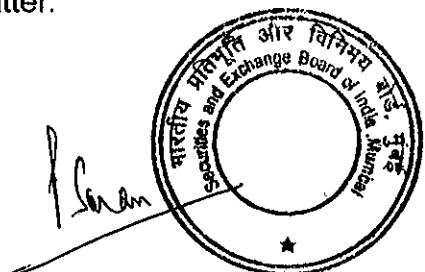


**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA  
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

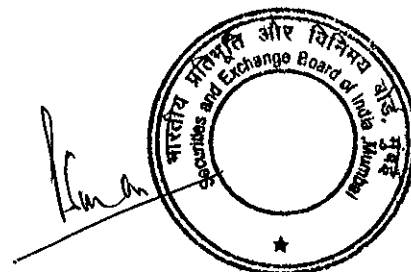
**ORDER**

**UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF INITIAL PUBLIC OFFER (IPO) OF M/s PG ELECTROPLAST LIMITED AGAINST SHRI BHARAT BACHUBHAI MERCHANT (PAN:AAIPM2574M)**

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI) had, pending investigation, vide an ad interim ex-parte order dated December 28, 2011 (hereinafter referred to as 'the Order') *inter alia* prohibited Shri Bharat Bachubhai Merchant (Director of Nimbus Industries Ltd.) from buying, selling or dealing in the securities market, in any manner whatsoever, till further directions. The Order also stated that Shri Bharat Bachubhai Merchant (hereinafter referred to as 'Shri Merchant') may file his objections, if any, within twenty one days from the date of the Order and, if he so desired, avail himself of an opportunity of personal hearing. Shri J.J. Bhatt, Advocate, has filed written submissions vide letter dated February 29, 2012 on behalf of Shri Merchant. An opportunity of personal hearing was granted to Shri Merchant on May 03, 2012. Shri J.J. Bhatt and Shri Merchant appeared before me on the said date and made submissions. Subsequently, Mr. J. J. Bhatt, on behalf of Shri Merchant has made additional submissions vide letter dated June 05, 2012.
2. At this stage, the limited issue to be considered is whether on a consideration of the submissions made by Shri Merchant, the ad interim ex-parte directions issued vide the Order dated December 28, 2011 against Shri Merchant should be confirmed, vacated or modified in any manner. Before proceeding further, it would be necessary to refer to the background of the matter.



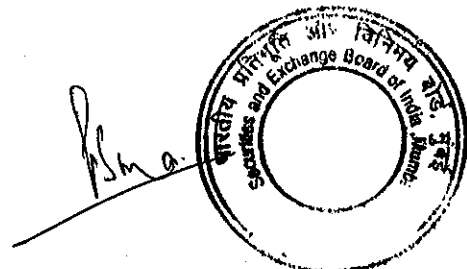
3. PG Electroplast Ltd. (hereinafter referred as 'PGEL') came out with its Initial Public Offer (IPO) for issue of 57,45,000 equity shares of face value of Rs.10/- each through 100% book building process. The issue price of the IPO was Rs. 210 per equity share, aggregating to approx. Rs. 120.65 crores. The investigation *prima facie* revealed that a predominant portion of the proceeds of the IPO of PGEL was diverted by PGEL for operations in the equity market as well as for questionable land deals and raw material purchases leading to the suspicion that the issue was for siphoning off and/or diversion of funds. Further, the *prima facie* findings revealed that PGEL had suppressed several material facts in the offer documents (Red Herring Prospectus and Prospectus) pertaining to the company, utilization of proceeds of issue, agreements for purchase of land etc. and had also made several mis-statements relating to ICDs, placement of purchase orders, general corporate purpose, investments in land etc.
4. PGEL, during the course of investigation, had submitted a copy of the agreement dated August 31, 2011 between PGEL and a company named Nimbus Industries Limited (Nimbus). The agreement was for purchase of plastic granules valued upto Rs. 3.5 Crores. The name of Nimbus did not appear in the list of suppliers mentioned in the offer documents submitted by PGEL. It *prima facie* appeared that Nimbus and its directors viz. Shri Bharat Bachubhai Merchant, Shri Sandeep Bakul Sheth, Shri Nimish Thakore and Shri Rajeshbhai Bhagat acted as layers/conduit in the movement of funds and diversion/routing of proceeds of the IPO to the buyers indulging in fraudulent trades on the date of listing and/or to the entities bidding in the IPO of PGEL and also aided and abetted PGEL in the siphoning off funds from PGEL, thereby violating the provision of Section 12A (a), (b) and (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d), 4(1), 4(2) (a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003. In view thereof, vide Order dated December 28, 2011, Nimbus and its directors, including Shri Merchant, were prohibited from buying, selling or dealing in the securities market in any manner whatsoever till further directions.



5. Shri J.J. Bhatt, Advocate on behalf of Shri Merchant, vide his letter dated February 29, 2012 has replied to the ad interim ex-parte order and has inter alia submitted that :-

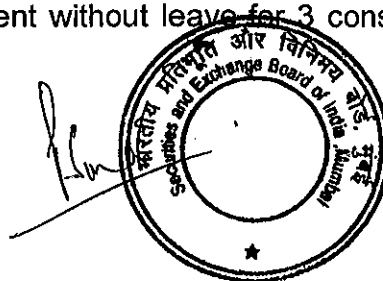
- a) Shri Merchant is a reputed solicitor and Advocate having practice in the legal profession for 40 years and is the proprietor of a reputed law firm known as Thakordas & Madgavkar for the last 30 years.
- b) Shri Merchant was an independent director of Nimbus and was not in charge of the day to day affairs of Nimbus. He had no contemporaneous knowledge about the transactions/ dealings of the company which have been considered objectionable.
- c) Shri Merchant never attended the Board meetings of Nimbus held on April 30, 2011, June 30, 2011 and August 27, 2011 and therefore by virtue of Section 283 (1) (g) of the Companies Act, 1956, he ceased to be a Director on August 27, 2011. At the time of the objectionable transaction, Shri Merchant had ceased to be a director.
- d) Shri Merchant was never involved in any operations of the company.
- e) Shri Merchant did not authorize or was not a party to the transactions. He had not executed the subject Agreement or dealing or signed any cheque or instrument in connection therewith. He was not an authorized signatory on any of the Bank accounts of Nimbus, was not a party to any resolution in connection with the said transactions. He was not involved in any correspondence with any of the parties in respect of the said transactions.
- f) Shri Merchant was not aware nor was made aware of the said transactions before or after and became aware of the same only through the said Order.
- g) Shri Merchant had not received any remuneration or any benefit from the company whatsoever.

6. During the personal hearing before me held on May 03, 2012, Shri Merchant and his advocate Shri J.J. Bhatt reiterated the submissions made in the letter dated



February 29, 2012 and undertook to submit the following documents within two weeks from the date of hearing:

- i. The documentary evidence to the effect that Shri Merchant was not involved in the affairs of Nimbus.
  - ii. Minutes of Meeting of the Board of Directors of Nimbus dated 30/04/2011, 30/06/2011 and 27/08/2011.
  - iii. Board resolution of Nimbus accepting the resignation of Shri Merchant as a Director.
  - iv. Latest extracts of BSE/NSE and ROC regarding the Board of Directors of Nimbus.
7. I note that Shri J.J. Bhatt, vide his letter dated June 05, 2012, has submitted an affidavit dated June 04, 2012 by one Shri Anil Sanas, clerk in Thakordas & Madgavkar, a sole proprietary concern of Shri Merchant, and another affidavit dated June 04, 2012 by Shri Merchant. Shri Anil Sanas in his affidavit has *inter alia* stated that with a view to obtain certain record from Nimbus, Shri Merchant addressed a letter to Nimbus and Shri Anil Sanas visited the offices of Nimbus at Worli and Kandivali to deliver the said letter but found the offices closed and that he slipped a copy of the said letter under the door of Nimbus at Kandivli. Shri Merchant in his affidavit has stated *inter alia* the following:
- i. He had written a letter dated May 9, 2012, asking Nimbus to furnish various documents and his clerk attempted to serve a copy of the said letter as reflected in his affidavit. He is awaiting the response from Nimbus.
  - ii. He was not involved in the IPO of PG Electroplast Ltd in any manner.
  - iii. As far as Nimbus is concerned, he is not a shareholder. Since, Mr. Sandeep Sheth was known to him, he agreed to act as an Independent Director of Nimbus and he was appointed in the year 2011.
  - iv. During the financial year ending March 2012, he had not attended any Board Meeting. Since he remained absent without leave for 3 consecutive

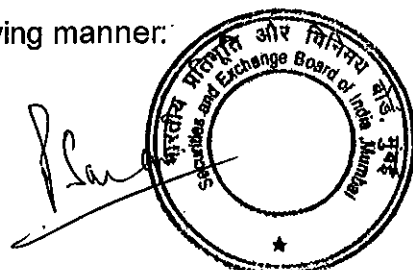


meetings of the Board of Directors of Nimbus, by virtue of provisions of Sec. 283 (1) (g) of the Companies Act 1956, he ceased to be a Director of Nimbus.

- v. He ceased as a Director before the subject transaction was executed under the Agreement. He was not a signatory to the said Agreement as an Independent Director or otherwise. He had not signed any cheque on behalf of Nimbus.
- vi. As an Independent Director of Nimbus, he was never involved in day to day affairs, activities and operations of Nimbus.
- vii. As an Independent Director of Nimbus, he had not received any remuneration.
- viii. The agreement was signed by Shri Sandeep Sheth and he was not aware of the transaction/s at all nor made aware of the same.
- ix. He has been dragged in the proceedings only because his name was reflected as an independent director in the corporate records and also in the website of ROC and Stock Exchanges.
- x. There was no specific allegation made against him in the Order. He does not have any records/documents of Nimbus.
- xi. He therefore requests that the directions contained in the Order against him may be vacated.

8. I have considered the various submissions made by Shri Merchant and Shri J.J. Bhatt on his behalf as well as other materials available on record. I find that Shri Merchant has contended that he was only an independent director in Nimbus, that he was not involved in day to day affairs of Nimbus and that he was not aware of the transactions. However, I note that in spite of giving an undertaking, Shri Merchant has failed to substantiate his contentions with documentary evidence.

9. Further, I find that his submissions, contained in letter dated February 29, 2012 and his affidavit dated June 04, 2012, suffer from factual inconsistencies and are not congruent with available records in the following manner:

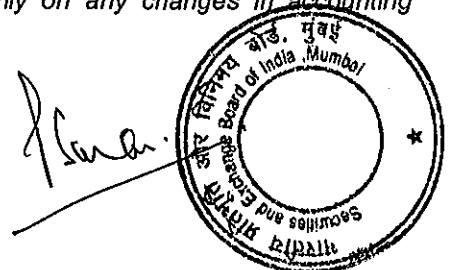


- a) Shri Merchant in his affidavit dated June 4, 2012 has affirmed that he was appointed as a director of Nimbus in the year 2011. However, the records available on the website of the Ministry of Corporate Affairs as on August 28, 2012, show that Shri Merchant was appointed as a director of Nimbus in the year 2010 (with effect from October 26, 2010) and not in the year 2011 as solemnly affirmed by him.
- b) Shri Merchant has claimed that he was merely an independent director of Nimbus and was never involved in any day to day affairs, activities and operations of Nimbus. However, I find that the Directors Report of Nimbus for the year ended March 31, 2011 available on the website of Ministry of Corporate Affairs (MCA) indicates otherwise. Annexure-A to the said Report shows that Shri Merchant was member of the Board of Directors (BOD), Audit Committee, Remuneration Committee and Share Holder's Grievance and Share Transfer Committee of Nimbus and had attended their meetings, details of which are as follows:

Name of the Committee	No. of Meetings Held in the year 2010-11	No. of Meetings Attended
BOD	4	2 out of 2 BOD meetings held after his appointment in Nimbus.
Audit Committee	4	2
Remuneration Committee	2	2
Share Holder's Grievance and Share Transfer Committee	4	2

Further, the said Annexure-A showed that the terms of reference for the audit committee as laid down by Nimbus's Board included *inter alia* the following:

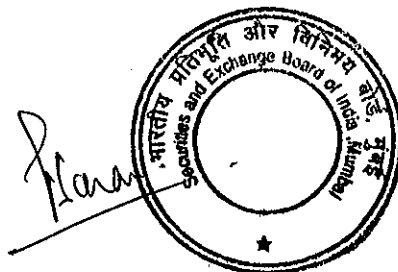
- i. *Overseeing the Company's financial reporting process and the disclosure of its financial information to ensure that the financial statements are correct, sufficient and credible.*
- ii. ....
- iii. *Reviewing with management, the quarterly, half yearly and annual financial statements before submission to the Board, focusing primarily on any changes in accounting*



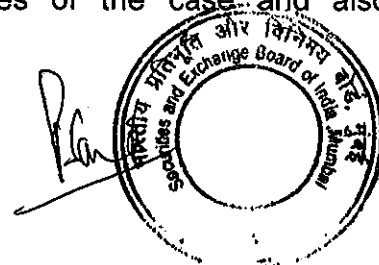
*policies and practices; major accounting entries based on exercise of judgment by management; qualifications in draft audit report; significant adjustments arising out of audit; the going concern assumption; compliance with accounting standards; compliance with stock exchange and legal requirements' concerning financial statements; any related party transaction i.e. transactions of the Company of material nature, with promoters or the management, their subsidiaries or relatives, etc. that may have potential conflict with the interests of the Company at large.*

The said Director's Report pertaining to year ended March 31, 2011 also refers Shri Merchant as independent director and such report for year ended March 31, 2012 is not available on MCA website. I do agree that even an independent director can be a member of the various committees. However, his membership and attendance in several committees pointing out towards his active role as a director coupled with other inconsistencies, lead to a situation that he was actively engaged in the affairs of Nimbus.

- c) After his appointment as director of Nimbus, Nimbus had held two BOD meetings in the year ending March 31, 2011 and Shri Merchant had attended both the meetings.
- d) I find from the 'Notice by Nimbus to the shareholders for the AGM to be held on Sept 30, 2011', available on the website of the MCA, that Nimbus had under the head 'Special Business' considered and if thought fit, to pass the resolution for the appointment of Shri Merchant (who was appointed as an Additional Director of Nimbus on Oct 26, 2010) as director of Nimbus liable to retire by rotation in the meeting of AGM to be held on Sept 30, 2011. Though, it has been contended by Shri Merchant that he vacated directorship of Nimbus on Aug 27, 2011 by not attending three consecutive Board meetings dated 30.04.2011, 30.06.2011 and 27.08.2011, I find that the above referred notice for the AGM dated Sept 30, 2011 contained a resolution on the re-appointment of Shri Merchant as director of Nimbus.
- e) I note that Nimbus in its letter dated Dec 26, 2011 to SEBI had mentioned the name of Shri Merchant as one of the directors of Nimbus.



- f) Whereas on one hand Shri Merchant has placed reliance on the provisions of Section 283 (1) (g) of the Companies Act, 1956 to contend that he vacated directorship on Aug 27, 2011 by not attending three consecutive Board meetings dated 30.04.2011, 30.06.2011 and 27.08.2011, he on the other hand has admitted in his letter dated May 09, 2012, addressed to Nimbus (which is annexed to the affidavit dated July 04, 2012 submitted by Shri Merchant), that he resigned from directorship of Nimbus with effect from January 18, 2012. I therefore find that he has given 2 (two) dates of his cessation from the directorship of Nimbus.
- g) Thus, the non-submission of documentary evidence regarding abovementioned non-attendance of board meetings without obtaining leave of absence from the BOD of Nimbus as well as the said admission of having resigned on January 18, 2012 makes it amply clear that Shri Merchant was a director of Nimbus when the Agreement dated August 31, 2011 was signed between PGEL and Nimbus.
- h) While the affidavit of Shri Anil Sanas was sworn on June 04, 2012 and notarized on June 04, 2012, the date of identification by the official of advocate Shri J. J. Bhatt before the Notary is May 04, 2012.
- i) I find from para 2 (c) of the affidavit of Shri Merchant dated June 04, 2012 that Shri Merchant has solemnly affirmed that his clerk Mr. Anil Sanas attempted to serve a copy of the letter dated May 09, 2012 as reflected in the affidavit of Mr. Anil Sanas dated May 04, 2012.
10. In view of the abovementioned observations and findings, I am constrained to draw an adverse inference against Shri Merchant from the submissions made by him including the notarized sworn affidavit furnished by him.
11. I note that the investigation in the matter is under progress. SEBI is expected to expeditiously complete the investigation in the matter in the interest of justice and thereafter shall take appropriate actions in accordance with law. Therefore, at this stage, considering the facts and circumstances of the case and also the





submissions made by Shri Merchant, I do not find any merit in vacating or modifying the Order dated December 28, 2011 as regards Shri Merchant.

12. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11(1), 11(4) and 11B thereof, hereby confirm the directions issued vide the ad interim ex-parte Order dated December 28, 2011 in the matter of IPO of PG Electroplast Limited, against Shri Bharat Bachubhai Merchant (PAN: AAIPM2574M).

13. Notwithstanding such confirmation, as stated above, Shri Merchant shall co-operate with the ongoing investigation in the matter and furnish all documents and information sought by SEBI.



**PRASHANT SARAN**  
**WHOLE TIME MEMBER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

**PLACE: MUMBAI**

**DATE: SEPTEMBER 3<sup>rd</sup>, 2012.**