



भारतीय प्रतिभूति
और विनियम बोर्ड
Securities and Exchange
Board of India

GENERAL MANAGER
DEPARTMENT OF DEBT AND HYBRID SECURITIES
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SEBI/HO/DDHS/P/OW/2021/37583/1
December 16, 2021

India Infradebt Limited
The Capital, 'B' Wing, 1101 A,
Bandra Kurla Complex, Mumbai-400051

Kind Attention: Mr. Gaurav Tolwani, Company Secretary

Dear Sir,

Subject: Request for informal guidance by way of an interpretive letter under the SEBI (Informal Guidance) Scheme, 2003 in connection to in connection with SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2008, 2015 [Last amended on September 07, 2021] (LODR Regulations)

1. This has reference to your letter dated November 09, 2021 wherein you have sought informal guidance by way of an "Interpretative letter" from SEBI under the SEBI (Informal Guidance) Scheme, 2003.
2. In your letter under reference, the following, *inter-alia*, has been stated:
 - a. India Infradebt Limited (Infradebt / Company / Applicant) is a Public Limited Company formed by four leading financial institutions viz. ICICI Bank being the largest shareholder with a 42.3% shareholding, followed by Bank of Baroda with 41% shareholding, Citicorp Finance India Limited with 10% shareholding and Life Insurance Corporation of India with 6.7% shareholding.
 - b. It is registered as an Infrastructure Debt Fund (IDF) - NBFC (Systematically Important Non- Deposit taking Company) with RBI. It finances completed infrastructure projects which have completed atleast one year of commercial operations by way of issuing secured and unsecured Non-Convertible debenture (NCDs) on private placement basis.
 - c. All corporate shareholders of the Company and the applicant have entered into a Joint Venture and shareholders' agreement.
 - d. Vide SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2021 dated September 07, 2021, Corporate Governance provisions contained in Regulations 15 to 27 of the LODR Regulations have been made applicable for high value debt listed companies on 'Comply or Explain' basis until March 2023.
 - e. Regulation 23 of LODR Regulations, *inter alia*, states that all material related party transactions shall require approval of the shareholders through resolution and no related party shall vote to approve such resolutions whether the entity is a related party to the particular transaction or not:

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.), 2644 9000 / 4045 9000 फैक्स : 2644 9019 से 2644 9022 वेब : www.sebi.gov.in



अनुवर्ती :
Continuation : 2.

भारतीय प्रतिभूति
और विनियम बोर्ड
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- f. Therefore, India Infradebt Limited is now required to obtain shareholders' approval for all material related party transactions wherein all entities falling under the definition of related parties shall not vote to approve the relevant transaction irrespective of whether the entity is a party to the particular transaction or not.
- g. Proviso of Section 188(1) of Companies Act, 2013 provides an exemption to a company in which 90% or more members, in number, are relatives of promoters or are related parties, enabling related party to vote on related party transactions.

Queries:

- h. *Considering that all corporate shareholders are identified as related parties for the applicant and cannot vote to approve the related party transaction at the General Meeting and in view of specific exemption provided by the Companies Act, 2013, for not voting by related party on related party transactions to companies which has 90% or more members, in number, are relatives of promoters or are related parties, the applicant has:*
- i. *requested to provide informal guidance- interpretative letter regarding procedure to obtain shareholder's approval for:*
- *Ratification of all existing material related party transactions and;*
 - *Prospective material related party transactions and;*
- ii. *Proposed that the applicant can continue with above mentioned exemptions specifically provided under the Companies Act, 2013, where the related party (except a related party for a particular transaction) can vote for approving material related party transaction(s).*

Our comments:

3. We have considered the submissions made by you in your letter under reference. Without necessarily agreeing with your analysis, our view is as under:
- a. In view of the definition of related party mentioned under Companies Act, 2013 and considering the Joint Venture and Shareholders Agreement between the applicant and corporate shareholders of applicant, the 4 corporate shareholders of the Applicants namely ICICI Bank Limited, Bank of Baroda, Citicorp Finance India Limited and Life Insurance Corporation of India are "related party".
- b. In terms of Regulation 23(4) of the LODR Regulations, "All material related party transactions shall require approval of the shareholders through resolution and no related party shall vote to approve such resolutions whether the entity is a related party to the particular transaction or not".
- c. In terms of Regulation 23(7) of the LODR Regulations, "For the purpose of this regulation, all entities falling under the definition of related parties shall not vote to approve the relevant transaction irrespective of whether the entity is a party to the particular transaction or not."



अनुवर्ती :
Continuation : 3

भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

- d. In terms of Regulation 23(6) of the LODR Regulations, *"The provisions of this regulation shall be applicable to all prospective transactions"*.
- e. In terms of Regulation 23(8) of the LODR Regulations, *"All existing material related party contracts or arrangements entered into prior to the date of notification of these regulations and which may continue beyond such date shall be placed for approval of the shareholders in the first General Meeting subsequent to notification of these regulations"*.
- f. Thus, from the above, it is noted that all existing and prospective material related party transactions requires shareholder approval through resolution and no related party shall vote to approve such resolutions. Hence, the applicant is now required to obtain shareholder's approval for all existing and prospective material related party transactions, but the related party cannot vote to approve such transactions.
- g. In this context, in view of the inherent difficulty as stated by you, your attention is drawn to Explanation 3 to Regulation 15(1A) of LODR Regulation, which states as follows:
"'Comply or explain' for the purpose of the second proviso to sub-regulation (1A) of regulation 15 shall mean that the entity shall endeavour to comply with the provisions and achieve full compliance by March 31, 2023. In case the entity is not able to achieve full compliance with the provisions, till such time, it shall explain the reasons for such non-compliance/ partial compliance and the steps initiated to achieve full compliance in the quarterly compliance report filed under clause (a), sub-regulation (2) of regulation 27 of these regulations."
- h. Thus, based on the representation of the facts mentioned by the applicant, regarding the procedure for obtaining shareholders' approval for "material related party transactions", the case of the applicant appears to fall under the category of "comply or explain" mentioned above. Therefore, the applicant shall disclose the reasons for such non-compliance / partial compliance and the steps initiated to achieve full compliance in its quarterly compliance report on corporate governance filed with the Stock Exchanges.
4. The above position is based on the information furnished in your letter under reference. Different facts or conditions might require different results. Further, this letter does not express a decision of the Board on the question referred.
5. You may also note that the above position/view is expressed only with respect to the clarifications sought in your letter under reference with respect to the Circulars and Regulations as referred above and does not affect the applicability of any other law or requirements of any other SEBI Regulations, Guidelines and Circulars administered by SEBI or the laws administered by any other authority.

Yours faithfully,

Pradeep Ramakrishnan