BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: ORDER/GR/RR/2020-21/ 10802-10805)

UNDER SECTION 15 - I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of:

SL. No.	Name of the Entity	PAN
1	Alok Jain Tijaria	ABJPJ3116C
2	Vineet Jain Tijaria	ABTPJ8166C
3	Vikas Jain Tijaria	ABTPJ8056D
4	Praveen Jain Tijaria	ABTPJ8112G

In the matter of IPO of Tijaria Polypipes Ltd.

(The aforesaid entities are hereinafter individually referred to as Noticee 1 to 4 and collectively referred to as "the Noticees")

FACTS OF THE CASE

1. Tijaria Polypipes Limited (hereinafter referred to as **"Tijaria/TPL/the Company"**) came out with an Initial Public Offering (hereinafter referred to as **"IPO"**) of 1,00,00,000 equity shares of a face value of Rs 10/- each, issued at a premium of Rs 50/- per equity share, wherein it raised Rs 60/- Crore to fund its proposed expansion and diversification plans. The aforesaid IPO opened on September 27, 2011 and closed on September 29, 2011. TPL allotted 71,64,406 shares in the retail individual investors category (constituting 71.64% of the total IPO shares) and 28,36,001 shares to the Qualified Institutional Buyers (hereinafter referred to as **"QIBs"**) (constituting 28.36% of the total IPO shares). The shares of TPL were listed on the Bombay Stock Exchange Limited

(hereinafter referred to as **“BSE”)** and the National Stock Exchange of India Limited (hereinafter referred to as **“NSE”).**

2. Upon observing a steep fall in the share price of TPL on the first day of listing i.e. October 14, 2011, Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an investigation in respect of trading in the scrip of TPL. The investigation revealed that on October 14, 2011, the share price of TPL in NSE, fell from the highest price of Rs 67.75/- per share to Rs 16.50/- per share while in BSE, it fell from the highest price of Rs 67.80/- per share to Rs 16.05/- per share.

APPOINTMENT OF ADJUDICATING OFFICER

3. Based on the findings of the investigation, SEBI initiated Adjudication proceedings in the matter and vide Order dated March 14, 2013, appointed Shri D Ravikumar, as the Adjudicating Officer (hereinafter referred as AO) under Sub-section (1) of Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (Adjudicating Rules) to inquire into and adjudge under Section 15HA of the SEBI Act and Section 15HB of the SEBI Act for the alleged violations of the provisions of (i) Section 12 A(a), 12A(b), 12A(c) of the SEBI Act read with Regulation 3 (a) (b) (c) (d) and 4 (1), 4(2)(a), 4(2)(d) and 4(2)(e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations") and (ii) Regulations 57(1) and 57(2) read with Schedule VIII, Part A(16) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as **"ICDR Regulations"**) and Regulations 59, 60(4) and 60(7)(a) of the ICDR Regulations by Alok Jain Tijaria (hereinafter referred to as **"Noticee 1"**), Vineet Jain Tijaria (hereinafter referred to as **"Noticee 2"**), Vikas Jain Tijaria (hereinafter referred to as **"Noticee 3"**), Praveen Jain Tijaria (hereinafter referred to as **"Noticee 4"**).

Subsequently, vide Order dated December 14, 2015, Shri. Suresh B Menon was appointed as the Adjudicating Officer in the said matter in the place of Shri D Ravikumar. Thereafter, vide order dated April 9, 2019 the undersigned has been appointed as the Adjudicating Officer in the instant matter. The proceeding is therefore been carried forward where they had been left off by the previous AO and an opportunity of personal hearing was granted as detailed hereinafter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated June 13, 2013 (hereinafter referred to as **'SCN'**) was issued by the erstwhile AO to the Noticees under the provisions of Rule 4 (1) of the Adjudication Rules, to show cause as to why an inquiry should not be held against the Noticees and why penalty should not be imposed on Noticees under the provisions of Section 15HA of the SEBI Act and Section 15HB of the SEBI Act for the alleged violations stated at para 3 above. The aforesaid SCN was served upon the Noticees.

5. The fact of the case and the allegations made in the SCN are summarised below:

   a) The company in its Board Meeting held on September 10, 2011, decided to obtain Inter Corporate Deposits (hereinafter referred to as **"ICDs")** for Rs 1 Crore and Rs 75 Lakhs from Herald Commerce Ltd. and Bahubali Properties Pvt. Ltd. respectively (hereinafter referred to as **"lenders"**). It is further observed that in the same Board Meeting a resolution was passed to apply and avail loan for meeting business expenses from the following parties:

Name of the Party	Maximum Loan Amount to be taken Rs
Nihita Financial Services Pvt. Ltd., Mumbai	50 lacs
Marine Gems Pvt. Ltd., Surat	75 lacs
Sanjivani Gems Pvt. Ltd., Surat	25 lacs
Bellisima Impex	9.5 Crore
Bellisima Impex	50 lacs
Balasaria Holdings, Kolkata	1 Crore

b) It is observed that the said ICDs constituted approx. 20.8% of the issue size. However, material decision to take ICDs just prior to the date of the Prospectus was not disclosed in the prospectus under the head 'Unsecured Loans' filed with ROC. It is also observed that in the prospectus company had mentioned that it did not raise any bridge loan against the proceeds of the present issue. It is further observed that part repayment of the ICDs was done after the receipt of the IPO proceeds. It is also observed that the company had taken amounts from the ICD lender in excess of what was approved in the Board meeting held on September 10, 2011.

c) In the prospectus under the head 'risk factors' the company had stated that there are restrictive covenants in the loan agreement the company has signed with Bank of India for term loan/working capital in which prior written permission of the Bank is to be obtained regarding changes in unsecured loan. However, no such written permission was obtained by the Company from the Bank. Therefore, it is alleged that there was concealment of material information in the prospectus.

d) The Noticees had diverted a substantial part of the IPO proceeds to accounts abroad in form of foreign remittance substantially in favour Shining Stars Implex FZE by placing supply orders with first time suppliers of plant and machinery (namely Shri Nath Trading Co., Neelkant Enterprises, Goyal Trading Co., RK International, VR international and Suvidha International) for which 100% advance was given by the company during the period September 14, 2011 to October, 17, 2011. These suppliers were also not mentioned in the prospectus. It is noted that the suppliers were the first time suppliers of the company. Despite that the company had given 100% advance to them without any agreement. Further, it is also noted that the company did not receive any machinery from the said suppliers as on March 31, 2012. Further, as per the quotation letters of the said suppliers, the plants and machinery were to be supplied within six month time. However, despite the passing of the said period, neither any machinery was received from the said suppliers nor the company received its money back from the suppliers.

e) The six entities mentioned in para 5(d) above, who are shown as suppliers, are in the business of metal/ scrap trading, trading in dry fruits, trading in electronic items. Further, the physical verification of the said suppliers by SEBI revealed that none of the suppliers existed in the addresses provided by the company. It is also observed that the said suppliers are related to each other and have their bank accounts in the same branch of Karur Vyasa Bank.

f) As per the disclosure made in the prospectus, the cost of the expansion cum diversification project was Rs.108.52 Crore and the Rs.60 Crore raised from IPO was to be utilized for this project. However, on perusal of the bank accounts of the company, it is observed that a quantum of IPO proceeds was layered to pay the ICD lenders and the suppliers of the plant and machinery.

g) TPL vide its letter dated August 6, 2012, had informed SEBI that the funds received by way of ICDs were paid back to the ICD holders with interest and TDS was deducted on the interest amounts paid and provided TDS certificates for the same. However, on perusal of the bank accounts of the company, it is observed that full interest payment was made to the ICD lenders without deducting any TDS.

h) The IPO proceeds were layered to provide an exit opportunity to QIBs namely Sparrow Asia Diversified Opportunities Fund, IPRO Funds Ltd and Credo India Thematic Fund Limited and certain retail investors. It is also observed that the noticees had failed to comply with the directions issued in SEBI ad-interim ex-parte order dated December 28, 2011.

i) In view of the above, it is alleged that the Noticees have violated Section 12 A(a), 12A(b), 12A(c) of the SEBI Act read with Regulation 3 (a) (b) (c) (d) and 4 (1), 4(2)(a), 4(2)(d) and 4(2)(e) of PFUTP Regulations and Regulations 57(1) and 57(2) read with Schedule VIII, Part A(16) of ICDR Regulations and Regulations 59, 60(4) and 60(7)(a) of the ICDR Regulations.

6. In response to the aforesaid SCN dated June 13, 2013, Noticees submitted their common reply vide letter dated November 4, 2016. Summary of the said reply is as under:

- *The SCN alleges that the "decision" to avail the ICDs was "material" and was not disclosed in the prospectus. It is respectfully submitted that the SCN proceeds on a misconception that the Board of Directors in the meeting on September 10, 2011 took any concrete decision to avail of ICDs while the resolution also identified the lenders and the amounts required by the company, it is noteworthy that Mr. Vineet Tijaria was only authorised to negotiate, discuss, settle and finalize terms" with the lenders. Authorizing Directors of a company to negotiate with third parties are fairly common, routine and are in the ordinary course of business.*

- *It was only subsequently that the negotiations with the lenders fructified and the rate of interest charged by them was found to be acceptable, the company entered in to ICD Agreements and the loans were disbursed. Therefore, absent any concluded arrangements with the lenders, it would have been premature to disclose the same in the Prospectus.*

- *As regards the allegation that the Prospectus had stated that no bridge loan would be raised against the IPO proceeds, it is submitted that no bridge loans were raised against the proceeds of the issue. As on the date of filing the prospectus, the ICD Agreements were not acted upon and the amounts were availed after the filing of the Prospectus.*

- *The SCN also alleges that the company had obtained amounts in excess of what was contemplated in the resolution dated September 10, 2011. It is respectfully submitted that merely because amounts higher than what was authorized was secured, does not render the transaction itself fraudulent or illegal. If the actions of the company or its representative in dealings with a third party are outside the scope of the authority conferred by way of a resolution passed by the Board of Directors, the same is at best an* *irregularity not an illegality. In the instant case, assuming for the sake of argument that the company was not authorized to obtain amounts in excess of what was sanctioned by the Board, the company by acting on the loan agreement and repaying the loan amount with interest, has effectively ratified the excess disbursement.*

- *Further in any event, the Board of Directors of the company had been authorized by the way of a special resolution passed by the shareholders on July 12, 2010 to borrow upto Rs.200 Crore. This has been specifically disclosed in the Prospectus under the heading "Details of Borrowing Powers of Directors" (Page 149 of Prospectus).*

- *Regarding the ICDs availed from M/s. Herald Commerce Ltd (Rs. 1 crore) and Bahubali Properties Private Ltd (Rs.75 lakhs), the loan was repaid with interest and tax was deducted at source. These loans were availed for the purpose of meeting working capital requirement in the ordinary and usual course of business. The company was of the view that the loan transaction had no impact on its operations and this was the view of the merchant banker too who did not even bother to verify any further after the discussions. Therefore they were not disclosed in the Prospectus. The SCN alleges that no resolution of the Board was passed for obtaining these loans. It is submitted that this is wholly irrelevant as these loans agreements have been acted upon and repaid the loan with interest.*

- *The Allegation that TDS was not deducted on the interest component of ICDs is baseless. In order to substantiate this allegation, SEBI relies on a communication dated August 8, 2012 where the company has stated that owing to oversight in the accounts department, TDS was not deducted but has subsequently been paid to the Government. In any event, TDS has been paid on the interest component of the ICDs and a copy of the TDS certificate is attached herein as "Annexure C". The company had also filed a civil suit against the lenders for nonpayment of tax which the company was compelled to pay. In some of the cases, a decree has also been passed by the civil court directing some of the lenders to reimburse the company for the same. A copy of the same is attached and annexed herein as "Annexure IY*

- *The SCN alleges that the Prospectus disclosed the existence of restrictive covenants that the company had entered into with the Bank of India that envisaged prior written permission of the bank for obtaining term loan/working capital loan. According to SEBI, these were not adhered to when availing ICDs. The allegation is wholly misconceived and without basis. The SCN does not even state which provision of SEBI Act or rules or regulations issued has been violated as a result of breaching the covenants* *with Bank of India. In fact, there is not even a remote nexus let alone a reasonable one, between breach of a contractual obligation and the provisions of the PFUTP Regulations and the ICDR Regulations that the SCN has invoked against the Noticees. It would be manifestly absurd to suggest that a breach of contract entered into with a lender constitutes either a fraudulent dealing in securities - the very basis tor a charge under PFUTP Regulations; or a non-disclosure of material facts to an investor under the ICDR Regulations when admittedly disclosures have been made regarding the existence of the contractual obligation in the prospectus under the section dealing with "Risk Factors". A Risk Factor by its very nature is susceptible to uncertainties. Therefore, the mere fact that the entity has breached a disclosed contractual obligation, does not ipso facto, render the disclosure fraudulent or misleading. On the contrary, the non-disclosure of the restrictive covenant in the Prospectus would have been misleading.*

- *In any event, the SCN does not explain the nexus between breach of a restrictive covenant disclosed in the Prospectus and its nexus with the charges under the PFUTP Regulations and the ICDR Regulations. On this ground alone, the allegations ought to be disregarded as being extraneous and irrelevant.*

- *The allegation that the proceeds of the IPO had been diverted to non-genuine suppliers and the company has not received any machinery is erroneous and is based on the site visit conducted by SEBI officials in March, 2012. This allegation is set aside by the Hon'ble Tribunal.*

- *The machinery was received in June, 2012 and the reasons for delay in installation were also explained to SEBI via letter dated June 22, 2012. We had stated that owing to the directions in the Ex-Parte Order, the construction of the building was delayed and we had requested the suppliers to retain the machinery pending completion of the construction of the factory. A certificate of Chartered Engineer was also provided with our letter dated February 28, 2013 certifying the installation of the machinery in the factory premises to demonstrate that we had received the machinery. We also requested SEBI to conduct a visit of the premises and test the veracity of the claims made by TPL. However, SEBI did not take cognizance of that and decided to stick to their arguments based solely on their Investigation Report.*

- *It appears that SEBI has sought to question the genuineness of the suppliers based on a visit by SEBI officials to the premises of the suppliers in July, 2012 based on the addresses provided by these suppliers in their KYC form to Karur Vyasa Bank. We had vide our letter dated August 6, 2012, at the* *request of SEBI, also provided the addresses of these suppliers as their addresses had changed. SEBI has made no effort at investigating and verifying the claims made by us and visiting the premises of the suppliers at the addresses provided by us.*

- *We are constrained to state that no response was forthcoming from SEBI which indicates existence of a predisposed mind that is not expected from a regulator required to discharge its quasi-judicial functions in a fair, impartial and objective manner.*

- *It was also held by the Hon'ble Securities Appellate Tribunal that the direction given by the Whole Time Member to call back advance paid for orders of plant and machinery need not be complied with as the orders were genuinely placed by the company and the machinery too was received. SEBI cannot arrive at a conclusion that the plant and machinery had not been received from the said suppliers and direct the company to call back the amount paid for procurement of machinery without verifying the aforesaid facts.*

- *The allegations in para 9 and para 11 of the Adjudication Show Cause Notice dated June 13, 2013 are wholly misconceived and without basis. An allegation that IPO proceeds were layered to pay ICD lenders and suppliers of plant and machinery and to provide an exit opportunity to QIBs and certain retail investors is of very serious nature. However, as stated earlier, all these entities are independent third parties and we have no connection whatsoever with these entities including whether by the way of common directorships or shareholding nor do we have any ability to manage or control the activities or dealings of these entities. The transactions with these entities were legitimate commercial transactions. Therefore, the company cannot be called upon to answer for dealings of an independent third party and what use it has put its fund to. If it is the case of SEBI that the allegations are substantiated in other parallel proceedings, we crave leave to refer to the decisions of the Supreme Court in Orix Fisheries where the Hon'ble Court has held the nature and the scope of the notice which the noticee has to defend. Mere a mention of allegation is not sufficient and it is a settled position of law. In case, the learned Adjudicating Officer decides to proceed further and inquire into this allegation of alleged layering of funds by our company, there ought to be an explanation and necessary facts mentioned to us which we will be dealing with separately as submitted during the personal hearing.*

7. Pursuant to receipt of SCN, the Noticees made multiple requests for inspection of relevant documents in the matter. Accordingly, opportunities of inspection of documents were provided to the Noticees on July 26, 2013, August 7, 2013 and September 5, 2013. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, hearing opportunities was provided to the Noticees by the erstwhile AO on August 23, 2016, September 21, 2016 and October 6, 2016. Subsequently, upon receipt of the case, the undersigned provided further opportunity of personal hearing to the Noticees on November 23, 2020 through video conferencing on the Webex platform. In this regard, the Authorised Representative of the Noticees attended hearing before me on November 23, 2020 and requested to submit additional reply within 10days time. However, till date, the Authorised Representative has not submitted any post hearing reply before me.

8. Taking into account the aforesaid facts, I am of the view that principles of natural justice have been followed in the matter by granting the Noticees opportunity of being heard and submit their reply in the matter. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record.

<u>CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS</u>

9. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Noticees is that they have violated various provisions of SEBI Act, SEBI PFUTP Regulations, 2003 and ICDR Regulations.

   After perusal of the material available on record, I have the following issues for consideration, viz.

   I. *Whether Noticees have violated Section 12 A(a), 12A(b), 12A(c) of the SEBI Act read with Regulation 3 (a) (b) (c) (d) and 4 (1), 4(2)(a), 4(2)(d) and 4(2)(e) of*

PFUTP Regulations and Regulations 57(1) and 57(2) read with Schedule VIII, Part A(16) of ICDR Regulations and Regulations 59, 60(4) and 60(7)(a) of the ICDR Regulations?

II. *Does the violation, if any, attract monetary penalty under Section 15 HA of SEBI Act and Section 15HB of the SEBI Act for the Noticees?*

III. *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

10. Before moving forward, it is pertinent to refer to the relevant regulatory provisions which reads as under:

Relevant provisions of SEBI PFUTP Regulations, 2003:

3. No person shall directly or indirectly—

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

1) *Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
2) *Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—*

   (a) indulging in an act which creates false or misleading appearance of trading in the securities market;

   ...

   (d) paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money's worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;

   (e) any act or omission amounting to manipulation of the price of a security;

<u>Relevant provisions of SEBI Act 1992:</u>

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A.No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

<u>Relevant provisions of ICDR Regulations, 2009</u>

"Manner of disclosures in the offer document.

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

(2) Without prejudice to the generality of sub-regulation (1):

(a) the red-herring prospectus, shelf prospectus and prospectus shall contain:

(i) the disclosures specified in Schedule II of the Companies Act, 1956; and

(ii) the disclosures specified in Part A of Schedule VIII, subject to the provisions of Parts B and C thereof.

Prohibition on payment of incentives.

59. No person connected with the issue shall offer any incentive, whether direct or indirect, in any manner, whether in cash or kind or services or otherwise to any person for making an application for allotment of specified securities:

Provided that nothing contained in this regulation shall apply to fees or commission for services rendered in relation to the issue.

Explanation: For the purpose of this regulation, the expression "person connected with the issue" includes a person connected with the distribution of the issue.

Public communications, publicity materials, advertisements and research reports.

60...

(4) The issuer shall make prompt, true and fair disclosure of all material developments which take place during the following period mentioned in this sub-regulation, relating to its business and securities and also relating to the business and securities of its subsidiaries, group companies, etc., which may have a material effect on the issuer, by issuing public notices in all the newspapers in which the issuer had issued pre-issue advertisement under regulation 47 or regulation 55, as the case may be:

(a) in case of public issue, between the date of registering final prospectus or the red herring prospectus, as the case may be, with the Registrar of Companies, and the date of allotment of specified securities;

(b) in case of a rights issue, between the date of filing the letter of offer with the designated stock exchange and the date of allotment of the specified securities.

...

(7) Any advertisement or research report issued or caused to be issued by an issuer, any intermediary concerned with the issue or their associates shall comply with the following:

(a) it shall be truthful, fair and shall not be manipulative or deceptive or distorted and it shall not contain any statement, promise or forecast which is untrue or misleading;

SCHEDULE VIII

DISCLOSURES IN OFFER DOCUMENT, ABRIDGED PROSPECTUS AND ABRIDGED LETTER OF OFFER

(16) Unsecured loans:

(a) Break-up of total outstanding unsecured loans taken by the issuer shall be given in the offer document into the amount borrowed from promoters/group companies/subsidiaries / material associate companies and amount borrowed from others. Further, in respect of each such loan of the former category, terms and conditions shall be disclosed including the interest rates and repayment schedule. If the loans can be recalled by the lenders at any time, the same shall be disclosed.

(b) Break-up of the total outstanding unsecured loans taken from the issuer by the promoters, group companies, related parties, material associate companies and others shall be disclosed.

(c) If the loans can be recalled by the lenders at any time, the same shall be disclosed along with details of such loans."

Issue I: Whether Noticees have violated Section 12 A(a), 12A(b), 12A(c) of the SEBI Act read with Regulation 3 (a) (b) (c) (d) and 4 (1), 4(2)(a), 4(2)(d) and 4(2)(e) of PFUTP Regulations and Regulations 57(1) and 57(2) read with Schedule VIII, Part A(16) of ICDR Regulations and Regulations 59, 60(4) and 60(7)(a) of the ICDR Regulations?

11. I have perused the facts of the case, gist of allegations made against the Noticee as per the SCN, summary of the submissions made by the Noticee, documents available on record and my findings thereof are specified below:

Findings:

<u>Non–disclosure in the Prospectus to raise funds through ICDs</u>

a) It is alleged in the SCN that Noticees have failed in making disclosure in the Prospectus dated September 12, 2011 regarding Board Resolution dated September 10, 2011 to raise funds through ICDs. From the copy of minutes of the meeting of Board of Directors held on September 10, 2011, it is observed that the Chairman of TPL informed the Board of Directors that there was a requirement for extra funds for meeting the business need in view of projects under progress. The minutes further records that it was decided in the said meeting to authorize Mr. Vineet Jain Tijaria, Executive Director of TPL, to find out sources of raising funds and finalize the terms and conditions favorable to the company. Accordingly, a resolution was passed to apply and avail loan of ₹*12.50* crore for meeting business expenses from the following parties:

Entity	**Maximum Loan Amount (₹ in Crore)**
Nihita Financial Services Pvt. Ltd.	0.50
Marine Gems Pvt. Ltd.	0.75
Sanjivani Gems Pvt. Ltd.	0.25
Bellisima Impex	10.00
Balasaria Holdings	1.00

Total	**12.50**

b) Subsequent to the above resolution, it is observed that TPL raised funds through ICDs aggregating to approximately ₹*15.25* Crore from 6 entities as mentioned in the table below

Entity	Loan Amount (₹ in Crore)
Nihita Financial Services Pvt. Ltd.	2.50
Marine Gems Pvt. Ltd.	0.75
Sanjivani Gems Pvt. Ltd.	0.25
Bellisima Impex	10.25
Balasaria Holdings	1.00
Shareware Finvin Pvt. Ltd.	0.50
Total	**15.25**

c) Further, I also note that TPL had taken amounts from Nihita Financial Services Pvt. Ltd. and Bellisima Impex, in excess of what was approved in the Board meeting dated September 10, 2011.

Name of the Party	Maximum Loan Amount (₹in Crore)	Actual Amount Taken (₹in Crore)
Nihita Financial Services Pvt. Ltd.	0.50	2.50
Bellisima Impex	10.00	10.25

d) From the records available on record, I note that while the receipt of funds by TPL from 5 entities i.e. Bellisima Impex, Nihita Financial Services P Ltd., Balasaria Holdings Pvt. Ltd., Marine Gems Pvt. Ltd. and Sanjivani Gems Pvt. Ltd., occurred immediately after the date of Prospectus i.e. September 12, 2011 (as regards ICDs taken from Shareware Finvin Pvt. Ltd., receipt of funds was on October 10, 2011), the decision to raise funds through ICDs and also the finalizing of entities from whom funds through such ICDs were to be raised, was made on September 10, 2011 i.e. two days prior the date of the Prospectus. This material information regarding ICDs taken by TPL was not disclosed its Prospectus dated September 12, 2011.

e) Noticees in their submission have argued that the information relating to the ICDs was not material to the IPO. In the Board Meeting dated September 10, 2011, no concrete decision to avail of ICDs was taken by the company. Mr. Vineet Tijaria was only authorized to negotiate, discuss, settle and finalize terms with the lenders. Authorizing Directors of a company to negotiate with third parties are fairly common, routine and arc in the ordinary course of business. It was only subsequently that the negotiations with the lenders fructified. Therefore without any concluded arrangements with the lenders, it would have been premature to disclose the same in the Prospectus.

   I do not accept the above contention of the Noticees that decision to raise funds through ICDs just prior to the Public Issue was not material considering the fact that repayment to the ICD lenders was made out of the IPO proceeds. Hence, I note that the Noticees have failed to disclose in the Prospectus dated September 12, 2011, the material decision to raise funds through ICDs. Such material information (taken by TPL on September 10, 2011), if contained in TPL's Prospectus, would have aided investors/subscribers to that company's IPO in taking an informed decision.

f) In addition to the above observations, I am of the view that importance and requirement of disclosures of the ICDs in the Prospectus as specified in relevant regulations can't be denied. I observe that ICDs constituted approximately 20.8% of the issue size which is substantively material for the market to correctly evaluate the advantage and risk of an IPO. Therefore, I do not accept the contention of the Noticees that money was used for normal business and information does not impose any risk to the investors.

g) In light of the above, I am of the view that Noticees failed to disclose material information in that company's Prospectus regarding the Board Resolution dated September 10, 2011, to raise funds through ICDs. In view of the same, I find that the charge against Noticees relating to the concealment of material information in the Prospectus, stands established.

<u>Non–disclosure in the Prospectus, of funds raised by TPL through ICDs (in accordance with the Board Resolution dated September 10, 2011), which were in the nature of a bridge loan</u>

h) It is alleged in the SCN that Noticees have failed to make disclosure in the Prospectus, of funds raised through ICDs in accordance with the Board Resolution dated September 10, 2011, which were in the nature of a bridge loan. Funds raised through ICDs was aggregating to approximately ₹15.25 crores from 6 entities, to purchase raw material, meet working capital requirements, pay for purchase of machinery, etc. Details in respect of ICDs raised from the aforementioned entities are provided below:

Entity	Date of Agreement	Amount agreed as per Agreement (₹Crores)	Actual amount received by TPL (₹Crores)	Tenure of ICD	Date of repayment of ICD	Amount repaid from IPO proceeds (₹Crores)
Bellisima Impex	22.9.2011	9.50	9.50	1 month (12.09.2011 to 15.10.2011)	13.10.2011	10.36
Bellisima Impex	27.9.2011	0.50	0.75	3 weeks (27.09.2011 to 15.10.2011)		
Nihita Financial Services Pvt. Ltd.	16.9.2011	2.00	2.00	1 month (16.09.2011 to 15.10.2011)	13.10.2011	2.51
Nihita Financial Services Pvt. Ltd.	21.9.2011	0.50	0.50	3 weeks (21.09.2011 to 15.10.2011)		
Shareware Finvin Pvt. Ltd.	27.9.2011	0.50	0.50	1 week (10.10.2011 to 15.10.2011)	13.10.2011	0.50

Balasaria Holdings Pvt. Ltd.	19.9.2011	1.00	1.00	1 month (19.09.2011 to 15.10.2011)	13.10.2011	1.01
Marine Gems Pvt. Ltd.	-	0.75	0.75	-	13.10.2011	0.75
Sanjivani Gems Pvt. Ltd.	-	0.25	0.25	-	13.10.2011	0.25
Total		**15.00**	**15.25**			**15.38**

i) It was observed that TPL, in its Prospectus dated September 12, 2011 (Paragraph Q on page 56), TPL stated that *"Our Company has not raised any bridge loan against the proceeds of the present issue"*.

j) Noticees, in their reply dated November 04, 2016, had submitted that no bridge loans were raised against the proceeds of the issue and the ICD Agreements were not acted upon and the amounts were availed after the filing of the Prospectus.

I note that the repayment of the abovementioned ICDs was from the IPO proceeds, which did not form part of the Objects of the Issue. Above submission of Noticees clearly shows that monies were raised through ICDs just prior to the IPO. Raising funds by TPL in this manner was therefore, nothing but a bridge loan since the repayment of the said ICDs was effectively tagged to the IPO proceeds. Further, the aforesaid fund raising through ICDs was not disclosed in accordance with the ICDR Regulations.

wrong disclosure/misstatement in the Prospectus regarding procurement of plant and machinery and suppliers, and diverted IPO proceeds

k) It is alleged in the SCN that the Noticees had diverted a substantial part of the IPO proceeds by placing supply orders with first time suppliers of plant and machinery (namely Shri Nath Trading Co., Neelkant Enterprises, Goyal Trading Co., RK International, VR international and Suvidha International) for which 100% advance was given by the company during the period September 14, 2011 to October, 17, 2011.. Further, the company did not receive any machinery from the said suppliers as on March 31, 2012. From the physical verification of the said suppliers by SEBI, it was observed that none of the suppliers existed in the addresses provided by the company.

Noticees, in their reply, denied the above allegations and stated that machinery was received in June 2012 and reason for delay was explained to SEBI vide letter dated June 22, 2012. A certificate of Chartered Engineer was also provided to SEBI with letter dated February 28, 2013 certifying the installation of the machinery in the factory premises to demonstrate that we had received the machinery. Noticees had requested SEBI to conduct a visit of the premises however, SEBI did not take cognizance of that. SEBI had sought question on the genuineness of the suppliers based on a visit by SEBI officials to the premises of the suppliers in July, 2012 based on the addresses provided by these suppliers in their KYC form to Karur Vyasa Bank. Noticees had, vide letter dated August 6, 2012, provided the addresses of these suppliers as their addresses had changed. However, SEBI did not verify those address by visiting the premises of the suppliers at the addresses provided by the Noticee

With regard to the above allegations and reply from the Noticees, I note that there exists 11B proceedings against the Noticees apart from the present adjudication proceedings. Additionally, both the proceedings have arisen out of same facts and allegations against the Noticees. I further note that Noticees had made appeal before the Hon'ble SAT with regards to the findings against them in the 11B proceedings and the Hon'ble SAT vide its order dated June 29, 2016 has decided the appeal on merit and had dealt with the issues elaborately. The Hon'ble SAT in its Order stated that "*WTM of SEBI has failed to consider the argument of the appellant that the plant and machinery from the suppliers have been in fact received by the appellant (though belatedly) and in support of that contention the appellant had relied upon the certificate issued by a*

Chartered Engineer. It is true that the visit reports of SEBI casts serious doubts as to the existence of the above suppliers. However, when the appellant had submitted that there was change in the address of the said suppliers and that the said suppliers had belatedly supplied the plant and machinery which are installed and available for inspection as per the Chartered Engineer's certificate, without verifying the aforesaid facts the WTM of SEBI, solely based on visit reports of SEBI could not arrive at a conclusion that the plant and machinery have not been received from the said suppliers and accordingly direct the appellant to call back the amount paid to the said four suppliers. Fact that the said suppliers were first time suppliers and that the advance payments were made prior to the purchase orders cannot be a ground to disbelieve the case of the appellant supported by a Chartered Engineer's certificate that the plant and machinery have been in fact received from the said suppliers and installed in the factory of the appellant. In the facts of present case, failure on part of SEBI in considering the arguments of the appellant regarding the actual receipt of plant and machinery from the suppliers in question as well as the certificate issued by Chartered Engineer has led to miscarriage of justice."

In view of the above, I am of the view that the allegation against the Noticees regarding wrong disclosure/misstatement in the Prospectus regarding procurement of plant and machinery and suppliers and diversion of IPO proceeds is not established.

Made misstatements in the Prospectus by overstating expenditure and diverted IPO proceeds:

l) In the SCN, it is alleged that the Noticees made misstatements in the Prospectus by overstating expenditure and diverted IPO proceeds.

m) As per the disclosure made in the Prospectus, the Object of the Issue was to meet the total project cost of ₹108.52 Crore. The utilization of funds as shown in the Prospectus is provided below:

Application of Funds	Budgeted (in Rs Lakh)	Already incurred (in Rs Lakh)	To be Incurred (in Rs Lakh)
Land & Site Development	716	681.83	34.17
Building & Civil Construction	1,466.00	788.72	677.28
Plant & Machinery			
-Imported	5,025.00	1,013.71	4,011.29
-Indigenous	1,200.00	576.1	623.9
Misc. Fixed Assets	590	415.82	174.18
Preliminary & Capital Issue Expenses	495	49.66	445.34
Pre operative Expenses	215	216.5	-1.5
Provision for Contingencies	285		285
Working Capital Margin	860	106.25	753.75
Total	10,852.00	3,848.59	7,003.41

n) With regard to utilization of IPO proceeds, it was observed that the estimated cost of the project was ₹ 108.52 crore and that cost was to be funded through –

- ₹60 Crores to be raised through the IPO;
- ₹40 Crores to be raised by way of a term–loan from financial institution i.e. Bank of India as the term lender, and
- the remaining ₹8.52 Crores was to be met from internal accruals

On perusal of the bank accounts of the company, it was observed that a quantum of IPO proceeds was layered to pay the ICD lenders and the suppliers of the plant and machinery. It was observed that the Company had taken ICDs from Herald Commerce Ltd. and Bahubali Properties Pvt. Ltd. for Rs 1 crore and Rs 75 lacs respectively. It was alleged that the said two ICDs taken by the company were not disclosed in the Prospectus of Tijaria Polypipes Ltd under the head 'Unsecured Loans'.

With regard to above, the Noticees in their reply submitted that the loan was repaid with interest and tax was deducted at source. These loans were availed for the purpose of meeting working capital requirement in the ordinary and usual course of business. The company was of the view that the loan transaction had no impact on its operations. Therefore, it was not disclosed in the Prospectus.

With regard to the above contention of the Noticees and importance of disclosure, my findings are provided in para 11(k) above. Therefore, I do not accept the contention of the Noticees that above loans had no impact on operation of the Company and hence not required disclosure in prospectus.

<u>IPO proceeds used for giving exit to QIBs and some of the retail allottees:</u>

o) It is alleged in the SCN that the IPO proceeds were layered to provide an exit opportunity to QIBs namely Sparrow Asia Diversified Opportunities Fund, IPRO Funds Ltd and Credo India Thematic Fund Limited and certain retail investors

p) With regard to diversion of IPO proceeds, the relevant issue to decide is whether there is any unfair trade practice/manipulation adopted by the Noticees. The proof of fraudulent /manipulative transaction in the circumstances always depends on inference drawn from a mass of actual details, the nature of transaction, conduct of the parties etc., It is difficult to prove intent by direct evidence in these type of manipulation and therefore circumstantial evidence has to be taken into consideration. Further the circumstantial evidence should be sufficient to raise a presumption in its favour with regard to the existence of a fact sought to be proved since it is exceedingly difficult to prove facts which are especially with in the knowledge of parties concerned. The legal proof in such circumstances partakes the character of a prudent man's estimate as the probabilities of the case.

q) I note that there is neither any direct evidence that the Noticees diverted IPO proceeds to give exit to the QIBs and certain retail allottees nor their manipulative intent to do so also has been brought out on record.

   Therefore, I find that in the instant case the evidence and material available on record is insignificant to hold that the Noticees gave exit to QIBs and some of the retail allottees. Further, establishing intent or fraudulent motive in commission of such trade is absolutely imperative to allege anyone with fraudulent and unfair trade practice. In the present case there is no such document/information/evidence available on record, which establish such fraudulent intention.

r) In view of the above observations, I do not find merit in the allegation that the Noticees have diverted IPO proceeds to give exit to QIBs and some of the retail allottees.

s) In view of the above, I am of the view that

   i. the allegations made against the Noticee for violation of Section 12A of SEBI Act, 1992 and Regulations 3(a), (b), (c) & (d), 4(1) of SEBI PFUTP Regulations, 2003 have not been established, and

   ii. the allegations made against the Noticee for violation of Regulations 57(1) and 57(2) read with Schedule VIII, Part A(16) of SEBI (ICDR) Regulations, 2009 and Regulations 59, 60(4) and 60(7)(a) of the ICDR Regulation stands established.

Issue II: Does the violation, if any, attract monetary penalty under Section 15 HA of SEBI Act and Section 15HB of the SEBI Act for the Noticee?

The provisions of Section 15HA and Section 15HB of the SEBI Act, 1992 read as under:

<u>SEBI Act 15HA - "Penalty for fraudulent and unfair trade practices–</u>
If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."

<u>SEBI Act 15HB - Penalty for contravention where no separate penalty has been provided</u>
Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

12. In view of the aforesaid findings, I am convinced that the Noticees are liable for monetary penalty Section 15HB of SEBI Act, 1992 for violation of the provisions of SEBI Act and ICDR Regulations. However, no penalty is warranted against the Noticees under Section 15HA of SEBI Act, 1992.

Issue III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

13. The provisions of Section 15J of the SEBI require that while adjudging the quantum of penalty, the Adjudicating Officer shall have due regard to the following factors namely;
    a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

b) the amount of loss caused to an investor or group of investors as a result of the default;

c) the repetitive nature of the default.

14. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that no quantifiable figures or data are available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default committed by the Noticees. I note that the Noticees have violated the provisions of ICDR Regulations.

<u>ORDER</u>

15. After taking into consideration all the facts and circumstances of the case, gravity of violations and the material on record, and also the factors stipulated in Section 15J of the SEBI Act, 1992, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, hereby impose penalty as detailed in table below:

<table>
<tr><th>Noticee</th><th>Violation</th><th>Penal Provisions</th><th>Penalty (Rs.)</th></tr>
<tr><td>Alok Jain Tijaria (PAN: ABJPJ3116C)</td><td rowspan="4">Regulations 57(1) and 57(2) read with Schedule VIII, Part A(16) of SEBI (ICDR) Regulations, 2009 and Regulations 59, 60(4) and 60(7)(a) of the ICDR Regulations</td><td rowspan="4">Section 15HB of the SEBI Act, 1992.</td><td>Rs. 2,00,000/-

(Rupees Two Lakh Only)</td></tr>
<tr><td>Vineet Jain Tijaria (PAN: ABTPJ8166C)</td><td>Rs. 2,00,000/-

(Rupees Two Lakh Only)</td></tr>
<tr><td>Vikas Jain Tijaria (PAN: ABTPJ8056D)</td><td>Rs. 2,00,000/-

(Rupees Two Lakh Only)</td></tr>
<tr><td>Praveen Jain Tijaria</td><td>Rs. 2,00,000/-</td></tr>
</table>

(PAN: ABTPJ8112G)			(Rupees Two Lakh Only)

I am of the view that the said penalty is commensurate with the violation committed by the Noticees

16. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

17. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

18. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA II), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal	

19. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to, recovery proceedings may be initiated under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

20. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticees and also to the Securities and Exchange Board of India.

Date: March 9, 2021
Place: Mumbai

G RAMAR
ADJUDICATING OFFICER