



भारतीय प्रतिभूति
और विनियम बोर्ड

Securities and Exchange
Board of India

DEPUTY GENERAL MANAGER
CORPORATION FINANCE DEPARTMENT
DIVISION OF CORPORATE RESTRUCTURING

SEBI/HO/CFD/DCR2/OW/28340/2018
October 09, 2018

Shri Praveen Kumar Arora
H-334, Ground Floor,
New Rajinder Nagar,
New Delhi - 110060

Dear Sir,

Sub: Request for informal guidance under the SEBI (Informal Guidance) Scheme, 2003 {Scheme} in the matter of M/s. Shreevatsaa Finance and Leasing Limited {Target Company} under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 {Takeover Regulations} and SEBI (Prohibition of Insider Trading) Regulations, 2015 {PIT Regulations}.

1. This has reference to your letter dated August 01, 2018 (received on August 03, 2018) on the captioned subject.
2. You have, *inter alia*, represented as follows-
 - a. You are a shareholder and promoter group entity of the target company and holding 65,25,700 shares constituting 64.61% of paid up equity share capital of the target company.
 - b. The Promoters' share in the target company's shareholding is 75.00% and consists of two entities i.e. yourself and Agarni Leasing and Finance Pvt. Ltd.
 - c. You are proposing to acquire 10.39% shareholding of the Target Company from the Promoter namely, Agarni Leasing and Finance Pvt. Ltd.
 - d. The entire shareholding of Agarni Leasing and Finance Pvt. Ltd., is held by your brother and sister in law i.e. Mr. Som Arora (your brother) and Mrs. Vrsha Arora (Sister in law of Praveen Kumar Arora and wife of Mr. Som Arora).

सेबी भवन, सी-4 'ए', जी-ब्लॉक, बान्द्रा कुर्ला काम्प्लेक्स, मुंबई-400 051. • दूरभाष : 2644 9000 • फैक्स : 2644 9019 to 2644 9022
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- e. Pursuant to the transaction, your shareholding will increase from the existing 65,25,700 shares (64.61%) to 75,75,000 shares (75%) in the target company. However, there will not be any change in the aggregate shareholding of the promoter group and in control and management of the target company on account of inter se transfers amongst promoter group entities.
- f. The transferor and transferee stand as qualifying persons as envisaged under Regulation 10(1) (a) (ii) of Takeover Regulations and thereby entitled to avail the benefit of General Exemption in terms of Regulation 10 of Takeover Regulations.
3. In view of the above, you have sought informal guidance from SEBI on the following issues:
- a) *Considering that the applicant Mr Praveen Kumar Arora and the transferor entity have been promoters of the target company for a period of more than three years, whether the proposed acquisition between the applicant and the transferor would be exempt from the open offer obligations as envisaged under Regulation 10(1)(a)(ii) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011?*
- b) *Whether an off market inter-se transfer of shares between the promoters of the company as enumerated above in the case of 'M/s. Shreevatsaa Finance and Leasing Limited' would come under the exemption of Regulation (4)(1)(i) of the SEBI(Prohibition of Insider Trading) Regulations, 2015 or are we mandated to furnish a trading plan as stated in provisions of Regulation 5 of the said regulations?*
4. We have considered the submissions made by you in your letter under reference and without necessarily agreeing with your analysis, our view is as under:

With respect to query at 3(a) above:-

- a. Regulation 10(1)(a)(ii) of the SAST Regulations read as under:

General Exemption:

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 —



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

(i).....

(ii) persons named as promoters in the shareholding pattern filed by the target company in terms of the listing agreement or these regulations for not less than three years prior to the proposed acquisition;

.....

Provided that for purposes of availing of the exemption under this clause,—

(i) If the shares of the target company are frequently traded, the acquisition price per share shall not be higher by more than twenty-five per cent of the volume-weighted average market price for a period of sixty trading days preceding the date of issuance of notice for the proposed inter se transfer under sub-regulation (5), as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, and if the shares of the target company are infrequently traded, the acquisition price shall not be higher by more than twenty-five percent of the price determined in terms of clause (e) of sub-regulation (2) of regulation 8; and

(ii) the transferor and the transferee shall have complied with applicable disclosure requirements set out in Chapter V.

- b. Thus, in terms of Regulation 10(1)(a)(ii) of SAST Regulations, the acquisition pursuant to an *inter se* transfer of shares amongst persons named as promoters in the shareholding pattern filed by the target company in terms of the listing agreement for not less than three years prior to the proposed acquisition would be exempt from making an open offer under Regulation 3 and 4 of the SAST Regulations.
- c. Upon perusal of the facts of the case, the proposed acquisition appears to be pursuant to *inter-se* transfer of shares among the existing promoters. Further, as submitted by you, the promoters of the target company i.e. you and the transferor entity have been enlisted in the Promoter Category in the target company's shareholding pattern for a period of more than 3 years.
- d. In view of the above, the exemption from open offer obligations under Regulation 3 as contained under regulation 10(1)(a)(ii) of the Takeover Regulations would extend to the proposed transfer of



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shares subject to the compliance of the conditions as stipulated under regulation 10 of Takeover Regulations.

With respect to query at 3(b) above:-

e. Regulation 4(1) of the PIT Regulations reads as under:

Trading when in possession of unpublished price sensitive information.

4.(1) No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information.

Provided that the insider may prove his innocence by demonstrating the circumstances including the following -

(i) The transaction is an off-market inter se transfer between promoters who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both the parties had made a conscious and informed trade decision;

(ii) In the case of non-individual insiders: -

(a) The individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and

(b) Appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;

(iii) The trades were pursuant to a trading plan set up in accordance with regulation 5.

f. With respect to the guidance sought under the PIT Regulations, it may be noted that Regulation 4(1) of the PIT Regulations prohibits an insider to trade in securities that are listed or proposed to be listed on a stock exchange when in possession of the UPSI. However, the provisos to the said regulation provide the insider an opportunity to prove his innocence by demonstrating the existence of certain circumstances at the time of execution of the said transactions. As per proviso (i) to Regulation 4(1) of the PIT Regulations, one such circumstance is when the transaction is an off-market *inter se* transfer between 'promoters' who were in possession of the same UPSI and that both the parties had made a conscious and informed trade decision. The said proviso is not an exemption from complying



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with the provisions of Regulation 4 of the PIT Regulations but can only be used as a defense in case an insider is charged for violating Regulation 4(1) of the PIT Regulations, 2015.

- g. Further, Regulation 5 of the PIT Regulations states about 'trading plans' and the provisions related thereto. The said provision only provides for an option to the insiders to formulate a trading plan as the said persons are presumed to be perpetually in possession of UPSI. If an insider opts to have a trading plan as per the regulation, then it may act as a circumstance to prove an insider innocent for the trades executed in terms of the proviso (iii) to Regulation 4(1) of the PIT Regulations.
5. Further, vide your aforesaid letter, you have requested for confidentiality in respect of your application. Accordingly, it has been decided that the no-action letter issued to you in this matter will not be made public for a period of 90 days from the date of issuance of this letter.
6. 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.
7. 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 Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 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,

Narendra Rawat