



भारतीय प्रतिभूति
और विनियम बोर्ड
Securities and Exchange
Board of India

Deputy General Manager
Corporation Finance Department
Division of Corporate Restructuring
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SEBI/HO/CFD/DCR1/OW/P/2018/31460/1

November 14, 2018

S. S. Toshniwal
Goolrukh 10th Floor,
83 Worli Seaface
Mumbai – 400 030

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 Lactose (India) Limited

1. This has reference to your letter dated September 05, 2018 and email dated October 22, 2018 on the captioned subject.
2. Vide the aforementioned correspondence, you have, *inter alia*, represented as under:
 - i. You are a shareholder and promoter group entity of Lactose (India) Limited (Target Company) since long and have been shown as promoter group entity during the period including latest as on 31.03.2014, 31.03.2015, 31.03.2016 and 31.03.2017.
 - ii. You are holding 53,073 shares constituting 0.52% of the paid up equity capital of the company. You have been allotted 75,000 convertible warrants, convertible into equity shares by April 2019. After conversion of warrants into equity, your shareholding will increase from 53,073 shares (0.52%) to 1,28,073 shares (1.26%) of paid up equity share capital of the company.
 - iii. Your elder sister's daughter Mrs. Indu Kasat, a foreign shareholder from 2008, is holding 7,80,000 shares (7.76%) of the Target Company. She wants to gift 7,80,000 shares by way of Off-market transaction (gift) to her mother Mrs. Vidyawati Parwal (your sister). Subsequently, Mrs. Vidyawati Parwal would like to gift these 7,80,000 shares to you by off-market transaction (gift).

सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बान्द्रा कुर्ला कॉम्प्लेक्स, बान्द्रा (पूर्व), मुंबई - 400 051.
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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- iv. If the above transactions are concluded, your shareholding will be increased from existing 53,073 shares (0.52%) to 8,33,073 shares (8.28%), i.e. an increase of 7.76% due to which there will be change in promoter group shareholding on account of off market inter se transfer from current 34.28% to 42.04%. After conversion of warrant, promoter group shareholding will be 43.51%.

Queries:-

3. In view of the above, you have sought guidance from SEBI, specifically, on the following:
"I seek an interpretive letter for the contemplated off market transactions referred hereinabove with an object to avail the benefit from exemption from inviting and invoking of provision of Regulation 3 related to OPEN OFFER consequent to the contemplation transaction."
Also, I seek an interpretive letter..... for the contemplated off market transactions referred hereinabove with an object to avail the benefit from exemption from inviting and invoking of provision of Regulation 8 related to OFFER PRICE for valuation of shares as per SEBI (SAST) Regulations, 2011 consequent to the contemplated transaction."
4. However, at para 6 of your letter dated September 05, 2018, you had stated that "As per my views it is off-market and inter se transfer it would not attract Regulation 4(1) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations)". Further, at para 10 of the said letter, it was stated that "I understand that the impugned transaction described hereinabove has no bearing or definite impact on any other similarly placed transactions or pending enquiries, if any". However, you had not given any details with respect to the transactions or pending enquiries while making such a statement.
5. Therefore, SEBI had sought clarification from you on the said issues. Vide your email dated October 22, 2018, you have clarified that you have sought interpretative letter under the SEBI (Informal Guidance) Scheme, 2003 only with regard to your proposed transaction under Regulation 10(1)(a)(i) r/w Regulation 3 and 8 of the SAST Regulations. Further, it has also been clarified by you that the statement made in para 10 of your letter dated September 05, 2018 is a general statement as you are not aware of any other similarly placed transactions or pending enquiries with SEBI having impact on your queries on the related party inter-se share transfer.

Our Comments:-

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



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4.1 Reference is drawn to the following provisions of Takeover Regulations, 2011:

4.1.1. Relevant extracts from Regulation 10 of 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,—

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

(i) immediate relatives;

(ii)...

(5) In respect of acquisitions under clause (a) of sub-regulation (1), and clauses (e) and (f) of sub-regulation (4), the acquirer shall intimate the stock exchanges where the shares of the target company are listed, the details of the proposed acquisition in such form as may be specified, at least four working days prior to the proposed acquisition, and the stock exchange shall forthwith disseminate such information to the public.

(6) In respect of any acquisition made pursuant to exemption provided for in this regulation, the acquirer shall file a report with the stock exchanges where the shares of the target company are listed, in such form as may be specified not later than four working days from the acquisition, and the stock exchange shall forthwith disseminate such information to the public.

(7) In respect of any acquisition of or increase in voting rights pursuant to exemption provided for in clause (a) of sub-regulation (1), sub-clause (iii) of clause (d) of sub-regulation (1), clause (b) of sub-regulation (1), sub-regulation (2), sub-regulation (3) and clause (c) of sub-regulation (4), clauses (a), (b) and (f) of sub-regulation (4), the acquirer shall, within twenty-one working days of the date of acquisition, submit a report in such form as may be specified along with supporting documents to the Board giving all details in respect of acquisitions, along with a non-refundable fee of rupees 21 [one lakh fifty thousand] 22 [by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or] by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board.

4.1.2 Definition of "immediate relative" provided in Regulation 2(1)(l) of Takeover Regulations, 2011:

2. (1) In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions and variations shall be construed accordingly,—

(l) "immediate relative" means any spouse of a person, and includes parent, brother, sister or child of such person or of the spouse.



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4.1.3 Definition of persons acting in concert provided in Regulation 2(1)(q) of Takeover Regulations, 2011:

(q) "persons acting in concert" means,

.....

(2) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established,—

.....

(v) immediate relatives;

.....

4.1.4 The relevant extracts of Regulation 8 are as follows:

(1) The open offer for acquiring shares under regulation 3, regulation 4, regulation 5 or regulation 6 shall be made at a price not lower than the price determined in accordance with sub-regulation (2) or sub-regulation (3), as the case may be.

.....

4.2 As represented by you, the promoter & promoter group shareholding in the target company is 34.28% (as on June 30, 2018). There are 8 promoter group entities, including you. The shareholding of Mrs. Indu Kasat (7,80,000 shares) is in the public category.

4.3 As mentioned by you, there are two off market transactions contemplated; (a) Off-market transfer of 7,80,000 shares from Mrs. Indu Kasat to Mrs. Vidyawati Parwal; and subsequently, (b) Off-market transfer of 7,80,000 shares from Mrs. Parwal to you.

Off-market transaction between Mrs. Parwal and Mrs. Indu Kasat

4.4 The first off-market transaction of 7,80,000 shares (7.77%) would be between Mrs. Parwal and Mrs. Indu Kasat:



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	Shareholding (current)	Increase/Decrease in shares (off market)	Shareholding post off-market transaction	Whether there is any trigger requiring open offer	Whether exempt under General Exemptions	Whether disclosure requirements under Reg. 29 applicable
Mrs. Indu Kasat	7,80,000 shares (7.77%)	-7,80,000 shares (7.77%)	NIL		-	Yes
Mrs. Parwal	NIL	+7,80,000 shares (7.77%)	7,80,000 shares (7.77%)	Yes - Reg. 3(2)	Reg. 10 (1)(a)(i)	Yes
Promoters + PACs	34,41,425 shares (34.28%)	+7,80,000 shares (7.77%)	42,21,425 shares (42.05%)			

4.5 In terms of the definition of "immediate relatives" under Regulation 2(1)(l) of Takeover Regulations, 2011 the following entities are immediate relatives:

- Mrs. Parwal and you;
- Mrs. Parwal and Mrs. Indu Kasat

4.6 Considering that Mrs. Parwal is an immediate relative of a promoter, Mrs. Parwal would be considered as persons acting in concert with the promoters (as per definition of PAC provided under Regulation 2(1)(q) of Takeover Regulations, 2011). Therefore, the shareholding of promoters along with PACs would increase from 34.28% to 42.05% (more than 5%) and would trigger the open offer requirements prescribed under Regulation 3(2) of Takeover Regulations, 2011.

4.7 However, since the transaction is between immediate relatives, the transaction would be exempt from the obligation to make an open offer as per Regulation 10 (1) (a) (i) of Takeover Regulations, 2011 subject to compliance with the conditions as mentioned under the proviso to Regulation 10(1)(a) and Regulation 10(5), (6) and (7) of the Takeover Regulations, 2011 and other disclosure requirements under the Takeover Regulations, 2011.

Off-market transaction between Mrs. Parwal and you

4.8 The second off-market transaction would be between Mrs. Parwal and you (S. S. Toshniwal):



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	Shareholding (current)	Increase/Decrease in shares (off market)	Shareholding post off-market transactions	Whether there is any trigger requiring open offer	Whether exempt under General Exemptions	Whether disclosure requirements under Reg. 29 applicable
Mrs. Parwal	7,80,000 shares (7.77%)	-7,80,000 shares (7.77%)	NIL		-	Yes
S. S. Toshniwal (applicant)	53,073 shares (0.53%)	+7,80,000 shares (7.77%)	8,33,073 shares (8.30%)	Yes - Reg. 3(2)	Reg. 10 (1)(a)(i)	Yes
Promoters (excluding seller)	34,41,425 shares (34.28%)	+7,80,000 shares (7.77%)	42,21,425 shares (42.05%)			

4.9 As mentioned in para 4.6 above, considering Mrs. Parwal is an immediate relative of the promoter, she would fall under the definition of a person acting in concert in terms of Regulation 2(1)(q) of Takeover Regulations, 2011. Thus, as a result of this transaction, the shareholding of promoters would increase from 34.28% to 42.05% (more than 5%) and would trigger the open offer requirements prescribed under Regulation 3(2) of Takeover Regulations, 2011.

4.10 However, since the above transaction is also between immediate relatives, the transaction would be exempt from the obligation of making an open offer as per Regulation 10 (1) (a) (i) of Takeover Regulations, 2011 subject to compliance with the conditions as mentioned under the proviso to Regulation 10(1)(a) and Regulation 10(5), (6) and (7) of the Takeover Regulations, 2011 and other disclosure requirements under the Takeover Regulations, 2011.

4.11 Further, as the said proposed off-market transactions would be exempt under Regulation 10(1)(a)(i) of the Takeover Regulations, 2011 from making an open offer, the provisions of Regulations 8 of the Takeover Regulations, 2011 would not be applicable in the instant case.

4.12 With regard to conversion of warrants into equity, the trigger and open offer requirements, if any, has to be considered at the time of conversion of warrants into equity as the same would depend on the shareholding pattern of the 'promoter and promoter group' prevailing at the time of conversion of the warrants.

7. 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.

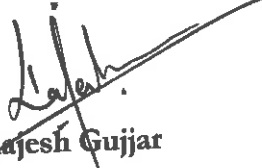


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8. You may also note that the above views are expressed only with respect to the clarification sought in your letter under reference with respect to Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 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