



Deputy General Manager,
Compliance and Monitoring Division-1
Corporation Finance Department

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

**SEBI/HO/CFD/CMD1/OW/P/2020/19620/1
November 18, 2020**

**Shri Vivek Jain
Company Secretary & Compliance Officer
8/1 Lal Bazar Street,
Bikaner Building, 3rd Floor,
Kolkata – 700001**

Sir,

**Sub: Request for Informal Guidance by way of interpretative letter under the SEBI
(Informal Guidance) Scheme, 2003**

1. This has reference to your letter dated October 06, 2020, requesting an interpretative letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 ('scheme').
2. In your letter under reference you have, *inter alia*, represented as under:
 - a. The equity shares of Manaksia Aluminum Company Limited ('MACL' or 'the Company') are listed on BSE and NSE.
 - b. The composition of the board of directors of the Company, as on date, is as under:

Sr.No.	Name	Designation/category
1	Mr. Ajay Kumar Chakraborty	NE- ID- Chairman
2	Mr. Chandan Ambaly	NE-ID
3	Mr. Shuvendu Sekhar Mohanty	NE-ID
4	Ms. Supriyt Biswas	Woman- ID
5	Mr. Dipak Bhattacharjee	ED-non promoter
6	Mr. Sunil Kimar Agarwal	MD- promoter director
7	Mr. Vineet Agrawal	NE-NI promoter director
8	Mr. Aniruddha Agrawal	NE-NI promoter director

NE- Non-executive, ID – independent director, ED- Executive director, MD – Managing Director, NI – non independent

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

SEBI Bhavan, Plot No. C4-A, "G" Block, Bandra-Kurla Complex, Bandra (E), Mumbai - 400 051.
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- c. The remuneration / salary to the MD & ED is paid by the Company in adherence with the applicable limit as specified under schedule V, part II, section II (viz., remuneration payable by companies having no profit or inadequate profit without Central Government approval) of the Companies Act, 2013 ('Companies Act') and rules made thereunder, for the time being in force.
 - d. Further, MD/ED are not paid any amount as fees or compensation including any profit percentage, incentive, retirement benefit, sitting fees, any fees in the form of extra service, etc., apart from monthly salary.
 - e. As on date, the Company has only one executive promoter director and the Company proposes to appoint one more executive promoter director on its board, with similar terms and conditions regarding remuneration.
 - f. In case the new executive promoter director is appointed within the limits as prescribed in the Companies Act including provisions of schedule V, part II, section II, approval is required by way of ordinary resolution in general meeting only.
 - g. In terms of regulation 17(6)(e) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR Regulations'), it is understood that in case the listed entity has one executive promoter director, it can pay upto 2.5% of the net profits or rupees 5 crore, whichever is higher, without passing a special resolution. In case of more than one such director in the entity, there is only a limit of 5 per cent of the net profits and absolute limit is not specified.
 - h. Currently, the Company has only one executive promoter director, whose remuneration is INR 126 lakh and is within the upper limit of clause (i) of regulation 17(6) (e) of LODR Regulations. With appointment of one more executive promoter director, the Company is required to comply with clause (ii) of regulation 17(6) (e) of LODR Regulations.
 - i. Further, the said regulation becomes applicable only if any fees or compensation is payable to executive promoter director apart from the customary monthly salary. It is noted that the term fees or compensation as mentioned in regulation 17(6)(e) is different and over and above the normal remuneration being paid to the executive directors.
3. On the basis of the above, you have sought guidance under the Scheme on:
- a. whether the aforementioned regulation would be applicable on the Company, if it appoints another executive promoter director by passing ordinary resolution and receiving only customary monthly salary and not receiving any fees or compensation in adherence with the applicable limit or ordinary resolution as specified under schedule V, part II, section III of the Companies Act and rules made thereunder;



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- b. is the upper limit of INR 5 crore as mentioned in clause (i) of regulation 17(6) (e) of LODR Regulations, for remuneration, also applicable if remuneration is paid to more than one executive promoter director under clause (ii) of regulation 17(6) (e) of LODR Regulations;
- c. whether the Company shall be required to pass a special resolution under clause (ii) of regulation 17(6) (e) of LODR Regulations for appointment of one more executive promoter director if the aggregate remuneration payable to all executive promoter directors exceeds 5 per cent of the net profits or an absolute aggregate limit of INR 5 crore shall also become applicable as mentioned in clause (i) of the said regulations.
4. In this regard, it may be noted that we have considered the submissions made by you in your letter under reference and without necessarily agreeing with your analysis, given in the above mentioned letter, our views on the queries raised by you are as follows:

- a. The following provisions of the LODR Regulations are applicable to the case under reference:

Regulation 17(6) (e) of LODR Regulations:

"the fees or compensation payable to executive directors who are promoters or members of the promoter group, shall be subject to the approval of the shareholders by special resolution in general meeting, if-

- i. *The annual remuneration payable to such executive director exceeds rupees 5 crore or 2.5 per cent of the net profits of the listed entity, whichever is higher; or*
- ii. *Where there is more than one such director, the aggregate annual remuneration to such directors exceeds 5 per cent of the net profits of the listed entity:*

Provided that the approval of the shareholders under this provision shall be valid only till the expiry of the term of such director.

- b. Section 2(78) of the Companies Act defines remuneration as any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961 (43 of 1961). Remuneration as defined under the Companies Act is an all-inclusive definition which encompasses any money or its equivalent given to any person for services rendered and also includes perquisites. Therefore, if not explicitly excluded, the remuneration would include salary, fees, commission, stock options, etc. or any money or its equivalent in whatever manner given to any person for the services rendered.

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- c. Any listed entity is required to comply with the provisions of LODR Regulations in addition to the provisions of the Companies Act. Therefore, Regulation 17(6) (e) of LODR Regulations would be applicable to the Company, in case the remuneration paid to such directors is beyond the specified limits and the Company is required to take approval of shareholders by special resolution in a general meeting, notwithstanding the adherence with the applicable limit of Ordinary resolution as specified under Schedule V, Part II, Section II .
- d. Further, clause (ii) of regulation 17(6) (e) of LODR Regulations prescribes only a percentage limit (i.e. where there are more than one executive directors who are promoters or members of the promoter group, the aggregate annual remuneration to such directors exceeds 5 per cent of the net profits of the listed entity) and no absolute limit has been specified.
- e. In case if the aggregate remuneration payable to all executive promoter directors exceeds 5 per cent of the net profits, the Company shall be required to pass a special resolution under clause (ii) of regulation 17(6) (e) of LODR Regulations, subject to the condition that such approval of the shareholders shall be valid only till the expiry of the term of such directors.
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 the LODR Regulations 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,


Amy Menon