



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

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SEBI/HO/CFD/DCR2/OW/P/2018/11863/1
April 18, 2018

Jaya Hind Industries Limited
Mumbai-Pune Road,
Akurdi, Pune - 411035

Kind Attention: Shri. Abhay Firodia

Dear Sir,

Sub: Request for informal guidance by way of “no action letter” under the SEBI (Informal Guidance) Scheme, 2003 with respect to the provisions of SEBI (SAST) Regulations, 2011 (“SAST”) in relation to the proposed merger of promoter/ promoter group companies of Force Motors Limited

1. This has reference to your letter dated January 12, 2018 and additional submissions vide letter dated February 16, 2018 and March 26, 2018 on the captioned subject.
2. You have, *inter alia*, represented as under:

- a) The equity shares of Force Motors Limited (“**Target Company**”/ “**TC**”) are listed on BSE Limited.
- b) Jaya Hind Investments Pvt Ltd. (**JHIPL**) holds 56.86% stake in the TC and Jaya Hind Industries Limited (**JHI**) owns 0.08% stake in the TC.
- c) Prasanna Holdings Private Limited (**Prasanna Holdings**) and Ahmednagar Engineering Private Limited (**Ahmednagar Engineering**) are the companies which hold 0.37% and 0.06% equity shares, respectively of the TC. Dhanna Engineering Private Limited (**Dhanna Engineering**) is a subsidiary company

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of JHIPL and has no holding in the TC. (The aforementioned three entities will together be referred as **Other Companies**).

- d) Mr. Abhay Firodia and Mr. Prasan Firodia, son of Mr. Abhay Firodia hold 2.01% and 1.68% of the shares of the TC respectively. Along with the Other Companies, Mr. Abhay Firodia and Mr. Prasan Firodia, are the “*persons acting in concert*” and are named as Promoter & Promoter Group in the shareholding pattern filed by the TC. Further, Mrs. Indira Firodia (wife of Mr. Abhay Firodia) hold some shares of the TC and also of JHI. As per the shareholding pattern filed with stock exchange, the shareholding of Mrs. Indira Firodia in the TC are shown under the Category of Shares held by Directors and Directors Relatives. Total holding of above referred companies along with Abhay Firodia and Prasan Firodia is 61.06% in the TC.
- e) Mr. Abhay Firodia and Mr. Prasan Firodia along with Mrs. Indira Firodia (wife of Mr. Abhay Firodia) are shareholders in JHI and Mr. Abhay Firodia and Mr. Prasan Firodia are also shareholders in JHIPL and the aforementioned Other Companies. A small percentage, i.e. 0.18% of JHI shares, are held by outsiders, viz. Munot Family.
- f) JHI holds 49.90% of the equity shares of JHIPL and JHIPL holds 49.19% equity shares of JHI. The Other Companies excluding Dhanna Engineering also holds shares in JHI & JHIPL and JHIPL holds shares in the Other Companies. Thus, JHI, JHIPL and the Other Companies are interlocked companies, i.e. holding each other's shares, in different percentages.
- g) It may also be noted that in the above named promoters and promoter group companies of the TC and Other Companies, the individuals (viz. Mr. Abhay Firodia and Mr. Prasan Firodia) hold direct as well as indirect control through equity shares. Apart from the shareholdings of Mr. Abhay Firodia, Mr. Prasan Firodia and Mrs. Indira Firodia in the aforementioned promoter entities of TC, the remaining shareholdings of each of the above referred companies are held by these Companies, [except a small percentage, i.e. 0.18% of JHI shares, which are held by outsiders, viz. Munot Family]. For instance, 49.90% shares of JHIPL is held by JHI and 49.19% of JHI is held by JHIPL.
- h) Thus, the individuals, namely Mr. Abhay Firodia and Mr. Prasan Firodia directly/indirectly have control in all the referred companies above.
- i) With a view to consolidate the holding and streamline the promoter's

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shareholding in these companies, it is proposed to amalgamate JHIPL and Other Companies into JHI through a Scheme of Amalgamation which will require the approval of NCLT.

- j) Pursuant to the Scheme of Amalgamation, the current shareholding of JHIPL, Prasanna Holdings and Ahmednagar Engineering will be consolidated into JHI, subsequent to which shareholding of JHI in the TC would increase from 0.08% to 57.37%.
- k) There will be no change in the total promoter/promoter group shareholding of 61.06% in the TC. JHI will hold 57.37% and the remaining 3.69% will continue to be held by existing individual promoters.
- l) In consideration of the amalgamation of JHIPL and Other Companies into JHI, JHI shall issue equity shares to the shareholders of JHIPL and Other Companies, other than inter-se cross shareholding, being shares held by these companies in each other as a shareholder, which shares of each of these companies shall stand cancelled, as per the Scheme of Amalgamation as proposed.
- m) Consequent to the scheme, JHI will have four shareholders namely, Mr. Abhay Firodia, Mr. Prasan Firodia, Mrs. Indira Firodia and Munot Family (comprising of seven individuals). Mrs. Indira Firodia and Munot Family shall hold only a very small minority shareholding in JHI post amalgamation.
- n) It has also been submitted in the application that as a consequence of the proposed amalgamation, there will be no change in the control of JHI. The individuals, which were holding, directly or indirectly, majority of equity shares of JHI, will continue to hold shares post amalgamation.
- o) As a result of the proposed scheme, Abhay Firodia and Prasan Firodia will hold more than 99% share capital of JHI as a result of cancellation of cross holdings of JHIPL, other companies and JHI. The increase in the shareholding of Abhay Firodia and Prasan Firodia in JHI, who in turn would have substantial holding of the TC, may have a bearing on the provisions of regulation 5 of SAST Regulations.
- p) Regulation 10(1)(d)(iii) of SAST Regulations does not directly refer to the situation covered under regulation 5 of these regulations. Hence, there may be ambiguity, in respect of interpreting the law. In consideration of the same, informal guidance in the form of No Action Letter may be provided.



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q) Guidance may be provided on who would be the 'acquirer', considering the provisions of Regulation 2(1)(a) and 2(1)(b) of SAST Regulations, 2011. In this regard, conditions for a person to be categorized as an acquirer has been submitted which are as follows:

- The act of acquisition or an agreement for acquisition of shares or voting rights of a target company.
- Such an act or agreement may be direct or indirect
- The person doing such an act or entering into such an agreement may do so either by himself or through or with persons acting in concert.

Queries:-

- In view of the above, you have sought a 'No Action Letter' seeking confirmation on the following issues:
 - Confirmation that the transfer and vesting of shares of Force/Target Company, pursuant to the Scheme of Amalgamation of Jaya Hind Investments and the Other Companies into Jaya Hind Industries, would be exempt from obligations of making an open offer under Regulations 3 and 5, by virtue of Regulation 10 of SAST Regulations.*
 - Confirmation that JHI as the transferee company, in the proposed scheme of amalgamation, would be the only 'acquirer', within the meaning of Regulation 2(1)(a) of the SAST Regulations.*

Our Comments-

- We have considered the submissions made by you and without necessarily agreeing with your analysis, we are issuing a no-action letter as under:

4.1 **Response to Query 3(a):** As per Regulation 10(1) (d) (iii) any acquisition pursuant to a scheme of arrangement not involving the target company as a transferor company or as a transferee company, or reconstruction not involving the target company's undertaking, upon an order of a court or a tribunal or competent authority would be exempt only if –

- Cash and cash equivalent is less than 25% of the total consideration paid in the scheme and*



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ii. After implementation of the scheme of arrangement, persons directly or indirectly holding at least thirty-three per cent of the voting rights in the combined entity are the same as the persons who held the entire voting rights before the implementation of the scheme.

4.2 As stated by the applicant, pursuant to the proposed scheme of amalgamation, the shareholding of the transferee, viz. JHI (other than cross holdings) would be issued to the shareholders of the transferor companies including Mr. Abhay Firodia and Mr. Prasan Firodia. Further, no portion of the consideration under the scheme would be offered by way of cash and cash equivalents. Further, the applicant also represented that individuals who directly or indirectly hold majority of shares or voting rights of JHI prior to the scheme would continue to hold more than 33% stake in JHI subsequent to the scheme.

4.3 Therefore, it appears from the submissions that the aforementioned conditions precedent (mentioned at Paragraph No. 4.1 (i) & (ii) above) for availing exemption would be complied with, on approval of the scheme by tribunal. Therefore, transfer and vesting of shares of the TC in JHI would be exempt from open offer obligations by virtue of regulation 10(1)(d)(iii) of SEBI (SAST) Regulations, 2011.

4.4 **Response to Query 3(b):** It is observed that as per Regulation 2(1) (a) of the SAST Regulations, 2011 an acquirer means any person who, directly or indirectly acquires or agrees to acquire shares or voting rights in or control over a target company, whether by himself, or through, or with persons acting in concert with him.

4.5 In the facts and circumstances as represented, pursuant to the proposed scheme, the shareholding of JHI in the TC would increase from 0.08% to 57.37%. Further, the holding (directly) of Mr. Abhay Firodia and Mr. Prasan Firodia in JHI would increase from 40.23% to 95.77%. It is pertinent to note that pre-merger (i.e. presently) Mr. Abhay Firodia and Mr. Prasan Firodia hold (both directly and indirectly) approximately 95.51% in JHI (approx. 46.32% directly and approx. 49.19% indirectly through JHIPL). As far as the present shareholdings of Mr. Abhay Firodia and Mr. Prasan Firodia in the TC are concerned, it is noted that they directly hold 2.01% and 1.68% of shares or voting rights in TC




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respectively (out of the total 61.06% of the promoter shareholders in TC) and indirectly hold 57.37% of the promoter shareholders in TC through promoter group companies viz. JHI, JHIPL, Prasanna Holdings and Ahmednagar Engineering. Pursuant to the proposed scheme, Mr. Abhay Firodia and Mr. Prasan Firodia would continue to exercise (indirectly) 57.37% of the voting rights and control of the promoter companies in TC through JHI, (instead of JHI, JHIPL, Prasanna Holdings and Ahmednagar Engineering). Therefore, there would not be any change in the shares or voting rights or control of the TC by Mr. Abhay Firodia and Mr. Prasan Firodia, as a result of the proposed scheme.

- 4.6 Based on the facts as submitted in the application, JHI would be the only acquirer as per the definition of 'acquirers' under the Regulation 2(1) (a) of the SAST Regulations, 2011.
5. Vide your aforesaid letters, you have requested for confidentiality in respect of your application. Accordingly, it has been decided that the no-action 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 result. Further, this letter does not express a decision of the Board on the questions 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 Takeovers) Regulations, 2011 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,


Rajesh Gujjar