

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER**

ORDER

Under the Securities and Exchange Board of India Act, 1992 read with the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 and the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, in the matter of Tijaria Polypipes Limited (PAN: AACCT4796M), its Directors, Mr. Alok Jain Tijaria (PAN: ABJPJ3116C), Mr. Vikas Jain Tijaria (PAN: ABTPJ8056D), Mr. Vineet Jain Tijaria (PAN: ABTPJ8166C), Mr. Praveen Jain Tijaria (PAN: ABTPJ8112G) and the Independent Directors, Mr. Santosh Kumar (PAN: ABJPJ3148G) and Mr. Padam Prakash Som Prakash Bhatnagar (PAN: ABTPJ9846M).

1. Tijaria Polypipes Limited (“**TPL**”), a company incorporated under the Companies Act, 1956, came out with an Initial Public Offering (“**IPO**”) of 1,00,00,000 equity shares of ₹10 each, issued at a premium of ₹50 per share i.e. ₹60 per equity share. The Issue opened on September 27, 2011 and closed on September 29, 2011. The shares of TPL, issued in its IPO, were listed on the Bombay Stock Exchange of India Limited (“**BSE**”) and the National Stock Exchange of India Limited (“**NSE**”) on October 14, 2011.
2. The Red Herring Prospectus (“**RHP**”) filed by TPL was dated August 17, 2011 and its Prospectus (“**Prospectus**”) was dated September 12, 2011. The objects of the Issue as disclosed in the Prospectus were as follows –

Table I		
Sr. No.	Particulars	Budgeted Amount (₹In Crores)
1.	Land and Site Development	7.16
2.	Building and Civil Construction	14.66
3.	Plant and Machinery –	
	i. Imported	50.25
	ii. Indigenous	12.00
4.	Misc. Fixed Assets	5.90
5.	Preliminary & Capital Issue Expenses	4.95
6.	Pre-operative Expenses	2.15
7.	Provision for Contingencies	2.85
8.	Working Capital Margin	8.60
	Total	108.52

3. Upon noticing fluctuations in the share price of TPL on the days immediately following its listing, Securities and Exchange Board of India (“**SEBI**”) conducted an investigation into the IPO of the aforesaid company. Preliminary findings of the investigation *prima facie* revealed suppression of material facts in the Prospectus of TPL; diversion of IPO proceeds by TPL for the purpose of purchase of its own shares, etc.

4. As manipulative practices were observed in the IPO of TPL, SEBI vide an *ad-interim ex-parte* Order dated December 28, 2011 (hereinafter referred to as “**Interim Order**”) *inter alia* issued directions against the following entities in view of the *prima facie* violations of Section 12A(a)–(c) of SEBI Act, 1992 (“**SEBI Act**”) read with Regulations 3(b)–(d), 4(1), 4(2)(d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“**PFUTP Regulations**”); Regulations 59 and 60(7)(a) of SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009 (“**ICDR Regulations**”), viz. –
 - i. TPL was prohibited from raising any further capital from the securities market, in any manner whatsoever, till further directions.
 - ii. TPL, its Directors – Mr. Alok Jain Tijaria, Mr. Vikas Jain Tijaria, Mr. Vineet Jain Tijaria and Mr. Praveen Jain Tijaria (collectively referred to as “**Directors**”) and the Independent Directors - Mr. Santosh Kumar and Mr. Padam Prakash Som Prakash Bhatnagar (collectively referred to as “**Independent Directors**”) were prohibited from buying, selling or dealing in the securities market, in any manner whatsoever, till further directions.
 - iii. TPL was directed to:
 - a. Call back ₹20.40 Crores, from the following entities to whom the IPO proceeds were found to have been diverted, as the Inter Corporate Deposits (“**ICDs**”) Agreements and purchase orders, wherever produced by TPL to explain such diversion, were *prima facie* found to be fabricated. The portion of the IPO proceeds, so diverted, were found to be *inter alia* routed to the individuals/entities who purchased shares from QIBs and/or retail allottees at a premium to the Issue Price –

Table II		
Sr. No.	Particulars	Amount (₹ in Crores)
1.	<i>Shri Nath Trading Co.</i>	2.00
2.	<i>Neelkanth Enterprise</i>	2.00
3.	<i>V R International</i>	0.50
4.	<i>Shastika Enterprises</i>	0.50
5.	<i>Sanjivani Gems Pvt. Ltd.</i>	0.25
6.	<i>Shareware Finvin Pvt. Ltd.</i>	0.50
7.	<i>Bellissima Impex</i>	10.36
8.	<i>Marine Gems Pvt. Ltd.</i>	0.75
9.	<i>Balasaria Holdings Pvt. Ltd.</i>	1.02
10.	<i>Nibita Finance</i>	2.52
Total		20.40

- b. Call back ₹25 Crores transferred from the IPO proceeds to its Cash Credit Account and also all other amounts transferred or paid out of the IPO proceeds to its Promoters/Directors or relatives of its Promoters/Directors or HUFs belonging to any of its Promoters/Directors or associates or subsidiaries or group companies, if any.*
- c. To keep the amounts mentioned at (iii)(a) and (b) including all of the IPO proceeds that were still lying unutilized with TPL across all its bank/deposit accounts or any investments including in mutual funds, in a separate interest bearing Escrow Account with a Scheduled Commercial Bank, till further directions; and*
- d. Give confirmation of the above (iii)(a)–(c) to NSE and BSE within 7 days of the Interim Order.*

5. The Interim Order was confirmed as against TPL; its Directors and the Independent Directors on June 13, 2013 (“**Confirmatory Order**”), subsequent to completion of the investigation in the matter.

6.1.1 Thereafter, a Show Cause Notice (“**SCN**”) dated July 13, 2013, was issued to TPL, its Directors and the Independent Directors under Sections 11(4) and 11B of the SEBI Act, 1992, calling upon them to show cause as to why appropriate action including a direction to debar them from accessing the securities market and prohibit them from buying, selling or dealing in securities for a particular duration, should not be issued for the violations alleged in the SCN, viz. Section 12A(a)–(c) of SEBI Act read with Regulations 3(a)–(d), 4(1), 4(2)(a), (d), (e), (f) and (r) of PFUTP Regulations; Regulations 57(1) and

(2), 59, 60(4)(a) and 60(7)(a); and Clause 16 of Part A of Schedule VIII of ICDR Regulations.

6.1.2 As per the SCN,

A. TPL and its Directors were alleged to have –

- i. Failed to make disclosures of material facts in the Prospectus such as –
 - a. Board Resolution dated September 10, 2011, to raise funds through ICDs.
 - b. Funds raised through ICDs in accordance with the Board Resolution dated September 10, 2011, which were in the nature of a bridge loan.
 - c. Funds raised through ICDs prior to the Board Resolution dated September 10, 2011.
- ii. Diverted IPO proceeds –
 - a. through repayment of ICDs (taken in accordance with the Board Resolution dated September 10, 2011), which were subsequently used to partially fund certain entities/individuals, who traded in the scrip of TPL.
- iii. Made wrong disclosure/misstatement in the Prospectus regarding procurement of plant and machinery (imported and indigenous) and suppliers, and diverted IPO proceeds.
- iv. Made misstatements in the Prospectus by overstating expenditure and diverted IPO proceeds.
- v. Failed to comply with certain directions contained in the Interim Order.

B. The Independent Directors were alleged to have –

- i. Failed to make disclosure in the Prospectus, of the Board Resolution dated September 10, 2011, to raise funds through ICDs.
7. An opportunity for inspection of documents relied upon in the SCN was granted to TPL and its Directors on July 26, 2013 and August 7, 2013, in response to a request made by them vide e-mails dated July 22, 2013 and July 30, 2013. The authorized representatives of TPL and its Directors inspected the documents and also requested for copies of certain documents to be couriered to them. On August 8, 2013, all documents were couriered to the authorized representatives. On August 27, 2013, a reminder to reply to

SCN was issued to TPL, its Directors and the Independent Directors. On August 28, 2013, TPL sought inspection for additional documents. On September 5, 2013, the authorized representative inspected the documents and copies of the same were provided.

8. Thereafter, vide letter dated September 9, 2013, TPL and its Directors sought cross-examination of certain entities. However, since from those entities for which cross-examination was sought, only the statement of Imran Mustafa Athania was relied upon by SEBI while framing charges against TPL and its Directors, an opportunity to cross-examine that entity alone, was granted to TPL and its Directors on October 24, 2013 and November 18, 2013. However, the aforesaid entity did not appear for cross examination on both the dates.
9. The Independent Director i.e. Mr. Padam Prakash Som Prakash Bhatnagar, replied to the SCN vide letter December 14, 2014.
10. Subsequently, an opportunity of personal hearing was granted to TPL and its Directors, the Independent Directors on December 16, 2013. During the aforesaid hearing, the authorised representative of TPL, its Directors and the Independent Director i.e. Mr. Santosh Kumar, sought adjournment on the ground that a Writ Petition had been filed before the Hon'ble Rajasthan High Court i.e. *Civil Writ Petition No 12867 of 2013*, by the aforesaid entities. As regards the other Independent Director i.e. Mr. Padam Prakash Som Prakash Bhatnagar, the hearing was concluded on that date.
11. Pursuant to the above, TPL and its Director i.e. Mr. Alok Jain Tijaria, filed an appeal before the Hon'ble Securities Appellate Tribunal ("**SAT**") i.e. *Appeal No 55 of 2014*, which vide Order dated March 5, 2014, held –

"We direct the appellants to file reply to the show cause notice within a period of two weeks from today if not already filed and further direct the respondent to dispose of the show cause notice dated June 13, 2013, within a period of three months from the date of receiving reply to the show cause notice".

12. In compliance with the abovementioned directions of the Hon'ble SAT, TPL and its Directors filed their individual reply to the SCN vide separate letters each dated March 20, 2014 (received by e-mail at SEBI on March 21, 2014). Pursuant to receipt by SEBI of

the aforesaid replies to the SCN, an opportunity of personal hearing was granted to TPL, its Directors and also to the Independent Director i.e. Mr. Santosh Kumar, on April 10, 2014. During the aforesaid hearing, the authorised representative TPL and its Directors reiterated the submissions made in their replies to the SCN dated July 13, 2013. TPL and its Directors also submitted additional written submissions vide letter dated April 17, 2014 and April 20, 2014. The Independent Director i.e. Mr. Santosh Kumar, replied to the SCN vide letter dated April 17, 2014.

13. In their replies to the SCN, written submissions, etc. TPL and its Directors submitted as follows –
 - i. The SCN proceeds on the basis that the Company and Directors have failed to comply with the directions of the WTM by not bringing in back the proceeds of the Issue which were paid to various entities as alleged by SEBI in the Interim Order. The basic premise of SEBI is itself incorrect as the proceeds of the Issue were only utilized to the extent of repayment of ICDs. As directed by SEBI, there were several attempts made to recover the amount which were in vain given the fact that the ICD lenders were not inclined to entertain their request in view of the pending litigation owing to some tax issues with the repayment of ICDs.
 - ii. It is alleged in the SCN that TPL has breached one of the terms of the Agreement entered into by it and the Bank of India in relation to term loans/working capital loans availed by it. The said ICDs were availed after the date of the Prospectus and that the Prospectus clearly states, as part of its risk factors appearing on page 18, that the business growth and execution of the proposed projects by TPL may be adversely affected due to the restrictive covenants contained in agreements with the lenders and the same has been acknowledged in the Notice as well. This is a standard risk factor in most offer documents as it is a known fact that some of these restrictive covenants at times are disregarded due to business urgencies wherein an unsecured loan may have to be availed and the process for obtaining consent from banks in relation to the same is time consuming and therefore the consent is often obtained subsequently. Hence we would like SEBI to take into consideration that a suitable disclosure, as stated above, had already been incorporated into the Prospectus envisaging such eventuality and does not amount to any form of non-disclosure on the part of TPL.

- iii. The SCN alleges that the proceeds of the Issue have been utilized to fund ultimate clients who had traded in the scrip of TPL on October 14, 2011 (first day of listing) to provide an exit to certain QIBs/retail individual investors at premium to the Issue price. The loans in the form of the ICDs were availed of from ICD lenders in order to purchase raw material, meet working capital requirements, pay for purchase of machinery etc. The loans were availed of for a short duration as is evident from the ICD agreements, given that the process of launching the IPO was delayed and orders needed to be placed for raw materials, machinery etc. Further, the loans availed of as ICDs were repaid with interest on October 13, 2011 i.e. immediately on receipt of IPO funds in view of the short duration of the loan the high rate of interest that TPL would have to pay should it fail to make repayment within the time specified in the loan agreements. The funds were utilized for setting up the new business and no question arises of the same being diverted for any trading in the market.
- iv. TPL had not raised any bridge loans against the proceeds of the Issue and the statement to this effect in the prospectus was not false because as on the date of filing of the Prospectus there were no ICDs or any loans which were taken by the TPL and the ICDs were availed after the filing of the Prospectus. In this respect, it would also be relevant to submit that in the Board Meeting of TPL held on September 10, 2011, it was only resolved that due to urgent need of extra funds for meeting business exigencies in view of the projects under progress, one of the Directors of TPL, be authorized to find out the sources of raising funds and finalize the terms and conditions with the prospective creditors. The non-disclosure by TPL of its decision to avail ICDs in the absence of any concluded arrangements with lenders can by no stretch of imagination be said to be a failure to disclose material information as required under law.
- v. TPL has secured amounts higher than what was authorized by the Board in some cases but this does not render the transaction itself fraudulent or illegal.
- vi. TPL had availed of a loan for a sum of ₹1 Crore and ₹75 Lakhs on May 23, 2011 and June 9, 2011 from M/s Herald Commerce Limited and Bahubali Properties Private Limited. The loan was repaid with interest and tax was deducted at source.

They are legitimate, bona-fide transactions. The SCN alleges that no resolution of the Board was passed for availing of these loans. It is submitted that this is wholly irrelevant as TPL has acted on the loan agreement and repaid the loan with interest these loans were availed for the purpose of meeting working capital requirement. Therefore, they were not disclosed in the Prospectus.

- vii. As regards the ICD availed from Shareware Finvin Pvt. Ltd., which was utilized to repay the promoters, it is submitted that ultimately these transactions benefitted TPL and not its promoters as interest free loans were obtained which were in the interests of TPL. In any event, this sole isolated instance cannot be a ground to state that there was no urgency at all in availing of the ICDs.
- viii. TPL had, on more than one occasion, submitted that the ICDs were raised to reduce the time for arranging money needed for making payments towards the expansion project which would be subsequently repaid from the proceeds of the IPO. Hence monies were raised and the same was returned to the ICD holders as soon as possible with interest. The required TDS on the interest amount was also paid to the Income Tax Department and TDS Certificates were issued to the ICD holders which fact too belies the assumption that the transactions were not genuine. Therefore, the Notice has thus been issued without proper application of mind and has been issued by blindly relying on the findings of the *Ex-parte Ad-interim* Order and Impugned Order.
- ix. The allegations made in the present notice, that the purchase orders to machine suppliers and raw material suppliers are fabricated is based on conjecture and surmises without any proper enquiry vis-à-vis the suppliers. Neither the Impugned Order nor the Notice fail to deal with the fact that some of the suppliers had also initiated litigation against TPL for non-payment in respect of supplies made. Moreover, SEBI has also failed to appreciate that every transfer made by TPL has been duly reflected in the bank statements as also in the ledger account. Therefore, the allegation that part of the IPO proceeds were illegally transferred to certain entities is also completely unfounded and baseless.
- x. SEBI completely failed to appreciate the business and the industry practices whereby the orders placed to the machine suppliers and for the procurement of raw materials

which are already due for shipment cannot be cancelled and the suppliers cannot be asked to refund the amount paid for the machines and goods. Needless to mention, all the machines and raw materials so purchased in connection with the business of TPL have been duly received by the TPL. The machine suppliers had also refused to return the payments made stating that they were in advance stages of execution of the supply orders placed with them. The same was also informed to SEBI vide our letter dated January 16, 2012. Further, as would be clear from a perusal of the Notice itself, TPL had also informed SEBI that the production of finished goods had been successfully undertaken and copies of the sales invoices were also been submitted by letter dated October 15, 2012.

- xi. SCN alleges that the proceeds of the IPO have been diverted to non-genuine suppliers as TPL has not received machinery from them. The allegation is erroneous and is based on a site visit conducted by SEBI officials in March, 2012. The machinery suppliers were introduced to us by the person who facilitated the ICD transactions. TPL in fact received the machinery from these suppliers on June, 2012. TPL vide its letter dated June 22, 2012 to SEBI also explained the reasons for the delay in the installation of the machinery. TPL had stated that owing to the directions in the Interim Order, the construction of the building was delayed and TPL had requested the suppliers to retain the machinery pending completion of the construction of the factory.
- xii. SEBI has relied on the statement of one Mr. Imran Mustafa Athania, the proprietor of M/s Bellissima Impex Limited (“**Bellisima**”), an entity from whom TPL availed of an ICD. We had vide our letter dated September 9, 2013, sought an opportunity to cross-examine him and six other persons. On October 3, 2013, while SEBI acceded to our request for cross-examination of Mustafa Athania, it refused to grant us cross-examination of the others on the grounds that the statements of these persons have not been recorded. Admittedly, the cross-examination of Mustafa Athania was scheduled before SEBI twice – on October 24, 2013 and November 18, 2013 and on both occasions he was not present and the cross-examination could not be conducted. Instead of exercising the powers of a civil court that are duly conferred on SEBI and compelling the attendance of a material witness by exercising its coercive powers, SEBI just one day later, vide its letter dated November 19, 2013, dispensed with the cross-examination and directed the Noticees to attend a personal

hearing which it scheduled on December 16, 2013. SEBI's approach clearly indicated that it was going through the motions of adhering to principles of natural justice and regarded the request for cross-examination as an empty formality rather than a question of the substantive due process rights of the Noticee and an exercise to ascertain the truth.

Consideration of Issues and Findings –

A. Against TPL and its Directors, viz. Mr. Alok Jain Tijaria, Mr. Vikas Jain Tijaria, Mr. Vineet Jain Tijaria and Mr. Praveen Jain Tijaria.

14. I note that vide letter dated September 9, 2013, TPL and its Directors sought cross-examination of certain entities. I note that since in the SCN only the statement of Mr. Imran Mustafa Athania was relied upon by SEBI while framing charges against TPL and its Directors, an opportunity to cross-examine that entity was granted to TPL and its Directors on October 24, 2013 and November 18, 2013. However, the aforesaid entity did not appear for cross examination on both the dates. As Mr. Imran Mustafa Athania failed to appear for cross – examination despite being granted two opportunities to do so in these proceedings and in order to ensure that no prejudice is caused to TPL and its Directors for not being able to cross – examine that entity, it is emphasized here that the statement made by Mr. Imran Mustafa Athania has not been relied upon for the purpose of this Order.
15. I have considered the SCN issued to TPL and its Directors, viz. Mr. Alok Jain Tijaria, Mr. Vikas Jain Tijaria, Mr. Vineet Jain Tijaria and Mr. Praveen Jain Tijaria alongwith the documents provided therein, their replies to the SCN alongwith the submissions made during the personal hearing before me and all other relevant material available on record. In light of the same, I shall now proceed to deal with the charges levelled in the SCN against TPL and its Directors.
16. **Non-disclosure in the Prospectus, of Board Resolution dated September 10, 2011, to raise funds through ICDs.**
- 16.1 As per the SCN, TPL and its Directors were alleged to have failed in making disclosure in the Prospectus of Board Resolution dated September 10, 2011, to raise funds through ICDs.

- 16.2 I note that even though TPL is stated to have taken a decision to raise funds through ICDs in its Board meeting held on September 10, 2011, there was no mention of that fact in TPL's Prospectus dated September 12, 2011. It is observed from the copy of minutes of the meeting of Board of Directors held on September 10, 2011, 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 record that it was decided in the said meeting to authorize Mr. Vineet Jain Tijaria, 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 Crores for meeting business expenses from the following parties:

Table III	
Entity	Maximum Loan Amount (₹in Crores)
Nihita Financial Services Pvt. Ltd.	0.50
Marine Gems Pvt. Ltd.	0.75
Sanjivani Gems Pvt. Ltd.	0.25
Bellissima Impex	10.00
Balasarria Holdings	1.00
Total	12.50

- 16.3 Subsequent to the above resolution, TPL raised funds through ICDs aggregating to approximately ₹15.25 Crores from 6 entities, viz. Bellissima Impex, Nihita Financial Services P Ltd., Shareware Finvin Pvt. Ltd., Balasarria Holdings Pvt. Ltd., Marine Gems Pvt. Ltd. and Sanjivani Gems Pvt. Ltd.

Table IV	
Entity	Loan Amount (₹in Crores)
Nihita Financial Services Pvt. Ltd.	2.50
Marine Gems Pvt. Ltd.	0.75
Sanjivani Gems Pvt. Ltd.	0.25
Bellissima Impex	10.25
Balasarria Holdings	1.00
Shareware Finvin Pvt. Ltd.	0.50
Total	15.25

- 16.4 It is observed that TPL had taken amounts from Nihita Financial Services Pvt. Ltd. and Bellissima Impex, in excess of what was approved in the Board meeting dated September 10, 2011.

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

- 16.5 I note that while the receipt of funds by TPL from 5 entities i.e. Bellissima 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), nonetheless 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 before the date of the Prospectus. This material information regarding ICDs taken by TPL, did not find any mention in its Prospectus dated September 12, 2011.
- 16.6 The argument that the decision to raise funds through ICDs just prior to the Public Issue was not material, is not acceptable considering the fact that repayment to the ICD lenders was made out of the IPO proceeds. Hence, I note that the TPL and its Directors 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.
- 16.7 In light of the above, I am of the considered view that TPL and its Directors 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 vis-à-vis TPL and its Directors relating to the concealment of material information in the Prospectus, stands established.
- 17. 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.**

17.1 As per the SCN, TPL and its Directors were alleged to 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.

17.2 It may be reiterated that TPL raised funds through ICDs aggregating to approximately ₹15.25 Crores from 6 entities, viz. Bellisima Impex, Nihita Financial Services Pvt. Ltd., Shareware Finvin Pvt. Ltd., Balasaria Holdings Pvt. Ltd., Marine Gems Pvt. Ltd. and Sanjivani Gems Pvt. Ltd., 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:

Table VI						
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

17.3 As regards the abovementioned ICDs, a sum of ₹15.38 Crores was repaid from the IPO proceeds (an amount of ₹48 Crores was received as IPO proceeds on October 13, 2011) towards Bellisima Impex, Nihita Financial Services Pvt. Ltd., Shareware Finvin Pvt. Ltd. and Balasaria Holdings Pvt. Ltd., on the same day of receipt of such proceeds. 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.'*

- 17.4 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*. In its reply, written submission, etc. to the SCN, TPL admitted that: *"the repayment of ICDs from the proceeds of the IPO was in consonance with the objects of the Issue which envisages, inter alia, repayment of outstanding loans. The same was not disclosed in the Prospectus only because the said ICDs were availed after the date of the Prospectus."* There is thus, a clear admission that monies were raised through ICDs just prior to the IPO. Raising of 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 aforementioned statement in TPL's Prospectus clearly reveal that such raising of funds through ICDs was not disclosed in accordance with the ICDR Regulations.
- 17.5 In light of the above, I am of the considered view that TPL and its Directors failed to disclose material information in TPL's Prospectus, in respect of funds raised through ICDs in accordance with the Board Resolution dated September 10, 2011, which were nothing but a bridge loan. In view of the same, I find that the charge vis-à-vis TPL and its Directors relating to the concealment of material information in the Prospectus, stands established.
- 17.6 Further, I find that part of the ICDs taken in accordance with the Board Resolution dated September 10, 2011, i.e. ₹50 Lakhs from Shareware Finvin Pvt. Ltd., was taken as late as October 10, 2011 and the same was transferred to Mr. Alok Jain Tijaria (₹35 Lakhs) and Maya Jain Tijaria (₹14.30 Lakhs) and the ICD was repaid from the IPO proceeds on October 13, 2011. The aforesaid fact clearly indicates that the ICDs were not entirely availed of by TPL to purchase raw material, meet working capital requirements, pay for purchase of machinery, etc.
- 17.7 In addition, in its Prospectus (Paragraph 26 on Page 18), TPL stated: *'Our Company has entered into agreements for term loans and financial facilities with our banker and the covenants in such agreements require us to obtain bank's permission in writing in respect of effecting any change in the Company's Capital Structure; change in unsecured loan, change in trading cycle, implementation of any scheme of expansion/modification/diversification/renovation, entering into any borrowing arrangement with other banks, undertake guarantee, undertake obligations on behalf of any other Company, declare dividends except for any year approved by the bank, pay guarantee commission to the guarantors whose guarantees have been*

stipulated, create an further charge/lien/encumbrance over assets & properties charged to the bank and sell/ assign or otherwise dispose off the fixed assets charged to the bank.' TPL has admittedly not taken any prior permission from its banker i.e. Bank of India, before taking ICDs. I note that there was a failure on the part of the TPL and its Directors to take written permission from its banker with regard to changes in unsecured loan as per the Loan Agreement mentioned in the Prospectus and it cannot be treated as merely a standard risk factor in most offer documents. The explanation provided by the TPL and its Directors that the process of obtaining consent from banks in relation to the same is time consuming is unacceptable. In this regard, it may be mentioned that disclosures are made in the Prospectus so to enable the investors to make an informed decision in respect of investment in any company.

- 17.8 It is interesting to note that the maturities for the moneys raised through ICDs by TPL from the abovementioned entities were on October 15, 2011. The repayment of ICDs had occurred on October 13, 2011. TPL was asked to confirm whether TDS was deducted for the interest payment made to the ICD lenders. TPL replied vide letter dated August 6, 2012, stating 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. They had provided the TDS Certificates in support of the same. However, on a perusal of the ledgers of the ICD lenders, it was observed that the TDS amounts were still due as on July 14, 2012. Also, a perusal of the bank account statement of TPL revealed that full interest payment was made to the ICD lenders without deducting any TDS. When asked by SEBI to offer their comments regarding the non-deduction of TDS from the ICD lenders, TPL vide e-mail dated August 9, 2012, replied that due to the oversight of the concerned person in the accounts department, adjustment for TDS was not made during the payout of interest; however, the same was identified, subsequently corrected and TDS was paid to the Government of India. Also, it was mentioned that the TDS amounts are still due to TPL and was yet to be recovered from the ICD lenders.

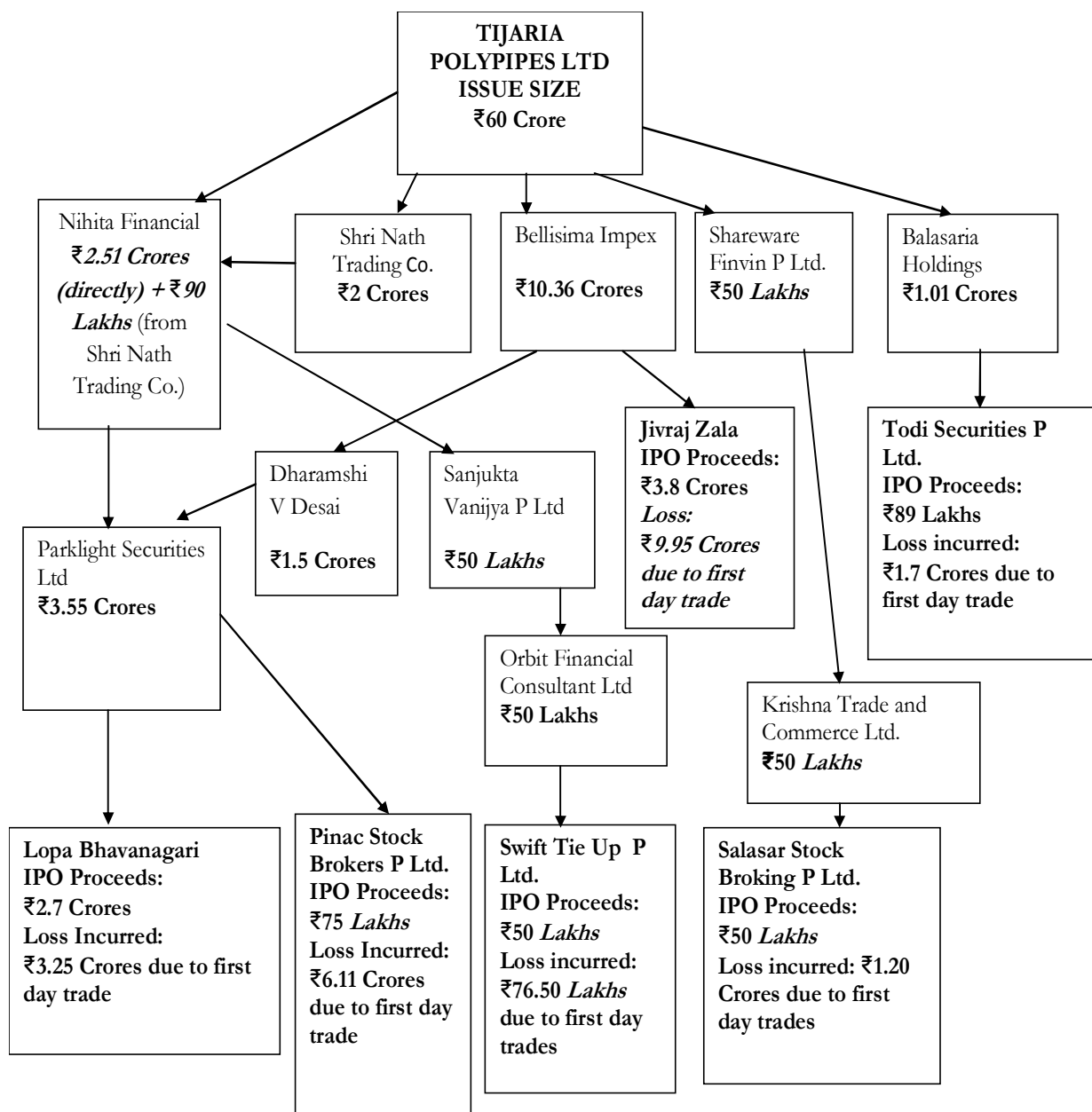
18. Non-disclosure in the Prospectus, of funds raised through ICDs prior to the Board Resolution dated September 10, 2011. –

- 18.1 As per the SCN, TPL and its Directors were alleged to have failed to disclose in the Prospectus, funds raised through ICDs prior to the Board Resolution dated September 10, 2011.

- 18.2 During the course of statement recording, Mr. Vineet Jain Tijaria, Director of TPL informed SEBI that TPL had raised funds through ICDs from Herald Commerce Ltd on May 23, 2011 and Bahubali Properties Pvt. Ltd on June 9, 2011 for ₹1 Crore and ₹75 Lakhs respectively, prior to the TPL's IPO. The aforesaid amounts which were admittedly borrowed by TPL through ICDs, prior to September 2011 i.e. before its IPO, were not disclosed in its Prospectus under the head '*Unsecured Loans*'.
- 18.3 In light of the above, I am of the considered view that TPL and its Directors had failed to disclose material information in TPL's Prospectus, in respect of funds raised through ICDs prior to the Board Resolution dated September 10, 2011. In view of the same, I find that the charge vis-à-vis TPL and its Directors relating to the concealment of material information in the Prospectus and consequent violation of Regulations 57(1), 57(2), 60(4), 60(7)(a) and Clause 16 of Part A of Schedule VIII of the ICDR Regulations, stands established.
- 19. Diverted IPO proceeds through repayment of ICDs (taken in accordance with the Board Resolution dated September 10, 2011), which were subsequently used to partially fund certain entities/individuals, who traded in the scrip of TPL.**
- 19.1 As per the SCN, TPL and its Directors were alleged to have diverted IPO proceeds through repayment of ICDs (taken in accordance with the Board Resolution dated September 10, 2011), which were subsequently used to partially fund certain entities/individuals (through layered transactions), who traded in the scrip of TPL.
- 19.2 The SCN details the diversion of funds i.e. IPO proceeds, from TPL to various entities for repayment of funds raised earlier through ICDs, payment of purchase orders, etc. (explained in detail in the subsequent paragraphs). It may be reiterated that TPL raised funds through ICDs aggregating to approximately ₹15.25 Crores from 6 entities, viz. Bellissima Impex, Nihita Financial Services Pvt. Ltd., Shareware Finvin Pvt. Ltd., Balasaria Holdings Pvt. Ltd., Marine Gems Pvt. Ltd. and Sanjivani Gems Pvt. Ltd., to purchase raw material, meet working capital requirements, pay for purchase of machinery, etc. Of the aforementioned 6 entities, TPL and its Directors are alleged to have diverted funds raised through ICDs from the following 4 entities i.e. an amount of ₹14.38 Crores (approx.), viz. –

Table VII						
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)
Bellissima Impex	22.9.2011	9.50	9.50	1 month (12.09.2011 to 15.10.2011)	13.10.2011	10.36
Bellissima 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
Total		14.00	14.25			14.38

19.3 The diversion of funds from the abovementioned 4 entities alongwith Shri Nath Trading Co. (IPL is alleged to have diverted ₹2 Crores from its IPO proceeds to that entity) is diagrammatically represented below –



19.4 As reproduced in Table VII at page 17 of this Order, TPL made repayment of ICDs to 4 entities, viz. Bellisima Impex, Nihita Financial Services Pvt. Ltd., Shareware Finvin Pvt. Ltd. and Balasaria Holdings Pvt. Ltd., from IPO proceeds. Of these aforesaid entities, payments made in lieu of ICDs by TPL, were subsequently used to partially fund certain entities/individuals, who traded in the scrip of TPL. The diversion of funds is provided below –

19.4.1 Diversion of funds to Shri Jivraj Zala (detailed in the SCN) –

Shri Jivraj Zala ("**Zala**") was indirectly funded by TPL to the extent of approximately ₹3.80 Crores, which was routed through layered transactions from the bank account of Bellisima Impex, Vimal Patel ("**Patel**") and Vanraj Kahor ("**Kahor**"). This consisted of ₹1.45 Crores directly received in the account of Zala from Bellisima Impex and ₹2.43 Crores received from Bellisima Impex in the accounts of Patel and Kahor. The aforesaid transfer of funds to Zala cannot be considered as mere coincidence since Zala required such funds to cover the loss of ₹9.95 Crores incurred by him while trading on the first day of listing, in the scrip of TPL. The aforesaid funds facilitated the purchase of shares of TPL at a premium to the Issue (which amounted to approximately 33% of the Public Issue Size), by Zala from retail allottees/QIBS who were allotted such shares on the first day of listing.

19.4.2 Diversion of funds to Todi Securities Pvt. Ltd. (detailed in the SCN) –

TPL transferred approximately ₹1.01 Crores from its IPO funds to Balasaria Holdings Pvt. Ltd., which in turn, had transferred ₹89 Lakhs to Todi Securities Pvt. Ltd. by layering the funds (routing it) through the account of Tilottama Holdings Pvt. Ltd and KBR Township Pvt. Ltd. on October 14, 2011. The aforesaid funds were used by Todi Securities Pvt. Ltd. towards margin pay-in on October 17, 2011.

19.4.3 Diversion of funds to Ms. Lopa Saumil Bhavanagari (detailed in the SCN) –

TPL transferred approximately ₹2.51 Crore, ₹2 Crore and ₹10.36 Crore from the IPO funds to Nihita, Shri Nath Trading Company ("**Shri Nath**") and Bellisima Impex, respectively. Nihita had transferred ₹40 Lakhs to Ms. Lopa Saumil Bhavanagari ("**Lopa**")

by layering the funds (routing it) through Parklight. Shri Nath had transferred ₹90 Lakhs to Lopa by layering the funds through Nihita and Parklight. Bellisima Impex transferred approximately ₹1.40 Crore to Lopa by layering the funds through the accounts of Mr. Dharamsi V. Desai and Parklight.

19.4.4 Diversion of funds to M/s. Pinac Stock Brokers P Ltd. (detailed in the SCN) –

TPL had transferred approximately ₹2.51 Crore from its IPO funds to Nihita, which in turn, had transferred ₹75 Lakhs to M/s. Pinac Stock Brokers P Ltd. by layering the funds (routing it) through Parklight on October 19, 2011, towards trading in TPL's scrip on NSE.

19.4.5 Diversion of funds to Salasar Stock Broking Ltd. (detailed in the SCN) –

TPL transferred approximately ₹50 Lakhs from its IPO funds to Shareware Finvin Pvt. Ltd., which in turn, had transferred ₹50 Lakhs to Salasar Stock Broking Ltd. by layering the funds (routing it) through the bank account of Krishna Trade & Commerce Pvt. Ltd., New Delhi.

19.4.6 Diversion of funds to M/s. Swift Tie Up Pvt. Ltd. (detailed in the SCN) –

TPL transferred approximately ₹2.51 Crores from its IPO funds to Nihita Financial Services Pvt. Ltd, which in turn, had transferred ₹50 Lakhs to M/s. Swift Tie Up Pvt. Ltd. by layering the funds (routing it) through the account of Sanjukta Vanijya Pvt. Ltd. and Orbit Financial Consultants Pvt. Ltd. on October 19, 2011.

19.5 The amount of funds received from the IPO proceeds by the abovementioned entities and the losses incurred by them on the first day of trading in the scrip of TPL, is provided below –

Table VIII		
Major Trading Clients in the scrip of TPL, who had received funds from that company – Losses incurred on the first day of trading vis-à-vis Funds diverted from IPO proceeds.		
Entity	Funds received from the IPO proceeds (₹in Crores)	Losses incurred due to trading in TPL (₹in Crores)
Mr. Jivraj Zala	3.80	9.95
M/s Pinac Stock Brokers Pvt. Ltd	0.75	6.11
Todi Securities Pvt. Ltd	0.89	1.70
Salasar Stock Broking Ltd	0.50	1.20
Ms. Lopa Saumil Bhavnagari	2.70	3.25
M/s Swift Tie-up Pvt. Ltd.	0.50	0.76

19.6 I find that no proper explanation has been provided by TPL and its Directors in respect of diversion of funds to the abovementioned entities. The manner in which the fund-flow has occurred and also the timing of such transactions lend credence to the charge that such diversion of funds to the said entities was for the purpose of enabling them to trade in the scrip of TPL, on the first day of its listing and thereafter.

19.7 In light of the above, I find that the charge vis-à-vis TPL and its Directors relating to diversion of IPO proceeds through repayment of ICDs, which were subsequently used to partially fund certain entities/individuals who traded in the scrip of TPL, stands established.

20. Made wrong disclosure/misstatement in the Prospectus regarding procurement of plant and machinery (imported and indigenous) and suppliers, and diverted IPO proceeds.

20.1 As per the SCN, TPL and its Directors were alleged to have made wrong disclosure/misstatement in the Prospectus regarding procurement of plant and machinery (imported and indigenous) and suppliers, and diverted IPO proceeds.

20.2 From its IPO proceeds, which it received on October 13, 2011, TPL transferred ₹25 Crores from its Current Account to its Cash Credit Account maintained with its banker i.e. Bank of India, on that same day and another ₹15.38 Crores as repayment of ICDs taken by it from Bellissima Impex, Nihita Financial Services Pvt. Ltd., Shareware Finvin Pvt. Ltd., Balasaria Holdings Pvt. Ltd., Marine Gems Pvt. Ltd. and Sanjivani Gems Pvt. Ltd. from the Cash Credit Account. Further, IPO proceeds were also transferred to the

following entities on that same day, who TPL stated were suppliers of plant and machinery –

Table IX		
Entity	Date of transfer	Amount (₹in Crores)
V R International	13.10.2011	0.50
Neelkanth Enterprise	13.10.2011	2.00
Shri Nath Trading Co.	13.10.2011	2.00
Shastika Enterprises	13.10.2011	0.50
Total		5.00

20.3 TPL informed SEBI that the abovementioned entities were the suppliers of plant and machinery of the company. The company was advised to provide the ledgers for the said entities. From the said ledgers, it is observed that even though the aforesaid entities were first time suppliers for TPL, it had given 100% advance payment to them. Further, TPL did not have any Agreements with the aforesaid entities for such advance payment. The ledgers also showed that TPL had not paid Value Added Tax ("**VAT**") till January 2013. Also, the bank accounts of TPL did not reflect any payments made towards VAT for purchase of plant and machinery to any of the aforesaid suppliers. I note that the said ledgers revealed that TPL had not received any machinery from the said entities as on March 31, 2012, which as per the quotation letters received by TPL from such entities, were to be supplied within six months.

20.4 I note that in order to explain the transfer of funds (reproduced at paragraph 19.2 above), the company produced copies of purchase orders entered with the following entities:

Table X			
Entity	Order No.	Date of Purchase Order	Amount (₹in Crores)
V R International	292	3.10.2011	0.95
Neelkanth Enterprise	295	4.10.2011	2.15
Shri Nath Trading Co.	297	10.10.2011	2.00
Shastika Enterprises	293	12.10.2011	0.50
Total			5.60

20.5 However, the purchase orders placed on October 4 and 10, 2011, had order numbers subsequent to the order numbers of orders placed on October 12, 2011, indicating that the purchase orders have been fabricated to explain the diversion of IPO proceeds to the

abovementioned entities. Further, from details furnished by TPL regarding the aforementioned entities, it is observed that they were dry fruits dealers, kirana stores, scrap dealers, etc. and there is no evidence that they were suppliers of plant and machinery.

- 20.6 From the Know Your Client ("**KYC**") documents of the said entities/suppliers of plant and machinery, it is observed that all of them had bank accounts with the same bank and branch i.e. Karur Vysya Bank, Chandni Chowk Branch, Delhi.

20.7 The following table provides the transfers from the company to the said suppliers and the ultimate utilization as per the trail carried out:

Table XI				
Sr. No	Name of the supplier	Amount paid by TPL (₹in Crores)	Date	Ultimate utilization as per the trail carried so far
1.	V.R. International	0.15	5.10.11	Foreign remittance (HSBC Hong Kong)
2.	V.R. International	0.25	7.10.11	Foreign remittance (Wachovia Bank)
3.	V.R. International	0.05	13.10.11	Foreign remittance (Wachovia Bank)
4.	V.R. International	0.50	13.10.11	Entire amount -Foreign remittance (Shining Stars Impex FZE)
5.	Shri Nath Trading Co.	2.00	13.10.11	a. Foreign Remittance (₹60 Lakhs) b. Foreign Remittance (₹50 Lakhs to Shining Stars Impex FZE) c. ₹90 Lakhs Parklight Securities Ltd
6.	Neelkanth Enterprises	2.00	13.10.11	a. ₹50 Lakhs to M/s. Noida Res. Plot Scheme b. ₹50 Lakhs to Panch Mukhi Vincom Pvt. Ltd. c. ₹41 Lakhs to Briston Infotech Pvt. Ltd. d. ₹6 Lakhs to Savita Goel e. Foreign remittance ₹50 Lakhs (Shining Stars Impex FZE)
7.	Neelkanth Enterprises	0.10	17.10.11	Entire amount to Shri Nath Trading Co.
8.	Goyal Trading	0.50	15.09.11	Entire amount withdrawn as Cash
9.	Goyal Trading	0.50	21.09.11	Entire amount to New Asia Trading Co.
10.	Goyal Trading	0.35	4.10.11	Entire amount to New Asia Trading Co.
11.	Suvidha International	0.50	14.09.11	Entire amount to Bhawani Enterprises
12.	Suvidha International	0.54	15.09.11	Entire amount withdrawn as Cash
13.	Suvidha International	0.50	20.09.11	Entire amount to New Asia Trading Co
14.	R.K. International	0.50	14.09.11	a. Cash Withdrawal-₹ 9.9 Lakhs b. ₹30 Lakhs to Azad Impex c. ₹5 Lakhs to JBSW Trading d. ₹5 Lakhs to Shri Bhagwati T
15.	R.K. International	0.40	16.09.11	a. ₹20 Lakhs to Kerala State Cashew corporation b. ₹7.7 Lakhs A.S. and Company c. ₹4 Lakhs to Klysta hardware d. ₹10 Lakhs to Chiranjeev Chhabra
16.	R.K. International	0.35	4.10.11	Entire amount to New Asia Trading Co.
Total		9.19		

20.8 I note that out of the funds received from the company, the following were the major heads of utilization as seen from the trail –

- ₹2.55 crores was transferred in the form of foreign remittance.
- ₹1.14 crores withdrawn in the form of cash.
- ₹50 Lakhs given to Noida Reserve Plot Scheme.
- ₹20 Lakhs was given to Kerala State Cashew Corporation.
- ₹1.7 crores to New Asia Trading Co.
- ₹90 Lakhs was given to Parklight Securities, who had transferred to Pinac Stock Brokers Pvt. Ltd and Lopa Bhavnagari, who had incurred losses on the day of listing.

20.9 From the above, it is observed that although TPL claimed to have transferred funds to entities who were domestic suppliers of plant and machinery, a part of those funds were *inter alia* remitted outside India; withdrawn as cash by routing through various accounts and given to Kerala State Cashew and Noida Reserve Plot Scheme, etc.

20.10 In order to ascertain the genuineness of the suppliers of plant and machinery mentioned above, to whom TPL had given 100% advance payments, inspite of the fact that they were first time suppliers, I note that attempts were made to visit the offices of the said entities/suppliers to record the statement of the Directors/Proprietors and seek information/documents with respect to the instant proceedings and related issues. However, when SEBI made an on-site visit to the aforementioned entities, it was discovered that the said entities were not functioning at the addresses mentioned in the KYC documents.

20.11 Also, I note that an attempt was made to summon the directors/proprietors of the above mentioned entities to appear before the investigating authority. However, the none of the summons could be delivered to the entities mentioned above.

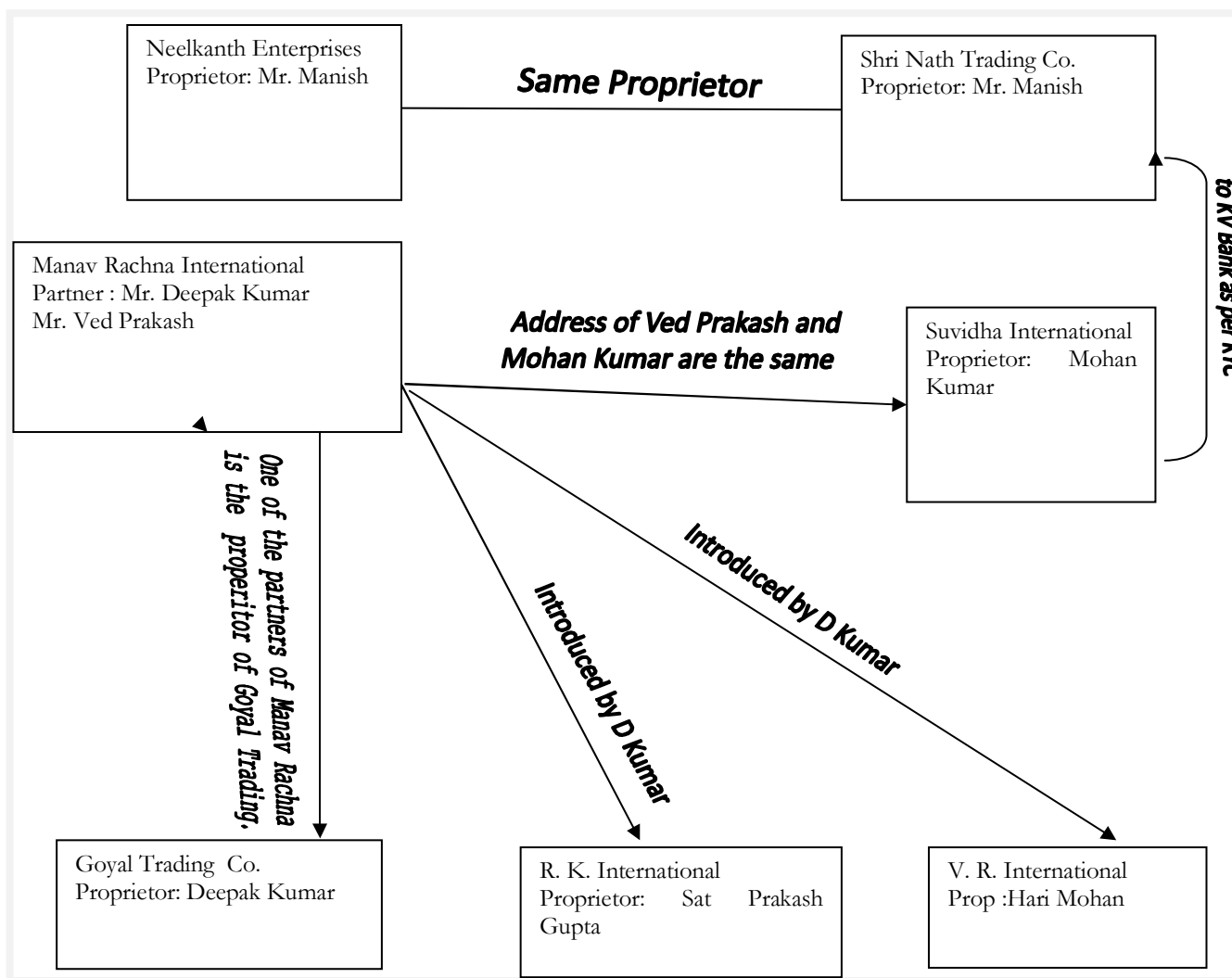
20.12 I note the following from the KYC of the above mentioned entities with Karur Vysya Bank:

Table XII			
Sr. No.	Name of the entity/proprietor	Name of the introducer to Karur Vysya Bank	Nature of business as per KYC documents of Karur Vysya Bank and /or Sales Tax- Certificate of Registration
1.	Shri Nath Trading Co Prop: Manish Kumar	Mohan Kumar-Suvidha International	Trading in Dry fruits, H/W(Steel and Pipe)
2.	Neelkanth Enterprises Prop: Manish Kumar	Akash Gupta-Shakti Enterprises	Trading in hardware
3.	Suvidha International Prop: Mohan Kumar		Trading in Copper and scraps, Ferrous, non-ferrous metals, Iron and Steel, Paper, Electrical and Electronic goods
4.	Goyal Trading Company Prop: Deepak Kumar	Deepak Kumar-Manav Rachna International	Iron & Steel, Ferrous and Non-Ferrous metals, Electrical Goods, Electronic Goods
5.	V R International Prop: Hari Mohan	Deepak – Manav Rachna International	Trading in Electronic Items, Electrical Goods
6.	R K International Prop: Sat Prakash Gupta	Deepak Kumar-Manav Rachna International	Trading in Plywood, Electrical Goods, Iron & Steel, Papers, Stationery, Ferrous and Non Ferrous Metals

20.13 I note from the KYC provided by Karur Vysya Bank, Chandini Chowk Branch, Delhi, the connection between the suppliers of plant and machinery of TPL is as seen below:

- It is seen that Mr. Deepak Kumar and Mr. Ved Prakash, were the partners of Manav Rachna International, a partnership firm who has an account with Karur Vysya Bank, Chandini Chowk Area.
- Mr. Deepak Kumar had introduced VR International and RK International to Karur Vysya Bank, Chandini Chowk Area
- Mr. Ved Prakash and Mr Mohan Kumar of Suvidha International shares the same address as per the KYC of Karur Vysya Bank, Chandini Chowk Area
- The proprietor of both Neelkanth Enterprises and Shri Nath Trading Co is the same- Mr. Manish Kumar and the proprietor of Suvidha International, Mr. Mohan Kumar had introduced Mr Manish Kumar(Shri Nath Trading Co) to Karur Vysya Bank, Chandini Chowk Area.

20.14 The connection between the above mentioned suppliers of plant and machinery is shown in the chart below:



20.15 TPL, vide letter dated August 6, 2012 informed that the suppliers, namely, Neelkanth Enterprises, Shri Nath Trading Co, Suvidha International, Goyal Trading Co and VR International had changed the office address and the new addresses were informed. SEBI's investigating team had already visited the addresses of Shri Nath Trading Co., Neelkanth Enterprises and Suvidha International during the course of investigation, as the said address were already mentioned in the ledger provided by the Company. However, no such company/business existed at the said locations.

20.16 In view of the same, I find that the charge vis-à-vis TPL and its Directors relating to wrong disclosure/misstatement in the Prospectus regarding procurement of plant and

machinery (imported and indigenous) and suppliers, and diversion of IPO proceeds, stands established.

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

21.1 As per the SCN, TPL and its Directors were alleged to have made misstatements in the Prospectus by overstating expenditure and diverted IPO proceeds.

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

Table XII				
Sr. No.	Particulars	Budgeted Amount (₹in Crores)	Already incurred (₹in Crores)	To be Incurred (₹in Crores)
1.	Land and Site Development	7.16	6.82	0.34
2.	Building and Civil Construction	14.66	7.89	6.77
3.	Plant and Machinery –			
	i. Imported	50.25	10.14	40.11
	ii. Indigenous	12.00	5.77	6.23
4.	Misc. Fixed Assets	5.90	4.15	1.75
5.	Preliminary & Capital Issue Expenses	4.95	0.49	4.46
6.	Pre-operative Expenses	2.15	2.16	- 0.01
7.	Provision for Contingencies	2.85		2.85
8.	Working Capital Margin	8.60	1.06	7.54
Total		108.52	38.48	70.04

21.3 In the documents submitted by TPL vide letter dated February 28, 2013, regarding utilization of IPO proceeds, it is observed that the estimated cost of the project was ₹108.52 crores 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.

21.4 As regards utilization of funds, TPL vide letter dated February 28, 2013, submitted that it utilised ₹97.83 Crores as follows –

Table XIII		
Sr. No.	Particulars	Actual Utilization (₹in Crores)
1.	Land and Site Development	6.82
2.	Building and Civil Construction	23.54
3.	Plant and Machinery – i. Imported ii. Indigenous	41.36
4.	Misc. Fixed Assets	5.49
5.	Preliminary & Capital Issue Expenses	4.04
6.	Pre-operative Expenses	4.35
7.	Advances for plant and machinery	3.27
8.	Working Capital Margin	8.21
9.	Deposit with bank	0.75
Total		97.83

21.5.1 Land & Site Development – As per the Prospectus, the expenditure to be incurred on Land and Site Development was ₹7.16 Crores. However, the actual expenditure incurred was ₹6.82 Crores.

21.5.2.1 Building and Civil Construction – As per the Prospectus, the expenditure to be incurred on Building and Civil Construction was ₹14.66 Crores. However, the actual expenditure incurred was ₹23.54 Crores.

21.5.2.2 There was a major deviation in the cost incurred for the building from that mentioned in the Prospectus. TPL was unable to produce secondary evidence to support the cost incurred for building. Also, from the inspection report submitted by the term lender i.e. Bank of India, it is observed that only 5% of the work is remaining with regard to building for which the company has claimed to have incurred ₹16 Crore. It was observed that the cost of building was escalated to this extent and TPL had not provided any reasons for the same. Therefore, it is observed that the cost of construction has been inflated to the extent of ₹8.94 Crore.

21.5.3 Plant & Machinery (*including electrical installations*) – As per the Prospectus, the total cost already incurred for plant & machinery was ₹15.89 Crores. The total cost (as per the

Prospectus) to be incurred on plant & machinery was ₹46.34 Crores. Thus, the total budgeted amount (as per the Prospectus) i.e. expenditure to be incurred on plant and machinery was ₹62.25 Crores. As per the documents submitted by TPL with regard to the utilization of IPO proceeds, the actual expenditure incurred for plant and machinery was ₹41.36 Crores.

21.5.4 As per the Prospectus, the total cost incurred for imported plant and machinery was ₹10.14 Crores and the total cost to be incurred for imported plant and machinery was ₹40.11 Crores. As per the documents submitted by TPL with regard to utilization of IPO proceeds, it was observed that TPL had imported machinery to the extent of ₹15.02 Crores. TPL had mentioned that the procurement of plant and machinery was from local suppliers and not Chinese and the said decision was commercial in nature and taken bearing in mind the cost of machinery, life of the machinery, maintenance, installation, troubleshooting capabilities amongst other things. Further, while TPL had provided invoices and receipts received from suppliers to the extent of ₹15.02 Crores, in respect of the imported plant and machinery, it had not furnished the Bill of Entry, which is the most important evidence of any import in India, with respect to such imported machinery.

21.5.5 As per the Prospectus, the total cost incurred for indigenous machinery was ₹5.77 Crores and the total cost to be incurred for indigenous machinery was ₹6.23 Crores. With respect to indigenous machinery, as per the documents submitted by TPL with regard to utilization of IPO proceeds, it was stated that the expenditure incurred was ₹24.94 Crores vis-à-vis the budgeted indigenous machinery for ₹12 Crores as per the Prospectus. It is observed that TPL has provided a summary statement of purchase against VAT invoices (Form VAT-07A) for the years 2011-12 and 2012-13 as secondary evidence to support the purchase of plant and machinery, building, raw materials, etc. From the VAT form downloaded from the website of the Government of Rajasthan, it is observed that ₹53.99 Lakhs was the amount of tax paid for the purchase of plant and machinery, building and raw materials of value ₹9.56 Crores as against ₹41.36 Crores claimed to have been incurred as cost towards plant and machinery, building, raw materials, etc. TPL has also submitted various invoices/challans. I observe that TPL had paid VAT for machinery worth approximately ₹9 Crore. However, TPL was unable to furnish secondary evidences such as government receipts other than the VAT payments

made to support the expenditure incurred for purchase of plant and machinery. Thus, it was observed that there was a cost overrun of with regard to purchase of imported machinery to the extent of ₹12.94 Crores and TPL has not provided evidence to support their claims.

21.5.6 Pre-operative Expenses – The total budgeted amount (as per the Prospectus) i.e. expenditure to be incurred on Pre-operative Expenses was ₹2.15 Crores. As per the documents submitted by TPL with regard to the utilization of IPO proceeds, the actual expenditure incurred for plant and machinery was ₹4.35 Crores. Thus, it is observed that there was a cost overrun of approximately ₹2.20 Crores.

21.5.7 Advances paid for Plant and Machinery – The Company had mentioned that it had incurred an expenditure of ₹3.27 Crores for Advances paid for Plant and Machinery. However, there was no provision such as advance for plant and machinery in the Prospectus.

21.6 From the aforementioned paragraphs 21.5.1–21.5.7, it is observed that there was a major difference with regard to the actual utilization of funds vis-à-vis the utilization mentioned in TPL's Prospectus in respect of the heads "*Building and Civil Construction*" and "*Plant and Machinery*". In support of its contentions that the amounts were actually utilized, TPL failed to furnish any secondary evidence to support the entire utilization of funds. This leads to the conclusion that TPL and its Directors made mis-statements in Prospectus to the extent that major differences were reflected in the utilization of funds stated in the Prospectus vis-à-vis the actual utilization of IPO proceeds. The aforementioned fact when viewed in light of wrong disclosure/misstatement made by TPL in its Prospectus would lead me to believe that the same was done with a specific purpose to divert IPO proceeds.

21.7 In view of the above, the charge against TPL and its Directors of making misstatements in the Prospectus by overstating expenditure and diverting IPO proceeds, stand established.

22. Failed to comply with certain directions contained in the Interim Order –

- 22.1 It is also pertinent to note that vide Interim Order dated December 28, 2011, SEBI had directed TPL to *"Call back ₹20.40 Crores, from the entities (mentioned at Page 3, Table II of this Order) to whom the IPO proceeds were found to have been diverted, as the ICDs Agreements and purchase orders, wherever produced by TPL to explain such diversion, were prima facie found to be fabricated and ₹25 Crores transferred from the IPO proceeds to its Cash Credit Account and also all other amounts transferred or paid out of the IPO proceeds to its Promoters/Directors or relatives of its Promoters/Directors or HUFs belonging to any of its Promoters/Directors or associates or subsidiaries or group companies, if any,"* and deposit the same along with unutilized IPO proceeds in a separate interest-bearing Escrow Account. However, till date TPL and its Directors have not taken any steps to comply with the aforesaid directions contained in the Interim Order and have therefore, failed to comply with the said Order.

B. Against the Independent Directors of TPL.

- 23.1 I have considered the SCN issued to the Independent Directors of TPL, viz. Mr. Santosh Kumar and Mr. Padam Prakash Som Prakash Bhatnagar alongwith the documents provided therein, their replies to the SCN alongwith the submissions made during the personal hearing before me and all other relevant material available on record. In light of the same, I shall now proceed to deal with the charge levelled in the SCN against the Independent Directors of TPL.
- 23.2 As per the SCN, the Independent Directors were alleged to have failed to disclose in the Prospectus, the Board Resolution dated September 10, 2011, to raise funds through ICDs.
- 23.3.1 In his reply to the SCN, Mr. Santosh Kumar submitted that in the Board Meeting held on September 10, 2011, which was attended by him, in view of the extra funds required for meeting the business needs for the project raising funds, it was only resolved to negotiate, discuss and finalize the terms and conditions. However, nothing was final and no actual agreement were concluded or executed till such time. In the absence of any concluded arrangement with the lenders can by no stretch of imagination be said to be a failure to disclose material information as required under law. In the circumstances, it is

unfair to allege that he has been a party to alleged manipulative practice of the Company or its directors or he has failed to exercise diligence required by him

- 23.3.2 In his reply to the SCN, Mr. Padam Prakash Som Prakash Bhatnagar submitted that during his tenure of 18 months on the Board of Directors of TPL, he had attended certain meetings but since he could not understand matters relating to finance, funding, public issue, prospectus, etc he would be a spectator in such discussions. Further, he submitted that upon receiving the Interim Order, he had resigned from the Board of Directors of TPL which became effective from 06.01.2012.
- 23.4 The decision to take ICDs and also the finalizing of entities from whom such ICDs were to be taken, was made in TPL's Board Meeting held on September 10, 2011, i.e. two days before the date of the Prospectus. As per the attendance sheet provided by TPL, the said Board Meeting was attended by Mr. Alok Jain Tijaria, Vikas Jain Tijaria, Praveen Jain Tijaria, Vineet Jain Tijaria, Mr. Padam Prakash Som Prakash Bhatnagar and Santosh Kumar. In view of the aforesaid fact, I note that the Independent Directors, although not involved in the day-to-day activities and decision making of TPL, nonetheless contributed to the decision to raise funds through ICDs. Despite the same, the Independent Directors failed to exercise the diligence required of them and ensure disclosure in the Prospectus, the Board Resolution dated September 10, 2011, for investing in ICDs of other companies.
- 23.5 In view of the same, I find that the charge vis-à-vis the Independent Directors of TPL relating to non-disclosure in the Prospectus, of the Board Resolution dated September 10, 2011, to raise funds through ICDs, stands established.

Conclusion –

- 24.1 The facts of this case make it abundantly clear that the fraudulent activity of TPL and its Directors had its origin prior to the IPO of TPL and resulted in the diversion of proceeds of that IPO through a series of transactions. This is clearly evident from the following:
- i. The decision to raise funds through ICDs as approved by the Board Resolution dated September 10, 2011 i.e. prior to the IPO of TPL, was not disclosed in the

Prospectus despite liability for repayment of such ICDs being attached to the proceeds of IPO. As a result, TPL alongwith its Directors were able to divert IPO proceeds through repayment of ICDs, which *inter alia* were subsequently used to partially fund certain entities/individuals, who traded in the scrip of TPL.

- ii. TPL and its Directors diverted IPO proceeds to certain entities ostensibly as payment for supply of plant & machinery, by making 100% advance payment to them despite the fact that such entities were non-genuine suppliers. Further, the names of the said suppliers were also not mentioned in the Prospectus.

24.2 The abovementioned fraudulent activity reflect the opaqueness with which the entire IPO has been carried out by TPL and its Directors and clearly exhibit the web of deceit and conspiracy hatched by the aforesaid entities. SEBI cannot remain a passive spectator when a company raises capital from the public without making proper disclosures and then siphons off such funds through dishonest and manipulative methods flouting the SEBI Act and Regulations issued there under (as detailed in the SCN).

25.1 With respect to the misleading disclosures in this regard made by TPL to disguise its manipulative intent, it is pertinent to note that it has been held by the Hon'ble Securities Appellate Tribunal in the matter of HSBC Securities and Capital Markets (India) Private Ltd. v. SEBI, SAT Appeal No. 99 of 2007, that "an incorrect or wrong information in a letter of offer or other similar documents issued for the benefit of investors in general could lead to serious consequences including loss of credibility for the market operators and for the regulatory system. This kind of failure has to be taken very seriously by the market regulator".

25.2 It is also pertinent to refer to the judgment of the Hon'ble Securities Appellate Tribunal in the matter of V. Natarajan vs. SEBI, SAT Appeal No.104 of 2011, wherein it was held as follows:-

"... we are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, were violated. These regulations, among others, prohibit any person from employing 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 an exchange. They also prohibit persons from engaging 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 that are listed on stock exchanges. These

regulations also prohibit persons from indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true. Any advertisement that is misleading or contains information in a distorted manner which may influence the decision of the investors is also an unfair trade practice in securities which is prohibited. The regulations also make it clear that planting false or misleading news which may induce the public for selling or purchasing securities would also come within the ambit of unfair trade practice in securities...

... A basic premise that underlies the integrity of securities market is that persons connected with securities market conform to standards of transparency, good governance and ethical behaviour prescribed in securities laws and do not resort to fraudulent activities."

25.3 While dealing with a matter of this nature, it would be worthwhile to refer to the following observations made by the Hon'ble Supreme Court in its judgment dated April 26, 2013, in *N. Narayanan v. Adjudicating Officer SEBI (Civil Appeal Nos.4112-4113 of 2013)* held that "SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto."

26. In the present case, TPL and its Directors alongwith the Independent Directors, had acted in a manner highly detrimental to the interests of the securities market and the investors therein. The rulings of the Hon'ble Supreme Court and Securities Appellate Tribunal discussed in the preceding paragraph 25 apply directly and fully to the facts of the instant case. The development of a strong, transparent and credible securities market is an important pre-requisite for the economic development of our country. The fraudulent activities such as what have been observed in the instant case pose a real threat to the integrity of our securities market. If such activities are allowed to continue, they will jeopardize and tarnish the image of the securities market as a transparent and efficient way of raising capital, shaking the very foundations of capital raising in India. The violations of law observed with respect to TPL and its Directors alongwith the

Independent Directors, if not dealt with sternly, could give rise to a situation where raising of capital would become extremely difficult even for honest companies.

- 27.1 For reasons detailed in the preceding paragraphs, I find that TPL and its Directors have diverted IPO proceeds *inter alia* through repayment of ICDs, which were subsequently used to partially fund certain entities/individuals who traded in the scrip of TPL. Thus, they have indulged in fraudulent activities and have thus violated the provisions of Section 12A(a)–(c) of SEBI Act, 1992 read with Regulations 3(b)–(d), 4(1), 4(2)(a), (d), (e), (f) and (r) of the FUTP Regulations.
- 27.2 In addition, TPL and its Directors have been found to have violated Regulations 57(1), 57 (2), 59, 60(4)(a) and 60 (7)(a); and Clause 16 of Part A of Schedule VIII of the ICDR Regulations, by failing to disclose/making wrong disclosure of material information in the Prospectus, viz. –
- i. Failed to make disclosures of material facts in the Prospectus such as –
 - a. Non-disclosure of the Board Resolution dated September 10, 2011, to raise funds through ICDs.
 - b. Non-disclosure of funds raised through ICDs in accordance with the Board Resolution dated September 10, 2011, which were in the nature of a bridge loan.
 - c. Non-disclosure of funds raised by TPL through ICDs taken prior to the Board Resolution dated September 10, 2011.
 - ii. Made wrong disclosure/misstatement in the Prospectus regarding procurement of plant and machinery (imported and indigenous) and suppliers.
 - iii. Made misstatements in the Prospectus by overstating expenditure.
- 27.3 The Independent Directors have been found to have violated Regulations 57(1), 57 (2), 59, 60(4)(a) and 60 (7)(a); and Clause 16 of Part A of Schedule VIII of the ICDR Regulations, by failing to disclose in the Prospectus, the Board Resolution dated September 10, 2011, to raise funds through ICDs.

Order –

28. In view of the foregoing, I, therefore, in exercise of the powers conferred upon me by virtue of Section 19 read with Sections 11(4) and 11B of the SEBI Act read with

Regulation 11(1) of the PFUTP Regulations and the ICDR Regulations, 2009, hereby direct as follows –

- i. Tijaria Polypipes Limited and its Directors, viz. Mr. Alok Jain Tijaria, Mr. Vikas Jain Tijaria, Mr. Vineet Jain Tijaria and Mr. Praveen Jain Tijaria, are prohibited from raising any further capital from the securities market, in any manner whatsoever, for a period of **seven years**.
 - ii. Tijaria Polypipes Limited and its abovementioned Directors are prohibited from buying, selling or dealing in the securities market, in any manner whatsoever, for a period of **seven years**.
 - iii. The Independent Directors i.e. Mr. Santosh Kumar and Mr. Padam Prakash Som Prakash Bhatnagar, are prohibited from buying, selling or dealing in the securities market, in any manner whatsoever, for a period of **three years**.
 - iv. The period of prohibition already undergone by Tijaria Polypipes Limited, its abovementioned Directors and the Independent Directors pursuant to the Interim Order dated December 28, 2011, shall be taken into account for the purpose of computing the period of prohibition imposed in this Order.
 - v. Tijaria Polypipes Limited is also directed to take urgent and effective measures to –
 - a. Call back ₹20.40 Crores, from the entities (mentioned at Page 3, Table II of this Order) to whom the IPO proceeds were found to have been diverted;
 - b. Progress in this regard shall be reported to SEBI on or before August 20, 2014, on the basis of which, further directions shall be considered.
29. This Order shall come into force with immediate effect.

Place: Mumbai
June 20, 2014

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA