

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(1), 11(4), 11A AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, REGULATION 11 OF THE SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 AND REGULATION 107 OF THE SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2009 - IN THE MATTER OF TAKSHEEL SOLUTIONS LIMITED

In respect of:

Sl. No.	Noticees /Name of the entities	PAN
1	Taksheel Solutions Ltd.	AAACI7325P
2	Shri Pavan Kumar Kuchana (MD & CEO)	ATAPK6144L
3	Shri Ramaswamy Kuchana (Director)	ALIPK4206D
4	Shri Ravi Kusam (VP- Business Development)	AKCPK0569Q
5	Smt. Durga Kuchana (Promoter)	AVRPK4234G
6	Shri Kamal Kuchana (Promoter)	ANLPK8156F
7	Shri V K Prasada Rao (CFO)	ACHPR842D

Background in brief

1. Securities and Exchange Board of India (SEBI) conducted an investigation in the scrip of Taksheel Solutions Ltd (TSL) in view of huge volatility in price and transacted volume of the scrip on the day of listing i.e. October 19, 2011 on the stock exchanges. The preliminary investigation prima facie revealed that TSL and its directors had made various mis-statements in the offer documents and had hidden vital pieces of information from the public. It was also

revealed that the books of accounts of the company were manipulated and parts of IPO proceeds were siphoned off. In view of the prima facie findings, pending further investigation, an ad-interim ex-parte order dated December 28, 2011 was passed. The order prohibited, amongst others, TSL, Pavan Kumar Kuchana and Ramaswamy Kuchana (directors of TSL) from raising any further capital in any manner and from buying, selling or dealing in securities market till further directions. The order also directed TSL to call back the Inter Corporate Deposits (ICD) placed with Silverpoint Infratech Limited amounting to ₹23 crore. After giving an opportunity of hearing to the entities, the directions issued against TSL, Mr. Pavan Kuchana and Mr. Ramaswamy Kuchana in the interim order were confirmed vide order dated October 25, 2013.

2. On completion of the investigation in the matter, a Show Cause Notice dated January 06, 2014 (hereinafter referred to as “SCN”) was issued to TSL and its promoter/directors/officers, namely Shri Pavan Kumar Kuchana (Managing Director & CEO), Shri Ramaswamy Kuchana (Director), Ms. Durga Kuchana (wife of Pavan Kuchana and a promoter group entity of TSL), Mr. Kamal Kuchana (brother of Pavan Kuchana and a promoter group entity of TSL), Ravi Kusum (Vice President – Business Development of TSL) and Shri V K Prasada Rao (CFO of TSL). These entities are hereinafter collectively referred to as “Noticees” and individually by their respective names.
3. TSL is a Hyderabad based company incorporated on September 23, 1999 and it is in the business of providing Information Technology (IT) solutions. It desired to raise capital through IPO issue of 55,00,000 shares of ₹10 each and for this purpose the Red Herring Prospectus (RHP) was filed by the company through its Merchant Banker, PNB Investment Services Ltd. (PISL), on September 19, 2011. The IPO opened on September 29, 2011 and closed on October 04, 2011. The company raised an amount of ₹82.50 Crore through issue of 55 lakh shares at a price of ₹150 per share. The prospectus for the issue was filed on October 11, 2011. After deducting issue expenses, ₹80.50 crore was transferred to TSL’s bank account maintained with Indian Bank, Hyderabad on October 19, 2011. The shares of the company were listed on the National Stock Exchange (NSE) and the Bombay Stock Exchange (BSE) on October 19, 2011. On this day the price of the scrip opened on BSE at ₹ 157.40, touched a high of ₹ 185 and a low of ₹38.50, which was 74.33% lower than the issue price and it closed

at ₹55.85. On this day, a total of 9,13,01,270 shares of TSL were traded on the NSE and the BSE and out of this only 5.15% (approx.) were delivery based.

4. The findings of the investigation and allegations in the show cause notice (SCN) are being summarily outlined hereunder. The details of each allegation have been discussed at length later in the order while considering them separately.
 - a) TSL did not disclose about the cancellation of allotment of land at Warangal due to delay in setting up the proposed industry by it. The actual facts, if stated may have exposed their inability to adhere to work completion schedule and in general their project management experience. It has been alleged that TSL made mis-statements in the offer document by concealing the information about cancellation of allotment of land in Warangal.
 - b) TSL made factually incorrect statement in the offer document about the pan global presence of its officers/employees in order to present a rosier picture about the company and misled the investors into subscribing to its shares.
 - c) TSL used IPO proceeds to repay the pre-existing liability of ₹34.50 crore incurred by raising loan through ICDs, without making proper disclosures about it in the offer document.
 - d) The Share Purchase Agreement (SPA) dated November 24, 2007 entered into between TSL and Mr. Dinesh Kumar Singhi had a condition for buy-back of shares held by Mr. Dinesh in case TSL fails to conclude IPO within the stipulated period. TSL failed to bring out the IPO within the stipulated period. Right to buy-back accrued to him and he consented not to exercise the right for a period of one year. It has been alleged that the narration about the buy-back of shares and the consent given by Mr. Singhi in the offer document was misleading and not based on facts.
 - e) TSL placed purchase order worth ₹10.12 crore with Wiselink Technologies Pvt. Ltd. (WTPL) on September 30, 2011 in which Mr. Vinod Babu Bollikonda, Vice-President (Technology) of TSL, is a Director. TSL failed to make disclosure in the offer document about the details and nature of transactions involving IPO proceeds with a Key Managerial Person (KMP), which resulted in suppression of material information from the public.

- f) TSL transferred at a premium 50 lakh shares on October 1, 2009 to Verisoft Business Solutions Pvt. Ltd., i.e., a company in which in-laws of Mr. Pavan Kuchana are directors, as consideration towards acquisition of a software product called Mobile Virtual Network Enabler. TSL has not made disclosure in the offer document about the nature and extent of interest of its directors in any property acquired by TSL within a period of two years before the date of prospectus.
- g) Most of the clients and vendors of TSL located in USA were having similar addresses, website creation dates, website content etc. and expenses for creation of their websites and for incorporation of many of such companies were borne by TSL. Mr. Pavan Kuchana, Ms. Durga Kuchana, Mr. Kamal Kuchana and Mr. Ravi Kusam, who are persons connected with TSL and/or related to its MD, were also connected with these clients and vendors of TSL in different capacities or roles, such as shareholder, director, secretary, treasurer, vice-president etc. Further, communications sent to most of such entities returned undelivered. It has been therefore alleged that most of the clients and vendors of TSL were book companies located in USA and were connected to TSL and Pavan Kuchana. The SCN details the modus operandi adopted by TSL in transferring around ₹35.45 Crore of IPO money (this includes money raised through ICDs and later repaid out of IPO proceeds) to its four vendors located in USA, namely, Crest Solutions Inc., Cyma Network Solutions Inc., Kyros Tech Systems Inc. and Helia Software Solutions Inc., and bringing back most of these amounts by showing it as revenue from its clients during the period April 2011- March 2012. Parts of IPO proceeds were also siphoned off in this process. The amount received from clients were once again recirculated to its vendors and credited back to TSL's bank account through the client account and shown as revenue of TSL. Thus, it has been alleged that TSL churned the IPO proceeds in the garb of vendor payments and receipts from clients to show more revenue and more profits using identical vendors and clients which bloated its revenue to ₹172.15 crore and profit to ₹13.34 crore in the Financial Year 2011-2012. It has been also alleged that parts of IPO proceeds were also siphoned off in this circular movement of funds.
- h) Though TSL created fictitious entries and bloated the books of accounts for the financial year 2011-2012, Mr. Pavan Kuchana (CMD) and Mr. Prasada Rao (CFO) reviewed the financial statements of the company and certified them as true.

- i) It has also been alleged that the purchase order for software placed by TSL with WTPL was very sketchy and TSL diverted the IPO proceeds by circuitously transferring ₹3.50 crore to Mr. Dinesh Kumar Singhi through WTPL.
 - j) TSL transferred ₹23 crore from the IPO proceeds to Silverpoint Infrastructure Ltd. as ICD. It has been alleged that the money was not invested in high quality interest bearing liquid instrument as stated in the offer document. Further, the money was not recalled by TSL in terms of the directions of the interim order.
 - k) TSL funded Rose Valley Merchandise Pvt. Ltd., Shreya Multitrade Pvt. Ltd., Baba Bhootnath Trade and Commerce Pvt. Ltd. and Overall Financial Consultants Pvt. Ltd. to trade in its own shares on the day of listing and absorbed their losses. For this, they utilised the IPO proceeds and funds were transferred through a circuitous route of multi-layered transactions through Silverpoint and others.
 - l) It has been alleged that around 60.05% of the IPO proceeds (₹48.34 crore) were utilised for purpose other than the disclosed objects in the offer document. Apart from this, TSL also transferred ₹23 crore as ICD to Silverpoint which was circulated/transferred to traders to absorb losses suffered by them by trading in the shares of TSL on the day of listing. It has been also alleged that no money was utilised or efforts were made to develop new SEZ centre at Hyderabad for which ₹9.15 crore was earmarked. Thus, it has been alleged that the IPO proceeds were utilised largely for purposes other than for which they were envisaged in the offer document.
5. In view of the above, it has been alleged that the acts and omissions on the part of TSL, Pavan Kuchana, being the Managing Director of TSL, and Ramaswamy Kuchana, being director and promoter of TSL, amounted to violation of section 12A(a), (b) and (c) of Securities and Exchange Board of India Act, 1992 (SEBI Act) 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 Practices relating to Securities Market) Regulations, 2003 (PFUTP Regulations) 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). With regard to Durga Kuchana, Kamal Kuchana and Ravi Kusum, who were allegedly involved in creation/incorporation of fictitious entities for purposes of entries in

books of accounts and V K Prasad Rao, who allegedly reviewed and certified the financial statement as true, it has been alleged that they have violated the provisions of section 12A(a), (b) and (c) of SEBI Act read with regulations 3(b), (c), (d), 4(1), 4(2)(e), (k) and (r) of the PFUTP Regulations, 2003.

6. The Noticees have filed their replies in the matter. Subsequent to filing of the replies, an opportunity of personal hearing was granted to all the Noticees on February 13 & 14, 2017. The hearing was rescheduled to March 16, 2017 and subsequently to April 10, 11 and 12, 2017 at the request of counsels for certain entities. Advocate Ankit Lohia appeared for hearing on April 10, 2017 and April 12, 2017 on behalf of TSL and Mr. Pavan Kumar Kuchana. Advocate Nirman Sharma appeared for hearing on April 11, 2017 on behalf of Mr. Ramaswamy Kuchana, Ms. Durga Kuchana and Mr. Kamal Kuchana. Advocate Shreya Parikh appeared for hearing on April 11, 2017 on behalf of Mr. Ravi Kusum. Mr. V K Prasada Rao did not appear for hearing. In response to the hearing notice dated December 16, 2016 scheduling hearing on February 13, 2017, Mr. Prasada Rao requested for copies of balance sheet of the company bearing his signature. Vide letter dated February 10, 2017, it was clarified to him that as CFO, he was under obligation to certify the balance sheet and annual financial statements and it can be negated only by producing material evidence in support of his claim. He was granted another opportunity of hearing on March 16, 2017 and April 11, 2017. However, Mr. Prasad Rao did not appear for hearing. As sufficient opportunities of hearing have been given to him, I am inclined to proceed against him on the basis of material available on record. The summary of replies and submission of the Noticees are as under:

A. Taksheel Solutions Ltd. and Mr. Pavan Kuchana have filed common replies, which are dated September 26, 2014 and October 4, 2016. They have also filed written submissions dated May 3, 2017 post the hearing. The summary of the replies and submissions are as under:

- Pavan Kuchana has done his Masters in Computer Science from City College of New York. He used his friends/connections in United States of America to gain business for TSL. His friends were interested in giving business to TSL through their own firm/entities, but they lacked in legal structures. Hence, in order to expand business of TSL,

Pavan Kuchana, assisted them by incorporating companies in the name of Durga Kuchana and Ravi Kusam and subsequently transferring those companies to his friends, as per understanding between Pavan Kuchana and his friends.

- TSL was a profit making company till 2011; after the interim order, the operations of the company have come to a standstill.
- With regard to status of land allotted to TSL at Warangal it has been submitted that the land was allotted to TSL on February 23, 2006 by Andhra Pradesh Industrial Infrastructure Company Limited (APIICL) subject to various terms and conditions, which TSL could not comply within the time frame. However, this non-adherence to time frame did not lead to dispossession of TSL from the land. This is evident from the fact that APIICL vide its letter dated October 10, 2008 (barely 2 days after the APIICL order of cancellation of land allotment) requested the Transmission Corporation of Andhra Pradesh Limited (APTRANSCO) for electricity connection at TSL site at Warangal. On February 23, 2009, TSL informed APIICL about the work done by it at the Industrial Park at Warangal. APIICL did not raise any objection regarding possession of land by TSL even after receiving the information about activity done by it on the land. On March 29, 2011, the District Industries Centre wrote a letter to Divisional Electrical Engineer, APNPDCL, Rural, forwarding their application for permission for connection load of 30 KVA to the TSL site at APIICL land. It has been also stated that prior to the IPO, i.e. from June 29, 2011, TSL had started its Non-SEZ software development centre at Warangal. It has been thus submitted that TSL continued to be in possession of the land allotted to it at Warangal and it was never transferred back to APIICL. It has been also submitted that cancellation order was reviewed as is evident from the minutes of meeting held on December 15, 2010 between Hon'ble Minister IT&C and VC & MD-APIICL and time to comply with the terms of allotment was extended by a further period of six months. Further, during the review meeting on April 28, 2011, it was decided not to cancel the allotment of land to TSL. Thus, at the time of IPO issue, the cancellation order stood revoked. Therefore, TSL did not make any misstatement in the DRHP, RHP or prospectus in regard. It has been submitted that considering the risk

associated with the land, it was mentioned under risk factors in the offer document.

- With regard to pan global presence of its employees, TSL has submitted that it had no intention of falsely creating any impression of a pan global presence. TSL had intended to send its employees to various destinations in future based on its ability to obtain necessary visas and work permits to do so. If the company's intention was miscommunicated or misstated, the same can be attributed to the merchant banker (PISL), who was responsible for drafting of the offer documents, which are highly technical, nuanced and lengthy documents. TSL further stated that, at the time of the issuance of the offer document, TSL had furnished the list of all its 65 employees and the information that they were located only at Hyderabad and Warangal centres to the merchant banker. Therefore, the fact that TSL was not having any employee outside India was known to the merchant banker. Further, the fact that TSL had office in USA and Singapore shows that the company had presence beyond India. Inclusion of Europe was a typographical error which has been admitted by the merchant banker also. The risk factor mentioned under the head employees is very peculiar and a standard risk factor in the offer documents of many IT companies. It appears that merchant banker has simply copied it from the offer documents of other IT companies. It has been submitted that they inadvertently failed to modify the offer document. Further, the statement was made under the heading 'external risk factors' to caution investors and hence cannot be construed to be a positive representation made with the intent of drawing investors.
- With regard to non-disclosure about five ICDs raised in May-June 2011 and September 2011 it has been submitted that the information about raising of ICDs and the purpose for which they were raised, i.e. to meet working capital requirement, was shared with PISL but the same was not reported by them. Copy of email dated August 25, 2011 sent to PISL has been relied upon in this regard. The decision to make disclosure or not was taken by the merchant banker. As regards the repayment of ICDs of ₹ 34.5 crore from the IPO proceeds it has been submitted that it was only after the completion of the IPO that the Board of TSL decided on October 13, 2011 to repay the ICDs from the IPO proceeds, which were to be replenished subsequently from the

internal accruals of TSL. Such a decision was well within the discretion of TSL's Board and was taken only with a view to reduce the burden of interest that had been mounting due to the large time gap between the issuance of the DRHP in December 2010 and the actual IPO. Further, at page 42 of the offer document under the heading "Financing the incremental Working Capital Requirements" it has been mentioned that in the year 2010-2011 they had met a total of ₹72.76 Crore of their working capital requirements through their own funds and the working capital requirements for the year 2011-2012 has been stated to be in the tune of ₹115.52 Crore. In the objects of issue under the head "Interim use of funds" (at page 44 of the offer document) stated that *"we may temporarily use the IPO proceeds to reduce outstanding overdrafts."* Similar disclosure was there under Risk Factor for general corporate purposes, hence, it has been submitted that proceeds were utilised for the purposes mentioned in the prospectus. The ICDs were not raised for any specific object but were only utilised for general day to day requirements of the company and for the benefit of the company. It has been also submitted that these ICDs cannot be categorised as bridge loan as there was no collateral securing these ICDs and these ICDs were not raised to fill in the gap of IPO proceeds. In this connection reliance has been placed upon SEBI judgement and order in the matter of IPO of Onelife Capital Advisors Ltd.

- With regard to buy-back arrangement, it has been submitted that a reference to the provision of Share Purchase Agreement dated November 24, 2007 (SPA) leaves no room of doubt that once TSL comes out with IPO that too with the consent of Mr. Singhi for lock-in of shares allotted to him then he was no more entitled to any buy back right and he could have disposed his shares only in the secondary market after the expiry of lock-in period. Further, with regard to this arrangement there is no allegation of suppression of any material fact. The disclosure made in the risk factor is appropriate and adequate.
- As regards the order placed with WTPL for purchase of Mobile Interactive Solutions Software it has been submitted that quotations were called and two companies provided detailed quotations and basic drawings showing the manner in which the said software will be developed. The quotations were discussed with Mr. Vinod Babu, who observed that the prices quoted were very high and if he is given an opportunity he

can develop the software for the company at a lesser price. Subsequently, he forwarded a fresh quotation through his company WTPL vide letter dated July 12, 2011. Though, initially TSL was not having any plan to buy the software but subsequently they decided to buy the same and utilise the IPO proceeds for it, out of the General Corporate Purposes Fund. Further, Vinod Babu resigned from TSL on September 28, 2011 (i.e. before the opening of the issue on September 29, 2011) and the order for software was placed later (i.e. on September 30, 2011). Hence, he was not a KMP as on the date of purchase of software. His name remained in the offer as KMP due to an inadvertent slip in updating. With regard to appearance of his name in the list of employees (as on October 31, 2011) furnished to SEBI, it has been stated that as some salary dues had to be paid to him and the list of employees was taken from the salary system of TSL, therefore his name was there. There was no intention on their part to show him as KMP as on October 31, 2011. It has been also submitted that the information about purchase order dated September 30, 2011 could not be included in prospectus due to an inadvertent slip in updating the same and the details of purchase order were not informed to the merchant banker as further discussions with regard to final decision of executing the order was pending and no payments were made by the company to WTPL.

- It has been also submitted that subsequent to the interim order they had requested WTPL to cancel the order and refund the money. WTPL however informed that they had already initiated work and hence the same would not be possible. With regard to transfer of Rs.3.5 crore by WTPL to Mr. Singhi, it has been submitted that they are unaware of any such transfer of funds by WTPL.
- The mother-in-law and father-in-law of Pavan Kuchana were directors of Verisoft Business Solutions Pvt. Ltd. till March 11, 2009. They both resigned from the directorship of the company and transferred all their shareholding to new directors namely, Mrs. Mandadi Sarojana and Mr. Harikiran Kakarala. Copy of resignation letters have been submitted. It has been also stated that Ms. G Lalitha (mother-in-law of Pavan Kuchana) continued with Verisoft on the request of new directors till November 16, 2009 and during this period she signed the software purchase agreement with TSL on behalf of Verisoft. As the in-laws of Mr. Pavan Kuchana were not

associated with Verisoft at the time of filing of the offer documents therefore, TSL did not make any disclosure regarding the purchase order in the offer document. With regard to sketchy details contained in the purchase order, it has been submitted that they have developed various other products and tools by making use of the purchased software application which has brought value to TSL. Copy of various documents claiming to contain details of various software tools developed by them through the use of the software Mobile Virtual Network Enabler, purchased from Verisoft, have been furnished. It has been also submitted that products developed through the use of the software had generated interest of various companies, including MNCs like Ericsson and Vodafone.

- With regard to payment of money raised through ICDs to vendors and from vendors to clients and further to TSL is concerned, it has been submitted that money raised from ICDs were used for their immediate requirements and was therefore paid to vendors. They are not aware as to what the vendors did with the money after receiving it. Their transactions with clients and vendors are genuine and independent of each other.
- It has been submitted that though most of the vendor and client companies were incorporated in USA by Durga Kuchana and Ravi Kusam, they both had only facilitated the incorporation and opening of bank account of these companies on the instructions of Pavan Kuchana. Pawan Kuchana had instructed these persons to incorporate these companies in order to gain business for TSL. The shareholding of these companies were later transferred to the persons for whom they were created. Documents to show transfer of companies to third parties have been furnished. Further, Kamal Kuchana had incorporated only one company – Alagya Technologies Inc. in USA. This company was incorporated by him in 2006 for rendering services in USA and not for the purpose of doing business with TSL. It has been submitted that at the time of transactions with TSL these companies were not operated or associated with TSL or promoters/directors of TSL and each company's transactions with TSL as its vendors and clients were independent and were of commercial nature. The payments to the vendors were distinct and unconnected with the payments received from clients, even if the entities are the same.

- TSL had made websites for clients/vendors as a matter of courtesy owing to relationship with them. The websites were developed or caused to be developed by TSL on the basis of sample template and creation and further change/modification of the website with the approval of clients cannot be linked to issue of summons by SEBI or passing of the interim order as the development of website was ongoing at that time.
- In order to gain business for TSL, Mr. Ravi Kusam and Durga Kuchana incorporated various companies and duly transferred them to various individuals. They also resigned from the position of being authorised signatory of bank accounts of such entities. Pavan Kuchana helped them with incorporation and opening of bank account of these companies. While assisting in these initial paper work, Mr. Pavan Kuchana had signed some pre-printed designations in account opening forms. During this process, by mistake his name got entered as account signer of Felix Technologies Inc. Kamal Kuchana was not involved in incorporation of these companies. He had incorporated Alagya in 2006 for his own business purposes. It has been submitted that subsequent to the transfer and at the time of transactions with TSL as clients/vendors these companies were acting independently and transactions were commercial in nature.
- The allegation of siphoning off of IPO proceeds is premised on the basis that payments have been made to entities outside India and that there have been transactions of receipt as well as payment with the same entity. In this regard, TSL has submitted that the inference drawn by SEBI is completely erroneous as considering the nature of services rendered by TSL, it is a common industry practice that a client that engages a Company for providing one type of software services can also be a vendor of that Company for other types of services. Transaction between TSL, its vendors and clients are independent and different. Copy of some Statement of Work (SOWs) to show genuineness of the transactions with clients/vendors have been filed. It has been submitted that they are not concerned with the transactions which their vendors may enter with others. Merely because some of the clients of TSL has also entered into some transactions with its vendors the SCN has wrongly drawn adverse inferences against TSL without highlighting any other discrepancy or proof. With respect to receipt of funds from Felix

in Pavan Kuchana's account it has been submitted that the receipt was on account of rendering of certain management support to Felix by Mr. Pavan Kuchana in his individual capacity. Copy of agreement has been furnished.

- With regard to funding Rose Valley Merchandise Pvt. Ltd., Shreya Multitrade Pvt. Ltd., Baba Bhootnath Trade and Commerce Pvt. Ltd. and Overall Financial Consultants Pvt. Ltd. by TSL to trade in its own shares on the day of listing it has been submitted that they have no nexus/connection with any of these entities and that they have not funded any of them. It has been also submitted that they are not in a position to comment upon utilisation of IPO money which was advanced to Silverpoint for genuine reasons and its further utilisation by various other entities for want of knowledge. It has been also submitted that Silverpoint has returned the principal amount along with interest therefore it cannot be said that they have funded trades as alleged.
- TSL placed ICD with Silverpoint Infratech Ltd. in order to earn interest over funds lying idle after the IPO. Further, after receipt of IPO proceeds, they negotiated with Genex for acquiring its GRC division. Post completion of negotiations they wrote to Silverpoint vide letter dated December 2, 2011 to return the ICD money. However, vide letter dated December 7, 2011, Silverpoint expressed its inability to return the amount for at least next 4-5 months as it had already deployed the funds elsewhere. Thereafter, TSL renegotiated the deal with Genex and they entered into a tri-partite Business Purchase Agreement (BPA) dated December 19, 2011 wherein Genex agreed for transferring business after receiving part payment from TSL and a guarantee being provided by Silverpoint for payment of the remaining purchase consideration. After the passing of the interim order dated December 28, 2011, TSL requested Silverpoint to give back the amount of ICD, however it refused as it had stood as an irrevocable guarantor to Genex and Genex refused to hold the execution of the BPA as it had already transferred confidential information, important software and their codes to TSL.
- It has been also submitted that vide letter dated May 25, 2012 it was informed by Genex that they have received the complete purchase consideration of ₹24 crore from

Silverpoint as per the tri-partite BPA. Silverpoint also transferred ₹ 46 lakh to TSL as the balance in interest on the amount of ICD of ₹ 23 crore. It has been also submitted that the whole amount and interest has been duly received by TSL and the amount was utilised towards the objects of the issue. Further, before lending to Silverpoint they had discreetly verified the market standing and repayment capacity of Silverpoint and the fact that Silverpoint has repaid the amount leaves no doubt that it had sound financial standing.

- With regard to deviation from objects of the issue, it has been stated that they have not paid any amount to Mr. Singhi under the alleged arrangement with WTPL. The transaction between Mr. Singhi and WTPL could be clarified by them. It has been submitted that the allegation that 60.05% of the IPO proceeds were utilised for purposes other than the disclosed objects is wrong. The ICD with Silverpoint was placed keeping in mind the investment perspective. The new SEZ facility at Hyderabad could not be developed by TSL as after passing of the SEBI order their entire mechanism came to a standstill and most of the employees left their company.
- With regard to allegation of fictitious entries in books of accounts, TSL has submitted that the financial statements have been prepared following applicable accounting standards incorporating the true facts which are available on record. The transactions between company and its vendors and clients were genuine. It has also submitted copy of agreement, statement of works to show that the transactions were genuine. It has been submitted that TSL is not concerned with transactions of vendors subsequent to transfer of funds by TSL.

B. Ravi Kusam replied vide letter received on August 25, 2014 as under:

- He was employed with TSL from September 2000 to January 2014. He was instructed by Pavan Kuchana to incorporate four companies in his name and four companies in the name of Mrs. Durga Kuchana (wife of Pavan Kuchana), which upon incorporation and opening of bank account were to be transferred to individuals who wanted to work with TSL. Accordingly, during his business visit to USA he assisted in incorporating

Ami Technologies Inc., Rasax Soft Inc., Cyma Network Solutions Inc., Helia Software Solutions Inc., and after incorporation transferred these companies to clients and vendors of TSL and resigned from the position of authorised signatory. These 4 companies were transferred to different individuals (Racha Anil Kumar, Swarna Manjari, DVN Padma Priya and D Suresh Babu) on March 7, 2011 and March 12, 2011. Copy of minutes of meeting of the companies and share transfer document has been furnished.

- With regard to Crest Solutions Inc. and Felix Technologies Inc., it has been submitted that these companies were transferred to Mr. Kiran, who was located in Texas. At that point of time he was requested by Mr. Kiran to open and operate the bank accounts for his companies in New Jersey. He was authorised by Ms. Durga to operate the bank account of Kyros. After opening the bank account he gave few blank signed cheques and all banking passwords and related information to concerned person at Kyros, who used them.
- At the time when he was shown as director/president/secretary of these companies, on pre-printed forms /documents, these companies were in existence. At the time of transfer of funds to these companies by TSL he was not associated with them.

C. Durga Kuchana replied vide letter dated September 10, 2014 as under:

- She was not involved in any kind of day-to-day operation of TSL or other companies where the funds were transferred. She is a housewife and she assisted in incorporation of Fausta Software Solutions Inc., CV Cox Networks Inc., Ermin Technologies Inc. and Kyros Tech Systems Inc. on instructions of her husband. Further, she made Mr. Ravi Kusam as the authorised signatory for opening bank accounts of Fausta, Ermin and Kyros on instructions of her husband.
- The ownership and entire shareholding of these companies was transferred to the other entities (Racha Vijay Kumar, Garikapaati Rama Rao, DVN Padma Priya and D Suresh Babu) on March 05, 2011 and March 12, 2011. Copy of minutes of meeting of the companies and share transfer document has been furnished. It has been also stated that she had no role in any activities of any of these companies, whether financial or

otherwise.

D. Ramaswamy Kuchana replied vide letter dated September 10, 2014 as under:

- He was not involved in the day-to-day work of the TSL and was merely a non-executive director in TSL. He joined the Board of TSL on the insistence of his son Pavan Kuchana and acted on the basis of instructions of his son.
- He has also submitted that he has no connection with Verisoft Business Solutions Pvt. Ltd. as director/officer/ signatory & the common address was only because the address was that of Pavan's mother-in-law.

E. Kamal Kuchana replied vide letter dated September 3, 2014 as under:

- He is not involved in working of TSL nor does he have any idea about any wrongdoing by TSL. He is a part of promoter group of TSL as Mr. Pavan Kuchana is his brother and he holds 3,18,024 shares of TSL. He has been residing in USA since 1997 and in October 2006 he incorporated Alagya Technologies Inc. in USA to render IT services. The relationship between Alagya and TSL is purely professional as it has provided business solution to TSL as per agreed terms and for due consideration. It has been submitted that as the advance from TSL was received by Alagya before March 31, 2011 therefore it cannot said that money raised by TSL through ICD or IPO was used to pay Alagya. Copies of certificate of incorporation of Alagya and agreement between Alagya and TSL has been furnished.

F. Mr. V K Prasada Rao has replied vide letter dated February 6, 2014, January 18, 2017 and March 13, 2017 as under:

- He is a Chartered Accountant and he was appointed as CFO of TSL in June 2007. He resigned from the post of CFO in December 2012 and was relieved from the services with effect from April 1, 2013. The scope of his work was limited to overseeing the day to day work of accounting, ensuring audit and closure of financial statements periodically. The accounts department used to receive documents from other department, upon receipt they were required to verify the documents with all relevant

records and initiate accounting and payment actions after instructions from Managing Director.

- He is not responsible for the contents of the prospectus nor for the utilisation of the IPO proceeds as he was not vested with any financial powers regarding deployment of funds. The funds were utilised as per directions of the Managing Director. He was not privy to any information about any person being related to each other in certain transactions as no such information was shared with him by the directors/management.
- He has denied that he had signed/certified the balance sheet or reviewed the allegedly inflated financial statements for the period 2011-2012. It has been also submitted that he was not even provided with copies of such statements, nor consulted in their preparation by the company. It has been submitted that no original document/certificate bearing his signature has been shown to him by SEBI.
- Further, it has been stated that there is no Board resolution or Audit committee resolution authorising him to sign the balance sheet. His name might have been included by the company so as to fill in a standard format or with malicious intentions. As soon as he became aware of this, he requested the company to correct the irregularity. He resigned from the company as they did not act on his request.

Consideration and findings

7. The allegations levelled against the Noticees in the SCN, their replies and findings with respect to each allegation are as under:

I. Status of land allotted in Warangal for SEZ development

8. TSL has listed out various risks related to the company and business in the offer document. Risk factor 11 under the sub-heading Internal Risk Factors deals with risk associated with land allotted to it at Warangal. The relevant paragraph reads as under:

“Our Company has executed an Agreement for Sale of Land with Andhra Pradesh Industrial Infrastructure Corporation Limited (APIICL) for acquisition of Land admeasuring 5 acres situated at Industrial Development Area, Hanamkonda Mandal, Warangal. In terms of the said Agreement, our Company is required to commence and complete the construction work within the time specified therein, failing which the allotment may be cancelled. Our Company has though commenced the construction at this Non-SEZ site; it has not been able to adhere to the specified timelines. Our Company has applied to APIICL for extension of time line for construction work and is awaiting the approval. Our Company has paid the consideration to Andhra Pradesh Industrial Infrastructure Corporation Limited and has been paying the relevant dues in respect of the said land. Our Company is completed the construction work which will be funded through the internal accruals and is awaiting the approval from APIICL for delay in construction and registration formalities”.

9. With respect to aforesaid statements in the prospectus, it has been alleged in the SCN that TSL made factual mis-statement about status of land allotment in the RHP and offer document. Factual status relating to cancellation of land allotted to it in Warangal would have led to adverse inferences being drawn about the project management experience of TSL and its ability to adhere to work completion schedule as per terms of the agreement. It has been alleged that the omission of the information that the land allotment has been cancelled by APIICL has misled prospective investors and it was in violation of regulation 57(1) of SEBI (ICDR) Regulations, 2009.
10. It is observed from the SCN that TSL executed an agreement for purchase of 5 acre of land situated at Industrial Development Area, Warangal with APIICL on February 23, 2006 and the land was handed over to TSL on February 24, 2006 after it paid the consideration amount of ₹ 5 lakh. As per the terms of allotment, the said land was to be occupied by TSL for setting up of an IT park/industry and the construction work was to commence and get completed within specified time lines. It was alleged in the SCN that TSL could not adhere to the time schedule and there was lack of any progress of work towards utilisation of the land, therefore APIICL served upon TSL cancellation notices during 2006 and 2007. Subsequently, the said allotment was cancelled by APIICL vide communication dated August 27, 2008.

11. TSL in its reply has submitted that even after the aforesaid cancellation of land allotment they continued to be in possession of the land and had started working from it before the filing of the RHP and prospectus. In this regard, it has been stated that barely two days after the said cancellation order, APIICL vide its letter dated October 10, 2008 requested APTRANSCO for electricity connection to TSL at Warangal. On February 23, 2009, TSL informed APIICL about the work done by it on the allotted land. On March 29, 2011 the District Industries Centre wrote a letter to Divisional Electrical Engineer, APNPDCL, Rural, forwarding their application for permission for connection load of 30 KVA to the TSL site at APIICL land. It has been also stated that prior to the IPO, i.e. from June 29, 2011, TSL had started its Non-SEZ software development centre at Warangal. Apart from this it has been submitted that the Government of Andhra Pradesh in meetings held on December 15, 2010 and April 28, 2011 reviewed the cancellation order and decided not to cancel the allotment of land to TSL. Subsequent to this, TSL vide letter dated September 5, 2011 requested APIICL for restoration of allotment of land. APIICL, keeping in view of the recommendation of Government of Andhra Pradesh and request of TSL, vide letter dated October 08, 2011 informed TSL that its request for restoration of allotment would be considered subject to payment of ₹ 8,09,400/- (i.e. ₹ 2,02,350/- towards restoration of allotment and ₹ 6,07,050/- towards delay condonation fees). It is evident from the receipt of APIICL annexed at page 127 of reply of TSL, that this amount was paid by TSL on November 28, 2011 and the allotment of land was restored to TSL by APIICL.
12. It is noted that after execution of the agreement for sale of land between TSL and APIICL, the possession of the land was handed over to TSL on February 24, 2006. From the documents submitted by TSL along with the reply, it appears that it remained in possession of the land since the time when it was allotted to it and during the filing of offer documents. Thus, it appears that at the time of filling of RHP and prospectus, TSL was in possession of the land and had started working from there, as the Government of Andhra Pradesh granted an extension of time to TSL to comply with the terms of allotment and decided not to cancel the allotment of land to TSL as per the review meeting on April 28, 2011, which is evident from Annexure F at page 330 of the reply of TSL. I find merit in the submissions of TSL that the decision to cancel the land allotment was reviewed and extension was granted and that if the allotment was cancelled there could have been no extension. Thus, it appears that though

APIICL had proposed cancellation, the cancellation did not take effect and the land was restored back to TSL, as seen from the documents filed along with the reply. In such circumstances, the disclosure that *“Our Company has applied to APIICL for extension of time for construction work and is awaiting the approval”* appears adequate and correct. Further, from the disclosure in the offer document that *“Our Company has though commenced the construction at this Non-SEZ site; it has not been able to adhere to the specified timelines....”* it appears that TSL’s disclosure is not a mis-statement of fact to mislead the investors.

II. Status of Employees

13. Under external risk factors, TSL has made the following statement in point no. 8, page xxix of the offer document.

“We have Indian nationals, as our employees, working in the United States, Europe and other countries and may depend on our ability to obtain necessary visas and work permits. ...”

Further, on page 7 of the offer document under the heading Geographical Expansion, TSL has made the following statement:

“We are in the process of expanding our operations and we have recently started our operations from Delaware. We already have our presence in India and New Jersey. We propose to expand our operations in Asia-Pacific markets and Middle Eastern countries”.

14. It has been alleged in the SCN that the statements made about the presence of its employees at various locations outside India was factually incorrect and was intended to mislead the investors into believing that TSL has a pan global presence and its employees are working on various projects and client locations spanning across the world. It has been alleged that this was in violation of regulation 57(1) of SEBI (ICDR) Regulations, 2009 and clause 2(XVI)(B)(2) of Part A of Schedule VIII of SEBI (ICDR) Regulations, 2009.
15. TSL in its reply has submitted that it had intended to send its employees in future to various destinations, including the USA, based on its ability to obtain the necessary visas and work permits to do so. The company's intention was miscommunicated or misstated by the

merchant banker who were responsible for drafting of the offer documents. It has been also submitted that the statement was made under the heading 'external risk factors' and hence cannot be construed to as positive representation about is employees.

16. In this regard, it is noted from the list of employees and other details furnished by TSL that it did not have any employee at places other than Hyderabad and Warangal and that Shri Pavan Kuchana, MD of TSL and Shri Ravi Kusam, VP Business Development of TSL were the only persons who had visited abroad during 2010-11 and 2011-12 (till October 2011). The statement of TSL in the offer document that *"We have Indian nationals, as our employees, working in the United States, ... and other countries ..."* clearly gives the impression that they are already having several Indian nationals working for them as their employees on foreign soil. Further, it has been also mentioned in the offer document that TSL has *"recently started operations from Delaware"*. Such statements made in the offer document give an impression to a person considering the viability of subscription to the IPO that the company at the time of issue of prospectus was having its employees working in United States of America and other countries. The statement was false and it gives an impression that the business of TSL is spread across several countries and its growth is dependent on changes in legal position related to work permit/visa in jurisdictions beyond India. In view of the clear words used in the offer document and glaring misstatement of facts, the submission made by the entities that they were referring to future requirements appears to be an afterthought. This is thus a mis-representation of facts in the offer document in order to mislead investors. Though, the merchant banker to the issue has admitted that it had inadvertently made inclusion about TSL's presence in Europe, it is observed that there are other glaring misrepresentation of facts as well in this regard and the primary responsibility to verify the disclosures/statement made in the offer document was on TSL and its directors, namely Pavan Kuchana and Ramaswamy Kuchana. It is also noted that they have certified the correctness of the disclosures made in the prospectus. Certifying the Prospectus as true and correct implies that the content of prospectus and statement made therein have been verified and were factually correct and not misrepresenting in any form.
17. As regards the submission of TSL that the statement was under the heading 'external risk factors', it is observed that those statements had no basis whatsoever and as such was unwarranted. Further, apart from this statement, under the heading "Business Strategy", TSL has stated that they are in the process of expanding their operations and have started their

operations from Delaware. This statement was not borne out from documents or otherwise. Thus, the manner in which several incorrect and misleading statements have been included in the offer documents leads one to believe that TSL was intentionally projecting a far rosier picture of its business presence and prospects than what it actually was. In such circumstances, I do not find any merit in the submissions made by the Noticees. Thus, TSL and its directors have violated the provisions of regulation 57(1) of SEBI (ICDR) Regulations, 2009 and clause 2(XVI)(B)(2) of Part A of Schedule VIII of SEBI (ICDR) Regulations, 2009.

III. Non-disclosure of ICDs

18. The SCN mentions that the requirement of funds and the schedule of deployment of funds raised through IPO were given at page 36 of the prospectus. The same is reproduced below:

Table 1 - Utilisation of IPO proceeds

Sl. No.	Particulars	Total fund required (in ₹ lakh)	Estimated deployment of funds in 2011-12 (in ₹ lakh)	Estimated deployment of funds in 2012-13 (in ₹ lakh)	% of each particulars w.r.t fund required
1	Setting up a new SEZ development centre at Hyderabad	914.83	914.83		11.09
2	Setting up a new SEZ development centre at Warangal	865.64	350	515.64	10.49
3	Acquisitions and Other Strategic Initiatives	2200	2200		26.67
4	Financing Incremental working Capital	1280	1280		15.52
5	General Corporate Purpose	2411.19	1411.19	1000	29.22
6	public Issue Expenses	578.35	578.35		7.01
	Total	8250	6734.36	1515.64	100

19. It is noted from the above that apart from the cost towards setting up of new SEZ development centre at Hyderabad and Warangal, the company had earmarked ₹ 24.11 crore towards general corporate purpose to be spent in a calibrated manner during 2011-12 and 2012-13. ₹12.80 crore was earmarked for financing incremental working capital requirements

during 2011-12 and ₹22.00 crore was for acquisitions and other strategic initiatives during 2011-12. The company while explaining the amount to be raised towards general corporate purpose has stated in the prospectus (at page 43) that:

"We intend to deploy the balance Issue proceeds aggregating ₹2411.19 lakhs (29.23% of the IPO size), towards the general corporate purposes to drive our business growth. In accordance with the policies set up by our Board, we have flexibility in applying the remaining Net proceeds, for general corporate purpose including but not restricted to meeting operating expenses, initial development costs for projects other than the identified projects, partnerships, joint ventures, strategic initiatives and acquisitions and the strengthening of our business development and marketing capabilities, meeting exigencies, which our company in the ordinary course of business may not foresee or any other purposes as approved by our Board of Directors, subject to compliance with the necessary provisions of the companies Act."

20. It has been alleged that TSL had not adhered to the above estimated deployment pattern of fund. It utilised the IPO proceeds to repay the loan of ₹34.50 crore raised through Inter Corporate Deposits (ICDs) between May-June 2011 and September 2011 from different entities (mentioned in the Table 2 below) which was in far excess of the total working capital requirements for the year 2011-12 as well as the entire general corporate purpose expenses budgeted by the company for 2011-12 and 2012-13. The details of ICDs raised by TSL are mentioned below:

Table 2 – Details of ICDs raised by TSL

Name of entity	Address of entity	Date of agreement	Interest Rate p.a.	Tenure (in days)	Amount received (₹ crore)	Secured/unsecured
Amarnath Securities Ltd	1/104, Sarthak, opp. C.T. Centre, Behind Swastik Cross Rd., Ahmedabad, Gujarat- 380 009	May 03, 2011	14%	180	20	Unsecured
Gujarat Tool Room Ltd	402, Sheel Complex, 4th Floor, Mayur Colony Near Mithakali Underbridge, Navrangpura, Ahmedabad	May 29, 2011	14%	180	7.5	Unsecured
Shitalnath Buildcon Pvt Ltd	402, Sheel Complex, 4th Floor, Mayur Colony Near Mithakali Underbridge, Navrangpura, Ahmedabad	June 07, 2011	14%	180	2.50	Unsecured

Swastik Securities & Finance Ltd	33, C.R. Avenue, 9th Floor, Room No. 909, Kolkata - 700 012	Sept 11, 2011	14%	180	2	Unsecured
Rohan Finance & Securities Ltd	29A, Weston Street, 3rd Floor, room No.C-2, Kolkata- 700 012	Sept 11, 2011	14%	180	2.5	Unsecured
Total					34.50	

21. It has been alleged that TSL used IPO proceeds to repay the ICDs which were raised by it much before the date of filing of RHP and the prospectus i.e. September 19, 2011 and October 10, 2011 respectively, and that it failed to make complete and truthful disclosures about it in the offer document. The company also made a misstatement in the prospectus about the amount projected towards general corporate purposes, which continued to be shown as the likely expenditure spread across the financial year 2011-12 and 2012-13 even though, it was intended to be used during the year 2011-12 itself.
22. In terms of regulation 57 of the ICDR Regulations, read with Schedule VIII, Clause (2) (VII), sub clause (G), which deals with the manner of disclosures of source of financing of funds already deployed, states that “the means and sources of financing, including details of bridge loan or other financial arrangement, which may be repaid from the proceeds of the issue” need to be disclosed. Further, in terms of clause IX of Part D of Schedule VIII read with Regulation 58(1) of ICDR Regulations “Any disclosure in terms of any material development after the date of the latest balance sheet and its impact on performance and prospects of the company” need to be made in the offer document.
23. TSL in its reply has submitted that the information about raising of loan through ICDs in May-June and September 2011 and the purpose for which they were raised, viz. to meet working capital requirement, was shared with the merchant banker (PNB Investment Services Ltd.) as part of the due diligence questionnaire, but the same was not reported by them. It is observed that an email dated August 25, 2011 (Annexure I to reply of TSL) was sent by Mr. Ankit Das, the then compliance officer of TSL, to Mr. Subrahmanyam D of PISL in response to the questionnaire sent by PISL. The e-mail contains disclosure about loan of ₹ 30 crore availed from Gujarat Tool Room and Amarnath Securities Ltd. for working capital purpose. It is noted

that by June 2011, TSL had availed a loan of ₹ 30 crore in the form of ICD from Gujarat Tool Room Ltd., Amarnath Securities Ltd. and Shitalnath Buildcon Pvt Ltd. The name of Shitalnath was not disclosed by TSL to the merchant banker. Thus, TSL made partial disclosure to PISL about the short term loan availed by it. It is also noted from the reply to the questionnaire that TSL had stated that "no bridge loan was taken by the company". Though it has been contended by TSL that these ICDs cannot be categorised as bridge loan as there was no collateral securing these ICDs, I do not find any merit in this contention as a loan taken for a short term pending an arrangement for long term financing is termed as bridge loan in commercial parlance. Securing the loan by a collateral is not a pre-condition to term such a loan as bridge loan. It is observed that TSL had raised these loans for a period of six months while it was making arrangements for raising capital through IPO and soon after the receipt of IPO proceeds, it used the money to repay these ICDs. Thus, such loans should have been disclosed in the offer document as bridge loan. This was not done. It is also noted from the minutes of the meeting of Board of Directors of TSL that Pavan Kuchana obtained ratification of the Board of TSL for ICD loans borrowed in the meeting of the board of directors held on October 13, 2011, i.e. after the closure of issue, though most of the loan amounts were raised in May -June, 2011. Thus, the ratification of the Board was taken after a long lag and the repayment of ICDs from IPO proceeds was also not informed to the Board of TSL.

24. It is also observed that the amount raised in the form of ICDs amounted to 41.81% of the IPO proceeds. The information relating to loan raised and its repayment schedule was critical for making informed investment decision on the part of IPO investors and should have been disclosed in the prospectus. These ICDs were raised at the interest rate of 14% p.a. thereby resulting in an interest liability of ₹ 4.83 crore every year. This would have had a significant impact on the potential cash flow position of the company as well as its profitability. This fact was thus a very material development which should have been disclosed in the offer document. Further, the intended repayment of ICDs through issue proceeds was also material and vital information. In fact, the offer document at page 33 (point 25) contains a contradictory statement that "as on date, TSL has not raised any bridge loan against the proceeds of the issue". Thus, even assuming for argument's sake that the merchant banker had not made the disclosure about ICDs in the RHP and prospectus, the position contradicts with the statement of TSL that no bridge loan has been availed. In the facts and circumstances of the case, it

cannot be said that the investors would have reasonably expected utilisation of IPO proceeds for repayment of huge loan amounts raised through ICDs to be covered under the head "Interim use of funds" wherein it has been stated that TSL may temporarily use the IPO proceeds to reduce outstanding overdrafts or from the IPO fund earmarked for financing incremental working capital requirements. This amounts to misstatement in the prospectus and is in violation of clause (2)(VII)(G) read with regulation 57(1) of SEBI (ICDR) Regulations, 2009 and Clause (IX) of Part D of Schedule VIII read with regulation 58(1) of SEBI (ICDR) Regulations, 2009 and regulations 60(4)(a) and 60(7)(a) of SEBI (ICDR) Regulations, 2009.

IV. Arrangement with regard to Buy back of shares

25. Risk factor 9 under the heading Internal Risk Factors is reproduced as under:

"Our company has entered into share purchase agreement dated November 24, 2007 ("SPA") with Mr. Dinesh Kumar Singhi, in terms of which the said Mr. Dinesh Kumar Singhi subscribed to 10,00,000 shares of our company constituting 6.12% of the pre-share capital of our company at a price of Rs.100/- per equity share. The total amount invested by said Mr. Dinesh Kumar Singhi was Rs.10 crore. As per the terms agreed in the SPA, in case our company fail to conclude IPO within 18 months from the date of allotment, then our company is required to buy back the shares held by the said Mr. Dinesh Kumar Singhi at Rs. 170/- per equity share aggregating to Rs. 1700 lakh. In case our company cannot buy back the shares from the said Mr. Dinesh Kumar Singhi then the shares may be sold to a person mutually agreed. If the purchase price paid by the third party purchaser is less than the Rs.170/- per equity shares then in that event our company shall be liable to pay the difference to the said Mr. Dinesh Kumar Singhi. The period of 18 months has elapsed. However, the said Mr. Dinesh Kumar Singhi has not exercised the rights available to him under the SPA. In case this issue is not concluded then there cannot be any assurance that Mr. Dinesh Kumar Singhi will not exercise his rights under the SPA and call upon our company to buy back the shares held by him. We are in receipt of lock-in-consent letter from Mr. Dinesh Kumar Singhi dated December 27, 2010 consenting to lock-in of the shares for a period of one year from the date of listing, which over rides the buy back."

26. It is observed that in terms of the agreement, TSL was required to buy back the shares held by Mr. Dinesh in case IPO is not concluded within 18 months from the date of allotment of the

shares subscribed under the SPA, at a price of ₹ 170/- per share aggregating to ₹ 17 crore. The period of 18 months had expired and Mr. Singhi had not exercise the right available to him under the SPA. The last sentence of the above para states that Shri Dinesh Singhi vide his letter dated December 27, 2010 has consented to the lock-in of shares for a period of one year from the date of listing, which over rides the buy back. It has been also stated in this paragraph that there cannot be any assurance that Shri Dinesh Singhi will not call upon the company to buy back shares held by him if this issue is not concluded.

27. It has been alleged that TSL by stating on the one hand that “.... there cannot be any assurance....” and then saying that “consent overrides buy-back” has made misleading statements so as to indicate that the consent overrides buy back for one year only, if at all it does, in terms of the provisions contained in the consent letter. Thus, the disclosures made in this regard have been alleged to be misleading and not based on facts and that any existing buy back arrangement by the issuer at the time of IPO is in violation of ICDR Regulations.
28. TSL in its reply has submitted that the provision of SPA leaves no room of doubt that once they come out with IPO that too with the consent of Mr. Singhi for lock-in of shares allotted to him, then he was no more entitled to any buy back right and he could have disposed of his shares only in the secondary market after the expiry of lock-in period.
29. It appears from the perusal of the provisions of SPA dated November 24, 2007, particularly the paragraphs on exit route for investments, that once TSL comes out with an IPO, the only obligation on TSL and its promoters was to see that Mr. Dinesh faces no difficulty in selling the shares purchased by him in the stock exchange. Thus, I find merit in the submission made by the counsel that after conclusion of the IPO, Mr. Dinesh was no more entitled to any buy back right and he could have disposed his shares only in the secondary market after the expiry of lock-in period. With regard to the statement in the offer document that *“In case this issue is not concluded then there cannot be any assurance that Mr. Dinesh Kumar Singhi will not exercise his rights under the SPA and call upon our company to buy back the shares held by him.”* It is observed that the statement begins with the words “in case this issue is not concluded...” Thus, it talks about the contingency of revival of right to buy back in case the IPO is not successful. As the issue has been successfully concluded this contingency does not arise. Another question for my

consideration is whether the statement “*We are in receipt of lock-in-consent letter from Mr. Dinesh Kumar Singhi dated December 27, 2010 consenting to lock-in of the shares for a period of one year from the date of listing, which over rides the buy back.*” is a wrong representation made to the public. This statement needs to be read in the context of the previous statements which indicates that the right to buy back may revive if the IPO is not successful. Therefore, I am of the view that statement cannot be said to be misleading.

V. Order placed with Wiselink Technologies Pvt Ltd (WTPL)

30. TSL placed a purchase order worth ₹10.12 crore with Wiselink Technologies Pvt. Ltd. on September 30, 2011 towards purported design and development of Mobile Interactive Solutions. As per the terms of payment, 50% advance payment (i.e. an amount of ₹5.06 crore) was paid by TSL during November 2011. The investigation revealed that Vinod Babu Bollikonda and Krishna Rao Potti Naga Venkata Tandava were on the Board of directors of WTPL at the relevant time and Vinod Babu Bollikonda was also authorized to operate the bank account of WTPL maintained with Oriental Bank of Commerce, Banjara Hills Branch, Hyderabad, in which ₹ 5.06 crore was transferred by TSL out of the IPO proceeds. It has been alleged that Vinod Babu Bollikonda was Vice President -Technology of TSL at that time and was therefore a Key Management Person (KMP) of TSL. However, TSL failed to make disclosure in the offer document about the details and nature of transactions utilising IPO proceeds with a KMP, which resulted in suppression of material information from the investors.
31. TSL in its reply has submitted that though, initially, the company was not having any plan to buy the mobile software, it subsequently decided to buy the same and utilise the IPO proceeds for it out of the General Corporate Purposes Fund. It has been also submitted that Vinod Babu resigned from TSL on September 28, 2011 (i.e. before the opening of the issue on September 29, 2011) and the order for software was placed later (i.e. on September 30, 2011). Hence, he was not the KMP when the software was purchased. It has been also submitted that the information about the purchase order dated September 30, 2011 could not be included in prospectus due to an inadvertent slip and it was not informed to merchant banker as no payment towards purchase order was made at that time.

32. It is observed that in terms of clause 2(VII)(B)(4) under part A of Schedule VIII of the ICDR Regulations, the details of all material existing or anticipated transactions in relation to utilization of the issue proceeds or project cost with promoters, directors, key management personnel, associates and group companies are required to be disclosed in the offer document. It has been submitted that the company placed purchase order with WTPL on September 30, 2011, i.e. a day after the opening of the issue on September 29, 2011. Be that as it may, it is observed from the letter dated July 12, 2011 written by Mr. Vinod Babu that quotations from WTPL were received by TSL as far back as in July 2011. It is also noted from the reply of TSL that quotations from Vinod Babu were called after the quotations received by TSL from two other persons were discussed with Vinod Babu and rejected. Thus, the transaction was anticipated and the company was in talks with only one person for purchase of the software and the person was a KMP. That the transaction was anticipated and planned can also be inferred from the fact that it was finalised by placing of order just a day after the opening of the issue. In such circumstances the submission of the TSL that it had no plan to purchase any such software is devoid of any substance and hence unacceptable. Further, the resignation of Vinod Babu one day prior to the opening of the issue also casts a doubt on the bonafides of the disclosure of KMP made in the offer documents. The conduct of TSL in placing such order with its KMP by taking resignation letter from its KMP a day before opening of the issue clearly reveals the ulterior motive of showing a KMP as an outsider and thus indirectly benefitting WTPL and Vinod Babu to the extent of ₹10 crore.
33. It is also noted that Mr. Vinod Babu Bollikonda, VP-Technology of TSL, was disclosed as KMP of TSL in the offer document. TSL was under obligation to inform PISL of any changes/additions to the KMP till the date when the equity shares of TSL started trading on the Stock Exchanges i.e. till October 19, 2011. Any change in the prospectus/offer document should have been informed to PISL or should have been updated in the offer document/prospectus. It is observed that no such change was made and Mr. Vinod Babu Bollikonda continued to be shown as a KMP in the offer document. The submission that it was not informed to merchant banker as no payments were made does not cut ice as even a planned transaction with a KMP needs to be disclosed. No such disclosure was made in the RHP or prospectus. In this connection, it is also noted from the minutes of the BoDs meeting held on October 10, 2011

that the directors of TSL have certified that they have verified the offer document/prospectus and the contents are true and no facts are omitted and misleading in any material respect. Thus, the attempt of TSL to show that Vinod Babu had resigned from TSL on September 29, 2011 appears to be a part well thought out plan to sidestep the regulations.

34. In this context it is relevant to note that the company had made a categorical statement in the prospectus (page xxx, point 8) that “no part of the issue proceeds will be paid as consideration to Promoter, Directors, Key Managerial Personnel or persons forming part of the promoter’s group”. Therefore, it can be inferred that TSL had deliberately hidden this vital piece of information from prospective investors and manipulated the placement of order to benefit Vinod Babu, using the proceeds of the IPO, by obtaining a resignation letter from him. Thus, TSL failed to make a disclosure about the intended transaction with WTPL, which led to a misstatement regarding related party transactions in violation of Clauses 2(VII)(B)(4) and 2(IX)(B)(12) of Part A of Schedule VIII read with Regulations 57(2)(a) of SEBI (ICDR) Regulations, 2009.

VI. Purchase of software product from Verisoft Business Solutions Pvt. Ltd.

35. TSL had issued and allotted 50,00,000 shares of the face value of ₹ 10/- each to Verisoft Business Solutions Pvt. Ltd. (VBSL) on October 01, 2009 for consideration other than cash at a premium of ₹ 10 per share. The said allotment of shares was for purchase of a software product called Mobile Virtual Network Enabler. The agreement with respect to the transaction was signed by Shri Pavan Kuchana on behalf of TSL and Smt. G Lalitha on behalf of VBSL on October 1, 2009. Mrs. G. Lalitha and Shri Gudimalla Janardhan Rao were directors of VBSL since its incorporation. Shri Gudimalla Janardhan Rao and Mrs. G. Lalitha are the father-in-law and mother-in-law respectively of Pavan Kuchana, Chairman and Managing Director of TSL. In other words, VBSL was a company in which the relatives of Pavan Kuchana were directors.
36. In terms of Regulations 57(1) of SEBI (ICDR) Regulations, 2009, 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. At page 98 of the prospectus, it has been disclosed by

the company that “except as stated in this prospectus, our company has not purchased any property in which any of its promoters and/or directors, have any direct interest in any payment made there-under.” Similarly, at page 121, it has been stated that “our directors do not have any interest in any property acquired by our company in a period of two years before the date of the prospectus....” In view of the above, it has been alleged that TSL failed to make disclosure in the offer document about linkages of VBSL with the directors/promoters of TSL, the nature and extent of interest of promoter/director in the payment made by the issuer for acquisition of property by issuing equity shares for consideration other than cash.

37. It has been contended that the father-in-law and the mother-in-law of Shri Pavan Kuchana ceased to be directors of VBSL from March 16, 2009. From a perusal of the resignation letters submitted by the entity, it is observed that there is no marking or stamp of VBSL on the resignation letters indicating that it was received by VBSL. Apart from this, no other supporting document has been furnished. On the other hand, there is an agreement dated October 01, 2009 between TSL and VBSL where Mrs. G. Lalitha has represented VBSL as its director. With regard to the statements that Mrs. Lalitha continued to be the director of the company at the request of new directors and that these persons had transferred their shareholding in the company to new directors, it is observed that these are mere statements for which no further details or supporting documents have been furnished. In such circumstances, I am not inclined to accept the submission that these persons had resigned from the directorship of the company. Further, the proximity of relations of the directors of VBSL with Pavan Kuchana and the nature of consideration paid towards purchase of software (i.e. 50 lakh shares of TSL) are factors that make it imperative on the side of TSL to make relevant disclosures in the offer document, more so because they would become substantial shareholders post the listing following the IPO.

38. Thus, the directors of TSL, namely Pavan Kuchana and Ramaswamy Kuchana failed to disclose in the offer document about their interests in the software purchased from VBSL in lieu of shares of TSL allotted to VBSL. This vital piece of information was suppressed by TSL and its directors from the investors while making other disclosures about VBSL. Thus, they made mis-leading statements and mis-represented the facts in the offer document in violation of regulation 57(1) of SEBI (ICDR) Regulations, 2009.

VII. Siphoning off of IPO proceeds and manipulation of books of accounts

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 registration 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	

Sl. No.	Name	Client/ vendor as per list provided by TSL	Address	Website	Website registration date	Website registered by
6	Cyma Network Solutions Inc.	Vendor	3240 E State Street Ext, Hamilton New Jersey 08619 USA	www.cymanets ol.com	31.05.11	
7	Helia Software Solutions Inc.	Vendor	3240 E State Street Ext, Hamilton New Jersey 08619	www.heliasofts olinc.com.	31.05.11	
8	Kyros Tech Systems Inc.	Vendor	3240 E State Street Ext Hamilton New Jersey 08619 USA	www.kyrostech sysinc.com	31.05.11	
9	Crest Solutions Inc.	Vendor	2540 US Highway 130 Suite 101 Cranbury New Jersey 08512	www.crestsol.c om	26.11.11	TSL through Virtu Tech Solutions Pvt. Ltd.
10	Felix Technologies Inc.	Client	4 Cotton Woods Drive Westwindor NJ 08550	www.felixtech inc.com	26.11.11	
11	Lorven Pharmacy	Client	1006 Manhattan Avenue Brooklyn NY 11222	www.lorvenph arma.com	26.11.11	
12	Naras Technologies Inc.	Client	5L Reading Road Edison NJ 08817	www.narastech inc.com	26.11.11	
13	Vemury Systems Inc.	Client	465, Meadow Road #7105 Princeton NJ 08540	www.vemurysy s.com	26.11.11	
14	Avalon Tech Systems Inc.	Client	1075 Easton Avenue Tower 2 Suite Sommerset NJ	www.avalontec hsys.com	26.11.11	

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.

42. With regard to the above, TSL has submitted that the websites were created and developed by them for their clients and vendors on sample basis hence they were similar. It has been also submitted that the process of website development and registration was ongoing before the issuance of the summons. In this regard, it is observed that the website domain names of these companies were registered by TSL or through Virtu Tech Solutions Pvt. Ltd. TSL also made payment to Virtu Tech on December 31, 2011 (₹16,500) and on January 25, 2012 (₹6,000/-). These payments were made after the date of registration of websites. Noticees have not submitted any communication/evidence to show that work for developing the websites was going on before the receipt of summons from SEBI. Thus, it appears that the statement that the website development work was going on before issuance of SEBI summons is an afterthought. Further, the SCN also mentions that subsequent to the observations in the interim order dated December 28, 2011 about similarity in website content, the webpage content and its design of the websites of entities at serial no. 1 to 8 were completely modified. To show the modifications carried out post the interim order, the SCN has provided screen shot of both the versions of ‘home’ page of Ami Technologies Inc. (the earlier version at page 19 and modified version at page 24 of SCN). On a comparison, I find that the contents therein and design of the webpage were totally recast. This subsequent act of modification of the contents and design of the website post the interim order indicates that TSL was attempting to distinguish its clients/vendors from one another and to show that each client/vendor was genuine. Hence, the submissions of the Noticees that the similarities in contents of the

websites developed by TSL, directly or through an external vendor, was due to the fact that these websites were developed on the basis of sample template is not acceptable. Further, the domain names of these websites were registered by TSL. Even if it is considered that TSL is a software company, I find it strange that it will register domain names of its own purported clients and vendors, all based in USA, without any written communication in this regard from them. I also find it difficult to believe that all these clients /vendors requested TSL to register websites for them at the same point of time. It also defies logic as to why TSL paid for creation of these websites and not recovered cost from its clients/vendor. The narration of events, as put forth by TSL, which led to creation and modification of the website for these 14 entities does not appear to be true as it is difficult to believe that so many independent entities or the so called clients and vendors of TSL would act in unison for creation and modification of websites. This compels one to conclude that these clients/vendors are controlled by a common person.

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 Kusam, 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	Relationship with Taksheel	Bank Account signatory name	Role / designation	Bank Name	Account No	Account opened date (DD/MM/YY)	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 & Secretary	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	

44. It is also pertinent to mention that during the investigation, communications were sent to these entities incorporated in USA, seeking details of shareholders/promoters. Communications sent to the vendors/clients of TSL mentioned at Sl. No. 1 to 10 in the table above returned undelivered and no registered agent or contact person associated with these companies could be contacted.

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.

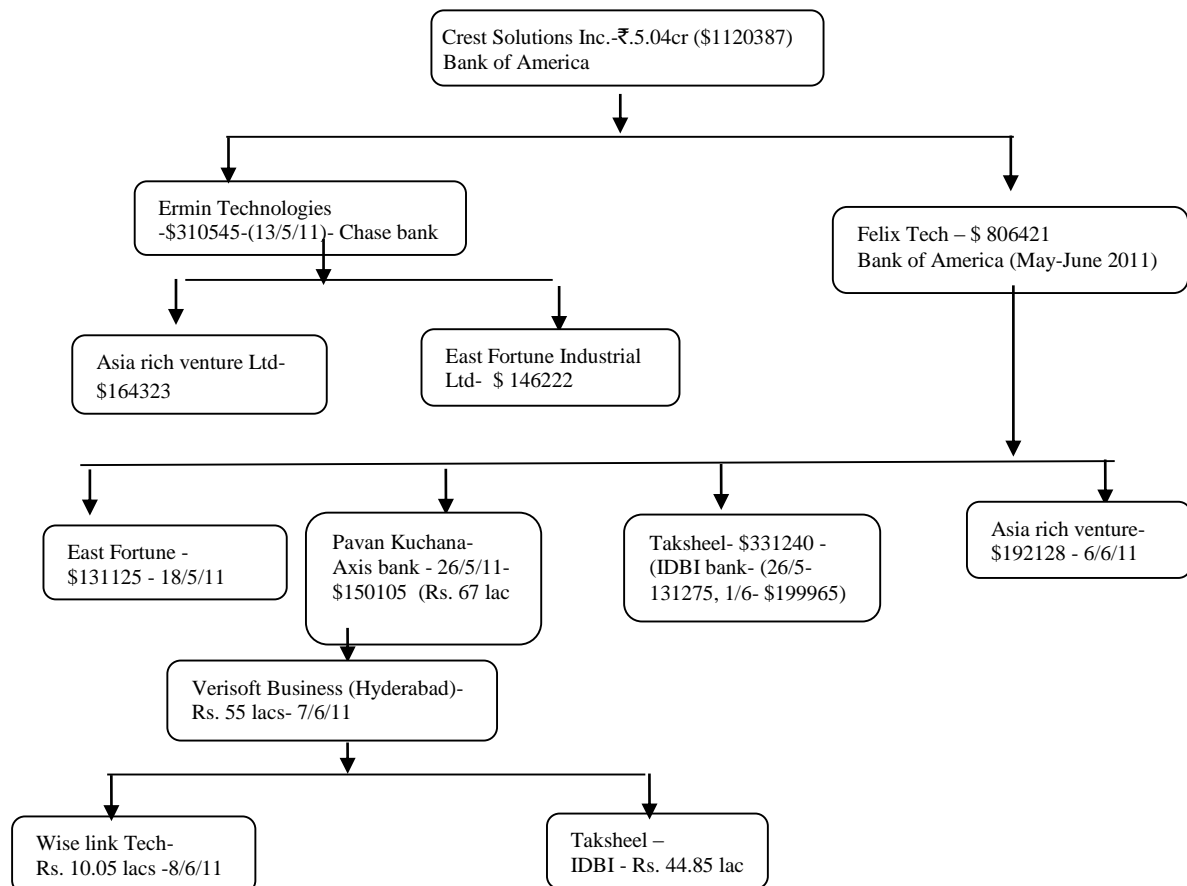
Table – 5 – Transfer of ICD proceeds by TSL

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	Soverign 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

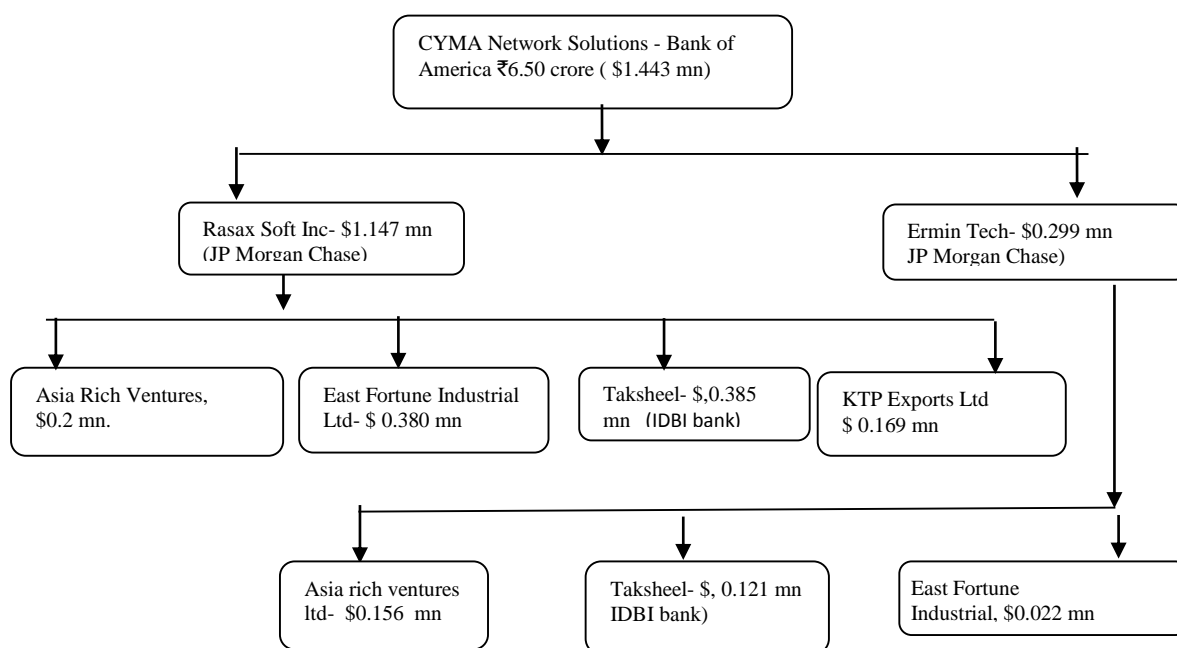
The further movement of funds, from the amount of ₹ 30.15 crore transferred to the aforesaid vendors of TSL, to other entities are detailed as follows.

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.

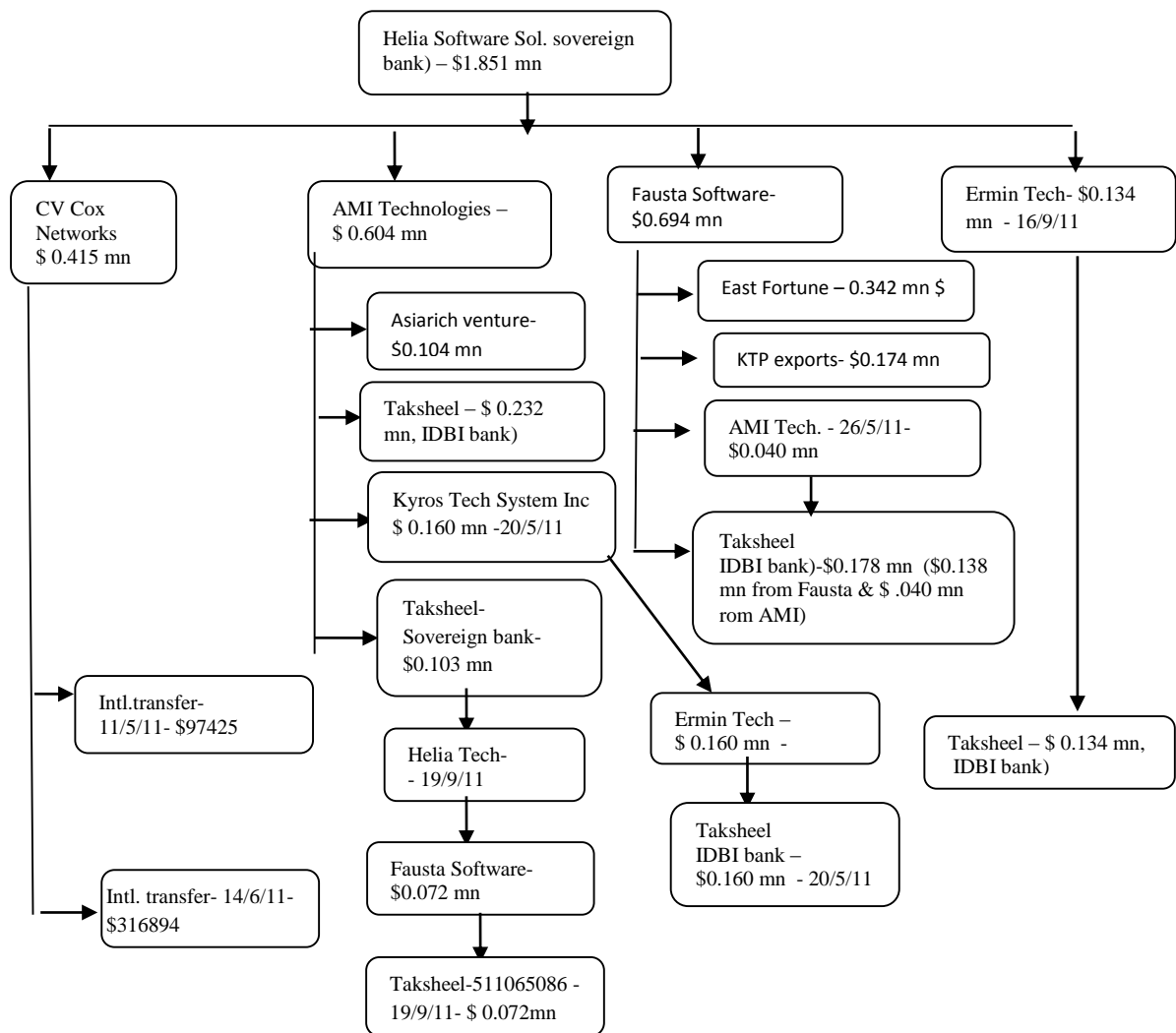


CYMA Network Solutions Inc. TSL transferred ₹ 6.50 crore (\$1.443 million) to CYMA as the payment towards vendor charges in the month of May-June 2011. CYMA in turn transferred \$1.147 million and \$0.299 million to Rasax Soft and Ermin Tech respectively. Rasex, out of the credit of \$1.147 million received by it, transferred \$0.200 million to Asia Rich Ventures Ltd, \$ 0.380 million to East Fortune Industrial Ltd., \$ 0.169 million to KTP Exports and \$ 0.385 million to TSL's IDBI bank account. The transfer of \$0.385 million to TSL has been shown as revenue of TSL for the period April 2011- March 2012, as observed from the copy of financial ledger of Ermin and Rasax forwarded by TSL. Similarly, Ermin after receipt of \$0.299 million in its account transferred \$ 0.156 million to Asia Rich Venture, \$0.021 million to East Fortune Industrial Ltd. and \$ 0.121 million to TSL. The transfer of \$ 0.121 million to TSL is shown as revenue of TSL for the period April 2011- March 2012. Thus, a total of \$0.506 million was received by TSL from its clients and shown as revenue in its books.

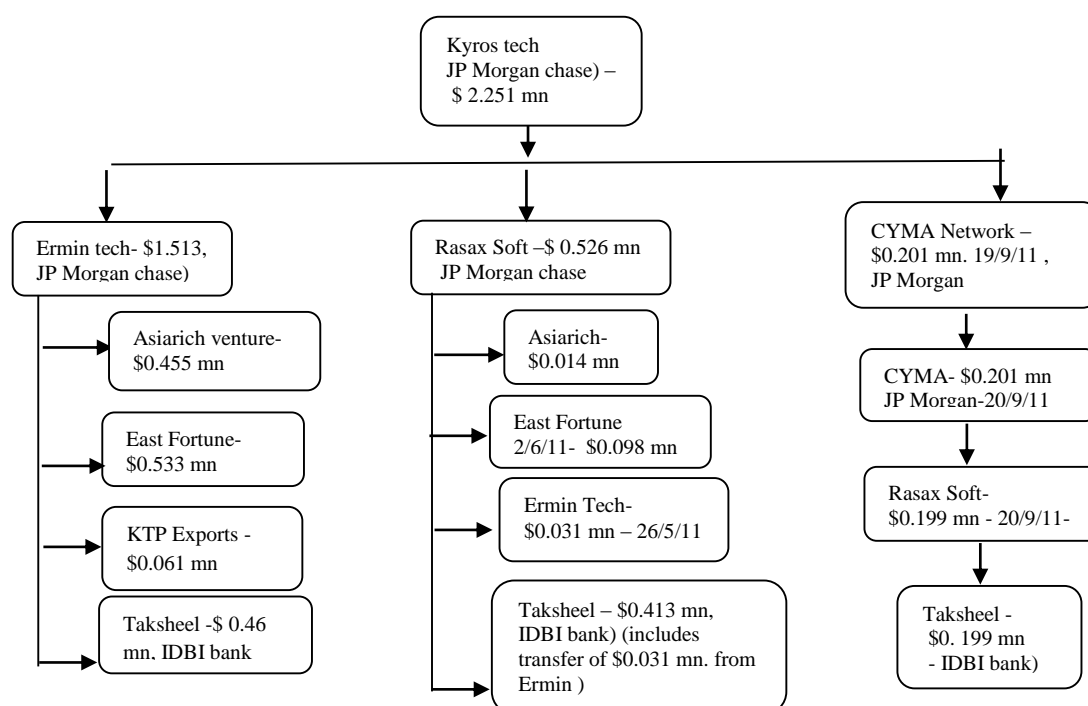


Helia Software Solutions Inc. TSL transferred ₹ 8.39 crore (\$1.85 million) to Helia from the amount raised through ICDs. Helia immediately transferred from this amount, a sum of \$0.415 million to CV Cox Networks, \$ 0.604 million to Ami Technologies, \$ 0.694 million to Fausta Software and \$ 0.134 million to Ermin

Technologies. From \$ 0.604 million received by Ami, it transferred \$0.104 million to Asia Rich Venture and \$ 0.304 million to TSL. The transfer from AMI to TSL was accounted as revenue in the books of TSL for the FY 2011-2012. Fausta, after receipt of \$ 0.694 million transferred \$ 0.342 million to East Fortune, \$ 0.174 million to KTP Exports and an amount of \$ 0.138 million to TSL's IDBI bank account (Ac. No. 39103000003568). TSL had also received an amount of \$0.040 million in this account from Ami Tech, which was received by Ami from Fausta. TSL accounted \$ 0.178 million as revenue in its books for the period April 2011- March 2012. Ermin transferred the entire amount of \$ 0.134 million received from Helia to TSL's IDBI bank account. TSL accounted it as revenue in its books for the period April 2011- March 2012. CV Cox Networks Inc. made certain international funds transfers. Thus, a total of \$ 0.616 million were transferred into TSL's account by its clients which were received by them from TSL out of the loan raised through ICDs.



Kyros Tech Solutions Inc. TSL transferred \$ 2.251 million (₹10.21 crore) to Kyros, during the period May- June 2011 and September 2011. From this amount, Kyros immediately transferred \$1.513 million to Ermin Tech, \$0.526 million to Rasax Soft and \$ 0.201 million to CYMA Network. Out of credit of \$1.513 million received by Ermin, it transferred \$ 0.455 million to Asia Rich Ventures, \$ 0.533 million to East Fortune Industrial, \$ 0.061 million to KTP Exports and the remaining \$ 0.46 million were transferred to TSL (IDBI bank account no. 39103000003568). The transfer by Ermin to TSL was accounted as revenue in the books of TSL for the FY 2011-12. Credit of \$ 0.526 million received by Rasex Soft from Kyros was used by it to transfer \$ 0.014 million to Asia Rich Ventures, \$ 0.098 million to East Fortune Industrial and \$ 0.031 million to Ermin Tech. Ermin Tech immediately transferred the entire amount received from Rasex to TSL (IDBI bank account). Rasax also transferred \$0.382 million to TSL. Thus, out of \$0.526 million transferred by TSL to Rasax, \$ 0.413 million was transferred to TSL and this amount was shown as revenue by TSL. Kyros had transferred \$ 0.201 million on September 19, 2011 to CYMA. CYMA after receiving the credit transferred \$0.199 million to Rasax Soft on September 20, 2011, which in turn transferred it to TSL (IDBI account 39103000003568). However, it appears that this amount was not accounted as revenue of TSL for the financial year. Thus, a total of \$0.873 million (apart from a transfer of \$ 0.199 million to TSL) was accounted as revenue from clients of TSL during the financial year April 2011- March 2012.



B. SCN also mentions that from the bank account of TSL maintained with Indian Bank, Hyderabad – in which IPO proceeds were received, TSL transferred ₹7 crore (approx.) on December 08, 2011 to its account with IDBI Bank in Mumbai (Account No. 039651100001144). Thereafter, out of the said amount, an amount of ₹5.30 crore was transferred to its aforesaid four vendors located at USA on December 13, 2011. The details of this transfer are as follows:

Table – 6 – Transfer of IPO proceeds by TSL

Date	Beneficiary Name	Amount (in ₹)	Equivalent in \$
13-12-2011	Crest Solutions Inc	82,75,135	154131
13-12-2011	CYMA Network Solutions	1,35,18,376	252444
13-12-2011	Kyros Tech Systems Inc	1,12,52,193.75	210125
13-12-2011	HELIA Software Solutions Inc	1,99,37,919	373020
Total		5,29,83,624	989720

The further movement of funds, from the above amount transferred by TSL on December 13, 2011 into the account of its purported vendors, are as follows:

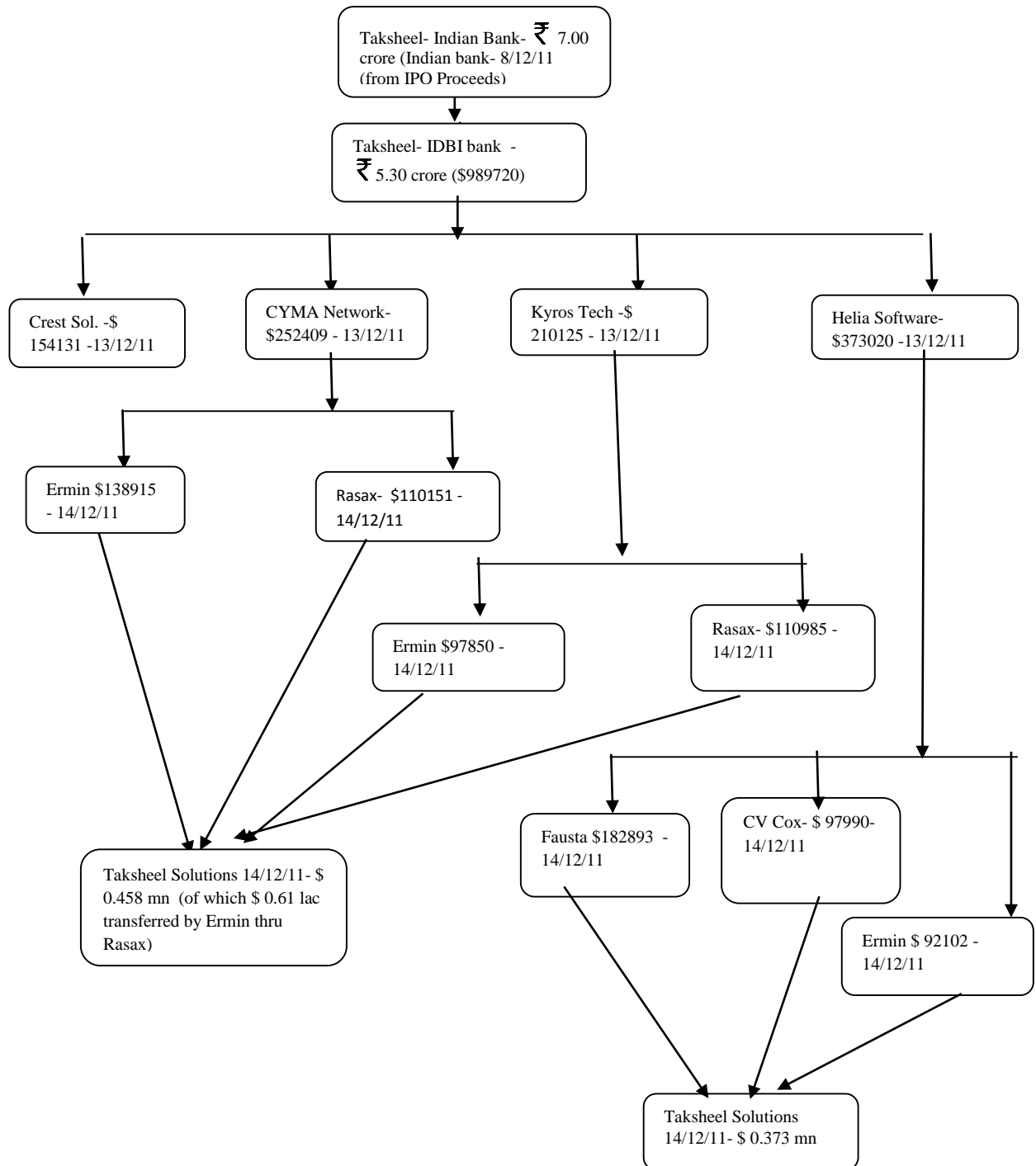
CYMA Network Solutions: TSL transferred ₹1.35 crore to CYMA Network Solutions (Ac. No: 970533386, JP Morgan Chase Bank, USA) on December 13, 2011. As per financial ledger of all the vendors of TSL for 2011-2012, this transfer from the IPO proceeds was accounted as payment for the software service rendered by CYMA. As per bank statement of CYMA Network Solutions, on December 14, 2011 sums of \$1,38,915 and \$1,10,151 (totalling \$2,49,066) were transferred to Ermin Technologies Inc. (Ac. no: 922483771, JP Morgan Chase Bank, USA) and to Rasax Soft Inc. (Ac. No. 970533311, JP Morgan Chase Bank, USA) respectively. Prior to the receipt of amount from TSL, CYMA had a small credit balance of \$ 220 in its account. On December 14, 2011, Ermin and Rasax transferred the said amounts to TSL bank account (Ac. no. 970533295, JP Morgan Chase Bank, USA). As per financial ledger of

all the clients of TSL for the period April 01, 2011-March 31, 2012, the amount received from Rasax Soft Inc. on December 14, 2011 was shown as revenue in the books of TSL for the year 2011-2012.

Kyros Tech Systems Inc.: TSL transferred ₹ 1.12 crore to Kyros Tech Systems Inc, (Ac. No. 922483755, JP Morgan Chase Bank, USA) on December 13, 2011 and the same was accounted by TSL in its ledger as an expenditure for software development for the period April 01, 2011- March 31, 2012. As per bank statement of Kyros, on December 14, 2011, it transferred \$97,850 and \$1,10,985 to Ermin Technologies Inc. (Ac. no: 922483771, JP Morgan Chase Bank, USA) and Rasax Soft Inc. (Ac. No. 970533311, JP Morgan Chase Bank, USA) respectively. Ermin Technologies Inc. transferred this amount to TSL (Ac. no: 970533295, JP Morgan Chase Bank, USA) along with the other transfers received from CYMA Network. Rasax Soft Inc. also transferred the amount to TSL (Ac. no: 970533295, JP Morgan Chase Bank, USA) and as per financial ledger of TSL it was shown as revenue from Rasax.

Helia Software Solutions Inc. TSL transferred ₹ 1.99 crore on December 13, 2011 to Helia (Ac. no. 0511065140, Sovereign Bank, USA) and as per financial ledger of Helia maintained in the books of TSL, the transfer was shown as vendor payment for the software service availed by TSL from Helia. Prior to this transfer, Helia had a very small credit balance of \$142 in its account. On December 14, 2011, Helia transferred \$92,102 to Ermin Technologies (Ac. No. 1411115155, Sovereign bank, USA), \$97,990 to CV Cox Networks Inc. (Ac. No. 0511065108, Sovereign Bank) and the remaining amount of \$1,82,893 was transferred to Fausta Software Solutions Inc. (Ac. No. 511065094, Sovereign Bank, USA). Durga Kuchana is signatory for the bank accounts of CV Cox and Fausta Software. The balance in the account of Fausta, prior to this transfer was only \$ 88.47. After receiving the credit, Fausta immediately transferred the amount to TSL (Ac. No. 0511065086, Sovereign Bank, USA). Similarly, Ermin had a small balance of \$15 in its bank account prior to the transfer of money from Helia. On receipt of credit, Ermin transferred the amount on the same day to TSL (Ac. No.0511065086, Sovereign Bank, USA). The transfers from Fausta and Ermin were accounted as revenue in the books of TSL in the month of December 2011. Similarly, on December 14, 2011, CV Cox received \$97990 from Helia and on the same day it

transferred the amount to TSL (Morgan Chase Bank account USA). CV Cox also maintained a small credit balance of \$172 prior to transfer of funds from the account of Helia.



46. In view of above, the SCN allege that TSL had transferred \$7.657 million (₹35.45 Crore) to its four vendors located in USA out of the IPO proceeds and from this amount, a sum of approximately \$3.058 million was transferred back to TSL's bank account through circuitous

route and shown as revenue for the period April 2011- March 2012 from the clients of TSL for the software services rendered to them. Apart from this, \$0.350 million were transferred to TSL's and Pavan Kuchana's bank account, which were not accounted as revenue by TSL from its clients. Thus, in total, an amount of \$ 3.408 million was credited to TSL and Pavan's account through circuitous route, which constitutes 44.51% of the IPO proceeds transferred to its purported vendors. On the basis of analysis of the bank statements of TSL in which income from clients were credited, it has been alleged that the amount received from the clients were once again recirculated to its vendors and credited back to TSL's bank account through the client account and shown as revenue of TSL. Thus, it has been alleged that re-circulation of the same funds in similar fashion as vendor/ client payment/revenue by TSL to show more revenue and more profits using identical vendors and clients bloated its revenue to ₹172.15 crore and profit to ₹13.34 crore in the Financial Year 2011-2012 and in this process it attempted to siphon off the IPO proceeds to various connected entities.

47. With regard to the above allegations, Ms. Durga Kuchana in her reply dated September 10, 2014 has admitted that Fausta Software Solutions Inc., Ermin Technologies Inc., CV Cox Networks and Kyros Tech Systems Inc. were incorporated by her on the instruction of her husband, Mr. Pavan Kuchana. Similarly, Mr Ravi Kusum in his reply dated August 25, 2014 has admitted that Helia Software Solutions Inc., Cyma Network Solutions Inc., Ami Technologies Inc. and Rasax Soft Inc. were incorporated by him on the instruction of Pavan Kuchana. It has been also admitted by Durga Kuchana and Ravi Kusum that they facilitated opening of bank accounts for these companies on the instructions of Pavan Kuchana. Pavan Kuchana has admitted that he had instructed his wife and Ravi Kusum to incorporate these companies, open bank accounts for them and transfer them to the persons with whom he had agreed to do so, in order to enable them to work with TSL and help it in expanding its business. It has been also admitted that the expenses for incorporation of these companies and for creation of websites for them were borne by TSL. Thus, it has been admitted that clients/vendors of TSL mentioned at Sl. No. 1 to 8 in the table 3 above were incorporated at the instance of Pavan Kuchana, MD of TSL and expenses for the same were also paid by TSL. However, it has been submitted that after incorporation and opening of bank accounts they duly transferred their shareholding in these companies during March 5, 2011 to March 12, 2011 to the persons for whom they were created and at the time of transactions with TSL, these companies were not

operated or associated with TSL or the promoters/directors of TSL. In support of their submissions, copy of minutes of shareholder's meeting of these companies to transfer the company and share transfer certificates have been furnished.

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 Kusam 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.

50. Apart from the findings above, it is also noted from the SCN that Mr. Pavan Kumar Kuchana misrepresented facts about clients of TSL even in the interview which he gave to the television channel - CNBC - on September 29, 2011 at 11.33 a.m. (i.e. the day on which the bid/issue opened). In the interview, in response to a question asked by CNBC about top clients of TSL, Pavan Kuchana stated that *“The clients we are working with are LFG, Merrill. But we work with the channel partners. We work with their prime vendors. But our relationships with clients are direct and where we deal with their business guys, technology guys. That’s where the domain and technology we use it.”* Thus, as stated by Mr. Kuchana, LFG and Merrill are some of TSL’s end-clients. During the course of the investigation, vide e-mail dated December 16, 2011, TSL was asked to furnish information/details regarding their end-clients as per the list applicable for 2010-11 and 2011-12 (till

September 30, 2011). It was stated by TSL that "... we are not in possession of information regarding details of ultimate clients in respect of the said projects were executed, as we are not privy to the contractual relationship between our client and the ultimate (sic) clients". Thus, TSL did not submit any information about LFG/ Merrill in any of the documents filed by it with SEBI during the course of investigation and the statement of the company that it does not have any information regarding details of end-clients is contrary to the claim made by Mr. Pavan Kuchana on September 29, 2011 that it has LFG and Merrill as its clients. Thus, I find that Pavan Kuchana had deliberately and fraudulently misrepresented LFG, Merrill to be his clients on the very first day when the issue opened.

51. With regard to transfer of money to vendors and from vendors to clients and further to TSL is concerned, it has been submitted by TSL that they are not aware as to what the vendors did with the money after receiving it from TSL. It has been also submitted that their transactions with clients and vendors are genuine and independent of each other. The payments received from clients by TSL were for the services rendered by it to them. In this regard, it is observed from the movement of funds as detailed above that payments were made by TSL to its four vendors, namely, Helia Software Solutions Inc., Crest Solutions Inc., CYMA Network Solutions Inc. and Kyros Tech Systems Inc. The movement of funds in circular manner has been observed between these four vendors of TSL, TSL and its clients, namely, Ermin, Rasax, Fausta, CV Cox, Felix and Helia. All these clients and vendors of TSL find mention in Sl. No. 1 to 10 of the Table 3 and 4 above. It has been already observed in the preceding paragraphs that these purported clients and vendors of TSL were created and controlled by Pavan Kuchana, his relatives and employees. Apart from the connection and commonality between these clients and vendors of TSL, the fund movement also shows certain similarity. In all cases, the purported vendors were having negligible balances in their accounts but immediately after receipt of funds from TSL, it was transferred to Ermin, Rasax, Fausta, CV Cox, Felix, Helia and after a layer or two of further movements of funds between these clients of TSL, a good part of the amount transferred to the vendors came back to TSL or Pavan Kuchana as shown in para 45 above. I, therefore, do not find any merit in the submissions of the Noticees. From the repeated circulation of funds to the book entities (the so called clients and vendors of TSL), it is seen that the funds generated out of the IPO have not been used for the business of the company or the declared objects in the offer document. There have been fraudulent mis-representation, suppression of material information related to substantial liabilities incurred by the company, and huge financial transactions with connected entities which

would together establish the intention of Pavan Kuchana to siphon off funds from TSL. In paras 45 and 46 above, TSL and Pavan Kuchana are shown in between as recipients of amounts to the tune of \$3.408 million based on the analysis of respective bank statements. Thus, the circulation of funds through several fictitious entities and thereon in further layers is with the idea of dispersing the funds that TSL raised through IPO so as to benefit the directors of TSL and persons connected to them without leaving any clear proof or trail of such diversion of funds.

52. I also observe that the statement of work with respect to the services rendered by TSL to its clients produced along with the reply filed by TSL does not appear to be genuine since the existence of its vendors and clients are doubtful and the services claimed to be rendered by TSL also stands belied. I am compelled to observe that the defence in the case has been laboriously structured so as to rebut each and every allegation/inference brought out in the SCN. Towards this a lot of supporting documents have been fictitiously generated. I am not inclined to accept the defence advanced by TSL to meet the alleged circulation of funds, services claimed to be rendered to its clients and the hideous manner of raising ICDs and the repayment effected to such lenders through the IPO proceeds.
53. It is also noted that Pavan Kuchana in his statement recorded on November 22, 2012, has stated that 90-100% of the revenue and expenditure of TSL were generated/spent from these aforementioned clients/vendors located at USA for the year 2011-12. It has been already observed that these are the entities who are not having any independent existence. As stated earlier, Ravi Kusam, Pavan Kuchana and Durga Kuchana are holding various positions such as Secretary/Treasurer/VP/ Board of Directors/Registered Agent in the clients and vendors with whom TSL was having fund movements and the same fund movement has been recorded as revenue and expenditure affecting the profitability positively. Clearly, such transactions appear to be structured so as to demonstrate an impressive picture about the company's financials.
54. Apart from aforesaid fund movements, on the basis of analysis of bank account statement of Wiselink Technologies Pvt. Ltd. (WTPL) maintained with OBC- Hyderabad Branch, it has been alleged in the SCN that TSL on October 19, 2011 transferred ₹ 5.06 crore to WTPL. Mr. Vinod Babu Bollikonda was a KMP of TSL and a director and authorised signatory of the

bank account of WTPL. Before this transfer WTPL was having negligible balance in its account and after receiving the funds from TSL, it transferred ₹ 3.50 crore (₹ 1.50 crore on 15/11/11, ₹ 0.75 crore on 1/12/11 and ₹ 1.25 crore on 8/12/11) to Mr. Dinesh Kumar Singhi. Mr. Singhi was holding 10 lakh shares of TSL and had entered into buy back arrangement with TSL in November 2007 for purchase of these shares at a price of ₹ 170 per share. However, in order to enable TSL to come out with IPO, Mr. Singhi had consented to one year lock-in for these 10 lakh shares of TSL. As WTPL and TSL are connected to each other through Vinod Babu and Mr. Dinesh Singhi had consented to one year lock-in for the shares of TSL held by him, it has been alleged that TSL has used WTPL as a conduit to give effect to the circuitous transfer of funds to Mr. Dinesh Singhi and in such process has siphoned off the IPO proceeds. TSL has denied that they have paid any amount to Mr. Singhi through WTPL. Appreciating the fund transfer from TSL to WTPL and from WTPL to Mr. Dinesh Singhi, on the basis of a pre-existing buy back arrangement between TSL and Dinesh Singhi and the connection that TSL had with WTPL, it appears that the consent for the lock-in of shares held by Mr. Dinesh Singhi in connection with IPO, was obtained from Dinesh Singhi on the promise of a subsequent transfer of funds. However, I note that WTPL and Dinesh Singhi are not parties to the present proceedings and the investigation has not brought out further evidence to show that WTPL has acted as a conduit. In the absence of strong evidence, I am not inclined to give a positive finding to the effect that TSL used WTPL as a conduit for transfer of funds to Mr. Dinesh Singhi.

55. It has been already observed that TSL created fictitious entries and bloated its books of accounts. The financial statements for the FY 2011-12 were false. However, Mr. Prasad Rao, CFO reviewed these statements and certified them as true and correct. Mr Prasad Rao in his reply submitted that he is not responsible for the contents of the prospectus nor the utilisation of the IPO proceeds as he was not vested with any financial powers regarding deployment of funds. The funds were utilised as per directions of the Managing Director. He has submitted that he had not signed/certified the balance sheet or reviewed the allegedly inflated financial statements for the period 2011-2012. It has been submitted that no original document/certificate bearing his signature has been shown to him by SEBI. Further, it has been stated that there is no Board resolution or Audit committee resolution authorising him to sign the balance sheet. In this regard, it is observed that Mr. Rao has not denied that he was the CFO of TSL. Having accepted the assignment as CFO of the

company, he cannot cast the entire blame on the company for having misused his name in the annual report. Moreover, being a chartered accountant by profession, Mr. Prasad Rao ought to have taken objection to the alleged certification done in his name in the annual report of the company for the year 2011-2012 at the right time without waiting for action from the side of SEBI. The submissions advanced by him in this regard are not acceptable. His insistence upon SEBI making available a balance sheet bearing his signature and refusing to appear for personal hearing unless such a document is furnished to him only exposes the flimsiness of his defence. The designation of a CFO itself carries with it a lot of responsibilities and obligations to a company and its shareholders. It is a different issue that he may not have had a role in the fraudulent activity of the company and its directors. However, as a qualified Chartered Accountant, it would have been appreciated if he had come forward with his defence on merits regarding the allegations in the SCN. I also observe that he has not taken any step against TSL or its directors in respect of the disclosures or the misuse of his name in the financial statements of TSL for 2011-12. Thus, I find that the acts of Prasad Rao also have led to misrepresentation in the financial statements of TSL which were published and he is liable for the same.

56. Ramaswamy Kuchana has submitted that he was not involved in the day-to-day work of the TSL and was merely a non-executive director in TSL. He joined the Board of TSL at the insistence of his son Pavan Kuchana and acted on the basis of instructions of his son. With regard to Ramaswamy Kuchana, it is noted that he was in fact a non-executive director and the SCN has proceeded against Ramaswamy Kuchana on the same lines as against Pavan Kuchana without drawing a distinction between the extent of the roles, in the alleged fraud, played by each one of them.

57. Kamal Kuchana in his reply has submitted that he is not involved in the working of TSL. He has been residing in USA since 1997. In October 2006, he incorporated Alagya Technologies Inc. in USA to render IT services. The relationship between him and TSL is purely professional as he has provided business solution to TSL as per agreed terms and for due consideration. The advance received from TSL was prior to the ICD loans or IPO money came to TSL. In this regard, it is observed that no evidence has been provided in the SCN to establish involvement or role of Mr. Kamal Kuchana or Alagya in the inflation of revenue and profit of TSL. Further, it is observed from records that Alagya was incorporated in 2006 by Mr. Kamal

Kuchana and it does not appear to be a company created or operated by Pavan Kuchana as is the case with other clients/vendors of TSL which are found to be involved in circular movement of funds. With regard to advance received by Alagya from TSL, it is observed that it was received before March 31, 2011 and for this transaction, Alagya was required to provide service to TSL in terms of the agreement between Alagya and TSL, which was signed by Kamal Kuchana for Alagya on February 24, 2011 and Pawan Kuchana for TSL on March 3, 2011. Thus, the advance was towards the work which was to be done by Alagya. The investigation has not brought out anything to show that such pre-IPO transactions were not genuine. It is also noted that the money raised by TSL by way of ICD or IPO was after the advance payment was made to Alagya. Therefore, it cannot be said that any part of the IPO money was transferred to Alagya. Thus, I do not find any role of Kamal Kuchana in connection with the fraudulent scheme of TSL.

58. With respect to Durga Kuchana and Ravi Kusum, it is observed that they were involved in creation /incorporation of fictitious entities and were also signatories to the bank accounts of fictitious companies which were used by Pavan Kuchana in manipulating the books of accounts of TSL by inflating its revenue, expenditure and profit and also used by him to siphon off the IPO proceeds.
59. The provisions of section 12A (a), (b) and (c) of the SEBI Act and regulations 3(b), (c), (d), PFUTP Regulations, 2003 prohibits any person from using or employing any manipulative or deceptive device or scheme to defraud an investor and it also prohibits him from engaging in any act, practice or course of business which would operate as fraud or deceit upon any person in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange. Regulation 4(1) of the PFUTP Regulations, 2003 prohibits any person from indulging in a fraudulent or an unfair trade practice in securities. In addition to this, regulation 4(2)(e) provides that any act or omission amounting to manipulation of the price of a security shall be deemed to be fraudulent if it involves fraud. Regulation 4(2)(f) provides that publishing/reporting or causing to publish or report any information which is not true or which one does not believe to be true shall be deemed to be fraudulent. In terms of regulation 4(2)(k), an advertisement which is misleading or contains information in a distorted manner and which may influence the decision of the investors to invest or not to invest in a security is deemed to be fraudulent and unfair activity if it involves fraud. Further,

as per regulation 4(2)(r), planting false or misleading news which may induce sale or purchase of securities is deemed to be fraudulent or an unfair trade practice if it involves fraud.

60. In view of the findings above, that TSL and its managing director Mr. Pavan Kuchana were involved in manipulating the books of accounts of TSL by inflating its revenue, expenditure and profit and siphoning off of IPO proceeds by creating book entities as its clients and vendors, they have violated the provisions of section 12A(a), (b) and (c) of SEBI Act read with regulations 3(b), (c), (d), 4(1), 4(2)(e), (f), (k) and (r) of PFUTP Regulations, 2003. Durga Kuchana and Ravi Kusum were involved in creation/ incorporation of fictitious entities and were signatories to the bank accounts of companies which were used in inflating the revenue, expenditure and profit of TSL and siphoning off IPO proceeds. Therefore, I find that they have violated the provisions of section 12A(a), (b) and (c) of SEBI Act read with regulations 3(b), (c), (d), 4(1), 4(2)(e), (k) and (r) of the PFUTP Regulations, 2003.

VIII. Placement of ICD by TSL with Silverpoint Infratech Ltd.

61. TSL has stated in the offer document that pending deployment, IPO proceeds will be temporarily invested in high quality interest bearing liquid instruments including money market mutual funds, deposits with banks etc. TSL placed ICD of ₹ 23 crore with Silverpoint as an investment on October 19, 2011. It has been mentioned in the SCN that as per the balance sheet of Silverpoint, obtained from MCA website, the profit earned by the company after tax as on March 31, 2010 was only ₹ 2.89 lacs and it had a total investment of 36.62 crore. In view of this, it has been alleged that TSL did not invest in high quality interest bearing liquid instrument.
62. TSL had submitted that there was an Inter Corporate Deposits arrangement with Silverpoint wherein TSL lent ₹ 23 crore to Silverpoint at an interest rate of 14% p.a. for a period of six months. It has been submitted that they have received the money back from Silverpoint in the form of cost of acquisition of business of Genex Technologies Pvt. Ltd. For this, they have relied upon a tri-partite agreement and a letter dated May 25, 2012 sent by Genex that they have received the complete purchase consideration of Rs.24 crore from Silverpoint. I find that no document (bank account statement) showing transfer of funds to Genex on behalf of TSL from Silverpoint for the underlying

transactions has been produced or any other document proving any business activity of TSL post the said acquisition of business has been provided. Therefore, I am not inclined to accept the submissions advanced in this regard. This also goes to establish that TSL has failed to call back the ICD placed with SIP amounting to ₹ 23 crore and therefore failed to comply with the directions issued vide interim order dated December 28, 2011.

IX. TSL funded trading in its own shares

63. On the day of listing i.e., October 19, 2011, a total of 9,13,01,270 shares of TSL were traded in NSE and BSE of which 5.15% approx. were delivered. The issue price of the scrip was ₹ 150. The scrip opened at ₹ 157.40 (at 09:15:04 hrs.) on BSE and reached an intraday high of ₹ 185.00 (at 11:58:19 hrs.) and thereafter the price touched the intraday low of ₹ 38.50 at (15:29:51 hrs.). This price was 74.33% lower than the issue price. On an analysis of the fund movements between the top net losers in the scrip of TSL on the day of listing, it has been alleged in the SCN that, through a circuitous route of multi-layered transactions through Silverpoint and others, TSL funded certain entities who were the top buyers in shares of TSL on October 19, 2011, to trade in its own shares on the day of listing. The details in this regard are mentioned below.

Table – 7 - Top net losers in the scrip of TSL on October 19, 2011

Sl. No	Client Name	Buy Vol.	Buy Value	Sell Vol	Sell Value	Net Buy Vol.	Balance qty selling price (in ₹)	Net Loss	Buy vol. % in terms of issue size)
1	Rose Valley Merchandise Pvt Ltd (RVM)	450000	61151608	300000	34800000	150000	35.83@	2,09,77,760 (&)	8.18
2	Shreya Multitrade Pvt Ltd. (SMT)	113650	14990497	112573	10662369	1077	55.85^	42,67,977 (&)	2.07
3	Baba Bhootnath Trade and commerce Pvt. Ltd (BBTC)	110000	14206982	110000	7785525	0		64,21,457 (&)	2.00
4	Overall Financial Consultants Pvt Ltd (OFC)	1456446	173173387	1312184	127897388	144262	35.80*	4,01,12,136 (\$)	26.48%

@ - Rose Valley sold the balance 1,50,000 shares on 21/10/11 at an average selling price of ₹ 35.83

^ - closing price of BSE as on October 19, 2011

& calculation of net loss (Sr. No. 1-2) = (Sell value – buy value – balance qty value of 150000, sold on October 21, 2011)

* Sold 144242 qty shares on October 21, 2011, weighted average price of ₹ 35.80 and the balance qty of 20 shares were not sold by the entity till October 31, 2011.

The value of balance 20 shares were also calculated at ₹ 35.80

\$ calculation of net loss= (sell value – buy value- balance qty value of 144262 shares sold on October 21, 2011)

64. On the basis of analysis of trading data in the scrip of TSL, it has been mentioned in the SCN that RVM traded through Indiabulls and OFC traded through Baba Bhoothnath Trade and Commerce Pvt. Ltd. (BBTC), JM Financial Services Pvt. Ltd. and Grishma Securities Pvt. Ltd. on October 19, 2011 and they were the top net buyers in the scrip. They together suffered losses to the extent of ₹ 6.10 crore. BBTC traded in the shares of TSL on the day of listing through its proprietary account and suffered a loss of ₹ 64 lacs. Shreya Multitrade Pvt. Ltd. (SMT) traded in the shares of TSL through Sunteck Wealthmax Capital Pvt Ltd on October 19, 2011 and suffered a loss of ₹ 42.67 lac (approx.).
65. Investigation has revealed that the registered office address of Rose Valley Merchandise Pvt. Ltd. (RVM) and Overall Financial Consultants Pvt. Ltd. (OFC) are same i.e. 61, Kali Krishna Tagore St., 1st Floor, Kolkata, West Bengal - 700 007. Further, the address of Mr. Biraj Sonkar, director RVM i.e. 5 F/3, Ratan Sarkar's Garden Street, Kolkata, 700007, West Bengal matches with the address of Mr. Anup Kumar Sharma, director OFC. Further, RVM and OFC had a beneficial owner account and broker client account with Karuna Financial Services Private Limited, Kolkata and these accounts were controlled by the same person as these accounts are having the same mobile number 9594352222 as per KYC details. Similarly, both RVM and OFC have a broker-client account with JM Financial Services Pvt. Ltd., member BSE and share the same mobile number 9836494311. Thus, it is observed that these entities are connected with each other..
66. On the basis of analysis of bank account statement of TSL, Silverpoint and the stock brokers, it has been found that on October 19, 2011 TSL transferred ₹ 23 crore to Silverpoint as ICD from IPO proceeds and out of this amount, Silverpoint transferred ₹ 11.40 crore on October 20, 2011 to Snehsil Marketing Pvt Ltd., Sugam Vinimay Pvt Ltd and Anubhav Infrastructure. These entities further transferred ₹ 10.85 crore to RVM on the same day. Subsequently, on October 25, 2011, RVM returned an amount to the extent of ₹ 3 crore to Snehsil Marketing Ltd. From this amount, Snehsil transferred ₹ 2 crore to Shreya on October 27, 2011. Shreya utilized this money to settle its accounts with the broker Sunteck Wealth Max Capital Pvt Ltd. on October 28, 2011. With regard to money

received by RVM, it has been observed that RVM and OFC had together suffered losses to the extent of ₹ 6.10 crore and the amount left with RVM was used by them to absorb the loss suffered by them by trading in the shares of TSL on the day of listing.

67. BBTC had traded in the shares of TSL on the day of listing through its proprietary account and suffered a loss of ₹ 64 lacs. It has been mentioned in the SCN that out of the amount of ₹ 23 crore received by Silverpoint from TSL, Silverpoint transferred ₹ 45 lacs to BBTC on October 21, 2011 which was then transferred to BBTC's settlement account on the same day to meet the settlement obligation. Investigation has also revealed that BBTC and Silverpoint do not have any broker-client relationship. Therefore, it has been alleged that TSL used Silverpoint's bank account as a channel to transfer the IPO proceeds to these brokers to trade in TSL Scrip and absorb loss.
68. TSL has denied that it funded entities who have incurred losses by trading in the scrip of TSL on the day of listing. It is observed from the copies of bank account statement of Silverpoint, BBTC, SMT and RVM that TSL had transferred ₹.23 crore to Silverpoint which in turn transferred funds to various entities directly/indirectly who had traded on the first day and had incurred losses. It cannot be a mere coincidence that funds are simultaneously transferred from one source (TSL) to these entities around the same period after they had incurred losses by trading in the scrip of TSL on the first day. The movement of funds discussed above, reasonably leads to the conclusion that the trades of RVM, BBTC, SMT and OFC were funded by TSL. It is highly probable that TSL funded these trades in order to maintain the price of the scrip. Therefore, TSL has violated the provisions of regulations 4(1), 4(2)(a) and (d) of PFUTP Regulations, 2003.
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.

70. On an evaluation of the entire facts and circumstances of the case and the role played by each noticee in the matter, the following observations are made. As regards V K Prasad Rao, I find that his conduct as CFO is not proper and that a strict warning to prevent such conduct in future is warranted to be issued. As regards, TSL, Pawan Kuchana and Ramaswamy Kuchana, it is noted that they were responsible for various mis-statements in the prospectus and for suppressing various material information from the prospective investors in IPO which mislead the investors into subscribing to the shares of TSL. Further, Mr. Pawan Kuchana, Durga Kuchana and Ravi Kusum have used TSL's IPO as a medium to raise funds from the public to indulge in fraudulent and unfair practices, as established in the foregoing paragraphs. I also take note of the fact that TSL, Pawan Kuchana and Mr. Ramaswamy Kuchana are under debarment from transacting in securities market since the date of the interim order i.e. December 28, 2011 and as such they have already undergone debarment for a period of around six years and ten months. With regard to Ramaswamy Kuchana, it is also noted that the SCN has not brought out any specific role played by him in the manipulative activities indulged into by Pawan Kuchana and others. In the facts and circumstances, the period of debarment already undergone by Ramaswamy Kuchana would be commensurate with the violations committed by him. Further, I understand that, on the same set of facts, adjudication proceedings as well as prosecution have been initiated against the Noticees.

Directions

71. Considering all the factors as mentioned above, I, in exercise of the powers conferred upon me under section 19 of the SEBI Act, read with sections 11(1), 11(4) and 11B thereof, hereby pass the

following directions.

- i. The directions issued against Ramaswamy Kuchana vide interim order dated December 28, 2011 and confirmed vide order dated October 25, 2013 shall stand revoked.
- ii. Taksheel Solutions Limited, Pavan Kuchana, Durga Kuchana and Ravi Kusum are restrained from accessing the securities market and further prohibited 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 three years from the date this order.
- iii. V K Prasad Rao is warned to be cautious and exercise due care and diligence in future in his conduct as a Chief Financial Officer of a listed company or while rendering services as a chartered accountant to any listed company.

72. A copy of this order shall be served on all recognized stock exchanges and depositories to ensure compliance with above directions.

DATE: November 15, 2017

PLACE: Mumbai

**G. MAHALINGAM
WHOLE TIME MEMBER**