



भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

Deputy General Manager
Division of Corporate Restructuring
Corporation Finance Department
Phone no: 022-26449583

CFD/DCR/OW/2018/
May 04, 2018

Nitesh Estates Limited
Level 7, Nitesh Timesquare,
#8, M.G. Road,
Bangalore – 560001

Kind attention: Mr. D. Srinivasan – Company Secretary and Compliance Officer

Dear Sir,

Sub: Request for informal guidance under the SEBI (Informal Guidance) Scheme, 2003 {Scheme} in the matter of M/s. Nitesh Estates Limited under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009

1. This has reference to your letter dated March 06, 2018 on the captioned subject.
2. You have, *inter alia*, represented as follows-
 - a) M/s. Nitesh Estates Limited ("Target Company") is a listed company. The promoter group shareholding in the target company is 47.32%.
 - b) During the financial year 2017-18, the promoter group acquired 0.42% shares of the target company.
 - c) It is proposed to make a transfer of 1.88% shares held by Hampton Investments Private Limited (one of the promoters), in favour of Nitesh Industries Private Limited (one of the promoters).
 - d) The target company is under discussion with an investor, who has evinced interest in investing in the capital of the target company and willing to take up to 51% of the paid up capital of the target company. (company will comply with the applicable procedures under the Companies Act, 2013 and ICDR Regulations and other applicable legislatures).
 - e) The proposed issue will be by way of preferential offer to the investor, who is not a shareholder or any way connected to the promoters or promoter group.

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सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बांद्रा कुर्ला कॉम्प्लेक्स, बांद्रा (पूर्व), मुंबई - 400 051.
दूरभाष : 2644 9950 / 4045 9950 (आई.वी.आर. एस.), 26449000 / 40459000 फैक्स : 2644 9019 से 2644 9022 वेब : www.sebi.gov.in

SEBI Bhavan, Plot No. C4-A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.
Tel.: 2644 9950 / 4045 9950 (IVRS), 26449000 / 40459000 Fax : 2644 9019 to 2644 9022 Web : www.sebi.gov.in



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- f) The proposal will be subject to necessary due diligence, approval by the board of directors, approvals by the shareholders of the company by way of special resolution and in compliance with the applicable laws including SEBI/other authorities.
- g) The pricing of the shares will be as per the provisions of the Companies Act, 2013 and ICDR Regulations.
- h) The exact entity that will be investing, methodology of infusion of funds, timeline etc. are not yet finalized. The finality is expected to happen in next three months.
3. Based on the above facts as stated in your letter you have sought informal guidance on the following issues:
- a) *Whether the proposed transfer of 1.88% of shares from one promoter entity to another, qualifies as normal transfer within 5% limit as well as inter se transfer not amounting to seeking exemption under Regulation 10 SEBI (SAST) Regulations.*
- b) *Other than normal disclosures under Regulations 29 and other periodical returns whether the Promoter need to comply with filing of forms under Regulation 10 of SEBI (SAST) Regulations.*
- c) *Whether the inter-se transfer will be treated as Sale of shares by Promoter Group and will it impact the proposed " Preferential offer" to new investor, who is not promoter group, nor a shareholder as on date, as stipulated under regulation 72 of SEBI(ICDR) regulations.*

Further, vide email dated April 06, 2018, it is clarified that guidance is being sought on:

- d) *The inter-se transfer of 1.88% shares among promoter group though permitted under SEBI (Substantial acquisition of Shares and Takeovers) Regulations, 2011 (Takeover regulations), will it be affecting the proposed preferential offer under ICDR Regulations.*
- e) *Whether any other compliance has to be made under Regulation 10 of Takeover Regulations.*
4. In this regard, it may be noted that we have considered the submissions made by you in your letter and email under reference and without necessarily agreeing with your analysis, our view on the queries raised by you is as under:



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Takeover Regulations-

a) Regulation 3(2) of SAST Regulations provides that no acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations, shares or voting rights in the target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

b) In view of the aforesaid, replies to queries no. 3(a) (b) and (e) as mentioned above is replied as under:

It may be noted that exemption provided under Regulation 10 applies only in case of obligation to make open offer as provided under regulation 3 and regulation 4 of Takeover regulations, subject to fulfilment of conditions as mentioned therein. In the matter, an inter-se transfer of 1.88% shares among promoter group is being proposed. The current promoter group holding is 47.32%. Thus, regulation 3(2) would be triggered only in case of acquisition of more than 5% shares within the financial year. The proposed transaction is for 1.88% shares. Thus, the proposed transaction, if considered individually, would not trigger the requirement and therefore, question of applicability of exemptions as provided under regulation 10 would not arise. However, it may trigger the requirement if taken together with any other transaction made in the financial year crosses 5% threshold. However, Regulation 10 would apply in that case, subject to fulfilment of conditions as mentioned therein.

ICDR Regulations-

c) By virtue of the inter-se transfer Hampton investments Pvt. Ltd. would be selling its entire shareholding to Nitesh Industries Pvt. Ltd. at the relevant transfer day at market price. Regulation 72 of ICDR Regulations provides conditions for preferential issue. In terms of the said regulation, a listed issuer may make a preferential issue of securities after fulfilling the conditions as provided therein.



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- d) In view of the aforesaid reply to queries as mentioned at para no. 3(c) and (d) above is as under:

Regulation 72 of the ICDR provides conditions for preferential issue. In terms of the said Regulation, a listed issuer may make a preferential issue of specified securities after fulfilling the conditions as provided therein. In terms of regulation 72(2), issuer shall not make preferential issue of specified securities to any person who has sold any equity shares of the issuer during the six months preceding the relevant date. The explanation to regulation 72(2) provides that where any person belonging to promoter(s) or the promoter group has sold his equity shares in the issuer during the six months preceding the relevant date, the promoter(s) and promoter group shall be ineligible for allotment of specified securities on preferential basis.

Therefore, allotment through preferential issue cannot be made to any promoter/ promoter group entities during six months pursuant to the proposed selling by Hampton Investments Pvt. Ltd. to Nitesh Industries Pvt. Ltd. Applicant may make preferential allotment to new investor subject to the conditions mentioned under Regulation 72 of ICDR Regulations and compliance with all the applicable provisions of law.

5. The above position is based on the information furnished in your letter under reference. Different facts or conditions might lead to a different result. Further, this letter does not express a decision of the Board on the questions referred.
6. Vide your letter dated March 06, 2018, you have requested for confidentiality in respect of your interpretative letter. Acceding to your request, it has been decided that the interpretative letter issued to you in this matter will not be made public for a period of 90 days from the date of issuance of this letter.
7. You may also note that the above views are expressed only with respect to the clarification sought in your letter under reference with respect to SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and do not affect the applicability of any other law or requirements of any other SEBI Regulations, Guidelines and Circulars administered by SEBI or of the laws administered by any other authority.

Yours faithfully,


Yogita Jadhav