



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

General Manager
Corporation Finance Department
Division of Corporate Restructuring

CFD/DCR/16403/11

May 23, 2011

D H Law Associates
87, Jolly Maker Chambers II
225, Nariman Point
Mumbai -400 021

Vulcan Engineers Ltd
326, Unique Industrial Estate
Off Veer Sawarkar Marg, PrabhaDevi
Mumbai-400 025

Dear Sir,

Sub.:-Request for interpretative letter under the SEBI (Informal Guidance) Scheme, 2003 by Vulcan Engineers Ltd in the relation to 'person acting in concert' under the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997-[Takeover Regulations]

1. This has reference to your letter dated February 24, 2011 and other correspondences on the captioned subject.
2. In your letter and other correspondences under reference, you have *inter alia* represented as follows:-
 - i. Terruzzi Fercalx SpA (TERRUZZI), a foreign company incorporated in Italy had acquired 33.50 lacs shares representing 40.90% of Vulcan Engineers Ltd (VEL) by way of preferential allotment on November 20, 2009 and acquired remaining 21.30 lacs shares representing 25.86% shareholding of VEL from the original promoters of VEL under Share Purchase Agreement (SPA) dated October 12, 2009. Thereafter, TERRUZZI made an open offer under Takeover Regulations wherein it acquired 0.15% share capital of VEL. As on the date of the letter, TERRUZZI holds 54.8 lacs shares representing 66.91% of the shareholding of VEL.
 - ii. SIMEST SpA, an Italian Financial Institution controlled by Italian Ministry of Economic Development is now desirous of subscribing to 13.789% of the shareholding of VEL through preferential allotment, which will in turn dilute TERRUZZI shareholding in VEL.
 - iii. On November 2, 2010, the Board of Directors of SIMEST approved the acquisition up to a maximum of 14% of VEL share capital. After the proposed

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preferential allotment of shares, TERRUZZI, SIMEST and market would hold 58%, 14% and 28% share capital of VEL respectively.

- iv. SIMEST has been established with the principle aim of promoting Italian business across the globe and actively participates in the growth of Italian ventures in other jurisdictions. In course of its business, SIMEST acquires shareholding in companies promoted by or in which Italian firms hold equity interests in order to promote financial, technical and economic goals and to offer organizational support for investments and industrial cooperation abroad for Italian companies.
- v. The investment method of SIMEST places a unique requirement on SIMEST to compulsorily exit the investment within a maximum duration of 7 years from any equity investment that SIMEST undertakes in a non-European Union company, within which a pre-agreed buyback of SIMEST shares with partner firms is to be established.
- vi. SIMEST and TERRUZZI are desirous of executing an agreement in Italy relating to acquisition of the participation of SIMEST with preferential allotment which is subject to following conditions-
 - a) SIMEST can exercise its option to sell to TERRUZZI all the VEL shares owned by SIMEST by a Put/Call option starting from June 30, 2015 and TERRUZZI is obliged to purchase the shares offered by SIMEST after complying with all applicable laws in India.
 - b) The shareholding owned by SIMEST would be sold to TERRUZZI at a pre-agreed price determined in terms of criteria specified at Art. 9 of the proposed agreement between SIMEST to TERRUZZI.
 - c) TERRUZZI will pay to SIMEST, during the whole period of its membership in VEL, an annual fee to be mutually agreed between SIMEST and TERRUZZI from which dividend amount, if any received by SIMEST from VEL will be deducted.
 - d) SIMEST has right to acquire and TERRUZZI obliges itself to periodically provide any data and information about management of VEL to SIMEST.
 - e) TERRUZZI will supply VEL with its own know how and its technical, commercial and management knowledge in order to allow VEL to achieve the targets indicated in development plans submitted by TERRUZZI to SIMEST and as approved by SIMEST.
 - f) TERRUZZI and SIMEST are independent legal entities and there is no direct, indirect agreement, arrangement or understanding between them highlighting a common objective to acquire voting rights or control over VEL through proposed acquisition of shares by way of preferential



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allotment. There are no common directorships or any shareholding interest of SIMEST in TERRUZZI. Further SIMEST was not involved or connected with TERRUZZI at the time when TERRUZZI acquired control of VEL.

3. In view of the above submissions, you have sought the interpretive letter on –

"Whether SIMEST and TERRUZZI may be considered as persons acting in concert under Takeover Regulations and would warrant the application of the said Regulations in light of the proposed transaction described therein above"

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

- (i) As per the agreement between SIMEST and TERRUZZI, SIMEST can exercise its option to sell to TERRUZZI all the VEL shares owned by SIMEST by a Put/Call option starting from June 30, 2015 and TERRUZZI is obliged to purchase the shares offered by SIMEST, at a pre-agreed price determined in terms of criteria specified at Art. 9 of the aforesaid proposed agreement, after complying with all applicable laws in India.
- (ii) The legality of the aforesaid put/ call option in the agreement is examined in terms of provisions of Securities Contracts (Regulation) Act, 1956 [SCRA].
- (iii) As this option would be exercised in a future date (June 30, 2015 onwards), the transaction under this arrangement would not qualify as spot delivery contract as defined section 2(i) of SCRA. Further, the aforesaid put/call option would not qualify as a legal and valid derivative contract in terms of section 18A of SCRA as it is exclusively entered between two parties and is not a contract traded on stock exchanges and settled on the clearing house of the recognized stock exchange.
- (iv) Therefore, in light of the aforesaid provisions of SCRA read with SEBI Notification No .S.O .184(E) dated 1st March 2000, the pre-agreed buyback of VEL shares from SIMEST through put/call option is not valid under SCRA. In view of the same, further examination with regard to the guidance sought in the interpretative letter does not arise.



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5. This position is based on the representation made to the Division in your letters under reference. Different facts or conditions might require a different result. This letter does not express decision of the Board on the questions referred.
6. You may note that the above views are expressed only with respect to the clarification sought on SEBI (SAST) Regulations and do not affect the applicability of any other law or SEBI Regulations, Guidelines and Circulars administered by SEBI or any other authority.

Yours faithfully,


(Neelam Bhardwa)