



भारतीय प्रतिभूति
और विनियम बोर्ड
Securities and Exchange
Board of India

CHIEF GENERAL MANAGER
INTEGRATED SURVEILLANCE DEPARTMENT

ISD/OW/ 30679 /2015
October 30, 2015

R Swaminathan
Company Secretary
KPIT Technologies
35 & 36, Rajiv Gandhi Infotech Park,
Phase 1, MIDC, Hinjewadi,
Pune - 411057

Dear Sir,

Re: Request for a informal guidance by way of "No-action 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

1. Please refer to your letter dated July 21, 2015 seeking a no action letter under the SEBI (Informal Guidance) Scheme, 2003.
2. In your letter under reference you have, *inter alia*, made the following submissions-
 - I. KPIT Technologies has implemented a cashless ESOP plan for its employees. This cashless ESOP Plan is operated through a trust in accordance with Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 ("SBEB Regulations").
 - II. From time to time, the trust either applies for shares to the company and such shares are issued to it/ or the Trust acquires shares through secondary market purchase for the purpose of ESOP Plan.
 - III. The trust is 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 undertaken by the trust on behalf of the employee and not by the Trust in its own capacity.
 - IV. SBEB Regulations specifically mandate that cashless ESOP plans can only be set up by way of a Trust mechanism and such a Trust is specifically classified as "Insider" for the purposes of the PIT Regulations
 - V. Thus any "Trade" undertaken by the Trust (which would include subscribing to shares, acquiring / selling shares from / in 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

सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बान्द्रा कुर्ला कॉम्प्लेक्स, बान्द्रा (पूर्व), मुंबई - 400 051.
दूरभाष : 2644 9950 / 4045 9950 (आई.सी.आर. एस.), 2644 9000 / 4045 9000 फैक्स : 2644 9019 से 2644 9022 वेब : www.sebi.gov.in



अनुवर्ती :
Continuation :

भारतीय प्रतिभूति
और विनियम बोर्ड
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to all the restrictions and disclosure requirements applicable to an "Insider" under the PIT Regulations.

- VI. Further, Paragraph 10 of Schedule B of the SEBI (PIT) Regulations, 2015 restricts a designated person from undertaking contra trades within a period of 6 months. Since, the cashless ESOP is undertaken through the Trust which is classified as an Insider, a view could be taken that the same would be subject to the contra-trading restriction.
3. In the light of aforesaid submissions, you have raised the following queries with regards to the SEBI (Prohibition of Insider Trading), Regulations, 2015.
- I. The intent of the PIT Regulations is not to prevent the implementation of otherwise permissible ESOP plans.
 - II. 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).
 - III. 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, 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.
 - IV. Further, as was the case under the previous PIT 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 person including a designated person, and the sale of the resultant shares will not attract any contra-trading restrictions.

Without necessarily agreeing with your analysis given in your above mentioned letter, our interpretation on the above query is as under:

4. Your request appears to seek informal guidance in the nature of 'No-Action Letter' in respect of the following issues:
- I. Whether the exercise of an ESOP by any person including a designated person, and the sale of the resultant shares attract any contra-trading restrictions under SEBI (PIT), Regulations, 2015.
 - II. Whether the cashless exercise of ESOPs by the trust for employees who are not designated persons, attract contract trade restrictions under SEBI (PIT), Regulations, 2015.
 - III. Whether the acquisition of shares (whether by subscription or secondary acquisition) by the trust to give effect to ESOPs be considered as a "Trade" for



अनुवर्ती :
Continuation :

भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

the purpose of the contra-trading restrictions under SEBI (PIT), Regulations, 2015.

5. It is pertinent at this point to draw your attention to a guidance note released by SEBI on SEBI (Prohibition of Insider Trading) Regulations, 2015, dated August 24, 2015. The said guidance note, *inter alia*, addresses the question of applicability of the said regulations on exercise of ESOPs.
6. The guidance note, on this particular matter states that Exercise of ESOPs shall not be considered to be "trading" except for the purposes of Chapter III (Disclosures of Trading by Insiders) of the Regulations. Further, it is stated by way of an example in the Guidance note that if a designated person has sold/ purchased shares, he can subscribe and exercise ESOPs at any time after such sale/purchase, without attracting contra trade restrictions.
7. Thus, it is clarified that the exercise of ESOP by any person including a designated person, and the sale of such shares so acquired under ESOPs shall not attract contra trade restrictions. The cashless exercise of ESOPs by the trust for employees, who are not designated persons, shall also not attract contract trade restrictions under SEBI (PIT), Regulations, 2015.
8. Further, it is seen that trust is not undertaking trades in its own capacity but acting solely on behalf of the employees to give effect to exercise of ESOPs. Thus in light of the guidance note dated August 24, 2015, it appears that acquisition of shares by the trust to give effect to exercise of ESOP by employees may not be considered as trade for the purpose of contra trade restrictions.
9. This position is based on the representations and submissions made to the Department in your letter under reference. Different facts or conditions might require a different result. This letter expresses the Department's position on applicability of the respective Regulations / Guidelines as referred above only in the instant case. It does not express decision of the Board on the questions presented.
10. In terms of Clause 14 to Clause 17 of SEBI (Informal Guidance) Scheme, 2003, the department issuing this no-action letter will not recommend enforcement action to the Board regarding above issues subject to the requestee acting strictly in accordance with the facts and the representations made in the letters while in compliance with applicable laws.
11. You may note that the above views are expressed only with respect to the clarification sought on the applicability of the respective Regulations/Guidelines as referred above and do not affect the applicability of any other law or requirements.

Yours faithfully,

Sunil Kadam