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**Securities and Exchange
Board of India**

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DEPUTY GENERAL MANAGER
CORPORATION FINANCE DEPARTMENT

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CFD/PC/AT/KJ/OW/817/2014

January 08, 2014

M/s. R Systems International limited

C-40, Sector- 59,

Noida- 201 307,

Dist. Gautam Budh Nagar.

U.P. (India)

Dear Sir,

Sub :- Request for " Interpretive Letter" under Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 by M/s R Systems International Limited regarding acquisition by Mr. Bhavook Tripathi would be treated as a part of the non-public shareholding of the company as contemplated under Regulation 7(4) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

1. This has reference to your letter dated September 02, 2013, September 27, 2013 and November 04, 2013 requesting for " Interpretive Letter" under Securities and Exchange Board of India (Informal Guidance) Scheme, 2003.

Your submissions

2.1. 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 ("BSE") and the National Stock Exchange of India Limited ("NSE"). The shareholding pattern of the Company as of June 30, 2013 as submitted to the Stock Exchanges is attached as Annexure A to the letter.

2.2. The company had sought interpretative guidance under SEBI (Informal Guidance) Scheme, 2003, vide letter dated December 21, 2011 and further correspondence relating to

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the same in relation to (i) the extent of non public shareholding in the Company; and (ii) reduction in the non- public shareholding in the Company by an Acquirer who has made an open offer. SEBI had, by way of a letter dated February 23, 2012 in accordance with Clause 8(ii) of the SEBI (Informal Guidance) Scheme, 2003 stated that the query contained in the said application was hypothetical and dependent on the completion of the open offer. The company is making this application again in relation to the issue as the open offer by the acquirer, Mr. Bhavook Tripathi in relation to the shares of the Company has now been completed.

2.3. On December 15, 2011, Mr. Bhavook Tripathi (the "Acquirer"), made a public announcement for an open offer ("Open Offer") for the acquisition of 33,45,242 equity shares of the Company constituting 26% of the expanded equity share capital of the Company.

2.4. During the period between the date of the public announcement and the issuance of the detailed public statement, the Acquirer had acquired 9,24,142 equity shares of the Company constituting 7.18% of the expanded equity share capital of the Company. Following this acquisition, the public shareholding in the Company was reduced to 24.23% which is below the minimum prescribed shareholding of 25%.

2.5. As per the post offer public announcement dated January 21, 2013 issued by Acquirer, the Acquirer had acquired 590 equity shares of the Company in the Open Offer. Additionally the Acquirer had acquired an additional 8,587 equity share of the Company after the issuance of the detailed public statement. As of the date of the post offer public announcement, the Acquirer's shareholding in the Company was 31.11% of the expanded equity share capital. Following both the above acquisitions, the public shareholding in the Company was further reduced to 19.24%.

2.6. Further, between January 21, 2013 and August 23, 2013, the Acquirer has additionally acquired approximately 477,083 equity shares of the Company constituting 3.72% of the expanded equity share capital of the Company. As a consequence, the Acquirer's holding in the Company increased to 34.82% and with Promoter Group holding of 50.17%, the current 'public shareholding' in the Company has further reduced to 15.00%.

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2.7. The company submitted that the above acquisitions have also resulted in the shares of the Company becoming illiquid. The average volume of trading for the year 2011 was 24,921 which fell to 5,661 during the year 2012 and the same has been further reduced to 2,828 during the last three calendar months i.e. period between June 01, 2013 and August 23, 2013 at both the BSE and NSE.

2.8. The company also submitted that the Acquirer is neither a promoter nor a part of the promoter group nor is a person acting in concert with the promoters.

2.9. Regulation 7(4) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 ("Takeover Regulations"), states as follows:

"In the event the shares accepted in the open offer were such that the shareholding of the acquirer taken together with persons acting in concert with him pursuant to completion of the open offer results in their shareholding exceeding the maximum permissible non-public shareholding, the acquirer shall be required to bring down the non-public shareholding to the level specified and within the time permitted under Securities Contract (Regulation) Rules, 1957" (emphasis added)

2.10. Based on the above, if pursuant to an open offer, the non-public shareholding of the Company is in excess of the "maximum permissible non-public shareholding", then the acquirer is required to bring down the non-public shareholding to the level specified and within the time permitted under the Securities Contract (Regulation) Rules, 1957 ("SCRR").

2.11. The "maximum permissible non-public shareholding" has been defined under the Takeover Regulations as "such percentage shareholding in the target company excluding the minimum public shareholding required under the Securities Contracts (Regulation) Rules, 1957." The minimum public shareholding required to be maintained by a listed company under the SCRR has been provided to be 25%. Further, the term "public shareholding" has been defined under the SCRR as "equity shares of the company held by public and shall exclude shares which are held by custodian against depository receipts issued overseas." Further, the term "public" under SCRR as follows:

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"persons other than-

- (i) the promoter and promoter group;
- (ii) subsidiaries and associates of the company.

Explanation: For the purpose of this clause the words "promoter" and "promoter group" shall have the same meaning as assigned to them under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009."

2.12. While the definition of "public shareholding" as per SCRR only provides for exclusion of the shareholdings of the promoter and the promoter group, a reading of Regulation 7(4) of the Takeover Regulations indicates that an acquirer's shareholding would also be considered as non- public shareholding in the company, and that in the event the non-public shareholding in the company exceeds the "maximum permissible non-public shareholding" for such company, such acquirer is required to bring down/ divest its equity shareholding in the company such that the company is in compliance with the "maximum permissible non-public shareholding" limit.

2.13. Despite the Acquirer not being a promoter or a person acting in concert with the promoters, by virtue of his shareholding of 34.82% in the Company, the Acquirer has the ability to exercise significant influence over the affairs of the Company. One of the ways in which the Acquirer may exercise such influence over the Company is through his ability to block matters which requires approval of the shareholders by way of a special resolution under the Companies Act, 1956. Given that the "public shareholders" typically are not entitled to such rights, the Acquirer cannot be considered to be a "public shareholder".

2.14. The company submitted that that the provisions regarding maintaining the minimum public shareholding are set out under the rules and regulations issued under the Securities Contract (Regulation) Act and the Listing Agreement. However, Regulation 7(4) of the Takeover Regulations was introduced in the Takeover Regulation specifically to cover a situation wherein the minimum public shareholding of a company is impacted by an acquirer (whether or not he is a promoter) pursuant to acquisition of shares under an open offer. Regulation 7(4) requires the **acquirer** and not the promoters to bring down to non public shareholding to the "maximum permissible non-public shareholding". It is clear that the

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intention of the Regulation was to ensure that if the aggregate of the acquirer's shareholding (post the open offer) together with the shareholding of the promoter and the promoter group exceeds the "maximum permissible non-public shareholding", then it is the acquirer who would have to bring down/ divest his/ its shareholding in the relevant company so as to ensure that the "minimum public shareholding" is maintained. In our view, the Takeover Regulations clearly consider the acquirer to be a category separate from the public as well as the promoter and promoter group. For the purposes of Regulation 7 (4) of the Takeover Regulations, the term "maximum permissible non public shareholding" should include the shareholding of the promoter and promoter group as well as the acquirer.

2.15. The company further submitted that to note that if the Acquirer is not considered to be a separate category from the public shareholders (for the purposes of Takeover Regulations), it could lead to absurd consequences and interpretations. For instance, it would then be feasible for one person to hold the entire "public shareholding" i.e. the entire shareholding of the Company other than what is held by the promoters) and the Company still being compliance with the minimum public shareholding requirements. This would go against the intention of the Government of India in increasing the public shareholding requirement to 25%.

2.16. Regulation 7(4) was introduced to ensure a dispersed and wide spread public shareholding in listed companies to avoid price manipulation and to allow fair price discovery, hi this regard, it may be relevant to note that our Company has been receiving letters from investors stating that there are no shares of the Company available for purchase on the stock market. This is further evidenced by the fact that the scrip of the Company have also been categorized as illiquid scrip pursuant to Circular Ref. No.: 32/2013 dated July 01, 2013 issued by National Stock Exchange of India Limited.

2.17. Therefore, as per Regulation 7(4) of the Takeover Regulations, the non-public shareholding of the Company in terms of Regulation 7(4) of the Takeover Regulations would be the aggregate of the shareholding of (i) the Acquirer and persons acting in concert with him (presently holding 34.82% of the expanded capital); and (ii) the existing promoters and promoter group of the Company (presently holding 50.17% of the expanded capital). Accordingly, the current non- public shareholding of the Company is 85.00%. as opposed to the maximum permissible non public shareholding of 75%.

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2.18. Since the non-public shareholding of the Company has exceeded beyond the "maximum permissible non-public shareholding" of the Company, therefore the Acquirer is required to reduce its shareholding by such percentage which would ensure that the non-public shareholding in the Company is not in excess of 75% in accordance with Regulation 7(4) of the Takeover Regulations. Such reduction is required to be completed within the timelines mentioned under SCRR.

2.19. The Company vide supplementary letter dated September 27, 2013 made further submission in context of this particular case as below.

2.20. The company submitted that as per the paragraph 3.1.2 of Letter of Offer of the Acquirer dated December 22, 2012 ("LOF"), it is indicated that the that the Acquirer had made the open offer in terms of Regulations 3 (1) and Regulation 4 of the Takeover Regulations.

2.21. As may be inferred from the aforementioned paragraph, that the (i) Acquirer has made an open offer under Regulation 4 of the Takeover Regulations, although it has been mentioned under paragraph 3.1.2 of LOF that the Acquirer's intention is not to have substantial holding of shares / control; and that (ii) Acquirer would be considered as "public" till he actually acquires control.

2.22. The company submitted that the definition of "Control" is given in Takeover Regulations "as a right" to control policy decisions of a company (with or without acquisition of shares/ voting rights), irrespective of the intention of the Acquirer to exercise such right or not. Therefore, in view of the company the acquirer cannot be considered as part of the "public shareholders" of the Company. The Acquirer being a person who has acquired 'control' in the Company (by acquiring right to block special resolutions of the company by virtue of his 36% shareholding), cannot be treated as "public". Therefore, the Acquirer's shareholding being a shareholding of a "person in control" should be clubbed with the existing promoters' holding to determine the "non-public" shareholding in the Company for the purpose of Regulation 7(4) of the Takeover Regulations.

2.23. The company further submitted that Paragraph 3.1.10 of the LOF discloses the undertaking given by the Acquirer to facilitate compliance with the provisions of the SCRR in terms of regulation 7(4) of Takeover Regulations. The aforesaid undertaking

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which talks about public holding reducing below the minimum public shareholding would not have triggered in any case. In spite of this, the Acquirer chose to give this undertaking, which implies that for the purpose of Regulation 7(4) of the Takeover Regulations, he was considering himself and rightly so as "non public" along with the existing promoters.

2.24. The company further submitted that the Acquirer is a person in control and the Acquirer's position in the Company cannot be compared with any of the other public shareholders of the Company. A person is said to be in "control" under the Takeover Regulations if he has the right to "control the management or policy decisions .. by virtue of their shareholding." As explained in our aforementioned supplementary letter, the right of the Acquirer to block special resolution matters by virtue of its shareholding in the Company amounts to acquisition of "control". In fact, SEBI has in the past also taken a similar view in various matters (including in *Subhkam Ventures*) that negative control should be considered to be "control" for the purposes of the Takeover Regulations. The fact of the Acquirer being in control is also clear by reason of the open offer being made under Regulation 4 of the Takeover Regulations.

Clarification sought by you

3. In light of the above submissions, you have sought issuance of a "Interpretive letter" on the following issues:

a) Whether the shareholding of the Acquirer in the Company, following all the acquisitions referred above, would be treated as part of the non-public shareholding of the Company as contemplated under Regulation 7(4) of the Takeover Regulations; and

b) If yes, given that the non-public shareholding of the Company has exceeded 75%, whether the Acquirer is required to reduce its shareholding in the Company by such percentage which would ensure that the non-public shareholding in the company does not exceed 75%, within the time period prescribed under the SCRR.

Our Views

4. The submissions made in your letter have been considered and without necessarily agreeing with your analysis, our view on the issue are as under:-

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4.1. It is noted that Acquirer made the open offer pursuant to regulation 3(1) and 4 of the Takeover Regulations for substantial acquisition of shares and voting rights on December 22, 2012.

4.2. As per the post offer public announcement dated January 21, 2013 during the offer period the Acquirer had acquired 7.20% in compliance with regulation 8 (8) and 18 (6) of the Takeover Regulation and acquired 590 equity shares under the Open Offer. According to the post offer public announcement the Acquirer's shareholding in the Company was 31.11%.

4.3. As per the Shareholding Pattern filed by the company with the stock exchanges for the quarter ended September 2013, the shareholding of Acquirer is shown under the category of "Public" and holding more than 5% of the total number of shares of the company. It is also noted that the promoter holds 50.86% in the company.

4.4. As per the submission of the company, the Acquirer is neither promoter nor part of the promoter group or person acting in concert with the promoters.

4.5. Regulation 7(4) of the Takeover Regulations provides as follows:

"In the event the shares accepted in the open offer were such that the shareholding of the acquirer taken together with persons acting in concert with him pursuant to completion of the open offer results in their shareholding exceeding the maximum permissible non-public shareholding, the acquirer shall be required to bring down the non-public shareholding to the level specified and within the time permitted under Securities Contract (Regulation) Rules, 1957" (emphasis added)

4.6. Thus, Regulation 7(4) imposes an obligation upon the acquirer to bring down its shareholding to the level specified for maximum permissible non-public shareholding within the time permitted under SCRR, in the event shares accepted in the open offer exceeds the shareholding of the acquirer taken together with the person acting in concert beyond the maximum permissible non-public shareholding under SCRR.

4.7. The expression acquirer has been defined in Regulation 2(a) of Takeover Regulation as any person who directly or indirectly acquires or agrees to acquire shares or voting rights in or control over a target company either by himself, or through or with any person acting in

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concert with the him. As per the definition acquirer means any person which includes both promoter and public. Thus the definition of term acquirer does not make any distinction between promoter and public.

4.8. The provision of Regulation 7 (4) is not be applicable in the present case as post offer shareholding of the Acquirer in the company was 31.11%.

4.9. It is noted that the section 2 (e) of Securities Contracts (Regulation) Rules, 1957 (SCRR) defines term "public shareholding" as "equity shares of the company held by public and shall exclude shares which are held by custodian against depository receipts issued overseas." Further, section 2 (d) of SCRR defines the term "public" as follows:

"persons other than-

- (i) the promoter and promoter group;
- (ii) subsidiaries and associates of the company.

Explanation: For the purpose of this clause the words "promoter" and "promoter group" shall have the same meaning as assigned to them under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009."

4.10. Since the Acquirer is a neither promoter nor part of the promoter group or is person acting in concert with the promoters, he falls under the category of public as defined under section 2 (d) of the of SCRR. Further, Acquirer's shareholding in the Applicant Company will fall under the category of the "Public Shareholding" as defined under section 2 (e) of the SCRR. The same is also evident from the Shareholding Pattern filed by the company with the stock exchanges for the quarter ended September 2013 wherein the shareholding of Acquirer is shown under the category of "Public" and holding more than 5% of the total number of shares of the company.

4.11. Further, paragraph 3.1.2. of letter of offer dated December 22, 2012 categorically states that

"...Notwithstanding that the Open Offer is being made under Regulation 4 of the SEBI (SAST) Regulations, the prime objective of the Acquirer behind the acquisition is the investment value in the Equity Shares of the Target Company and NOT substantial

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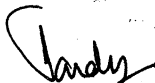
holding of shares/voting rights/control or management of the Target Company. Therefore, until and unless the Acquirer actually acquires control of the Target Company, the Acquirer would be considered as "public".

4.12. In view of above, with reference to question at 3 (a) above, it is submitted that acquisition of the Acquirer in the company does not attract provisions of Regulation 7(4) of the Takeover Regulations; Since question at 3 (a) is answered in negative, question 3 (b) need not be answered.

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 a decision of the Board on the questions referred.

6. You may note that the above views are expressed by this Division only with respect to the clarifications sought on SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and do not affect the applicability of any other law or requirements.

Yours faithfully,


Amit Tandon