

Dissecting the Order passed by CCI against Goldman Sachs (India) Alternative Investment Management Pvt. Ltd.

New legal development has arisen for AIFs after the **Order dated 14 January 2025** passed by Competition Commission of India (**CCI**) in the proceedings against Goldman Sachs (India) Alternative Investment Management Private Limited (**GS AIMPL**), the investment manager of Goldman Sachs AIF Scheme-1 (**GS AIF**) [collectively '**GS**'], under Section 43A of the Competition Act, 2002 (Act) in relation to subscription by **GS AIF**, acting through **GS AIMPL**, to optionally convertible debentures (**OCDs**) issued by Biocon Biologics Limited (**Biocon**) which, if calculated on the date of the investment, would have converted to **3.81%** of the entire shareholding of Biocon on a fully diluted basis (**FDB**).

The case before the CCI pertains to GS AIMPL, which is the investment manager of GS AIF. The issue arose from GS AIMPL's subscription to Optionally Convertible Debentures (**OCDs**) issued by Biocon. If converted, these OCDs would have given GS a 3.81% equity stake in Biocon on a FDB. The transaction was executed through a Securities Subscription Agreement (**SSA**) and a Shareholders Agreement (**SHA**) on 7th Nov 2020 and closed on 9th Dec 2020.

Background of the Case

- **Transaction:** GS AIMPL, through GS AIF, subscribed to Optionally Convertible Debentures (OCDs) issued by Biocon Biologics Limited (Biocon).
- **Stake Acquired:** On conversion OCDs would give GS 3.81% shareholding in Biocon on FDB.
- **Legal Agreements:** SSA + SHA
- **Rights Gained by GS AIF:**
 - **Reserved Matter Rights**– GS had consent rights over key business decisions.
 - **Information Rights**– GS could access board meeting minutes and company records.
 - **Access Rights**– GS could visit Biocon's premises and interact with personnel.

CCI's Observations

Violation: of Section 6(2) of the Competition Act, 2002

Reason: GS failed to notify CCI before executing the transaction.

Under the SHA, GS AIF gained Reserved Matter Rights, Information Rights, and Access Rights. The Reserved Matter Rights meant that GS had a say in crucial business decisions, which required investor approval. The Information Rights granted GS access to board meeting minutes and key company records, while the Access Rights allowed

GS representatives to visit Biocon's premises and interact with its personnel. These rights were in addition to GS's financial investment in the company.

The CCI became aware of the transaction and noted that GS had not notified the Commission before executing it, as required under Section 6(2) of the Competition Act, 2002. Consequently, a letter was issued on 4th February 2022 under Section 36(4) of the Act, asking GS to provide details.

Upon reviewing the responses from GS, CCI observed that the Minutes Right, Access Right, and Reserved Matter Rights extended beyond the entitlements of an ordinary shareholder. Since these rights granted GS privileged access to confidential business

information and strategic decision-making, the transaction could not be considered a mere financial investment. The CCI held that GS should have notified the transaction

Goldman Sachs' Defense Arguments

- **The investment was purely financial and not strategic.**
 - The primary aim was returns and it did not intend to participate in management.
 - The shareholding was below 10%, making it eligible for exemption under Item 1 of Schedule 1 of the Combination Regulations.
- **GS did not acquire control over Biocon.**
 - It had no board representation and did not participate in Biocon's affairs.
- **The acquisition was in the "ordinary course of business".**
 - GS frequently makes such investments.
- **GS was willing to surrender the "Minutes Right" and "Access Right" if needed to avoid penalty.**
 - **Access Rights**– GS could visit Biocon's premises and interact with personnel.

CCI's Findings

- **The transaction was strategic, not passive.**
 - The "**Minutes Right**" granted GS access to confidential financial and business data.
 - The "**Access Right**" allowed GS to interact with Biocon's employees and visit premises.
 - **These rights** exceeded those of a regular shareholder, making it mandatory for GS to notify CCI before execution.
- **The investment was not in the "ordinary course of business".**
 - GS held the OCDs for a long period (until January 2026).
 - GS had the right to convert OCDs into equity, extending its influence over Biocon.
- **GS violated Section 6(2) of the Act by not notifying CCI.**
 - The rights GS acquired had the potential to impact competition.
 - GS's defense regarding confidentiality safeguards was rejected as irrelevant

under Section 6(2) of the Competition Act and, on 25th May 2023, issued a Show Cause Notice (SCN) under Section 43A.

In defense, GS argued that its investment was purely financial, and it had no intention to participate in Biocon's management. It contended that since its stake was below 10%, the transaction qualified for exemption under Item 1 of Schedule 1 of the Combination Regulations. GS further claimed that it had no control over Biocon, and its rights were similar to those given to other investors. Additionally, GS argued that its investment activities were in the ordinary course of business and therefore did not require notification.

The **CCI rejected GS's arguments**, finding that the rights GS acquired were strategic in nature and not passive financial rights. It emphasized that the Minutes Right granted GS access to sensitive business information, which ordinary shareholders would not have. Similarly, the Access Right allowed GS to interact with Biocon's employees and visit its premises, indicating a level of involvement beyond a simple financial investment. The CCI also noted that GS acquired OCDs with the option to convert them into equity at any time before 9th January 2026, indicating a long-term strategic investment rather than a short-term financial transaction.

Penalty & Final Order

- **Fine Imposed:** ₹40,00,000 (INR 40 Lakhs)
- **Reason for Fine:** GS's investment in Biocon was not purely financial but had strategic elements, it failed to notify CCI before executing a strategic investment.
- **Payment Deadline:** 60 days from the order date (14th January 2025).
- **Confidentiality Clause:** No part of this order is deemed confidential under Sec 57 of the Act.

Furthermore, the CCI ruled that GS's investment did not qualify as an "ordinary course of business" transaction, as the intended holding period was long, and the rights GS acquired gave it a level of influence over Biocon. CCI clarified that transactions must be analyzed based on their substance rather than their form, meaning that even if GS's structure followed a typical investment model, its actual rights affected the competitive dynamics of Biocon. GS's arguments on confidentiality safeguards under the SEBI AIF Regulations and the SHA were also rejected as irrelevant to the question of notifiability.

Concluding that GS violated Section 6(2) by failing to notify CCI, the Commission imposed a penalty of ₹40,00,000 (INR 40 Lakhs) under Section 43A of the Competition Act. The fine was calculated considering the nature of the violation, GS's conduct during proceedings, and the legal framework. GS was directed to pay the penalty within 60 days. Additionally, the CCI clarified that none of the contents of this order would be deemed confidential, as per Section 57 of the Competition Act.

Appeal: CCI order can be challenged before the National Company Law Appellate Tribunal (NCLAT) within 60 days from the date of receipt of the order, as per Section 53B(2) of the Competition Act, 2002, with further extension of up to 60 additional days if permitted by NCLAT. Hence its open for GS to appeal before NCLAT and challenge CCI Order. We await to see as it unfolds in coming time.

Learning for other AIFs & Investors: Unless appeal is made and decided otherwise, this case establishes a precedent that minority shareholdings, even below 10%, may require CCI approval if they include strategic rights. The CCI's ruling reinforces the need for investors to assess whether their acquisitions involve more than just financial stakes and whether they should notify CCI before executing similar transactions in the future.

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