

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR. K.M. ABRAHAM, WHOLE TIME MEMBER

ORDER

DIRECTIONS UNDER SECTIONS 11, 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, AGAINST MR. P.S. SAMINATHAN IN THE MATTER OF PYRAMID SAIMIRA THEATRE LIMITED

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI), vide an ad interim ex-parte Order dated April 23, 2009 (hereinafter referred to as the Order) in the matter of Pyramid Saimira Theatre Limited (hereinafter referred to as PSTL), had directed various entities and persons including Mr. P.S. Saminathan, not to buy, sell or deal in the securities market including in Initial Public Offerings (IPOs) directly or indirectly, till further directions. In the Order, Mr. P.S.Saminathan was alleged to have made misleading public announcements to create public interest in the shares of PSTL for facilitating Mr. Nirmal Kotecha in offloading his shares in PSTL at artificially inflated prices in the market and that by his acts, Mr. P.S.Saminathan was found to have *prima facie* violated Regulations 3 and 4 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the PFUTP Regulations). Thereafter, Mr. P.S. Saminathan filed his reply to the Order, vide letter dated June 12, 2009, requesting that the interim directions issued against him be withdrawn. An opportunity of personal hearing was also afforded to him on August 11, 2009, when Mr. R. Venkatesh of M/s. GSV

Associates, Chartered Accountants and Mr. S. R. Sundar, Advocate (M/s. Kasturi & Sundar Associates) appeared on behalf of Mr. P.S. Saminathan and made submissions. Mr. P.S. Saminathan was also present in the hearing. Written submissions were also filed during the hearing.

2. I have considered the reply filed by Mr. P.S. Saminathan, the oral submissions made on his behalf during the hearing and other material available on record. In the facts and circumstances, the limited issue for consideration at this stage, is whether based on the available material and after considering the submissions made by Mr.P.S. Saminathan, the ex-parte directions issued by SEBI against him, in terms of the Order needs to be continued, revoked or modified in any manner. The circumstances which led to the passing of the Order had been mentioned in detail therein. The investigation in the matter of PSTL, *prima facie* revealed the operation of a widely distributed network of persons/entities who had joined hands in breaching market integrity by manipulating the shares of PSTL, forging a letter purported to be issued by SEBI to Mr. P.S. Saminathan (promoter of PSTL), publicizing its contents and the manipulators taking benefit of the artificial price rise caused by the said letter and selling of their substantial stake in the market, to their advantage and to the detriment of the unsuspecting investors. There were other persons/entities who appeared to have played their role in various capacities such as publicizing the contents of the forged SEBI letter, routing funds, offloading substantial shares at an artificial inflated price on December 22, 2008 etc.

3. Mr. P.S. Saminathan has been alleged to have made misleading public announcements to create public interest in the shares of PSTL for facilitating Mr. Nirmal Kotecha in offloading his shares in PSTL at artificially inflated prices in the market. In this regard, I note that in paragraph 48 of the Order, it was

inter alia mentioned that Mr. P.S. Saminathan had made certain corporate announcements which were *prima facie* misleading in nature, just prior to the issuance of the purported SEBI letters. The said Order also stated that PSTL, vide letter dated June 20, 2008 had informed the stock exchanges (National Stock Exchange of India Limited and Bombay Stock Exchange Limited) that Mr. P.S. Saminathan had purchased 13,70,000 equity shares of PSTL, representing 4.845% of its paid-up capital, from Mr. Nirmal Kotecha. The above transaction was done through the stock broker, Keynote Capital Limited (hereinafter referred as Keynote) in the form of a cross deal and the trade was executed at a price of Rs.250/- per share. The total value of the said sale was Rs.34.25 crore. Mr. Nirmal Kotecha had requested Keynote to transfer the credit of Rs.34 crore lying in his trading account with Keynote on account of sale of shares on June 20, 2008 to the account of Mr. P.S. Saminathan by debiting his account with Rs.34 crore as per his mutual understanding with Mr. P.S. Saminathan. It is seen from the client ledger provided by Keynote that the money was not actually received in Mr. Nirmal Kotecha's account and that only a ledger entry was passed in the books for transferring an amount of Rs.33,99,04,292.28/- (i.e. credit lying in Mr. Nirmal Kotecha's account after adjusting the debit accumulated in his account of Rs.1,57,837.24/-) towards the balance transferred to Mr. P.S. Saminathan's account as per the written instructions of Mr. Nirmal Kotecha. It is seen that Mr. Nirmal Kotecha gave a post dated cheque dated December 2, 2008 for Rs.25,95,707.26/- to Keynote and requested it to credit the same to the account of Mr. P.S. Saminathan with Keynote and also requested that 13,70,000 shares be transferred to the demat account of Mr. P.S. Saminathan. Though, the transaction was executed on June 20, 2008 on BSE, it was found that the delivery of shares was done only on July 24, 2008. Further, the balance amount for the transaction was also paid by Mr. P.S. Saminathan on July 24, 2008. Thus, there was no receipt of funds or

of shares as on the date of the transaction and that only book entries had been made by Keynote on the basis of a letter from Mr. Nirmal Kotecha.

4. As regards the aforesaid transactions and announcement, Mr. P.S.Saminathan had submitted that the said transaction was not a fixed price transaction but was done on the market. According to him, the said *interse* transaction was reported and that declarations were filed with the stock exchanges. Mr. P.S.Saminathan also submitted that PSTL was on an expansion mode and, as they planned to release certain 'mega films', they were in need of funds. Mr. P.S. Saminathan further submitted that the promoters of PSTL had pledged their shares with banks and private financial institutions for the purposes of working capital and that they were also in discussions with banks for further capital or a temporary short term loan. According to him, as the banks needed collateral, he had requested Mr. Nirmal Kotecha to transfer some of his shares to be used as collateral and had assured him that the loans can be settled in three months time. He further submitted that Mr. Nirmal Kotecha had agreed to give shares without receiving payment and had transferred shares to Keynote on June 20, 2008, which were then transferred to his account in July 2008. It is the contention of Mr. P.S. Saminathan that shares were purchased from Mr. Nirmal Kotecha only for the purpose of raising money for PSTL and that the shares were left with Keynote, as the loan from the bank (Punjab National Bank) did not come immediately. However, I am not convinced by the said submissions. If the intention was to borrow the shares from Mr. Nirmal Kotecha, the same could also have been done through an off market transaction instead of a market transaction or Mr. Nirmal Kotecha could have directly pledged the shares with the lender. Further, the fact of keeping the shares with Keynote is also not properly explained. I do not comprehend as to why the shares were left with Keynote when Mr. P.S.Saminathan could have got the same transferred to his demat account and used it for pledging as and

when the bank was disbursing the loans. Therefore, I am of the view that the announcements made in respect of the purchase of shares from Mr. Nirmal Kotecha have not been properly explained by Mr. P.S.Saminathan. In this view of the matter, his submissions would be considered appropriately by the ongoing investigation, to arrive at a finding in respect of the same.

5. Further, in paragraph 53 of the Order, it is mentioned that on October 10, 2008, Mr. P.S. Saminathan had informed the stock exchanges (BSE and NSE) that he had proposed to acquire 70,45,619 equity shares aggregating to 24.9169% of the shareholding rights of PSTL from Mr. N.C. Ravichandran and Mr. Nirmal Kotecha, by way of inter-se transfer. The date of the proposed acquisition (as communicated) was November 28, 2008 and the price per share was Rs.200/-. The shareholding of Mr. P.S. Saminathan after the proposed acquisition would have been 1,32,58,575 shares aggregating to 46.89% of the shares/voting rights of PSTL. It was mentioned that, subsequently on November 27, 2008, Mr. P.S. Saminathan again informed National Stock Exchange of India Limited and Bombay Stock Exchange Limited that after discussions with the transferees and considering the present market conditions, the price of the proposed acquisition had been revised to Rs.200/- or market price, whichever is lower, and that the deal would take place on December 22, 2008 and not on November 28, 2008. Despite announcing on October 10, 2008, the above proposal to acquire shares through *interse* transfer at Rs. 200/- per share and even before revising the proposed acquisition price, Mr. P.S. Saminathan was found to have acquired 2,80,000 shares from Mr. Nirmal Kotecha on November 19, 2008 at an average price of Rs. 50/- per share on the Bombay Stock Exchange Limited. Mr. P.S. Saminathan had also purchased 61,757 shares, 50,000 shares and 48,071 shares of PSTL on November 28, 2008, December 1, 2008 and December 5, 2008, respectively, from Mr. Nirmal Kotecha. In this regard, Mr. P.S. Saminathan had submitted that in the declaration dated

November 27, 2008, it was very clearly mentioned that the acquisition price would be Rs.200/- per share or the market price whichever is low and that the acquisition was done at the market price. He further submitted that the declarations did not mention or gave an indication that he would be buying shares from Mr. Nirmal Kotecha at Rs.200/- per share irrespective of the market price nor did he mention that he would buy from anybody at Rs.200/- per share or at any price other than the market price. He also stated that the declarations filed with the relevant authorities also clearly mentioned that he is acquiring it *inter se* which does not entail an open offer. Further, he also stated that during interviews and public announcements, he had consistently mentioned that he is purchasing shares from Mr. Nirmal Kotecha and would not give a public offer. He contended that before purchasing, he had filed a declaration that he would be buying at Rs.200/- or market price, whichever is lower and after purchasing from Mr. Nirmal Kotecha, had declared that he had acquired at the market rate (at Rs.45.67/- per share). Mr. P.S. Saminathan further submitted that the transactions with Mr. Nirmal Kotecha were at market prices as per the declarations and contended that he did not make announcements to artificially inflate the share price. Mr P.S. Saminathan also contended that he did not make any false declaration or any misleading communication. In respect of his announcement on October 10, 2008, he submitted that the prevailing market conditions compelled him to renegotiate the price “in sync with the market movements”. After considering the submissions of Mr P.S. Saminathan, I find the same to be without merit. As already mentioned in the Order, Mr. Nirmal Kotecha was holding shares in PSTL only since April 27, 2006. Therefore, the inter-se transfer from Mr. Nirmal Kotecha does not become eligible for grant of exemption under Regulation 3(1)(iii)(b) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. The announcement of Mr. P.S.Saminathan would have induced investors to

purchase the shares of PSTL in the anticipation that they could tender the same whenever Mr. P.S.Saminathan came out with an open offer.

6. In the Order, it was also alleged that despite his claims to the media that PSTL was grossly undervalued and that Rs.200/- was a fair price, Mr. P.S. Saminathan had purchased a total of 8,43,942 shares of PSTL in market transactions at an average price of Rs.45.67 per share during the period from October 24, 2008 to December 5, 2008 and had sold a total of 6,000 shares at an average price of Rs.46.66 per share, during the said period. In this regard, I note that Mr. P.S. Saminathan had admitted in his reply that he had given media interviews that the share price of PSTL was undervalued. With respect to his purchase and sale of PSTL shares at the market price, he submitted that there is always a disconnect between the economic fundamentals of the company and the market prices and that, what he stated was based on the economic fundamentals of PSTL. I also find that, the investigation in the matter revealed that Mr. P.S.Saminathan and Mr. Nirmal Kotecha were in touch with each other immediately before the forgery came to light. As regards the observation that Mr. P.S. Saminathan and Mr. Nirmal Kotecha were in touch with each other, Mr. P.S. Saminathan has admitted that he was *'talking'* with Mr. Nirmal Kotecha. His contention was that Mr. Nirmal Kotecha was a major shareholder in PSTL and that he had entered into an agreement for purchase/placement of shares from him and therefore was in touch with Mr. Nirmal Kotecha. However, in the facts and circumstances of the case, the said submissions do not convince me at this stage. In view of the same, it would be in the interest of justice that the claims and documents submitted by Mr. P.S. Saminathan shall be considered by the investigation to arrive at a finding in this regard.

7. Mr. P.S.Saminathan has also submitted that the Order does not indicate the reasons why he was clubbed with the other persons/entities who are *prima facie* said to be involved in the alleged fabrication. He has also stated that the misleading public announcements attributed to him have no nexus with the commission of the fraud. In this regard, I find that the alleged relationship between the concerned parties and the large scale manipulation perpetrated in the shares of PSTL with the aid of the forged letters purported to be issued by SEBI, have already been brought out in much detail in the Order.

8. During the course of hearing, the representative for Mr. P.S. Saminathan submitted that the Order raises a very serious question involving the Fundamental Rights enshrined in the Constitution of India, as according to him, the Order infringes on the personal liberty, reputation and the right to carry on business of Mr. P.S. Saminathan, guaranteed under the Constitution of India. He contended that the acts of the Board under the Securities and Exchange Board of India Act, 1992 (SEBI Act) cannot be *de hors* the Constitution of India and in violation of the Principles of Natural Justice. He cited various case laws including the case of Maneka Gandhi vs. Union of India and others, in support of his contention. Further, it was his contention that there existed no reasonable grounds to initiate Investigation under Sections 11(3) and 11C of the SEBI Act. In this regard, I find that the 'reasonable grounds' for initiating the investigation in the present matter and the need for the interim directions have been explained in detail in the Order. Needless to say, SEBI has been entrusted with the duty of protecting the interest of the investors in the securities market. SEBI has to regulate and ensure orderly transactions in the securities market, and has to deal with exigencies and contingencies that arise from time to time. SEBI has to do what is best in public interest in cases of any market breach, in order to protect the integrity and the safety of the market in the interest of the investors and other market participants. The interim directions issued in the

Order have been issued invoking the powers conferred under Sections 11, 11(4) (b) and 11B of the SEBI Act and Regulation 11 of the PFUTP Regulations. The said directions in the matter have been issued pending investigations and passing of a final order. Section 11(4) of the SEBI Act empowers SEBI to restrain persons from accessing the securities market and prohibit any person associated with the securities market to buy, sell or deal in securities, pending investigation or inquiry or on completion of such investigation or inquiry. Further, in accordance with the second *proviso* to Section 11(4) of the SEBI Act, an opportunity of hearing has been afforded to Mr. P.S. Saminathan after passing of the Order. The Order is interim in nature and was issued in the interest of the investors and the securities market. Therefore, the Order directing him not to deal in securities is an interim measure and does not violate his right of profession or business. In this context, I note that the Hon'ble High Court at Bombay in Anand Rathi vs. Securities and Exchange Board of India [2001 INDLAW MUM 26] had observed as follows -

“.....In the instant case the order impugned is of interim nature which is passed by SEBI in a pending inquiry. The question of any violation of article 19(1)(g) does not arise”. (Emphasis supplied)

Therefore, the plea that the action of SEBI was violative of Article 19 of the Constitution has no merit. Therefore, as SEBI is statutorily authorized to take such measures pending investigation or inquiry and that Mr.P.S.Saminathan has been afforded an opportunity of post decisional hearing, the Order cannot be said to be *de hors* the Constitution of India or in violation of the principles of natural justice. During the course of the hearing, the learned representative had also submitted that SEBI must have been shown the report of the investigation to them for an effective defence and to rebut all charges. In this regard, he referred to Binapani Dei's case in support of his contention. With respect to the

said submission, it is to be noted that the Order has been issued pending investigations and based on the preliminary findings of the investigation so ordered in the matter. As and when the investigation is concluded and after considering the findings of the investigation, if found necessary, Mr. P.S.Saminathan would be issued a show cause notice. In such an eventuality, SEBI would furnish Mr. P.S. Saminathan with the material collected during the investigation as relevant for him to show cause. For the aforesaid reasons, I find that the aforesaid contentions raised by Mr. P.S.Saminathan are without merit.

9. In view of the foregoing, the fact that the shares borrowed from Mr. Nirmal Kotecha were kept with Keynote till the disbursement of the loan, announcing the stock exchanges that Mr. P.S. Saminathan had purchased shares from Mr. Nirmal Kotecha when the said transaction was in the nature of borrowing shares for pledging, delayed pay-in and the pay-out, would lead to a *prima facie* inference that Mr. P.S.Saminathan had made misleading announcements to the stock exchanges in respect of his certain dealings in the shares of PSTL during the relevant period. Further, the present case involves a complex web of persons and entities who are intertwined and had individual roles to play. Further, those who masterminded the entire episode ensured that the news about the forged letters was published by the media so that the share price of PSTL would substantially increase. In such matters, I am of the view that in a case of large scale market abuse like what had happened in the present case, the same needs to be examined as a whole and that individual conduct or role cannot be examined in isolation. Thus, in such matters, the focus should be on the case in its entirety. In the facts and circumstances of the case, I am of the view that Mr. P.S.Saminathan has not made out a case for revoking or modifying the directions issued against him vide the Order. Therefore, at this stage, when the investigation is in an advanced stage, I do

not find this a fit case to revoke the ad interim directions issued against Mr. P.S.Saminathan vide the Order.

10. In view of the foregoing, 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, 11B and 11(4) thereof, hereby confirm the directions issued against Mr. P.S. Saminathan vide the ex-parte interim Order dated April 23, 2009.

**DR. K. M. ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**

**PLACE: MUMBAI
DATE: JUNE 21, 2010**