



भारतीय प्रतिभूति
और विनियम बोर्ड

*Securities and Exchange
Board of India*

Yogita Jadhav
Deputy General Manager
Corporation Finance Department
Division of Issues and Listing- 1
Tel: +91 22 26449000 (Extn: 9583)
Email: yogitag@sebi.gov.in

CFD/DIL-1/OW/2018/2918/1
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GMR Infrastructure Limited
New Udaan Bhawan, Ground Floor,
Opp. Terminal – 3, IGI Airport,
New Delhi - 110037

Dear Sir,

Sub: Request for Interpretative Letter under the SEBI (Informal Guidance Scheme) Scheme, 2003, regarding applicability of certain provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009

1. This is with reference to your letter dated August 27, 2018 on the captioned subject.
2. In your letter under reference, you have, inter-alia, represented as under:
 - a) GMR Infrastructure Limited (GIL) is a Public Limited Company. The Equity Shares of the Company are listed on BSE and NSE.
 - b) GIL proposes to issue unlisted unsecured Optionally Convertible Debentures (OCDs) to an Indian Party and a Subsidiary of the foreign company (Security Holder), in settlement of a debt due to the Security Holder. The Terms of the OCDs are stated in the table below:

Type of Debenture	Optionally Convertible Debenture (OCD)
Face Value	4 OCDs of Rs. 43,01,86,080 each and 4 OCDs of Rs. 57,35,81,450 each
Facility Amount	Rs. 401.50 crore
Tenure – redeemable in 8 quarterly instalments	OCDs proposed to be issued during October 2018, are proposed to be redeemed in quarterly instalments commencing from March 2019 and going upto December 2020
Conversion Formula	The conversion price will be the higher of 26 weeks average and 2 weeks average of the price of the equity shares on the stock exchange.



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- c) Since, the OCDs proposed to be issued is a debt instrument with an Option to convert into equity, GIL proposes to issue the OCDs in terms of provisions of Sections 42 and 62(3) of the Companies Act, 2013.
3. Based on the above facts as stated in your letter, you have sought interpretative Letter on the following issues:

- i. *Would the issue of proposed OCDs by GIL be exempt from the compliances of Chapter VII of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (ICDR), as stated under Reg. 70(1)(a),*

Chapter VII not to apply in certain cases

70(1) *The provisions of this Chapter shall not apply where the preferential issue of equity shares is made:*

(a) Pursuant to conversion of loan or option attached to convertible debt instruments in terms of sub-section (3) and (4) of section 81 of the Companies Act, 1956 [or sub-section (3) and (4) of section 62 of the Companies Act, 2013, whichever applicable];

- ii. *Would GIL be free to fix the conversion period to be beyond 18 months and would the resultant equity shares be free from any kind of lock-in restrictions?*
- iii. *Can the conversion price be as may be approved by the Shareholders of GIL, prior to the issue of the OCDs instead of the price specified under Chapter VII of the ICDR?*

4. In this regard, it may be noted that we have considered the submissions made by you in your letter under reference and without necessarily agreeing with your analysis, our views on the queries raised by you are as under:

5. Response to Query no. (i):

- i. Regulation 70(1) of Chapter VII on Preferential Issue, of SEBI (ICDR) Regulations, 2009 clearly states that *"the provisions of this Chapter shall not apply where the preferential issue of equity shares is made:*
- (a) Pursuant to conversion of loan or option attached to convertible debt instruments in terms of sub-section (3) and (4) of section 81 of Companies Act, 1956 or sub-section (3) and (4) of section 62 of the Companies Act, 2013, whichever applicable;*
- (b) ...*
- (c)"*
- ii. Regulation 70(1) clearly specifies that it shall not apply where **preferential issue of equity shares** is made pursuant to *option attached to convertible debt instruments sub-section (3) and (4) of section 62 of the Companies Act, 2013.*



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Preferential issue of OCDs in terms of sub-section 3 of section 62 of Companies Act, 2013 is not covered in the exemptions provided in Regulation 70(1) of SEBI (ICDR), 2009. Hence, the provisions of Chapter VII of SEBI (ICDR) Regulation, 2009 will be applicable to the proposed issue of OCDs by GIL.

6. Response to Query no. (ii)

- i. Regulation 75 of ICDR provides for Tenure of Convertible Securities. Even though Chapter VII would not be applicable at the time of issue of equity shares on preferential basis, the provisions of Chapter VII of ICDR would be applicable to proposed issue of OCDs by GIL. Hence, GIL cannot fix tenure of OCDs beyond 18 months.
- ii. As per Regulation 2(1)(zi) 'Specified Securities' means 'equity shares and convertible securities'. Regulation 78 provides for Lock-in of Specified Securities. Hence, provisions of Regulation 78 would be applicable to the proposed issue of OCDs by GIL and it would be required to comply with lock-in requirements as specified under Regulation 78 of ICDR.

7. Response to Query no. (iii)

The provisions of Chapter VII of ICDR are applicable at the time of issue of OCDs by GIL. However, as per Regulation 70(1) (a) the provisions of this Chapter would not apply pursuant to conversion of option attached to convertible debt instruments in terms of sub-section (3) of Section 62 of the Companies Act. If GIL issues equity shares pursuant to conversion of OCDs in compliance with sub-section (3) of Section 62 of the Companies Act, the provisions of Chapter VII of ICDR would not be applicable at the time of issuance of Equity Shares.

8. Vide your aforesaid letter, you have requested for confidentiality in respect of your application. Accordingly, it has been decided that the 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.
9. The above position is based on the information furnished in your letter under reference. Different facts or conditions might lead to a different result. This letter expresses the Department's view on enforcement action only. Further, this letter does not express a decision of the Board on the question referred.
10. 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 (Issue of Capital and Disclosure Requirements) Regulations, 2009 and do not affect the applicability of any other law or requirements of any other



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SEBI Regulations, Guidelines and Circulars administered by SEBI or of the laws administered by any other authority.

Yours truly,


Yogita Jadhav 19/12/18