

Info Capsule

FOREIGN DIRECT INVESTMENT (FDI-LLP) IN LIMITED LIABILITY PARTNERSHIPS (LLP) FORMED AND REGISTERED UNDER THE LIMITED LIABILITY PARTNERSHIP ACT, 2008¹

In exercise of the powers conferred by clause (b) of sub-section (3) of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999, the Reserve Bank of India vide Notification No. FEMA.385/2017-RB dated March 03, 2017 notified Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2017. Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2017 amended Regulation 5(9) and Schedule 9.

Regulation 5 (9) of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2017 read as under:

“A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India (other than an entity in Pakistan or Bangladesh), not being a Foreign Portfolio Investor or Foreign Institutional Investor or Foreign Venture Capital Investor registered in accordance with SEBI guidelines, may contribute foreign capital either by way of capital contribution or by way of acquisition / transfer of profit shares in the capital structure of an LLP under Foreign Direct Investment, subject to the terms and conditions as specified in Schedule 9.”

“Schedule 9

[See Regulation 5 (9)]

The Scheme shall be called Foreign Direct Investment (FDI-LLP) in Limited Liability Partnerships (LLP) formed and registered under the Limited Liability Partnership Act, 2008.

1. Eligible Investors:

A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India (other than an entity in Pakistan or Bangladesh), not being a Foreign Portfolio Investor or Foreign Institutional Investor or Foreign Venture Capital Investor registered in accordance with SEBI guidelines, may contribute foreign capital either by way of capital contribution or by way of acquisition / transfer of profit shares in the capital structure of an LLP.

2. Eligible investment

Contribution to the capital of an LLP would be an eligible investment under the scheme.

Note: Investment by way of 'profit share' will fall under the category of reinvestment of earnings

¹ Available at: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10876&Mode=0>

3. Eligibility of a LLP

FDI in LLPs is permitted, subject to the following conditions:

- i. FDI is permitted under the automatic route in LLPs operating in sectors / activities where 100% FDI is allowed through the automatic route and there are no FDI linked performance conditions. For ascertaining such sectors, reference shall be made to Annex B to Schedule 1 of these Regulations.
- ii. An Indian company or an LLP, having foreign investment, will be permitted to make downstream investment in another company or LLP engaged in sectors in which 100% FDI is allowed under the automatic route and there are no FDI linked performance conditions. Onus shall be on the Indian company / LLP accepting downstream investment to ensure compliance with the above conditions.
- iii. FDI in LLP is subject to the compliance of the conditions of Limited Liability Partnership Act, 2008.
- iv. A company having foreign investment can be converted into an LLP under the automatic route only if it is engaged in a sector where foreign investment up to 100 percent is permitted under automatic route and there are no FDI linked performance conditions.

4. Pricing

FDI in a LLP either by way of capital contribution or by way of acquisition / transfer of profit shares, would have to be more than or equal to the fair price as worked out with any valuation norm which is internationally accepted / adopted as per market practice (hereinafter referred to as "fair price of capital contribution / profit share of an LLP") and a valuation certificate to that effect shall be issued by the Chartered Accountant or by a practicing Cost Accountant or by an approved valuer from the panel maintained by the Central Government.

In case of transfer of capital contribution / profit share from a resident to a non-resident, the transfer shall be for a consideration equal to or more than the fair price of capital contribution / profit share of an LLP. Further, in case of transfer of capital contribution / profit share from a non-resident to resident, the transfer shall be for a consideration which is less than or equal to the fair price of the capital contribution / profit share of an LLP.

5. Mode of payment

Payment by an investor towards capital contribution in LLPs shall be made:

- (i) by way of inward remittance through banking channels; or
- (ii) by debit to NRE / FCNR(B) account of the person concerned, maintained with an AD Category - I bank in accordance with Foreign Exchange Management (Deposit) Regulations, 2016, as amended from time to time.

6. Reporting

- (i) Reporting of foreign investment in LLPs and disinvestment/transfer of capital contribution or profit shares between a resident and a non-resident may be made in a manner as prescribed by Reserve Bank of India from time to time.
- (ii) All LLPs which have received Foreign Direct Investment in the previous year(s) including the current year shall submit to the Reserve Bank of India, on or before the 15th day of July of each year, a report titled 'Annual Return on Foreign Liabilities and Assets' as specified by the Reserve Bank from time to time."

**ORDER UNDER REGULATION 11(5) OF THE SECURITIES AND EXCHANGE
BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES
AND TAKEOVERS) REGULATIONS, 2011. ²**

IN THE MATTER OF PROPOSED ACQUISITION OF SHARES AND VOTING RIGHTS IN NIIT TECHNOLOGIES LIMITED.

SEBI received an application dated April 27, 2016 (“Application”) from Thadani Family Trust (Trustee – Vijay Kumar Thadani) and Pawar Family Trust (Trustee – Rajendra Singh Pawar) (Collectively referred to as the “Proposed Acquirers”) seeking exemption from the applicability of Regulation 3(1), Regulation 4 and Regulation 5 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“Takeover Regulations”) in respect of the proposed indirect acquisition and control of the shareholding and voting rights in the Target Company (**NIIT TECHNOLOGIES LIMITED**).

In the aforementioned application, the following was stated –

- i. Mr. Vijay Kumar Thadani and Mr. Rajendra Singh Pawar are co-founders and Promoters of the Target Company. NIIT Limited holds 23.68% shares of the Target Company.
- ii. GSPL Advisory Services and Investment Private Limited (‘GSPL Advisory’) holds 3.56% shares (21,75,911 shares) of the Target Company. GSPL Advisory is a wholly owned subsidiary of Global Solutions Private Limited (‘Global Solutions’), which in turn is held 50% each by Mr. Vijay Kumar Thadani and Mr. Renuka Vijay Thadani, wife of Mr. Vijay Kumar Thadani.
- iii. As a part of family succession planning, it is proposed that Mrs. Renuka Vijay Thadani will transfer her shareholding in Global Solutions i.e. 50% of the share capital of Global Solutions to her husband Mr. Vijay Kumar Thadani. As Global Solutions is a registered NBFC, an application has been filed with the Reserve Bank of India seeking approval for the aforementioned transfer, Mr. Vijay Kumar Thadani and Mrs. Renuka Vijay Thadani form part of the declared Promoter Group of Target Company and therefore, the aforesaid proposed transfer is exempt under Regulation 10 of the Takeover Regulations.
- iv. A family trust named Thadani Family Trust has been set up for the benefit of Mr. Vijay Kumar Thadani, Mrs. Renuka Vijay Thadani and their lineal descendants (‘Thadani Family’).
- v. PIPL Business Advisors and Investment Private Limited (‘PIPL Business Advisors’) holds 3.56% shares (21,75,911 shares) of the Target Company. PIPL Business Advisors is a wholly owned subsidiary of Pace Industries Private Limited, which in turn is held 50% each by Mr. Rajendra Singh Pawar and Mrs. Neeti Pawar, wife of Mr. Rajendra Singh Pawar. (They) form part of the declared Promoter Group of the Target Company.
- vi. A family trust named Pawar Family Trust has been set up for the benefit of Mr. Rajendra Singh Pawar, Mrs. Neeti Pawar and their lineal descendants (‘Pawar Family’).
- vii. In order to facilitate succession planning and welfare of Thadani Family and Pawar Family, it is now intended that the ownership and control of GSPL Advisory and PIPL Business Advisors which hold the shares of the Target Company, will be held by the Thadani Family Trust and Pawar Family Trust, respectively.
- viii. Accordingly, Thadani Family Trust intends to subscribe to such number of shares of GSPL Advisory such that post subscription, Thadani Family Trust would hold majority i.e. 90% or more, of GSPL Advisory and thereby, indirectly acquire ownership and control over 21,75,911 shares (3.56%) of the Target Company.

² Available at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1488888588405.pdf

- ix. Similarly, Pawar Family Trust intends to subscribe to such number of shares of PIPL Business Advisors such that post subscription, Pawar Family Trust would hold majority i.e. 90% or more, of PIPL Business Advisors and thereby, indirectly acquire ownership and control over 21,75,911 shares (3.56%) of the Target Company. xi. Thus, pursuant to the aforementioned subscription of shares of GSPL Advisory and PIPL Business Advisors, collectively the Acquirers i.e. Thadani Family Trust and Pawar Family Trust, being persons acting in concert shall acquire ownership and control over 43,51,822 shares (7.12%) of the Target Company ('Proposed Indirect Acquisition').

ORDER

In exercise of the powers conferred under Section 19 of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") read with Regulation 11(5) of the Takeover Regulations, hereby grant exemption to the Proposed Acquirers, viz. Thadani Family Trust (represented by its Trustee – Vijay Kumar Thadani) and Pawar Family Trust (represented by its Trustee – Rajendra Singh Pawar), from complying with the requirements of Regulations 3(1), Regulation 4 and Regulation 5 of the Takeover Regulations with respect to its proposed indirect acquisition/exercise of voting rights in respect of the Target Company, viz. NIIT Technologies Limited, by way of proposed transactions as mentioned in the Application.

The exemption so granted is subject to the following conditions:

- I. The proposed indirect acquisition shall be in accordance with the relevant provisions of the Companies Act, 2013 and other applicable laws.
- II. On completion of the proposed indirect acquisition, the Acquirer shall file a report with SEBI in the manner provided in the Takeovers Regulations, within a period of 21 days from the date of such acquisition.
- III. The statements/ averments made or facts and figures mentioned in the Application and in the subsequent correspondences/submissions/clarifications by the proposed acquirer are true and correct.
- IV. The provisions of the SEBI Act and the Regulations framed there under will apply on the basis that the ownership or control of shares or voting rights vests not only directly with the Trustees but also indirectly with the beneficiaries of the Acquirer.
- V. There shall be no limitation of liability of the Trustees/beneficiaries in relation to the provisions of the SEBI Act and all Regulations framed there under.
- VI. The Proposed Acquirers shall honour their undertakings and shall also ensure compliance with the statements, disclosures and undertakings made in the Application and in their subsequent correspondences.
- VII. The Proposed Acquirers/Trusts shall confirm, on an annual basis, that they are in compliance with the exemption order passed by SEBI. The said confirmation shall be furnished to the Target Company, which it shall disclose prominently as a note to the shareholding pattern filed for the quarter ending March 31 each year, under Regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
- VIII. The Proposed Acquirers/Trusts shall get the compliance status certified from an Independent Auditor annually and furnish the same to the stock exchanges with a copy endorsed to SEBI for its records. ix. The Proposed Acquirer/Trust shall also ensure that the covenants in the Trust Deed are not contrary to the above conditions and undertaking provided by the transferors. In such case, the Trust Deed shall be suitably modified and expeditiously reported to SEBI.

The exemption granted above is limited to the requirements of making open offer under the Takeover Regulations and shall not be construed as exemption from the disclosure requirements under Chapter V of the Takeover Regulations; compliance with the SEBI (Prohibition of Insider Trading) Regulations, 2015; Listing Agreement/SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 or any other applicable Acts, Rules and Regulations. 4.4 The Application dated April 27, 2016 (read with further correspondences/submissions/ clarifications) filed by Thadani Family Trust (represented by its Trustee – Vijay Kumar Thadani) and Pawar Family Trust (represented by its Trustee – Rajendra Singh Pawar), is accordingly disposed of.

Team ICSI

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