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भारतीय प्रतिभूति  
और विनिमय बोर्ड  
Securities and Exchange  
Board of India

CFD/DIL-II/NR/AV/OW/<sup>29/88</sup>/2016  
October 19, 2016

Shri Vivek Jain  
Company Secretary & Compliance Officer,  
Asian Hotels (West) Limited  
6<sup>th</sup> Floor, Aria Towers,  
J.W. Marriott,  
New Delhi Aerocity, Asset Area 4,  
Hospitality District, Near IGI Airport  
New Delhi – 110 037

Dear Sir,

**Sub: Request for Interpretative letter under the SEBI (Informal Guidance) Scheme, 2003 regarding interpretation of Regulation 72(2) of Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009**

1. This has reference to your letter dated August 27, 2016 seeking guidance by way of an interpretative letter under the Securities & Exchange Board of India (Informal Guidance) Scheme, 2003.
2. You have, *inter alia*, represented as follows:
  - a. Asian Hotels (West) Limited is a Company duly incorporated under the provisions of the Companies Act, 1956. The shares of the Company are listed on BSE Limited and the National Stock Exchange of India Limited.
  - b. The paid up capital of the Company as on date is Rs. 11,45,83,030 consisting of 1,14,58,303 equity shares of Rs. 10 each.
  - c. Promoters of the Company hold 64.20% of the equity share capital.
  - d. In the month of July, 2016, Smt. Madhu Jain, a person belonging to promoter group, out of her total holding of 49,500 equity shares, gifted 49,000 (0.42%) of them to her husband, Shri Dinesh Jain (not part of promoter group).
  - e. In view of the fact that the term used in the Regulations is "Sale", which involves a consideration and in your case, the concerned Promoter Group person has "gifted" the shares, which is without any consideration, so you are of the view that the above mentioned gift should not be construed as a "sale", as envisaged in the Regulations.

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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.), 2644 9000 / 4045 9000 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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3. On the basis of the above, you have sought interpretative letter from SEBI as to whether the gift of shares as stated above, will be considered as a "sale" as envisaged in the Explanation to Regulation 72(2) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ["SEBI (ICDR) Regulations"], thereby making the promoter(s) and promoter group ineligible to subscribe to preferential allotment of specified securities.
4. Without necessarily agreeing with your analysis given in your above mentioned letter, our interpretation on the above query is as under:
  - a) Regulation 72 of the SEBI (ICDR) Regulations, 2009 deals with conditions of preferential issue. In this regard, regulation 72(2) provides that:

*"(2)The issuer shall not make preferential issue of specified securities to any person who has sold any equity shares of the issuer during the six months preceding the relevant date:*

*Provided that in respect of the preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, the Board may grant relaxation from the requirements of this sub-regulation, if the Board has granted relaxation in terms of regulation 29A of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 to such preferential allotment.*

*[Explanation.—Where any person belonging to promoter(s) or the promoter group has sold his equity shares in the issuer during the six months preceding the relevant date, the promoter(s) and promoter group shall be ineligible for allotment of specified securities on preferential basis.]"*

- b) In view of the above referred regulation, if any person belonging to promoter(s) or the promoter group in the issuer company has sold his equity shares during the six months preceding the relevant date, the promoter(s) and promoter group shall be ineligible for allotment of specified securities on preferential basis.
  - c) In the instant case, it has been noted that Smt. Madhu Jain, a person belonging to promoter group, out of her total holding of 49,500 equity shares, gifted 49,000 (0.42%) of them to her husband, Shri Dinesh Jain (not part of promoter group).





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- d) Having regard to the provisions of Regulation 72(2) of the SEBI (ICDR) Regulations, it is felt that the primary intention of the regulation was not with respect to "consideration" but with the "change in ownership of equity shares".
- e) In this regard, attention is drawn to Para 4 at page 2 of the Informal Guidance Letter No. CFD/DIL-2/OW/PR/25591/2016 dated September 12, 2016 issued by SEBI in the matter of M/s. KJMC Services Limited, wherein a similar query was raised by the applicant.
5. We have considered the submissions made by you in your letter under reference. Without necessarily agreeing with your analysis, our view is that Inter-se transfer by way of gift will be considered as "sale" as envisaged in the Regulation 72(2) of SEBI (ICDR) Regulations, 2009 thereby making the promoter(s) and promoter group ineligible for allotment of specified securities on preferential basis.
6. The above position is based on the information furnished in your letter under reference. Different facts or conditions might lead to a different result. 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 the SEBI (ICDR) Regulations, 2009 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,

**Narendra Rawat**