

R SYSTEMS INTERNATIONAL LIMITED

SEI CMMI Level 5, PCMM Level 5, ISO 9001:2008 & ISO 27001:2005 Company
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REF: SECT/02/2012/10

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

February 10, 2012

No 11885

13 FEB 2012

Dear Sir/ Madam,

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

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).
3. One of the shareholders of the Company, Mr. Bhavook Tripathi (the "Acquirer"), had made a public announcement on December 15, 2011 ("Public Announcement") under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, 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(s).
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 Announcement, 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.



SEBI/HO/WIP/2012/13/1640240782



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.
6. In the context of the Public Announcement made by the Acquirer, the Company wishes to seek the Hon'ble Board's views with respect to interpretation of Regulation 20 (2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (the "**Takeover Regulations**") which deals with the size of a competing offer. The provisions of Regulations 20(1) and 20(2) of the Takeover Regulations are set out below:

"20. (1) Upon a public announcement of an open offer for acquiring shares of a target company being made, any person, other than the acquirer who has made such public announcement, shall be entitled to make a public announcement of an open offer within fifteen working days of the date of the detailed public statement made by the acquirer who has made the first public announcement.

(2) The open offer made under sub-regulation (1) shall be for such number of shares which, when taken together with shares held by such acquirer along with persons acting in concert with him, shall be at least equal to the holding of the acquirer who has made the first public announcement, including the number of shares proposed to be acquired by him under the offer and any underlying agreement for the sale of shares of the target company pursuant to which the open offer is made."

7. A reading of Regulation 20 (2) suggests that if a person intends to make a competing offer (a "**Competing Acquirer**") such Competing Acquirer would only be required to make such a competing offer for such number of shares which would be the difference between: (a) the holding of the acquirer who has made the first public announcement ("**Original Acquirer**"), including the number of shares proposed to be acquired by him under the offer and any underlying agreement for the sale of shares of the target company pursuant to which the open offer is made; and (b) the holding of the Competing Acquirer and the persons acting in concert with such Competing Acquirer. This can be depicted by the formula as below:

$$A + X = B + C$$

$$\text{Therefore, } X = (B+C) - A$$

Where:

X= The number of shares for which a competing offer is to be made by the Competing Acquirer;

A = The number of shares held by the Competitive Acquirer prior to the competing offer;

B = The number of shares held by the Original Acquirer prior to making the open offer; and

C = The number of shares to be acquired by the Original Acquirer under the open offer.

8. Based on the foregoing, if a shareholder of the Company were to make a competing offer then, such a shareholder would have to make a competing offer for at least such number of shares calculated as follows:



I. Where such Competing Acquirer holds 45% of the shares of the Company

In the current fact scenario, the number of shares of the Company held by the Original Acquirer (i.e. Mr. Bhavook Tripathi) before making the Open Offer is 31%. The number of shares proposed to be acquired by the Acquirer under the Open Offer is 26%.

Therefore the offer size for the competing offer to be made by the Competing Acquirer will be as follows:

$$(31\% + 26\%) - 45\% = 12\%$$

II. Where the Competing Acquirer holds 10% of the shares of the Company

In the current fact scenario, the number of shares held by the Original Acquirer (i.e. Mr. Bhavook Tripathi) before making the Open Offer is 31%. The number of shares proposed to be acquired by the Acquirer under the Open Offer is 26%.

Therefore the offer size for the competing offer to be made by the Competing Acquirer will be as follows:

$$(31\% + 26\%) - 10\% = 47\%$$

9. It is our submission that, the size of the competing offer cannot be for at least 26% for *inter alia* the following reasons:

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

"7. (1) The open offer for acquiring shares to be made by the acquirer and persons acting in concert with him under regulation 3 and regulation 4 shall be for at least twenty six per cent of total shares of the target company, as of tenth working day from the closure of the tendering period."

Therefore, the requirement of the offer size to be of at least 26% is only for open offers made under Regulations 3 and 4 of the Takeover Regulations which stipulates the triggers for the requirement for making of open offers. As a competing offer is not made under Regulation 3 or Regulation 4 of the Takeover Regulations but under Regulation 20 (1), the offer size for a competing offer cannot be 26% as set out in Regulation 7, but such shareholding as is determined under Regulation 20 (2).

(b) As stated above, the calculation for the offer size for a competing offer as set out in Regulation 20 (2) prescribes the minimum size of the open offer as Regulation 20 (2) uses the words "at least". The words "at least" has been used to establish the minimum offer size and at the same time give the flexibility to the Competing Acquirer to make an open offer for a higher shareholding than the minimum prescribed. However, the use of the words "at least" cannot be interpreted to mean that the Competing Acquirer is also required to comply with Regulation 7 (1). In the absence of a specific reference to Regulation 7 (1) in Regulation 20, Regulation 7 (1)'s stipulation for an offer size (that too pursuant to offers under Regulations 3 and 4) of 26% cannot be imported into Regulation 20 (2). Even Regulation 7 (2) of the Takeover Regulation which deals with the offer size



of 10% in a voluntary offer, only prescribes the minimum offer size. Regulation 7 (2) of the Takeover Regulations states as follows:

“(2) The open offer made under regulation 6 shall be for acquisition of at least such number of shares as would entitle the holder thereof to exercise an additional ten per cent of the total shares of the target company, and shall not exceed such number of shares as would result in the post-acquisition holding of the acquirer and persons acting in concert with him exceeding the maximum permissible nonpublic shareholding applicable to such target company.”

Therefore, Regulation 7 (2) sets out the minimum offer size for a voluntary offer (of at least 10%). The use of the words “at least” in Regulation 7 (2), cannot be interpreted to mean that a voluntary offer has to also comply with the 26% offer size requirement prescribed under Regulation 7 (1). This would negate Regulation 7 (2) completely. Similarly, Regulation 20 (2) sets of the minimum offer size for a competing offer and the provisions of the Takeover Regulations cannot be interpreted to apply the 26% offer size to a competing offer. Courts have in the past in multiple judicial precedents have held that where the words of a statute are clear, plain or unambiguous, the effect should be given to the same. The Supreme Court in *State of Uttar Pradesh v. Vijay Anand Maharaj*, AIR 1963 SC 946 held that “*When a language is plain and unambiguous and admits only of one meaning, no question of construction of a statute arises for the Act speaks for itself.*” Courts have also held that it is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so¹. Therefore, while interpreting Regulation 20 (2), one should not add words from Regulation 7 (1), especially when the provisions of Regulation 20 (2) are clean and unambiguous.

- (c) Even if one were to argue that provisions of Regulation 7 (1) and Regulation 20 (2) are in conflict, it may be noted that the Indian courts have in the past held that if a special provision is made on a certain matter then that matter is excluded from the general provision². In the current case Regulation 7 would be the general provision regarding offer sizes and Regulation 20 (2) the special provision regarding offer size in a competing offer. Therefore, provisions of Regulation 20 (2) would prevail in respect of any conflict of interpretation regarding the offer size for a competing offer.
- (d) Further, if the objective of the Takeover Regulations was to make the offer size for a competing offer to be at least 26%, then Regulation 20(2) would have stated that the offer size would be the higher of (i) shares amounting to at least 26% of the shares of the Company; and (ii) the shares calculated in the manner as set out in Regulation 20(2). However, as Regulation 20 (2) is currently drafted it does not mention / reference an offer size of at least 26% in any manner for a competing offer and the same should not be read into Regulation 20 (2).

¹ *Renula Bose (Smt.) v. Rai Manmathnath Bose* AIR 1945 PC 108.

² *Venkat Rao v. Government of Andhra Pradesh*, AIR 1996 SC 828.



- (e) Under the erstwhile SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("**Erstwhile Takeover Regulations**"), Regulation 25 dealt with the provisions relating to "competitive bids". Prior to September 9, 2002, Regulation 25 (3) of the Erstwhile Takeover Regulations stated as follows:

"Any competitive offer by an acquirer shall be for such number of shares which, when taken together with shares held by him along with persons acting in concert with him, shall be at least equal to the number of shares for which the first public announcement has been made.

The reconvened committee on substantial acquisitions of shares and takeovers under the chairmanship of Justice P. N. Bhagwati ("**Bhagwati Committee Report**") prepared its report dated May 7, 2002, wherein the following observation was made regarding the size of the competitive bids:

"The Committee noted that the extant Regulations provide that the competitive offer shall be for such number of shares which when taken together with the shares already held by him at least equals the number of shares for which the first public announcement has been made. This provision while reckoning the pre offer holding of the competitive bidder excludes the pre offer holding of the original bidder. In order to ensure that the targeted quantity of the shares at the time of making the first public announcement/competitive bid is equal, it would be necessary to include the pre offer holding of both the original bidder and the competitive bidder.

The Committee recommends that the competitive bid shall be for such number of shares which, when taken together with shares held by competitive bidder along with persons acting in concert with him, shall be at least equal to the post offer target of the original bidder."

Pursuant to the Bhagwati Committee Report and by way of the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2002, Regulation 25 (3) dealing with the offer size of competitive bids under the Erstwhile Takeover Regulations was amended as follows:

"Any competitive offer by an acquirer shall be for such number of shares which, when taken together with shares held by him along with persons acting in concert with him, shall be at least equal to the holding of the first bidder including the number of shares for which the present offer by the first bidder has been made."

It may again be noted that there was no reference to a minimum offer of 20% (i.e. the offer size prescribed for public offers under Regulation 21 (1) of the Erstwhile Takeover Regulations for public offers) for competitive bids under Regulation 25 (3) of the Erstwhile Takeover Regulations.



10. We, request you to kindly confirm our understanding as set out in paragraphs 7, 8 and 9 above.



11. We enclose a demand draft bearing number 252409 drawn on ICICI Bank for an amount of Rs. 25,000/- in favour of 'Securities and Exchange Board of India', payable at Mumbai, towards the prescribed fee.
12. 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)