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R SYSTEMS INTERNATIONAL LIMITED

SEI CMMI Level 5, PCMM Level 5, ISO 9001:2008 & ISO 27001:2005 Company
C-40, SECTOR-59, NOIDA - 201 307, DISTT. GAUTAM BUDDH NAGAR, U.P. (INDIA)
PHONES : 0120-4303500 FAX : 0120-2587123
EMAIL : rsystems.india@rsystems.com, URL : www.rsystems.com
REGD. OFF. : B-104 A, GREATER KAILASH-I, NEW DELHI - 110 048

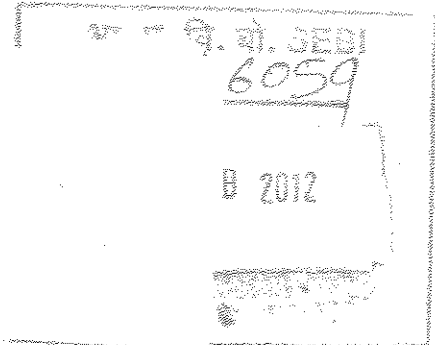
REF:SECT/02/2012/26

FEBRUARY 24, 2012

To,
The General Manager
Corporate Finance Department
Division of Corporate Restructuring
Securities & Exchange Board of India
SEBI Bhavan, Plot No. C4-A, G Block,
Bandra (East), Mumbai - 400051



SEBI/HO/...



Dear Sir/ Madam,

RE: Request for Interpretative Letter under the SEBI (Informal Guidance) Scheme, 2003

I. Introduction

1. R Systems International Limited (the "Company") is an Indian public limited company having its registered offices at B-104A, Greater Kailash- I, New Delhi - 110048. The shares of the Company are listed on the BSE Limited and the National Stock Exchange of India Limited. The shareholding pattern as filed by the Company with BSE Limited and National Stock Exchange of India Limited as of December 31, 2011 is attached as Annexure A to this letter.
2. Mr. Satinder Singh Rekhi, Mrs. Harpreet Rekhi, RightMatch Holdings Ltd and Satinder & Harpreet Rekhi Family Trust are the current promoters of the Company ("Promoters") and along with promoter group are holding 45.57% of the expanded equity share capital of the Company (i.e. assuming full conversion of outstanding options under ESOP/ESOS schemes of the Company). ①
3. One of the shareholders of the Company, Mr. Bhavook Tripathi (the "Acquirer"), had made a public announcement on December 15, 2011 ("Public Announcement") for an open offer ("Open Offer") for the acquisition of 33,45,242 equity shares of the Company constituting 26% of the equity share capital of the Company (on a fully diluted basis). As on date of the Public Announcement, the Acquirer held 23.82% of the equity shares of the Company (on a fully diluted basis). A copy of the Public Announcement made by the Acquirer for the Open Offer is attached as Annexure B to this letter. Kindly note that the Acquirer is neither a promoter nor a part of the promoter group nor is a person acting in concert with the promoter. ②
4. The Acquirer on December 22, 2011 had published a detailed public statement ("Public Statement") pursuant to the Public Announcement. The Acquirer had stated in the Public Statement that as on date of the Public Statement, he held 31% of the equity shares of the Company (on a fully diluted basis). A copy of the Public Statement for the Open Offer as published by the Acquirer is attached as Annexure C to this letter. The Acquirer had acquired 9,24,142 shares of the Company amounting to 7.18% of the equity shares of the Company on December 15, 2011 after the commencement of the offer period. ③
5. Further, the Acquirer has submitted with the Securities and Exchange Board of India ("SEBI"), the draft letter of offer in relation to the Open Offer for 33,45,242 equity shares of the



Company constituting 26% of the equity share capital of the Company (on a fully diluted basis). A copy of draft letter of offer is attached as Annexure D. 69

II. Interpretative Guidance Sought

6. In the context of the acquisition of 9,24,142 equity shares by the Acquirer during the offer period, the Company wishes to seek the Hon'ble Board's views with respect to interpretation of Regulation 22 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (the "Takeover Regulations") as to whether:
- (a) Regulation 22 (1) prohibits the completion of any acquisition (**whether under an agreement or otherwise**) of shares / voting rights / control by an acquirer for which the open offer is required to be made under the Takeover Regulations, prior to the consideration having been received by the shareholders who have tendered their shares under the open offer; and
 - (b) Regulation 22 (2) provides for an exception to the prohibition under Regulation 22 (1) by permitting an acquirer to complete the acquisition contemplated under such agreement after 21 days from the date of the detailed public statement, subject to the deposit of 100% of the consideration payable under the open offer assuming full acceptances.

III. Analysis

7. Regulation 22 (1) of the Takeover Regulations states as follows:

"The acquirer shall not complete the acquisition of shares or voting rights in, or control over, the target company, whether by way of subscription to shares or a purchase of shares attracting the obligation to make an open offer for acquiring shares, until the expiry of the offer period:

Provided that in case of an offer made under sub-regulation (1) of regulation 20, pursuant to a preferential allotment, the offer shall be completed within the period as provided under sub-regulation (1) of regulation 74 of Securities and Exchange Board of India (Issue of Capital and Disclosure) Regulations, 2009."

Further, the term acquisition is defined under Regulation 2 (1)(b) as follows:

"acquisition" means, directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, or control over, a target company;"

8. Regulation 22 (1) read with the definition of the term "acquisition" is clear and unambiguous in that it stipulates that the acquirer cannot acquire shares or voting rights in or control over a target company, which would attract the obligation to make the open offer, until the expiry of the "offer period". Further, the language of Regulation 22 (1) is very broad and appears to cover all types of acquisitions and not just those which are contemplated under an agreement executed by an acquirer.
9. The intent behind Regulation 22 (1) clearly appears to be to prohibit the completion of any acquisition (whether under an agreement or otherwise) of shares / voting rights / control by an acquirer for which the open offer is required to be made under the Takeover Regulations, prior to the consideration having been received by the shareholders who have tendered their shares under the open offer. This provision seems to have been included to safeguard the interests of the public shareholders who tender their shares in an open offer against any potential default by the acquirer



in purchasing such shares after having completed the acquisition of shares which triggered the open offer in the first instance. If the intent was to cover only acquisition of shares pursuant to an agreement, then Regulation 22 (1) would have stipulated the same in clear terms.

10. As regards, Regulation 22 (2) of the Takeover Regulations, the said Regulation reads as follows:

"Notwithstanding anything contained in sub-regulation (1), subject to the acquirer depositing in the escrow account under regulation 17, cash of an amount equal to one hundred per cent of the consideration payable under the open offer assuming full acceptance of the open offer, the parties to such agreement may after the expiry of twenty-one working days from the date of detailed public statement, act upon the agreement and the acquirer may complete the acquisition of shares or voting rights in, or control over the target company as contemplated."

Regulation 22 (2) merely provides an exception to Regulation 22 (1), permitting parties to an agreement (completion of acquisition pursuant to which would have otherwise been in violation of Regulation 22(1)). This exception permits an acquirer to complete the acquisition contemplated under such agreement after 21 days from the date of the detailed public statement, subject to the deposit of 100% of the consideration payable under the open offer assuming full acceptances. In the current situation, the Acquirer neither deposited 100% of the consideration payable under the open offer (assuming full acceptances) in the escrow account nor did he wait for the expiry of 21 days from the date of the detailed public statement, for the acquisition of 7.18% of the equity shares of the Company.

11. The words *"Notwithstanding anything contained in sub-regulation (1)"* forming part of Regulation 22(2) clearly indicate that the same is meant to be an exception to the rule as set out in Regulation 22 (1). It is a well settled principle of statutory interpretation that an exception cannot be used to narrow the scope of the rule. In case of any ambiguity in the interpretation of Regulation 22 (1) against the non obstante clause in Regulation 22(2), Regulation 22(1) must be read in a manner so as to control the non obstante clause in Regulation 22(2) and not the other way around. In this regard it may be noted that in the case of *Dominion of India v. Shrinbai A Irani*, AIR 1954 SC 596 (599, 600), Justice Bhagwati had stated as follows:

"The non obstante clause need not necessarily and always be co-extensive with the operative part so as to have the effect of cutting down the clear terms of an enactment. If the words of the enactment are clean and are capable of only one interpretation on a plain grammatical construction of the words thereof a non obstante clause cannot cut down the construction and restrict the scope of its operation."

In *Ashwini Kumar Ghosh v. Arabinda Bose*, AIR 1952 SC 369, Chief Justice Patanjali Sashtri held that *"the enacting part of the statute must, where it is clear be taken to control the non obstante clause where both cannot be read harmoniously"*

12. Therefore, the reference to the words "such agreement" in Regulation 22 (2) cannot dilute or restrict the prohibition contained in Regulation 22 (1). Further, if Regulation 22 (1) is to be read to be restricted only to those acquisitions which are contemplated pursuant to an agreement, it could lead to absurd consequences as discussed below:

- (a) There could be a gross misuse of the provision as all that an acquirer would need to do is not enter into any agreement with respect to an intended acquisition and on that basis complete such acquisition without waiting for the expiry of the offer period. This we assume is not the intention of the Takeover Regulations. In our view, the existence or non-existence of an agreement cannot determine the applicability of Regulation 22 (1) as



in certain cases, such as an acquisition on the stock exchange through negotiated deals (such as bulk and block deals), the existence of an agreement between the purchaser and the seller of shares in question is by itself difficult to establish.

- (b) There could be situation wherein the acquirer makes a public announcement of an open offer at a price determined in accordance with Regulation 8 and on the same date even prior to the news being disseminated to all the public shareholders, acquires shares from the market at the prevalent market price of such shares. The prevalent market price may be lower than the open offer price, thereby depriving the sellers of the opportunity to tender their shares at a higher price in the open offer. For instance in the current case, the Acquirer acquired 924,142 shares immediately after having made the public announcement on December 15, 2011 at a price of INR 117.87 per equity share. Under the open offer the price offered by him was INR 122. Therefore, the shareholders who sold the shares to the Acquirer on December 15, 2011 were denied the opportunity to realize a higher price under the open offer.
- (c) Acquisition of the shares from the public after having made the public announcement but prior to the expiry of the offer period could also prevent other shareholders from making competing offers. For instance in the current situation, had the Acquirer not acquired the 7.18% of the shares of the Company, the aggregate holding of the Acquirer post the open offer (assuming full acceptances) would have been 49.82%. If the promoters intended to make a competing offer, they would have had to make an offer for a minimum of 5.06% in such competing offer (i.e. 49.82%-44.76%). However, the Acquirer acquired an additional 7.18% of the equity shares even before such competing offer could have been made, thereby resulting in an increase in the offer size for the promoters from 5.06% to 12.24%. This has significant financial implications, which may have deterred the promoters from making a competing offer thereby resulting in loss of opportunity for the public shareholders to participate in a competing offer at potentially a higher price than that offered by the Acquirer. This was detrimental to the interests of the public shareholders as they are now restricted to only the open offer by the Acquirer.
- (d) Further, if such open market purchases are permitted, nothing would stop an acquirer from "cleaning up" the entire public shareholding even before any other potential acquirer makes a competing offer. This could result in the provisions relating to the competing offer under the Takeover Regulations being made redundant and also depriving the public shareholders of an opportunity to participate in a competing offer at a potentially higher price. Further, the open offer process itself would become academic.

13. Based on the above, we, request you to kindly confirm our understanding that:

- (a) Regulation 22 (1) prohibits the completion of any acquisition (**whether under an agreement or otherwise**) of shares / voting rights / control by an acquirer for which the open offer is required to be made under the Takeover Regulations, prior to the consideration having been received by the shareholders who have tendered their shares under the open offer; and
- (b) Regulation 22 (2) merely provides for an exception to the prohibition under Regulation 22 (1) by permitting an acquirer to complete the acquisition contemplated under such agreement after 21 days from the date of the detailed public statement, subject to the deposit of 100% of the consideration payable under the open offer assuming full acceptances.



14. We enclose a demand draft bearing number 250819 drawn on ICICI Bank Limited for an amount of Rs.25,000/- in favour of 'Securities and Exchange Board of India', payable at Mumbai, towards the prescribed fee.

We request you to kindly provide us the guidance on the aforesaid at the earliest. We will be happy to provide any further information or meet with you in person, as required. You may also contact:

Mr. Nand Sardana
Ph: +91 0120-4303506
Email: nand.sardana@rsystems.com

Yours Sincerely,



For R Systems International Limited

Nand Sardana
***Chief Financial Officer**