposed Scheme of Amalgamation been approved by the shareholders? If yes, please provide the shareholders' resolution for the aforementioned.*

NTPC's reply: *The Scheme of Amalgamation is yet to be approved by the shareholders.*

b. SEBI's query: As stated in the Application, the Scheme of Amalgamation is not yet filed with NSE and BSE as required under Regulation 37 of the LODR Regulations 2015 or with the MCA under the Companies Act, 2013. In this regard, you are requested to provide the reasons for non-filing and provide the latest developments thereof.

NTPC's reply: After approval of the Scheme of Amalgamation by the Board of Directors, consent of the lenders of Transferor Companies and NTPC were sought under the various Loan Agreements. Consent of Punjab National Bank i.e. one of the lenders of Transferor Company 2, was received only on September 23, 2020. The Scheme of Amalgamation is not yet filed with the stock exchanges since consent of the lenders under various Loan Agreements are not yet in place. The Scheme of Amalgamation shall be duly filed with the stock exchanges under Regulation 37 of the LODR Regulations 2015, before filing of the Scheme with the Court/ National Company Law Tribunal ("NCLT") [in our case, MCA – in terms of Govt. Notification no. GSR 582 (E) dated June 13, 2017] as per statutory requirement.

6. I have considered the Application made by NTPC along with all the material available on record. For the purpose of considering the instant Application, Regulation 24(ii) of the Buy-back Regulations 2018 is reproduced as under –

"24. Obligations of the company for all buy-back procedure:

(ii) No public announcement of buy-back shall be made during the pendency of any scheme of amalgamation or compromise or arrangement pursuant to the provisions of the Companies Act ..."

7. As per Regulation 28 of the Buy-back Regulations 2018, the Board may, in the interest of investors and the securities market, relax the strict enforcement of any requirement of the aforesaid Regulations except the provisions incorporated from the Companies Act, if the Board is satisfied that the requirement is procedural in nature or the requirement may cause undue hardship to investors. I note that the requirement contained in Regulation 24(ii) of the Buy-back Regulations 2018 is substantive in nature and prohibits the Company from making any public announcement of buy-back during the pendency of any Scheme of Amalgamation pursuant to the provisions of the Companies Act, 2013.

8. In its Application for relaxation by SEBI from the requirement of Regulation 24(ii) of the Buy-back Regulations 2018, NTPC has submitted that the proposed buy-back will be in the interests of investors as the shareholders of the Company (especially small shareholders) will benefit from return of surplus cash through the buy-back program. Further, NTPC have confirmed that there will be no new issue of equity shares or change in the shareholding pattern of the Company consequent to the Scheme of Amalgamation with its wholly owned subsidiaries (which is yet to be approved by the shareholders). Considering the aforementioned, I find that the requirement of Regulation 24(ii) of the Buy-back Regulations 2018 can be viewed as a procedural requirement having regard to the facts of the present Application (i.e. a merger between a holding company and its wholly owned subsidiaries not involving any new issuance of equity shares or change in the paid-up share capital of the Company impacting the proposed buy-back). In addition to the aforementioned, NTPC has also informed SEBI that in compliance with Regulation 37(6) of the LODR Regulations 2015, the Scheme of Amalgamation proposed to be filed before the MCA under Sections 230–232 of Companies Act, 2013, for sanctioning the Scheme, shall be filed with the stock exchanges for the purpose of disclosures, as mandated. Accordingly, I am of the considered view that exemption/relaxation as sought for in the Application be granted to NTPC. However, such exemption/relaxation shall be subject to certain conditions stated herein.

Order –

9. I, in exercise of the powers under Section 11(1) of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") and Regulation 28 of the Buy-back Regulations 2018, hereby grant exemption/relaxation to the Company, viz. **NTPC**, from ensuring compliance with the requirement of Regulation 24(ii) of the Buy-back Regulations 2018 in relation to the proposal for buy-back of equity shares as mentioned in the Application.

10. The exemption so granted is subject to the following conditions:
- i. The Scheme of Amalgamation shall be approved by the shareholders of NTPC.
 - ii. NTPC shall ensure that the Scheme of Amalgamation proposed to be filed before the MCA under Sections 230–232 of Companies Act, 2013, shall be filed with the stock exchanges for the purpose of disclosures, in compliance with Regulation 37(6) of the LODR Regulations 2015 read with SEBI Circular no. CFD/DIL3/CIR/2017/21 dated March 10, 2017.
 - iii. The proposed buy-back shall be in accordance with the relevant provisions of the Companies Act, 2013, the Buy-back Regulations 2018 and any other applicable law.
 - iv. The statements/ averments made or facts mentioned in the Application and the e-mail dated October 22, 2020 and October 23, 2020, are true and correct.
11. The exemption granted above is limited to a relaxation from the strict enforcement of Regulation 24(ii) of the Buy-back Regulations 2018 and shall not be construed as a relaxation from any other requirement under the Buy-back Regulations 2018 or the provisions incorporated therein from the Companies Act, 2013.
12. The Application dated October 15, 2020, filed by NTPC is accordingly disposed of.
13. A copy of this Order shall be forwarded to the Stock Exchanges to ensure necessary compliance.

Place: Mumbai
Date: October 23, 2020

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA