



Deputy General Manager
Integrated Surveillance Department

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

SEBI/HO/ISD/ISD/OW/P/2019/29136/1

November 04, 2019

Shri Nimish Upendrabhai Patel
Krishnarpan Samir Estate,
Gotri-Sevasi Road,
Sevasi, Vadodara – 391101.

Sir,

Subject: Request for Informal Guidance under Securities and Exchange Board of India (Informal Guidance) Scheme, 2003

1. This has reference to your letter dated August 30, 2019 requesting guidance by way of an 'Interpretative Letter' under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003.
2. In your letter under reference, you have, inter alia, represented as under:

- (i) Shri Dinesh Mills Limited (SDM) is a company incorporated under the provisions of Vadodara State Companies Act Samvat 1975 (now subsumed under the Companies Act, 2013). The shares of the Company are listed on BSE Limited.
- (ii) SDM had allotted warrants (convertible at the option of holder within a period of 18 months from the date of allotment in one or more tranches) to its promoters / promoter group on preferential basis on February 20, 2019 in following manner:

Name of the Allotees	Number of Warrants allotted
Bharatbhai Upendrabhai Patel	1,25,000
Nimishbhai Upendrabhai Patel	1,25,000
Aditya Bharatbhai Patel	1,25,000
Nishank Nimishbhai Patel	1,25,000
Total	5,00,000

- (iii) As part of overall succession planning between the promoter families, it is desired by the Promoters / Promoter Group to transfer their current shareholding as well as all the shares received pursuant to conversion of warrants to their respective trusts (collectively referred to as Acquirer Trusts). The promoters / members of Promoter Group are evaluating to migrate their shareholding in the Company to Acquirer Trusts as per the below steps:

Page 1 of 8

सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बान्द्रा कुर्ला कॉम्प्लेक्स, बान्द्रा (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



अनुवर्ती :
Continuation :

भारतीय प्रतिभूति
और विनिमय बोर्ड

**Securities and Exchange
Board of India**

(a) Conversion of outstanding warrants into equity shares: Promoters / members of Promoter group will receive 3,00,000 equity shares (viz. 75,000 equity shares each) on conversion of the remaining 3,00,000 warrants of SDM.

(b) Off-market transfer of shares by way of gift between family members to Bharatbhai Patel and Nimishbhai Patel

Name of receiver of shares	Name of persons receiving it from	Relationship with receiver	No. of equity shares
Bharatbhai Upendrabhai Patel	Aditya Bharatbhai Patel	Son	4,92,443
	Roopaben Bharatbhai Patel	Spouse	54,554
	Jemika Kama Parikh	Daughter	21,160
	Total		5,68,157
Nimishbhai Upendrabhai Patel	Nishank Nimishbhai Patel	Son	5,04,490
	Arushaben Nimishbhai Patel	Spouse	83,085
	Total		5,87,575

(c) Pursuant to the above transaction, the shareholding of Promoters and members of the Promoter group of SDM shall be as below:

Name of Promoters / members of the Promoter Group	Total number of shares held by promoters / members of promoter group	
	No. of equity shares	%
Bharatbhai Upendrabhai Patel	13,63,245	24.34%
Nimishbhai Upendrabhai Patel	13,56,427	24.22%
Minal Shekhar Desai	34,640	0.62%
Ranak Kamlesh Laskari	34,060	0.61%
Total	27,88,372	49.79%

(d) Migration of shares held by Bharatbhai Patel to Bharatbhai Upendrabhai Patel Family Trust (BUPFT) and Aditya Patel Family Trust (APFT) and shares held by Nimishbhai Patel to Nimishbhai Upendrabhai Patel Family Trust (NUPFT) and Nishank Patel Family Trust (NPFT): The aforesaid shares will be transferred either by way of off-market transfer or through block deal window.

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अनुवर्ती :
Continuation :

भारतीय प्रतिभूति
और विनियम बोर्ड

**Securities and Exchange
Board of India**

Name of transferor	Name of receiver	Number of shares	Percentage shareholding
Bharatbhai Upendrabhai Patel	BUPFT	8,70,802	15.55%
	APFT	4,92,443	8.79%
Nimishbhai Upendrabhai Patel	NUPFT	8,51,937	15.21%
	NPFT	5,04,490	9.01%

- (e) BUPFT, NUPFT, APFT and NPFT are controlled by the Trustees who are members of the Promoter / Promoter Group. Further, beneficiaries of the Trusts are also members of the Promoter / Promoter Group.

3. You have further represented the following in your letter under reference:

(i) As per Regulation 168 (1) of ICDR Regulations, 2018, specified securities held by promoters / members of promoter group and locked-in in terms of sub regulation (1) of Regulation 167, may be transferred among the promoters or the promoter group or to a new promoter or persons in control of the issuer. In the instant case, pursuant to the proposed transfer of shares to the Trusts, the Trusts (through its trustees) would have control over the affairs of SDM.

(ii) Even otherwise, the Trusts shall fall within the definition of "promoter group" under ICDR Regulations, 2018, as the trustees and ultimate beneficiaries of the Trusts are promoters and members of the promoter group family of the Company.

(iii) Considering the above, the Trusts shall be considered as part of 'new promoter' or 'promoter group' or 'persons in control of the issuer' and consequently, there shall not be any contravention of provisions of ICDR Regulations, 2018, on transfer of locked -in securities to the Trusts. However, the balance lock-in period shall continue in the hands of the Trusts.

(iv) Where the members of the promoter and promoter group acquires additional shares through conversion of warrants in Financial Year 2019-20 utilizing the creeping acquisition limit of 5% computed on gross acquisition basis, subsequent transaction which is exempt under Regulation 10(1)(a) and Regulation 11 (1) of the Takeover Regulations should not have any implications under Takeover regulations.

(v) Further, in case where the transaction which is exempt under Regulation 10(1)(a) and Regulation 11(1) of the Takeover Regulations is undertaken first, subsequent transaction of acquiring additional shares through conversion of warrants in the same FY should only be considered for consuming the creeping acquisition limit of 5% as the previous transactions are exempt under Regulation 10(1)(a) and Regulation 11(1) of the Takeover Regulations.



अनुवर्ती :
Continuation :

भारतीय प्रतिभूति
और विनियम बोर्ड

**Securities and Exchange
Board of India**

(vi) Accordingly, on receipt of shares on conversion of warrants should be considered for the purpose of the creeping acquisition limit of 5% of the voting rights computed on a gross acquisition basis as provided under Regulation 3(2) of Takeover Regulations.

(vii) In terms of the PIT Regulations, the Code of Conduct of a company has to specify the period, which in any event shall not be less than 6 months, within which a designated person who is permitted to trade shall not execute a contra trade. Further, the compliance officer would be empowered under the Code of Conduct to grant relaxation from strict application of such contra trade restriction for reasons to be recorded in writing.

(viii) An inter-se transfer between promoters/members of the promoter group or transfer of shares to the Acquirer Trusts does not bring any change in the shareholding pattern of the promoters and public. We believe that the proposed inter-se transfer is done in good faith and will not give any undue advantage to the promoters / members of the promoter group or have any impact on the public shareholding pattern.

(ix) Off-market inter-se transfers between insiders who are in possession of the same unpublished price sensitive information and where both the parties had made a conscious and informed trade decision is a specific ground for demonstrating innocence, as per proviso to Regulation 4(1) of PIT Regulations. Therefore, there should not be any contravention of PIT regulations on off-market inter-se transfer between insiders.

(x) Transaction carried out through block deal window mechanism between persons who are in possession of the unpublished price sensitive information and where both the parties had made a conscious and informed trade decision is a specific ground for demonstrating innocence, as per proviso to Regulation 4(1) of PIT Regulations. Therefore, there should not be any contravention of PIT regulations on transaction carried out through block deal window mechanism between persons in possession of unpublished price sensitive information.

(xi) Considering the above, there should not be any contravention of provisions regarding contra trade as per PIT regulations for shares received by promoters / members of the promoter group pursuant to conversion of warrants and the proposed off-market transfer of shares / transfer of shares through block deal window amongst insiders (i.e. promoters / members of the promoter group as well as the Acquirer Trusts) within six months or vice-versa specifically when compliance officer has granted relaxation to execute such transaction.

4. In light of the above submissions, you have sought clarification in the form of an Interpretative Letter with regard to the following queries:



अनुवर्ती :
Continuation :

भारतीय प्रतिभूति
और विनियम बोर्ड

**Securities and Exchange
Board of India**

(i) Query 1: Whether the proposed inter-se off-market transfer of shares between insiders within a period of six months post receipt of shares by the same Promoters / members of the Promoter group pursuant to conversion of warrants will violate provisions regarding contra trade of the SEBI (Prohibition of Insider Trading) Regulations, 2015 and attract any penal provisions?

(ii) Query 2: If the Promoters / members of the Promoter group who had acquired shares through inter-se off-market transfer of shares or through block deal window mechanism between Promoters / members of the Promoter group, wants to transfer shares to the Acquirer Trusts within 6 months, whether the proposed transfer to the Acquirer Trusts within 6 months would violate the provisions regarding contra trade as provided in the SEBI (Prohibition of Insider Trading) Regulations, 2015?

(iii) Query 3: Whether the equity shares acquired by the members of the Promoter and promoter group of SDM, pursuant to the exemption under Regulation 10(1)(a) and Regulation 11(1) of the Takeover Regulations respectively in the Financial Year 2019-20 consume or reduce the creeping acquisition limit of 5% in the same Financial Year 2019-20 in terms of Regulation 3(2) of the Takeover Regulations?

(iv) Query 4: Whether the specified securities held by promoters / members of the promoter group and locked-in as per Regulation 167(1) of ICDR Regulations can be transferred to Acquirer Trusts as per Regulation 168(1) of ICDR Regulations, 2018?

5. Our Comments

The submissions made in your letter have been considered and without necessarily agreeing with your analysis, our views on the issues are as under:

Views on Query 1 and Query 2:

(i) In the instant case, the said promoters have option to convert warrants any time within 18 months from the date of allotment in one or more tranches. The subsequent sale within 6 months may attract the contra trade restrictions under the PIT Regulations. Likewise, if the promoters / members of the promoter group who had acquired shares through inter-se off-market transfer of shares or through block deal window mechanism between promoters / members of the promoter group want to transfer shares to the acquirer trusts within six months, the proposed transfer to the acquirer trusts within 6 months may also attract the contra trade restrictions specified under the PIT Regulations.

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अनुवर्ती :
Continuation :

भारतीय प्रतिभूति
और विनियम बोर्ड

**Securities and Exchange
Board of India**

Views on Query 3

(ii) Regulatory Provision:

“3. (1).....

(2) 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 a 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:

Provided that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.

Provided further that, acquisition pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016 [No. 31 of 2016] shall be exempt from the obligation under the proviso to the sub-regulation (2) of regulation 3.

Explanation.— For purposes of determining the quantum of acquisition of additional voting rights under this sub-regulation,—

(i) gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company.

(ii) in the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of new shares in any given financial year, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition .”

(iii) The acquisition which are otherwise exempt under Takeover Regulations may not be counted towards computing acquisitions on a gross basis under the creeping acquisition limit in terms of Regulation 3(2) of SAST Regulations.

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अनुवर्ती :
Continuation :

भारतीय प्रतिभूति
और विनियम बोर्ड

**Securities and Exchange
Board of India**

Views on Query 4

(iv) Regulatory Provision:

“Lock-in

167. (1) The specified securities, allotted on a preferential basis to the promoters or promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on a preferential basis to the promoters or the promoter group, shall be locked-in for a period of three years from the date of trading approval granted for the specified securities or equity shares allotted pursuant to exercise of the option attached to warrant, as the case may be....

Transferability

168. (1) Subject to the provisions of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, specified securities held by promoters and locked-in in terms of sub-regulation (1) of regulation 167, may be transferred among the promoters or the promoter group or to a new promoter or persons in control of the issuer: Provided that the lock-in on such specified securities shall continue for the remaining period with the transferee.”

(v) The specified securities (i.e. shares of Shri Dinesh Mills Limited), held by promoters / members of the promoter group and locked-in as per Regulation 167 (1) of ICDR Regulations, 2018, may be transferred to the Acquirer Trusts under Regulation 168 (1) of ICDR Regulations, 2018. However, the said transferability, is subject to the provisions of Securities and Exchange Board of India (Substantial Acquisition of shares and Takeovers) Regulations, 2011.

6. This position is based on information furnished in your letter under reference. Different facts or conditions might lead to different interpretation. Further, this letter does not express decision of the Board on the questions referred.
7. You may note that the above views are expressed only with respect to the clarification sought in your letter with respect to certain provisions of ICDR Regulations, SAST Regulations and PIT Regulations, 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.
8. Further, you have sought confidentiality treatment in respect of your request. Acceding to your request, it has been decided that the letter issued to you in this



अनुवर्ती :
Continuation :

भारतीय प्रतिभूति
और विनिमय बोर्ड

**Securities and Exchange
Board of India**

matter will not be available to the public for period of ninety (90) days from the date of issuance of the letter.

Yours faithfully,

Amar Navlani