

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

UNDER REGULATION 11(5) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.

IN THE MATTER OF PROPOSED ACQUISITION OF SHARES AND VOTING RIGHTS IN NIIT LIMITED.

Background –

- 1.1 NIIT Limited (“**Target Company**”) was incorporated under the Companies Act, 1956 (“**Companies Act**”) on December 2, 1981, as a private limited company under the name of Pace Education Private Limited. The name was changed to NIIT Limited in terms of fresh Certificate of Incorporation dated November 16, 1990. The Registered Office of the Target Company is at 8 Balaji Estate, 1st Floor, Guru Ravi Das Marg, Kalkaji, New Delhi–110019. The shares of the Target Company are listed on BSE Limited (“**BSE**”) and the National Stock Exchange of India Limited (“**NSE**”).
- 1.2 SEBI received an application dated April 27, 2016 (“**Application**”) from Thadani Family Trust (Trustee – Vijay Kumar Thadani) and Pawar Family Trust (Trustee – Rajendra Singh Pawar) (Collectively referred to as the “**Proposed Acquirers**”) seeking exemption from the applicability of Regulation 3(1), Regulation 4 and Regulation 5 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“**Takeover Regulations**”) in respect of the proposed indirect acquisition and control of the shareholding and voting rights in the Target Company.
- 1.3 In the aforementioned application, the following was stated –
 - i. *“Mr. Vijay Kumar Thadani and Mr. Rajendra Singh Pawar are co–founders and Promoters of the Target Company.*
 - ii. *Global Consultancy and Investment Private Limited (**‘Global Consultancy’**) holds 15.66% shares (2,59,15,838 shares) of the Target Company. Global Consultancy is a wholly owned subsidiary of Global Solutions Private Limited (**‘Global Solutions’**), which in turn is held 50% each by Mr. Vijay Kumar Thadani and Mr. Renuka Vijay Thadani, wife of Mr. Vijay Kumar Thadani.*
 - iii. *As a part of family succession planning, it is proposed that Mrs. Renuka Vijay Thadani will transfer her shareholding in Global Solutions i.e. 50% of the share capital of Global Solutions to her husband Mr. Vijay Kumar Thadani. As Global Solutions is a registered NBFC, an application has been filed*

with the Reserve Bank of India seeking approval for the aforementioned transfer, Mr. Vijay Kumar Thadani and Mrs. Renuka Vijay Thadani form part of the declared Promoter Group of the Target Company and therefore, the aforesaid proposed transfer is exempt under Regulation 10 of the Takeover Regulations.

- iv. A family trust named **Thadani Family Trust** has been set up for the benefit of Mr. Vijay Kumar Thadani, Mrs. Renuka Vijay Thadani and their lineal descendants ('**Thadani Family**').
- v. PIPL Management Consultancy and Investment Private Limited ('**PIPL Consultancy**') holds 15.33% shares (2,53,66,521 shares) of the Target Company. PIPL Consultancy is a wholly owned subsidiary of Pace Industries Private Limited, which in turn is held 50% each by Mr. Rajendra Singh Pawar and Mrs. Neeti Pawar, wife of Mr. Rajendra Singh Pawar. (They) form part of the declared Promoter Group of the Target Company.
- vi. A family trust named **Pawar Family Trust** has been set up for the benefit of Mr. Rajendra Singh Pawar, Mrs. Neeti Pawar and their lineal descendants ('**Pawar Family**').
- vii. In order to facilitate succession planning and welfare of Thadani Family and Pawar Family, it is now intended that the ownership and control of Global Consultancy and PIPL Consultancy which hold the shares of the Target Company, will be held by the Thadani Family Trust and Pawar Family Trust, respectively.
- viii. Accordingly, Thadani Family Trust intends to subscribe to such number of shares of Global Consultancy such that post subscription, Thadani Family Trust would hold majority i.e. 90% or more, of Global Consultancy and thereby, indirectly acquire ownership and control over 2,59,15,838 shares (15.66%) of the Target Company.
- ix. Similarly, Pawar Family Trust intends to subscribe to such number of shares of PIPL Consultancy such that post subscription, Pawar Family Trust would hold majority i.e. 90% or more, of PIPL Consultancy and thereby, indirectly acquire ownership and control over 2,53,66,521 shares (15.33%) of the Target Company.
- x. Thus, pursuant to the aforementioned subscription of shares of Global Consultancy and PIPL Consultancy, collectively the **Acquirers** i.e. Thadani Family Trust and Pawar Family Trust, being persons acting in concert shall acquire ownership and control over 5,12,82,359 shares (30.99%) of the Target Company ('**Proposed Indirect Acquisition**').

Details of Acquirers –

Acquirer 1 – Thadani Family Trust: A private family trust settled under a deed of settlement dated April 8, 2016, for the benefit of Mr. Vijay Kumar Thadani, Mrs. Renuka Vijay Thadani and their lineal descendants.

Particulars	Person/Trust	Relationship
Settlor	Mr. Rajendra Singh Pawar	Mr. Rajendra Singh Pawar and Mr. Vijay Kumar Thadani are co – founder members and Promoters of the Target Company
Trustees	Mr. Vijay Kumar Thadani & Mrs. Renuka Vijay Thadani	Mrs. Renuka Vijay Thadani is the wife of Mr. Vijay Kumar Thadani
Beneficiaries	Mr. Vijay Kumar Thadani & Mrs. Renuka Vijay Thadani, KVT Family Trust, LVT Family Trust and NVT Family Trust	KVT Family Trust, LVT Family Trust and NVT Family Trust are the ‘Child Trusts’ of lineal descendants viz. the three daughters viz. Ms. Kiran Vijay Thadani, Ms. Leher Vijay Thadani and Ms. Nihar Vijay Thadani, of Mr. Vijay Kumar Thadani and Mrs. Renuka Vijay Thadani
The control of the Thadani Family Trust is with Mr. Vijay Kumar Thadani and Mrs. Renuka Vijay Thadani. The control of the Thadani Family Trust shall always be within the Thadani Family. Similarly, the control of Child Trusts is with Mr. Vijay Kumar Thadani and Mrs. Renuka Vijay Thadani. The control of the Thadani Child Trusts shall always be within the Thadani Family.		

Details of the settlers, trustee and beneficiaries of the ‘Child Trusts’ are as follows:

Settlor	Trustee	Beneficiaries
KVT Family Trust		
Rajendra Singh Pawar	Vijay Kumar Thadani & Renuka Vijay Thadani	Vijay Kumar Thadani, Renuka Vijay Thadani, Ms. Kiran Vijay Thadani & lineal descendants of Ms. Kiran Vijay Thadani
LVT Family Trust		
Rajendra Singh Pawar	Vijay Kumar Thadani & Renuka Vijay Thadani	Vijay Kumar Thadani, Renuka Vijay Thadani, Ms. Leher Vijay Thadani & lineal descendants of Ms. Leher Vijay Thadani
NVT Family Trust		
Rajendra Singh Pawar	Vijay Kumar Thadani & Renuka Vijay Thadani	Vijay Kumar Thadani, Renuka Vijay Thadani, Ms. Nihar Vijay Thadani & lineal descendants of Ms. Nihar Vijay Thadani

Acquirer 2 – Pawar Family Trust: A private family trust settled under a deed of settlement dated April 8, 2016, for the benefit of Mr. Rajendra Singh Pawar, Mrs. Neeti Pawar and their lineal descendants. The settlers, trustees and beneficiaries of the Trust are as follows:

Particulars	Person/Trust	Relationship
Settlor	Mr. Vijay Kumar Thadani	Mr. Rajendra Singh Pawar and Mr. Vijay Kumar Thadani are co – founder members and Promoters of the Target Company
Trustees	Mr. Rajendra Singh Pawar & Mrs. Neeti Pawar	Mrs. Neeti Pawar is the wife of Mr. Rajendra Singh Pawar
Beneficiaries	Mr. Rajendra Singh Pawar & Mrs. Neeti Pawar, USP Family Trust, URP Family Trust and UNP Family Trust	USP Family Trust, URP Family Trust and UNP Family Trust are the ‘Child Trusts’ of lineal descendants viz. Mr. Udai Singh Pawar (son), Ms. Urvashi Pawar (daughter) and Ms. Unnati Pawar (daughter), of Mr. Rajendra Singh Pawar & Mrs. Neeti Pawar
The control of the Pawar Family Trust is with Mr. Rajendra Singh Pawar and Mrs. Neeti Pawar. The control of the Pawar Family Trust shall always be within the Pawar Family. Similarly, the control of Child Trusts is with Mr. Rajendra Singh Pawar and Mrs. Neeti Pawar. The control of the Child Trusts shall always be within the Pawar Family.		

Details of the settlers, trustee and beneficiaries of the 'Child Trusts' are as follows:

Settlor	Trustee	Beneficiaries
USP Family Trust		
Vijay Kumar Thadani	Mr. Rajendra Singh Pawar & Mrs. Neeti Pawar	Mr. Rajendra Singh Pawar, Mrs. Neeti Pawar, Mr. Udai Singh Pawar & lineal descendants of Mr. Udai Singh Pawar.
URP Family Trust		
Vijay Kumar Thadani	Mr. Rajendra Singh Pawar & Mrs. Neeti Pawar	Mr. Rajendra Singh Pawar, Mrs. Neeti Pawar, Ms. Urvashi Pawar & lineal descendants of Ms. Urvashi Pawar.
NVT Family Trust		
Vijay Kumar Thadani	Mr. Rajendra Singh Pawar & Mrs. Neeti Pawar	Mr. Rajendra Singh Pawar, Mrs. Neeti Pawar, Ms. Unnati Pawar & lineal descendants of Ms. Unnati Pawar.

- xi. Trust funds would be utilized by the respective family trusts to subscribe to the shares issued by Global Consultancy and PIPL Consultancy.
- xii. The Acquirers currently do not own any shares in the Target Company.
- xiii. The current Promoter Group holding in the Target Company as on March 31, 2016, is as follows –

Table A			
Sr. No.	Name	No. of shares	% Shareholding
A.	Promoter Group		
1.	Unnati Pawar	56,242	0.03
2.	Urvashi Pawar	56,250	0.03
3.	Udai Pawar	7,500	0.01
4.	Rajendra Singh Pawar and Neeti Pawar	1,55,000	0.09
5.	Arvind Thakur	6,59,242	0.40
6.	Neeti Pawar and Rajendra Singh Pawar	4,27,326	0.26
7.	R S Pawar (HUF)	2,527	0.00
8.	Vijay Kumar Thadani and Renuka Vijay Thadani	1,55,000	0.09
9.	Renuka Vijay Thadani and Vijay Kumar Thadani	1,000	0.00
10.	V K Thadani (HUF)	2,527	0.00
11.	Global Consultancy and Investment Private Limited	2,59,15,838	15.66
12.	PIPL Management Consultancy and Investment Private Limited	2,53,66,521	15.33
13.	AKM Systems Private Limited	36,68,362	2.22
		5,64,73,335	34.12
B.	Public Shareholding	10,90,27,898	65.88
C.	Total (A + B)	16,55,01,233	100.00

- xiv. The date of the Initial Public Offer of the Target was 1st February, 1993 and the offer price was ₹50 per equity share (including premium of ₹40 per share).

xv. Following are the Key Management Personnel ('KMPs') of the Target Company as on 31st March, 2016.

<i>Table B</i>		
<i>Sr. No.</i>	<i>Name</i>	<i>Designation</i>
1.	Vijay Kumar Thadani	Vice Chairman & Managing Director
2.	P. Rajendran	Joint Managing Director
3.	Rahul K. Patwardhan	Chief Executive Officer
4.	Rohit Kumar Gupta	Chief Financial Officer

xvi. The shares of the Target Company are frequently traded in terms of Regulation 2(j) of the Takeover Regulations, taking the date of this application as the reference date. The opening price of shares of the Target Company was recorded at ₹82.50 and closing price of shares of the Target was recorded at ₹82.45 on BSE as on a date prior to the date of this application i.e. April 26, 2016.

Proposed Acquisition –

xvii. Global Consultancy is a wholly owned subsidiary of Global Solutions Private Limited, which is promoted jointly by Mr. Vijay Kumar Thadani and Mrs. Renuka Vijay Thadani.

xviii. PIPL Consultancy is a wholly owned subsidiary of Pace Industries Private Limited, which is promoted jointly by Mr. Rajendra Singh Pawar and Mrs. Neeti Pawar.

xix. Thadani Family Trust and Pawar Family Trust shall subscribe to shares issued by Global Consultancy and PIPL Consultancy, respectively. Consequent to such subscription, the Acquirers shall acquire indirect ownership and control of 5,12,82,359 shares (30.99% of the paid up share capital) of the Target Company.

Rationale –

xx. The proposed Indirect Acquisition is being undertaken pursuant to an internal family arrangement intended to streamline succession and welfare of the Thadani Family and Pawar Family. It is a non-commercial transaction which will not prejudice the interests of the public shareholders of the Target in any manner. Further, there will be no change in control or management of the Target Company.

Implications of the Proposed Acquisition –

xxi. Pursuant to subscription of shares in Global Consultancy by Thadani Family Trust and PIPL Consultancy by Pawar Family Trust respectively, the Acquirers would indirectly acquire ownership/voting rights over 5,12,82,359 shares (30.99% of share capital) of the Target Company thus triggering Regulation 3(1) and Regulation 4 read with Regulation 5 of the Takeover Regulations. The Acquirers will become a part of the Promoter Group of the Target Company after the proposed indirect acquisition.

xxii. *There will be no change in the control or management of the Target Company. Further, there will be no change in the ultimate shareholding of the Promoter Group in the Target Company.*

xxiii. *Total equity share capital/voting rights of the Target Company before and after the proposed indirect acquisition will remain the same i.e. 16,55,01,233 equity shares.*

Details of exemption sought and grounds for seeking exemption –

xxiv. *... the Acquirer has sought exemption from making an open offer in view of the following:*

- *The Proposed Indirect Acquisition for which exemption is sought will take place pursuant to a private family arrangement, which is intended to streamline Thadani Family's and Pawar Family's shareholding in the Target Company and facilitate succession planning and welfare of both the families. It is a non-commercial transaction which will not prejudice the interests of the public shareholders of the Target Company in any manner.*
- *Pursuant to the proposed indirect acquisition, no outsider will acquire shares, directly or indirectly, in the Target Company as the acquisition takes place between the entities that are part of the Promoter Group and the respective Family Trusts. The control of Family Trusts is with the Thadani Family and Pawar Family, respectively.*
- *As Mr. Vijay Kumar Thadani and Mr. Rajendra Singh Pawar are the Trustees of the Thadani Family Trust and Pawar Family Trust, respectively, there will be no change in control of the Target Company after the Proposed Acquisition.*
- *There is no change in the ultimate beneficial ownership of the person who exercise voting rights over the Target Company.*
- *The application is filed in the belief that the proposed indirect acquisition is on principle, exempted from the requirement of an open offer. SEBI does not require any open offer in spirit, when no additional voting rights are acquired and when the acquisition is made by a group of Promoters.*

- There is no new acquisition of shares by the Promoters Group and the pre-acquisition and post-acquisition shareholding of the Promoter Group in the Target Company would remain the same at 34.12%.

Table C					
	Name	Pre – Acquisition		Post – Acquisition	
		Shares	%	Shares	%
A.	Promoter Group				
1.	Unnati Pawar	56,242	0.03	56,242	0.03
2.	Urvashi Pawar	56,250	0.03	56,250	0.03
3.	Udai Pawar	7,500	0.01	7,500	0.01
4.	Rajendra Singh Pawar and Neeti Pawar	1,55,000	0.09	1,55,000	0.09
5.	Arvind Thakur	6,59,242	0.40	6,59,242	0.40
6.	Neeti Pawar and Rajendra Singh Pawar	4,27,326	0.26	4,27,326	0.26
7.	R S Pawar (HUF)	2,527	0.00	2,527	0.00
8.	Vijay Kumar Thadani and Renuka Vijay Thadani	1,55,000	0.09	1,55,000	0.09
9.	Renuka Vijay Thadani and Vijay Kumar Thadani	1,000	0.00	1,000	0.00
10.	V K Thadani (HUF)	2,527	0.00	2,527	0.00
11.	Global Consultancy and Investment Private Limited	2,59,15,838	15.66	2,59,15,838	15.66
12.	PIPL Management Consultancy and Investment Private Limited	2,53,66,521	15.33	2,53,66,521	15.33
13.	AKM Systems Private Limited	36,68,362	2.22	36,68,362	2.22
	Total Promoter Group	5,64,73,335	34.12	5,64,73,335	34.12
B.	Public	10,90,27,898	65.88	10,90,27,898	65.88
C.	Total (A + B)	16,55,01,233	100.00	16,55,01,233	100.00

xxv. Pursuant to proposed indirect acquisition, the Target Company's equity share capital held by Global Consultancy and PIPL Consultancy (aggregating to 30.99%) will be transferred to Thadani Family Trust and Pawar Family Trust respectively, wherein the Promoters Mr. Vijay Kumar Thadani and Mr. Rajendra Singh Pawar of the Target Company are one of the Trustees in the respective Family Trusts. Hence, there is no change in control of the Target Company.

xxvi. Therefore, the Acquirers have sought to make this application in order to obtain an exemption from SEBI from the applicability of Chapter II of the Takeover Regulations and particularly, Regulation 3(1) and Regulation 4 read with Regulation 5 of the Takeover Regulations."

1.4 Regulation 3(1), Regulation 4 and Regulation 5 of the Takeover Regulations state –

"Substantial acquisition of shares or voting rights. –

3. (1) No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five per cent or more of the voting rights in such target company

unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

Acquisition of Control –

4. Irrespective of acquisition or holding of shares or voting rights in a target company, no acquirer shall acquire, directly or indirectly, control over such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

Indirect acquisition of shares or control.

5. (1) For the purposes of regulation 3 and regulation 4, acquisition of shares or voting rights in, or control over, any company or other entity, that would enable any person and persons acting in concert with him to exercise or direct the exercise of such percentage of voting rights in, or control over, a target company, the acquisition of which would otherwise attract the obligation to make a public announcement of an open offer for acquiring shares under these regulations, shall be considered as an indirect acquisition of shares or voting rights in, or control over the target company.

(2) Notwithstanding anything contained in these regulations, in the case of an indirect acquisition attracting the provisions of sub-regulation (1) where, –

(a) the proportionate net asset value of the target company as a percentage of the consolidated net asset value of the entity or business being acquired;

(b) the proportionate sales turnover of the target company as a percentage of the consolidated sales turnover of the entity or business being acquired; or

(c) the proportionate market capitalisation of the target company as a percentage of the enterprise value for the entity or business being acquired;

is in excess of eighty per cent, on the basis of the most recent audited annual financial statements, such indirect acquisition shall be regarded as a direct acquisition of the target company for all purposes of these regulations including without limitation, the obligations relating to timing, pricing and other compliance requirements for the open offer.

Explanation –*For the purposes of computing the percentage referred to in clause (c) of this sub-regulation, the market capitalisation of the target company shall be taken into account on the basis of the volume-weighted average market price of such shares on the stock exchange for a period of sixty trading days preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period.”*

1.5 Vide an e-mail dated May 13, 2016, SEBI requested the Acquirers to clarify the following issues –

1. *As submitted, due to proposed acquisition there will not be any change in control of the Target Company, however, the exemption has also been sought from the applicability of Regulation 4 alongwith Regulation 3(1) and 5 of the Takeover Regulations for change in control.*
2. *As mentioned, acquisition has been proposed through subscription of shares of Global Consultancy and PIPL Consultancy. However, it is not mentioned at what price shares will be subscribed by the Acquirers.*

1.6 Vide letter dated May 20, 2016, the Acquirers submitted point-wise reply to the issues mentioned in SEBI's-mail dated May 13, 2016, stating as under –

1. *As submitted, due to proposed acquisition there will not be any change in control of the Target Company, however, the exemption has also been sought from the applicability of Regulation 4 alongwith Regulation 3(1) and 5 of the Takeover Regulations for change in control.*

“Regulation 10(1) of the Takeover Regulations specifically exempts certain acquisitions including inter-se transfer among qualifying persons being relatives from the obligation to make an open offer under Regulation 3 and Regulation 4. However, the proposed indirect acquisition of shares by the Thadani Family Trust and Pawar Family Trust is not specifically covered under the exemption listed in Regulation 10(1).

In the given fact pattern, Global Consultancy and PIPL Consultancy (Collectively referred to as ‘Existing Target Shareholders’) hold 15.66% and 15.33% shares, respectively of the Target Company.

In view of the above, pursuant to proposed transaction, the Acquirers will indirectly acquire ownership/voting rights over 30.99% share capital of the Target Company.

However, it is pertinent to highlight that –

- i. *Thadani Family Trust has been set up for the benefit of Mr. Vijay Kumar Thadani and Mrs Renuka Vijay Thadani (and their lineal descendants). Mr. Vijay Kumar Thadani and Mrs Renuka Vijay Thadani are also the Trustees of the Thadani Family Trust.*
- ii. *Pawar Family Trust has been set up for the benefit of Mr. Rajendra Singh Pawar and Mrs Neeti Pawar (and their lineal descendants). Mr. Rajendra Singh Pawar and Mrs Neeti Pawar are also the Trustees of the Pawar Family Trust.*
- iii. *Mr. Vijay Kumar Thadani and Mrs Renuka Vijay Thadani are the ultimate beneficial owners of Global Consultancy.*
- iv. *Mr. Rajendra Singh Pawar and Mrs Neeti Pawar are the ultimate beneficial owners of PIPL Consultancy.*

Thus, even though there is an indirect change of control of the Target Company from the existing Target Shareholders to the Acquirers, there will be no effective change in control as the ultimate beneficial ownership of both existing Target Shareholders and the Acquirers rests with the same individuals and their lineal descendants.

Since, the scope of Regulation 4 of the Takeover Regulations is wide and covers all transactions involving any indirect change in control, it seems prudent to request for exemption under Regulation 4 alongwith Regulations 3(1) and 5 of the Takeover Regulations for the proposed transaction.”

2. As mentioned, acquisition has been proposed through subscription of shares of Global Consultancy and PIPL Consultancy. However, it is not mentioned at what price shares will be subscribed by the Acquirers.

“The Acquirers would subscribe to shares of Global Consultancy and PIPL Consultancy based on the prevailing book value of the respective companies at the time of subscription. Further, the value at which the shares shall be subscribed would be computed in accordance with the applicable laws including Companies Act, 2013 and the Income Tax Act, 1961. ...”

- 1.7 Vide an e-mail dated July 25, 2016, the Acquirers submitted details of the Board of Directors of the Target Company –

<i>Table D</i>		
<i>Sr. No.</i>	<i>Name</i>	<i>Designation</i>
1.	<i>Rajendra S. Pawar</i>	<i>Chairman</i>
2.	<i>Vijay Kumar Thadani</i>	<i>Vice Chairman & Managing Director</i>
3.	<i>P. Rajendran</i>	<i>Joint Managing Director</i>
4.	<i>Surendra Singh</i>	<i>Director</i>
5.	<i>Sanjay Khosla</i>	<i>Director</i>
6.	<i>Anand Sudarshan</i>	<i>Director</i>
7.	<i>Geeta Mathur</i>	<i>Director</i>

- 1.8 Vide an e-mail dated July 27, 2016, SEBI requested the Acquirers to clarify the following issues –

1. Reasons for Rajendra Singh Pawar being a Settlor in the Trust of the Thadani Family and Vijay Kumar Thadani being a Settlor in the Trust of Pawar Family.
2. Reason for including ‘Child Trusts’ as beneficiaries instead of the children directly as beneficiaries of both Family Trusts.

1.9 Vide e-mails dated July 28, 2016 and August 8, 2016, the Acquirers submitted point-wise reply a to the issues mentioned in SEBI's e-mail dated July 27, 2016, *inter alia* stating –

1. *Reasons for Rajendra Singh Pawar being a Settlor in the Trust of the Thadani Family and Vijay Kumar Thadani being a Settlor in the Trust of Pawar Family.*

“Under the Indian Trusts Act, the role of the Settlor or the Author of the Trust is to create the Trust for the benefit of defined beneficiaries under the trusteeship of designated trustees. Settlers would normally not have any continuing interest in the Trust either as a Trustee or a beneficiary. In the subject situation, it was desired that the Settlor is a person who is close to the family and has the family's wider interests at heart. Since Mr. Vijay Kumar Thadani and Mr. Rajendra Singh Pawar have been associated for many decades as founders and Promoters of this group and share deep respect and trust for each other, they were the ideal choice to settle the respective family trusts.”

2. *Reason for including 'Child Trusts' as beneficiaries instead of the children directly as beneficiaries of both Family Trusts.*

“The Promoters have provided for 'Child Trusts' as beneficiaries as against children directly in order to facilitate smooth succession planning for the children's families as well. The children of both Promoters have attained an age where they would need to consider succession planning in respect of their respective family units. It may be noted that the beneficiaries of these Child Trusts are restricted to only their lineal descendants.

... The shares of the (Target Company) would continue to be held by the Master Trust and the Child Trusts would have no control over the decisions of the Master Trust or decision as shareholders of the Target Company. Such decisions would continue to be taken by the Trustees in their individual capacity. As already provided in the Trust Deed, the children would automatically become trustees of the Master Trust on the demise of the parents.

We may also mention that the Child Trusts are currently under the control of the same Trustees who are Trustees of the Master Trust. Post demise of the parents, it is the individual children who would then be appointed as Trustees in their respective Child Trust. As Trustees, their role would be restricted to deciding on the allocation of the income distributed from the Master Trust (if any). Hence, the Child Trusts serve a limited purposes of accumulating wealth for the children's respective families and do not have any direct role in the administration of the Master Trust.”

- 1.10 Vide an e-mail dated September 7, 2016, the Acquirers submitted point-wise reply to clarifications sought by SEBI in the meeting held with them on August 31, 2016, as under –

Issue 1 – Appointment of Professional Trustee and consequent impact on control over listed company.

“We are submitting an Undertaking that the Trust Deeds would be amended to provide that additional trustees may either be lineal descendants of Founder Trustees or a Professional Trustee. The Undertaking also states that specific approval shall be sought from SEBI prior to appointment of a Professional Trustee. We submitting an Undertaking that ‘Professional Trustee’ in the Master Trust as well as the Child Trust can only mean a professional organisation involved in trusteeship services with a minimum track record of five years.

We are also submitting an Undertaking that Child Trust Nominee as referred to in the Deed would only be restricted to a Professional Trustee (as defined above) or a lineal descendant of the Child.”

Issue 2 –Appointment of ‘Child Trusts’ as beneficiaries in Master Family Trust and consequent impact on control over listed company.

“We are submitting an Undertaking that no further Trusts/entities can be appointed as beneficiaries either in the Master Trust Deeds or in the Child Trust Deeds. The additional beneficiaries to be added would only be restricted to lineal descendants.

Further, we are also submitting an Undertaking on behalf of the Child Trusts that any change in the Trustees and/or beneficiaries would be notified to the stock exchanges.

We have attached the relevant Undertaking on behalf of all the Master Trusts and Child Trusts.”

Observations of the Takeover Panel on the Application made by the Proposed Acquirers –

A. Takeover Panel’s Recommendations –

- 2.1 The Application dated April 27, 2016, was forwarded to the Takeover Panel in terms of the *proviso* to Regulation 11(5) of the Takeover Regulations. The matter was deliberated by the Takeover Panel in its meeting held on October 20, 2016 and the minutes of the said meeting were approved on November 28, 2016. The Takeover Panel made the following observations –

“In the case of NIIT Limited and ..., the Panel took note that the Target Companies are promoted and managed by Thadani and Pawar Families. Transfer of the shareholding is proposed by entities forming part of the Promoter Group to two Trusts i.e. Pawar Family Trust and Thadani Family Trust.

The aforesaid trust beneficiaries are existing individual Promoters and three Trusts (Child Trusts). The beneficiaries of the Child Trusts are current promoters, their children and lineal descendants of the children. The Panel also took note of the clause in the Trust deeds that provides for appointment/ removal of additional professional trustee(s).

The Panel deliberated the issue of child trust as beneficiaries of the acquiring Trusts and took note of the undertaking of the applicant that no further Trusts/entities would be appointed as beneficiaries either in the acquirer trusts or in the child trusts. It was further noted by the Panel that since the beneficiaries of the child trusts include current promoters, their children and their lineal descendants, the effective control over the Target Company remains with the current promoters. Hence, the Panel was of the view that the same may be allowed.

Further, with respect to the clause relating to the appointment of professional trustees, the Panel expressed reservations as it was felt that it may lead to change in control over the target company at any later stage and it may become difficult to monitor.

In view of the above, the Panel recommended grant of exemption subject to the undertakings taken by SEBI in the past and removal of the clause relating to appointment/ removal of professional Trustee(s).

With a view to enforce compliance with the conditions specified in the exemption orders passed by SEBI in trust case, the Panel recommended the following:

- (i) The Trust shall confirm, on an annual basis, that it is in compliance with the exemption order passed by SEBI. The said confirmation shall be furnished to the company which it shall disclose prominently as a note to the shareholding pattern filed for the quarter ending March 31 each year, under Regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.*
- (ii) The Trust shall get the compliance status certified from an Independent Auditor annually and furnish the same to SEBI.”*

2.2 Vide an e-mail dated December 6, 2016, SEBI requested the Acquirers to clarify the following –

“Based on the recommendation received from SEBI Takeover Panel, you are requested to confirm whether the (Acquirers) are willing to remove the clause related to professional trustees from the Master Trust and Child Trusts (Deeds).”

2.3 The Acquirers replied vide e-mails dated December 12, 2016 and December 16, 2016, forwarding copies of the revised Undertakings for Master and Child Trust Deeds and *inter alia* stating –

“As requested, we confirm the change in the Undertakings –

Necessary clauses in the Trusts deed (family trust and child trusts) relating to appointment of the professional trustees shall be deleted.

The Master Trust deed and Child Trust deed shall suitably be modified to restrict appointment of the Trustee(s) to lineal descendants of the Founder Trustees.”

B. Takeover Panel’s Recommendations –

2.4 The recommendations relating to the submission of *compliance status certified from an Independent Auditor* was again deliberated by the Takeover Panel in its meeting held on January 7, 2017 (minutes of the said meeting were approved on February 17, 2017). The Takeover Panel made the following observations –

“The issue of whether the Independent Auditor certified status of compliance with the exemption order should be filed with SEBI or stock exchange was also deliberated by the Panel. The compliance certificate should be filed with the stock exchanges with a copy endorsed to SEBI for its records.”

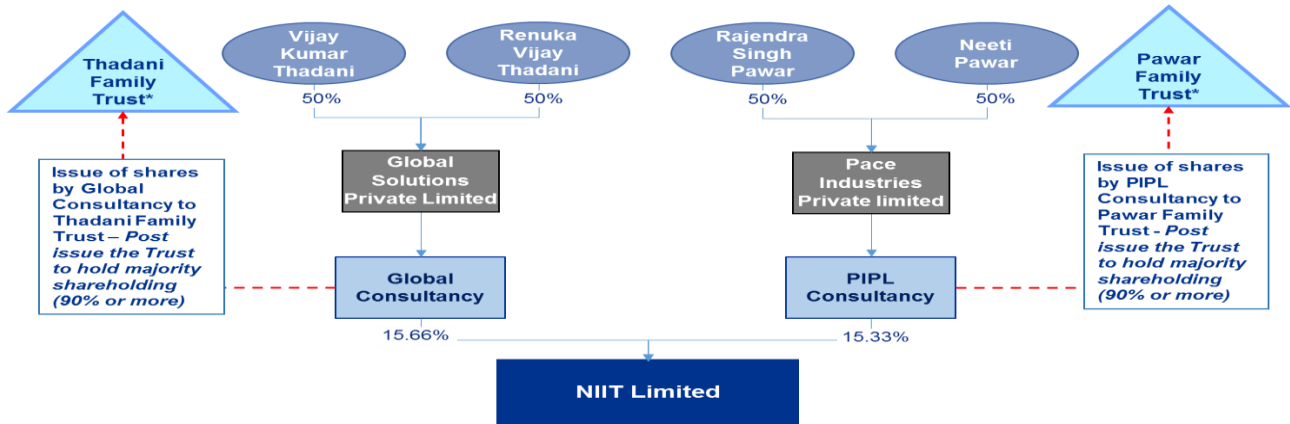
Consideration of the Application and Findings –

3.1 I have considered the Application alongwith further correspondences/submissions/clarifications submitted by the Proposed Acquirers; the recommendations of the Takeover Panel and other material available on record.

3.2.1 From the preceding paragraphs, it is noted that –

A. The Application submitted is in respect of the proposed acquisition and control of the shareholding and voting rights in the Target Company i.e. **NIIT Limited**.

B. The aforesaid indirect acquisition is proposed to be made by the Thadani Family Trust and the Pawar Family Trust i.e. the **Proposed Acquirers**, in the following manner –



i. Global Consultancy (wholly owned subsidiary of Global Solutions, which in turn is held 50% each by Mr. Vijay Kumar Thadani and Mr. Renuka Vijay Thadani, wife of Mr. Vijay Kumar Thadani) holds 15.66% shares (2,59,15,838 shares) of the Target Company.

Thadani Family Trust, which was set up for the benefit of Mr. Vijay Kumar Thadani, Mrs. Renuka Vijay Thadani and their lineal descendants, intends to subscribe to such number of shares of GSPL Advisory such that post subscription, Thadani Family Trust would hold majority i.e. 90% or more, of GSPL Advisory and thereby, indirectly acquire ownership and control over 2,59,15,838 shares (15.66%) of the Target Company.

ii. PIPL Consultancy (wholly owned subsidiary of Pace Industries Private Limited, which in turn is held 50% each by Mr. Vijay Kumar Thadani and Mr. Renuka Vijay Thadani, wife of Mr. Vijay Kumar Thadani) holds 15.33% shares (2,53,66,521 shares) of the Target Company.

Pawar Family Trust, which was set up for the benefit of Mr. Rajendra Singh Pawar, Mrs. Neeti Pawar and their lineal descendants, intends to subscribe to such number of shares of PIPL Business Advisors such that post subscription, Pawar Family Trust would hold majority i.e. 90% or more, of PIPL Business Advisors and thereby, indirectly acquire ownership and control over 2,53,66,521 shares (15.33%) of the Target Company.

iii. Pursuant to the aforementioned subscription of shares of GSPL Advisory and PIPL Business Advisors, the Thadani Family Trust and Pawar Family Trust shall acquire ownership and control over 5,12,82,359 shares (30.99%) of the Target Company, thereby breaching 25% limit triggering Regulation 3(1), Regulation 4 and Regulation 5 of the Takeover Regulations.

- C. The proposed indirect acquisition transaction is pursuant to a private family arrangement intended to streamline the succession and welfare of the Thadani and Pawar families and will not affect the interest of the public shareholders.
- D. There will be no change in control of the Target Company pursuant to the proposed indirect acquisition.
- E. There is no new acquisition of shares by the Promoters Group and the pre-acquisition and post-acquisition shareholding of the Promoter Group in the Target Company will remain the same at 30.99%.
- F. There will also be no change in the public shareholding of the Target Company.
- G. The Target Company shall continue to be in compliance with the minimum public shareholding requirements under the Securities Contracts Regulation Rules, 1957 (“SCRR”) and the Listing Agreement.
- H. From the Takeover Panel’s Recommendations, the following is reiterated –

“In the case of NIIT Limited and ..., the Panel took note that the Target Companies are promoted and managed by Thadani and Pawar Families. Transfer of the shareholding is proposed by entities forming part of the Promoter Group to two Trusts i.e. Pawar Family Trust and Thadani Family Trust. The aforesaid trust beneficiaries are existing individual Promoters and three Trusts (Child Trusts). The beneficiaries of the Child Trusts are current promoters, their children and lineal descendants of the children.

The Panel deliberated the issue of child trust as beneficiaries of the acquiring Trusts and took note of the undertaking of the applicant that no further Trusts/entities would be appointed as beneficiaries either in the acquirer trusts or in the child trusts. It was further noted by the Panel that since the beneficiaries of the child trusts include current promoters, their children and their lineal descendants, the effective control over the Target Company remains with the current promoters. Hence, the Panel was of the view that the same may be allowed.”

- I. Vide e-mails dated December 12, 2016 and December 16, 2016, the Proposed Acquirers forwarded copies of the revised Undertakings for Master and Child Trust Deeds wherein clauses relating to appointment of the professional trustees were deleted and such Trust Deeds were modified to restrict appointment of the Trustee(s) to lineal descendants of the Founder Trustees.

3.2.2 Considering the aforementioned, I am of the view that exemption as sought for in the Application (read with further correspondences/submissions/clarifications) be granted to the Proposed Acquirers, subject to certain conditions as ordered herein below.

Order –

4.1 I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 (“SEBI Act”) read with Regulation 11(5) of the Takeover Regulations, hereby grant exemption to the Proposed Acquirers, viz. **Thadani Family Trust (represented by its Trustee – Vijay Kumar Thadani) and Pawar Family Trust (represented by its Trustee – Rajendra Singh Pawar)**, from complying with the requirements of Regulations 3(1), Regulation 4 and Regulation 5 of the Takeover Regulations with respect to the proposed indirect acquisition/exercise of voting rights in respect of the Target Company, viz. **NIIT Limited**, by way of proposed transactions as mentioned in the Application.

4.2 The exemption so granted is subject to the following conditions:

- i. The proposed indirect acquisition shall be in accordance with the relevant provisions of the Companies Act, 2013 and other applicable laws.
- ii. On completion of the proposed indirect acquisition, the Acquirer shall file a report with SEBI in the manner provided in the Takeovers Regulations, within a period of 21 days from the date of such acquisition.
- iii. The statements/ averments made or facts and figures mentioned in the Application and in the subsequent correspondences/submissions/clarifications by the proposed acquirer are true and correct.
- iv. The provisions of the SEBI Act and the Regulations framed thereunder will apply on the basis that the ownership or control of shares or voting rights vests not only directly with the Trustees but also indirectly with the beneficiaries of the Acquirer.
- v. There shall be no limitation of liability of the Trustees/beneficiaries in relation to the provisions of the SEBI Act and all Regulations framed thereunder.
- vi. The Proposed Acquirers shall honour their undertakings and shall also ensure compliance with the statements, disclosures and undertakings made in the Application and in their subsequent correspondences.
- vii. The Proposed Acquirers/Trusts shall confirm, on an annual basis, that they are in compliance with the exemption order passed by SEBI. The said confirmation shall be furnished to the Target

Company, which it shall disclose prominently as a note to the shareholding pattern filed for the quarter ending March 31 each year, under Regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

viii. The Proposed Acquirers/Trusts shall get the compliance status certified from an Independent Auditor annually and furnish the same to the stock exchanges with a copy endorsed to SEBI for its records.

ix. The Proposed Acquirer/Trust shall also ensure that the covenants in the Trust Deed are not contrary to the above conditions and undertaking provided by the transferors. In such case, the Trust Deed shall be suitably modified and expeditiously reported to SEBI.

4.3 The exemption granted above is limited to the requirements of making open offer under the Takeover Regulations and shall not be construed as exemption from the disclosure requirements under Chapter V of the Takeover Regulations; compliance with the SEBI (Prohibition of Insider Trading) Regulations, 2015; Listing Agreement/SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 or any other applicable Acts, Rules and Regulations.

4.4 The Application dated April 27, 2016 (read with further correspondence/submissions/ clarifications) filed by Thadani Family Trust (represented by its Trustee – Vijay Kumar Thadani) and Pawar Family Trust (represented by its Trustee – Rajendra Singh Pawar), is accordingly disposed of.

Place: Mumbai
Date: March 7, 2017

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA