



Chief General Manager  
Corporation Finance Department  
Division of Corporate Restructuring  
Tel. 2644 9200  
Email: sundaresanvi@sabi.gov.in

भारतीय प्रतिभूति  
और विनियम बोर्ड  
Securities and Exchange  
Board of India

27038  
CFD/PCI/IGI/.../OWN/2012  
December 5, 2012

The Commercial Engineers and Body Builders Company Limited  
124, Napier Town  
Jabalpur-482001  
Madhya Pradesh

Dear Sir,

**Sub: Request for "Interpretative Letter" under the SEBI (Informal Guidance) Scheme, 2003 (Scheme) by Mr Kailash Gupta in the matter of M/s. The Commercial Engineers and Body Builders Company Limited (Target Company) under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Regulations).**

1. This has reference to your letter dated October 10, 2012 requesting for Interpretative letter under Securities and Exchange Board of India (Informal Guidance) Scheme, 2003.
2. You have, *inter alia*, represented as follows-
  - a. THE COMMERCIAL ENGINEERS AND BODY BUILDERS COMPANY LIMITED (CEBBCO OR THE COMPANY), is a publicly listed company having its registered office at 84/105A, G.T. Road, Kanpur Mahanagar, Kanpur- 208003, Uttar Pradesh. The company is engaged in the business of designing and manufacturing vehicle and locomotive bodies for road and railway transportation.
  - b. The equity shares of the company are listed on BSE limited (BSE) and National Stock Exchange (NSE) since October 18, 2010 pursuant to its initial public offer.
  - c. The promoters and promoters group of the company hold 55.81% of the paid up shares capital of the company.
  - d. One of the promoters of the company, Mr. Ajay Gupta ("AG") who holds 20.53% in the paid up share capital of the company intends to transfer shares of the company constituting 17.61% of the paid up shares capital to Mr. Kailash Gupta ("KG" or acquirer), another promoter of the company Mr. Kailash Gupta is Mr. Ajay Gupta father in law.
  - e. A reading of Regulation 10(1)(a)(ii) of the Takeover Regulations suggests that the promoters must be disclosed as such in the shareholding pattern filed by the company in terms of the listing agreement or under the takeover regulation 2011 for period of three years prior to the proposed acquisition. Since the company was listed only in October

W/S

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

Pg 1 of 4



अनुवर्ती :  
Continuation :

भारतीय प्रतिभूति  
और विनियम बोर्ड  
**Securities and Exchange  
Board of India**

2010, AG and KG have been disclosed as promoters for two years only. However, both have been shareholders for a period of more than three years as on 1 Oct 2012.

- f. In the instant case, proposed interse transfer of shares between AG and KG would qualify for an exemption under regulation 10(1)(a)(ii) of the Takeover regulation 2011 for the reasons mentioned herein below:
- (i) Since the company got listed in October 2010, it was impossible for the company to make such a disclosure for a period prior to October 2010 pursuant to the listing agreement or under the takeover regulation 2011. However, both the transferor and transferee have been holding shares as promoters of the company for more than 3 years. KG is promoter/ shareholder of the company since October 3, 2005 and AG is the promoter/ shareholder of the company since December 23, 2006.
  - (ii) Further, in such a case, it is imperative to look into the spirit and intent behind the requirement of naming qualifying persons as promoters for a period of three years.
- g. Further, in such case, it is imperative to look into the spirit and intent behind the requirement of naming qualifying persons as promoters for a period of 3 years which can be ascertained from the following:
- (i) Proviso to regulation 3(e) (iii)(b) of the erstwhile SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 1997 states:  
  
*"Provided that the transferor(s) as well as the transferee(s) have been holding shares in the target company for a period of at least three years prior to the proposed acquisition"*
  - (ii) Paragraph 12.6 of the Report of the Takeover Regulation Advisory Committee("TRAC") dated July 19, 2010 based on which the current regulations were drafted states :
  - (iii) *"In respect of inter-se transfers amongst certain—qualifying parties as listed and defined under the Takeover Regulations, the Committee recommends that, in order to curb the abuse of introduction of new entities as qualifying parties, in most cases a requirement of pre—existing relationship of at least three years has been prescribed...."*
  - (iv) As is evident from the erstwhile Takeover Regulations 1997 and TRAC's interpretation as mentioned above, the intention behind the requirement of holding shares in the target company and named as promoters for a period of at least three years is to ensure that the transferor and transferee involved have a long-standing relationship inter-se and with the company. We submit that a three year holding / disclosure requirement ensures the same.
  - (v) We further submit that on applying this test to the instant case, it can clearly be seen that both AG and KG have been holding shares in the Company as promoters for

Ves



अनुवर्ती:  
Continuation :

भारतीय प्रतिभूति  
और विनियम बोर्ड  
**Securities and Exchange  
Board of India**

more than three years and we believe that this is sufficient to meet the three years threshold requirement for the purposes of Regulation 10(1)(a)(ii) of the Takeover Regulation 2011. In other words, the shortage not be an impediment to the exemption process as the purpose of the safeguard under Regulations 10(1)(a)(ii) has been squarely met.

3. In view of the above, you have sought interpretive letter from SEBI on the following :-

**Whether the inter-se transfer of shares from AG to KG will qualify for an exemption under regulation 10(1)(a)(ii) of the takeover regulations, 2011 i.e. inter-se transfer of shares amongst the promoters.**

4. We have considered the submission made by you in your letters under reference and without necessarily agreeing with your analysis, our views on the issues are as under.

(a) Regulation 10(1)(a)(ii) of the SEBI(SAST) Regulations, 2011 is reproduced for reference below:

*"The following acquisitions shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 subject to fulfillment of the condition stipulated therefor.-*

*(a) Acquisition pursuant to inter se transfer of shares amongst qualifying persons , being,--*

*(i) ....*

*(ii) Persons named as promoters in the shareholding pattern filed by the target company in terms of the listing agreement or these regulations for not less than three years prior to the proposed acquisition"*

(b) Thus, regulation 10(1)(a)(ii) clearly states that promoters can transfer shares amongst themselves only if the following conditions are fulfilled:

(i) Persons named as promoters in the shareholding pattern filed by the target company in terms of the listing agreement for a continuous period of 3 years prior to the proposed acquisition.

(ii) Acquisition price shall not be higher by more than 25% of the Volume Weighted Average Market price for a period of 60 trading days preceding the date of issuance of notice for the proposed inter-se.

(iii) The transferor and transferee have complied with applicable disclosure requirements set out in Chapter-V.

(c) Since the company was listed in October 2010 only, the shareholding pattern in terms of the listing agreement is available only for two years. Thus, prima facie the promoters

1967



अनुवर्ती:  
Continuation :

भारतीय प्रतिभूति  
और विनियम बोर्ड  
*Securities and Exchange  
Board of India*

do not qualify for the inter-se transfer since they are not complying with one of the pre-requisites mentioned at point 4(b)(i) above.

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. 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 Securities and Exchange Board of India (Substantial Acquisition of Shares & Takeovers) Regulations, 2011 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,

V S Sundaresan