



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

DEPUTY GENERAL MANAGER
CORPORATION FINANCE DEPARTMENT
DIVISION OF CORPORATE RESTRUCTURING

CFD/DCR/TO/IG/ SKS/25619 /12
November 19, 2012

Mr. Sujit Kanoria
32Q, New Alipore Road
Kolkata - 700 027

Dear Sir,

Sub: Request for no-action letter under the SEBI (Informal Guidance) Scheme, 2003 (the Scheme) regarding interpretation on Securities and Exchange Board of India (Substantial Acquisition of Shares & Takeover) Regulations, 2011.

1. Please refer to your letter dated August 02, 2012 and other correspondence on the captioned matter, wherein you sought a "No-action letter" under SEBI (Informal Guidance) scheme, 2003. (The Scheme).
2. In your letter, you have *inter alia* represented as follows:
 - a. Shristi Infrastructure Development Corporation Ltd (herein after referred as 'Shristi') is a Public Limited Company. The equity shares of Shristi are listed on the Calcutta Stock Exchange Ltd and the BSE Limited (formerly known as Bombay Stock Exchange Ltd).
 - b. The total paid-up equity share capital of Shristi as on date is Rs. 22.20 crore comprising of 2,22,00,000 equity shares of Rs. 10/- each.
 - c. You as a promoter along with other promoter/ promoter group hold 11,171,590 equity shares i.e 50.32% of the equity share capital of Shristi as on June 30, 2012.
 - d. Opulent Venture Capital Trust (herein after referred as Opulent) is registered with SEBI as Venture Capital Fund, in the form of Trust. Opulent through its Sivana scheme had invested in the equity shares of Shristi as a Venture Capital Investor as under

Number of Shares	Date of Acquisition
8,39,700 equity shares of Rs. 10/- each	30.06.2003
9,00,000 equity shares of Rs. 10/- each	30.06.2003
55,00,000 equity shares of Rs. 10/- each	04.03.2005

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 फेक्स : 2644 9019 से 2644 9022 वेब : www.sebi.gov.in

SEBI Bhavan, Plot No. C4-A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.
Tel.: 2644 9950 / 4045 9950 (IVRS), 26449000 / 40459000 Fax : 2644 9019 to 2644 9022 Web : www.sebi.gov.in



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- e. Pursuant to amalgamation dated April 1, 2005 of Shristi with another listed company i.e. Peerless Abasan Finance Limited, holding of Opulent (amalgamation ratio 1:2) became 1,00,79,400 equity share. The scheme of amalgamation was sanctioned by the Hon'ble Court u/s 391(2) & 394 of the Companies Act, 1956.
 - f. Opulent, as on date of application i.e. August 02, 2012 holds 99,52,953 equity shares of Shristi of Rs. 10/ each representing 44.83% of the equity share capital.
 - g. Opulent had entered into an Investment Agreement with Shristi and its promoter on February 03, 2003. The Investment Agreement contains a 'Buy back clause' which casts an obligation on you as a promoter of Shristi to buy back the entire equity shares held by Opulent as on notice date either by himself or through his nominees(s), at a price to be calculated as per the formula prescribed in the investment agreement.
 - h. The promoters' shareholding in Shristi as on date of this application, stands at 50.32% of the total share capital of the company.
 - i. As per the provision of the Investment Agreement, Opulent has served a notice to promoter of the Company obligating him or his nominee(s) to buy back 99,52,953 equity shares of Shristi held by Opulent as on the notice date, which would result in increase of promoters shareholding from 50.23% to 95.15%
 - j. The acquisition of 99,52,953 equity shares of Rs. 10/ each of Shristi by himself (either by him or through his nominee(s)) from Opulent, pursuant to the Investment Agreement, would be exempted from the obligation to make an open offer by the promoters under Regulation 3(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (herein after referred as 'Takeover Regulations'), pursuant to regulation 10(4)(f) of the Takeover Regulation as the acquisition of shares in Shristi is pursuant to the Investment Agreement by and between Opulent Venture Capital Trust, a venture capital trust registered with SEBI, Shristi and himself as the promoter of Shristi even though the said acquisition exceeds more than five per cent (5%) of the total share capital of Shristi in the financial year in which the acquisition would take place.
3. In view of the aforesaid submissions, you have sought a "No-action letter" under SEBI (Informal Guidance) Scheme, 2003 for the above acquisition.
4. We have considered the submission made by you in your letter under reference and without necessarily agreeing with your analysis, our views on the issue is as under ;
- i. Regulation 10(4)(f) of Takeover Regulation read as -

"acquisition of shares in a target company from a venture capital fund or a foreign venture capital investor registered with the Board, by promoters of the target



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company pursuant to an agreement between such venture capital fund or foreign venture capital investor and such promoters"

- ii. The regulation 10(4)(f) of the Takeover Regulations provides exemption from the obligation to make an open offer under regulation 3(2) of Takeover Regulations, subject to the condition as mentioned above. However, the said exemption is available in respect of the acquisition by the promoters who are under obligation to acquire under the Investment Agreement and not to the nominees of the promoters.
- iii. Moreover, under the proviso to regulation 3(2) of Takeover Regulations, 2011, the acquirer can acquire only upto maximum permissible non public shareholding limit while making acquisition under regulation 3(2) of Takeover Regulations. The proviso would be applicable even in case of acquisition by the promoter pursuant to agreement between a venture capital fund investor and promoters. Accordingly, post acquisition holding of promoters should not increase beyond maximum permissible non-public shareholding. In your application, you have represented that pursuant to the acquisition the shareholding of the promoters would increase from 50.23% to 95.15%. In light of the above, the holding of promoters/ promoter group pursuant to proposed acquisition should not exceed maximum permissible non-public shareholding.
- iv. In view of the above, we are issuing a "No-action letter" only for the proposed acquisition of share in the target company held by Opulent by promoter Shri Sujit Kanoria who is under an obligation to acquire under the Investment Agreement and not in respect of proposed acquisition of share in the target company by the nominees, subject to the conditions that the promoters should not acquire the share which would increase their shareholding beyond the non-public shareholding limit under the Takeover Regulations and compliance with the regulations 10(5), 10(6) and 10(7) of the Takeover Regulations.
5. 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.
6. You may note that the above views are expressed only with respect to the clarification sought on Takeover regulation and do not affect the applicability of any Act, Rules or Regulations, Guidelines and Circulars administered by SEBI or any other authority.
7. 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,

Anindya Kumar Das