WTM/PS/IVD-ID8/05/SEPT /2012

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: PRASHANT SARAN, WHOLE TIME MEMBER

ORDER

UNDER SECTION 11(1), 11(4) and 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN RESPECT OF IPO MATTER OF TAKSHEEL SOLUTIONS LTD IN THE MATTER OF M/S. PNB INVESTMENT SERVICES LTD (PAN NO. AAECP9810F) AND ITS THEN MD & CEO SHRI L.P. AGARWAL (PAN NO. ABIPA5024F)

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI) had, pending investigation, vide an ad-interim ex-parte Order dated December 28, 2011 (hereinafter referred to as the Order), inter alia prohibited M/s. PNB Investment Services Ltd., Merchant Banker (SEBI Reg. No.INM000011617) (hereinafter referred to as PNB) and its MD & CEO Shri L.P. Agarwal from taking up any fresh assignment or involvement in any new issue of capital including IPO, follow on issue etc., till further directions in the IPO matter of Taksheel Solutions Ltd (hereinafter referred to as Taksheel). The order also stated that the entity/person may file their objections and seek personal hearing, if they so desire, within 21 days of the date of order.

2. PNB and Shri L.P. Agarwal made their submissions vide separate letters dated January 17, 2012. PNB also sought inspection of documents which were relied upon by SEBI in passing the order. The inspection was carried out by PNB on February 23, 2012 wherein Shri Mahesh Peswani, Sr. VP and Shri D. Subrahmanyam, Sr. AVP of PNB along with their advocates Shri Ankur Loona and Ms. Roochi Hatengdi of Alliance Corporate Lawyers were also

present. Copies of the relevant documents as required by PNB were also provided to them.

3. A combined personal hearing was granted to PNB and Shri L. P. Agarwal, on their request. On March 15, 2012, Shri L.P. Agarwal and Shri S.A.R. Zaidi, MD-PNB along with their advocates namely Shri R S Loona, Shri Ankur Loona, Ms. Roochi Hatengdi of Alliance Corporate Lawyers attended the hearing. Since, it was partly heard on March 15, 2012, the matter was once again heard on April 03, 2012 wherein Shri L. P. Agarwal, the representatives of PNB namely Shri D. Subrahmanyam, Sr. AVP and Shri J.K. Agarwal, COO along with their Advocates Shri R S Loona and Shri Ankur Loona of Alliance Corporate Lawyers made the submissions. Pursuant to hearing, the PNB further filed written submissions vide letter dated April 03, 2012 and April 12, 2012

4. Before proceeding further, it would be necessary to revisit the background of the matter. Taksheel came out with an IPO of 55,00,000 equity shares of face value of ₹10 each. The issue price of the shares in IPO was ₹ 150/- each, aggregating to 82.50 crore. On the day of listing i.e. October 19, 2011, huge volatility in price and transaction volume was observed and accordingly SEBI initiated investigation in the matter.

5. The prima facie findings of the investigation indicated that Taksheel and its directors had made various mis-statements in the offer document, hidden vital pieces of information and had also made material inaccurate and untrue statements, siphoned- off part of IPO proceeds in a circuitous route to certain entities and operators in order to enable them to absorb losses incurred due to trading in the shares of Taksheel. Against PNB, specifically, lack of adequate and independent due diligence was observed in the following issues:

i. Non- disclosure of cancellation of land allotted to Taksheel by *Andhra Pradesh Industrial Infrastructure Corporation Ltd. (herein referred to as APIICL)* at Warangal in the offer document;
ii. Incorrect disclosures about the presence of employees across various offices of Taksheel in the offer document**;**
iii. Non-disclosure of utilisation of IPO proceeds for repayment of Inter Corporate Deposits(herein referred to as ICD) raised by Taksheel;
iv. Incorrect disclosures about buy back arrangement of shares of Taksheel;
v. Non-disclosure of purchase order placed with Wiselink Technologies Pvt Ltd (herein referred to as WTPL) for purchase of design and development of Mobile Interactive Solutions in the offer document;
vi. Non-disclosure of related party transactions in the offer document.

6. PNB vide letter dated January 17, 2012 has attempted to clarify its position by making written submissions, which were further iterated by representatives of PNB on March 15, 2012 & April 03, 2012 during the course of personal hearings. The submissions of PNB on each of the findings in the referred Order are as follows:

A. <u>On status of land allotted in Warangal</u>

PNB has submitted that the cancellation of allotment of the land was never disclosed by Taksheel to PNB. It has submitted that;

- *At no point of time, Taksheel had disclosed the fact of cancellation of allotment of land at Warangal by APIICL, to PNB and even to its Board of Directors, audit committee or shareholders..*
- *Taksheel had concealed the fact of cancellation of land from its legal advisors, who carried out legal due diligence on Taksheel's immovable properties.*

- *There was no mention of cancellation of the allotment of APIICL land in the Annual Report or any other Annual report of Taksheel for the period 2008-09 and thereafter.*
- *The cancellation order (dt: August 27, 2008) came to the notice of PNB only after the Impugned Order (of SEBI dtd December 28, 2011).*
- *Though APIICL had passed the cancellation order, the same remained ineffective and Taksheel continued to remain in possession of the said land.*

PNB further stated that it had taken all reasonable steps as a prudent man would have taken in such circumstances to conduct a thorough due diligence which involved examination of copies of relevant/material documents as issued by APIICL, perusal of the Taksheel's records including annual reports, minutes of board and shareholders meeting etc. PNB had stated that at no point of time prior to date of the Impugned order, it was in possession of any information that could have or ought to have raised suspicion or doubt in the mind of PNB as a man of ordinary prudence.

B. <u>On status of Employees</u>

With regard to the status of Taksheel employees, the submission of PNB is as follows:

- *PNB inadvertently used the word "Europe" in the external risk factor (no.8) of the offer document.*
- *Taksheel had plans to expand its operation outside India as is reflected from the Directors Report forming part of Taksheel's Annual Report 2010-11.*
- *During the preparation of RHP, it was observed by PNB that Mr. Pavan Kuchana, MD of Taksheel had been travelling abroad for business meetings.*

- *All the aforesaid factors made PNB to believe that Taksheel has its offices in New Jersey, USA and Singapore.*

C. On status of funds required toward objects of the Issue

With respect to non-disclosure of utilisation of IPO proceeds to the extent of ₹34.50 crore for the repayment of ICD raised by Taksheel during the period May-June and September 2011, PNB had stated that

- *It had independently verified the auditor's certificate (dated October 09, 2011) on restated schedule of Capitalisation which certified short term debt of ₹809.26 lac as on March 31, 2011 and again post issue short term debt as ₹ 809. 26 lac*
- *Independently perused minutes of Taksheel's board meetings, audit committee meetings and shareholder's meetings and it observed that no such proposal was ever brought before the Board of Taksheel for its approval, which is required under law.*
- *Taksheel had provided statement to PNB stating that it had not availed loan/bridge loan.*

Thus, PNB has pleaded that it was never informed about the raising of the aforesaid ICD by Taksheel before RHP and there was no material on record to indicate or even suspect the raising of funds through ICDs by Taksheel.

D. On arrangement with regard to buy back of shares

With respect to above, the submissions of PNB are reproduced as below:

- *The impugned order (of SEBI) appears to have proceeded on the basis that Mr. Dinesh continues to have the buyback right even after the IPO.*
- *Hence, as per SPA after the IPO, Dinesh has a right to dispose off his shares in the secondary market only*

- *Therefore the prima facie finding that "such an existing buy back arrangement at the time of IPO is prima facie in violation of the specific prohibition of any buy back arrangement as provided under ICDR Regulations", is based on incorrect appreciation of the factual position and the provision of relevant law.*

E. <u>On order placed with M/s.Wiselink Technologies Pvt Ltd</u>

With respect to non disclosure of purchase order placed with WTPL for purchase of design and development of Mobile Interactive solutions in the offer document, PNB has submitted that:

- *Purchase order dated September 30, 2011 placed with WTPL was neither disclosed to PNB nor was it to form a part of the objects of the Issue.*
- *Minutes of Taksheel's Board meeting held on September 06, 2011 and September 19, 2011 and October 10, 2011 also did not reveal anything about the placement of the said purchase order by Taksheel with WTPL or any advance payment there under to WTPL.*
- *PNB had taken all reasonable steps to verify the veracity and adequacy of the disclosures made in the offer documents. PNB had not committed any breach of Regulation 60(4) of ICDR Regulations*

F. <u>On purchase of Software product from Verisoft Business Solutions Pvt Ltd</u>

On non-disclosures of share transfer of Taksheel to Verisoft Business Solutions Pvt Ltd (herein referred to as Verisoft), an entity linked to promoters of Taksheel, for sale of software product without disclosing the nature and extent of the interest in the offer document, PNB has submitted that

- *Taksheel had informed PNB that the management of Taksheel does not have any direct or indirect relation with the directors of Verisoft.*
- *It had made all reasonable efforts including verification of information at the MCA website ascertain the inter-connection. But the information*

could not be extracted from MCA website since Verisoft had not complied with certain secretarial matters.

- *PNB cannot be held liable for the active concealment of material information by Taksheel with respect to the relationship between the promoters and Verisoft.*

PNB, also submitted a copy of the screenshot from the MCA website for verisoft. PNB therefore argued that the Merchant Banker can be held liable only if information was provided to it and the same was not disclosed. It cannot be held liable based on mere suspicion or for its error in judgment or indiscretion.

7. Further, Shri L.P.Agarwal, vide letter dated January 17, 2012 had submitted that he had resigned from the post of MD & CEO of PNB and no more associated with the PNB. Also Shri L.P. Agarwal had stated that as an MD & CEO of PNB, he had performed his duties with utmost diligence and care and does not deserve any action in his individual capacity, particularly, when the referred Order has not made any adverse findings on his role in supervising or undertaking the Taksheel's due diligence. Accordingly, Shri L.P. Agarwal requested that the directions issued against him be lifted/ removed.

8. I have considered all the submissions made by PNB and Shri L. P. Agarwal, including their submissions made during the course of hearing. At this point, the limited issue to be considered is whether, the ad-interim ex parte directions issued vide order dated December 28, 2011 against PNB and Shri L. P. Agarwal should be continued, modified or revoked in any manner. My point wise observations in regard to the submissions made by PNB are as follows:

A. <u>On status of land allotted in Warangal</u>

Taksheel had executed the agreement for purchase of 5 acre of land with APIICL on 23.02.2006. As per the terms of allotment, the said land was to

be occupied by Taksheel for use and development as IT parks/industry. However, due to lack of progress of work, the said allotment was cancelled by APIICL vide its order dated 27.08.08. Taksheel, in its letter dated 05.09.2011 to APIICL had acknowledged that due to financial reasons, it had failed to comply with the instructions and also mentioned about the cancellation of allotment. It is observed that, subsequent to payment of fee (for delay and condonation) of ₹2,02,350 (for restoration of allotment), by Taksheel on 28.11.2011, the land was restored to Taksheel by APIICL. Thus, at the time of filing of DRHP, RHP and the prospectus, TSL was fully aware that the allotment of land was cancelled and that it was trying to restore the same subject to certain terms and conditions and payment of restoration fee for delay/condonation. Thus by not declaring the correct current status of the land allotment, Taksheel had made factual misstatements in the offer document.

The fact regarding actual status of land allotment needed to be verified by PNB, both from the company records and independently considering that there had been significant delay in implementation of the agreed milestones as per the terms of agreement for land allotment. As part of its due diligence exercise, PNB could have considered deploying one of its officer to visit the site as well as the office of APIICL to verify the status of this transaction. Moreover, had PNB attempted to look deeper into the communication records between Taksheel and APIICL available with it, it would have sensed the delay in implementation of project and consequent cancellation of land. PNB has therefore been found cavalier in its approach on this issue.

B. <u>Status of employees</u>

Taksheel in the offer document had stated (point number 8, pg xxix) that "*they have Indian nationals, as their employees, working in the United States, Europe and other countries and may depend on their ability to*

obtain necessary visas and work permits". The statement gave an impression that Taksheel had a pan-global presence and had its employees working in various projects and clients location across the world. During investigation, Taksheel vide its letter dated November 24, 2011 has categorically stated that it does not have any employees other than in Hyderabad and Warangal, nor does it have employees placed anywhere else other than at Hyderabad and Warangal during last one year. Thus by giving misleading and factually inaccurate statement about the pan-global presence of its employees at the time of going public, Taksheel had tried to fraudulently project a far rosy picture than the prevailing realities.

PNB in its replies, has conceded that they inadvertently "*used the word "Europe" in the external risk factor (no.8) of the offer document*". On the presence of Taksheel in other overseas locations, PNB has submitted that it did verify about the existence of offices at New Jersey, USA and Singapore. However, there is no evidence to show that PNB also attempted to verify about the presence of employees at these locations. Mere visits by the MD of the company abroad do not prove the presence of staff at the visited locations. Similarly, registration of company with the authorities at Singapore cannot be said to be a basis for concluding the presence of employees. Thus, the statement regarding pan global presence of employees of Taksheel was never verified by PNB before disclosing in the offer document as the same was not supported by facts.

C. <u>On status of funds required toward objects of the issues</u>

As per the records furnished by Taksheel, it had raised a sum of ₹34.50 crore through ICDs between May-June and September 2011. Immediately after raising ICDs, the funds were ostensibly paid to various vendors of Taksheel. It was observed that the amount raised by way of ICD amounted to 41.81% of the IPO proceeds. The raising of ICDs and using IPO

proceeds for repayment of ICDs was a vital piece of information, which should have been disclosed in the offer document. It is worth noting here that this amount far exceeded the total working capital requirements for 2011-12 as well as the entire general corporate purpose expenses budgeted by Taksheel for 2011-12 and 2012-13. This should have been independently verified by PNB from records available with Taksheel including the statements of Taksheel's bank accounts, rather than relying on routine verification process undertaken by it while vetting the DRHP. PNB has thus been found negligent in carrying out adequate and independent due diligence on such a vital disclosure issue.

D. <u>On arrangement with regard to Buy back of shares</u>

Taksheel had entered into Share Purchase Agreement (SPA) with Mr. Dinesh Kumar Singhi to subscribe to 10,00,000 shares of Taksheel for an investment of ₹10 crore. Taksheel had also disclosed in the offer document that "*In case this issue is not concluded then there cannot be any assurance that Mr. Dinesh Kumar Singhi will not exercise his right under the SPA and call upon Taksheel to buy back the shares held by him. We are in receipt of a lock-in consent letter from Mr. Dinesh Kumar Singhi vide letter dated December 27, 2010 consenting to lock-in of the shares for a period of one year from the date of listing, which over rides the buyback*". Taksheel, by stating on the one hand that "….there cannot be any assurance .." and then saying that consent overrides buy-back is making misleading statement as the consent overrides buy back for 1 year only, if at all it does, in terms of the provisions contained in the consent letter. The averments made in this regard are misleading and not based on facts. This amounts to failure on the part of PNB in exercise of due diligence and satisfaction regarding all aspects of the issue including the veracity and adequacy of disclosures in the offer document, which exhibits failure to carry out adequate and independent due diligence on the part of PNB.

E. On order placed with M/s. Wiselilnk Technologies Pvt ltd

Taksheel placed a purchase order (dt: September 30, 2011) amounting to ₹10.12 crore to Wiselink Technologies Pvt Ltd (referred as WTPL) for purchase of purported design and development of Mobile Interactive Solutions for which 50% advance payment i.e. ₹5.06 crore was released to WTPL from IPO proceeds during November 2011. It has been noted that Shri Vinod Babu Bollikonda, director of WTPL is also the key management person i.e. VP-Technology of Taksheel. In terms of ICDR Regulation, the details of all material existing or anticipated transactions in relation to utilisation of the issue proceeds or project cost with promoters, directors, key management personnel, associates and group companies is required to be disclosed. Taksheel, deliberately hidden this vital piece of information from prospective investors by not disclosing the same in the offer document which resulted into suppression of material information from the offer document and led to misstatement. On this aspect, no due diligence was carried out by PNB. There is no evidence to show on records that, PNB obtained any document from Taksheel about the actual or anticipated utilisation of funds relating to working capital and general corporate purposes and no efforts were made by PNB to ensure the adequacy of disclosure made in the offer document with regard to this huge amount of expenditure to be incurred out of the IPO proceeds.

F. Purchase of Software product from Verisoft Business Solutions Pvt Ltd

Taksheel had allotted 50,00,000 shares of Taksheel to Verisoft Business Solution pvt Ltd (referred as Verisoft) on October 01, 2009 for consideration other than cash at a premium of ₹10 per share thus keeping the valuation of the product at ₹ 10 crore. The said transfer was purported to be made for purchase of software product called Mobile Virtual Network Enabler by Taksheel. The only description of the product is a screenshot of the said product attached with a three page agreement signed by Taksheel and one Mrs. G. Lalitha, director of Verisoft on October 01, 2009.

Investigation revealed that Verisoft is located at “202, A Block, Sri Nilayam Asian Manor Apartments, Road Number 2, Banjara Hills, Hyderabad – 500034. Mrs G. Lalitha and Shri Gudimalla Janardhan Rao, directors of Verisoft are the parents in law of Shri Pavan Kumar Kuchana, Managing Director of Taksheel. The relationship status was also disclosed at page no. 128 &129 of RHP. Investigation also revealed that the said address 202, A Block, Sri Nilayam Asian Manor Apartments, Road Number 2, Banjara Hills, Hyderabad – 500034, relates to Mrs. K. Bhagyalakshmi, mother of Shri Pavan Kumar Kuchana, who is registered as a client with broker ICICI securities Ltd, (Member NSE and BSE) and as a beneficiary owner with ICICI Bank Ltd.(DP). Thus, investigation could substantiate that Verisoft is an entity closely connected to the promoters/ directors of Taksheel.

Taksheel, by not disclosing the linkages of Verisoft with promoters, had hidden this vital piece of information from the prospective investors leading to suppression of material information from the offer document. Statement made on page 121 of the document that “our directors do not have any interest in any property acquired by our company in a period of two years before the date of the prospectus ..” was thus a misleading statement.

PNB, on this lapse, has submitted that it had visited MCA website to verify the veracity of the disclosures made by Taksheel to PNB, however, due to non compliance of certain secretarial matters by Verisoft, the list of directors of Verisoft was not displayed on the MCA website. PNB also submitted the screenshot, which states that “the company is in default of filing of Form DIN /Form 32”. It is noted from the screenshot that PNB had attempted to extract the information from MCA website only on January 02, 2012, as is clear from the screen shot itself, which is taken after the issuance of the referred SEBI order. Further, the relationship status of

directors of Verisoft with the promoters of Taksheel mentioned at page no. 128 &129 of RHP was completely ignored by PNB. Thus PNB failed to carry out any meaningful independent verification with regard to the status of this entity prior to IPO leading to conclude that no meaningful due diligence has been carried out by PNB on this issue which resulted in inadequate disclosures concerning this transaction

9. Shri L. P. Agarwal, being the MD and CEO of PNB at the time of IPO of Taksheel and in the preceding period when the due diligence exercise was being carried out, is responsible for the lapses of PNB.

10. Further, during the hearing held on March 15, 2012, PNB was informed to submit documentary evidence to substantiate that PNB had carried out the due diligence process through independent verification with adequate checks and balances. In this regard, PNB, vide letter dated April 03, 2012 had submitted the details of exercise carried out by PNB during the process of vetting of offer document of Taksheel. It is noted, that the referred submissions contain the details of man-hours put in by PNB, communications by PNB to Taksheel seeking documents/information and to other related entities during the due diligence process. However, no specific instances were noted from the referred submissions to substantiate that PNB had verified the documents/information submitted by Taksheel as a men of prudence would ordinarily do.

11. After considering the findings of investigation and replies & submission made by PNB and Shri L. P. Agarwal, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11(1), 11(4) and 11(B) thereof, hereby confirm the directions issued vide the ad-interim ex-parte order dated December 28, 2011 in the IPO matter of Taksheel Solutions ltd., against PNB Investment Services Ltd., Merchant Banker and Shri L.P. Agarwal

12. I also note that the investigation in the matter is under progress. SEBI shall expeditiously complete the investigation in the matter, in the interest of justice and thereafter shall take appropriate actions in accordance with law

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

PLACE: MUMBAI
DATE: SEPTEMBER 07, 2012