

Date: 28 May 2021

To

**Securities and Exchange Board of India
Department of Debt and Hybrid Securities**

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C4-A, 'G' Block
Bandra Kurla Complex, Bandra (East)
Mumbai – 400 051

Dear Sir / Madam,

Sub: Request for informal guidance in the form of an interpretative letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in relation to a preferential issue of units to natural persons by a privately placed listed infrastructure investment trust.

We submit this letter seeking an informal guidance in the form of an interpretative letter under the provisions of the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003, as amended (“**Scheme**”) with respect to the proposed acquisition of securities of Space Teleinfra Private Limited (“**Target SPV**”) by Tower Infrastructure Trust (“**Tower InvIT**”), consideration for which is proposed to be a combination of cash and fresh issuance of units of the Tower InvIT in exchange for the securities held by the existing shareholders of the Target SPV.

We submit this application on behalf of our client, the Target SPV, and Ankit Goel, Radhey Raman Sharma and Ram Gopal Goel, who are the promoters and shareholders of the Target SPV (“**Existing Shareholders**”).

1. Background and Grounds for Request

- 1.1. The Target SPV, incorporated on 19 February 2011, holds completed and revenue generating assets and is currently engaged in the business of providing telecom infrastructure services to telecom service providers (“**TSPs**”) through In building Solutions (including distributed antennae systems and rooftop poles), and for installation of indoor and outdoor small cells.
- 1.2. The Tower InvIT is a privately placed listed infrastructure investment trust registered with SEBI under the Securities and Exchange Board of India (Infrastructure Investment Trust), Regulations, 2014, as amended from time to time (“**InvIT Regulations**”). The Investment Manager of Tower InvIT is Brookfield India Infrastructure Manager Private Limited.
- 1.3. The Existing Shareholders are currently in discussions to sell up to 100% of their stake in the Target SPV to the Tower InvIT. The Existing Shareholders and the Tower InvIT propose to structure the consideration for such acquisition (in full or in part, in one or more tranches) through a combination of cash and units of the Tower InvIT in exchange for securities of the Target SPV. The units which are proposed to be issued and allotted to the Existing Shareholders as part of the proposed consideration shall be issued through preferential issue(s) of units by the Tower InvIT in accordance with the 'Guidelines on preferential issues and institutional placements by listed InvITs' issued by SEBI through its circular dated November 27, 2019 (ref. no: SEBI/HO/DDHS/DDHS/CIR/P/2019/143), as amended from time to time (“**Preferential Issue Guidelines**”). Such preferential issue(s) of units shall be made after the parties have obtained necessary approvals which may be required

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pursuant to applicable law.

1.4. We, Ambit Private Limited, seek your guidance on the query as set forth in paragraph 2 below.

2. Queries on which guidance is sought

In light of the above, on behalf of our client, the Target SPV, and the Existing Shareholders, we seek an interpretative guidance on the below:

Whether a privately placed listed infrastructure investment trust ("**InvIT**") (in this case the Tower InvIT), which fulfils the eligibility criteria for undertaking a preferential issue under the InvIT Regulations is permitted to issue and allot units to natural persons (in this case the Existing Shareholders) under the Preferential Issue Guidelines in exchange for receipt of securities of the Target SPV?

3. Our Submissions

3.1. We submit that the interpretation as set out in relation to the query above is based on the following analysis:

3.1.1. The InvIT Regulations specify the conditions applicable for an initial offer of units by a to be listed InvIT including the categories of eligible investors. However, any subsequent issue of units by a listed InvIT is required to be undertaken in the manner specified by SEBI. Accordingly, SEBI issued the Preferential Issue Guidelines in November 2019 and has also separately issued guidelines for rights issues by listed InvITs in January 2020.

3.1.2. The preamble to the Preferential Issue Guidelines states: "*This circular details the guidelines in respect of a preferential issue of units and institutional placement of units **by a listed InvIT***". The InvIT Regulations define a listed InvIT to mean "*an InvIT whose units are listed on a recognized stock exchange*". Accordingly, a preferential issue by the Tower InvIT shall be governed by the Preferential Issue Guidelines.

3.1.3. The InvIT Regulations define **preferential issue** and **private placement** as under:

*"(zo) "**preferential issue**" means an issue of units by a listed InvIT to any select person or group of persons on a private placement basis and does not include an offer of units made through a public issue, rights issue, bonus issue, qualified institutions placement or any other issue as may be specified by the Board;"*

*"(zoo) "**private placement**" means an issue of units by an InvIT to any select person or group of persons and does not include an offer of units made through a public issue;"*

The preamble to Preferential Issue Guidelines refers to Regulation 2(1)(zo) of InvIT Regulations and reiterates the definition of a preferential issue as: "*preferential issue*", is an issue to select group of persons on private placement basis.

While the term 'person' has not been specifically defined under the InvIT Regulations, the SEBI Act, 1992, the Securities Contract (Regulation) Act, 1956 or the Companies Act, 2013, the definition may be borrowed from legislations such as the Income Tax Act, 1961 or the General Clauses Act, 1897, which define 'person' to include bodies corporate as well as **natural persons**.

Further, Regulation 2(1)(b) of the InvIT Regulations defines the term "**associate**" which *inter alia* provides that where the said person is an individual, associate will include any relative of the individual. This further demonstrates that the use of the term 'person' under the InvIT Regulations is intended to cover **natural persons** as well.

3.1.4. Further, the Preferential Issue Guidelines require the investment manager to disclose the intent of any **directors or key managerial personnel** of the parties to the InvIT to subscribe to the preferential issue. This disclosure requirement (as reproduced below) clarifies that the preferential issue of units under the Preferential Issue Guidelines envisages issuance of units to natural persons:

*Paragraph 1.1.4 of Annexure 1 of the Preferential Issue Guidelines: “Intent of the parties to the InvIT, **their directors or key managerial personnel** to subscribe to the issue”*

The Preferential Issue Guidelines also permit the issuance of units of an InvIT for consideration other than cash pursuant to paragraph 3.3: **“Other than to the extent of the issue of units that is proposed to be made for consideration other than cash, full consideration for the units issued shall be paid by the prospective allottees prior to the allotment of the units, through banking channels.”**

- 3.1.5. The InvIT Regulations specify conditions applicable to a private placement by a to be listed InvIT at the time of initial offer pursuant to Regulation 14(2) which states as under:

“If the InvIT raises funds by way of private placement–

*(a) it shall do it through a **placement memorandum**;*

(b) from institutional investors and body corporate only, whether Indian or foreign:”

Regulation 14 specifically deals with initial offers by an InvIT and accordingly, an initial offer by a listed InvIT through a private placement is required to comply with Regulation 14(2) (i.e., it shall be made through a placement memorandum and can only be made to institutional investors and body corporates in accordance with Regulation 14(2)(a) and (b)). However, the InvIT Regulations do not set out any specific requirements applicable to a preferential issue by a listed InvIT.

- 3.1.6. It is clear from a plain reading of the Preferential Issue Guidelines that the aforementioned requirements under Regulation 14(2), including preparation of a placement memorandum and the restriction on category of eligible investors are **only applicable to an initial offer** and not to any subsequent issuance including through a preferential issue of units.

- 3.1.7. The Preferential Issue Guidelines do not contain any restrictions on the nature of investors in case of a preferential issue and on the contrary envisages allotment to individuals by referring to participation by directors or key managerial personnel of parties to an InvIT. Moreover, neither the InvIT Regulations nor any circulars issued pursuant to same impose any restriction on purchase of units of privately placed listed InvITs by individuals from secondary markets (subject to minimum trading lot).

- 3.1.8. Based on the aforementioned, in our view, there is no restriction under the InvIT Regulations or the Preferential Issue Guidelines which prohibits allotment of units to natural persons pursuant to a preferential issue under the Preferential Issue Guidelines.

- 3.2. It is also important to note that the proposed preferential issue of units shall be made after the Tower InvIT has obtained necessary approvals of the unitholders in accordance with the InvIT Regulations and any other approvals which may be required for the proposed transaction pursuant to other applicable law. Further, in accordance with the Preferential Issue Guidelines, the investment manager shall disclose all necessary details with respect to the object of the preferential issue and details of the proposed allottees in the explanatory statement to be issued to the unitholders.

- 3.3. In view of the above, and in the context of the given facts, we reiterate our interpretation that a privately placed listed InvIT (in this case, Tower InvIT) is permitted to issue units to natural persons (in this case, the Existing Shareholders) in exchange for receipt of securities of the Target SPV on a preferential basis, in accordance with the InvIT Regulations and the Preferential Issue Guidelines.

- 3.4. We seek an interpretative guidance on the above understanding on behalf of our client, the Target SPV, and the Existing Shareholders, in the context of the facts and submissions outlined above.

4. Fees

As per the requirements prescribed under the Scheme, we have made payment of ₹ 25,000 (Rupees Twenty-Five Thousand only) on 28 May 2021 (UTR No.: N148211515659816) in favour of “The Securities and Exchange Board of India” to SEBI’s bank account number 012210210000007 in relation to this application for seeking the interpretative letter. We have

enclosed a copy of the payment confirmation as **Annexure A**.

Further, as per the provisions of paragraph 11 of the Scheme, we request you to give confidential treatment to this application for a period of 90 (ninety) days from the date of SEBI's response as the information pertains to a proposed acquisition by a listed InvIT.

Should you have any questions or require any clarifications with respect to this application, kindly contact the below person(s) from **Ambit Private Limited** or **Khaitan & Co** (the legal counsel to the Target SPV and Existing Shareholders):

Contact Person	Telephone	Email
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Thank you.

Yours faithfully,

For **Ambit Private Limited**

SEBI Registration Number: INM000010585



Authorised Signatory

Name: Rahul Mody

Designation: Managing Director