



भारतीय प्रतिभूति  
और विनियम बोर्ड  
Securities and Exchange  
Board of India

Deputy General Manager  
Corporation Finance Department  
Division of Corporate Restructuring

SEBI/HO/CFD/DCR1/OW/P/2018/01828/1  
January 18, 2018

Ms. Ramolla Karnani  
Constituted Attorney  
(For Dow Luxembourg Spectrum Holding S.a.r.l  
And Dow France S.A.S)  
02, Block B, 1<sup>st</sup> Floor, Godrej Business District,  
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Mumbai-400079

Madam,

Request for informal guidance by way of "Interpretive Letter" under the SEBI (Informal Guidance) Scheme, 2003 {Scheme} in relation to SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 {SAST Regulations} in the matter of M/s. Multibase India Ltd. {Target Company}

1. This has reference to your letter dated September 8, 2017 and clarifications received on Oct 18, 2017, October 26, 2017 and January 8, 2018 on the captioned subject.
2. In respect of the same, you have, *inter alia*, represented as under:
  - i. The two applicants, Dow Luxembourg Spectrum Holding S.a.r.l ("**Dow Luxembourg**"), a private company limited by shares, registered under the laws of Luxembourg with its principal place of business in Luxembourg and Dow France S.A.S ("**Dow France**"), a private company limited by shares, registered under the laws of France with its principal place of business in France, both are indirect subsidiaries of The Dow Chemical Company ("**TDCC**").
  - ii. TDCC holds 100% of Dow Corning Corporation ("**DCC**"). DCC holds 100% of DC Global Holdings S.a.r.l ("**DC Global**"). DC Global holds 100% of Dow Corning France S.A.S. ("**DC France**"). DC France holds 99.997% of Multibase S.A., France ("**Multibase France**"). Multibase France holds 75.01% of the equity shares of the Target Company.
  - iii. Dow France is 100% owned by Rohm and Haas International SNC ("**RHI**"). RHI is held 99.99% held by Rohm and Haas Denmark Holding Company ApS which is in turn 100% held by Rohm & Haas Denmark Bermuda GP ApS and Rohm and Haas Denmark Bermuda GP ApS is a 100% subsidiary of Dow Europe Holding B.V. ("**Dow Europe**"). There are certain other holding companies in the chain above Dow Europe ultimately owned by TDCC. Among the said holding companies include an entity Dow Switzerland Holding GmbH ("**DSH**") which thus indirectly holds Dow Europe and RHI.
  - iv. About the proposed restructuring: - The proposed restructuring exercise contemplates the merger of DC France into Dow France. The merger (Step-3) is proposed to be preceded with the transactions as described in Steps 1 and 2 below:

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अनुवर्ती :  
Continuation :

भारतीय प्रतिभूति  
और विनियम बोर्ड  
Securities and Exchange  
Board of India

**Step 1:- Transfer of Shares of DC Global:**

- First, from DCC(100% subsidiary of TDCC) to Dow Luxembourg(97.40% held by Dow International Holdings Company, 1.93% held by DCC and balance 0.67% by Rohm and Haas Denmark A/S) in exchange for shares
- Then, from Dow Luxembourg to Dow Luxembourg Galaxy Holding S.a.r.l (100% held by Dow Luxembourg) in exchange for share premium
- Finally from Dow Luxembourg Galaxy Holding S.a.r.l to Dow Switzerland Holding GmbH(100% held by Dow Luxembourg Galaxy Holding S.a.r.l) in exchange for shares.

**Step 2:- Transfer of shares of DC France: Upon completion of Step 1, DC Global will transfer shares of DC France down the chain to RHI for no consideration as described below:**

- From DC Global (100% held by Dow Switzerland Holding GmbH as a result of Step 1) to DC Spectrum Holding CV, Netherlands(99.99% shares held by DC Global and nominal shares held by Dow Netherland Holding LLC, as a result of transfer of shares from Dow Switzerland Holding GmbH to DC Global after Step 1);
- From DC Spectrum Holding CV, Netherlands to Cooperative DC Prisma Holding U.A.(99.999% held by DC Spectrum Holding CV and balance 0.01% held by Dow Netherlands Investments LLC)
- From Cooperatieve DC Prisma Holding U.A. to Dow International Holdings S.A. (100% held by Cooperatieve DC Prisma Holding U.A.);
- From Dow International Holdings S.A to DC Galaxy Holding C.V. Netherlands(99.93% held by Dow International Holdings S.A. and nominal shares(0.07% held by Dow Dutch Holding B.V.)
- From DC Galaxy Holding C.V., Netherlands to Dow Europe(100% held by DC Galaxy Holding C.V)
- From Dow Europe to RHI (99.99% held by Rohm and Haas Denmark Holding Company ApS and nominal shares (0.0001%)held by Dow Interbranch B.V.)

**Step-3 :- Merger of DC France into Dow France:**

- Upon completion of Step 2, i.e., DC France becoming a direct 100% subsidiary of RHI, DC France is proposed to be merged into Dow France which is also a direct 100% subsidiary of RHI.
- Each of the transfer of shares/transactions as enumerated under Step 1 are contemplated to be done on the same day. Similarly each of the transfer of shares/transactions as enumerated under Step 2 are also contemplated to be done on a single day.
  - All the entities involved in proposed restructuring described at Step 1 and 2 above (before and after the proposed restructuring exercise) will continue to be ultimately held and controlled by TDCC.
  - The goal of transfer through multiple entities as contemplated in Step 1 and Step 2 is to eliminate DC France and simplify the organisational structure of TDCC through tax neutral internal reorganisations. DC France and Dow France, the two relevant entities, are currently located in different ownership chains, a direct merger of the two entities would create cross chain ownerships, which would increase the administrative burden and cost to maintain the entities going forward, and





अनुवर्ती :  
Continuation :

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

are generally avoided as a matter of the corporate policy. In addition, a sale of shares of DC France to the relevant chain would not be tax efficient from US federal income tax perspective. The current plan would achieve the goal of tax neutral reorganisation from the perspective of each relevant country in the chain and simplify the organisational structure by eliminating DC France without creating cross chain ownerships or triggering material tax costs.

- viii. The applicants have further submitted in its letter dated October 26, 2017 that the proposed merger process in France (between DC France and Dow France) is governed by *Commercial Code* which deals with and lays down the process to be followed for merger of companies incorporated in France. In order for the merger to be valid, the participating companies are required to file with the registry of *Tribunal de commerce* (Commercial Court) of Bobigny a declaration (compliance statement) in which they have to record all the acts carried out in order to proceed with this operation of merger as laid in the Commercial Code and by which they have to confirm that the operation of merger has been carried out in accordance with the acts and regulations. A notice regarding the completion of the merger process is published in a legal gazette.

**Queries:-**

3. In view of above, you have sought interpretive letter from SEBI on the following:
- Whether, each step involving (i) transfer of shares of DC Global from DCC ultimately to DSH as described in Step 1; and (ii) transfer of shares of DC France from DC Global ultimately to RHI as described in Step 2, attract the provisions of Regulation 3 of SAST Regulations or amounts to indirect acquisition of shares in terms of Regulation 3 read with Regulation 5 of SAST Regulation and triggers the requirement on the concerned acquiring entities to make an open offer subject to exemptions, if any, available under Regulation 10?
  - If the answer to query (i) above is in the affirmative, please confirm our understanding that each of the concerned acquirer/transferee entities shall qualify for the exemption in terms of Regulation 10(1)(a)(iii) of SAST Regulations in respect of each of the transfer of shares as described in Step 1 and 2.
  - In case the exemptions in terms of Regulation 10(1)(a)(iii) of SAST Regulations stated in query (ii) above are available to each of the concerned acquiring entities, please confirm our understanding is correct that the condition in relation to the acquisition price, as prescribed under the proviso to Regulation 10(1)(a), will not be relevant/applicable for each of the proposed transactions under Step 1 and 2, as each of the said transactions would be an indirect acquisition.
  - In case the exemptions in terms of Regulation 10(1)(a)(iii) of SAST Regulations as stated in Query (iii) above are available to each of the concerned acquiring entities, considering that each of the transfer of shares/transactions as enumerated under Step 1 are contemplated to be done on the same day and similarly each of the transfer of shares//transactions as enumerated under Step 2 are also contemplated to be done on the same day, whether



अनुवर्ती :  
Continuation :

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

- A single consolidated filing (signed on behalf of each of the transferee/acquiring entities) pursuant to Regulation 10(5) of SAST Regulations, covering each transfer of shares/transactions in Step 1 and similarly for Step 2 can be made and that such consolidated filings would be sufficient compliance with Regulation 10(5) of SAST Regulations?
  - A single consolidated filing (signed on behalf of each of the transferee/acquiring entities) pursuant to Regulation 10(6) of SAST Regulations covering each transfer of shares/transactions in Step 1 and similarly for Step 2 can be made and that such consolidated filings would be sufficient compliance with Regulation 10(6) of SAST Regulations?
  - A single consolidated filing (signed on behalf of each of the transferee/acquiring entities) pursuant to Regulation 10(7) of SAST Regulations, covering each transfer of shares/transactions in Step 1 and similarly for Step 2 can be made and that such consolidated filings would be sufficient compliance with Regulation 10(7) of SAST Regulations?
- v. Whether the proposed merger of DC France into Dow France as discussed in Step 3 would attract the provisions of Regulation 3,4 or 5 of SAST Regulations? In case Step 3 attracts the provisions of aforesaid Regulations 3, 4 or 5 of SAST Regulations, please confirm our understanding that the merger would qualify for exemption under Regulation 10(1)(d)(iii) of SAST Regulations.

**Our Comments**

4. We have considered the various submissions made and clarifications provided by you in your letter under reference. Without necessarily agreeing with your analysis, our views on the queries raised by you are as under:
- 4.1 **Query-I :-** During the transaction/acquisitions at each step involving (i) transfer of shares of DC Global from DCC to DSH as described in Step 1; and (ii) transfer of shares of DC France from DC Global to RHI as described in Step 2, each entity indirectly acquires more than 25% of shares or voting rights (75.01%) of Target Company, as 75.01% of the Target Company are held by Multibase France, which is the subsidiary (99.997%) of DC France and DC France is subsidiary (100%) of DC Global. In view of this, the proposed acquisition of more than 25% of the shares of the Target Company indirectly (through DC Global, DC France and Multibase France) by the entities mentioned at Step-I and II, effectively allows each of the entities to exercise more than 25% of the voting rights in the Target Company as soon as it acquires the said shares, thereby triggering Regulation 3(1) read with Regulation 5(1) of the SAST Regulations.
- 4.2 **Query-II :-** As per Regulation 10(1) (a) (iii) of the said Regulations the acquisition pursuant to the *inter se* transfer of shares amongst a company, its subsidiaries, its holding company, and other subsidiaries of such holding companies, etc. are exempted from making open offer under Regulation 3 and 4 of the SAST Regulations. Based on your submissions, each of the concerned acquirer shall qualify for the exemption under Regulation 10(1)(a)(iii) of SAST Regulations in respect of each of the transfer of shares as described in Step 1 and 2 subject to the compliance with the applicable conditions in terms of the proviso to Regulation 10 (1) (a).






अनुवर्ती :  
Continuation :

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

- 4.3 **Query-III :-** In view of the facts and circumstances as represented and various submissions made including separate valuation of the target company, the said requirement specified in proviso to Regulations 10(1)(a) on pricing would need to be complied with.
- 4.4 **Query-IV :-** The acquirer has to comply with the provisions of Regulation 10(5), 10(6) and 10(7) for any acquisition, exempted under Regulation 10 (1) (a) of SAST Regulations. In this regard, you have informed that all the transactions/transfer of shares mentioned at Step-I would take place on the same day and all the transactions/transfer of shares mentioned at Step-II would take place on the same day. You have also stated that each consolidated filings under Regulations 10(5), (6) and (7) of the SAST Regulations for Step-I, would cover the details of each transactions/transfer of shares in Step –I and would be signed by each of the transferee/acquiring entities, similarly, each consolidated filings under Regulations 10(5), (6) and (7) of the SAST Regulations for Step-II, would cover the details of each transactions/transfer of shares in Step–II and would be signed by each of the transferee/acquiring entities.  
In view of this, a consolidated filings as described above may be made under Regulations 10(5), (6) and (7) of the SAST Regulations.
- 4.5 **Query-V :-** Upon the said merger of DC France with Dow France, Dow France would indirectly acquire the voting rights of the Target Company through Multibase S.A. (promoter of the Target Company, which holds 75.01%). In view of this, Dow France would trigger Regulation 3(1) read with Regulation 5(1) of the SAST Regulations. With respect to the applicability of the exemption under Regulation 10(1) (d) (iii) of the SAST Regulations, it is observed that the said Regulation specifies that in order to avail exemption under this provision, the scheme of merger has to be pursuant to an Order of a Court or competent authority. In the facts and circumstances as represented by you, the proposed merger will not be pursuant to an order of a court or competent authority. In view of this, the proposed merger shall not be exempted from the obligation to make an open offer, under the said Regulation.
5. Further, your request for confidentiality for a period of 90 days has been acceded to.
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 the provisions of Securities and Exchange Board of India (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