



GENERAL MANAGER  
CORPORATION FINANCE DEPARTMENT  
COMPLIANCE & MONITORING DIVISION

भारतीय प्रतिभूति  
और विनियम बोर्ड  
Securities and Exchange  
Board of India

SEBI/HO/CFD/CMD/OW/P/2016/21881 /1  
August 02, 2016

Suzlon Energy Limited  
"Suzlon", 5, Shrimali Society,  
Near Shri Krishna Complex,  
Navarangpura,  
Ahmedabad – 380009

Dear Sir,

**Sub: Request under Securities and Exchange Board of India (Informal Guidance)  
Scheme, 2003 – Suzlon Energy Limited**

1. This has reference to your letter dated June 07, 2016 seeking interpretive letter under the Securities and Exchange Board of India (Informal Guidance) Scheme 2003.
2. In your letter under reference you have inter alia represented as follows:
  - 2.1. Suzlon Energy Limited (SEL) is a listed entity having its registered office in Ahmedabad and group headquarters based in Pune. It is inter alia engaged in the business of designing, developing and manufacturing and supplying of wind turbine generators and together with this subsidiaries provides turnkey solution for setting up of, operating and maintaining of wind farm projects. SEL in its ordinary course of business inter alia sets up special purpose vehicles (SPVs) by subscribing to the SPV companies, installs wind or solar energy projects in such SPVs and proposes to eventually transfer its entire shareholding in the PSV to its clients/ investors.
  - 2.2. It is stated in the application that SEL has certain subsidiaries which had positive net worth and certain subsidiaries which had negative net worth as on March 31, 2016. SEL, from time to time, explores various options in order to reduce its debt and disinvestment of one or more of its subsidiaries could be a part of such options. It has been stated that, based on the audited accounts of the company for the financial year 2015-16, the company's consolidated net worth was negative as on March 31, 2016.
  - 2.3. Regulation 16(1)(c) of Listing Regulations defines a material subsidiary as – "a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year." Based on the above, a subsidiary of a listed entity would qualify as a material subsidiary if it satisfies either of the tests, i.e., if the income of a subsidiary exceeds 20% of the consolidated income of the listed entity and its subsidiaries or exceeds 20% of the consolidated net worth of the listed entity and subsidiaries, in the immediately preceding accounting year.

सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बांद्रा कुर्ला कॉम्प्लेक्स, बांद्रा (पूर्व), मुंबई - 400 051.  
दूरभाष : 2644 9950 / 4045 9950 (आई.वी.आर. एस.), 2644 9000 / 4045 9000 फैक्स : 2644 9019 से 2644 9022 वेब : www.sebi.gov.in

SEBI Bhavan, Plot No. C4-A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.  
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2.4. Further, the application makes a reference to Regulation 24(1) on the requirement to appoint at least one independent director on the board of the unlisted material subsidiary, Regulation 24(5) on non-disposal of shares in the material subsidiary to less than 50% or ceasing control over the subsidiary and Regulation 24(6) on the, selling, disposing and leasing of assets amounting to more than 20% of the assets of the material subsidiary in a year requiring prior approval of shareholders unless it is a scheme of arrangement.

3. Based on the above facts, you have sought our guidance on the following points:

3.1. **Query 1:** If the net worth of the company for an accounting year is negative, whether under Regulation 16(1)(c) of the Listing Regulations, the net worth test would be required to be considered to determine if any of the SPVs/ subsidiaries of the company are/ would be material subsidiaries of the company during the following year? If yes, how would the materiality threshold of 20% with reference to such negative net worth be determined since arithmetically, percentage for zero and less than zero is illogical?

For instance, if the consolidated turnover is 10,000 Crores, equity share capital is 700 Crores and consolidated net worth of the Company is -7000 Crores, (i) what would be the materiality threshold as per the Net-worth Test; and (ii) if four of the Company's subsidiaries have turnover of 500 Crores, 1500 Crores, 200 Crores and NIL respectively; and net worth of -1000 Crores, -150 Crores, 25 Crores and 10 Lacs respectively, which of such subsidiaries would be considered material subsidiaries of the Company as per the Net-worth Test ?

3.2. **Query 2:** Given its business structure, whether the company can obtain an omnibus approval of its shareholders, in terms of Regulation 24(5) of the Listing Regulations, during the financial year, permitting the board of directors/ duly authorized committee to dispose off the company's shareholding (more than 50% shares) in SPVs (which are material subsidiaries) during such financial year? This would prevent the hardship of approaching the shareholders repeatedly, which involves significant costs and time, prior to each such disposal in the relevant financial year.

3.3. **Query 3:** Whether company is required to approach shareholders under Regulation 24(5) of Listing Regulations in the event of shareholding of the company in a material subsidiary is reduced below 50% or the company ceases to have a control over a material subsidiary pursuant to a further issuance of shares by such subsidiary and not due to disposal of shares by the company?

4. Without necessarily agreeing to your analysis, our views on the queries raised by you are as under:

4.1. **Response 1:** As provided in Regulation 16(1)(c), a listed entity can be guided by either the income criteria or the net worth criteria as mentioned in R.16(1)(c) and may choose to formulate their policy for materiality. A listed entity can develop criteria that is stricter than what has been provided in the Regulations.





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**4.2. Response 2:** Regulation 24 (5) of the Listing Regulations stipulates as under :

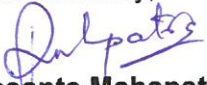
*"A listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than fifty percent or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal".*

The requirement under Regulation 24(5) for passage of a special resolution while disposing off shares in a material subsidiary below the prescribed thresholds by the listed entity is a measure put in place to ensure protection of investor interest. The provisions do not envisage omnibus approvals. The listed parent entity would therefore be required to obtain special resolution from its shareholders for disposing of shares in its material subsidiary to less than 50%.

**4.3. Response 3:** Since a subsidiary is within the control of its parent entity, there may not arise any such situation where a further issue of shares or dilution of holding or cessation of control is made without the involvement of the parent entity. The regulation also does not provide for such situations and requires shareholder approval through special resolution. Therefore, the listed parent entity would therefore be required to obtain special resolution from its shareholders.

5. This position is based on the representation made to the division in your aforesaid letter under reference. Different facts or condition might require different results. This letter does not express a decision of the Board on the question referred.
6. Please note that the above position is expressed only with respect to the clarifications sought on the applicability of the Listing Regulations as referred above and does not affect the applicability of any law and other SEBI Regulations, Guidelines and circulars administered by SEBI or the requirements of Listing Agreement.

Yours faithfully,

  
Prasanta Mahapatra