

July 21, 2015

The General Manager,
Corporate Finance division,
Securities Exchange Board of India,
Plot no. C4-A, 'G' Block,
Bandra Kurla Complex, Bandra (East),
Mumbai 400 051

भा. प्र. वि. बो. SEBI
सं/No 37286

दिनांक
Date 22 JUL 2015



SEBI/IW/P/20150722/0000037286

Request for a "Interpretive letter" under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in relation to the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.

Dear Ma'am/Sir,

KPIT Technologies Limited (the "Company") has in place a cashless Employees Stock Option plan ("ESOP Plan") for its employees. The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 ("Insider Trading Regulations") which came into effect from May 15, 2015 contain certain provisions which significantly impact the administration of this ESOP Plan.

(A) Background

1. The Company has implemented the facility of a cashless ESOP Plan for its employees. This cashless ESOP Plan is operated through a trust (the, KPIT Employee Welfare Trust (the "Trust")) in accordance with the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 ("SBEB Regulations").
2. From time to time, the Trust either applies for shares to the Company and such shares are issued to it and/or the Trust acquires shares through secondary market purchases for the purposes of the ESOP Plan.
3. When an option vests with the relevant employee (which employees would include both "Designated Persons" and also persons who are not Designated Persons"):
 - (a) If the employee is a resident, then no cash is paid by such employee, he/she simply exercises his/her ESOP online at which time based on such exercise, the Trust sells the relevant shares on the market, and the employee is paid the difference between the market price (at the time of such sale) and the exercise price of the relevant ESOP; and
 - (b) If the employee is a non-resident, then such non-resident employee exercises his/her ESOP by first paying the exercise price to the Trust (upon vesting of the option) and then upon exercise of the option by the employee, the Trust sells the relevant shares on the market and the employee is paid the difference between the market price (at the time of such sale) and the exercise price of the relevant ESOP (less applicable taxes).
4. The Insider Trading Regulations define a "Designated Person" as employees and connected persons designated as such on the basis of their functional role in the relevant organisation.



5. The Trust is therefore only the mechanism for implementing the ESOP Plan, all sales are undertaken only on the basis of exercise by the relevant employee. Effectively the trade is therefore undertaken by the Trust on behalf of the employee and not by the Trust in its own capacity. In the case of a non-resident for instance, each time a non-resident employee exercises an ESOP, and the Trust sell shares pursuant to such exercise, an FC-TRS is filed where the relevant employee is indicated as the seller of the relevant shares.

(B) Issues

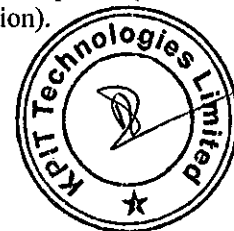
1. The SBEB Regulations specifically mandate that cashless ESOP plans can only be set up by way of a trust mechanism. Under the same SBEB Regulations, such a trust is specifically classified as an "Insider" for the purposes of the Insider Trading Regulations.
2. This effectively means that any "Trades" undertaken by the Trust (which would include subscribing to shares, acquiring shares from the market and selling the same on the market), even though the same are undertaken solely on the basis of exercise of an ESOP by the relevant employees and is effectively a trade by such employee (who may not be an Insider) could technically be treated as a Trade by an Insider and will be subject to all the restrictions and disclosure requirement applicable to an "Insider" under the Insider Trading Regulations.
3. **Of particular relevance is the following restrictions under the Insider Trading Regulations:**

Paragraph 6 of Schedule B of the Insider Trading Regulations provides that:

"The code of conduct shall specify the period, which in any event shall not be less than six months, within which a Designated Person who is permitted to trade shall not execute a contratrade."

This restriction therefore applies to Designated Persons and given the definition of "trade" (which includes subscription as well as secondary transactions), effectively:

- (i) Since the cashless ESOP is undertaken through the Trust which is classified as an Insider (and therefore arguably captured under the definition of a Designated Person), even though the Trust is not undertaking any Trades in its own capacity and only doing so on the basis of instructions from employees (who may or may not be Designated Persons) technically it is the Trust that is undertaking the Trades and therefore a technical view could be taken that the same violates the restriction on contra-trading. For instance if the Trust has subscribed to shares on May 20th, 2015 and thereafter (within a period of 6 months) an employee **not** being a Designated Person exercises an ESOP, the Trust could technically be restricted from selling the underlying shares due to the contra-trading restriction – thereby making the whole cashless ESOP Plan redundant.
- (ii) Further, if a Designated Person has exercised his stock options at any time in the previous six month period he cannot then sell the relevant shares of the company (whether or not, he is in possession of unpublished price sensitive information) and conversely, if a Designated Person had sold the shares of the company at any time in the previous six month period, he cannot then exercise his vested options (whether or not, he is in possession of unpublished price sensitive information).

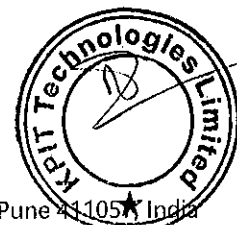


4. Please note that the Previous Insider Trading Regulations provided a specific clarification that the contra-trading rule applies only to the secondary market and hence was not applicable for the exercise of ESOPs and sale of those resultant shares.
5. Please bear in mind that the Trust undertakes Trades only on instructions from specific and identified employees pursuant to an ESOP exercise. The Trust does not initiate any transactions on its own. In fact the SBEB Regulations prohibit the Trust from selling shares for any purpose other than selling /transferring it to employees. The Companies Act, 2013 as well as SBEB Regulations require the Trust to have independent trustees.
6. The contratrade restrictions under the Insider Trading Regulations are applicable only to Designated Employees whereas the Trust executes Trades on behalf of various classes of employees, several of whom are non-Designated Persons. However, since the Trust itself is classified as an Insider, it by extension could be technically restricted from executing Trades even for employees who are not Designated Persons, which is otherwise not prohibited under the Insider Trading Regulations.
7. Also, if the exercise of ESOPs by employees who are Designated Persons is subject to the restriction on contra-trading, then such a Designated Person cannot sell any shares (including shares arising from ESOP exercises done several years back) within 6 months of any ESOP exercise, and can make another ESOP exercise only after a further 6 months have expired since a sale. This would imply that an employee who is a Designated Person can exercise an ESOP only once a year and sell only once a year. This would make ESOP exercises practically impossible. Our experience shows that since employees do not have enough funds to pay for the exercise price and tax, they either do a cashless or sell their existing holding or borrow to meet their obligations. Under the new Insider Trading Regulations, none of these would be possible. If an employee were to borrow, he/she will be forced to service the loan for 6 months since he/she cannot sell the shares in that period. This provision leads to de facto lock-in of 6 months. This may prevent some employees from exercising some options as some options may expire before the end of such six month period (all our ESOP schemes have a restriction on the period within which options have to be exercised).

(C) Interpretation

Our interpretation of the Insider Trading Regulations is as follows:

1. The intent of the Insider Trading Regulations is not to prevent the implementation of otherwise permissible ESOP Plans.
2. The acquisition of shares (whether by subscription or secondary acquisition) will not be considered as a "Trade" for the purposes of the contra-trading restrictions as the Trust in the ordinary course of its existence has to acquire/subscribe to shares to give effect to ESOPs (which are permissible under applicable law).
3. Since the Trust is not acting on its own but solely on instructions and authority from specific and identified employees pursuant to an ESOP exercise to procure and/or sell shares, the cashless exercises of ESOPs (as set forth above), being in accordance with the provisions of SBEB Regulations, by the Trust for employees who are not Designated Persons (and do not at the time of such exercise have access to any unpublished price sensitive information) will not attract any contra-trade restrictions.
4. ✓ Further, as was the case under the Previous Insider Trading Regulations, we assume that the intent of contra-trade restrictions is to apply to secondary acquisitions and not acquisitions/sale of an ESOP and resultant shares. Therefore we assume that the exercise of an ESOP by any



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person including a Designated Person, and the sale of the resultant shares will not attract any contra-trading restrictions.

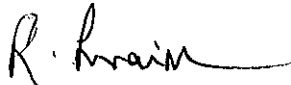
For example: If a Designated Employee has exercised ESOPs on May 30, 2015 he is permitted to sell the resultant shares within a period of 6 months; and similarly if a Designated Person has sold any shares that he got as a result of an ESOP exercise on May 30, 2015 he can still exercise an ESOP within a period of 6 months therefrom.

(Please note that the Previous Insider Trading Regulations provided a specific clarification that the contra-trading rule applies only to the secondary market and hence was not applicable for the exercise of ESOPs and sale of those resultant shares.)

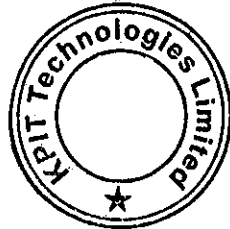
We request you to issue us a "No-action letter" confirming if our understanding and interpretation is correct.

Thanking you,

Yours faithfully,
For KPIT Technologies Limited



R. Swaminathan
Company Secretary



- Sneha Padure (New company secretary of co.)
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