



SEBI/WP/00010101/150001637

11th May, 2015

To,
The Executive Director
Corporation Finance Department
Division of Issue and Listing
Securities and Exchange Board of India
SEBI Bhawan, C 4-A, G Block
Bandra Kurla Complex
Bandra (East), Mumbai 400051

Sub : Request for Informal Guidance by way of an interpretive letter/ No action letter under the SEBI (Informal Guidance) Scheme, 2003 in connection with phantom stock schemes for employees who are promoters and applicability of the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 to such schemes.

We would like to submit the following facts for your consideration and seek guidance with respect to (i) interpretation of stock appreciation rights scheme as mentioned in the SEBI (Share Based Employee Benefits) Regulations, 2014 ("**SEBI Regulations**") and (ii) applicability of the SEBI Regulations to phantom stock unit schemes for the benefit of employees who are promoters.

A. Background and Material Facts

1. Mindtree Limited (the "**Company**") is a public limited company whose shares are listed on the National Stock Exchange of India Limited and BSE Limited, having its registered office at Global Village, RVCE post, Mysore Road, Bangalore - 560 059, Karnataka. The Company is engaged in the field of Information technology (IT) and IT enabled services.
2. As part of the Company's employee compensation schemes, during August 2013 an employee benefit scheme called the stock appreciation rights scheme ("**Phantom Stock Scheme**") was introduced, pursuant to which stock appreciation right ("**SAR**") units ("**Phantom Stock**") were granted to 6 employees who are also promoters of the Company ("**Promoters**"). Further, of the 6 Promoters, 4 Promoters are also executive directors of the Company.



3. As per the provisions of the Phantom Stock Scheme, only notional SAR units were issued at a pre-determined grant price and the Promoters were entitled to receive cash payment for appreciation in the share price over the grant price for the awarded units, based on the Company achieving the specified revenue targets. While the cash payouts pursuant to the Phantom Stock Scheme are linked to the share price of the Company's equity shares, implementation of the Phantom Stock Scheme does not involve any actual purchase or sale of the equity shares of the Company.
4. Further, as per the Phantom Stock Scheme, the Phantom Stock awarded to the Promoters will vest every year over a period of 4 years starting from August 2013 (graded vesting over 4 years, with a minimum 1 year vesting period and expected cash payouts and settlements in Aug 2014, Aug 2015, Aug 2016 and Aug 2017), based on the appreciation in the share price of the Company.
5. The Scheme was renamed as "Phantom Stock Program" subsequently since the scheme was in the nature of phantom stock options because the scheme did not involve entitle the Promoters to receive any equity shares of the Company, nor did it involve any actual purchase or sale of the equity shares of the Company.
6. Pursuant to the Phantom Stock Scheme, the 1st year payout was made to the Promoters in August 2014 and the 2nd cash payout is expected to be made in August 2015.
7. On 30th September, 2014 the remaining 2 year plans were cancelled and accordingly no payout will be made to the Promoters after August 2015, under the Phantom Stock Scheme.

B. Relevant Provisions of the SEBI Regulations

1. The SEBI Regulations for covering share based payments were notified on 28th October, 2014.
2. Regulation 1(4) (iii) of SEBI Regulations covers SAR schemes.
3. Regulation 2(1)(zf) of the SEBI Regulations defines "stock appreciation right scheme or SAR scheme" to mean "a scheme under which a company grants SAR to employees".
4. Further, SAR as per regulation 2(1)(ze) defines "Stock appreciation right or SAR" to mean "a right given to a SAR grantee entitling him to receive appreciation for a specified number of shares of the company where the settlement of such appreciation may be made by way of cash payment or shares of the company."



Further, the explanation to regulation 2(1)(ze) states that "an SAR settled by way of shares of the company shall be referred to as equity settled SAR".

5. Regulation 2(1)(f) defines "employee" to mean-

- (i) "a permanent employee of the company who has been working in India or outside India; or
- (ii) a director of the company, whether a whole time director or not but excluding an independent director; or
- (iii) an employee as defined in clauses (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company or of an associate company but does not include-
 - (a) an employee who is a promoter or a person belonging to the promoter group; or
 - (b) a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company."

C. Queries

Considering the above background and the relevant provisions of the SEBI Regulations, please advise us on the following:

- a) In light of the facts that:
 - the Phantom Stock Scheme of the Company does not involve any dealing in or subscribing to or purchasing securities of the Company, directly or indirectly; and
 - regulation 4(ii) of the SEBI Regulations provides that the provisions of the SEBI Regulations shall apply to a company whose shares are listed on a recognized stock exchange in India and has a scheme (i) for direct or indirect benefit of the employees; and (ii) involving dealing in or subscribing to or purchasing securities of the Company, directly or indirectly; and (iii) satisfying, directly or indirectly, any of the following conditions: (a) the scheme is set up by the company or any company in its group; (b) the scheme is funded or guaranteed by the company or any company in its group; the scheme is controlled or managed by the company or any other company in its group, (*emphasis added*)

whether the Phantom Stock Scheme falls within purview of SEBI Regulations?

- b) As per the current definition of "employee", for the purpose of any share based schemes, it appears that only employee of any subsidiary/ holding company/ associate company of the company who is also a promoter/ part of promoter group alone excluded and considering this,



whether Phantom Stock awarded to the Promoters is fully compliant with the SEBI Regulations?

- c) Since the Promoters are not excluded employees as per the current definition as per the SEBI Regulations, can the Company award fresh phantom stock units to Promoters?

Please also advise that no action would be initiated under SEBI Regulations or any other SEBI regulations.

As required in SEBI (Informal Guidance) Scheme, 2003, a demand draft dated 12nd May, 2015 for Rs.25,000, payable at Mumbai is enclosed herewith towards fees payable for seeking guidance.

In case you require any additional information/ explanation, please contact the undersigned person. We look forward to your response.

Mr. Jagannathan Chakravarthi
Chief Financial Officer
Mindtree Limited
Global Village, RVCE post, Mysore Road
Bangalore - 560 059, India
P + 91 80 3395 5615
M + 91 97422 72461
F + 91 80 6706 4100
E jagannathan.chakravarthi@mindtree.com

Thank you

For Mindtree Limited


Authorised Signatory

