



भारतीय प्रतिभूति  
और विनिमय बोर्ड  
Securities and Exchange  
Board of India

DEPUTY GENERAL MANAGER  
INTEGRATED SURVEILLANCE DEPARTMENT

SEBI/HO/ISD/OW/P/2019/24249/2019  
17 September 2019

**Shri Vijendra Surana**  
CFO & Company Secretary  
R. S. Software (India) Ltd.  
A-2, FMC Fortuna, 234/3A  
A.J.C. Bose Road  
**Kolkata - 700020**

Sir,

**Sub: Request for Informal Guidance under Securities and Exchange Board of India (Informal Guidance) Scheme, 2003**

1. This has reference to your letter dated 03 July 2019 requesting guidance by way of an 'interpretive letter' under Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 ("**the Scheme**").
2. You have, *inter alia*, represented as under:
  - a. On 04 September 2012, a Trust in the name of 'R S Software Employee Welfare Trust' ("**the Trust**") was instituted with the objective of providing assistance to the employees in form of medical facilities, scholarships, housing and to reward performance besides attracting talent.
  - b. The said Trust acquired 11,48,640 equity shares of the company comprising of 4.47% of the total shareholding of the company during the period from October 2012 to January 2013.

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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.), 26449000 / 40459000 फैक्स : 2644 9019 से 2644 9022 वेब : [www.sebi.gov.in](http://www.sebi.gov.in)

SEBI Bhavan, Plot No. C4-A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.  
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- c. Regulation 3(12) of the SEBI (Share Based Employee Benefit) Regulations, 2014 [SEBI (SBEB) Regulations], *inter alia*, requires the share inventory held by a company in Trust for providing benefits to its employees to be sold on the recognized stock exchange(s) where shares of the company are listed, within a period of five years from the date of Notification (28 October 2014) of the SEBI (SBEB) Regulations subject to certain conditions.
- d. The Promoters/promoters Group, the Executive Director and Independent Directors of the applicant Company are desirous of acquiring the shares held by the Company's Employee Benefit Trust through Stock Market offering from the Trust to enable the company and the Trust to be in compliance with the provision of SEBI (SBEB) Regulations.
- e. The current shareholding pattern of the Promoters, Directors and Independent Directors are as under:

Name	Designation	% of total issued equity shares held
Rajnit Rai Jain	Promoter, ED, CMD	39.04%
Sarita Jain	Promoter, Non-Executive Director	1.43%
Rajasekhar Ramaraj	Non-Executive & Independent Director	0.27%
Richard Launder	Non-Executive & Independent Director	0.19%

3. In light of the above submissions, you have sought clarifications seeking interpretive letter with regard to the following queries:
- a. Whether shares held by the Trust in full or part if purchased by the Promoters and Promoters Group (including Executive Director) or Independent Directors of the Company will be within the lawful limits and not in contravention of the above Relevant Regulations.
- b. Whether these shares can be purchased by the Promoters & Promoters Group or Independent Directors by way of Block Deal through the Stock Exchange in compliance with the relevant Regulations as these are being acquired on grounds of regulatory requirement.

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- c. Whether there are any restrictions to the aforesaid transaction or specific compliances that the purchasers or the Company need to comply with.
- d. Whether Regulation 5 of the PIT Regulations puts any restraint on this transaction as these are shares not acquired for trading purposes but to meet regulatory requirements.
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 reference to query at 3 (a) above:**

- i. Regulation 3(2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 reads as under:
- “3(2) No acquirer, who together with persons acting in concert with him has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations....”
- ii. In the instant matter, the Promoters/promoter group are acquirers and are holding 40.47% (more than 25%) shares of R S Software (India) Ltd. (RSSIL). Therefore, if they are desirous of acquiring additional shares in RSSIL, under Regulation 3(2) of the SAST Regulations they may do so without making a public announcement of an open offer, provided that the overall acquisition does not exceed 5% of voting rights of RSSIL in a financial year.
- iii. Further, Regulation 16(1)(b)(vi)(C) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) defines “Independent director” as any person who either by himself or with his relatives does not hold two percent or more of the total voting power of the listed entity. Therefore, after the proposed acquisition of shares from trust, under Regulation 16(1)(b)(vi)(C) of LODR Regulations, the shareholding of independent directors together with their relatives should not be 2% or more of the total voting power of RSSIL.



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**With reference to query at 3 (b) above**

- iv. Regulation 4(1) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) *inter alia* states that no insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of the UPSI. Clause (ii) of first proviso to Regulation 4(1) (ii) of PIT Regulations, *inter alia*, provides for the circumstances under which the insider may prove his innocence if the transaction was carried out through the block deal window mechanism between persons who were in possession of the UPSI without being in breach of Regulation 3 and both parties had made a conscious and informed trade decision.
- v. Regulation 3 of PIT Regulations which *inter alia* prohibits the communication or procurement of UPSI to any person including other insiders except where such communication is used for legitimate purposes and for performance of duties or discharge of legal obligations. In view of the above provisions, the fact remains that a person will be treated as an insider for all the purposes and has to demonstrate his innocence in case he trades while in possession of UPSI.
- vi. The SEBI (SBEB) Regulations do not indicate any regulatory requirement for promoters / promoter group to purchase shares sold by an Employee Trust. It only provides that inventory held by a company in Trust for providing benefits to its employees to be sold on the recognized stock exchange(s) where shares of the company are listed, within a period of five years from the date of notification (October 28, 2014) of the SEBI (SBEB) Regulations, subject to certain conditions.
- vii. In view of the above, the shares held by the Company's Employee Benefit Trust to be purchased by the promoters and promoters group by way of block deal cannot be regarded as regulatory compliance. Hence, all applicable legal requirements have to be complied with, if the trades are executed by way of block deal.

**With reference to query 3 (c) above**

- viii. The clarification sought at 3(c) above is general in nature and does not describe the factual situation and hence does not warrant reply under clause 8 of the Informal Guidance Scheme.



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With reference to query 3 (d) above

- ix. Regulation 5 of the SEBI (PIT) Regulations, 2015 states about the 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. Since the purchase of shares by the promoters is not a regulatory requirement, the query sought becomes redundant.
5. Further, vide your aforesaid letter, you have requested for confidentiality in respect of your application. Accordingly, it has been decided that the 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 interpretation. Further, this letter does not express a decision of the Board on the question 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 SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 and SEBI (Prohibition of Insider Trading) Regulations, 2015 and 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,

**Deepti Agrawal**