

WTM/ AB / IVD/ID2/9791/2020-21

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992

In respect of:

1.	Timbor Home Limited	AABCI2531A
2.	Anant Sureshchandra Maloo	ACSPM2958D
3.	Manan Vidhyapati Patel	AFJPP0452P
4.	Abhijeet Dwarkadas Daga	AHTPD5397B
5.	Rakesh Surajkumar Bhagat	Not available
6.	Tejdeep Singh Harvindersingh Anand	ADCPA2220K
7.	Rakesh Mohinder Puri	ABLPP1212F

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

In the matter of Initial Public Offering of Timbor Home Ltd.

1. The present proceedings have emanated from a show because notice dated March 15, 2017 (hereinafter referred to as “**SCN**”) issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) to the aforesaid 7 Noticees calling upon them to show cause as to why suitable directions, as may be appropriate, under Sections 11(1), 11(4), 11A and 11B of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) should not be issued against them. The SCN is issued to the Noticees pursuant to an investigation conducted by SEBI, into the scrip of Timbor Home Limited

(hereinafter referred to as “**the Company**”/ “**THL**”), related to the Initial Public Offering (hereinafter referred to as “**IPO**”) made by the Company, of 36,90,000 equity shares of face value Rs.10/- to the public in the price band of Rs. 54 to Rs. 63 per equity share which opened on May 30, 2011 and closed on June 2, 2011. The issue price was determined as Rs. 63/- per share.

2. The SCN *inter alia* alleges that THL has failed to make disclosure of significant liabilities in the prospectus and failed to make disclosure of loan of Rs.7 crore and its repayment out of the IPO proceeds. The SCN also alleges that THL made mis-statements regarding financial information of the Company in its prospectus. Further, it made false and misleading reporting of sales and purchases for the FY 2010-11 and 2011-12. The SCN also alleges that THL has made wrong disclosure to the exchange regarding unutilised IPO proceeds. Based on the same, the SCN alleges that THL has violated the provisions of Regulations 57 (1) and 57 (2) (a) read with Clause 2 (VII) (G) of part A of schedule VIII of the SEBI (Issue Of Capital and Disclosure Requirements) Regulations, 2009 (since repealed) (hereinafter referred to as “**ICDR Regulations**”), Section 12A (a),(b),(c) of SEBI Act,1992 and Regulations 3 (b),(c),(d), 4 (1) and 4(2)(f) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating To Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUPT Regulations**”) and Clause 43 of listing agreement (now repealed) read with Section 21 of the Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as “**SCRA**”).
3. The brief facts of the case, as mentioned in the SCN are as follows:
 - 3.1. SEBI initiated investigation into the alleged irregularities in the IPO of THL. The investigation revealed the following:
 - 3.2. THL offered 36,90,000 equity shares of face value Rs.10/- to the public in the price band of Rs. 54 to Rs. 63 per equity share. The bids opened on May 30, 2011 and closed on June 2, 2011. The shares were allotted on June 18, 2011 at Rs.63 per share. The equity shares were listed on BSE and NSE and trading in the scrip started from June 22, 2011.

Corporate Strategic Allianz Limited (hereinafter referred to as “**CSAL**”) was the Lead Manager to the IPO.

- 3.3. THL filed the Red Herring Prospectus (hereinafter referred to as “**RHP**”) dated May 20, 2011 and the Prospectus dated June 8, 2011. The cost of project and means of finance as disclosed in the prospectus were as under:-

3.4. Cost of Project:

S.No.	Particulars	Amount in Lakhs
1.	Purchase of Machinery	259.60
2.	Establishment of new stores across India	400.00
3.	Additional Working Capital Requirements	1318.25
4.	Public issue expenses	161.69
5.	General Corporate Purposes	185.16
	Total	2324.70

3.5. Means of Finance:

S.No.	Particulars	Amount in Lakhs
1.	Proceeds from Initial Public Offer	2324.70

- 3.6. Vide its letter dated July 31, 2013, the details regarding utilisation of IPO proceeds and the details of Bank Account of IPO proceeds credited provided by THL are as below:

Object	Amount to be utilised as per prospectus	Amount Utilised	Balance Rs. In lakh
Purchase of Machinery	259.60	222.00	37.60
Establishment of new stores across India	400.00	135.18	264.82
Additional Working Capital Requirements	1318.25	1312.23	6.02

Public issue expenses	161.69	219.30	-57.61
General Corporate Purposes	185.16	0	185.16
Total	2324.70	1888.71	435.99

- 3.7. From the verification of bank statements, investigation observed that the IPO funds were transferred from the public issue account to Company's bank accounts as follows:

S.No.	Date of transfer	Details of company's bank accounts credited	Amount credited
1.	22.06.2011	UBI Account – Cash Credit Account - 449105010077360	8,00,00,000
2.	22.06.2011	HDFC Account No. 03062560001480.	13,24,70,000
3.	27.06.2011	UBI - Cash Credit Account .449105010077360	1,32,39,000
4.	Total amount transferred to company's bank accounts		22,57,09,000
5.	Amount paid to Merchant Banker		67,61,000
6.	Total (amount raised in IPO) = (5+6)		23,24,70,000

- 3.8. Following are the bank balances of the Company before and after deposit of IPO Funds:

Account details	Bank balance before transfer of IPO proceeds	Amount of IPO funds transferred	Bank balance after transfer of IPO proceeds
UBI Account – CC Account No. 449105010077360 Branch: DR.S.R.Marg, Ahmedabad	On 22.06.2011: (-) Rs.2477.06 lakh	Rs.800 lakh	(-) Rs.1677.06 lakh
	On 27.06.2011: (-) Rs.1744.48 lakh	Rs.132.39 lakh	(-) Rs.1612.09 lakh
HDFC Bank account - 03062560001480	On 22.06.2011: Rs.19.63 lakh	Rs.1324.70 lakh	Rs. 1344.33 lakh

(The above accounts maintained by the Company with UBI was a Cash Credit (CC) account and showing debit balance before as well as after transfer of IPO Funds.)

- 3.9. Additional Working Capital Requirements – amount proposed Rs.1318.25 lacs and utilized Rs.1312.23 lacs:
- a) As per prospectus of the Company, the proposed amount for additional working capital requirement was Rs.1318.25 lakhs. This forms

significant portion (56.71%) of the Issue size of Rs.2324.70 lakh. The Company, in its reply dated July 31, 2013 stated that it had spent Rs.1312.23 lakh during the period from May 2011 to June 2012. The Company, vide its letter dated September 18, 2013 provided the breakup of working capital payments. Investigation noted from Company's reply that substantial expenses (approximately Rs.7 crore) have been incurred before the date of prospectus i.e. June 08, 2011.

- b) The utilisation by the Company is given in the following table showing expenses incurred before and after prospectus date:

Amounts in Rs.				
S.No	Particulars / Name of the Vendor	Before prospectus date	After prospectus date	Total
1	Wood Star (India) Pvt Ltd	2,33,05,712	1,40,99,445	3,74,05,157
2	Green Gold Tree Farmers Pvt Ltd	1,53,30,000	50,00,000	2,03,30,000
3.	Show Room Rent	-	1,52,21,375	1,52,21,375
4.	Land mark Veneer Pvt Ltd	35,00,000	81,00,000	1,16,00,000
5.	Turakhia Overseas Ltd	1,00,00,000	9,00,000	1,09,00,000
6.	Green Gold Timbers Pvt Ltd	26,98,100	52,00,000	78,98,100
	Sub-Total	5,48,33,812	4,85,20,820	10,33,54,632
	Others (30 entities)	1,51,58,838	1,27,02,394	2,78,61,232
	Grand Total	6,99,92,650	6,12,23,214	13,12,15,864*

*The amount shown as utilisation is Rs.1312.23 lakhs. However breakup was provided for Rs.1312.16 lakhs

- c) Bank statements of the Company and the vendors were analysed to verify the veracity of information furnished by the Company and vendors. On analysis, investigation revealed certain findings regarding payments to Wood Star (India) Private Limited (hereinafter referred to as "**Wood Star**"). Investigation further revealed that payments made by THL to Wood Star have been returned to THL through circular transactions.
- d) It can be seen from the above table that approximately Rs.7 crore liabilities were created against IPO proceeds as on the date of prospectus. The amount of liabilities i.e.Rs.7 crore forms significant percentage of (30.11%) of total issue size of Rs.23.25 crore. However, there were no disclosures made in the prospectus regarding these liabilities. Therefore, the Company and its directors did not disclose

material information in prospectus relating to the significant liabilities as on the date of prospectus.

- 3.10. Non-disclosure of loan taken for the purposes of working capital in the prospectus:
- a) The Bank Statements of the Company revealed that it had transferred Rs.7 crore to Mr. Alin Ajaykumar Shah (hereinafter referred to as “**Alin**”) during June 22, 2011 to June 28, 2011 i.e. after receipt of IPO Funds.
 - b) The Company, vide its reply dated February 11, 2014 and March 26, 2014 replied that the payments have been made towards repayment of Rs.7 crore loan taken from Alin during May 13, 2011 to May 30, 2011. The Company further stated that the said loan was deployed for the purposes of working capital requirement. However, investigation noted that the Company had already spent approx. Rs. 7 crore prior to the date of prospectus.
 - c) Further, the Company, vide letter dated April 29, 2014 stated that the loan taken from Alin was for a short period as an interest free loan and hence no terms and conditions were made and accordingly no board resolution was passed for the same.
 - d) The investigation revealed that the Company had not disclosed the loan of Rs.7 crore from Alin in the prospectus dated June 08, 2011 though the Company had received the loan during May 13, 2011 and May 30, 2011. Further, the Company mentioned in page no.59 of the prospectus that it has not raised any bridge loan against the proceeds of the Issue. The amount of loan i.e. Rs.7 crore forms significant percentage of (30.11%) of total issue size of Rs.23.25 crore. Therefore, it is alleged that the Company and its directors have not made the necessary disclosures relating to the loan taken and its repayment out of IPO proceeds in prospectus.

- e) As stated above, CSAL was the lead manager to the issue of THL. Vide e-mail dated December 04, 2015, CSAL stated that it was not aware of the any bridge loan taken by the Company. Further, it stated that they have not found any resolution for the bridge loan availed by the Company from minutes book of the Company at the time of filing the prospectus.

3.11. Artificial Inflation of purchases and sales figures of THL for the years 2010-11 and 2011-12 through circular transactions amongst the connected entities:-

a) Payments to Wood Star:

Wood Star was the top vendor to whom payments were made by THL from IPO proceeds. As per the information provided by THL, following are the details of payments made by THL to Wood Star out of IPO proceeds towards purchase of timber.

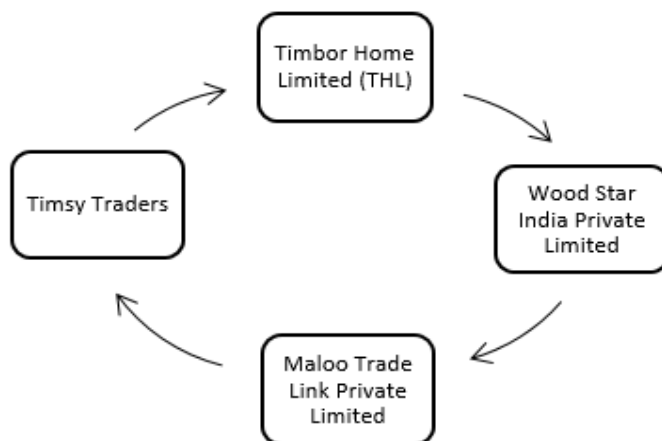
Date	Amount Paid	Bank Account of the company from which amounts were debited
17/05/2011	58,64,320	UBI A/c Number 449105010077360
18/05/2011	58,59,362	-do-
19/05/2011	55,85,000	-do-
23/05/2011	44,48,530	-do-
24/05/2011	15,48,500	-do-
27/06/2011	70,00,000	-do-
31/10/2011	32,00,000	HDFC A/c No. 03062560001480
16/11/2011	8,00,000	-do-
09/05/2012	10,00,000	-do-
31/05/2012	20,99,445	-do-
	3,74,05,157	

- b) Trail of payments made to Wood Star: The trail of above payments revealed that majority of the amounts paid to Wood Star have been returned to THL through two entities viz., Maloo Tradelink Limited (Maloo Tradelink) and Timsy Traders. The details of the funds flow is shown below:

Date	Amount transferred from THL to Wood Star	Amount transferred from Wood Star to Maloo Tradelink	Amount transferred from Maloo Tradelink to Timsy Traders	Amount transferred from Timsy Traders to THL
17.05.2011	58,64,320	58,60,000	56,10,000	56,09,500
18.05.2011	58,59,362	58,59,000	58,58,575	58,58,075
19.05.2011	55,85,000	55,84,500	52,97,000	52,98,000
23.05.2011	44,48,530	44,48,000	42,25,056	42,25,000
24.05.2011	15,48,500	15,48,000	17,70,400	17,70,000

28.06.2011	70,00,000	69,99,250	69,50,000	69,49,000
31.10.2011	32,00,000	32,00,200	31,35,000	31,35,100
Total	3,35,05,712	3,34,98,950	3,28,46,031	3,28,44,675

c) The above flow of funds is shown as follows:



It is observed from the above table that out of Rs.3,74,05,157 paid to Wood Star, Rs.3,27,74,675 has been returned to THL.

d) Details were sought from THL regarding the nature of transactions with Timsy Traders and Wood Star. The Company replied that the receipts from Timsy traders were towards the sales made to Timsy Traders and payments were towards purchases from Wood Star. THL has also provided ledger copies of Wood Star and Timsy Traders for the year 2011-12. It was observed from the ledger copies of Wood Star and Timsy Traders that there were several transactions in the similar manner apart from the above listed transfers during the entire period of 2011-12. Therefore, to verify the veracity of purchases/sales, copies of bills pertaining to purchases from Wood Star and sales made to Timsy Traders were sought. Vide its reply dated July 20, 2015, THL replied that bills were destroyed by fire.

e) From the analysis of various invoices raised by Wood Star on THL (purchases of THL) during 2011-12 that the description of goods mentioned as "Wood Size (imported)". It was further observed from invoices raised by THL on Timsy Traders (sales of THL) that the same description i.e. "Wood Size (imported)" was mentioned. In view of the

above, explanation was sought from THL and other entities regarding the material purchased and sold by them.

- f) Vide e-mail dated September 09, 2015, THL replied that it purchased raw green (wet) Timber in wood size from Wood Star India Pvt Ltd. and sold dried and seasoned wood in wood size to various parties including Timsy Traders. Further, Timsy Traders, vide letter dated October 01, 2015 replied that it had purchased dried seasoned wood from THL and sold to various parties including Maloo Tradelink. Wood Star, vide letter dated October 01, 2015 replied that it had purchased dried seasoned wood from Maloo Tradelink and sold to various parties including THL. Maloo Tradelink, vide e-mail dated September 21, 2015 replied that the company is under liquidation and the liquidator has taken possession of company.

3.12. Details of sales and purchases between THL and other entities:

- a) As per the replies of entities and their returns filed with MCA, the details of purchases/sales by the entities is given in below table:

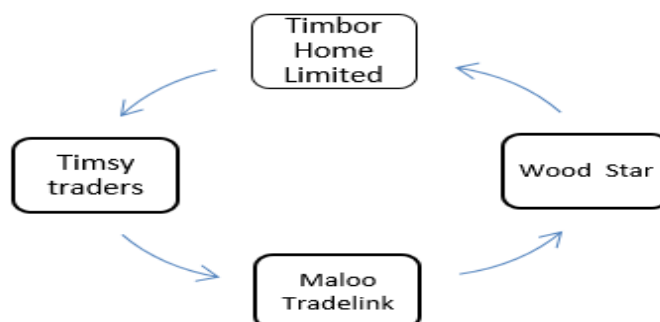
Particulars	Amounts in Rs.	
	2011-12	2010-11
THL:		
Total sales of the company	81,31,70,432	79,15,32,877
Sales to Timsy traders	19,37,90,898	9,05,45,628
% of sales to Timsy traders to the total sales	23.83	11.44
Total purchases of the company	63,28,01,161	64,69,95,811
Purchases from Wood Star	31,74,91,045	34,01,01,594
% of wood Star purchases to the total purchases	50.17	52.57
Timsy Traders:		
Total sales of the entity	27,05,49,469	21,58,48,540
Sales to Maloo	17,31,48,712	18,83,40,783
% of sales to Maloo to the total sales	64.00	87.26
Total purchases of the entity	27,99,34,650	25,19,83,569
Purchases from THL	19,33,18,990	9,01,22,883
% of Purchases from THL to the total purchases	69.06	35.77
Maloo Tradelink:		
Total sales of the company	24,59,08,913	25,15,05,354
Sales to Wood Star	26,14,84,396	27,99,67,368
% of sales to Wood Star to the total sales*	100.00	100.00

Particulars	Amounts in Rs.	
	2011-12	2010-11
Total purchases of the company	24,04,95,869	24,94,78,434
Purchases from Timsy Traders	17,31,48,712	18,83,40,784
% of purchases from Timsy traders to the total purchases	72.00	75.49
Wood Star:		
Total sales of the company	35,22,04,222	36,29,97,549
Sales to THL	28,61,47,535	34,01,01,603
% of sales to THL to the total sales	81.24	93.69
Total purchases of the company	37,61,37,884	40,84,11,173
Purchases from Maloo Tradelink	26,14,84,025	27,99,67,368
% of Purchases from Maloo Tradelink to the total purchases	69.52	68.55

*since the company did not provide details relating to total sales and purchases, the same is taken from financials filed by the company with MCA.

- b) On analysis of replies from the entities, investigation observed that THL states that it buys raw green timber from Wood Star and sells dried seasoned wood to Timsy. However, as per Wood Star reply it sells dried seasoned wood to THL which is bought from Maloo Tradelink. Therefore, there was no conformity between the information provided by THL and Wood Star regarding transactions in between them. The statements made by THL and other entities regarding the buy and sale are contradictory.
- c) Investigation further observed that THL is connected to Maloo Tradelink. As per MCA annual returns for the year 2011-12 these two entities share same registered office address at A-2 Harikrupa Apartment, Near Naranpura Rly. Crossing, Ahmedabad, Gujarat-380013. As per the annual return of the company the promoter directors of the Maloo Tradelink were Ajay Sureshchandra Maloo and Nina Ajay Maloo (wife of Ajay Sureshchandra Maloo). Ajay Sureshchandra Maloo is the brother of Anant Sureshchandra Maloo who is the promoter and Chairman & Managing Director of THL. Also, in the Annual Report of THL for the year 2010-11 and 2011-12 Maloo Tradelink is shown as related entity of THL.

- d) Further, Wood Star and Timsy Trader are also connected. The address of Wood Star as per MCA returns for the year 2010-11 is at 201, 202, 203 Pavan Plaza, Near S P Statue Naranpura, Ahmedabad-380013 and the address of Timsy traders is 202 Pavan Plaza, Near S P Statue Naranpura, Ahmedabad-380013. As per annual returns filed with MCA for the year 2010-11, Diptiben Rohitbhai Patel is one of the promoter director of Wood Star. Diptiben Rohitbhai Patel is also the proprietor of Timsy Traders. On a query regarding connection, vide letter dated September 19, 2015, Wood Star confirmed that Diptiben Rohitbhai Patel is the director in the company and also a proprietor of Timsy Traders.
- e) Details of circular transactions of sales/purchases between the entities are depicted as follows:



- f) Investigation observed that THL was making sales to Timsy Traders. This formed 69.06% of total purchases of Timsy Traders which means significant proportion of inputs for the business of Timsy were received from THL. Timsy Traders in turn making sales to Maloo Tradelink (which is connected to THL) which forms 64% of total sales of Timsy Traders and 72% of total purchases of Maloo Tradelink. This means significant proportion of inputs for the business of Maloo Tradelink were received from Timsy Traders. Maloo Tradelink in turn was making sales to Wood Star (which is connected to Timsy Traders) which formed almost 100% of total sales of Maloo Tradelink and 69.52% of total purchases of Wood Star. This means Wood Star was significantly depending on Maloo Tradelink for business inputs. Wood Star is in turn

was making sales to THL which formed 81.24% of total sales of Wood Star and 50.17% of total purchases of THL.

- g) Thus, investigation revealed that substantial portion of material that is being sold by Maloo Tradelink to Wood Star was coming from THL. Thus, THL was receiving back its own material which was again being put in the circular transactions. Also, these circular transactions were happening through connected entities i.e. Maloo Tradelink which is connected to THL and Wood Star which is connected to Timsy Traders.
- h) In order to check the genuineness of purchases/sales among the entities, information *inter alia* regarding mode of transport of materials along with documentary evidence regarding transportation of materials such as delivery challan/lorry receipt or any other documents were sought from THL, Wood Star, Maloo Tradelink and Timsy Traders. In reply THL and Maloo Tradelink stated that the companies are under liquidation and the official liquidator has been appointed. Therefore, they are not able to provide the information sought. Wood Star forwarded delivery challans regarding sales to THL and purchases from Maloo Tradelink. Timsy Traders forwarded delivery challans regarding sales to Maloo Tradelink and purchases from THL. On verification of these delivery challans, investigation observed that there were no transportation details such as vehicle details in which materials were transported between the entities. The delivery challan has contained only the description of product i.e. wood size (import), signature of the buyer and seller. Thus, it is revealed that the entities could not provide any evidence to show that the material was actually transported from one entity to the other entity.

3.13. Payments among the entities occurred on the same day:

In 7 instances, the payments were transferred among the entities on the same day. For example, on May 17, 2011 an amount of Rs.58,64,320 was transferred from THL to Wood Star and on the same day Rs.58,60,000 was transferred from Wood Star to Maloo Tradelink

and Rs.56,10,000 was transferred from Maloo Tradelink to Timsy Traders and Rs.56,09,500 transferred from Timsy Traders to THL. These series of fund transfers between the connected entities on the same day alleged to be not a coincidence. The investigation revealed that these fund transfers were fictitious and false book entries. In view of the above and considering the connection between entities THL & Maloo Tradelink and Wood Star & Timsy Traders, thus, it is concluded that the sales/purchases among THL, Timsy Traders, Maloo Tradelink and Wood Star are book entries and therefore fictitious. This has resulted in inflation of both purchases and sales figures of THL for the years 2010-11 and 2011-12. In its prospectus, THL had disclosed the financial information for the year 2010 which included these inflated purchases and sales. Hence, THL and its directors made mis-leading statements in its prospectus regarding its financial information.

- 3.14. Disclosure related violation regarding un-utilized IPO proceeds of Rs.5 crore:
- a) From the verification of bank statements of the Company, (HDFC Account No. 03062560001480) investigation observed that after receipt of IPO funds, the Company transferred Rs.5 crore to Shree Corporation on June 23, 2011. The Company, vide its letters dated March 26, 2014 and April 29, 2014 replied that the Company deposited Rs.5 crore out of unutilised IPO proceeds for two years and it fetches interest at 16% per annum. Further, vide its letter dated June 26, 2014 Company replied that till 31.03.2014, it received Rs.2.10 crore as interest and forwarded the bank statements showing receipt of interest. On a query, the Company vide e-mail dated December 12, 2014 replied that the deposit with Shree Corporation still continues.
 - b) In page number 60 of prospectus it is stated as “in case of excess funds remaining after deployment as per objects of the issue, the same will be utilized for General Corporate purposes”. In page number 67 of the prospectus it is stated as “The management, in accordance with the approval of the Board of Directors, will have the flexibility in deploying the Issue Proceeds received by us. Pending utilization for the purposes

described above, we intend to invest the funds in high quality interest/dividend bearing liquid instruments including money market mutual funds and deposits with banks for the necessary duration or for reducing overdraft”.

- c) From the above it can be noted that the Company can use excess funds either for General Corporate Purposes or for investing in high quality interest/dividend bearing liquid instruments. The Company disclosed to the exchanges under clause 43 of listing agreement regarding utilization of IPO proceeds till quarter ended December 2013. The extract of disclosure for the quarter ended December 2013 is as follows:

4 The Details of utilisation of IPO proceeds arising from allotment made in June 2011 are stated below:	
Particulars *	As at 31-Dec-13 (₹ in Lacs)
Proceeds from IPO	2324.70
Less:	
Issue Related Expenses	219.30
Utilised towards object of the issue	357.18
Fund Deployed for Working Capital #	1312.23
Un-utilised fund towards object of the issue ##	435.99
# The Fund have been deployed for Working Capital towards the Object of the Issue.	
## The fund have been temporarily deployed as Deposit with Nationalised Bank, NBFC, Mutual Fund and other Inter Corporate Deposits as an interim measure pending deployment towards the Object of the Issue to earn Interest income.	

- d) It can be seen from the above that the Company stated that un-utilised fund towards object of the issue deployed as deposit with nationalized bank, NBFC, Mutual Fund and other Inter Corporate Deposits as an interim measure pending deployment towards the object of the issue to earn interest income. However, the Company actually deployed entire un-utilised fund with Shree Corporation.

- 3.15. Thus, the investigation revealed that THL has made Non-disclosure of significant liabilities in the prospectus and non-disclosure of loan of Rs.7 crore and its repayment out of IPO proceeds. It also made mis-statements regarding financial information of the Company in its prospectus. Further, it made false & mis-leading reporting of sales and purchases for the FY 2010-11 and 2011-12. THL has also made wrong disclosure to the exchange regarding un-utilised IPO proceeds.

4. In the light of the above, THL (Noticee No.1) was advised to show cause as to why suitable directions in terms of Sections 11(1), 11(4), 11A and 11B of SEBI Act, 1992 for debarring it from accessing capital market and prohibiting the Company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities should not be issued against it for the violations as aforementioned in para 2 above. Noticee nos. 2 to 7, directors of THL were advised to show cause as to why suitable direction in terms of 11(1), 11(4) and 11B of SEBI Act, 1992 for debarring them from accessing capital market and debarring from acting as Directors in any company should not be issued against them for violation of Regulations 57 (1) and 57 (2) (a) read with Clause 2 (VII) (G) of part A of schedule VIII of the ICDR Regulations, (since repealed) (, Section 12A (a),(b),(c) of SEBI Act,1992 and Regulations 3 (b),(c),(d), 4 (1) and 4(2)(f) of the PFUPT Regulations and Clause 43 of listing agreement (now repealed) read with Section 21 of the SCRA.
5. The SCN was delivered to all Noticees except Noticee no.4. A common reply dated May 11, 2017 was received from Noticee nos. 1 and 2 stating the following:
 - 5.1. THL, of which Noticee no. 2 was a director, filed the Red Herring Prospectus ('RHP') dated May 20, 2011.
 - 5.2. As regards the observation in the SCN that approximately Rs.7 crore liabilities were created against IPO proceeds is incorrect. The liabilities to the vendors are created in the ordinary course of business. As per Annexure -I to the Auditors report and financial information of THL as on 31.12.2010, secured loans, unsecured loans, current liabilities and provisions were properly disclosed. Annexure - VII to the Auditors report reveals the total unsecured loan received party-wise. Similarly, secured loans party-wise are appearing in Annexure - XIII to the Auditors report. Current liabilities as on 31.12.2010 are shown as 2160.09 lakhs. Thus, the liability is duly disclosed under the head current liabilities and provisions. Therefore, the allegation in para 3 (d) is not correct.

- 5.3. It appears that there is a misunderstanding in considering the utilization as liability. The utilization by the Company as mentioned in para 3 (b) of SCN will amount to advances and thus an asset and not a liability. Annexure - VIII to the Auditors report reveals the details of Sundry Debtors and Annexure - IX shows the loans and advances. As on 31st December 2010, the Sundry Debtors are 3719.58 lakhs and the loans and advances are 981.86 lakhs. Thus, the amount spent should be considered as an asset rather liability and which is adequately disclosed either in the form of sundry debtors or loans and advances and therefore on both this counts the allegation in para 3 (d) is not sustainable.
- 5.4. As regards allegation of non-disclosure of loan taken from Mr. Alin Ajaykumar Shah (Alin), the allegation is denied. First of all it should be noted that the RHP is dated May 20, 2011. The loan taken from Alin on May 20, 2011 and subsequent dates cannot be forming part of RHP dated May 20, 2011. The loan taken from Alin is in the course of regular business activities. The loan was to tide over the temporary financial requirement which was obtained on the personal guarantee of the Director Mr. Anant Maloo. It was not a bridge loan against the IPO funds but purely temporary loan for business exigencies. Even no interest was payable. Regulation 57 (1) of ICDR Regulation requires the offer document to contain all material disclosure which are true and adequate so as to enable the applicants to take a informed investment decision. Availing temporary loan without any interest liability does not affect the financial results or its' profitability. The transactions carried out in the regular course of business are not required to be separately disclosed unless the same affects the financial results or profitability. Since the loan from Alin was utilized for the purpose of business which was received in Bank account with UBI which is duly disclosed and the amount repaid from the Bank account with HDFC Bank is also duly disclosed in the RHP, it cannot be said that the amount received from Alin, was a bridge loan against the proceeds of the issue. The amount received by way of temporary loan and repayment thereof as promised

in the ordinary course of business does not amount to misstatement in the prospectus.

- 5.5. As regards allegation that payment to Wood Star was out of IPO proceeds is incorrect. The amount paid to Wood Star prior to May 24, 2011 as mentioned in table in para 5 (1) can never be out of IPO proceeds because the issue closed on 2nd June, 2011 and the IPO proceeds were transferred from Escrow Account to regular Bank accounts only after 22nd June, 2011 as per instruction of lead Manager dated 22nd June 2011 itself. The copy of letter from Corporate Strategic Allanze Limited who were the lead manager to transfer fund from IPO Escrow Account to Company Bank Account is attached herewith. The payment to Wood Star after June 27, 2011 is 140.99 lakhs only and not 374 lakhs as alleged.
- 5.6. As regards the allegation in SCN that the payment to Wood Star is returned to THL is also an inference and not fact. The transaction with Wood Star, Maloo Trade Link, and Timsy Traders are regular business transaction for purchase and sale of goods regularly dealt in is carried out in the regular course of business. The statement of related parties transactions is appearing in Annexure - X to the Auditors report dated 21.3.2011 forming part of the RHP. Maloo Trade Link is a party declared as a related party in the said Annexure. However, Wood Star and Timsy Traders are not related parties. Wood Star and Timsy Traders may be related to each other but it is not a related party so far as THL is concerned and this fact is emanating from the SCN also.
- 5.7. As regards the observation in SCN that THL could not provide evidence to show that the material was actually transported, it is submitted that due to a massive fire at the premises of THL on 17th August 2013, the records were completely gutted in fire. Because of such fire, the Company incurred huge loss and was unable to pay its debts. Since Company was unable to pay its debts, winding up proceedings were initiated against THL and Hon'ble Gujarat High Court by its order dated June 16, 2016, ordered THL to be wound up. In view of the circumstances beyond the control of the THL no adverse inference should be drawn against it. As regards the observation that payments

amongst the entities occurred on the same day, no adverse inference is to be drawn, the transactions are carried out in the regular course of business and when the funds are available, the Company is supposed to pay its creditors and in the same fashion if the debtors of the Company repay to it, it is a normal transaction as per the objects of the company and there is no violation in this regard or any misleading statement effecting the investment decision.

- 5.8. As regards the observation regarding unutilized IPO proceeds, there cannot be said to be a misstatement in the prospectus so as to affect the investment decision. It has been adequately disclosed in prospectus that the excess fund remaining after deployment as per object of the issue, will be utilized for “General Corporate purposes” which includes deploying the issue proceeds in high quality interest bearing liquid instruments for reducing overdraft interest. Deployment of fund with Shree Corporation is part of the disclosure made. The intention to invest the funds in high quality interest bearing instrument etc. does not mean that the investment is to be made in each and every fund so stated in the prospectus. So long as the investment of unutilized IPO funds is as per the purpose stated in the prospectus there cannot be said to be any misstatement in the prospectus.

6. Vide his reply dated August 09, 2017, Noticee no. 3 has stated as follows:

- 6.1. He was and Executive Director of Timbor and was not connected with the day to day financial management of the said Company. He was looking after the technical and production side. The Company had already been ordered to be wound up by the Hon'ble High Court of Gujarat by its order dated June 16, 2016 and an Official Liquidator had been appointed to has taken possession of all assets and records of the Company.
- 6.2. He resigned as the Director of THL with effect from May 07, 2013.
- 6.3. He is adopting the reply submitted by Noticee no. 2. He is not connected with Wood Star India Pvt. Ltd., Maloo Trade Link Pvt. Ltd. or Timsy Traders. The allegations made against him in the SCN are not legally tenable.

7. Apart from Noticee nos. 1,2 and 3, since none of the other Noticees had submitted their replies to the SCN a hearing date was granted to all Noticees on September 21, 2017. In response to the same, Noticee no. 2 had replied that Noticee no. 4 had expired. The hearing was rescheduled to January 17, 2018. Thereafter, on May 08, 2019 the matter was assigned to me and an opportunity of hearing was provided to all Noticees on July 31, 2019.
8. On July 31, 2019 Noticee no. 2, appeared on behalf of himself and Noticee no. 6. It was also informed that Noticee no. 4 has passed away. Noticee nos. 3 and 7 namely Mr. Manan Vidhyapati Patel and Mr. Rakesh Mohan Puri did not appear for the hearing. Noticee no. 5 i.e. Mr. Rakesh Surajkumar Bhagat vide email dated July 29, 2019 had sought an adjournment stating that he has not received a copy of the SCN. Therefore, in the interest of justice, another opportunity of hearing was granted to Noticee nos. 1, 3, 5 and 7 on October 14, 2019. On the said date none appeared.
9. Vide letter dated September 27, 2019 Noticee no. 7 submitted as follows:
 - 9.1. On receipt of notice he had tried his level best to contact the Company and its managing director for documentary evidences in support of his defence. After regular follow up he was able to have contact with the Company, and was told that due to massive fire at the premises of 17-08-2013 all the records had been destroyed and hence nothing is available. Further he was also informed that THL is under winding up and the Hon'ble Gujrat High Court vide its order dated 29-06 2015 has ordered the winding up of the Company. He had resigned from the directorship of the Company with effect from May 01, 2013 and ceased to be director of THL. In these circumstances and without records I have to submit as under:
 - 9.2. The loan was taken by the Company in the ordinary course of business from Alin to meet the working capital requirements with the efforts of Mr. Anant Sureshchandra Maloo, the Managing Director. The Loan was taken in the regular course of business as such was not a subject matter of any discussions in the meetings of the board. The matter was

neither taken up in any board meeting nor any resolution was passed in this regards. The acceptance of deposits without any discussions or without any resolution in the board meeting and its non-disclosure was not in Noticee no. 7's knowledge.

9.3. The Company is regularly doing trading transactions with these companies in the ordinary course of business. The Company has as per the requirements of the disclosures of related party transactions, has duly disclosed these transaction in the audited financial statements. As per the practices followed by the Company such type of transactions are backed by the bills, delivery challans and receipt and payment through banking channels. As an independent Director he had no reasons to doubt such transactions, as these transactions, as per practice of the Company, are duly supported by the documentary evidences.

9.4. Disclosure of utilisation of IPO proceeds has been duly disclosed in the prospectus. The prospectus clearly states as to where the unutilised funds will be parked and the application of unutilised IPO proceeds are exactly as per disclosure made in the prospectus. It is not necessary to park the funds in all the instruments stated in the prospectus, if the funds are parked only in such instruments which are stated in the prospectus, it is sufficient compliance of the terms and conditions regarding utilisation of unutilised IPO proceeds as per terms stated in the prospectus, therefore he cannot be held responsible.

10. Vide his reply dated October 10, 2019 Noticee no. 5 stated as under:

10.1. He was merely an independent director of the Company for a limited period of time from 11/6/2010 to 5/31/2013 and was never a Managing Director of the Company neither was he occupying any executive position in the Company. He was therefore not aware about the dealings of the Company or the day today activities/affairs of the Company. Also, he did not participate in the day to day business activities neither was aware or concerned or responsible for the alleged transactions.

- 10.2. He was being roped into this matter wherein he was neither responsible now aware about the dealings/transactions allegedly done by the Company as enumerated in the SCN. It is only the Company and Its Executive Directors who may be held responsible for the same and not him being merely an independent director
- 10.3. He was holding the position of an Independent Director who is neither a Key Management Person (KMP) nor holds any such position in the Company to make any decisions. By any stretch of imagination, an Independent Director would not have any role in the trading or advancing of any loans by the Company. The Company had Managing Director, directors and other executive positions in place who were the decision makers and responsible persons for all acts of the Company.
- 10.4. He was not an "officer in default" as contemplated under Section 73(2) of the Companies Act and could not be responsible for the affairs of the company and, consequently, no direction could be issued against him.
- 10.5. He did not attend any Board meetings and did not participate in the day today affairs of the Company and was in no way a beneficiary or executor to any transactions nor is it even alleged that he was a beneficiary of the dealings of the Company.
11. Vide a letter dated January 08, 2020 the Authorized Representative (hereinafter referred to as "**AR**") of Noticee no. 6 informed that they had been appointed as AR by Noticee no. 6 and they requested for inspection of documents and an opportunity of hearing thereafter. Inspection of documents was carried out by the AR of Noticee no. 6 on February 28, 2020 and an opportunity of hearing was given to Noticee no. 6 on August 06, 2020. The AR of the Noticee no.6 appeared for the hearing and submitted the reply to the SCN on August 27, 2020.
12. Vide reply dated August 27, 2020 the Noticee no. 6 has submitted as follows:
- 12.1. Mr. Anant Maloo, (Noticee no. 2) the Managing Director, Promoter and majority shareholder of THL and Noticee no.6 have studied in the same college and school. Sometime in the year 2010, Noticee no. 2 approached Noticee no. 6 and requested him to accept the position of an Independent Director in THL. Noticee no. 2 represented that as an

independent director Noticee no. 6 would not entail any responsibility with respect to the affairs, management, control and day to day working of THL. Mr. Maloo also informed Noticee no. 6 that he had plans to take THL public and that he had already appointed one Corporate Strategic Allianz Limited, a SEBI registered merchant banker for the proposed initial public offering. Considering that there was no responsibility with respect to the affairs, management, control and day to day working of THL and that experts registered with SEBI had been appointed to advise on the proposed IPO, Noticee no. 6 accepted his offer of becoming an independent director of THL and was so appointed as an independent non- executive director on 06 July 2010. Noticee no. 6 neither held any shares of THL at any time nor had he ever attended any board meeting of THL. In fact, during his entire tenure of association with THL, he has not received any monetary compensation from the Company including that for sitting fees.

- 12.2. Noticee no. 6 was given to understand that one Corporate Strategic Allianz Limited, a merchant banker registered with SEBI and one Advocate Mr. Nigam R. Shukla, legal advisor were appointed to assist THL with the IPO. Accordingly, they conducted due diligence and drafted prospectus/offer document. This entire exercise was conducted by the said merchant banker and legal advisor independently and Noticee no. 6 had no role or control over the same. During the entire process, Noticee no. 6 was only called upon to provide his personal details, vis. age, address, designation, occupation, nationality, DIN, etc. Further, he was never called upon to explain or provide any information with relation to the affairs of THL. It is only at the time of the issuance/approval of the offer documents that Noticee no. 6 was called upon to sign the same. At the time of signing the aforesaid documents, Noticee no. 6 relied upon the merchant banker/legal advisor and signed the prospectus after examining the diligence certificates issued by Advocate Mr Nigam R. Shukla, the legal advisor to the Issue and Corporate Strategic Allianz Limited, the merchant banker to the Issue. Further, on the perusal of the offer documents and thereafter on signing, Noticee no. 6 had no reason to suspect any wrongdoing on the

part of THL, its promoters and directors as detailed due diligence across months had been carried out by the merchant banker and legal advisor.

12.3. On 9 April 2015, Noticee no. 6 resigned from the directorship of THL as he was unable to attend even a single board meeting during his entire tenure as a director. As on the date of issuance of the SCN, Noticee no. 6 did not have any link/connection with THL.

12.4. Noticee no. 6 was not an authorised signatory of THL for any purpose whatsoever and hence he had no information about payments being made by or to THL.

12.5. Noticee no. 6 was never invited for any board meeting and as a result he never attended any board meeting and he has never signed any document for THL apart from the prospectus and documents related thereto.

12.6. Vide an affidavit dated 5 August 2020 affirmed by Mr. Anant Maloo he has duly confirmed the following:

“2. I hereby confirm that I had approached Mr. Tejdeep Singh Harvinder Singh Anand, sometime in the year 2010, for the position of Independent Director of Timbor Homes Limited and had represented it to him that being an independent director, he would not entail any responsibility with respect to the affairs, management, control and day to day working of Timbor Home Limited.

3. I hereby confirm that Mr. Tejdeep Singh Harvinder Singh Anand was at no given point of time involved in the affairs, management, control or day to day working of Timbor Home Limited. In fact, Mr. Tejdeep Singh Harvinder Singh Anand had never:

(a) attended any Board Meeting or General Meeting of Timbor Home Limited.

(b) acted as an authorized signatory of Timbor Home Limited for any purpose whatsoever and hence he had no information about payments being made by or to Timbor Home Limited. He had only signed documents pertaining to his appointment as Independent Director and declarations pertaining to Draft Red Herring

Prospectus, Red Herring Prospectus and the Prospectus issued by Timbor Home Limited.

- (c) *derived any gain or pecuniary advantage from Timbor Home Limited or from the entities allegedly associated with it. In fact, he never even received any payment, including that for sitting fees, whatsoever from Timbor Home Limited.”*

12.7. The allegations levied in the present SCN pertain to the period May - June 2011. Noticee no. 6 subsequently resigned from the board of THL in April 2015, the SCN was issued by SEBI on March 15, 2017 i.e. around 6 years from the date of commission the alleged violations and the hearings in the matter are now being held in 2020. This inordinate delay has effectively restrained Noticee no. 6 from putting up a meaningful and complete defense in the matter as he is no longer in possession of any document to defend his role as an independent director of THL. In the aforesaid circumstances, it is submitted that the SCN is liable to be recalled and discharged

12.8. SEBI has failed to provide all the materials/ documents/evidence collected by it. The conduct of SEBI is clearly bad in law and is contrary to the settled principles of natural justice. It is pertinent to mention here that in the documents provided along with the SCN there is no mention of or a reference to Noticee no. 6 nor does any of it show the involvement of Noticee no. 6 in the affairs of the Company or in the alleged fraudulent activities. The following document shave not been provided by SEBI:

	Document	Relevance
1.	Copy of the complete Investigation Report.	The SCN has admittedly been issued pursuant to an investigation carried out by SEBI into the alleged irregularities in the IPO of THL. Thus, it is essential that the investigation report prepared by SEBI in the matter should be made available to us.

2.	Minutes of board of directors' meetings and audit committee meetings	Noticee no. 6 and the other directors have been called upon to explain the various violations allegedly committed by THL without even providing the minutes of a single board of directors' or audit committee meetings. It is submitted that board of directors of THL and more specifically the independent directors cannot be alleged of any wrongdoing till their involvement with the purported offence is made out. It is submitted that Noticee no. 6 cannot be held liable if the alleged actions were unauthorizedly undertaken by the managing director of the Company without the approval of the board. These documents are also essential for Noticee no. 6 to show that he was not involved in the acts of the company and its executives.
3.	E-mails sent or other documents signed by Noticee no. 6 that show that his awareness of the commission of alleged violations by THL.	It is submitted that in the documents supplied by SEBI along with SCN, not even a single document has been supplied to show that our client was either involved or aware of any of the alleged violations being committed by THL. In fact, all the allegations and averments have been made by SEBI after examining subsequent letters issued by THL, which were never put before the board of directors of THL at any given point of time.
4.	Any document to show that the statutory auditor and / or merchant banker was aware of the alleged financial wrong doings by THL.	It is submitted that predominately the allegations set out in the SCN pertain to either movement of funds by THL and non-disclosure of the same in the prospectus. In spite of the above, neither the third parties to whom funds have been transferred have been made a party to the SCN nor have the merchant Banker and statutory Auditor been made a party of the present proceedings. Further, nothing has been brought on record show that the violations were committed by THL without the knowledge or active concealment on the part of the statutory auditor or the merchant banker.
5.	Any other document obtained by SEBI in the present matter	

12.9. It is also submitted that the SCN is ambiguous and disjointed and a reference in this regard can be made to paragraph nos. 10 and 11 of the SCN wherein SEBI has alleged THL of violating Regulations 57(1) and 57(2) (a) read with Clause 2(VII) (G) of part A of Schedule VIII of the SEBI ICDR Regulations, Section 12A (a)(b)(c) of the SEBI Act, 1992, Regulations 3 (b)(c)(d), 4(1) and 4(2)(f) of the SEBI PFUTP Regulations and Clause 43 of Listing Agreement read with Section 21

of the SCRA, but on the other hand, there are no allegations against Noticee no. 6 of violating any provision of law whatsoever.

- 12.10. Payment made by THL to its Vendors, which were ultimately re-routed to THL; non-disclosure of loan taken for meeting working capital requirements in the prospectus; artificial Inflation of purchase and sales figures by THL through circular transactions amongst connected entities; and details of sales and purchases between THL and other entities -these allegations have been made in the SCN without showing any linkage/ connection/action or omission on the part of Noticee no. 6. It is submitted that being an independent director, Noticee no. 6 cannot be presumed to be connected to third party entities with whom he has no connection. It is submitted that where a contravention of any of the provisions of the SEBI Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention. No case has been made out in the SCN that Noticee no. 6 was in charge of, and was responsible to, the Company for the conduct of the business of the company. Further, it is categorically submitted that Noticee no. 6 was not in charge of, and nor was he responsible to, the Company for the conduct of the business of the Company. In fact, THL had executive directors for the same.
- 12.11. It is further submitted that no minutes of the meeting of the board of directors or any other document has been brought on record by SEBI to even show that Noticee no. 6 had either approved or was even aware of the transfer of funds referred to in the paragraph.
- 12.12. As per both THL and the Merchant Banker, the decision to raise working capital from Mr Alin Ajaykumar Shah and subsequent repayment to him was never done with the approval of the board. In such a circumstance, Noticee no. 6 or any other director cannot be held guilty for an unauthorised transaction done by any individual without the knowledge of the board or its subsequent disclosure.

- 12.13. It is further submitted that Noticee no. 6 was not aware of any artificial inflation of purchases and sales figures of THL for the year 2010 -11 and 2011-12 through circular transactions amongst connected entities. Further, there is nothing on record to show any awareness Noticee no. 6 in any manner in relation to Wood Star, Maloo Tradelink and Timsy Traders and hence there is no reason to attribute any wrongdoing to our client or draw any negative inferences against him.
- 12.14. It is submitted that the requirement to maintain book of accounts; and the form and contents of balance sheet and profit and loss account to be prepared by a company are provided under Sections 209 and 211 of the Companies Act, 1956. It is submitted that even the requirements to ensure that the accounts represent a true and fair picture of the state of the affairs of the company is provided for in Section 211(1) of the Companies Act, 1956. Under Section 209 (5), 209 (6), 211(7) and 211(8) of the Companies Act, 1956 the responsibility to ensure the compliance with these provisions is that of the managing director of the company or of the person charged with the duty of seeing that the requirements of these sections are complied. It is submitted that the liability in case of any default of section 209 and 211 of the Companies Act, 1956 is very specific to the Managing Director of the Company. Further, Section 209 and 211 of the Companies Act, 1956 also says that every director of the company will only be held responsible if there is no managing director or manager. In the present matter, Mr Maloo was the managing director of THL at the relevant time and hence Mr. Maloo alone can be held liable for any wrong reporting of financials in the year 2010-2011 and 2011-12. In any event, it is further submitted that the Company and the Executive directors had appointed a reputed firm to conduct the audit of the Company. Thus, in respect of violations pertaining to financials of THL, the 'officer in default' would be the Managing Director of THL and not Noticee no. 6 who is merely a non executive independent director.
- 12.15. It can only be presumed that Noticee no. 6 is being held vicariously liable by SEBI for acts and omissions of THL merely because he was an independent director on the board of the Company, which in our

humble submission it cannot do for serious violations of PFUTP Regulations without establishing any connivance on part of Noticee no. 6 with the Company.

Consideration of submissions and findings thereon:

13. Before dealing with the issues involved in the matter, it would be appropriate to refer to the provisions of laws which have been alleged to have been violated by the Noticees and the relevant extracts of the same are reproduced below:

Relevant extract of provisions of SEBI Act, 1992:

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

Section 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 recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

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

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

(d)”

Relevant extracts of provisions of the ICDR Regulations, 2009

“Manner of disclosures in the offer document.

57.

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

(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.”

Schedule VIII of ICDR Regulations

“PART A

[See regulations 14(3), 37(a), 44, 45(1)(f), 57(2)(a)) and 57(2)(b)]

DISCLOSURES IN RED HERRING PROSPECTUS, SHELF PROSPECTUS AND PROSPECTUS

(2) An issuer making a public issue of specified securities shall make the following disclosures in the offer document. However, an issuer making a fast track issue of specified securities may not make the disclosures specified in Part B of this Schedule in the offer document. Further, an issuer making a further public offer of specified securities may not make the disclosures specified in Part C of this Schedule, in the offer document, if it satisfies the conditions specified in para 2 of that Part:

(VII) Particulars of the Issue:

(G) Sources of Financing of Funds Already Deployed:

The means and source of financing, including details of bridge loan or other financial arrangement, which may be repaid from the proceeds of the issue.”

Relevant extracts of provisions of the ICDR Regulations, 2018

“Repeal and Savings

301. (1) On and from the commencement of these regulations, the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements), Regulations 2009 shall stand rescinded.

(2) Notwithstanding such rescission:

a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Regulations shall be deemed to have been done or taken under the corresponding provisions of these regulations.

b) any offer document, whether draft or otherwise, filed or application made to the Board under the said Regulations and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations.”

Relevant extract of provisions of PFUTP Regulations, 2003:

“Regulation 3 - Prohibition of certain dealings in securities

No person shall directly or indirectly

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

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

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

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

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(a).....

(b).....

...

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

...”

Relevant extracts of provisions of SCRA

Section 21 of SCRA - Conditions for listing

“Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange”.

Relevant extracts of provisions of Listing Agreement

Clause 43 of Listing Agreement

a) The Company agrees that it will furnish on a quarterly basis a statement to the Exchange indicating the variations between projected utilization of funds and/or projected profitability statement made by it in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilization of funds and/or actual profitability.

b) The statement referred to in clause (1) shall be given for each of the years for which projections are provided in the prospectus/letter of offer/object/s stated in the explanatory statement to the notice for considering preferential issue of securities and shall be published in newspapers simultaneously with the unaudited/audited financial results as required under clause 41.

c) If there are material variations between the projections and the actual utilization /profitability, the company shall furnish an explanation therefore in the advertisement and shall also provide the same in the Directors' Report.

d) The statement referred to in clause (a) shall also be given for warrants issued along with public or rights issue of specified securities.

Relevant Extracts Of Provisions Of SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015

“Repeal and Savings

103. (1) On and from the commencement of these regulations, all circulars stipulating or modifying the provisions of the listing agreements including those specified in Schedule X, shall stand rescinded.

(2) Notwithstanding such rescission, anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in sub-regulation (1) or the Listing Agreements, entered into between stock exchange(s) and listed entity, in force prior to the commencement of these regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations”

14. In this matter, I note that a complaint dated July 21, 2011 was received from All Gujarat Investor Protection Trust regarding irregularities in the IPO of THL. Thereafter, an extensive investigation was carried out by SEBI. The period of

investigation was taken as from June 22, 2011 to July 08, 2011. The said investigation included looking into the role of various entities, their bank statements, ledger statements, challans, vouchers, etc. After conclusion of investigation enforcement action was approved by the Competent Authority on January 20, 2016. Thereafter, the SCN was issued on March 15, 2017. The SCN was delivered to all Noticees except Noticee no. 4. A common reply dated May 11, 2017 was received from Noticee nos. 1 and 2 on May 11, 2017 and from Noticee no. 3 on August 09, 2017. Apart from Noticee nos. 1, 2 and 3, since none of the other Noticees had submitted their replies to the SCN a hearing date was granted to all Noticees on September 21, 2017. In response to the same, Noticee no. 2 had replied that Noticee no. 4 had expired. The hearing was rescheduled to January 17, 2018. Thereafter, on May 08, 2019 the matter was assigned to me and an opportunity of hearing was provided to all Noticees on July 31, 2019. On July 31, 2019 Noticee no. 2, appeared on behalf of himself and Noticee no. 6. It was also informed that Noticee no. 4 has passed away. Noticee nos. 3 and 7 namely Mr. Manan Vidhyapati Patel and Mr. Rakesh Mohan Puri did not appear for the hearing. Noticee no. 5 i.e. Mr. Rakesh Surajkumar Bhagat vide email dated July 29, 2019 had sought an adjournment stating that he has not received a copy of the SCN. Therefore, in the interest of justice, another opportunity of hearing was granted to Noticee nos. 1, 3, 5 and 7 on October 14, 2019. On the said date none appeared. Thereafter, vide a letter dated January 08, 2020 the AR of Noticee no. 6 informed that they had been appointed as AR by Noticee no. 6 and they requested for inspection of documents and an opportunity of hearing thereafter. Inspection of documents was carried out by the AR of Noticee no. 6 on February 28, 2020 and an opportunity of hearing was given to Noticee no. 6 on August 06, 2020. The AR of the Noticee no. 6 appeared for the hearing and submitted the reply to the SCN on August 27, 2020. I also note that from March 2020 onwards nationwide lockdown was imposed due to outbreak of Covid -19 till August 2020.

15. I note that the Noticee no. 6 has raised an issue relating to non-furnishing of certain documents to him such as the complete copy of Investigation Report and certain other documents without specifying the documents sought. I note that all the documents relied upon in the SCN has been provided to him in order to enable

him to submit a reply and he has filed his reply dated August 27, 2020. Therefore, the request of Noticee no. 6 in this regard is untenable. In this regard, reference may be made to the order dated February 12, 2020 passed by Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") in Appeal (L) No. 28 of 2020 – Shruti Vora Vs. SEBI, wherein it was observed as under:

"In the light of the aforesaid, we are of the opinion that concept of fairness and principles of natural justice are in-built in Rule 4 of the Rules of 1995 and that the AO is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence."

The aforesaid observations made in Shruti Vora's case has been reiterated with confirmation by Hon'ble SAT in its order dated July 17, 2020 passed in Anant R Sathe Vs. SEBI wherein it was observed as under:

".....8. The said principle elucidated in Shruti Vora's judgement is squarely applicable in the instant case. The authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence....."

In the present case also, I find that the Noticee no. 7 has been provided with all the relevant documents relied upon in the SCN which are sufficient for Noticee no. 7 to file an efficacious reply in the matter. I find that Noticee no. 7 has filed its detailed response to the SCN, on October 12, 2019 and October 16, 2019 and June 26, 2020. Therefore, the contention of the Noticee no. 7 in this regard is untenable.

16. Coming to the merits of the case, I note that the SCN has made certain allegations related to non-disclosures in the prospectus for the IPO of THL and certain misstatements in the said prospectus. Each of the said allegations are dealt with separately below. I observe that only Noticee no. 2 has made submissions on the merits of the present matter and Noticee no. 3 has also adopted the same arguments. Noticee no. 4 has expired. Noticee nos. 5, 6 and 7 have all individually contended that they were Independent Directors and were

not aware of the day to day function of THL . Therefore, Noticee nos. 5,6 and 7 have mainly contended that they cannot be made vicariously liable for the violations committed by THL without any specific allegation against them in the SCN.

17. Firstly, the SCN alleges that THL did not disclose past liabilities incurred for working capital in the Prospectus. The SCN states that as per prospectus of THL, the proposed amount for additional working capital requirement was Rs.1318.25 lakhs which formed the major portion of the 'cost of project' and thus the major object of issue. The Company, vide its letter dated September 18, 2013 provided the breakup of working capital payments. It was noted from THL's reply that substantial expenses (approximately Rs.7 crore) had been incurred before the date of prospectus i.e. June 08, 2011. The utilization of IPO proceeds towards working capital by the Company is given in the following table showing expenses incurred before and after prospectus date:

Amounts in Rs.				
S.No	Particulars / Name of the Vendor	Before prospectus date	After prospectus date	Total
1	Wood Star (India) Pvt Ltd	2,33,05,712	1,40,99,445	3,74,05,157
2	Green Gold Tree Farmers Pvt Ltd	1,53,30,000	50,00,000	2,03,30,000
3.	Show Room Rent	-	1,52,21,375	1,52,21,375
4.	Land mark Veneer Pvt Ltd	35,00,000	81,00,000	1,16,00,000
5.	Turakhia Overseas Ltd	1,00,00,000	9,00,000	1,09,00,000
6.	Green Gold Timbers Pvt Ltd	26,98,100	52,00,000	78,98,100
	Sub-Total	5,48,33,812	4,85,20,820	10,33,54,632
	Others (30 entities)	1,51,58,838	1,27,02,394	2,78,61,232
	Grand Total	6,99,92,650	6,12,23,214	13,12,15,864*

*The amount shown as utilisation is Rs.1312.23 lakhs. However breakup was provided for Rs.1312.16 lakhs

The SCN states from the above table that that the amount of liabilities i.e. almost Rs.7 crore (which was incurred pre-prospectus) forms significant percentage of (30.11%) of total issue size of Rs.23.25 crore. However, there were no disclosures made in the prospectus regarding these pre-existing liabilities towards working capital. Therefore, the Company and its directors did not disclose material information in prospectus relating to the significant liabilities as on the date of prospectus.

18. In response to this Noticee no. 2 has submitted that the liabilities to the vendors were created in the ordinary course of business. Noticee no. 2 has submitted that as per Annexure -I to the Auditors report and financial information of THL as on 31.12.2010, secured loans, unsecured loans, current liabilities and provisions were properly disclosed. Annexure - VII to the Auditors report reveals the total unsecured loan received party-wise. Similarly, secured loans party-wise are appearing in Annexure - XIII to the Auditors report. Current liabilities as on 31.12.2010 are shown as 2160.09 lakhs. Thus, Noticee no. 2 has submitted that the liability is duly disclosed under the head current liabilities and provisions. Therefore, the Noticee no. 2 has contended that the allegation is not correct. Noticee no. 2 has also submitted that there is a misunderstanding in considering the utilization as liability. The utilization by the Company as mentioned in para 3 (b) of SCN will amount to advances and thus an asset and not a liability. Annexure - VIII to the Auditors report reveals the details of Sundry Debtors and Annexure - IX shows the loans and advances. As on 31st December 2010, the Sundry Debtors are 3719.58 lakhs and the loans and advances are 981.86 lakhs. Thus, the amount spent should be considered as an asset rather than liability and which is adequately disclosed either in the form of sundry debtors or loans and advances and therefore on both this counts the allegation is not sustainable.
19. In this regard I find that the two submission of the Noticee no. 2 are conflicting. On one hand he has submitted that the liabilities have been disclosed in the Annexure VII and XIII to the Auditor's Report which forms part of the prospectus as debts and on the other hand he has submitted that payment to vendors, i.e utilization should not be considered as liability at all but should be considered as asset. Be that as it may, I note that the Prospectus of the IPO of THL in the "objects of the issue" stated as follows:

"We have existing banking relationships with sanctioned working capital limits as provided in the "Annexure 13 Secured Loans" beginning on page 161 under Chapter titled "Auditors' Report and Financial Information of our Company" beginning on page 145 of the Prospectus. These limits and our internal accruals are adequate to meet our existing requirements. However, our Company will utilize a part of the Issue Proceeds to fund additional future working capital requirements."

Therefore, from the above, I note that the Company in its Prospectus had categorically stated that as on the date of the Prospectus it was in a position to finance its working capital requirements and the IPO proceeds would only be used for additional future working capital requirements. However, this was not the true picture since the Company had pre-existing liabilities which it had incurred due to working capital expenses and the same was not disclosed in the Prospectus. Therefore, in my view THL had failed to disclose its pre-existing liabilities amounting approximately Rs. 7 crores related to working capital expenses in the Prospectus. Moreover, the fact that THL used part of the IPO proceeds to make payments for working capital expenses which accrued before the issue date is contrary to its statement in the prospectus. I am of the opinion that irrespective of whether the utilisation is an asset or liability, it has been established that THL had utilized the proceeds of the IPO to finance pre-existing working capital requirements, as submitted by THL itself vide its letter dated September 18, 2013, which was contrary to what was disclosed in the prospectus and the same amounts to misutilisation of IPO proceeds. Therefore, THL failed to disclose the pre existing liabilities related to working capital expenses in its Prospectus and utilized part of the IPO proceeds for pre-existing working capital requirements contrary to the object of the issue. I find that the submissions of Noticee no. 2 in this regard is not acceptable. I also note that utilization may be considered as asset if it is used for advance payments but in the case of THL, I note that no supporting documents related to payment of advances has been provided by Noticee no.2. Moreover, the purported payments themselves were fraudulent, as discussed in the subsequent paragraphs.

20. Secondly, it has been alleged in the SCN that the Bank Statements of the Company revealed that THL had transferred Rs.7 crore to Alin during June 22, 2011 to June 28, 2011 i.e. after receipt of IPO Funds. Further, the SCN states that the Company, vide letter dated April 29, 2014 has stated that the payment to Alin was for repayment of loan and that the loan taken from Alin was for a short period as an interest free loan and hence no terms and conditions were made and accordingly no board resolution was passed for the same. The details of loan stated to have received from Alin, as per the Company, are as under:

Date	Amount Received in UBI Bank Account No. 449105010077360
13.05.2011	1,00,00,000
17.05.2011	50,00,000
20.05.2011	50,00,000
23.05.2011	1,00,00,000
24.05.2011	1,00,00,000
25.05.2011	1,00,00,000
26.05.2011	50,00,000
30.05.2011	50,00,000
30.05.2011	1,00,00,000
Total	7,00,00,000

21. The Company further stated that the said loan was deployed for the purposes of working capital requirement. However, the SCN notes that the company had already spent approx. Rs. 7 crore prior to the date of prospectus and thus the SCN has alleged that that the Company had not disclosed the loan of Rs.7 crore from Alin in the prospectus dated June 08, 2011 though the Company had received the loan during May 13, 2011 to May 30, 2011. Further, the Company mentioned in page no.59 of the prospectus that it has not raised any bridge loan against the proceeds of the Issue. The amount of loan i.e. Rs.7 crore forms significant percentage of (30.11%) of total issue size of Rs.23.25 crore. Therefore, it is alleged in the SCN that the Company and its directors have not made the necessary disclosures relating to the loan taken from Alin and its repayment out of IPO proceeds in prospectus.

22. Noticee no.2 in his reply has stated that the RHP is dated May 20, 2011 and the loan taken from Alin on May 20, 2011 and subsequent dates cannot be forming part of RHP dated May 20, 2011. The Noticee No. 2 has stated that the loan was taken from Alin in the course of regular business activities to tide over the temporary financial requirement which was obtained on the personal guarantee of the Director Mr. Anant Maloo. It was not a bridge loan against the IPO funds but purely temporary loan for business exigencies and no interest was payable and so did not affect the financial results or THL's profitability. It is the Noticee no. 2's case that the transactions carried out in the regular course of business are not required to be separately disclosed unless the same affects the financial results or profitability. Since the loan from Alin was utilized for the purpose of business which was received in Bank account with UBI which is duly disclosed and the amount repaid from the Bank account with HDFC Bank is also duly

disclosed in the RHP, it cannot be said that the amount received from Alin, was a bridge loan against the proceeds of the issue and so does not amount to misstatement in the prospectus.

23. I note that Rs. 7 crore was transferred from the IPO proceeds to Alin as follows:

Date	Bank Account of the Company	Bank Account of Alin Ajaykumar shah.	Amount
22.06.2011	Bank Account Number: 03062560001480, HDFC Bank	Bank Account Number: 08110020001122, Kotak Mahindra Bank	3,55,00,000
23.06.2011	-do-	-do-	1,00,00,000
24.06.2011	-do-	-do-	85,00,000
27.06.2011	-do-	-do-	90,00,000
28.06.2011	-do-	-do-	45,00,000
28.06.2011	Bank Account Number: 449105010077360, Union Bank of India	-do-	25,00,000
		Total	7,00,00,000

24. I note that vide letter dated April 29, 2014 THL has stated that the payment to Alin was for repayment of loan and that the loan taken from Alin was for a short period as an interest free loan but could not produce any details such as terms and conditions or board resolution. I note that the loan taken from Alin was not disclosed in the Prospectus for the IPO of THL. I find that the final Prospectus of THL was filed on June 08, 2011 and therefore, I am unable to accept the contention of the Noticee no. 2 that loan amounting to Rs. 7 crore taken in the month of May 2011 from Alin could not have been disclosed in the Prospectus. I note that in the financial world, bridge loan is understood as a short term accommodation availed by an entity awaiting the permanent financial resources. This definition of bridge loan has been stated by the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") in *Inventure Growth and Securities Ltd. Vs. SEBI* (Appeal No. 361 of 2018 decided on October 10, 2019). Although Noticee no. 2 has stated that the loan taken from Alin was a temporary arrangement, however, I find that in substance it was a bridge loan. Clause 2 (VII) (G) of part A of schedule VIII of the ICDR Regulations clearly states that any bridge loan available by the issuer company before the IPO has to be disclosed in the Prospectus. Thus, in this regard, I find that THL had failed to disclose the

bridge loan of Rs. 7 crore availed from Alin on different dates in the month of May 2011.

25. I also note that the balance in the two IPO accounts of THL before and after receipt of IPO proceeds were as follows:

Account details	Bank balance before transfer of IPO proceeds	Amount of IPO funds transferred	Bank balance after transfer of IPO proceeds
UBI Account – CC Account No. 449105010077360 Branch: DR.S.R.Marg, Ahmedabad	On 22.06.2011: (-) Rs.2477.06 lakh	Rs.800 lakh	(-) Rs.1677.06 lakh
	On 27.06.2011: (-) Rs.1744.48 lakh	Rs.132.39 lakh	(-) Rs.1612.09 lakh
HDFC Bank account - 03062560001480	On 22.06.2011: Rs.19.63 lakh	Rs.1324.70 lakh	Rs. 1344.33 lakh

From the above, it is observed that, after receipt of IPO proceeds, a total amount of Rs. 6,75,00,000 was transferred from Bank Account Number 03062560001480, HDFC Bank of THL to Alin's account and a total of Rs. 25,00,000 was transferred from Bank Account Number 449105010077360, Union Bank of India of THL to Alin. Bank Account Number 03062560001480, HDFC Bank of THL had received IPO proceeds. Since the balance in the HDFC Bank Account before receipt of IPO proceeds was Rs.19.63 lakh and subsequently Rs. 6,75,00,000 was transferred to Alin, I find that Rs. 6,55,70,000 from the IPO proceeds were transferred to Alin in order to pay back the bridge loan which had not been disclosed in the Prospectus and thus amounted to misutilisation of IPO proceeds. However, since the Bank Account Number 449105010077360, Union Bank of India of THL was not used for the receipt of IPO proceeds, I find that the transfer to Alin from this account cannot be said to be made from the IPO proceeds.

26. Thirdly, it has been alleged in the SCN that THL indulged in artificial Inflation of purchases and sales figures for the years 2010-11 and 2011-12 through circular transactions amongst connected entities and thus figures disclosed in this regard in the Prospectus were not correct. The details of such circular transactions are as follows:

a) Payments to Wood Star:

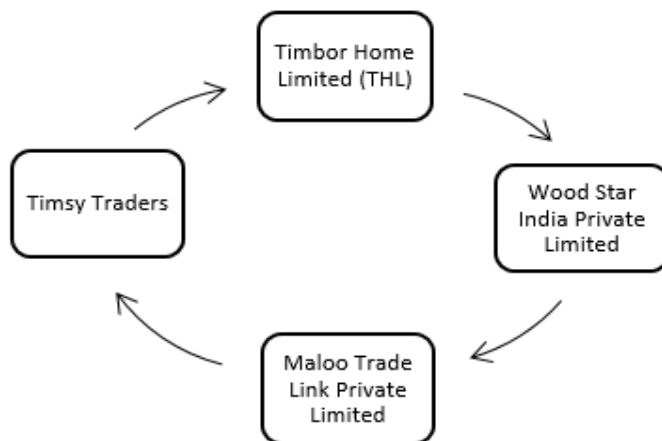
Wood Star was the top vendor to whom payments were made by THL from IPO proceeds. As per the information provided by THL, following are the details of payments made by THL to Wood Star out of IPO proceeds towards purchase of timber.

Date	Amount Paid	Bank Account of the company from which amounts were debited
17/05/2011	58,64,320	UBI A/c Number 449105010077360
18/05/2011	58,59,362	-do-
19/05/2011	55,85,000	-do-
23/05/2011	44,48,530	-do-
24/05/2011	15,48,500	-do-
27/06/2011	70,00,000	-do-
31/10/2011	32,00,000	HDFC A/c No. 03062560001480
16/11/2011	8,00,000	-do-
09/05/2012	10,00,000	-do-
31/05/2012	20,99,445	-do-
	3,74,05,157	

b) Trail of payments made to Wood Star: The trail of above payments revealed that majority of the amounts paid to Wood Star have been returned to THL through two entities viz., Maloo Tradelink Limited (Maloo Tradelink) and Timsy Traders. The details of the funds flow is shown below:

Date	Amount transferred from THL to Wood Star	Amount transferred from Wood Star to Maloo Tradelink	Amount transferred from Maloo Tradelink to Timsy Traders	Amount transferred from Timsy Traders to THL
17.05.2011	58,64,320	58,60,000	56,10,000	56,09,500
18.05.2011	58,59,362	58,59,000	58,58,575	58,58,075
19.05.2011	55,85,000	55,84,500	52,97,000	52,98,000
23.05.2011	44,48,530	44,48,000	42,25,056	42,25,000
24.05.2011	15,48,500	15,48,000	17,70,400	17,70,000
28.06.2011	70,00,000	69,99,250	69,50,000	69,49,000
31.10.2011	32,00,000	32,00,200	31,35,000	31,35,100
Total	3,35,05,712	3,34,98,950	3,28,46,031	3,28,44,675

c) The above flow of funds is shown as follows:



27. Noticee no. 2 has submitted that the amount paid to Wood Star prior to May 24, 2011 as mentioned in table in para 5 (1) can never be out of IPO proceeds because the issue closed on 2nd June, 2011 and the IPO proceeds were transferred from Escrow Account to regular Bank accounts only after 22nd June, 2011 as per instruction of lead Manager dated 22nd June 2011 itself. The payment to Wood Star after June 27, 2011 is 140.99 lakhs only and not 374 lakhs as alleged. The Noticee no. 2 has also submitted that the transaction with Wood Star, Maloo Trade Link, and Timsy Traders are regular business transaction for purchase and sale of goods regularly dealt in is carried out in the regular course of business. The statement of related parties transactions was appearing in Annexure - X to the Auditors report dated 21.3.2011 forming part of the RHP. Maloo Trade Link was a party declared as a related party of THL in the said Annexure. However, Wood Star and Timsy Traders were not related parties. Noticee no. 2 has also submitted that submitted that due to a massive fire at the premises of THL on 17th August 2013, the records were completely gutted in fire. Because of such fire, the Company incurred huge loss and was unable to pay its debts. Since Company was unable to pay its debts, winding up proceedings were initiated against THL and Hon'ble Gujarat High Court by its order dated June 16, 2016, ordered THL to be wound up. In view of the circumstances beyond the control of the THL no adverse inference should be drawn against it.

28. From the material available on record I note the following:

- a) THL has stated that that the receipts from Timsy traders were towards the sales made to Timsy Traders and payments made to Wood Star were towards purchases from Wood Star and provided ledger copies of Wood Star and Timsy Traders for the year 2011-12. It was observed from the ledger copies of Wood Star and Timsy Traders that there were several transactions in the similar manner apart from the above listed transfers during the entire period of 2011-12. However, vide its reply dated July 20, 2015, THL was unable to provide any supporting bill for these transactions and replied that bills were destroyed by fire.
- b) In the invoices raised by Wood Star on THL (purchases of THL) during 2011-12 the description of goods is mentioned as "Wood Size (imported)". From invoices raised by THL on Timsy Traders (sales of THL) that the same description i.e. "Wood Size (imported)" was mentioned.
- c) Vide e-mail dated September 09, 2015, THL replied that it purchased raw green (wet) Timber in wood size from Wood Star India Pvt Ltd. and sold dried and seasoned wood in wood size to various parties including Timsy Traders. Further, Timsy Traders, vide letter dated October 01, 2015 replied that it had purchased dried seasoned wood from THL and sold to various parties including Maloo Tradelink. Wood Star, vide letter dated October 01, 2015 replied that it had purchased dried seasoned wood from Maloo Tradelink and sold to various parties including THL. Maloo Tradelink, vide e-mail dated September 21, 2015 replied that the company is under liquidation and the liquidator has taken possession of company. Therefore, there was no conformity between the information provided by THL and Wood Star regarding transactions in between them. The statements made by THL and other entities regarding the buy and sale are contradictory.
- d) As per the replies of entities and their returns filed with MCA and also noted in the SCN, the details of purchases/sales by the entities is given in below table:

Particulars	Amounts in Rs.	
	2011-12	2010-11
THL:		
Total sales of the company	81,31,70,432	79,15,32,877
Sales to Timsy traders	19,37,90,898	9,05,45,628
% of sales to Timsy traders to the total sales	23.83	11.44
Total purchases of the company	63,28,01,161	64,69,95,811
Purchases from Wood Star	31,74,91,045	34,01,01,594
% of wood Star purchases to the total purchases	50.17	52.57
Timsy Traders:		
Total sales of the entity	27,05,49,469	21,58,48,540
Sales to Maloo	17,31,48,712	18,83,40,783
% of sales to Maloo to the total sales	64.00	87.26
Total purchases of the entity	27,99,34,650	25,19,83,569
Purchases from THL	19,33,18,990	9,01,22,883
% of Purchases from THL to the total purchases	69.06	35.77
Maloo Tradelink:		
Total sales of the company	24,59,08,913	25,15,05,354
Sales to Wood Star	26,14,84,396	27,99,67,368
% of sales to Wood Star to the total sales*	100.00	100.00
Total purchases of the company	24,04,95,869	24,94,78,434
Purchases from Timsy Traders	17,31,48,712	18,83,40,784
% of purchases from Timsy traders to the total purchases	72.00	75.49
Wood Star:		
Total sales of the company	35,22,04,222	36,29,97,549
Sales to THL	28,61,47,535	34,01,01,603
% of sales to THL to the total sales	81.24	93.69
Total purchases of the company	37,61,37,884	40,84,11,173
Purchases from Maloo Tradelink	26,14,84,025	27,99,67,368
% of Purchases from Maloo Tradelink to the total purchases	69.52	68.55

- e) The SCN observes that THL was making sales to Timsy Traders. This formed 69.06% of total purchases of Timsy Traders which means significant proportion of inputs for the business of Timsy were received from THL. Timsy Traders in turn making sales to Maloo Tradelink (which is connected to THL) which forms 64% of total sales of Timsy Traders and 72% of total purchases of Maloo Tradelink. This means significant proportion of inputs for the business of Maloo Tradelink were received from Timsy Traders. Maloo Tradelink in turn was making sales to Wood Star (which is connected to Timsy Traders) which formed almost 100% of total sales of Maloo Tradelink and 69.52% of total purchases of Wood Star. This means Wood Star was significantly depending on Maloo Tradelink for business inputs.

Wood Star is in turn was making sales to THL which formed 81.24% of total sales of Wood Star and 50.17% of total purchases of THL.

- f) THL is connected to Maloo Tradelink. As per MCA annual returns for the year 2011-12 these two entities share same registered office address at A-2 Harikrupa Apartment, Near Naranpura Rly. Crossing, Ahmedabad, Gujarat-380013. As per the annual return of the company the promoter directors of the Maloo Tradelink were Ajay Sureshchandra Maloo and Nina Ajay Maloo (wife of Ajay Sureshchandra Maloo). Ajay Sureshchandra Maloo is the brother of Anant Sureshchandra Maloo who is the promoter and Chairman & Managing Director of THL. Also, in the Annual Report of THL for the year 2010-11 and 2011-12 Maloo Tradelink is shown as related entity of THL.
- g) Further, Wood Star and Timsy Trader are also connected. The address of Wood Star as per MCA returns for the year 2010-11 is at 201, 202, 203 Pavan Plaza, Near S P Statue Naranpura, Ahmedabad-380013 and the address of Timsy traders is 202 Pavan Plaza, Near S P Statue Naranpura, Ahmedabad-380013. As per annual returns filed with MCA for the year 2010-11, Diptiben Rohitbhai Patel is one of the promoter director of Wood Star. Diptiben Rohitbhai Patel is also the proprietor of Timsy Traders. On a query regarding connection, vide letter dated September 19, 2015, Wood Star confirmed that Diptiben Rohitbhai Patel is the director in the company and also a proprietor of Timsy Traders.
- h) Thus, investigation revealed that substantial portion of material that is being sold by Maloo Tradelink to Wood Star was coming from THL. Thus, THL was receiving back its own material which was again being put in the circular transactions. Also, these circular transactions were happening through connected entities i.e. Maloo Tradelink which is connected to THL and Wood Star which is connected to Timsy Traders. Moreover, out of Rs.3,74,05,157 paid to Wood Star, Rs.3,27,74,675 has been returned to THL.

- i) In order to check the genuineness of purchases/sales among the entities, information *inter alia* regarding mode of transport of materials along with documentary evidence regarding transportation of materials such as delivery challan/lorry receipt or any other documents were sought from THL, Wood Star, Maloo Tradelink and Timsy Traders by the Investigating Authority. In reply THL and Maloo Tradelink stated that the companies are under liquidation and the official liquidator has been appointed. Therefore, they were not able to provide the information sought. Wood Star forwarded delivery challans regarding sales to THL and purchases from Maloo Tradelink. Timsy Traders forwarded delivery challans regarding sales to Maloo Tradelink and purchases from THL. On verification of these delivery challans, investigation observed that there were no transportation details such as vehicle details in which materials were transported between the entities.
 - j) In 7 instances, the payments mentioned in para 26 b) above were transferred among the entities on the same day. For example, on May 17, 2011 an amount of Rs.58,64,320 was transferred from THL to Wood Star and on the same day Rs.58,60,000 was transferred from Wood Star to Maloo Tradelink and Rs.56,10,000 was transferred from Maloo Tradelink to Timsy Traders and Rs.56,09,500 transferred from Timsy Traders to THL.
29. I note that the details of expenditure and sales of the Company have been disclosed in the 'Summary of Financial Information' at page 33 and Section V of the Prospectus titled 'Financial Information' beginning at page 145 of the Prospectus. Based on the discussion at para 28, I find that the nature of the transactions (such transactions forming substantial portion of purchases of these entities, transactions on the same day, between parties related to each other) and the lack of evidence in support of the Noticee no. 2's contention (contradiction in the replies submitted by these four entities and no supporting bill and lack of information in the delivery challans) point to the conclusion that these fund transfers were fictitious and bogus in nature. I note that the Noticee no. 2 has contended that only Maloo Tradelink was its related party and not Timsy Traders and Wood Star. In this regard, I note that these four parties had

carried out transactions with each other and when explanations were sought from them they provided contradictory statements. Moreover, when asked by the Investigating Authority to produce delivery challan/lorry receipt or any other documents, THL and Maloo Tradelink stated that the companies are under liquidation and the official liquidator has been appointed and so they would be unable to provide the information sought. Wood Star and Timsy Traders forwarded delivery challans regarding sales to Maloo Tradelink and purchases from THL. On verification of these delivery challans, investigation observed that there were no transportation details such as vehicle details in which materials were transported between the entities. Therefore, I find that these delivery challans cannot be relied upon. I note that by reporting such fictitious transactions, THL inflated its purchases and sales figures for the years 2010-11 and 2011-12 which was included in its prospectus. Therefore, in my view, reporting such inflated purchase and sales figure in the financial information in the prospectus amount to a mis-statement in the prospectus.

30. Fourthly, the SCN alleges that from the verification of bank statements of the Company, (HDFC Account No. 03062560001480) it was observed that after receipt of IPO funds, the Company transferred Rs.5 crore to Shree Corporation on June 23, 2011. The SCN notes that the Company, vide its letters dated March 26, 2014 and April 29, 2014 replied that it deposited Rs.5 crore out of unutilised IPO proceeds for two years and it fetches interest at 16% per annum. Further, vide its letter dated June 26, 2014 Company replied that till 31.03.2014, it received Rs.2.10 crore as interest and forwarded the bank statements showing receipt of interest. On a query, the Company vide e-mail dated December 12, 2014 replied that the deposit with Shree Corporation still continues.
31. I note from the SCN that the Company disclosed the following utilization of IPO proceeds till quarter ended December 2013, under Clause 43 of listing agreement:

4 The Details of utilisation of IPO proceeds arising from allotment made in June 2011 are stated below:	
Particulars *	As at 31-Dec-13 (₹ in Lacs)
Proceeds from IPO	2324.70
Less:	
Issue Related Expenses	219.30
Utilised towards object of the issue	357.18
Fund Deployed for Working Capital #	1312.23
Un-utilised fund towards object of the issue ##	435.99
# The Fund have been deployed for Working Capital towards the Object of the Issue.	
## The fund have been temporarily deployed as Deposit with Nationalised Bank, NBFC, Mutual Fund and other Inter Corporate Deposits as an interim measure pending deployment towards the Object of the Issue to earn Interest income.	

32. Thus, I find that whereas the Company stated that un-utilised fund from the issue have been temporarily deployed as deposit with nationalized bank, NBFC, Mutual Fund and other Inter Corporate Deposits as an interim measure however, the Company actually deployed entire un-utilised fund with Shree Corporation. I find that this is in contradiction with the objects of issue of the IPO of THL as disclosed in the prospectus which states that:

“in case of excess funds remaining after deployment as per objects of the issue, the same will be utilized for General Corporate purposes”.

The prospectus further goes on to say as follows:

“Interim Use of funds

The management, in accordance with the approval of the Board of Directors, will have the flexibility in deploying the Issue Proceeds received by us. Pending utilization for the purposes described above, we intend to invest the funds in high quality interest/dividend bearing liquid instruments including money market mutual funds and deposits with banks for the necessary duration or for reducing overdraft”.

33. I note that the deployment with Shree Corporation was neither a deployment in money market mutual fund nor a deposit with a bank and the Noticee no. 2 has not produced any approval of the Board of Directors of THL for the same. I find that the money given to Shree Corporation was in the nature of a loan which cannot be counted as a liquid instrument as contemplated in the Prospectus. I note that the 'interim use of funds' para in the Prospectus talks about “interest/ dividend bearing liquid instruments including money market mutual funds and deposits with banks”. Thus, I find that a plain reading of the 'interim use of funds' para indicates financial products that are tradeable in the market i.e. they are transferable to third parties for easy liquidity. I note that the loan given to Shree

Corporation was nothing but a private lending and borrowing arrangement between two corporates. Such instrument may be repayable on demand by the investee on being so asked by the investor but that does not make such instrument a liquid instrument. Liquidity signifies the ability of an instrument of being bought and sold in the market to third parties, without any involvement of the issuer of the instrument. Hence, the transaction with Shree Corporation does not qualify as 'liquid instruments' as mentioned in the Prospectus. In fact, THL made an incorrect disclosure under Clause 43 of the Listing Agreement stating that the fund had been temporarily deployed as deposit with nationalized bank, NBFC, Mutual Fund and other Inter Corporate Deposits as an interim measure. Therefore, I find that the Company made a misstatement in the quarterly statement to the Exchange regarding utilization of IPO proceeds for the quarter till the quarter ended December 2013.

34. Based on the discussions above, I find that THL has made the following non-disclosures and mis-statements in the Prospectus dated June 08, 2011:
- a. THL had failed to disclose its pre-existing liabilities amounting approximately Rs. 7 crores related to working capital expenses in the Prospectus dated June 8, 2011. On the contrary, THL made an affirmative disclosure that there is no pre-existing liability related to working capital expenses.
 - b. THL had failed to disclose the loan of a total amount of Rs. 7 crore taken from Alin on different dates in the month of May 2011 in the Prospectus dated June 8, 2011, which was in the nature of bridge loan. On the contrary, THL made an affirmative disclosure that it has not raised any bridge loan against the proceeds of the IPO.
 - c. THL inflated its purchases and sales figures for the years 2010-11 and 2011-12 which was included in the Financial Information contained in its Prospectus dated June 8, 2011.

In view of the same, I find that THL has violated Regulations 57 (1) and 57 (2) (a) read with Clause 2 (VII) (G) of part A of schedule VIII of the ICDR Regulations, Section 12A (a) of SEBI Act, 1992 and Regulations 3 (b) and 4 (1) and 4(2)(f) of the PFUPT Regulations.

35. I also find that THL is liable for not using the IPO proceeds as per the objects of issue stated in the Prospectus dated June 08, 2011 in the following instances:

- a. The fact that THL used part of the IPO proceeds to make payments for working capital expenses which accrued before the issue date is contrary to its statement in the Prospectus dated June 8, 2011.
- b. Rs. 6,55,70,000 from the IPO proceeds were transferred to Alin in order to pay back the bridge loan which had not been disclosed in the prospectus.

In view of the same, I find that THL has violated Section 12A (a) of SEBI Act, 1992 and Regulations 3 (b), 4 (1) of the PFUPT Regulations.

36. In addition to the above THL made a misstatement in the quarterly statement to the Exchange regarding utilization of IPO proceeds for the quarter ended December 2013 which is in violation of Clause 43 of Listing Agreement read with Section 21 of the SCRA

37. I note that THL is currently under liquidation and the Hon'ble High Court of Gujarat has ordered the Company to be wound up vide its order dated June 16, 2016. In view of the same, it will not be practical or suitable to issue directions to the Company.

38. I also note that the directors of the Company during the period of IPO as stated in the Prospectus filed on June 08, 2011 is given below:

S.No.	Name of the Director	Designation
1.	Anant Sureshchandra Maloo	Chairman & Managing Director
2.	Manan Vidhyapati Patel	Director - executive
3.	Abhijeet Dwarkadas Daga	Director - executive
4.	Rakesh Surajkumar Bhagat	Independent Director
5.	Tejdeep Singh Harvindersingh Anand	Independent Director
6.	Rakesh Mohinder Puri	Independent Director

39. Any company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. The Board of Directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the Board of Directors being responsible for the conduct of the business of a company are liable for any non-compliance of law and such liability shall be upon the individual directors also. Hon'ble Supreme court while describing what is the duty of a Director of a company held in *Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602* that:

"A Director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially".

I note that Noticee nos. 2 and 3 were the Managing Director and Whole Time Director of THL respectively and also signed the Prospectus. Therefore, Noticee nos. 2 and 3 are also liable for the violation of Regulations 57 (1) and 57 (2) (a) read with Clause 2 (VII) (G) of part A of schedule VIII of the ICDR Regulations, Section 12A (a),(b),(c) of SEBI Act,1992 and Regulations 3 (b),(c),(d), 4 (1) and 4(2)(f) of the PFUPT Regulations and Clause 43 of listing agreement read with Section 21 of the SCRA.

40. Noticee nos. 5,6 and 7 have contend that they were Independent Directors and therefore not involved in the day to day functioning of the Company and therefore cannot be held vicariously liable for the violations of the Company as mentioned in para 34, 35 and 36 above. I also note that these Noticees have contended that they never attended any Board meetings of THL and the decisions of THL such as utilization of the IPO proceeds for repayment of pre-existing debt, for repayment of loan to Alin and to pay Shree Corporation, were never brought to the knowledge of Noticee nos. 5,6 and 7. I note that there is nothing on record to show otherwise or to show that issues such as pre- existing debt, inflation of purchase and sale etc. were brought to the notice of these Independent Directors. I find that I the facts and circumstances of the case, the liability of

independent directors can be only attributable and in respect of such acts of omission or commission by a company which had occurred with the knowledge of such Independent Director, attributable through Board processes, and with his consent or connivance or where he had not acted diligently. In fact, in the present matter, Noticee no. 6 has produced an affidavit from Noticee no. 2 specifically stating that Noticee no. 6 had been requested to be an Independent Director of THL and would not entail any responsibility with respect to the affairs, management, control and day to day workings of THL. I note that in the matter of *Inventure Growth and Securities Ltd. Vs. SEBI* (Appeal No. 361 of 2018 decided on October 10, 2019) wherein the Hon'ble SAT dealt with the liability of Independent Directors in case of misstatement in the Prospectus by a company. In the *Inventure* matter (supra) the Hon'ble Tribunal relied on its previous order in *Vijay Remedies & Ors. Vs. SEBI* (Appeal No. 49 of 2003 decided February 11, 2005) and observed as follows:

"31. More particularly, in Appeal no.49 and others decided by this Tribunal on 11th February, 2005 the issue related to certain non-disclosures made in the prospectus, misutilisation of the proceeds of the public issue which are similar to the present case.

32. In para no.5 of the decision, this Tribunal has noted that the appellant therein were independent directors and were not involved in the day to day management and control of the Company. In the circumstances, the argument of the respondent SEBI that they had put their signatures in the prospectus were taken into consideration. It was finally concluded that disclosures could not be attributed to them as they were independent director and they were not associated in the day to day management or control over the Company. In the circumstances, the appeal was allowed.

33. The appellants in Appeal no.362 of 2018 are also independent directors. In Appeal no.361 of 2018, we find the Company had Whole Time Directors, Managing Directors etc. Considering all these facts on record in our opinion appellant in Appeal no.362 of 2018 cannot be held responsible for the non-disclosure as detailed above."

41. I also note that the crux of the allegation levelled in the SCN is based on the utilization of the IPO proceeds which happened subsequent to the issue and there is no allegation in the SCN that the Noticee nos. 5,6 and 7 were involved in the subsequent acts after the issue which formed the basis of the allegations against THL. In view of the above, I find that, in the facts and circumstances of this particular case, the allegations of violation against Noticee nos. 5,6 and 7

are not established. I also note that Noticee no. 4 has expired and therefore the proceedings against him abate.

Directions:

42. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby issue the following directions:

- (i) Noticee no. 1 is under liquidation and the proceedings *qua* Noticee no. 1 is disposed in terms of para 37.
- (ii) Noticee nos. 2 and 3 are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of two years, from the date of this order. During the period of restraint, the existing holding, including units of mutual funds of the Noticees shall remain frozen in terms of findings at para 38 and 39.
- (iii) Noticee no. 2 and 3 are restrained from acting as a director in any listed company for a period of two years, from the date of this order in terms of findings at para 38 and 39.
- (iv) The proceedings against Noticee nos. 5, 6 and 7 are disposed in view of the findings recorded in para 40 and 41 above.
- (v) Noticee no. 4 has expired and thus the proceedings against him abate.

43. The order comes into force with immediate effect.

44. A copy of this order shall be served on all the Noticees, recognized Stock Exchanges, Registrars and Transfer Agents, Depositories, RTAs of mutual funds for information and necessary action to ensure compliance with above directions.

Date: December 15, 2020

Place: Mumbai

**ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**