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भारतीय प्रतिभूति
और विनिमय बोर्ड
**Securities and Exchange
Board of India**

OW/4441/2014

February 11, 2014

To,

Mr. Abhay Firodia,
Director,
Jaya Hind Investments Private Limited,
Mumbai-Pune Road, Akurdi,
Pune - 411 035.

Dear Sir,

**Subject: Request for 'Interpretive Letter' and 'No-Action Letter' under the SEBI
(Informal Guidance) Scheme 2003.**

This has reference to your letters dated October 31, 2013 requesting an 'Interpretive letter' and a 'No-action Letter' under the *SEBI (Informal Guidance) Scheme 2003* and subsequent clarifications dated January 24, 2014 in this regard.

Your submissions

2. In your letters under reference, you have *inter-alia* represented the following:

a. Force Motors Limited (for brevity, FML), a public limited company listed at BSE Limited and Pune Stock Exchange Limited, has a total paid-up equity share capital of Rs.13,17,62,620 comprising 1,31,76,262 equity shares of Rs.10/- each.

b. Jaya Hind Investment Private Limited (for brevity, JHIPL), a company registered under the Companies Act, 1956 and registered as a Non-Banking Finance Company with the Reserve Bank of India, is the promoter of FML and along with the persons acting in concert, holds 68,18,272 equity shares of FML as on date of your letter.

c. JHIPL had acquired the shares in FML before June 04, 2001 and there has been no change in the shares held in FML since June, 2001. Similarly, the persons acting in concert (names provided in your letter) have also not dealt in the shares of FML during the financial year beginning on April 01, 2013 till date of your letter.

d. As per the provisions of Regulation 3(2) of the Takeover Code, JHIPL is entitled to acquire, along with the persons acting in concert, 6,58,813 equity shares of FML. JHIPL intends to acquire 6,31,139 equity shares of Rs. 10 each (i.e., 4.79 per cent of the total paid-up capital) of FML from 12 members of the FML (for brevity, Acquirees) on 'spot delivery basis'.

e. Considering the present shareholding, this proposed acquisition would take your holding to 56.54% of the paid-up capital of FML after the acquisitions.

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सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बांद्रा कुर्ला कॉम्प्लेक्स, बांद्रा (पूर्व), मुंबई - 400 051.

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f. The shares proposed to be acquired by JHIPL would either be rematerialized and delivered by the acquirees along with the transfer forms OR the dematerialized shares would be transferred by the acquirees to the JHIPL's demat account; and the delivery and payment of consideration would be arranged simultaneously on the date of transaction or before expiry of the next day.

g. In your view, considering the provisions of Section 18 of the *Securities Contract (Regulation) Act, 1956* (for brevity, SCRA 1956), the proposed transaction being based on 'spot delivery contract', it would not be necessary that such transactions should take place on the floor of the Stock Exchange / Stock Exchange Screen and restrictions about time, volumes and circuit breakers (price band) would not be applicable. This acquisition of 4.79% of the equity capital of FML could be at a value to be discussed and agreed between JHIPL and the acquirees.

h. JHIPL, as the acquirer and the promoter, have complied with all disclosure requirements prescribed by the SEBI as per the Takeover Code.

i. In no case the transaction would be in form of an agreement / transaction to be executed in future / or a forward contract.

j. The acquisition of the shares of Force Motors Limited from the persons who have made the offer would be completed within 7 (seven) working days from the date of receipt of Informal Guidance.

Clarifications sought by you

3. In light of the above submissions, you have requested an 'Interpretive Letter' as per the provisions of the SEBI Informal Guidance Scheme, confirming your understanding about interpretation of the legal provisions in respect of:

- a. acquisition of less than 5% shares during the Financial Year 2013-14;
- b. acquisition of these shares as per spot delivery contracts on spot delivery basis; and
- c. non-application of rules and regulations, relating to dealing in equity shares on floor of Stock Exchange / Screen Based Trading.

4. Further, you have requested to issue a 'No-action letter' if the proposed transaction is consummated in the manner referred in your letter.

Our comments

5. The submissions made in your letter have been considered and without necessarily agreeing with your analysis, our views on the issues are as under:

- a. On the matter of proposed acquisition of shares of FML, as the quantum of shares intended to be acquired during the financial year 2013-14 by JHIPL is less than 5% of the total fully paid-up shares of FML, the provisions of SEBI



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(Substantial Acquisition of Shares and Takeovers) Regulations (for brevity, SAST Regulations) would not be attracted.

b. With regard to the matter related to 'acquisition of shares as per spot delivery contracts on spot delivery basis' and 'non-application of rules and regulations, relating to dealing in equity shares on floor of stock exchange / screen based trading', our views are as follows:

(i) Section 2(i) of SCRA 1956 defines spot delivery contract as "a contract which provides for -

- (a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;
- (b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository."

c. Section 13 of SCRA 1956 empowers the Central Government to make the provisions of section 13 to be applicable in any State or States or area, and upon its doing so, every contract in such State, States or area is required to be entered into from the date of the notification only between the members of a recognized stock exchange or recognized stock exchanges or through a member of the stock exchange or with a member of the stock exchange. Section 13 also provides that contracts entered into in any other manner shall be illegal.

d. However, Section 18 (1) of the SCRA 1956 carves out an exception as it provides that nothing contained in Section 13 shall apply to spot delivery contracts. Further, it is observed that Section 18 (2) provides that, for areas to which section 13 has not been declared to apply, Central Government, with the view to regulate and control the business of dealing in spot delivery contracts, may declare that the provisions of section 17 shall apply in respect of spot delivery contracts. Section 17 states that no person shall carry on or purport to carry on, whether on his own behalf or on behalf of any other person, the business of dealing in securities except under the authority of a license granted by SEBI.

e. In view of the above, when a spot transaction takes place between two persons as per section 2(i) of SCRA 1956, i.e., actual delivery/transfer of shares and the payment of price takes place either on the same day as the date of the contract or on the next day, then the provision of Section 13 of SCRA 1956 shall not be applicable. Therefore, if such transactions are done whereby stock brokers of a stock exchange are not involved, the rules of stock exchanges shall not apply.



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6. In view of the above, no-action letter w.r.t. applicable provisions SAST Regulations and SCRA 1956 is being issued subject to the condition that the proposed transaction is consummated in the manner referred in your letter.

7. This position is based on the representation made to the division in your letter under reference. Different facts or conditions might require a different result. This letter does not express decision of the Board on the questions referred.

8. You may note that the above views are expressed only with respect to the clarification sought on certain provisions of SAST Regulations and SCRA 1956, and do not affect the applicability of any law and other SEBI Regulations, guidelines and circulars administered by SEBI or any other authority.

9. Further, you have sought confidentiality treatment in respect of your request. Acceding to your request, it has been decided that the letter issued to you in this matter will not be available to the public for period of ninety (90) days from the date of issuance of the letter.

Yours faithfully,

Maninder Cheema