

December 03, 2019

To,
Securities and Exchange Board of India
SEBI Bhawan, Plot No C4-A,
G - Block, Bandra Kurla Complex,
Bandra (East)
Mumbai - 400 051

Dear Sir / Madam,

Subject: Request for Informal Guidance by way of an Interpretive Letter under the SEBI (Informal Guidance) Scheme, 2003 ("Scheme") in relation to carrying on the profession as Registered Valuer for "Securities and Financial Assets" under Section 247 of the Companies Act, 2013 by a Merchant Banker

We would like to submit the following facts for your consideration and opinion w.r.t. carrying on the profession as Registered Valuer under Section 247 of the Companies Act, 2013 by a Category I Merchant Banker registered with Securities and Exchange Board of India ("SEBI").

A. Background of the Company

Sundae Capital Advisors Private Limited ("**Sundae Capital**") is a company incorporated under Companies Act, 2013 having its registered office at 611, Shahpuri Tirath Singh Tower, 58, C - Block, Community Centre, Janak Puri, New Delhi - 110 058. Sundae Capital is registered with SEBI as a Category I Merchant Banker with registration number as INM000012494.

B. Brief Synopsis of Case

1. Regulation 13A of the SEBI (Merchant Bankers) Regulations, 1992 reads as under:

"No merchant banker, other than a Bank or a Public Financial Institution, who has been granted a certificate of registration under these regulations shall after June 30, 1998 carry on any business other than that in the securities market.

Notwithstanding anything contained above, a merchant banker who prior to the date of notification of the Securities and Exchange Board of India (Merchant Bankers) Amendment Regulations, 1997, has entered into a contract in respect of a business other than that of the securities market may, if he so desires, discharge his obligations under such contract:

Provided that a merchant banker who has been granted certificate of registration to act as primary or satellite dealer by Reserve Bank of India, may carry on such business as may be permitted by the Reserve Bank of India.

Provided further that a merchant banker, who has been granted certificate of registration under these regulations, may ensure market making in accordance with Chapter XA of the



Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009."

2. Sundae Capital is presently carrying on business as a merchant banker, in particularly as manager to various capital market transactions, advisory services for merger / demerger / capital re-structuring, ESOP advisory and **valuation practice including the valuation requirements under Foreign Exchange Management Act, 1999, Income Tax Act, 1961 and Companies Act, 2013 (prior to the notification of Section 247 of the Companies Act, 2013).**
3. Various regulatory provisions under the Indian laws requires the valuation of financial assets / securities to be undertaken by a Category I Merchant Banker, e.g. (Rule 11UA(2)(b) of the Income Tax Rules, 1962, Section 17(2)(vi) of the Income Tax Act, 1961, Rule 21 of the Foreign Exchange Management (Non Debt Instruments) Rules, 2019 (including erstwhile Foreign Exchange Management (Transfer or Issue of a Security by a Person resident Outside India) Regulations, 2017) and provisions of Companies Act, 2013 prior to notification of Section 247 of the Companies Act, etc.
4. Merchant Bankers were identified as valuers for securities and financial assets under the Companies Act, 2013, when notified by the Government. Prior to the Notification of Section 247, which deals with the provisions of Registered Valuer, Companies Act, 2013 permitted Category I Merchant Banker to undertake valuation under various specified provisions under the Companies Act, 2013.
5. However vide Notification dated October 18, 2017, as amended from time to time, the Companies (Registered Valuers and Valuation) Rules, 2017 (the "**Valuation Rules**") have been notified w.e.f. January 31, 2019 which provide for a prior registration of a registered valuer with Insolvency and Bankruptcy Board of India ("IBBI") for the purpose of issuance of valuation report under certain specified provisions of the Companies Act, 2013 and also for requirement of submission of reports under Insolvency Act, 2013.
6. In addition to other requirements, the Valuation Rules specified that the Director of the Company should have undergone training and cleared an exam, presently being conducted by NISM, for being eligible to be registered as Registered Valuer.
7. Sundae Capital had been undertaking valuation of securities prior to the Notification of Valuation Rules under Section 247 of the Companies Act, 2013. However with the notification of the Valuation Rules, a separate registration is required to be obtained for carrying out valuation practice under Section 247 of the Companies Act, 2013. Accordingly, Sundae Capital proposes to obtain registration with IBBI as a registered valuer, subject to compliance with the requirements of the Valuation Rules to act as a valuer, for "Securities and Financial Assets" alongwith the valuation services carried on by us as a Category I Merchant Banker.

C. Clarification Sought

1. In view of above we seek your guidance on whether the registration obtained by Sundae Capital as Registered Valuer for Securities and Financial Assets under the Valuation Rules shall be deemed to be a business associated with securities market in terms of Regulation 13A of the



SEBI Merchant Bankers Regulations since the valuation of securities by a Category I Merchant Banker is permitted under various provisions of law.

2. Further, obtaining of registration by Sundae Capital with IBBI as Registered Valuer for "Securities and Financial Assets" is not in non compliance with the requirements of Regulation 13A of the SEBI Merchant Bankers Regulations.

In case any further details required for the opinion sought above, we request you to kindly communicate at following address:

Mr. NitiN Somani
Managing Director
Sundae Capital Advisors Private Limited
611, Shahpuri Tirath Singh Tower
58, C - Block, Community Centre
Janak Puri, New Delhi - 110 058
M: +91 98 1069 4501
E-mail: nitin@sundaecapital.com

We are enclosing herewith the demand draft no. 054627 dated December 03, 2019 drawn on Axis Bank Limited for ₹ 25,000/- (Rupees Twenty Five Thousand only) in favour of "Securities and Exchange Board of India", payable at Mumbai towards fees for seeking informal guidance and request you to kindly give your opinion.

Further, as per Para 11 of the Scheme, we request your good office to give confidential treatment to the application submitted by us for a period of 90 days from the date of SEBI's response.

Thanking you in advance,

Yours sincerely,
for Sundae Capital Advisors Private Limited


NitiN Somani
Managing Director



Encl.: Demand Draft No. 054627 dated December 03, 2019 drawn on Axis Bank Limited for ₹ 25,000/- in favour of "Securities and Exchange Board of India", payable at Mumbai.