

KAILASH GUPTA

COMMERCIAL AUTOMOBILES PVT LTD.
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Ref:

Dated: 10th October 2012

Executive Director
Division of Corporate Restructuring
Corporation Finance Department
Securities and Exchange Board of India
SEBI Bhawan, Plot No.C4-A, "G" Block
Bandra – Kurla Complex,
Bandra (E),
Mumbai - 400 051

Dear Sir/Ma'am,

Re: Request for an Informal Guidance by way of interpretative letter under the SEBI (Informal Guidance) Scheme, 2003 in connection with the proposed *inter se* transfer of shares between promoters pursuant to Regulation 10 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

1. This is a request for an interpretative letter under Para 5 of the SEBI (Informal Guidance) Scheme, 2003 ("Scheme").

FACTUAL BACKGROUND AND PROPOSED TRANSACTION

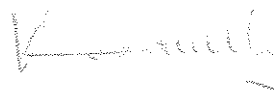
2. The Commercial Engineers and Body Builders Company Limited ("CEBBCO" or "the Company"), is a publicly listed company having its registered office at 84/105-A, G. T. Road, Kanpur Mahanagar, Kanpur – 208003, Uttar Pradesh. The Company is engaged in the business of designing and manufacturing vehicle and locomotive bodies for road and railway transportation.



3. The equity shares of the Company are listed on BSE Limited ("BSE") and National Stock Exchange of India Limited ("NSE") since October 18, 2010 pursuant to its initial public offer.
4. The Promoter and Promoter Group of the Company hold 55.81% of the paid-up share capital of the Company as set out in the table below:

S.No.	Name of the shareholder	Details of Shares held	
		No. of Shares held	Percentage
1	Kailash Gupta	12645780	23.02
2	Ajay Gupta	11281270	20.53
3	Asha Gopal Gupta	1620000	2.95
4	Jashn Beneficiary Trust	1124105	2.05
5	Asha Gopal Gupta	469338	0.85
6	Shalini Gupta	58030	0.11
7	Commercial Automobiles Private Limited	27054	0.05
8	Rekha Gupta	3439590	6.26
	Total	30665167	55.81

5. One of the promoters of the Company, Mr. Ajay Gupta ("AG") who holds 20.53% in the paid-up share capital of the Company intends to transfer shares of the Company constituting 17.61% of the paid-up share capital to Mr. Kailash Gupta ("KG" or "Acquirer"), another promoter of the Company. Mr. Kailash Gupta is Mr. Ajay Gupta's father in law.
6. We believe that the aforesaid transfer of shares from AG to KG will qualify for an exemption as an inter-se transfer of shares between promoters under Regulation 10(1)(a)(ii) of the SEBI (Substantial Acquisition of Shares and



Takeovers) Regulations, 2011 ("Takeover Regulations 2011") for the reasons mentioned herein below:

7. Regulation 10(1)(a)(ii) of the Takeover Regulations 2011 states that, "*The following acquisitions 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,— (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 agreement or these regulations for not less than three years prior to the proposed acquisition; (iii) ...*"
8. A reading of Regulation 10(1)(a)(ii) of the Takeover Regulations suggests that the promoters must be disclosed as such in the shareholding pattern filed by the Company in terms of the listing agreement or under the Takeover Regulations 2011 for a period of three years prior to the proposed acquisition. Since the Company was listed only in October 2010, AG and KG have been disclosed as promoters for two years only. However, both have been shareholders for a period of more than three years as on 1 Oct 2012.
9. In the instant case, we submit that the proposed *interse* transfer of shares between AG and KG would qualify for an exemption under Regulation 10(1)(a)(ii) of the Takeover Regulations 2011 for the reasons mentioned herein below:
 - a. Since the Company got listed in October 2010, it was impossible for the Company to make such a disclosure for a period prior to October



2010 pursuant to the listing agreement or under the Takeover Regulations 2011. However, we submit that both the transferor and transferee have been holding shares as promoters of the Company for more than 3 years. KG is the promoter / shareholder of the Company since October 3, 2005 and AG is the promoter / shareholder of the Company since December 23, 2006.

b. Further, in such a case, it is imperative to look into the spirit and intent behind the requirement of naming qualifying persons as promoters for a period of three years which can be ascertained from the following:

i. Proviso to Regulation 3(e)(iii)(b) of the erstwhile SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 1997 states:

"Provided that the transferor(s) as well as the transferee(s) have been holding shares in the target company for a period of at least three years prior to the proposed acquisition"
[Emphasis supplied]

ii. Paragraph 12.6 of the Report of the Takeover Regulations Advisory Committee ("TRAC") dated July 19, 2010 based on which the current regulations were drafted states:

"In respect of inter-se transfers amongst certain —qualifying parties as listed and defined under the Takeover Regulations, the Committee recommends that, in order to curb the abuse of introduction of new entities as qualifying parties, in most

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cases a requirement of pre-existing relationship of at least three years has been prescribed..."

c. As is evident from the erstwhile Takeover Regulations 1997 and TRAC's interpretation mentioned above, the intention behind the requirement of holding shares in the target company and named as promoters for a period of at least three years is to prevent the introduction of new parties i.e., it seeks to ensure that the transferor and transferee involved have a long-standing relationship inter-se and with the Company. We submit that a three year holding / disclosure requirement ensures the same.

d. We further submit that on applying this test to the instant case, it can clearly be seen that both AG and KG have been holding shares in the Company as promoters for more than three years and we believe that this is sufficient to meet the three year threshold requirement for the purposes of Regulation 10(1)(a)(ii) of the Takeover Regulations 2011. Therefore, KG should be eligible for an exemption prescribed under Regulation 10(1)(a)(ii) of the Takeover Regulations 2011. In other words, the shortage of one year of disclosure in the listing agreement should not be an impediment to the exemption process as the purpose of the safeguard under Regulations 10(1)(a)(ii) has been squarely met.

10. Furthermore, we submit that post such transfer of shares from AG to KG, the Promoter and Promoter Group of the Company will continue to hold 55.81% of the paid-up share capital of the Company as set out in the table below:



S. No.	Name of the shareholder	Details of Shares held	
		No. of Shares held	Percentage
1	Kailash Gupta	22320328	40.63
3	Ajay Gupta	1606722	2.92
4	Asha Gopal Gupta	1620000	2.95
5	Jashn Beneficiary Trust	1124105	2.05
6	Asha Gopal Gupta	469338	0.85
7	Shalini Gupta	58030	0.11
8	Commercial Automobiles Private Limited	27054	0.05
9	Rekha Gupta	3439590	6.26
Total		30665167	55.81

In other words the beneficial ownership of the promoter group will not change at all with this transfer.

11. We also submit that we will comply with all the necessary reporting and disclosure requirements as may be required for the proposed transaction under the applicable laws including the Takeover Regulations 2011 and the SEBI (Prohibition of Insider Trading) Regulations, 1992.
12. In light of the above, we seek your guidance with respect to the interpretation of Regulation 10(1)(a)(ii) of the Takeover Regulations 2011 and the specific query mentioned below:
 - a. Whether the inter-se transfer of shares from AG to KG will qualify for an exemption under Regulation 10(1)(a)(ii) of the Takeover Regulations 2011 i.e., inter se transfer of shares amongst the promoters;



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13. We enclose herewith a demand draft bearing number 092715 drawn on Axis Bank Limited dated 09.10.2012 for an amount of Rs. 25,000 in favour of "Securities and Exchange Board of India", payable at Mumbai, towards the prescribed fee.

14. We request you to kindly provide us with the guidance on the aforementioned and we would be glad to provide any further information or meet you in person if any clarification is required.

15. We also request you in terms of Para 11 of the Scheme that the application as well as your response may be given confidentiality for the prescribed time.

Yours faithfully,



Kailash Gupta

Encl: a/a