BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref No.: EAD-2/SS/VS/2019-20/2654-2657]

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:

1. **Nikhara Bharath Construction Company Ltd. (PAN No.: AACCN1626J)**
2. **Mr. Kodandarama Pillaiah (PAN No.: ABVPP2512L)**
3. **Ms. Bharathi Balakrishna Murthy (PAN No.: ACBPB6181A)**
4. **Ms. Sreedevi Balakrishnamurthy (PAN No.: BBVPS2216P)**

In the matter of
Nikhara Bharath Construction Company Limited

1. Securities and Exchange Board of India (SEBI) vide its *ad-interim ex-parte* order dated June 12, 2014 (hereinafter referred to as 'the *interim order*') issued following directions against Nikhara Bharath Construction Company Ltd. (the Company / NBCCL/the Noticee No. 1) and its directors, including Mr. Kodandarama Pillaiah (the Noticee No. 2), Ms. Bharathi Balakrishna Murthy (the Noticee No. 3) and Ms. Sreedevi Balakrishnamurthy (the Noticee No. 4) (hereinafter referred individually as "Noticee No. 1 to 4" and collectively as "the Noticees"):-

"10. In view of the above, I, in exercise of the powers conferred upon me under Section 11(4) and 11B of the SEBI Act, 1992 and Regulation 65 of CIS Regulations, hereby direct Nikhara Bharath Construction Company Ltd. (CIN: U70200KA2004PLC034675) and its Directors viz. Mr. Kodandarama Pilliah (DIN No. 00548550), Mrs. Bharathi Balakrishna Murthy (DIN No.00548571) and Mrs. Sreedevi Balakrishnamurthy (DIN No. 00548882).

a. not to collect any money from investors from its existing "scheme" or to launch any new "scheme";

b. to immediately submit the full inventory of the assets owned by Nikhara out of the amounts collected from the "customers"/investors under its existing "scheme";

c. not to dispose of any of the properties or alienate the assets of the existing "scheme";

d. not to divert any funds raised from public at large, kept in bank account(s) and/or in the custody of the Company;

e. to furnish all the information/details sought by SEBI within 15 days from the date of receipt of this order, including,

i. *Details of amount mobilized and refunded till date,*

ii. *Scheme wise list of investors and their contact numbers and address and,*

iii. *PAN Nos. of the aforementioned Directors.*

11. The above directions shall take effect immediately and shall be in force until further orders."

2. After hearing the Noticees, Whole Time Member (WTM), SEBI vide confirmatory order dated August 21, 2015 confirmed the directions issued vide the *interim order* dated June 12, 2014 as under:

"18. In view of the foregoing, I, in exercise of the powers upon me under section 11, 11(4) and 11B of the SEBI Act read with regulation 65 of CIS Regulations, hereby confirm the interim directions issued vide the interim order dated June 12, 2014 against the Company, Nikhara Bharath Construction Company Limited (CIN: U70200KA2004PLC034675) and its Directors namely,.Mr. Kodandarama Pilliah (DIN No. 00548550), Mrs. Bharathi Balakrishna Murthy (DIN No.00548571) and Mrs. Sreedevi Balakrishnamurthy (DIN No. 00548882), subject to the modification that nothing in the interim order shall not cause any hindrance to the Company in respect Page 23 of 23 of execution and registration of sale deeds in respect of customers from whom it had already collected the monies.

19. The Company is also directed to report to SEBI on a monthly basis the –
a) Sale deeds executed and registered by it in favour of customers;
b) The sale consideration received from such buyers of plots;
c) Details of plots so"

3. In the aforesaid confirmatory order dated August 21, 2015, WTM also made observations and issued directions to SEBI as under:

"16……it would be necessary that SEBI conducts an investigation into the entire business operations of the Company to find whether the activities of the Company are in the nature of CIS as prima facie observed in the interim order and whether such activities are carried out in violation of the securities laws. The investigation shall examine all the submissions and documents produced by the Company and also seek further documents as required including undertaking inspection of records and premises. A final view could be taken based on the findings of the investigation.

20. SEBI is directed to conclude the investigation expeditiously and initiate further action in the matter, as may be deemed necessary in accordance with law. A separate Order shall be issued for appointing the Investigation Authority."

4. Accordingly, SEBI initiated the investigation in the matter. During the investigation, NBCCL, vide its letter dated May 28, 2016 had *inter-alia* provided the information/details from which SEBI observed that NBCCL had collected ₹2,53,43,976/-after SEBI's order dated June 12, 2014 in 66 transactions relating to its 5 projects as detailed below:

S. No.	Name of the Buyer	Date of Receipt	Total consideration (in ₹)
Project name: Adadukulapalli (Fort I)			
1	Chakara Reddy	26/11/2014	400000
2	Anurudha G Joshi	01/08/2015	600000
3	Srinvasaih Setty	13/07/2015	200000
4	Nagesh Sai Babu	24/07/2015	250000
5	Dr. V.K Chowdhry	04/11/2014	400000
6	Dr. Venkataramana	29/10/2014	400000
7	Srikanth R Sudha Srikanth	11/12/2014	398580
8	Rachna Ramesh Rao	13/07/2015	200000
Project name: Narayanapura			
1	Rajashekar J M	02/07/2014	362000
2	Vijay Simha	25/06/2014	546000
3	Amith Banglore & Seema Shivan	05/07/2014	325000
4	Venugopal B R	17/06/2014	916170
5	Hemanth Ranganath SK	29/09/2014	267480
6	Anurudha G Joshi	12/08/2014	450000
Project name: Amadgur Project Phase I			
1	Parinitha Rao	31/07/2014	216250
2	Vkranthi Cherala	27/01/2015	350000
3	Chaitanay Gupa	31/07/2015	367875
4	Varsha BM	14/11/2014	264000
5	Yashas B M	14/11/2014	264000
6	Shubha	04/07/2014	252050
7	N Vijayalakshmi Naidu	18/10/2014	252050
8	Gopalkrishnan N	02/07/2014	272750
9	Marianee Nisha G	19/07/2014	354250
Project name: Amadgur Project Phase II			
1	Kamala Venkatesh	31/07/2014	411550
2	Kiran Kumar	15/10/2014	337029
3	Sridevi G	17/07/2014	354250
4	Gopinat R	17/07/2014	354250
5	Sheshardi N C	01/07/2014	354250
6	Rekha Gopinath	31/07/2014	708500
7	Jyothi Ashok	15/10/2014	354250
8	Pradeep	15/10/2014	354250
9	John Paul Praveen	25/11/2014	590494
10	Lakshmi Shobha	20/06/2014	347437

S. No.	Name of the Buyer	Date of Receipt	Total consideration (in ₹)
11	Kamala Jagadish	20/06/2014	347437
12	Roopa Ganesh	20/06/2014	347437
13	Mythri	02/07/2014	381500
14	Sunil Kerishna MH	17/07/2014	425000
15	Lalithamma H M	31/07/2014	333800
16	Shanthala S Kori	22/07/2014	333800
17	Punida	23/06/2014	470453
18	Bharathi S	21/10/2014	333812
19	Sushma V Danots	01/07/2014	298000
20	Viswanth	01/07/2014	317000
21	Ramakrishna K	11/12/2014	398580
22	Shilpa Char HCS	10/07/2014	442584
23	Narayan T	03/07/2014	369237
24	Vishwanath B Y	04/12/2014	333813
25	Vasudeva	30/12/2014	613126
26	Vatshala D T	07/10/2014	354250
27	Vasantha Lakshmamma	20/06/2014	380000
28	Jovitha Rosline Shee	04/11/2014	374667
29	Hemavathi	16/06/2014	388313
30	Narendra Babu	29/11/2014	333813
31	Pavana Sandesh	11/12/2014	347438
32	Vasudeva	30/12/2014	306563
33	Savitha	28/06/2014	369942
34	Satish Kumar Devraj	25/11/2014	374684
35	Rajini	19/11/2014	374688
36	Hema	29/11/2014	333812
37	Harish P R	11/12/2014	306562
38	Sowmya K A	23/06/2014	408750
Project Name: Sakelshpura			
1	Chandramma S N	30/07/2014	490200
2	Anupamma Sunil Kumar	01/07/2014	580000
3	Jyothi T R	29/11/2014	600000
4	Madhusudan	01/04/2015	400000
5	Srnivas Babu	01/04/2015	400000
Total			**25343976**

5. Based upon the above, it was alleged that the Noticees have failed to comply with the SEBI's *interim order* dated June 12, 2014 and confirmatory order dated August 21, 2015. SEBI initiated inquiry and adjudication proceedings for the said alleged violations of the said orders by the Noticees under section 15I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as

the 'Adjudication Rules') and appointed Shri Suresh Gupta, Chief General Manager, as adjudicating officer (AO) vide order dated April 03, 2017 to adjudge under Section 15HB of the SEBI Act the alleged non-compliance of SEBI's *interim order* dated June 12, 2014 by the Noticees.

6. Thereafter, vide communication order dated April 02, 2018, this case had been transferred to me on June 13, 2018 with advice that except for the change of the Adjudicating Officer the other terms and condition of the original orders (whereby the aforesaid Adjudicating Officers were appointed) '*shall remain unchanged and shall be in full force and effect*' and that I should proceed in accordance with the terms of reference made in the said original orders.

7. After receipt of the record as aforesaid, the notice to show cause no. EAD-2/SS/VS/21549/1-4/2018 dated July 31, 2018 (hereinafter referred to as 'SCN') was issued to the Noticees in terms of rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act and the terms of reference. By the SCN the Noticees were called upon to show cause as to why an inquiry should not be held against them in terms of rule 4 of the Adjudication Rules and penalty be not imposed under Section 15HB of the SEBI Act. The SCN was duly served upon the Noticees.

8. After seeking additional time, the Noticee No.1 filed reply to the SCN vide its letter dated September 09, 2018. In its reply it inter alia submitted that the Noticee No. 3 and No. 4 were not involved in day to day affairs of the Company. However, no reply was received from Noticee No. 2 to No. On September 25, 2018 the Noticee No. 2 along with its Authorised Representative (AR), Ms. Shilpa Shah appeared on behalf of all the Noticees and made oral submissions based upon the written reply dated September 09, 2018. Learned AR sought liberty to provide evidence in support of the submissions which was allowed. On October 8, 2018, SEBI received the affidavit filed by the Noticee No. 1 along with the copies of Sale Deed as evidence to substantiate its claim.

9. The replies and submission of the Noticees are summarised as following:-

    a) The Noticees have received another SCN dated February 28, 2018, where separate proceedings before Whole Time Member (WTM) SEBI are on. Hence, the instant proceedings may kept in abeyance until the outcome of the SCN dated February 28, 20118.

    b) Subsequent to SEBI's *interim order* dated June 12, 2014, the Company has not collected any money from investors under any scheme rather it had sold plots by way of absolute Sale Deed, for which no additional amounts were collected towards maintenance and

development. SEBI vide its order dated August 21, 2015 permitted the Company to execute Sale Deed where money was received. No funds/monies have been collected from any investors since there are no schemes in the nature of CIS. The alleged amounts are paid by various buyers towards their plots as against the registration of land to them through Absolute Sale Deed.

c) The Company is into the real estate development and business of selling plots of land by registering it with the concerned Sib-Registrar's office, in favour of the buyer and does not fall under the CIS. The Company was never receiving any contributions or payments from land owners and only maintenance charges and/or development fees were being recovered from the plot owners.

d) Subsequent to the passing of the *interim order*, the Company stopped executing any MOUs and also stopped receiving any maintenance or development charges towards the plots. The Company discontinued taking any care of the tree/plants over the plots sold subsequent to the interim order and left their maintenance to its respective plot owners and executes only Absolute Sale Deed in favour of the buyers.

e) It is clarified that amount shown in some of the Sale Deed do not exact tally with the details of sale consideration received for the said transaction as provided to the Investigating officer and now reflect in the said Notice, mainly on two counts:

   i. Some of the buyers paid to Company, a sum payable towards stamp duty, registration fees, transfer duty and User charges to Registry, while making payment of sale consideration, which money ultimately paid by the Company to Registry, however, said sum was also included in the total receipt/consideration received from Buyers.

   ii. Amount received towards the tree supplied to some of the Buyers, value of which varied depending upon the age and nature of the trees was also included in the total receipt/consideration in the Statement.

10. In this case, it is admitted position that SEBI vide its interim order dated June 12, 2014 restrained the Noticees from collecting any money from investors from its existing "*scheme*" or to launch any new "*scheme*" and thereafter, WTM vide order dated August 21, 2015 *inter alia*, had also held that

"…– (i) the Company may be allowed to execute and register sale deeds where the customer has already made payments ; and

(ii) prohibit the Company from collecting/mobilizing money from investors/buyers/customers, directly or indirectly, through any mode."

11. While examining the replies and submissions of the Noticees, it was noted that the Noticees have *inter alia* relied upon finding in the SEBI order dated August 21, 2015 wherein the WTM directed SEBI to investigate into the '*entire business operations'* of the Company to find out whether the activities of the Company are in the nature of CIS as *prima facie* found in the *interim order*. WTM had also directed that a '*final view'* in the matter shall be taken based on the findings of the investigations. In his order dated August 21, 2015, the WTM had, on the basis of the documents submitted by the Company, found that-" …*hindering any genuine execution of sale deeds in favour of customers who purchase plots from the Company would not be reasonable*." WTM had found that a part of Company's business was that of sale of land and there were pointers towards CIS like activities that was to be investigated.

12. In view of the above order of WTM dated August 21, 2015, it was noted that the findings with regard to the allegation in the SCN dated July 31, 2018 in the instant proceedings would be dependent upon the final view to be taken by the WTM on the show cause notice dated February 28, 2018 issued in the proceedings under section 11 and 11B of the SEBI Act after conclusion of the investigation in this case. Considering the same and in view of SEBI's policy that -'*In order to avoid contradictions where parallel proceedings are pending, it may be desirable that disposal of proceedings under Section11B by WTMs precedes before disposal of proceedings by AOs….'* the order in these proceedings was reserved after concluding the procedure as aforesaid.

13. Now the final order in respect of the SCN dated February 28, 2018 has come to be passed by the WTM on April 09, 2019. Accordingly, I proceed to deal with the SCN dated July 31, 2018 issued against the Noticees herein in these proceedings. It is noted that vide order dated August 21, 2015, the Company was allowed to execute and register Sale Deeds in respect of such buyers who had already made the payments. The Noticees have stated in their affidavit that *"…the Company is into the real estate development and business of selling plots of land by registering it with the concerned Sub-Registrar's office, in favour of the buyer and does not fall under the CIS."* Such sale of plots was permitted in terms of the order dated August 31, 2015 and the collection of money towards sale consideration does not amount to the pooling of additional money for the purpose of any scheme as defined under section

11AA of the SEBI Act. They have also submitted that the collection of monies from 66 customers as alleged in these proceedings was towards consideration of sale of plots through genuine sale deeds as found in the order dated August 21, 2015.

14. By the final order dated April 09, 2014, the entre allegations are settled and it has been finally held that –"… the *Company is engaged in actual purchase and sale of land plots and, in this connection, the Company carries out certain developmental activities on the land plots like construction of road, drainage, sewage etc., as prevalent in the real estate sector. Thus, the business activities carried out by the Company does not contain all of the ingredients of CIS*. It has been further found that -*"...all of the four conditions do not exist in the aforesaid business activities of the Company and, therefore, the same cannot be treated as CIS, as defined in Section 11AA (2) of the SEBI Act, 1992."* Accordingly, the cause of action in the instant proceedings does not survive and the SCN dated July 31, 2018 is disposed of.

15. In terms of Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticees and also to SEBI.

Date: April 10, 2019
Place: Mumbai

Santosh Shukla
Chief General Manager &
Adjudicating Officer