भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange Board of India

General Manager
Corporation Finance Department
Division Of Corporate Restructuring
Tel. (Direct):2644 9330

CFD/DCR/ SKS/ SG/198032/10
March 10, 2010

The Company Secretary
Eastern Investments Limited
Office-FD-350
Salt Lake City, Sector-III
Kolkata-700106

Dear Sir,

Sub.: <u>Request for Interpretive Letter under the SEBI (Informal Guidance) Scheme, 2003- SEBI (Substantial Acquisition of Shares And Takeovers) Regulations, 1997 {Regulations}</u>

1. Please refer to your letters dated 27.10.09, 22.12.09, 29.01.10, 03.02.10, 04.02.10, 08.02.01, 09.02.10 and 16.02.10, on the captioned subject matter.

2. In your letters under reference you have *inter alia* represented as follows:-

   a. Eastern Investments Limited (EIL) is an investment company and belongs to Bird group of companies (BGCs). There are twenty one companies including EIL and their subsidiaries are under Bird group.
   b. With the effect of nationalization of the above Bird group companies pursuant to Bird & Company Ltd (Acquisition and transfer of Undertakings and other properties) Act, 1980, the shares of aforesaid twenty one companies got vested in the President of India through different ministries.
   c. EIL, Orissa Minerals Development Company Limited (OMDC), Birsa Stone Lime Company Limited (BSLC) and other three companies were came under the administrative control of Ministry of Steel, Government of India and were styled as Bird Group of companies as mentioned above.
   d. EIL, OMDC and BSLC, are Government Companies as follows:
      i. More than 51% of its paid up Shares are being held by Government (directly & indirectly) as indicated in the Share holding pattern enclosed along with your letter dated 29.01.2010.
      ii. In accordance with the provisions of an Act of the Parliament i.e. "The Bird And Company Limited (Acquisition and Transfer Of Undertakings And other Properties) Act, 1980" all the shares held by the company shall stand transferred to and vested in the Central Government.

iii. By virtue of the above referred Act the total Management of the Companies including that of EIL, The OMDC and BSLC have been vested on the Central Government and due to this the Board Of Directors of these Group Companies are being appointed/ nominated by the Central Government.

iv. In view of the aforesaid reasons all the companies as referred above i.e. EIL, OMDC & BSLC are Group Companies under the same management. Status of 'the Companies Under the same management' has been disclosed in the Annual Reports.

v. On consideration of above stated facts EIL comes under the preview of CAG Audit.

vi. It is the fact that that the said "Restructuring Scheme" involving EIL, OMDC & BSLC have been drafted by Ministry of Steel and have been dully vetted by Ministry of Corporate Affairs, Ministry of Labour & Employment, Department of Corporate Affairs, Planning Commission & Department Of Public Enterprises, Ministry Of Finance. The said Restructuring Scheme has been shown to the PMO and has been duly approved by the Union Cabinet in its meeting held on 10.09.2009.

e. Restructuring of aforesaid three companies i.e., EIL, OMDC and BSLC has been finalized and approved by the Ministry and also the Union Cabinet.

f. In pursuance of aforesaid Restructuring Scheme, EIL needs to acquire substantial shares of the OMDC and BSLC from the President of India (transferor/seller). In lieu of such acquisition of shares, EIL needs to issue and allot its own shares in the name of President of India as preferential allotment based on the valuation of shares of all the three companies by a registered valuer.

g. EIL, OMDC and BSLC are listed on the Calcutta Stock Exchange. In a bid to acquire 14.2% of shares of OMDC and around 50% of shares of BSLC from President of India and very meager number (less than 2%) of shares of OMDC from Life Insurance Corporation Limited (LICL), EIL appears to come under purview of Takeover Regulations concerning public announcement.

h. The Transferee (EIL) and the Transferor (President of India) are disclosed as promoters of the both the target companies i.e., OMDC and BSLC.

i. That EIL, OMDC and BSLC are disclosed as associate/group companies under their respective last published annual reports.

j. In view of the above stated facts, you have stated that the proposed substantial acquisitions of Shares of OMDC & BSLC by EIL under the "Restructuring Scheme" in accordance with law i.e., The Bird and Company Limited (Acquisition and Transfer of Undertakings and other Properties) Act,1980 and same has been duly approved by the Union Cabinet. Hence, the proposed acquisition of shares by EIL may be treated as exempted transactions under either of the following categories:

i. Regulation 3(1)(h) of Takeover Regulations i.e., *Acquisition of shares by Government companies within the meaning of section 617 of the Companies Act, 1956 (1 of 1956), and statutory corporations*

ii. Regulation 3(1)(e)(i) of Takeover Regulations i.e., *Group coming within the definition of group as defined in the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) where persons constituting such group have been shown as group in the last published Annual Report of the target company.*

iii. Regulation 3(1)(e)(iii)(b) of Takeover Regulations i.e., *Qualifying promoters as both the transferee i.e. EIL and transferor i.e., Government of India are disclosed as promoters of OMDC and BSLC.*

3. As the decision of the Union Cabinet needs to be complied and implemented immediately, you requested SEBI to consider your stand as stated at para 2 'j' above, and if the same is considered to be applicable then to treat your request for informal guidance vide application dated December 22, 2009 as withdrawan.

4. Without necessarily agreeing with your analysis, our views on the issue raised by you are as under:-

(i) In this regard, your attention is drawn to regulation 3(1) (h) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (Takeover Regulations), which provides as follows:-

*"**Applicability of the regulation.***
3. (1) Nothing contained in regulations 10, 11 and 12 of these regulations shall apply to:
(a)……………..
(b)……………..
.
.
.
(h) acquisition of shares by Government companies within the meaning of section 617 of the Companies Act, 1956 (1 of 1956), and statutory corporations :
Provided that this exemption shall not be applicable if a Government company acquires shares or voting rights or control of a listed Public Sector Undertaking through the competitive bidding process of the Central Government or the State Government as the case may be, for the purpose of disinvestment;
……………………… "

(ii) It has been represented that EIL, which is acquiring the shares of OMDC and BSLC is a Government company within the meaning of section 617 of the Companies Act, 1956. In view of this acquisitions of shares of OMDC and BSLC by the EIL shall be exempted from regulations 10, 11 and 12 of the

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Takeover Regulations under regulation 3(1)(h) subject to compliance with regulation 3(3) of the Takeover Regulations.

(iii) You are further informed that regulation 3(1)(h) exempts an acquisition from the applicability of regulations 10,11 and 12 of the Takeover Regulations but the provisions of Chapter II of the Takeover Regulations shall apply to such exempted acquisition.

(iv) Regarding your request for treating your request dated 27.10.09 as withdrawn if the stand, as stated at para 'a' of your letter dated 16.02.10 is found applicable, you are informed that you had made a request under SEBI (Informal Guidance) Scheme, 2003. In terms of the provisions of the said scheme, department of SEBI can confirm or deny a stand by way of "interpretive letter" or "no-action letter". In your case, your stand is being confirmed by the department of SEBI by way of the present interpretive letter. Accordingly, your request for informal guidance made vide application dated December 22, 2009 stands disposed of in terms of provisions of the SEBI (Informal Guidance) Scheme, 2003 and is governed by the provisions of said scheme. Accordingly, your request can not be treated as withdrawn.

5. This position is based on the representation made to the Division in your letters under reference. Different facts or conditions might require a different result. This letter does not express decision of the Board on the questions referred by you.

6. Please note that this position is only with respect to applicability of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and does not affect the applicability of any law and other SEBI Regulations, Guidelines and circulars administered by SEBI or any other authority.

Yours faithfully,

Santosh Kumar Sharma