

**BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI**

**Order Reserved On: 28.02.2020**

**Date of Decision : 26.10.2020**

**Appeal No. 70 of 2019**

Pavan Kuchana

H No. 1-7-1266/1, Advocates Colony,

Balasamudram, Hanamkonda,

Warangal-506 002, Telangana, India

...Appellant

Versus

Securities and Exchange Board of India,

SEBI Bhavan, Plot No. C-4A, G-Block,

Bandra-Kurla Complex, Bandra (East),

Mumbai - 400 051

...Respondent

Mr. Ankit Lohia, Advocate with Ms. Rishika Harish, Mr. Jitendra Sharda, Ms. Rakshita Poddar, Mr. Shikhar Sthapak and Ms. Khyati Bhandari, Advocates i/b Mindspright Legal for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Abhiraj Arora and Mr. Feroz Patel, Advocates i/b ELP for the Respondent.

**WITH  
Appeal No. 186 of 2018**

Durga Kuchana

H No. 1-7-1266/1,

Balasamudram, Hanamkonda,

Warangal-506 002, Telangana, India

...Appellant

Versus

Securities and Exchange Board of India,

SEBI Bhavan, Plot No. C-4A, G-Block,

Bandra-Kurla Complex, Bandra (East),

Mumbai - 400 051

...Respondent

Ms. H. V. Tamana, Advocate with Mr. Jitendra Sharda, Ms. Rakshita Poddar, Mr. Shikhar Sthapak and Ms. Khyati Bhandari, Advocates i/b Mindspright Legal for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Abhiraj Arora and Mr. Feroz Patel, Advocates i/b ELP for the Respondent.

**WITH**  
**Appeal No. 187 of 2018**

Ramaswamy Kuchana  
H No. 1-7-1266/1, Advocates Colony,  
Balasamudram, Hanamkonda,  
Warangal-506 002, Telangana, India ...Appellant

Versus

Securities and Exchange Board of India,  
SEBI Bhavan, Plot No. C-4A, G-Block,  
Bandra-Kurla Complex, Bandra (East),  
Mumbai - 400 051 ...Respondent

Mr. Shikhar Sthapak, Advocate with Mr. Jitendra Sharda, Ms. Rakshita Poddar and Ms. Khyati Bhandari, Advocates i/b Mindspright Legal for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Abhiraj Arora and Mr. Feroz Patel, Advocates i/b ELP for the Respondent.

**AND**  
**Appeal No. 188 of 2018**

Ravi Kusum  
Plot No. 151, Seshadri Enclave,  
Venkatdri Township-IV Phase,  
Chowdhari Guda (Village),  
Ghatkesar (Mandal),  
Medchal District- 500 088,  
Telangana ...Appellant

Versus

Securities and Exchange Board of India,  
SEBI Bhavan, Plot No. C-4A, G-Block,  
Bandra-Kurla Complex, Bandra (East),  
Mumbai - 400 051

...Respondent

Mr. Saurabh Bacchawat, Advocate with Mr. Shikhar Sthapak, Mr. Jitendra Sharda, Ms. Rakshita Poddar and Ms. Khyati Bhandari, Advocates i/b Mindspright Legal for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Abhiraj Arora and Mr. Feroz Patel, Advocates i/b ELP for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer  
Dr. C.K.G. Nair, Member  
Justice M. T. Joshi, Judicial Member

Per: Dr. C.K.G. Nair

1. These four appeals have been filed to challenge the order of the Whole Time Member (“WTM” for short) of the Securities and Exchange Board of India (“SEBI” for short) dated November 15, 2017. By the said order four of the appellants, namely Taksheel Solutions Limited (“TSL” for short), Pawan Kuchana, Durga Kuchana and Ravi Kusum have been restrained from accessing/dealing in the securities market, directly or indirectly, for a further period of 3 years. Further, the restraint imposed on appellant Ramaswamy Kuchana vide interim order has been revoked and noticee V K Prasad

Rao has been warned to be cautious and to exercise due care and diligence in future.

2. Aggrieved by these directions five appellants have filed these four appeals. Appeal No. 70 of 2019 was filed jointly by the company TSL and its Managing director Pavan Kuchana. Since filing the appeal TSL has gone into liquidation pursuant to a winding up order dated October 31, 2019 passed by the National Company Law Tribunal (“NCLT”) and an Official Liquidator has been appointed who sought to withdraw the appeal on behalf of the Company-TSL vide an application filed before this Tribunal on December 08, 2019. The said application was allowed and appeal as far as the Company-TSL-is concerned was dismissed as withdrawn vide our order dated January 16, 2020. Consequently, Appeal No. 70 of 2019 is thereafter pressed only by the second appellant namely Pavan Kuchana. Appeal No. 186 of 2018 is filed by Durga Kuchana, a promoter of TSL, Appeal No. 187 of 2018 is filed by a Director of TSL, Ramaswamy Kuchana; and Appeal No. 188 of 2018 is filed by Ravi Kusum, who was Vice President-Business Development of TSL. Ramaswamy Kuchana is the father of Pavan

Kuchana; Durga Kuchana is the wife of Pavan Kuchana. Since the impugned order is common, by consent of the parties, all the four appeals are heard together and decided by this common order taking Appeal No. 70 of 2019 as the lead matter.

3. The background of the matter is as follows:-
  - a) Following huge volatility in the price of the scrip of TSL on the date of listing on October 19, 2011 an investigation was conducted by SEBI. This led to the finding that TSL and its Directors had made various misstatements in the offer documents of the IPO.
  - b) Further it was also revealed that the books of TSL were manipulated and part of the IPO proceedings was siphoned off. Hence SEBI issued the ex-parte ad-interim order dated December 28, 2011, whereby, among others, the present appellants were restrained from dealing in the securities market, directly or indirectly, till further direction.
  - c) It was also directed that TSL should call back the Inter Corporate Deposits (“ICDs”) placed with one

M/s Silverpoint Infratech Ltd. (“Silverpoint”) amounting to Rs. 23 crores.

- d) The said interim order was thereafter confirmed vide SEBI’s order dated October 25, 2013, after giving an opportunity of hearing to the entities.
- e) On completion of the investigation a show cause notice dated January 06, 2014 was issued to the appellants as well as some other entities. The show cause notice alleged several violations such as non-disclosure of the cancelation of allotment of land at Warangal; factually incorrect disclosure about the pan-global presence of offices/employees of TSL; non-disclosure of transactions of TSL with M/s Wiselink Technologies Pvt. Ltd. (“WTPL”) which also involved a Key Managerial Person (“KMP”); non-disclosure of related party transactions in respect of Verisoft Business Solutions Pvt. Ltd.; non-disclosure of ICDs raised by TSL prior to the IPO. The show cause notice also alleged misuse/siphoning off IPO proceedings and manipulation of books of accounts of TSL; proceeds used to repay the pre-existing liability of Rs.34.50 crore through

ICDs; siphoning off funds to multiple clients and vendors of TSL located in United States of America (“USA”) which were companies connected to TSL and Pavan Kuchana; diversion of Rs. 3.50 crores to one Dinesh Kumar Singhi through WTPL; transfer of Rs. 23 crore to Silverpoint as ICD and about 60% of the IPO proceeds which is Rs. 48.34 crore were utilized for the purposes other than disclosed in the offer document.

4. Therefore, it was alleged that the TSL, Pavan Kuchana and Ramaswamy Kuchana violated provisions of Section 12A(a), (b) and (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d), 4(1), 4(2), (a), (d), (e), (f), (k) and (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003 (“PFUTP Regulations” for short) and also Regulations 57 (1), 58(1), 60 (1), 60 (4)(a), 60 (7)(a), 57 (2)(a), Clauses 2 (VII)(B)(4), (2)(VII)(G), 2(IX) (12) and 2 (XVI)(B)(2) of Part A of Schedule VIII and Clause (IX) of Part D of Schedule VIII of SEBI (Issue Of Capital And Disclosure Requirements) Regulations, 2009 (“ICDR Regulations” for short). Durga Kuchana and Ravi Kusum were associated/ involved/ created/ incorporated

fictitious entities as vendors/ clients of TSL in the USA and these vendors/ clients were used to siphon off the IPO proceeds, which were later recorded as expenditure and revenue. Accordingly, they have violated provisions of Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(b), (c) and (d), Regulations 4(1), 4(2)(e), (k) and (r) of the PFUTP Regulations, 2003.

5. Learned counsel Shri Ankit Lohia, appearing for Appellant Pawan Kuchana in Appeal No. 70 of 2019, contended that there are some inadvertent defects in the offer documents which crept in because of a “cut and paste” job done by the Merchant Banker. For evidence, it was contended that, records itself states that while TSL had employees in the ‘United States, Europe and other Countries’ the latter two crept in the offer documents inadvertently. Moreover, the Merchant Banker had admitted to such inadvertent mistakes also. Similarly, it was contended that the allegation of transactions with a KMP of TSL is not correct since the said KMP had resigned prior to the alleged transactions and even before the IPO itself. Similar contention was taken with respect to the charge of related party transactions where it was contended that the mother-in-law of the MD who is alleged to be a Director with a related party had



also resigned before the alleged transactions. As far as the charge of siphoning off of funds to various entities the learned counsel submitted that it was because of the unwillingness of SEBI to accept its contention that TSL made all efforts to get back Rs. 23 crores given to Silverpoint. TSL had written to both Silverpoint as well as the technology company which it planned to acquire as part of the proposed expansion of business. Similar arguments have been made in respect of other allegations that sufficient documentary evidence was given to SEBI to prove the veracity regarding inter-corporate loan, acquisition of property and companies etc. which SEBI has not considered while passing the impugned order. The learned counsel, however, fairly admitted that all the facts and figures given in the impugned order are correct, only that the submissions and interpretations made by the appellant were not accepted which if considered would have resulted in much less penalty on the appellant instead of more than 9 years restraint imposed on him.

### **Appeal No. 186 of 2018**

6. The learned counsel Ms. H. V. Tamana, appearing for appellant, Durga Kuchana contended that it is a fact that the appellant was instrumental in incorporating four entities in the US. This was done on the instructions of her husband, Pawan,

who was MD of TSL. These four entities were incorporated with the help of Ravi Kusum during 1<sup>st</sup> and 2<sup>nd</sup> March, 2011 but between 8<sup>th</sup> and 12<sup>th</sup> March, 2011 itself these companies were transferred to different entities with whom she had no connection; neither she has any connection to these companies after the transfer. Though, she continued to remain a promoter to TSL, she had no role in its management or operation as such just because of being a party to incorporating a few companies in the US legally she cannot be held to be liable for any wrong doing because of being a namesake promoter of TSL and in no way can she be punished under the stringent provisions of the PFUTP Regulations, 2003.

### **Appeal No. 187 of 2018**

7. The learned counsel Shri Shikhar Sthapak, appearing for the appellant Ramaswamy Kuchana, contended that the appellant herein (who is the father of the Appellant No. 2 in Appeal No. 70 of 2019 who was the MD of TSL) joined the company as a Director on the request of his son. Other than being a Director he had no functional/ operational role in the affairs of the company nor was involved in any way in the alleged transfer/ siphoning off of funds etc. It was also contended that the impugned order in paragraph 70 itself has noted that “the show cause notice has not brought out any

specific role played by him in the manipulative activities indulged into by Pavan Kuchana and others”. Therefore it was contended by the learned counsel that the appellant deserved to be discharged fully from any wrong doings, as alleged in the impugned order.

### **Appeal No. 188 of 2018**

8. The learned counsel Shri Saurabh Bacchawat, appearing for the appellant Ravi Kusum contended that the appellant was the Vice President (Business Development) of TSL at the relevant time and worked with company from September 2000 to January 2014. He was instrumental in incorporating four companies in his name and four companies in the name of Durga Kuchana and the said companies were transferred to other entities shortly thereafter. However, he admitted that certain blank cheques were given from the account of Kyros Tech Systems Inc., one of the companies incorporated by Durga Kuchana and where he was the authorised signatory to operate the bank account. Therefore, it is the contention of this appellant that apart from incorporating companies on the instructions of his Managing Director, Pavan Kuchana in his name and in the name of Durga Kuchana he had no other role in the alleged violations.

9. We have also heard Shri Gaurav Joshi, learned senior counsel appearing for SEBI who guided us through the detailed findings in the impugned order such as how ICDs worth several crores was given to entities with a networth of just a few lakh rupees; how the appellant-company and its directors and other appellants were instrumental in creating a web of entities in the United States which have similar names, website address etc. as detailed in the impugned order and also how funds/IPO proceeds were transferred to these entities. These tell-tale details are given in paragraphs 43 to 49 of the impugned order. The learned senior counsel also submitted that for the disclosure violations concerned the Merchant Banker was also penalized through a different order.

10. Learned senior counsel for SEBI also placed reliance on the orders of this Tribunal in ***P.G. Electroplast Ltd. vs. SEBI (Appeal No. 144 of 2014 decided on 30.08.2016, Brooks Laboratories Ltd. & Ors. vs. SEBI (Appeal No. 246 of 2015 decided on 21.03.2018 and Bharatiya Global Infomedia Ltd. & Ors. vs. SEBI (Appeal No. 481 of 2016 decided on 25.06.2019)*** to emphasis their contentions that ICDs are ‘bridge loans’ and it is mandatory to make disclosures relating to the same in the

offer documents and failure to disclose the same as such is manipulative and hence would fall under PFUTP violations.

11. Having heard the learned counsel for the parties and after perusing the records before us, we are constrained to state that the violation graphically described in the impugned order is not only of a very serious magnitude but also would fall in a rare category of extreme manipulation. It is a clear case of a company and some of the associated entities [promoters/Directors/Officials] clearly playing out a well crafted strategy of fraud in trying to depict the company as a big player in the area of technology and therefore by presenting a rosy, bombastic profile of having global operations and with further plans for Indian and global expansion through acquisition etc. The company, however, went into liquidation within 8 years of such a high profile IPO. From the way the issue documents were drafted, we have no doubt that the disclosures made in term of operations in “Europe and other Countries” or regarding “global expansion plans” are deliberately made to woo investors with the IPO. Therefore, there is no merit in the arguments by the learned counsel for the appellant in Appeal No. 70 of 2019 that the alleged disclosure violations were the mistakes arising from a ‘cut and paste’ job

of the Merchant Banker. In fact on specific query from the Bench regarding operations in the US prior to the issue of IPO it was admitted that there were only some clients, neither officials nor operations in the strict sense of those terms.

12. As regards the findings in the impugned order regarding multiple other violations relating to misuse of funds such as for development of SEZ centre; non-disclosure of ICD transactions with various entities such as Silverpoint and WTPL; related party transactions; manipulation of books of accounts; using foreign entities established by the some of the appellants/noticees for siphoning off of funds etc. the evidence relating to such violations is so crystal clear that the fraud committed by the parties herein is of an extra-ordinary nature and strategically planned. Virtually the entire IPO proceeds have been misutilized by the various fraudulent schemes after mobilising more than Rs. 82 crores through the IPO, by painting a rosy picture of TSL to start with.

13. The submission of Ramaswamy Kuchana (Appellant in Appeal No. 187 of 2018) that he had no role in the manipulative activities is admitted. However, that does not absolve him from the role as a Director of TSL and hence the supervisory

responsibilities. Further, he was admittedly signatory to the offer documents which were found to be misleading and wanting in several aspects. In any case the impugned order has considered that he had no role in the day to day management of TSL and hence absolved him from any role in the fraud and as such the restraint order imposed on him through the interim and confirmatory orders has been revoked by the impugned order.

14. As regards the submissions of the appellants Pavan Kuchana, Durga Kuchana and Ravi Kusum are concerned, we consider them devoid of any merit. Pavan Kuchana as MD and CEO of TSL was the mastermind behind the entire strategy and scheme of fraud committed on the innocent investors by hoisting an IPO and thereafter diverting virtually the entire amount of proceeds for other than the purpose stated, including to entities abroad which, based on the records available, are undoubtedly front entities of the appellant. Durga Kuchana as a connected entity and a promoter and who was instrumental in setting up four entities abroad and thereby enabling the transfer of funds by TSL and appellant Ravi Kusum as a senior official of TSL who was instrumental in incorporating eight entities abroad, including by helping Durga Kuchana in setting up four of them, which were found to be front entities set up with the

help of TSL in the manipulative scheme cannot be absolved of the charges leveled against them and as held in the impugned order. They even continued to operate the bank accounts of some of these entities as subsequent to their ‘transfer’ as claimed by these appellants, cheques signed by these appellants have been issued by those entities. Appellants’ submission that they were post-dated cheques signed by them does not have any merit in the given facts and circumstances and with overwhelming evidence of fraud available in the impugned order. On the charge of diversion of funds, some of the details as in the impugned order are reproduced below:-

*“39. It has been alleged in the SCN that there were circular movement of funds between suppliers, TSL and its clients in the garb of vendor/client payment and receipts which resulted in incremental revenue on the one hand and corresponding inflation of profitability of TSL on the other. In this process, IPO money was also alleged to be siphoned off. It has been also alleged that the entities amongst whom the IPO proceeds were churned were entities connected to TSL as they were created by Pavan Kuchana, Durga Kuchana, Kamal Kuchana and Ravi Kusum and they were themselves the bank account signatories of these companies.*

*40. The list of clients and vendors (16 clients and 4 vendors) was provided by TSL during the investigation. On the basis of analysis of further details obtained during the investigation about these clients and vendors, it has been observed in the SCN that the address of most of the clients and vendors, their website creation dates,*



*website contents etc. were similar. The similarities are summarized as under:*

**Table - 3**

Sl. No.	Name	Client/ vendor as per list provided by TSL	Address	Website	Website registratio n date	Website registered by
1.	Ami Technologies Inc.	Client	325 Cranbury NJ - 08540	www.amitechinc.com	31.05.11	Taksheel Solutions Limited
2.	Cvcox Networks Inc.	Client	3240 E State Street Ext, Hamilton New Jersey 08619	www.cvcoxnetworksinc.com	31.05.11	
3.	Ermin Technologies Inc.	Client	3240 E State Street Ext, Hamilton New Jersey 08619	www.ermintechinc.com	31.05.11	
4.	Fausta Software Solutions Inc.	Client	3240 E State Street Ext Hamilton New Jersey 08619	www.faustasoftsolinc.com	31.05.11	
5.	Rasax Soft Inc.	Client	3240 E State Street Ext Hamilton New Jersey 08619	www.rasaxsoftinc.com	31.05.11	
6.	Cyma Network Solutions Inc.	Vendor	3240 E State Street Ext, Hamilton New Jersey 08619 USA	www.cymanetsol.com	31.05.11	
7.	Helia Software Solutions Inc.	Vendor	3240 E State Street Ext, Hamilton New Jersey 08619	www.heliasoftsolinc.com.	31.05.11	
8.	Kyros Tech Systems Inc.	Vendor	3240 E State Street Ext Hamilton New Jersey 08619 USA	www.kyrostechsysinc.com	31.05.11	
9.	Crest Solutions Inc.	Vendor	2540 US Highway 130 Suite 101 Cranbury New Jersey 08512	www.crestsol.com	26.11.11	TSL through Virtu Tech Solutions Pvt. Ltd.
10.	Felix Technologies Inc.	Client	4 Cotton Woods Drive Westwindor NJ 08550	www.felixtechinc.com	26.11.11	
11.	Lorven Pharmacy	Client	1006 Manhattan Avenue  Brooklyn NY 11222	www.lorvenpharma.com	26.11.11	
12.	Naras Technologies Inc.	Client	5L Reading Road Edison NJ 08817	www.narastechinc.com	26.11.11	
13.	Vemury Systems Inc.	Client	465, Meadow Road #7105 Princeton NJ 08540	www.vemurysys.com	26.11.11	
14.	Avalon Tech	Client	1075 Easton	www.avalontec	26.11.11	

	Systems Inc.		Avenue Tower 2 Suite Sommerset NJ	hsys.com		
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41. It has been also brought out in the SCN that the contents of the websites of entities at Sl. No. 1 to 8 in the table 3 above were similar. All these websites had 4 links (Home, Ourselves, Technology and Contact Us). The contents of each of these links provided in the websites were same across all these websites. For instance, under the weblink “Ourselves”, all of the webpages wrote that “...over 70% of ... candidates are sourced from referrals”. In the Technology page, all these websites had a write up which stated that the company “.... Will meet with key business leaders to determine a hiring strategy that supports (client’s) specific environment....” All the websites also claimed that the company “... helps its clients in planning, implementing and upgrading various ERP Technologies including SAP, Oracle....” Further, apart from the address, no other contact details such as phone numbers, email ids etc. were provided on the web-pages of any of these entities. With regard to websites of 6 entities (from Sl. No. 9 to 14 in table 3), it has been mentioned in the SCN that they were registered by TSL through Virtu Tech Solutions Pvt. Ltd. (a company based in Hyderabad) on November 26, 2011, i.e. two days after TSL received SEBI summons to provide complete details about its clients and vendors and payments for the same were made by TSL.

43. The SCN mentions that many of the vendors and clients of TSL were created by Pavan Kuchana, the MD of TSL, Smt. Durga Kuchana, wife of Pavan Kuchana, Ravi Kusam, VP-Business Development of TSL and Kamal Kuchana, one of the promoters of TSL and brother of Pavan Kuchana. It has been also brought out that Durga Kuchana and Ravi Kusum were shareholders of many of these companies. Ravi Kusum, Durga Kuchana or Pavan Kuchana were the bank account

*signatories of the companies mentioned at Serial no. 1 to 10 of Table 3. The details of such clients/vendors of TSL are as under:*

Table – 4

Sl. No	Entity Name	Relation-ship with Taksheel	Bank Account signatory	Role / designation	Bank Name	Account No	Account opened date (DD/MM/Y Y)	Name of Shareholder
1.	AMI Technologies Inc.	Client	Ravi Kusam	Director/ Incorporator	Sovereign Bank	842356800/511065132		Ravi Kusum (200 shares)
2.	CV COX Networks Inc.	Client	Durga Kuchana		Sovereign Bank	511065108/842356762	03/03/2011/3/3/11	Durga Kuchana
3.	Ermin Technologies Inc.	Client	Ravi Kusam	Secretary / Treasurer	JP Morgan	922483771	11/03/11	Durga Kuchana
			Ravi Kusam	Secretary	Sovereign Bank	1411115155	10/03/11	(200 shares)
4.	Fausta Software Solutions Inc.	Client	Durga Kuchana		Sovereign Bank	842356754/511065094		Durga Kuchana
5.	Rasax Soft Inc.	Client	Ravi Kusam	President	JP Morgan	970533311	10/03/11	
6.	CYMA Network Solutions Inc.	vendor	Ravi Kusam	President	JP Morgan	970533386	10/03/11	
7.	Helia Software Solutions Inc.	vendor	Ravi Kusam	Director	Sovereign Bank	0842356797		Ravi Kusum (200 shares)
8.	Kyros Tech Systems Inc.	vendor	Ravi Kusam	Secretary / Treasurer	JP Morgan	922483755	11/03/11	Durga Kuchana (200 shares)
			Ravi Kusam	Authorised by Durga Kuchana	Sovereign Bank	1411115147	10/03/11	
9.	Crest Solutions Inc.	vendor	Ravi Kusam	VP/ Secretary	Bank of America	381029026276	07/03/11	
10.	Felix technologies Inc.	Client	Pavan kuchana/ Ravi Kusam	President /VP &Secretar y	Bank of America	381029026137		
11.	Alagya Technologies Inc.	Client/ vendor	Kamal Kuchana	President	Bank of America	3817329214	08/11/06	
			Preeti Mulbagal	Secretary	JP Morgan	943789362	17/03/11	

*45. On the basis of analysis of bank account statements of clients and vendors of TSL, as*

*obtained from Securities and Exchange Commission, USA, circular movement of funds between TSL and its clients and vendors (mentioned at Sl. No 1 to 10 in the table above) have been brought out in the SCN. TSL utilised the IPO money to make transfer of funds to its vendors and part of it came back to it in the garb of receipts from clients. After receipt of the IPO money, TSL utilised them to repay the loan amount of ` 34.50 crore raised by it through ICD from different entities during May 2011, June 2011 and September 2011. From the amounts raised through ICD, an amount of ` 30.15 Crore was transferred to Helia Software Solutions Inc., Crest Solutions Inc., CYMA Network Solutions Inc. and Kyros Tech Systems Inc. as vendor payments. Apart from the transfer of ` 30.15 crore to the aforesaid four purported vendors of TSL, an amount of ` 5.30 crore was also transferred to them on December 13, 2011 from the IPO proceeds. The details of funds transfer and its further movement as brought out in the SCN are as follows.*

*A. TSL after raising the loan through ICDs in the month of May 2011, June 2011 and September 2011, immediately transferred ` 30.15 crore (i.e. \$66,66,069) to the entities located in USA as “vendor payments” through its Account No. 039651100001144 with IDBI Bank in Mumbai. The details are as follows.*

*Table – 5 – Transfer of ICD proceeds by TSL*

Sl. No.	Name of the entity	Name of the bank in which it maintained account	Account No.	Transferred Amount (₹ in crore)	Transferred amount (\$ in lac)
1.	Helia Software Solutions Inc., USA	Sovereign Bank	0511065140,	8.39	18.52
2.	Crest Solutions Inc., USA	Bank of America	381029026276	5.05	11.20
3.	CYMA Network Solutions Inc., USA	JP Morgan Chase	970533386	6.50	14.43
4.	Kyros tech Systems Inc., USA	JP Morgan Chase	922483755,	10.21	22.51

Total	30.15	66.66
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*The further movement of funds, from the amount of ` 30.15 crore transferred to the aforesaid vendors of TSL, to other entities are detailed as follows.*

*Crest Solutions Inc. - Crest Solutions Inc. received ` 5.04 crore (\$11,20,387) in the month of May 2011 from TSL, prior to which there was a negligible balance of \$295 in its account. Crest transferred \$3,10,545 to Ermin Technologies on May 13, 2011 and \$8,06,421 to Felix Technologies Inc. in the month of May-June 2011. The entire amount credited in Ermin's account was transferred to 2 entities namely Asia Rich Ventures Ltd. and East Fortune Industrial Ltd. Felix after receipt of credit of \$8,06,321 in its account from Crest transferred \$3,31,240 (` 1.49 Crore) to TSL (IDBI Bank Account). TSL accounted for the same as revenue. Prior to the credit from Crest, Felix maintained a negligible credit balance of \$238. Felix also transferred \$1,50,105 (` 67 lakh) to bank account of Pavan Kuchana maintained with Axis Bank. Out of this, an amount ` 55 lakh was transferred by Shri Pavan Kuchana to Verisoft Business Solutions which in turn transferred this amount to Wise Link Technology and to TSL. The remaining amount with Felix was transferred to Asia Rich Venture (\$1,92,128 on June 6, 2011) and to East Fortune Industrial Ltd (\$1,31,125 on May 18, 2011). The entities Asia Rich ventures and East Fortune Industrial are not located either in India or in USA. Thus, out of ` 5.04 crore an amount of ` 1.49 crore was received by TSL from its client Felix and shown as revenue in its books. It is also relevant to mention here that Pavan Kuchana and Ravi Kusam are the bank account signatories of Felix.*

48. At the outset, it is unheard of that the directors/employees of an Indian software company would float companies abroad for their clients and vendors by partaking in holding their shares as well as operationalizing the company by opening bank accounts for them and thereafter end up transferring the companies/entities to foreign clients totally. In the process, I find that the clients enter the picture as transferees, according to TSL's version. This explanation for the fund flow and existence of such companies from which the transactions are evidenced as clients/vendors are merely imaginary and not supported by any document. In any case, it does not stand to logic that TSL will have to transfer funds to the clients, shown at Table 3. In my view, the transfer of funds is only justifiable through connections with those clients. With regard to TSL's submission that the companies were transferred to others, it is observed that the purported "minutes of shareholder's meeting" of such companies floated abroad were recorded on a plain sheet of paper and were signed by either Ravi Kusum or Durga Kuchana. The share transfer document provides the name of the transferee and an identification number of the assignee. In order to get further details and verify the genuineness of these companies, communications were sent to them during the course of the investigation. These communications returned undelivered and no registered agent or contact person associated with these companies could be contacted. The return of the unserved letters confirms the doubt about the existence and genuineness of these entities. Further, during the course of hearing on April 12, 2017, in order to verify the claim made by Noticees that these are genuine companies and TSL was having business relationships with these companies, TSL was advised to furnish the pre-incorporation communications between them and the present address of these companies. Pavan Kuchana, vide e-mail dated April 14, 2017, provided

*addresses of some of the entities, with a caveat that these addresses may not be authentic as most of his clients and vendors have refused to work with him subsequently. Further, no details or copy of any communication which took place between Pavan Kuchana and the transferees before incorporation of the companies on their behalf have been provided. It is observed that clients or vendors of TSL mentioned at Sl. No. 1 to 8 of Table 3 were created by TSL and these companies could not be contacted during the investigation or by Pavan Kuchana even though he is claiming to have business relationship with them. In such circumstances, it does not appear that these companies were functioning independently or were having their own clients or business. Further, the noticees have also not submitted details of any proof of consideration received from these transferees for transferring the company or expenses of incorporation and creation of websites, etc. It can thus be concluded that these companies are book companies, not carrying on any independent business, set up by the promoters/directors of TSL for the sole purpose of reflecting them as clients/vendors of TSL and for supporting fictitious accounting entries in the books of accounts of TSL.*

*49. Incidentally, the SCN mentions that Ravi Kusum has signed a cheque for Kyros Tech Systems Inc. on March 31, 2011 which was issued in favour of Felix technologies Inc. It has been submitted by Pavan Kuchana that all banking passwords and related information were given to the transferee of each concerned company along with signed and undated cheque. From Table 4 above, it is seen that Pavan Kuchana, his wife Durga Kuchana and Ravi Kusum are the bank account signatories of the companies at Sl. No. 1 to 10 of the table, including Kyros. The Noticees have submitted that Kyros and other such companies were created at the instance of Pavan Kuchana for*

*transferring them to others. However, the submissions of the Noticees do not appear bonafide because there is no possibility of these companies having commenced any operations before or at the time of transfer. Thus, the explanation advanced by the Noticees that as part of the transfer of the company to respective transferees some undated blank cheques were signed and handed over to them is far from being credible and satisfactory.....*

*69. It has been found earlier that TSL and its directors have intentionally made various mis-statements in the offer document in order to project far rosier picture of its business presence and prospects and its financials in violation of the various provisions of SEBI (ICDR) Regulations, 2009. It is noted that TSL and its directors utilised ` 34.50 crore from the IPO proceeds, constituting 43% of the amount raised through IPO, to repay the loan raised in the form of ICD without giving any hint about it in the offer document to the investors. It made advance payment of ` 5.075 crore to WTPL from the IPO proceeds, which was a related party transaction and a material information, without making proper disclosure about it. Pavan Kuchana also suppressed material information about transferring 50 lakh shares of TSL for consideration other than cash to a company in which his relatives were directors. It is also noted that the IPO money was not utilised for the stated objects. It is noted that ` 9.15 crore (11.09% of IPO proceeds) was demarcated to develop new SEZ centre at Hyderabad. However, from the submissions made, TSL has not made any effort nor progressed with respect to the said stated objects in the offer document, which is a clear case of departure from the disclosed use of funds in the offer document. Thus, the manner in which various material information was suppressed and a major part of IPO proceeds utilised for the objects other than those stated in the prospectus, it appears that the directors and relatives of TSL had pre-planned*



*to benefit from the IPO money at the cost of innocent investors.”*

15. Given the above facts, evidence and reasons we do not find merit in any of the 4 appeals. Accordingly all appeals fail and are dismissed with no orders on costs.

16. This Order has been pronounced through video conference due to Covid-19 pandemic, since the matter had been reserved only a few days prior to the lockdown. At this stage, it is neither possible to sign a copy of this Order nor a certified copy of this Order could be issued by the Registry. In these circumstances, this Order will be digitally signed by the Presiding Officer on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this Order. Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala  
Presiding Officer

Dr. C.K.G. Nair  
Member

Justice M. T. Joshi  
Judicial Member