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SEBI/HO/CFD/PoD/OW/P/2023/47033/1  
November 30, 2023

To

**K.J. Joseph and Thomas John**  
11 Balaji Nagar, First Street,  
Royapettah,  
Chennai 600014

**Sub: Request for informal guidance by way of an "interpretive letter" under the provisions of Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 with respect to Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 in the matter of Thejo Engineering Limited.**

1. This is with reference to your undated letter, received on October 03, 2023 ("application") seeking guidance by way of an interpretive/no-action letter under Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 ("Informal Guidance Scheme") and subsequent email dated October 31, 2023 providing clarification in the matter.
2. In your application under reference you have, *inter alia*, represented as under:
  - a) Thejo Engineering Limited ("the Company") is listed on the 'Emerge', the SME Platform of the National Stock Exchange of India Limited ("NSE") and is in the process of migrating to the main Board of NSE. Mr. K. J. Joseph and Mr. Thomas John are the Promoters of the Company. They, along with ten other shareholders (family members of the Promoters), form the 'Promoter and Promoter Group' of the Company and collectively hold 54.27% of the Company's total shareholding. The remaining share capital of the company is held by public shareholders.
  - b) The Promoter and Promoter Group of the Company (except two Promoter Group Members who are not the spouse/lineal descendants of the Promoters) are contemplating to form a Family Trust (the Trust), where 51.75% of their shares (out of the total Promoter and Promoter Group's holding of 54.27%) would be moved to the Trust.
  - c) The beneficiaries of the Trust would be the same persons as the existing Promoter Group shareholders who are pooling their shares into the Trust with each beneficiary's beneficial interest/share in the Trust would be on the

same proportion as their existing shareholding and would include the immediate relatives and lineal descendants of the individual shareholders.

- d) The Trust would be a mirror image of the Promoter's holdings and consequently would not result in any change in control in the Company. It is proposed that out of the five Trustees to the Trust, one would be a neutral trustee, who shall not belong to the Promoter Group.
- e) The proposed Trust intends to apply under Regulation 11(1) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 ("Takeover Regulations") for grant of specific exemption from the obligation to make an open offer for acquiring shares.
3. In this background, you have sought an Interpretative letter under the Informal Guidance Scheme on the following queries:
- "Whether the Family Trust with third party as trustee, as aforesaid, be eligible for grant of specific exemption from the obligation to make an open offer for acquiring shares under Regulation 11(1) of the Takeover Regulations read with SEBI Master Circular no. SEBI/HO/CFD/PoD-1/P/CIR/2023/31 dated February 16, 2023?"*
  - "Whether the Family Trust which does not include some members of the promoter group and restricting the Trust only to the spouse and lineal descendants of the promoters be eligible for grant of specific exemption from the obligation to make an open offer for acquiring shares, under Regulation 11 (1) of the Takeover Regulations read with SEBI Master Circular no. SEBI/HO/CFD/PoD-1/P/CIR/2023/31 dated February 16, 2023?"*
4. We have considered the submissions made by you in your application. Without necessarily agreeing with your analysis, we are issuing interpretive letter as under:
- Regulation 11(1) of the Takeover Regulations specifies that the Board may for reasons to be recorded in writing, grant relaxation from the obligation to make an open offer for acquiring shares under the regulations. The relevant provision is reproduced for reference as under-  
***Exemptions by the Board.***  
*11.(1) The Board may for reasons recorded in writing, grant exemption from the obligation to make an open offer for acquiring shares under these regulations subject to such conditions as the Board deems fit to impose in the interests of investors in securities and the securities market..."*
  - Chapter 8 of the Master Circular no. SEBI/HO/CFD/PoD-1/P/CIR/2023/31 dated February 16, 2023 for Substantial Acquisition of Shares and Takeovers ("the Master Circular") specifies the conditions which have been considered by the aforesaid Takeover Panel for the purpose of



granting exemption from the obligation to make an open offer in cases of involving trusts as acquirers. The provisions of the said Chapter specifying conditions to be incorporated in the trust deed for the purpose of availing the aforesaid exemption are reproduced for reference as under-

- i. "The Trust is in substance, only a mirror image of the promoters' holdings and consequently, there is no change of ownership or control of the shares or voting rights in the target company.
- ii. Only individual promoters or their immediate relatives or lineal descendants are Trustees and beneficiaries;
- iii. The beneficial interest of the beneficiaries of the trust has not been and will not in the future, be transferred, assigned or encumbered in any manner including by way of pledge/mortgage;
- iv. In case of dissolution of the Trust, the assets will be distributed only to the beneficiaries of the trust or to their legal heirs;
- v. The Trustees will not be entitled to transfer or delegate any of their powers to any person other than one or more of themselves."

iii. In the present case, the Trust is proposed to be constituted with the beneficiaries consisting of the individual promoters, their immediate relatives and lineal descendants. The persons (siblings of the Promoters) in the Promoter Group not forming part of the Trust shall continue to hold their respective shareholding in their individual names. Therefore, the proposed shareholding pattern of the Trust along with the persons of the Promoter Group who shall continue to hold shares in their individual names shall be a mirror image of the present shareholding of the Promoters and Promoter Group and shall not result in a change in control of the company.

iv. Paragraph 1, sub-paragraph (ii) of Chapter 8 of the Master Circular no. SEBI/HO/CFD/PoD-1/P/CIR/2023/31 specifies that exemption from the obligation to make an open offer was granted in cases inter alia where "only individual promoters or their immediate relatives or lineal descendants are Trustees and beneficiaries". In the present case, it is noted from the application that the beneficiaries of the Trust shall only be the Promoters, their immediate relatives (respective spouses) and lineal descendants (children). However, the applicant has intended to have one out of the five trustees as a neutral trustee, who shall not belong to the promoter group. The same is not in consonance with the aforesaid condition specified in Chapter 8 of the Master Circular. Hence, the Trust shall be not eligible for specific exemption from the obligation to make an open offer for acquiring shares.

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- v. Further, you may also note that Paragraph 4 of Chapter 8 of the Master Circular specifies as under-

*"... It is further clarified that while the above conditions / undertaking are broad and general in nature, compliance with the above conditions does not guarantee automatic exemption from open offer and all applications will be considered by the Takeover Panel and SEBI on a case to case basis. However, the processing time of applications where the above conditions are complied could be significantly faster."*

Therefore, the compliance of the conditions specified in Chapter 8 of the Master Circular does not guarantee an automatic exemption and the application filed under Regulation 11(5) of the Takeover Regulations would be considered by the Takeover Panel on a case to case basis for the purpose of granting exemption from the obligation to make an open offer for acquiring shares.

5. Vide your application under reference, you have requested for confidentiality in respect of your application. Accordingly, the interpretative letter issued to you in this matter shall not be made public for a period of 90 days from the date of issuance of this letter.
6. The above position is based on the facts and circumstances described by you in the application. 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.
7. You may also note that the above views are expressed only with respect to the clarification sought vide your letter under reference in relation to Regulation 11(1) of the Takeover Regulations read with Chapter 8 of the Master Circular 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,



**Vimal Bhat**