BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO- 184-190 /2014]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of

M/s Nikhar Investment and Credit Pvt. Ltd. (PAN AAACN7584R), **Mr. Mukund Kumar Saboo** (PAN AHIPS2311M), **M/s Suryajyoti Vanijya & Viniyog Ltd.** (PAN AAGCS2721M)**, Mr. Surinder Bhuraria** (PAN ACTPB2703N)**, M/s. Midland Plastics Ltd.** (PAN AABCM8687M)**, Mr. Sudhir Lakhotia** (PAN ABEPL3651M) and **Ms. Alka Lakhotia** (PAN ABEPL3671R)

In the matter of

M/s. Midland Polymers Ltd.

FACTS OF THE CASE IN BRIEF

1. A letter of offer to acquire 7,86,500 equity shares of Rs. 10/- each (representing 20% of the paid up and voting equity share capital) of M/s Midland Polymers Limited (hereinafter referred to as the **Company**) was made at an offer price of Rs.29.25/-. The Public Announcement of the same was made on October 19, 2011 and the shares of the target company were listed on Bombay Stock Exchange Ltd (hereinafter referred to as '**BSE**'), Delhi Stock Exchange Ltd. (hereinafter referred to as '**DSE**') and Madhya Pradesh Stock Exchange Ltd. (hereinafter referred to as '**MPSE'**). The company was previously also listed in Jaipur Stock Exchange Ltd. (hereinafter referred to as '**JSE**'), but, was delisted vide letter dated July 17, 2010. The Company had sent a letter dated March 10, 2009 for delisting from DSE and MPSE, but, no reply was received.

2. While examining the letter of offer document, it was observed that the promoters of the company viz. M/s Nikhar Investment and Credit Pvt. Ltd., Mr. Mukund Kumar Saboo, M/s. Suryajyoti Vanijya & Viniyog Ltd., Mr. Surinder Bhuraria, M/s Midland Plastics Ltd., Mr. Sudhir Lakhotia and Ms. Alka Lakhotia (hereinafter referred to as **'the erstwhile promoters'/ 'the Noticees'**) failed to comply with Regulation 7(1A) read with 7(2) and/ or Regulation 11(2) read with Regulation 14(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **'Takeover Regulations'**), as applicable. Based on the aforesaid information with respect to the non-compliance of Takeover Regulations, 1997, adjudication proceedings under Chapter VI-A of SEBI Act, 1992 (hereinafter referred to as **'Act'**) were initiated against the promoters/ the Noticees under Section 15 A (b) and 15 H (ii) of SEBI Act, 1992, as applicable, to inquire into and adjudicate the alleged violations by the erstwhile promoters/ the Noticees.

<u>APPOINTMENT OF ADJUDICATING OFFICER</u>

3. The undersigned was appointed as the Adjudicating Officer vide Order dated September 02, 2013 under Section 15-I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and imposing Penalties by Adjudicating Officer) Rules (hereinafter referred to as 'SEBI Rules') to inquire into and adjudge under Section 15A(b) and/ or Section 15H(ii) of the SEBI Act, as applicable, for the alleged violation of Regulation 7(1A) read with 7(2) and Regulation 11(2) read with Regulation 14(1) of the Takeover Regulations, 1997 by the erstwhile promoters/ the Noticees, as applicable.

<u>SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING</u>

4. A common Show Cause Notice (hereinafter referred to as '**SCN**') Ref. No. EAD-6/AK/RSL/32300/2013, EAD-6/AK/RSL/32301/2013, EAD-6/AK/RSL/32302/2013, EAD-6/AK/RSL/32303/2013, EAD-6/AK/RSL/32304/2013, EAD-6/AK/RSL/32305/2013, and EAD-6/AK/RSL/32306/2013 dated December 12, 2013 was issued to the erstwhile promoters/

the Noticees viz. M/s Nikhar Investment and Credit Pvt Ltd, Mr. Mukund Kumar Saboo , M/s Suryajyoti Vanijya & Viniyog Ltd, Mr. Surinder Bhuraria, M/s Midland Plastics Ltd, Mr. Sudhir Lakhotia and Ms. Alka Lakhotia respectively under Rule 4(1) of SEBI Rules communicating the alleged violation of Takeover Regulations as detailed below. A copy of the relevant pages from the letter of offer showing changes in the shareholding of the promoter Noticees were also sent along with the SCN. The details of the same are as given below:

i) Disclosure Violations:

On perusal of the letter of Offer, SEBI observed that the following erstwhile promoters of the company had failed to comply with Regulation 7(1A) read with 7 (2) of Takeover Regulations, details of which are as given below:

Name of the Erstwhile Promoter	Date of acquisition	Transaction details		Total promoters shareholding (In %)	
		No of shares acquired (%)	No of shares sold (%)	Pre-acquisition	Post-acquisition
M/s. Nikhar Investment & Credit Pvt. Ltd.	07.06.2004	2,28,100 *(6.91%)*	-	65.53 %	72.43%
Mr. Mukund Kumar Saboo	25.09.2007	-	89,500 *(2.71%)*	72.82%	72.82%
M/s. Nikhar Investment and Credit Pvt. Ltd.			4,81,650 *(14.58%)*		
M/s. Midland Plastics Ltd.			1,00,000 *(3.03%)*		
M/s. Suryajyoti Vanijya & Viniyog Ltd.			1,43,500 *(4.35%)*		
Mr. Surinder Bhuraria			85,900 *(2.60%)*		
Mr. Sudhir Lakhotia		14,03,350 *(42.49%)*	-		
Ms. Alka Lakhotia	05.01.2008	3,81,000 *(11.54%)*	-	72.82%	72.82%

Other details about the transaction are as given below:

<table>
<tr><th>Name of the Promoter</th><th>Date of acquisition</th><th>Due date of compliance</th><th>Actual Date of compliance</th><th>Complied with delay (Delay in number of days)</th><th>Non-compliance</th></tr>
<tr><td>M/s. Nikhar Investment & Credit Pvt. Ltd.</td><td>07.06.2004</td><td>9.06. 2004</td><td>19.10.2011</td><td>2,688</td><td>NA</td></tr>
<tr><td>Mr. Mukund Kumar Saboo</td><td rowspan="6">25.09.2007</td><td rowspan="5">27.09.2007</td><td rowspan="5">Not Complied</td><td rowspan="5">NA</td><td rowspan="5">Not complied</td></tr>
<tr><td>M/s. Nikhar Investment and Credit Pvt. Ltd.</td></tr>
<tr><td>M/s. Midland Plastics Ltd.</td></tr>
<tr><td>M/s. Suryajyoti Vanijya & Viniyog Ltd.</td></tr>
<tr><td>Mr. Surinder Bhuraria</td></tr>
<tr><td>Mr. Sudhir Lakhotia</td><td>27.09.2007</td><td>20.12.2011</td><td>1,545</td><td>NA</td></tr>
<tr><td>Ms. Alka Lakhotia</td><td>05.01.2008</td><td>07.01.2008</td><td>20.12.2011</td><td>1,443</td><td>NA</td></tr>
</table>

ii) Non compliance by the erstwhile promoters with regard to provisions of chapter III of the Takeover Regulations are as under:

It was also observed that certain erstwhile promoters had violated Regulation 11(2) read with Regulation 14(1) of Takeover Regulations, 1997 during the financial years 2004-2005 and 2007-2008. It was observed that the erstwhile promoter viz. M/s. Nikhar Investment and Credit Pvt. Ltd. had acquired 6.91% and 0.38% shares of the company from other then promoters on June 7, 2004 and April 10, 2007 respectively, without making an open offer, thereby violating Regulation 11(2) read with Regulation 14 of Takeover Regulations. Similarly it was observed that the erstwhile promoters, viz. Mr Sudhir Lakhotia and Ms.

Alka Lakhotia had also violated Regulation 11(2) read with Regulation 14 of the Takeover Regulations, in respect of the acquisition of 42.49% shares and 11.54% shares from other then promoters of the company on September 25, 2007 and January 05, 2008 respectively without making an open offer. The details of violation of Regulation 11(2) read with Regulation 14 of the Takeover Regulations by M/s. Nikhar Investment and Credit Pvt. Ltd., Mr Sudhir Lakhotia and Ms. Alka Lakhotia are as given in the table below:

Name of the Promoter	Date of acquisition	Transaction details		Total promoters shareholding (in %)	
		No of shares acquired (%)	No of shares sold (%)	Pre-acquisition	Post-acquisition
Nikhar Investment & Credit Pvt Ltd	07.06.2004	228,100 (6.91%)	-	65.53 %	72.43%
	10.04.2007	12,700 0.38%	-	72.43%	72.82%
Alka Lakhotia	05.01.2008	381,000 (11.54%)	-	72.82%	72.82%
Sudhir Lakhotia	25.09.2007	1,403,350 (42.49%)	-	72.82%	72.82%

5. In view of the above, it was alleged that the Noticees had allegedly violated the following provisions of the Takeover Regulations:

Sl.	Name of the Noticees	Takeover Regulations violated	Penalty u/s
1.	Mr. Mukund Kumar Saboo	Regulation 7 (1A) read with Regulation 7(2)	Section 15 A(b)
2.	M/s. Midland Plastics Ltd	Regulation 7 (1A) read with Regulation 7(2)	Section 15 A(b)
3.	M/s. Suryajyoti Vanijya & Viniyog Ltd	Regulation 7 (1A) read with Regulation 7(2)	Section 15 A(b)
4.	Mr. Surinder Bhuraria	Regulation 7 (1A) read with Regulation 7(2)	Section 15 A(b)
5.	M/s, Nikhar Investment and Credit Capital Pvt Ltd	Regulation 7 (1A) read with Regulation 7(2) on 2 occasions and Regulation 11(2) read with Regulation 14 on 2 occasions	Section 15 A(b) and Section 15 H(ii)
6.	Mr. Sudhir Lakhotia	Regulation 7 (1A) read with Regulation 7(2) and Regulation 11(2) read with Regulation 14	Section 15 A(b) and Section 15 H(ii)
7.	Ms. Alka Lakhotia	Regulation 7 (1A) read with Regulation 7(2) and Regulation 11(2) read with Regulation 14	Section 15 A(b) and Section 15 H(ii)

6. The provisions of the Regulations 7(1A) read with Regulation 7(2) and Regulation 11(2) read with Regulation 14 of the Takeover Regulations are reproduced hereunder: -

<u>Acquisition of 5 per cent and more shares or voting rights of a company.</u>

7(1A) *Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11 shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.]*

[Explanation.—For the purposes of sub-regulations (1) and (1A), the term ‗acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.]

7 (2) *The disclosures mentioned in sub-regulations (1) [and (1A)] shall be made within [two days] of,—*

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

<u>Regulation 11 (2) of the Takeover Regulations prior to Amendment w.ef 26-05-2006:</u>

Consolidation of holdings.

11(2) *An acquirer, who together with persons acting in concert with him has acquired, in accordance with the provisions of law, fifty five per cent (55%) or more but less than seventy five per cent (75%) of the shares or voting rights in a target company, may acquire either by himself or through persons acting in concert with him any additional share or voting right, only if he makes a public announcement to acquire shares or voting rights in accordance with these regulations:*

Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures ‗seventy-five per cent (75%)', the words and figures ‗ninety per cent (90%)' were substituted.]

<u>Regulation 11 (2) of the Takeover Regulations after the Amendment w.ef 26-05-2006:</u>

Consolidation of holdings.

11 [(2) *No acquirer, who together with persons acting in concert with him holds, fifty-five per cent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through persons acting in concert with him any additional shares or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:*

Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures ‗seventy-five per cent (75%)', the words and figures ‗ninety per cent (90%)' were substituted.]

Timing of the public announcement of offer.

14. (1) *The public announcement referred to in regulation 10 or regulation 11 shall be made by the merchant banker not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein:*

[Provided that in case of disinvestment of a Public Sector Undertaking, the public announcement shall be made by the merchant banker not later than 4 working days of the acquirer executing the Share Purchase Agreement or Shareholders Agreement with the Central Government [or the State Government as the case may be,] for the acquisition of shares or voting rights exceeding the percentage of shareholding referred to in regulation 10 or regulation 11 or the transfer of control over a target Public Sector Undertaking.]

7. The Noticee promoters viz. M/s Nikhar Investment and Credit Pvt Ltd, Mr. Mukund Kumar Saboo, M/s. Suryajyoti Vanijya & Viniyog Ltd., Mr. Surinder Bhuraria, M/s Midland Plastics Ltd, Mr. Sudhir Lakhotia and Ms. Alka Lakhotia were therefore called upon to show cause as to why an inquiry should not be initiated against them and penalty be not imposed under Section 15 A (b) and 15 H (ii) of the SEBI Act for the alleged violations, as applicable.

8. The Noticees viz. Mr. Sudhir K Lakhotia and Ms. Alka lakhotia vide letter dated January 07, 2014 requested for extension of time up to January 31, 2014 to respond to the SCN. Further to the same, vide letter dated January 16, 2014, Mr. Sudhir Lakhotia, one of the Noticees informed regarding change of address of the Noticees viz. M/s Nikhar Investment and Credit Pvt Ltd, Mr. Mukund Kumar Sahoo, M/s. Suryajyoti Vanijya & Viniyog Ltd. and Mr. Surinder Bhurarja and that he proposed to deliver the copy of the SCN received by him to them.

9. Thereafter, the Noticee Mr. Sudhir Lakhotia on behalf of himself and on behalf of the Noticees viz. M/s Suryajyoti Vanijya & Viniyog Ltd, Mr. Surinder Bhuraria and Ms. Alka Lakhotia filed a common reply dated January 30, 2014 and the Noticee Mr. Mukund Kumar Saboo on behalf of himself and on behalf of the Noticees viz. M/s Nikhar Investments and Credit Pvt. Ltd. and M/s Midland Plastics Ltd filed a common reply dated March 05, 2014. Vide both the replies, the Noticees while denying all allegations against them have *inter alia* made the following submissions:

a) *That the company M/s. Midland Polymers Ltd. is a public company incorporated in September 01, 1992 under the Companies Act;*
b) *That in the year 2001, the net-worth of the company was fully eroded and the company was referred to Order dated October 18, 2002 of the Board for Industrial and Financial Reconstruction (hereinafter referred to as '**BIFR**')**,** whereby the company was declared sick;*
c) *That during the period when the company was facing losses, few of the erstwhile co-promoters viz. Mr. Mukund Kumar Saboo, M/s. Midland Plastics Ltd., M/s Suryajyoti Vanijya & Viniyog Ltd. and Mr. Surinder Bhuraria showed their incapacity to infuse further capital in the company. Thus, Mr. Sudhir Lakhotia along with Ms. Alka Lakhotia in the best interest of the company and all its stakeholders agreed to infuse the required funds as well as look out for strategic investors. That owing to this arrangement only, the shares of the aforementioned erstwhile promoters were also transferred to Mr. Sudhir Lakhotia and Ms. Alka Lakhotia;*
d) *That it was with the continued efforts of the erstwhile promoters of the company that the net-worth of the company became positive as on March 31, 2009 and it came out of BIFR on December 02, 2009;*
e) *That at the time of the alleged violation of regulation 7(1A) of the Takeover Regulations i.e. September 25, 2007 and January 05, 2008, the total promoter holding along with persons acting in concert had been 72.82%. Since the total*

promoter holding was more than 55%, hence did not fall within the purview of Regulation 11(1) of the Takeover Regulations and thereby Regulation 7(1A) cannot be applicable;

f) *That as regards the alleged violation of Regulation 11(2) of the Takeover Regulations by Mr. Sudhir Lakhotia and Ms. Alka Lakhotia on September 25, 2007 and January 05, 2008, it has been inter alia submitted that the transactions so carried out on the aforementioned dates were interse transactions amongst the promoter group only wherein the total promoter group pre and post transactions continued to remain at 72.82%. Further, that Regulation 3(1)(e)(iii) of Takeover Regulations, as applicable, as on the date of the transaction, duly exempts transaction amongst the promoters from the provisions of Regulation 10, 11 and 12 of the Takeover Regulations;*

g) *That as regards the alleged violation of Regulation 7(1A) and Regulation 11(2) of the Takeover Regulations on June 07, 2004 and of Regulation 11(2) on April 10, 2007, it has been submitted that the concerned Noticees had acquired the shares from the financial institutions etc. who did not wish to continue with the company in view of the company being sick and running into continued losses. That as such, the erstwhile promoter Noticees concerned had no choice, but, to surrender to the wishes of these shareholders and purchase back the shares, however, there was no malafide intention regarding delay in making disclosure with respect to Regulation 7(1A) and non-compliance under Regulation 11(2). Further that the company being sick, the focus of the promoters was only towards reviving the company and there was no professional to ensure compliance with all statutory requirements including filing of declarations;*

h) *That without prejudice to the submission made, it has been further reiterated that the Company had not been in good financial conditions and was registered under BIFR. Further that the Noticees and the Company had protection of BIFR order dated February 17, 2009 with respect to past non-compliance, the relevant text of the sanctioned scheme are reproduced herein below:*

*"**Para 2.4** the promoters propose to bring in the required funds for the rehabilitation scheme in the shape of interest free subordinate debt i.e. unsecured loan of Rs. 62.93 lakhs and also to tie up for the funds to the tune of Rs. 135.00 lakhs through strategic investment. If the strategic investor is unable to infuse the required funds, the gap in the resources shall have to met by themselves. The funds from strategic investor will be converted into equity capital in the current year.*

***Para 3.6** Dept of Corporate Affairs (relating to ROC and SEBI and Stock Exchanges)*

a. *to allow increase in authorized equity share capital and preferential share capital with a view to allot the same on preferential basis to the promoters and their associates as per the provisions of this scheme without the need of an EGM.*

b. *to exempt from the applicable provisions of SEBI Regulations/guidelines and rules in so far as they relate to promoters holding in the sick company;*

c. *.....*

d. *to exempt the company from applicable provisions/guidelines of the Companies Act, SEBI Regulations etc. in connection with the raising of additional equity share capital.*

e. *to exempt the company from the relevant provisions/regulations relating to increase in shareholding of promoters and Persons acting in Concert, in accordance with revival scheme to insure its smooth implementation.*

f. *to exempt the Company from the relevant provision of SEBI (SAST) Regulations, 1997, SEBI (DIP) Guidelines, 2000 and SEBI (Central Listing Authority) Regulations, 2003 relating to preferential allotment of shares to promoters, their friends, relatives, associate companies and strategic investors.*

g. *to exempt company from the relevant provisions of listing agreement with stock exchanges, relating to listing of fresh equity share capital to be* *issued to promoters in accordance with the provisions of the scheme for induction of funds, including in-principle and final approval."*

i) *Thus in light of the aforesaid exemption and without prejudice to the submissions made it has been submitted that the Noticees was exempted from all the penal provisions under applicable laws including SEBI and therefore no penal provisions may be implicated against them;*

j) *That during the entire period under consideration, none of the erstwhile promoters have benefitted out of the transactions so carried out. The transactions were made in good faith for the best interest of the Company and its stakeholder including the shareholders, employees and financial institutions and creditors. More importantly in the transactions so carried out, there has been no loss to any investors too.*

10. In the interest of natural justice and in terms of rule 4(3) of the SEBI Rules, the Noticees were granted an opportunity of hearing on April 17, 2014 vide notice dated April 01, 2014. On the scheduled date, Mr. Sudhir Lakhotia and Ms. Deepika Vijay Sahwney, Authorized Representatives (hereinafter referred to as **'ARs'**) appeared for the hearing on behalf of the Noticees. The ARs *inter alia* reiterated the written submissions made vide replies dated January 30, 2014 and March 05, 2014. During the personal hearing the ARs were *inter alia* advised to submit a copy of the BIFR Order dated February 17, 2009, copies of the actual filings made under the Takeover Regulations, if any, details of report filed, if any, to SEBI and Stock Exchanges notifying the *inter-se* transfer amongst promoters along with the details of the acquisitions.

11. Mr. Sudhir Lakhotia on behalf of himself and other Noticees (except Noticee viz. M/s Nikhar Investments and Credit Pvt. Ltd.) vide submission dated April 30, 2014 *inter alia* made the following further submissions:

a) *That the exemption under Regulation 3(1)(e)(iii) of the Takeover Regulations is not subject to compliances under Regulation 3(3) and 3(4) and that all these three regulations are independent of each other and cannot be read in consonance;*
b) *That sub-Regulation 3(3) and 3(4) requires reporting of transactions, but, are not pre-conditions for exemptions under Regulation 3(1)(e)(iii) and hence it cannot be said that in case of non-reporting under Regulation 3(3) and 3(4), exemption under Regulation 3(1)(e)(iii) cannot be availed;*
c) *That the Noticees Mr. Sudhir Lakhotia and Ms. Alka Lakhotia submitted their interse reports under Regulation 3(3) and 3(4) of the Takeover Regulations on December 21, 2011 for the transactions carried out by them on September 25, 2007 and January 05, 2008;*
d) *That the shares acquired by the Noticees Mr. Sudhir Lakhotia and Ms. Alka Lakhotia were at a price of Rs. 0.50 per share, whereas the price at which shareholders got exit opportunity was Rs. 29/- per equity shares vide public announcement dated October 19, 2011 by the acquirers Mr. Rupesh Soni, Ms. Radhika Soni and M/s. Rudh Equities and Investment Advisors (P) Ltd., which was much higher and, thus, there was no loss or harm to investors.*

The copies of the filings made under the Takeover Regulations, 1997, as applicable, and also a copy of the BIFR Order dated February 17, 2009 was submitted along with the said letter.

12. The Noticee viz. M/s Nikhar Investment and Credit Pvt. Ltd. (hereinafter referred to as **'Nikhar'**) vide separate submission dated April 30, 2014 while reiterating the submissions earlier made has *inter alia* further submitted that:
a) *That the transaction had not been within the promoter group, but, from a financial institution and other friends and relatives of the Noticees and hence no interse report was required to be submitted;*
b) *That the purchases from Financial Institutions and other shareholders were made with an intention to preserve the long term credibility and for revival and*

rehabilitation of the company and for the best interest of the company, its stakeholders;

c) *That since the acquisition pertained to the years 2004 and 2007 through off-market transactions in physical form, the details of the transfer and fund transfers was not available.*

<u>CONSIDERATION AND FINDINGS</u>

13. On perusal of the BIFR order dated February 17, 2009 it is observed that the Company had started incurring cash losses, which led to the shutting down of the plant in September 2002. The Net Worth of the Company fully eroded as on March 31, 2001 and a reference was filed with the Board for Industrial and Financial Reconstruction (**BIFR**) as case no. 298/2001. The BIFR declared the Company sick vide its order dated October 18, 2002. As per the letter of offer, the net-worth of the Company turned positive only in the FY 2009. The acquisitions were made by the erstwhile promoters/ Noticees during the years 2004, 2007 and 2008, as applicable. The erstwhile promoters/Noticees have submitted that the Company as well as the promoters had *protection* under the BIFR order dated February 17, 2009 with regard to past non-compliances, the relevant text of the sanctioned scheme is reproduced below:

*"**Para 2.4** the promoters propose to bring in the required funds for the rehabilitation scheme in the shape of interest free subordinate debt i.e. unsecured loan of Rs. 62.93 lakhs and also to tie up for the funds to the tune of Rs. 135.00 lakhs through strategic investment. If the strategic investor is unable to infuse the required funds, the gap in the resources shall have to met by themselves. The funds from strategic investor will be converted into equity capital in the current year.*

Para 3.6 *Dept of Corporate Affairs (relating to ROC and SEBI and Stock Exchanges)*

a. to allow increase in authorized equity share capital and preferential share capital with a view to allot the same on preferential basis to the promoters and their associates as per the provisions of this scheme without the need of an EGM.

*b. **to exempt from the applicable provisions of SEBI Regulations/guidelines and rules in so far as they relate to promoters holding in the sick company;***

c. ....

d. to exempt the company from applicable provisions/guidelines of the Companies Act, SEBI Regulations etc. in connection with the raising of additional equity share capital.

....

14. It is noted that the Scheme sanctioned by the BIFR is in accordance with the provisions of The Sick Industrial Companies (Special provisions) Act, 1985 (**SICA**). The special provision under the SICA enables BIFR, a quasi- judicial body, to take appropriate measures for revival and rehabilitation of the potentially viable sick industrial companies. The BIFR has to first make an effort to provide an opportunity to the sick industrial company to make its net worth exceed the accumulated losses within a reasonable time, failing which the BIFR has to formulate a scheme for revival of the company. The special provisions under the SICA enable the BIFR, a quasi judicial body, to take appropriate measures for revival and rehabilitation of the potentially sick company.

15. On perusal of the scheme, it is observed that BIFR had sanctioned the scheme for the revival of the Company, and for its effective implementation, the promoters were exempted from applicable provisions of the SEBI Regulations/Guidelines and Rules, in so far as they relate to the Promoters holding in the sick company. I find that the Company was declared sick vide order dated October 18, 2002. As per the letter of offer, the net-worth of the Company turned positive only in the FY 2009. The allegations in the SCN dated December 12, 2013 involving the acquisitions made by the Noticees, pertain to the periods 2004, 2007 and 2008, as applicable, during which the Company was declared sick.

Hence, without going into the merits of the allegation in the SCN dated December 12, 2013 and in the submissions made by the Noticees through their various replies and at the time of hearing, I find that the erstwhile promoters of the Company viz. M/s Nikhar Investment and Credit Pvt Ltd, Mr. Mukund Kumar Saboo, M/s Suryajyoti Vanijya & Viniyog Ltd, Mr. Surinder Bhuraria, M/s Midland Plastics Ltd, Mr. Sudhir Lakhotia, and Ms. Alka Lakhotia are exempted from the provisions of the SEBI Regulations, in view of the Scheme sanctioned by BIFR vide Order dated February 17, 2009. As such, no action can be taken against the Noticees in so far as they relate to the promoters holding in the sick Company during the period the Company was declared sick.

16. After taking into consideration all the facts and circumstances of the case, I find that the matter in respect of the erstwhile promoters/ Noticees viz. M/s Nikhar Investment and Credit Pvt Ltd, Mr. Mukund Kumar Saboo, M/s Suryajyoti Vanijya & Viniyog Ltd, Mr. Surinder Bhuraria, M/s Midland Plastics Ltd, Mr. Sudhir Lakhotia and Ms. Alka Lakhotia initiated vide EAD-6/AK/RSL/32300/2013, EAD-6/AK/RSL/32301/2013, EAD-6/AK/RSL/32302/2013, EAD-6/AK/RSL/32303/2013, EAD-6/AK/RSL/32304/2013, EAD-6/AK/RSL/32305/2013 and EAD-6/AK/RSL/32306/2013 dated December 12, 2013 cannot be proceeded with. Thus, the said adjudication proceedings are disposed of accordingly.

17. In terms of rule 6 of the Rules, copies of this order are being sent to the address of the Noticees and also to the Securities and Exchange Board of India.

Date: **September 17, 2014** **Anita Kenkare**
Place: **Mumbai** **Adjudicating Officer**