



DEPUTY GENERAL MANAGER
DEPARTMENT OF DEBT AND HYBRID SECURITIES
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भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

SEBI/HO/DDHS/OW/P/2018/32622/1
November 29, 2018

Shri M H Qureshi
Director
Genpact India Private Limited
DLF City, Phase V, Sector 53,
Gurgaon-122002,
Haryana

Dear Sir,

Subject: Request for informal guidance by way of an interpretive letter under the SEBI (Informal Guidance) Scheme, 2003 in connection to SEBI (Foreign Portfolio Investors) Regulations, 2014

1. This has reference to your letter dated October 12, 2018 wherein you have sought informal guidance by way of an "Interpretive letter" from SEBI under paragraph 5(ii) of the SEBI (Informal Guidance) Scheme, 2003.
2. In your letter under reference, you have, *inter-alia*, represented the following:
 - a) The company is incorporated under the erstwhile provisions of Companies Act, 1956 and is engaged in the business of providing finance and accounting services, smart decision services (including analytics research, business consulting, enterprise risk consulting and re – engineering), supply chain and procurement services, enterprise application services, IT Management services etc.
 - b) The company had issued rated, unsecured, redeemable, non-convertible debentures (NCDs) on private placement basis to Genpact Luxembourg S.A.R.L (GLS) registered as Foreign Portfolio Investor ('FPI') under SEBI (Foreign Portfolio Investors) Regulations, 2014 ('SEBI FPI Regulations').
 - c) The NCDs so issued have maturity period (including residual maturity) of more than three years and were utilized for meeting the funding requirements for day-to-day operations, downstream investment and for general corporate purposes. Further, in terms of repayment schedule, the first tranche of principal repayment amounting to INR 6,000,000,000/- has been effected on April 26, 2018.
 - d) Reserve Bank of India ("RBI") through its A.P. (DIR Series) Circular No.19 dated November 17, 2016 read along with A.P. (DIR Series) Circular No. 24 dated April 27, 2018 permitted FPIs to

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अनुवर्ती :
Continuation :

2

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

invest in unlisted corporate debt subject to minimum residual maturity of more than one year and end use restriction on investment in real estate business, capital market and purchase of land. Consequently, SEBI, on February 27, 2017 also permitted FPI's to invest in such securities.

- e) Although the term 'capital market' is not explicitly defined in SEBI regulations, inference has been drawn from FAQs-Secondary Market Department issued by SEBI. As per the said FAQs, *"Capital market is a market for long-term debt and equity shares. In this market, the capital funds comprising of both equity and debt are issued and traded. This also includes private placement sources of debt and equity as well as organized markets like stock exchanges. Capital market can be further divided into primary and secondary markets"*.
- f) The company had utilized part of the NCD proceeds in making downstream investment in acquiring shares of private companies of the Genpact group only. In terms of the provisions of Companies Act, 2013, a private company restricts the right to transfer its shares and accordingly, in their view, such shares of private companies, acquired by the GIPL should ideally not qualify as capital funds since they may not be freely traded on the primary/ secondary market.
- g) In your understanding, downstream investment made by the company on private arrangement basis for acquiring shares of private companies should not be considered as investment made in capital market and accordingly, the delisting process of the NCD's subscribed to by the FPI may be initiated by the company pursuant to which FPI shall be considered to have invested in unlisted NCD's.
- h) In your view, there is no prohibition per se in relation to delisting of debt securities as FPIs are allowed to invest in unlisted NCDs as specified in regulation 21(1)(n) of the SEBI FPI Regulations subject to the guidelines issued by the Ministry of Corporate Affairs, Government of India from time to time.

3. Queries

In light of the above submissions, you have requested us to issue an "Interpretive letter" under paragraph 5 of the Informal Guidance Scheme, 2003, on the following:

Whether, pursuant to the aforesaid amendment, GIPL is permitted to de-list its existing listed NCD's that have been subscribed to by FPI prior to the date of the amendment coming into effect and the proceeds of which has been utilized for making downstream investment on private arrangement basis for acquiring shares of private companies?

4. Our comments

We have considered the submissions made by you in your letter under reference. Our views on the queries raised by you are as under:



अनुवर्ती : 3
Continuation :

भारतीय प्रतिभूति
और विनिमय बोर्ड

Securities and Exchange
Board of India

- a) In this regard, it may be noted that pursuant to the Relevant Amendments and the subsequent RBI Circular dated November 17, 2016, SEBI Circular February 28, 2017 and RBI circular dated April 27, 2018 read with SEBI circular dated June 15, 2018, the FPIs are permitted (in addition to the list of debt instruments already allowed as per the relevant provisions of the FEMA Regulations and FPI Regulations) to invest in *"unlisted corporate debt securities in the form of non-convertible debentures/bonds issued by public or private Indian companies subject to the guidelines issued by the Ministry of Corporate Affairs, Government of India from time to time and also subject to minimum residual maturity of above one year and end use-restriction on investment in real estate business, capital market and purchase of land"*.
- b) In the instant case, there was no violation of end use restriction norms for the proceeds raised from the issuance of debt securities by you to GSL as you are engaged in the business of providing finance and accounting services.
- c) It is not clear whether the terms of offer document/private placement memorandum concerning the issuance of NCDs by you to GLS provided whether the bonds will be necessarily listed or may be listed. ***If the terms of NCDs were that they had to be necessarily listed*** as per the terms of offer document/private placement memorandum, then the NCDs should be held till maturity or redeemed by you. However, if as per the terms of the offer document/private placement memorandum, ***there was an option to list the NCDs*** then the same may be delisted after following the due procedure as specified in regulation 59 of the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015.
- d) Vide your aforesaid letter, you have requested for confidentiality in respect of your application. Accordingly, it has been decided that the interpretive 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.
- e) 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. Further, wider dissemination of the response would provide clarity to the market regarding delisting of NCDs held by FPIs.
- f) 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,

Richa G. Agarwal