



भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

Deputy General Manager
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Division of Policy and Development-1
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SEBI/HO/CFD/CFD-PoD-2/OW/P/2023/20934/1

May 23, 2023

To

SpiceJet Limited
319 Udhyog Vihar, Phase-IV,
Gurugram 122016, Haryana, India

Sir,

Kind attention: Sunil Maurya (AGM- Legal & Company Affairs)

Sub: Request for informal guidance by way of interpretive letter under the provisions of Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 ("Scheme") with regard to Regulation 163(3) and 167(2) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018

1. This is with reference to your letter dated March 20, 2023 ("**Application**") seeking guidance by way of an interpretive letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 ("**Scheme**") with respect to Regulations 163(3) and 167(2) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("**ICDR Regulations**")
2. The brief facts of the matter, as stated by you in your application are summarized below:
 - 2.1. SpiceJet Limited ("SpiceJet" or the "Company") is a public limited company incorporated under the erstwhile Companies Act, 1956 and has its registered office in New Delhi. The shares of the Company are listed on BSE Limited.
 - 2.2. The Company has outstanding dues towards its vendors, aircraft lessors and creditors. In view of the same, the Company has proposed to issue equity shares on a preferential basis to the aircraft lessors in order to restructure its outstanding lease liabilities towards certain aircraft lessors.
 - 2.3. The aforesaid proposal was made by the Board of Directors of the Company in its meeting dated February 27, 2023. It was proposed to issue equity shares on preferential basis to the aforesaid aircraft lessors consequent upon conversion of their existing outstanding lease payment liabilities equivalent to an amount not

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दूरभाष : 2644 9950 / 4045 9950 (आई.वी.आर. एस.), 2644 9000 / 4045 9000 फैक्स : 2644 9019 से 2644 9022 वेब : www.sebi.gov.in

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exceeding US\$29.5 million at a price of Rs. 48.00 per equity share or such price as may be determined in accordance with the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“ICDR Regulations”), whichever is higher. The same is to be in accordance with the relevant provisions of the Companies Act, 2013 (“Companies Act”) and other applicable laws and subject to approval of the shareholders of the Company and receipt of other required regulatory approvals (the “Proposed Transaction”).

3. The relevant provisions of the Companies Act and ICDR Regulations have been noted as under:

3.1 Section 62 of the Companies Act, 2013:

“62. Further Issue of Share Capital

1. *Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered –*

....

(c) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.”

3.2 Regulation 163(3) of the SEBI ICDR Regulations

“(3) Specified securities may be issued on a preferential basis for consideration other than cash:

Provided that consideration other than cash shall comprise only swap of shares pursuant to a valuation report by an independent registered valuer, which shall be submitted to the stock exchange(s) where the equity shares of the issuer are listed:

Provided further that if the stock exchange(s) is not satisfied with the appropriateness of the valuation, it may get the valuation done by any other valuer and for this purpose it may seek any information, as deemed necessary, from the issuer.”

3.3 Regulation 167(2) of the SEBI ICDR Regulations:

“(2) The specified securities allotted on a preferential basis to persons other than the

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promoters and promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to such persons shall be locked-in for a period of six months from the date of trading approval."

4. In view of the above, you have sought informal guidance by way of an interpretive letter under the Scheme on the following queries:

a) *That the proposed issue of equity shares adjusting the money payments to be made to the aircraft lessors who will be the allottees of these new equity shares, will not be covered by the provisions of Regulation 163(3) of the SEBI ICDR Regulations subject to other provisions of the SEBI ICDR Regulations relating to preferential issue and the relevant provisions of the Companies Act, 2013 are complied with;*

b) *That the provisions of Regulation 167(2) of the SEBI ICDR Regulations will be applicable to the proposed issue of equity shares adjusting the money payments to be made to the aircraft lessors who will be the allottees of these new equity shares, and the lock-in period for such aircraft lessors will be six (6) months from the date of trading approval only."*

5. The submissions made in your letter have been considered. Our views on the query raised in your letter are as under-

a. In this case, the applicant has an outstanding liability of paying rent to the aircraft lessors and it has opted to issue preferential equity shares to the lessors as a means of fulfilling its rental obligations. This would amount to issuing preferential shares in lieu of cash, being the monetary liability which the company is subjected to.

b. In view of the above, the proposed issuance of equity shares, which will serve to offset monetary obligations owed to the aircraft lessors and will be allocated to these lessors as new equity shares, will not be covered under the provisions of Regulation 163(3) of the ICDR Regulations.

c. It has further been observed that Regulation 167(2) of the SEBI ICDR Regulations shall apply to the proposed issuance of equity shares and a lock-in period of six (6) months will be imposed on such aircraft lessors from the date of trading approval.

6. The above position is based on the facts and circumstances described by you in your application. Further, this letter does not express a decision of the Board on the questions referred.

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7. You may also note that the above position is expressed only with respect to the guidance sought in your letter under reference in respect of the Regulation as referred above and does not affect the applicability of any other law or requirement of any other SEBI Regulations, Guidelines and Circulars administered by SEBI or the laws administered by any other authority.

Yours faithfully,

Vimal Bhattar