

WTM/ AB /EFD-1/DRA-1/23/2019-20

SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: ANANTA BARUA, 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 IPO of Midfield Industries Limited

Noticee no.	Name of the Noticee	PAN
1.	Midfield Industries Limited	AAACM9490M
2.	Mr. M Madhu Mohan Reddy	ACIPM3240J
3.	Mr. Ashok Sagar Mudumba	AFWPK8481L

The aforesaid entities are hereinafter referred to individually, by their respective names/ Noticee numbers and collectively as “the Noticees”.

Background:

1. The Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted an investigation into the Initial Public Offer (hereinafter referred to as “IPO”) of Midfield Industries Limited (hereinafter called as “Noticee no. 1/Midfield/the company”) to ascertain the possible violations of SEBI Act, 1992 (hereinafter referred to as “SEBI Act”) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “PFUTP Regulations”) and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as “ICDR Regulations”) for misutilization of the IPO proceeds and diversion of the same.

Show Cause Notice, Reply to Show Cause Notice and Personal Hearing:

2. A Show Cause Notice (hereinafter referred to as “SCN”) dated February 09, 2017 providing the findings of SEBI’s investigation along with details of alleged violations of SEBI Act, PFUTP Regulations and ICDR Regulations was issued to all the Noticees with an advice to submit their replies, if any, to the SCN along with supporting documents within 21 days

from the date of receipt of the SCN. The documents which were enclosed as annexures to the SCN, are tabulated as under:

Table A: Annexures to SCN	
Annexure	Particulars
1	Copies of communications between Midfield and SEBI as under: (a) Letter dated January 29, 2015 issued by SEBI to Midfield in connection with SEBI's investigation into the IPO of Midfield, (b) Midfield's reply dated February 06, 2015
2	Bank account statements of Midfield maintained with Axis Bank & State Bank of India.
3	Copies of replies received from proposed suppliers which are as under: (a) Letter from Aaccess Cranes to SEBI dated January 10, 2016 along with enclosures, (b) Letter from Phenix Construction Technologies to SEBI dated January 12, 2016 along with enclosures, (c) Letter from Triveni Enterprises to SEBI dated January 11, 2016 (wrongly dated January 11, 2015) along with enclosures, (d) Letter from Kabra Extrusion to SEBI dated January 07, 2016 along with enclosures, (e) Letter from Sunil Engineering Works to SEBI dated January 11, 2016 along with enclosures, and (f) Letter from Shalimar Foundry to SEBI dated January 05, 2016 along with enclosures

3. The SCN was served on Noticee no. 1 i.e. Midfield through Speed Post. As the SCN could not be served on Noticee no. 2 i.e. Mr. M Madhu Mohan Reddy and Noticee no. 3 i.e. Mr. Ashok Sagar Mudumba through Speed Post, the SCN was served by affixing the same on the last known address of Noticee nos. 2 and 3.
4. Noticee no. 1 i.e. Midfield vide letter dated February 28, 2017 (signed by Noticee no. 2 i.e. Mr. M Madhu Mohan Reddy) informed SEBI that it would require some more time to give a

detailed reply and sought extension of time. Vide letter dated March 13, 2017, Noticee no. 1 i.e. Midfield submitted its reply as signed by Noticee no. 2 i.e. Mr. M Madhu Mohan Reddy. Noticee no. 3 i.e. Mr. Ashok Sagar Mudumba submitted his reply vide letter dated July 31, 2017.

5. Hearing in the matter was scheduled on May 29, 2019. The hearing notice was served on all the noticees. Noticee no. 2, Mr. Madhu Mohan Reddy appeared on the said date of hearing on behalf of Noticee no. 1 i.e. Midfield and himself. Noticee no. 3 i.e. Mr. Ashok Sagar Mudumba did not appear for the personal hearing.

Consideration of Noticees' replies to SCN and submissions made during personal hearing:

6. I note from the SCN that Noticee no. 1 i.e. Midfield was incorporated in the year 1990 and made an IPO through a prospectus dated July 27, 2010 with an issue size of 45,00,000 equity shares of face value Rs. 10/- and issue price of Rs. 133/-, aggregating Rs. 59.85 crores. The price band of the issues was between Rs. 126/- to Rs. 133/-. The bids opened on July 19, 2010 and closed on July 21, 2010. The Book Running Lead Manager (hereinafter referred to as "BRLM") for the issue was Atherstone Capital Markets Limited. The issue was graded by Brickwork Ratings India Private Ltd. and was assigned the IPO Grade 2 indicating below average fundamentals. The equity shares were proposed to be listed on the BSE Limited (hereinafter referred to as "BSE") only. The issue was oversubscribed 12.92 times with 37,780 applications received during bidding period for 5,81,41,450 equity shares.
7. I note from the SCN that the scrip of Midfield was listed and admitted for trading on BSE from August 04, 2010. The price of the scrip reached Rs. 174.90 on listing day i.e. August 04, 2010 and went to an all-time high of Rs. 455.80 on November 11, 2010 and thereafter fell to Rs. 11.65 on February 15, 2013.
8. The SCN has alleged that the IPO proceeds that were received in the bank accounts of the company were not utilized by the company for the objects set out in the prospectus and the information contained in the prospectus was not true and adequate thereby violating

Regulation 57 (1) of ICDR Regulations and Section 12A (a), (b) and (c) of SEBI Act r/w Regulations 3 (b), (c), (d), 4(1) ,4 (2) (f) and (k) of PFUTP Regulations.

9. I have considered the SCN along with the findings of the investigation stated therein and all annexures referred to in para 2 of this order, replies received in the matter and submissions made by the Noticees pursuant to the hearing granted to them. At this juncture, it is relevant to note the provisions of law applicable to the present case, relevant extracts of which are as under:

SEBI Act, 1992

12A. No person shall directly or indirectly—

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (d)”*

PFUTP Regulations, 2003

“Regulation 3. Prohibition of certain dealings in securities

No person shall directly or indirectly

...

- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*

- (c) *employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

Regulation 4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) *Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
- (2) *Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely: —*
 - ...
 - ...
 - ...
 - (f) *publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;*
 - ...
 - (k) *an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;”*

ICDR Regulations, 2009

“Manner of disclosures in the offer document.

57. (1) The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.”

10. I note that as per the prospectus of the company, Midfield, the IPO proceeds were to be utilized for (i) expansion of capacities at the existing plants; (ii) setting up a new facilities; (iii)

augmenting long term working capital requirement of the company; (iv) general corporate purposes; and (v) achieve the benefits of listing on the stock exchange. The estimated fund requirement of the company and means of finance as disclosed in the Prospectus are given in Table no. 1 and 2, respectively, below:

Table 1 – Estimated Fund Requirement	
Objects	Total Est. Cost (Rs. in mn)
Expansion at existing manufacturing facility at Hyderabad, by setting up PET Strap, Stretch Films, PP Strapping, Collated nails – nails making machine, Seals	131.52
Setting up new facility for manufacture of VCI Paper at Hyderabad	41.67
Expansion at existing manufacturing facility at Mumbai, by setting up Angle Board, Collated Nails, Seals and Heat Treatment Plant	62.73
Expansion at existing manufacturing facility at Roorkee, by setting up Angle Board and Collated Nails, Seals	15.92
Setting up new facility for manufacturing High Tensile Steel Strapping and seals at Sharjah	127.01
Augmenting Long Term Working Capital Requirement	53.50
General Corporate Purposes	117.14
Issue Expenses	59.51
Total Cost of the Project	609.00

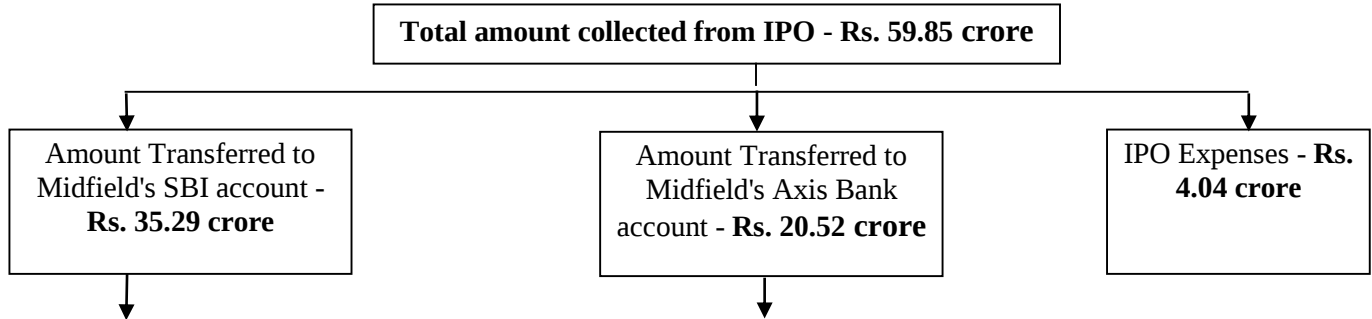
Table 2 - Means of Finance	
Description	Amount (Rs. in mn)
Proceeds of Initial Public Offering	598.50
Internal accruals	10.50

11. I note that the amounts received in the IPO process i.e. Rs. 59.85 Crore in Public Issue accounts of Midfield were transferred to Midfield's bank accounts in the following manner:

Table 3: Details of transfer of funds from Public Issue accounts to company's bank accounts			
MIL's Public Issue Account No.	Date	Counterparty Account No.	Amount (in Rs.)
SBI A/c No. - 31266326418	04/08/2010	Midfield SBI A/c No. - 10558727516	25,32,187
DCB A/c No. - 05822000000064	04/08/2010	Midfield Axis A/c No. - 008010300012971	16,99,93,551
Axis A/c No. - 910020024538154	05/08/2010	Midfield Axis A/c No. - 008010300012971	3,52,32,764
ICICI A/c No. - 000405073171	04/08/2010	Midfield SBI A/c No. - 10558727516	34,07,03,992
	04/08/2010-06/09/2010	Accounts of BRLM, Registrar, Syndicate Members, Legal Advisors, Underwriters etc.	4,03,57,695
	06/09/2010	Midfield SBI A/c No. - 10558727516	96,79,944
			59,85,00,133

12. From the above, I note that out of Rs. 59.85 crore raised through IPO, an amount of Rs. 35.29 crore was transferred to Midfield's State Bank of India (hereinafter referred to as "SBI") account no. 10558727516 in three tranches of Rs. 25,32,187/- & Rs. 34,07,03,992 on August 04, 2010 and Rs. 96,79,944/- on September 06, 2010. I note that an amount of Rs. 20.52 crore was transferred to Midfield's Axis Bank Limited (hereinafter referred to as "Axis Bank") account no. 008010300012971 in two different tranches of Rs. 16,99,93,551/- on August 04, 2010 and Rs. 3,52,32,764/- on August 05, 2010. I note that an amount of Rs. 4.04 crore was utilized as expenses incurred towards the IPO.

13. I note from the SCN that the IPO proceeds of Rs. 59.85 crore spent by the Company as shown in the Chart below:



For period 04/08/2010 to 31/09/2010			
Particulars	Debit Amt (Rs. in crore)	Credit Amt (Rs. in crore)	Balance (Rs. in crore)
Debit balance in account as on 31/07/2010			-18.79
Received from Public Issue A/c		35.29	16.5
Transferred to various entities whose names not mentioned in prospectus	-12.52		3.98
Transferred to SBI Mutual Fund	-10		-6.02
Transferred for SLC Disbursement, Usance Bill payments and to company's other bank accounts	-19.63		-25.65
Other transfers of more than Rs. 10 lakh	-3.76		-29.41
Received from Co.'s other bank A/cs		11.93	-17.48
Received from other sources and each transaction amount more than Rs.10 lacs		2.60	-14.88
Other debits of value less than Rs. 10 lacs from 04/08/2010 to 31/09/2010	-3.93		-18.81
Other credits of value less than Rs. 10 lacs from 04/08/2010 to 31/09/2010		0.46	-18.35

For period 04/08/2010 to 31/09/2010			
Particulars	Debit Amount (Rs. in crore)	Credit Amount (Rs. in crore)	Balance (Rs. in crore)
Debit balance in account as on 02/08/2010			-12.1
Received from Public Issue A/c		20.52	8.42
Transferred to Deesha Tie Up Pvt Ltd.	-15.0		-6.58
Payments for taxes, salaries, loans, interest & transfer to company's other accounts	-3.86		-10.44
Transferred to Bhushan Steels Ltd.	-1.0		-11.44
Received from co. other bank account		0.6	-10.84
Other debits of value less than Rs. 10 lacs from 04/08/2010 to 31/09/2010	-1.49		-12.34
Other credits of value less than Rs. 10 lacs from 04/08/2010 to 31/09/2010		0.98	-11.35

14. I shall first deal with the IPO proceeds transferred to Midfield's bank account maintained with SBI bearing account number 10558727516. As noted in para 12 of this order, Rs. 35.29 crore were transferred to the company's SBI account no. 10558727516 in three tranches in the following manner:

Table no. 4: Details of IPO proceeds transferred into SBI Account no. 10558727516

Sr. no.	Date	Amount
1	August 04, 2010	Rs. 25,32,187/-
2	August 04, 2010	Rs. 34,07,03,992/-
3	September 06, 2010	Rs. 96,79,944/-
Total		Rs. 35,29,16,123/-

15. From the above Table no. 4, I note that an amount of Rs. 34,32,36,179/- of the total IPO proceeds was transferred into the company's SBI account no. 10558727516 on August 04, 2010 itself i.e. the date on which the IPO proceeds came into the bank accounts of Midfield. On perusal of the account statement for the aforesaid bank account (Annexure 2 to the SCN), I note that as on July 31, 2010 the company maintained a negative balance i.e. the company had an overdraft balance of Rs. 18,78,88,503/-. I note from the bank account statement that as soon as the amount of Rs. 34,32,36,179/- was credited into the bank account on August 04, 2010, the amount of Rs. 18,78,88,503/- out of Rs. 34,32,36,179/- transferred into the account was utilized for clearing the existing overdraft dues of the company. Thus, as on August 04, 2010, the balance IPO proceeds left in the SBI account of the company was Rs. 15,53,47,676/-. I note that nowhere in the prospectus of the company, it has been mentioned that the IPO proceeds would be used for clearing its pre-existing overdraft dues. Thereafter, during the period from August 05, 2010 to August 26, 2010, the company has made payments worth Rs. 14,10,19,001/- to various entities which are not mentioned in the prospectus as proposed suppliers of machines, lands and civil work for carrying out the objects of the issue, thus, exhausting the IPO proceeds of Rs. 34,32,36,179/- received in the account of the company.

16. From Table no. 4, I note that an amount of Rs. 96,79,944/- of IPO proceeds was transferred into the company's SBI account no. 10558727516 on September 06, 2010. I note that before the said amount was credited into the bank account of the company, the company maintained a negative balance of Rs. 10,25,40,123/- as a result of payment of Rs. 10 Crore made to SBI Mutual Fund. On perusal of the bank statement, I note that as soon as Rs. 96,79,944/- was transferred into the company's account, it was utilized to clear its pre-existing overdraft dues. Thus, as on September 06, 2010 the company had a negative balance of Rs. 9,28,60,179/- in its bank account.

17. I note from para 12 of this order that IPO proceeds of Rs. 20.52 Crore was transferred to Midfield's Axis Bank account no. 008010300012971 in two different tranches in the following manner:

Table no. 5: Details of IPO proceeds transferred into Axis Bank Account no. 008010300012971		
Sr. no.	Date	Amount
1	August 04, 2010	Rs. 16,99,93,551/-
2	August 05, 2010	Rs. 3,52,32,764/-
Total		Rs. 20,52,26,315/-

18. From Table 5 above, I note that IPO proceeds of Rs. 16,99,93,551/- was transferred into the company's Axis Bank account no. 008010300012971 on August 04, 2010 itself i.e. the date on which the IPO proceeds came into the bank accounts of Midfield. On perusal of the account statement for the aforesaid bank account (Annexure 2 to the SCN), I note that as on August 02, 2010 the company maintained a negative balance i.e. the company had an overdraft balance of Rs. 12,10,01,215/-. I note from the bank account statement that as soon as the amount of Rs. 16,99,93,551/- was credited into the bank account on August 04, 2010, the amount of Rs. 12,10,01,215/- out of Rs. 16,99,93,551/- transferred into the account was utilized for clearing the overdraft dues of the company i.e. on August 04, 2010. Therefore, as on August 04, 2010, the balance IPO proceeds remaining in the Axis Bank account of the company was Rs. 4,89,92,336/. On perusal of the bank account statement, I note that within a period of two weeks of receipt of IPO proceeds in the said Axis Bank account of the company the company made the following transfers:

Table No. 6: Transfers from Midfield's Axis Bank account no. 008010300012971			
Sr. no.	Date	Transferee	Amount (in Rs.)
1	August 04, 2010	Deesha Tie Up Pvt. Ltd.	5,00,00,000
2	August 05, 2010	Deesha Tie Up Pvt. Ltd.	10,00,00,000

3	August 05, 2010	Bhushan Steel	1,00,00,000
4	August 05, 2010	Income Tax	7,41,028
5	August 05, 2010	Income Tax	35,00,000
6	August 07, 2010	Salaries	4,44,494
7	August 07, 2010	Income Tax	1,00,00,000
8	August 11, 2010	Salaries	6,41,362
9	August 18, 2010	Income Tax	18,78,860

19. From Table no. 6, I note that the company has made a total payment of Rs. 15 Crore to one Deesha Tie Up Pvt. Ltd. (hereinafter referred to as “Deesha Tie Up”) on August 05, 2010. Noticee no. 2, Mr. Madhu Mohan Reddy in a statement to the Income Tax Department has stated that Rs. 15 Crore were earmarked for the company’s project in Sharjah which was shelved and instead a plant was set up in Roorkee. I note from the prospectus that the company had called for quotations from suppliers for the purpose of carrying out its expansion and setting up of new plants in Hyderabad, Mumbai, Roorkee and Sharjah. These suppliers were mentioned as “proposed suppliers” in the prospectus albeit with a disclaimer that the actual supplier may vary from the those mentioned in the prospectus. However, I note that the fact that payment was made to Deesha Tie Up on August 05, 2010 i.e. a day after the IPO proceeds were received by the company shows that the company from the beginning intended to give the contract to Deesha Tie Up but failed to mention the same in the prospectus.
20. Further, the company has made a total payment of Rs. 1,88,04,147/- towards Income Tax payment within two weeks (i.e. on 5th, 7th and 18th August, 2010), of receipt of IPO proceeds. I note that it has nowhere been mentioned in the prospectus that the IPO proceeds would be utilized for paying the company’s Income tax dues. Similarly, I note that Rs. 14,70,533/- have been spent on paying salaries, on 5th, 7th and 11th August, 2010, which was not mentioned as one of the objects of the issue.
21. The company in its reply dated March 13, 2017 has stated that it has not diverted the IPO proceeds. However, the facts enumerated above, clearly show that the company used the IPO proceeds not as per the stated objects of the issue as disclosed in the prospectus and thereby misutilized the IPO proceeds.

22. Regulation 57 of the ICDR Regulations deals with the manner of disclosure of material information in the offer document which is true and adequate to enable investors to take an informed investment decision regarding the stock of a particular company. I find that the information regarding use of issue proceeds towards company's existing overdraft dues, income tax dues, payments to suppliers not mentioned in the prospectus, payment of salaries, etc. more specifically discussed in paragraphs 15 to 20 of this order, was material information and should have been incorporated in the offer document to enable the prospective investors to appreciate the company's financial background in a better manner before investing in the IPO of Midfield. I also find that the information disclosed in the prospectus regarding the objects of the issue was false because the manner in which the IPO proceeds were utilized was for purposes other than those stated in the prospectus. I find that the information disclosed in the prospectus was inadequate in material particulars because the true intended objects of the issue were not stated in the prospectus. Therefore, I find that Noticee no. 1 i.e. Midfield has acted in violation of Regulation 57 (1) of the ICDR Regulations.

23. The SCN has also alleged that Midfield has diverted the IPO proceeds and has not utilized the money in accordance with the objects of the issue as stated in the prospectus and thereby misled the investors. Thus, the SCN has alleged that the company i.e. Midfield and its directors have violated Sections 12A (a), (b) and (c) of the SEBI Act, 1992 read with Regulation 3 (b), (c) & (d) and Regulation 4 (1), 4 (2) (f) & (k) of the PFUTP Regulations, 2003. Regarding this allegation, Midfield in its reply dated March 13, 2017 has submitted as under:

- a. The officials of Income Tax Department conducted a raid at the premises of Midfield on November 07, 2012 and seized all its files including electronic data. The Income Tax Department has also issued attachment letters to the company's bankers and debtors.
- b. Due to the attachment of assets by the Income Tax Department, the company's bank accounts became irregular and were declared as NPA. The banks initiated proceedings against Midfield under the SARFAESI Act and took physical possession of the company's assets.
- c. Mr. Ashok Sagar has quit the company as an Executive Director in 2012 and the same has been informed to the Registrar of Companies.

- d. Midfield has completed all the projects mentioned in the Red Herring Prospectus. However, it has changed the places and suppliers for the sake of operation convenience and to reduce project cost. The company has taken approval from the directors and at the AGM for these changes. The company claims that these changes were informed to the concerned officials at BSE and SEBI at the relevant time.
- e. The company has not diverted any IPO funds and in fact have spent more funds than IPO funds in the company's new projects.

24. I note that for not furnishing any documentary evidence in support of its aforesaid claim, the company has taken a defence that its documents have been seized by the Income Tax Department. I note that the company has not adduced any evidence in support of said defence, thus rendering the contentions raised by the company as mere bald assertions and hence, cannot be accepted.

25. I note that Regulation 3 of PFUTP Regulations, 2003 which is analogous to section 12A of the SEBI Act prohibits a person from certain dealing in securities in a fraudulent manner. Fraud is defined, under Regulation 2(1)(c) of the PFUTP Regulations, 2003, to include any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance while dealing in securities in order to induce another person to deal in securities, whether or not there is any wrongful gain or avoidance of any loss and also includes certain specific circumstances mentioned in the definition. The term "dealing in securities" is defined, under Regulation 2(1)(b) of the PFUTP Regulations, 2003, as an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any person as principal, agent or intermediary referred to in section 12 of the SEBI Act. Regulation 4 (1) prohibits a person from acting indulging in any fraudulent or unfair trade practice. Regulation 4(2) provides that dealing in securities shall be deemed to be fraudulent or unlawful trade practice if it involves fraud and may include publishing of any false information by any person dealing in securities [under clause (f)]; or publishing of an advertisement which is misleading in any manner or distorts the information it presents to prospective investors [under clause (k)].

26. I note that as per the objects of the issue, the IPO proceeds were to be utilized for expansion of capacities at the existing manufacturing facility located in Hyderabad, Mumbai and Roorkee, setting up a new facility at Sharjah, augmenting long term working capital requirement, general corporate purposes and issue expenses. However, as noted in paragraph 15, 16 and 18 above that as soon as the IPO proceeds amounting to Rs. 35,29,16,123/- and Rs. 20, 52,26,315/- were transferred to Midfield's company accounts maintained with SBI and Axis Bank respectively, the amount of Rs. 18.79 Crore and Rs. 12.1 Crore respectively were immediately used for clearing its pre – existing overdraft balance maintained with the aforesaid banks. Thus, I note that the Company utilized Rs. 30.89 Crore which constitutes 51.61% of the total IPO proceeds of Rs. 59. 85 Crore to clear its pre – existing overdraft balance. I note that the company knowing fully well that its bank accounts maintained with SBI and Axis Bank had overdraft balance dues of total amount of Rs. 30.89 Crore, used the IPO proceeds for clearing its existing dues. The company has also failed to show that the IPO proceeds used for clearing the overdraft dues have been brought back by the company.
27. I note that on August 26, 2010 the company made payment of Rs. 10 Crore to SBI Mutual Fund in two tranches of Rs. 5 Crore each thereby bringing the account balance in the said SBI account to negative. I note that the company in its prospectus has stated that “pending utilization of the proceeds of the Issue for the purposes described above, we intend to temporarily invest the funds in high quality interest bearing liquid instruments including money market mutual funds and deposits with banks.” The company in its letter dated March 13, 2017 has submitted that the payments made to SBI Mutual Fund has been brought back. Assuming that the company means that the mutual fund units purchased with payments made to SBI Mutual Fund have been redeemed, I note that the company has not furnished any documentary evidence to show the same. Therefore, I find that the amount of Rs. 10 Crore invested in SBI Mutual Fund was never used for the objects of the issue disclosed in the prospectus.
28. I note that the Hon'ble Supreme Court in *Kanaiyalal Baldev Bhai Patel v. SEBI* [2017] 143 SCL 124 (SC) has observed that the definition of ‘fraud’ under the PFUTP Regulations contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. In the facts

of the present case, Midfield, while stating the objects of the issue in its prospectus, referred to only to its expansion plans and future ventures and did not disclose material information such as utilization of IPO proceeds for clearing its overdraft dues, income tax dues, payment of salaries etc. The company also failed to show that the deployment of IPO proceeds in SBI Mutual Fund as interim use of funds was later utilized to fulfil the objects of the company. I note that the company through its prospectus led the investors to believe that the company would be expanding its existing projects and setting up new projects. This would have led the investors to believe that the company has very good future prospects. Instead the company used the IPO proceeds for other purposes of the company. I note that had the company disclosed its intended objects to utilize the IPO proceeds, the investors would have made an informed decision of investing in the company. The company also acted in a fraudulent manner as it published false information and concealed material information, and thereby induced the investors to subscribe to the securities of the company.

29. In view of the above, I find that allegations made in the SCN against the Company regarding misutilization of IPO proceeds stands established. Consequently, the disclosures made by the company in its prospectus were false. The said act of making false/wrong disclosures in the prospectus about “Objects of the Issue” and thereafter, misusing/misutilising the issue proceeds for the purposes other than the objects of the issue disclosed in the prospectus shows that it was a fraudulent scheme of the Noticees whereby the investors were induced to subscribe to the shares of the company and the IPO proceeds were misutilised by the Noticees. The Hon’ble Supreme Court in *Kanhaiyalal Baldevbhai Patel v. SEBI* (Supra) has held that “the provisions of Regulations 3 (a), (b), (c), (d) and 4(1) are couched in general terms to cover diverse situations and possibilities. Once a conclusion, that fraud has been committed while dealing in securities, is arrived at, all these provisions get attracted in a situation like the one under consideration.” Therefore, I find that Midfield has acted in violation of Section 12A (a), (b) and (c) of SEBI Act, 1992 read with regulations 3 (b), (c), (d), 4(1), 4 (2) (f) and (k) of PFUTP Regulations, 2003.

30. I note that Noticee no. 2, Mr. M Madhu Mohan Reddy has not submitted any reply on his behalf. However, Noticee no. 2 appeared before me on May 27, 2019 and submitted on behalf of Noticee no. 1, Midfield and himself. During the personal hearing, Noticee no. 2 stated that

the company's assets have been attached by Income Tax Department and various banks. Some of the assets have also been auctioned by banks to recover their dues. Mr. Madhu Mohan Reddy also submitted that the Adjudicating Officer of SEBI has also imposed a penalty of Rs. 25 lakhs against him and that recovery proceedings have also been initiated against him by SEBI for non-payment of penalty.

31. I note that Noticee no. 3, Mr. Ashok Sagar Mudumba in his reply letter dated July 31, 2017 submitted as under:

- a. As an Executive Director of Midfield, he was dealing only in the area of marketing of the products of the company and in no way connected with the financial matters of the company. All the matters pertaining to finance, were handled by the Managing Director of the company.
- b. He has resigned from the post of Executive Director with effect from March 19, 2012 and the same has been registered with the Registrar of Companies.
- c. At the time of the IPO the following were part of the Board of Directors of Midfield:
 - i. Mr. M Madhu Mohan Reddy, Chairman and Managing Director,
 - ii. Mr. M Ashok Sagar, Whole Time Director/ Executive Director,
 - iii. Mr. Ashok Kumar Kolla, Non – Executive and Non – Independent Director,
 - iv. Mr. Raju Raju Kothapalli, Independent Director,
 - v. Mr. Kamlesh Kumar Bhargava, Non – Executive and Independent Director,
 - vi. Mr. V. G. Krishna Rao, Non – Executive and Independent Director.
- d. After his resignation from the post of Executive Director in 2012, the other directors continued to be part of the Board and they are responsible for the decisions taken by the Managing Director of the Company along with the other directors of Midfield.
- e. In view of the above, he has requested that the SCN issued against him may be withdrawn.

32. I note that at the time of the IPO, Mr. M. Madhu Mohan Reddy (Noticee no. 2) was the Chairman & Managing Director and Mr. Ashok Sagar Mudumba (Noticee no. 3) was the Executive & Non Independent Director of the company. Mr. Ashok Sagar has submitted that he has resigned from the company, Midfield with effect from March 19, 2012. However, I

note that he was the Executive Director of Midfield during the IPO and at the time of misutilization of IPO Proceeds. Mr. M. Madhu Mohan Reddy being the Chairman & Managing Director and Mr. Ashok Sagar Mudumba being the Executive & Non Independent Director of the company cannot plead that they were not aware of the affairs of the company and the violations committed by the company, as stated in para 23. Noticee no. 2 and 3 were also signatories to the prospectus of the company alongwith others. Section 62 of the Companies Act, 1956 states that every person who is a director of a company at the time of the issue of prospectus is liable to pay compensation to every person who subscribes for any shares on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein. I note that the Hon'ble Supreme Court in *N Narayanan v. Adjudicating Officer, SEBI* the principle relied therein is equally applicable in the context of a director's duty to act diligently:

“33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.”

33. Therefore, I find that Mr. M. Madhu Mohan Reddy (Noticee no. 2) and Mr. Ashok Sagar Mudumba (Noticee no. 3) have violated Section 12A (a), (b) and (c) of SEBI Act, 1992 read with regulations 3 (b), (c), (d), 4(1), 4 (2) (f) and (k) of PFUTP Regulations, 2003.
34. The Hon'ble Securities Appellate Tribunal (hereinafter referred to as “SAT”) in *Tijaria Polypipes Limited v. SEBI* (Appeal no. 372 of 2014 decided on June 29, 2016) and *P. G. Electroplast Limited v. SEBI* (Appeal no. 144 of 2014, decided on August 30, 2019) has observed that a direction to call back cannot be sustained if the IPO proceeds have been utilized for the purposes/ objects of the company even though the said objects are not the same as those mentioned in the Objects Clause of the prospectus. From the preceding paragraphs, I note that the company

has utilized the IPO proceeds for its objects other than those stated in the prospectus such as clearing its overdraft dues, payment to Mutual Fund, payment towards Income Tax dues, salaries etc. In view of the above, I note that the direction to call back the IPO proceeds is not warranted in the facts of the present case.

ORDER:

35. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby restrain Midfield Industries Ltd. (Noticee no. 1), Mr. M. Madhu Mohan Reddy (Noticee no. 2) and Mr. Ashik Sagar Mudumba (Noticee no. 3) from accessing the securities market and further prohibit them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of two years, from the date of this order. During the period of restraint, the existing holding including units of mutual funds, of the Noticees shall remain frozen.

36. This order shall come into force with immediate effect.

37. A copy of this order shall be served on all the Noticees, recognized stock exchanges, depositories and RTAs of mutual funds to ensure compliance with above directions.

Date: September 25, 2019

Place: Mumbai

Sd/

ANANTA BARUA

WHOLE TIME MEMBER