



Deputy General Manager

Corporation Finance Department

Division of Policy and Development

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SEBI/HO/CFD/PoD-1/OW/P/2025/6753/1

March 03, 2025

Empire Industries Limited

Empire Complex, 414, Senapati Bapat Marg,

Lower Parel, Mumbai- 400013, India

Sir,

Kind attention: Mr. Suhas Chandra Nanda (Company Secretary)

Sub: Request for Informal Guidance by way of an Interpretive Letter with respect to the provisions of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("SEBI SAST Regulations") & SEBI (Prohibition of Insider Trading) Regulations, 2015 ("SEBI PIT Regulations")

1. This is with reference to your letter dated December 16, 2024 ("application") seeking guidance by way of an interpretive letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 ("Informal Guidance Scheme").
2. In your application under reference you have, *inter alia*, represented as under:
 - 2.1. Empire Industries Limited ("Target Company") is a public limited company listed on BSE Limited and is engaged in the manufacturing and marketing of glass bottles for the pharmaceutical industry, marketing of machine tools and industrial equipment's, trading of frozen food products, building and leasing of commercial properties, providing vending services, developing real estate, building and managing business centres.

2.2. Mr. Satish Chandra Malhotra and Mrs. Usha Devi Malhotra ("Donors") are the promoters of the Target Company collectively holding 95,582 (1.59%) and 1,98,117 (3.30%) equity shares of the Target Company, respectively.

2.3. The Donors wish to gift their entire shareholding i.e. 4.90% of the paid up capital in equal proportion to their sons, Mr. Ranjit Malhotra and Mr. Dileep Malhotra ("Donee's/Acquirers"), who are also promoters of the Target Company.

2.4. As a result of the proposed gift of shares, Mr. Ranjit's shareholding will increase from 9,68,403 (16.14%) equity shares to 11,15,253 (18.58%) equity shares and Mr. Dileep's shareholding will increase from 14,75,975 (24.60%) equity shares to 16,22,824 (27.05%) equity shares of the Target Company.

2.5. Mr. Ranjit and his family (wife, son and daughter) currently hold 23.61% of the paid up capital collectively. As a result of the proposed gift the total shareholding of Mr Ranjit's family will increase to 26.06% and that of Mr. Dileep's individual shareholding will increase to 27.05%, which in both cases will exceed the 25% threshold and will trigger the open offer requirement as set out in SEBI SAST Regulations.

2.6. While referring to the provisions under SEBI SAST Regulations and SEBI PIT Regulations, you have sought clarifications as under:

2.6.1. *Considering that the Donors and Donee's are immediate relatives, whether the proposed acquisition between the transferors and acquirers would be exempt from the open offer obligations as envisaged under regulation 10(1)(a)(i) of SEBI SAST Regulations, 2011?*

2.6.2. *Any additional compliances required in this regard except as specified under regulations 10(5), 10(6), 10(7) and 29(2) of SEBI SAST Regulations?*

2.6.3. *Whether an off market inter-se transfer of shares between the promoters of the Target Company can be executed during trading window closure period under clause 4 of the Schedule B read with regulation 9 of SEBI (Prohibition of Insider Trading) Regulations, 2015 and will pre-clearance be required from the compliance officer of the Target Company to execute the gift of shares during such period.*

2.6.4. *Can we make a joint application of both Mr. Ranjit Malhotra and Mr. Dileep Malhotra under regulation 10(7) of the SEBI SAST Regulations to avail exemption under regulation 10(1)(a)(i) of the SEBI SAST Regulations?*

2.6.5. *Disclosure under regulation 29(2) of SEBI SAST Regulations is required for Donee's only or for Donors as well?*

3. The submissions made by you in your application have been considered and without necessarily agreeing with your analysis, our views on the queries are given below:

3.1. The relevant legal provisions are reproduced below:

Provisions under SEBI SAST Regulations, 2011:

3(1) *No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.*

3(3) *For the purpose of sub-regulation (1) and sub-regulation (2), acquisition of shares by any person, such that the individual shareholding of such person acquiring shares exceeds the stipulated threshold, shall also be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of whether there is a change in the aggregate shareholding with persons acting in concert.*

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. Persons named as promoters in the shareholding pattern filed by the target company in terms of the listing regulations or as the case may be, the listing agreement or these regulations for not less than three years prior to the proposed acquisition;

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- iii. ...
- iv. ...
- v. ...

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 transfer shall have complied with applicable disclosure requirements set out in Chapter V.”*

10(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.*

10(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.*

10(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 (h) 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*

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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 one lakh fifty thousand by way of direct credit into the bank account through NEFT/RTGS/IMPS or online payment using the SEBI Payment Gateway or any other mode as may be specified by the Board from time to time.

29(2) Any person together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

Provisions under SEBI PIT Regulations, 2015

4(1)(i) 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 insiders who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.

Provided further that such off-market trades shall be reported by the insiders to the company within two working days. Every company shall notify the particulars of such trades to the stock exchanges on which the securities are listed within two trading days from receipt of disclosure or from becoming aware of such information.

- ii. ...
- iii. ...

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*Clause 4(3)(a) of Schedule B read with regulation 9 of SEBI PIT Regulations:
The trading window restrictions mentioned in sub-clause (1) shall not apply in respect of-*

a) Transactions specified in clauses (i) to (iv) and (vi) of the proviso to sub-regulation (1) of regulation 4 and in respect of a pledge of shares for a bonafide purpose such as raising of funds, subject to pre-clearance by the compliance officer and compliance with the respective regulations made by the Board;

3.2. Reply to Query at paragraph 2.6.1

3.2.1. Regulation 10(1)(a)(i) of SEBI SAST Regulations provides that acquisition pursuant to inter se transfer of shares amongst immediate relatives shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 subject to fulfilment of the conditions stipulated therefor. The expression "immediate relative" under regulation 2(1)(l) of SEBI SAST Regulations is defined to inter alia include 'child of the person'.

3.2.2. In the present case, shares are proposed to be gifted by transfer by parents (Donors) to their sons (Donees). However, before invoking the exemption clause as above, it needs to be ascertained as to who triggers the open offer obligations under regulation 3 of SEBI SAST Regulations. In this regard, it may be noted that the Donors, namely, Mr. Satish Chandra Malhotra (shareholding-1.59%) and Mrs. Usha Devi Malhotra (shareholding-3.30%), desire to gift their cumulative holding of 4.90% of the paid up capital of the Target Company **to their sons** as under-

3.2.2.1. to Mr. Ranjit Malhotra, such that his individual shareholding will increase from the present 16.14% in the Target Company to 18.58%,

3.2.2.2. to Mr. Dileep Malhotra, such that his individual shareholding will increase from the present 24.60% to 27.05%.

3.2.3. The increase in respect of shareholding of Mr. Ranjit Malhotra from 16.14% to 18.58% does not breach the threshold limits specified under regulation 3(1) read with regulation 3(3). Hence, no open offer obligations would arise for Mr. Ranjit Malhotra.

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3.2.4. However, the shareholding increase from 24.60% to 27.05% in respect of Mr. Dileep Malhotra would breach the 25% threshold limits specified under regulation 3(1) read with regulation 3(3) of SEBI SAST Regulations, which would trigger open offer obligations thereunder. Hence, the exemption under regulation 10(1)(a)(i) of SEBI SAST Regulations could be invoked and made applicable in his case.

3.3. Reply to Query at paragraph 2.6.2

3.3.1. Since, the query does not completely and sufficiently describe the factual situation and the applicable legal provisions are not cited, in terms of paragraph 8 of the Informal Guidance Scheme, the said query is not responded to.

3.4. Reply to Query at paragraph 2.6.3

3.4.1. The trading window transactions would not apply to the inter-se off-market transfer between the promoters of the company, if the said transaction is carried out in compliance with the conditions mentioned in clause (i) of the proviso to regulation 4(1) of SEBI PIT Regulations, subject to pre-clearance by the compliance officer and compliance with respective regulations made by SEBI.

3.5. Reply to Query at paragraph 2.6.4

3.5.1. Regulation 10(7) of SEBI SAST Regulations requires the acquirer to submit a report, within twenty-one working days of the date of acquisition, in such form as may be specified along with supporting documents to the Board giving all details in respect of acquisitions.

3.5.2. Since the open offer obligations would be triggered [pursuant to the proposed transaction under regulation 3(1) read with 3(3)] and exemption [under regulation 10(1)(a)(i)] be invoked by Mr. Dileep Malhotra, compliance under regulation 10(7) of SEBI SAST Regulations shall be the responsibility of the said person.

3.6. Reply to Query at paragraph 2.6.5

3.6.1. The Donors and Donee's both would be required to comply with the disclosure requirement in terms of regulation 29(2) of SEBI SAST Regulations.



4. The above position is based on the information furnished in your letter dated December 16, 2024 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.
5. You may also note that the above position is expressed only with respect to the guidance sought in your letter under reference in respect of the provisions as referred above and does not affect the applicability of any other law or requirement of any other SEBI Regulation, Guidelines and Circulars administered by SEBI or the laws administered by any other authority.

Yours faithfully,

Vimal Bhatte