



भारतीय प्रतिभूति  
और विनिमय बोर्ड

**Securities and Exchange  
Board of India**

**Deputy General Manager**  
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SEBI/HO/CFD/DCR1/OW/P/2018/6986/1  
March 06, 2018

**Navkar Builders Limited**  
304, Circle 'P'  
Near Prahaladnagar Garden  
S.G. Road  
**Ahmedabad - 380 015**

**Kind attention: Mr. Shailesh Shah, Director**

Dear Sir,

**Sub: Request for informal guidance by way of "Interpretive Letter" under the SEBI (Informal Guidance) Scheme, 2003 in relation to SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 in the matter of Navkar Builders Ltd.**

1. This has reference to your letter dated December 30, 2017 and subsequent correspondence vide e-mails dated January 29, 2018 and January 30, 2018 on the captioned subject.
2. Vide the aforementioned correspondence, you have, *inter alia*, represented as under:
  - a. Navkar Builders Limited is the target company ("TC") which is listed on BSE. Shares of the company are infrequently traded.
  - b. The promoter group of TC comprises of Mr. Dakshesh R Shah ("Dakshesh Shah"), Mr. Samir C Patel ("Samir Patel") and Navkar Fiscal Services Pvt. Ltd. ("NFSPL"). Their names are mentioned in the shareholding pattern filed with BSE under the provisions of Listing Agreement/ SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for more than 3 years. The shareholding of promoter group entities as on quarters ending March 31, 2015, March 31, 2016, March 31, 2017, December 31, 2017 has remained the same which is as under:

Page 1 of 6



अनुवर्ती :  
Continuation :

भारतीय प्रतिभूति  
और विनिमय बोर्ड  
Securities and Exchange  
Board of India

Promoter group entities	No. of shares	% shareholding
Dakshesh R Shah	11,61,250	6.65
Samir C Patel	7,78,867	4.46
Navkar Fiscal Services Pvt. Ltd.	50,30,583	28.82
<b>Total</b>	<b>69,70,700</b>	<b>39.94</b>

- c. The following two transactions have been proposed.
- d. **Transaction No. 1** - Navkar Fiscal Services Pvt. Ltd. which is one of the promoters of the target company proposes to acquire shares from another promoter, *viz.* Samir Patel at an acquisition price per share as per the proviso to Regulation 10(1)(a) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**Takeover Regulations, 2011**"). Promoter holding after execution of the said transaction shall be as under:

Name of Promoter	No. of shares	% shareholding
Dakshesh R Shah	11,61,250	6.65
Navkar Fiscal Services Pvt. Ltd.	58,09,450	33.29
<b>Total</b>	<b>69,70,700</b>	<b>39.94</b>

- e. Both transferor (Samir Patel) and transferee (NFSPL) are named as promoters in the shareholding pattern of TC for more than 3 years prior to the proposed acquisition.
- f. **Transaction No. 2** - NFSPL, which is one of the promoter group entities of TC is a company incorporated under the Companies Act, 1956. List of shareholders in NFSPL as on September 30, 2017 is as under:

Name of Shareholders*	No. of shares	% shareholding
Dakshesh Ramesh Shah	7,66,720	50.05
Samir Chandulal Patel	7,65,020	49.95
<b>Total</b>	<b>15,31,740</b>	<b>100.00</b>

\* There has been no change in the holding of Samir Patel and Dakshesh Shah in NFSPL since last more than 3 years.

- g. Out of the total 7,65,020 shares held by Samir Patel in NFSPL, he proposes to transfer his 7,57,300 equity shares to Dakshesh Shah and the remaining 7,720 shares to Shital Dakshesh Shah (**Shital Shah**), wife of Dakshesh Shah. After the aforementioned proposed transaction, list of shareholders in NFSPL will be as under:

*[Handwritten signature]*



अनुवर्ती :  
Continuation :

भारतीय प्रतिभूति  
और विनिमय बोर्ड  
Securities and Exchange  
Board of India

Name of Shareholder	No. of shares	% shareholding
Dakshesh Ramesh Shah	15,24,020	99.50
Shital Dakshesh Shah	7,720	0.50
<b>Total</b>	<b>15,31,740</b>	<b>100.00</b>

- h. As per information furnished on January 29, 2018, Dakshesh Shah and Samir Patel belong to the promoter and promoter group in NFSPL and they are jointly in control of NFSPL, which in turn holds 28.82% of the TC.
- i. Both the transferors and transferee in above mentioned both the transactions have undertaken to comply with applicable disclosure requirements set out in Chapter V of the Takeover Regulations, 2011.

**Queries:-**

3. In view of the above, you have sought guidance from SEBI on the following:
- a. *As in aforementioned both the transactions, the transferor and transferee belong to the promoter group and their names are also mentioned in shareholding pattern for more than 3 years, you have requested for interpretation of Regulation 10(1)(a) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 that whether the aforementioned transaction at par, is eligible for exemption from obligation to make an open offer under Regulation 3 and Regulation 4 of Takeover Regulations, 2011.*
- b. *Any other recommendations of SEBI in this regard.*

**Our Comments:-**

4. We have considered the submissions made by you and without necessarily agreeing with your analysis, our views on the queries are as under:

**Query No. 1:**

- 4.1 Reference is drawn to the following provisions of the Regulation 10(1)(a) of the Takeover Regulations, 2011:

*“10. (1) The following acquisitions shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 subject to fulfillment of the conditions stipulated therefor,—*



अनुवर्ती :  
Continuation :

भारतीय प्रतिभूति  
और विनिमय बोर्ड  
Securities and Exchange  
Board of India

(a) *acquisition pursuant to inter se transfer of shares amongst qualifying persons, being,—*

(i) *immediate relatives;*

(ii) **persons named as promoters in the shareholding pattern filed by the target company in terms of the listing agreement or these regulations for not less than three years prior to the proposed acquisition;**

(iii) *a company, its subsidiaries, its holding company, other subsidiaries of such holding company, persons holding not less than fifty per cent of the equity shares of such company, other companies in which such persons hold not less than fifty per cent of the equity shares, and their subsidiaries subject to control over such qualifying persons being exclusively held by the same persons;*

(iv) *persons acting in concert for not less than three years prior to the proposed acquisition, and disclosed as such pursuant to filings under the listing agreement;*

(v) *shareholders of a target company who have been persons acting in concert for a period of not less than three years prior to the proposed acquisition and are disclosed as such pursuant to filings under the listing agreement, and any company in which the entire equity share capital is owned by such shareholders in the same proportion as their holdings in the target company without any differential entitlement to exercise voting rights in such company;*

**Provided that for purposes of availing of the exemption under this clause,—**

(i) *If the shares of the target company are frequently traded, the acquisition price per share shall not be higher by more than twenty-five per cent of the volume-weighted average market price for a period of sixty trading days preceding the date of issuance of notice for the proposed inter se transfer under sub-regulation (5), as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, and if the shares of the target company are infrequently traded, the acquisition price shall not be higher by more than twenty-five percent of the price determined in terms of clause (e) of sub-regulation (2) of regulation 8; and*

(ii) *the transferor and the transferee shall have complied with applicable disclosure requirements set out in Chapter V.”*

4.2 As represented by you, the first transaction is between two promoter group entities of TC which have been so disclosed in the shareholding pattern filed under the listing agreement for not less than 3 years as on the date of making the application. As per Regulation 10(1)(a) (ii) of the Takeover Regulations, 2011, the acquisition pursuant to the *inter se* transfer of shares amongst persons named as promoters in the shareholding pattern filed by the target company in terms of the listing agreement or these regulations for not less than three years prior to the proposed acquisition is exempt from making open offer under Regulation 3 and 4 of the Takeover Regulations, 2011.



अनुवर्ती :  
Continuation :

भारतीय प्रतिभूति  
और विनिमय बोर्ड  
Securities and Exchange  
Board of India

- 4.3 In the facts and circumstances as represented, the said transaction would be exempt from open offer obligations in terms of Regulation 10(1)(a)(ii) of the Takeover Regulations, 2011, subject to compliance of conditions prescribed under Regulation 10 of the Takeover Regulations, 2011.
- 4.4 As represented by you, the second transaction is between the two promoters (*viz.* Dakshesh Shah and Samir Patel) of NFSPL. It is noted that all the three persons/entities, *viz.* Dakshesh Shah, Samir Patel and NFSPL are also promoters of the TC. The two promoters of NFSPL (*viz.* Dakshesh Shah and Samir Patel) are in joint control of NFSPL. Pursuant to the said transaction, only one of the promoters, *viz.* Dakshesh Shah (along with his wife with miniscule holding of 0.50%) will have the entire shareholding/control in NFSPL. This would result in the indirect acquisition of shares/voting rights of TC by Dakshesh Shah through NFSPL. The said indirect acquisition of TC is due to the *inter se* transfer of shares of NFSPL between the promoters of NFSPL. Regulation 10(1)(a)(ii) of Takeover Regulations, 2011 provides for exemption from the obligation to make open offer under Regulation 3 & 4 of the Takeover Regulations, 2011 for the acquisition pursuant to *inter se* transfer of shares amongst persons named as promoters in the shareholding pattern filed by the TC for not less than three years prior to the acquisition. In the instant case, the shareholding of Dakshesh Shah and Samir Patel in NFSPL are not disclosed to the stock exchanges. Their names are disclosed only as the promoters of the Target Company. Hence, such indirect acquisition of shares through the *inter se* transfer of shares of a promoter entity does not squarely fall under the exemption of Regulation 10(1)(a)(ii) of the Takeover Regulations, 2011.
- 4.5 Under the given facts and circumstances, the second transaction would not be qualified for exemption under Regulation 10(1)(a)(ii) of the Takeover Regulations, 2011.

**Query No. 2:**

- 4.6 In respect of the second query, it is informed that no recommendations are made under the Informal Guidance Scheme. Accordingly, we are not in a position to respond to your second query.



अनुवर्ती :  
Continuation :

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

5. The above position is based on the information furnished in your letter under reference. 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.
6. 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 (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 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,

  
Rajesh Gujjar