WTM/MSS/ISD/ 26/09

SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: M. S. SAHOO, WHOLE TIME MEMBER

IN THE MATTER OF PUBLIC ISSUE OF PYRAMID SAIMIRA THEATRE LTD. - DEALINGS BY PYRAMID SAIMIRA THEATRE LTD.

Date of Hearing: September 15, 2009

Appearances:

For Noticees: Mr. Somasekhar Sundaresan, Advocate, J. Sagar Associates
Mr. Ravichandra S. Hegde, Advocate, J. Sagar Associates
Mr. N. Narayanan, Chairman, Pyramid Saimira Theatre Ltd. (PSTL), and
Mr. S. N. Madhavan, Group Company Secretary, PSTL.

For SEBI: Ms. Sudha Rani, Legal Officer (Presenting Officer)
Mr. S. Ramann, Officer on Special Duty
Mr. Shashi Kumar Valsakumar, Deputy General Manager
Mr. Saroj Kumar Sahu, Manager, and
Ms. Kshama Wagherkar, Legal Officer.

ORDER

UNDER SECTIONS 11B AND 11 (4) (b) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 11 OF THE SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003

1. An investigation into the allotment of 4,22,200 shares reserved for the employees (employee category) by Pyramid Saimira Theatre Ltd. (PSTL) in its initial public offer in December 2006 revealed that PSTL allotted 98.5% of shares under the employee category to seven persons who were not its employees. In collusion with PSTL, these seven persons donned the cloak of 'employee' on the eve of the public issue for 4 to 6 months, applied for shares in the employee category and received the allotment, sold the shares soon after listing and made an unlawful gain of Rs. 2,31,94,612. The details of transactions by these seven persons are as under:

Seven Persons	No. of Shares		Duration of 'Employment' (Months)
	Applied	Allotted	
Mr. Kishore S. Jain	50,040	48,837	4+
Mr. Jayantilal R. Jain	48,000	46,846	5+
Mr. Shripal J. Shah	18,000	17,567	5+
Mr. Rajesh Prakashchandra Jain	22,020	21,490	5
Mr. Pravin Kumar Devichand Jain	48,000	46,846	5+
Mr. Dheeraj Jain	1,20,000	1,17,115	5+
Mr. Sanjay Jhabak	1,20,000	1,17,115	5+
Total	**4,26,060**	**4,15,816**	

2. Accordingly SEBI issued a common show cause notice (SCN) dated February 22, 2008 to PSTL and these seven persons. The SCN called upon PSTL to show cause as to why suitable directions under sections 11(4) and 11B of the SEBI Act, 1992 read with regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (PFUTP Regulations) should not be issued for its collusion with the seven persons. Though it collected relevant documents from SEBI and sought time to file the reply to the SCN, it did not do so. Instead, vide letter dated May 08, 2008, it sought settlement of the proceedings through the consent procedure. SEBI held the proceedings in abeyance and processed the request for settlement of the proceeding through the consent procedure. Vide letter dated June 05, 2009, it declined to settle the matter through consent as the terms offered by PSTL were not acceptable. Accordingly the proceedings revived. PSTL again sought time for filing the reply to the SCN. Vide letter dated August 17, 2009, it ultimately filed its reply and requested for a personal hearing. Along with its Advocates, it appeared for the hearing before me on September 15, 2009.

3. Before arguing the matter on merits, the learned Advocate raised a few technical issues. I am dealing with those first in this paragraph.

3.1 The learned Advocate for PSTL strenuously argued that his client had been denied of principles of natural justice as it had not been provided with the relevant documents in support of the charge and hence his client was handicapped to defend itself. He insisted that the hearing be adjourned till the documents were provided. This insistence came as a surprise as no such request was made in the reply dated August 17, 2009 to the SCN. The Department clarified that PSTL did not make this request in its reply as it had received all the documents it needed from SEBI. Acceding to the request dated March 14, 2008 of PSTL, SEBI, vide letter dated March 31, 2008, had provided the copies of the documents as sought. The Department produced a letter dated April 4, 2008 of PSTL acknowledging the receipt of the documents from SEBI. On being cornered with documentary evidence, the learned Advocate apologized for misleading the proceedings stating that he was not aware of this. Mr. N. Narayanan, Chairman of PSTL, who was accompanying the learned Advocate, submitted a written apology for misleading the proceeding.

3.2 The learned Advocate insisted that the statements of the seven 'employees' contained in the SCN can't be relied on without cross examination as all of them had settled the proceeding through the consent procedure without admitting or denying the guilt. He insisted that the hearing be adjourned till the cross examination was provided. The Department submitted that of the seven persons, SEBI has settled the proceedings through the consent procedure in respect of

only two persons. The proceedings in respect of five others were concluded on merit vide order dated June 25, 2009 and these five have complied with the directions (disgorgement and debarment) in the said order. On being cornered with these facts from the Department, the learned Advocate stated that he did not have full information in the matter.

3.3 The learned Advocate placed reliance on two judgments [*Dilip Pendse vs. SEBI (Appeal No. 90 of 2007) and NSDL vs. SEBI (Appeal No. 68 of 2007)*] of the Hon'ble Securities Appellate Tribunal (SAT) in support of the need for cross examination of the officials of PSTL and the seven persons. A perusal of these orders made it clear that only where the charge is relied solely on the statement of a person(s), cross examination was necessary. It was noted that SEBI was not relying solely on the statements of the persons and their statements were only corroborative. Hence cross examination was not necessary. The learned Advocate doggedly argued that if SEBI were not relying on the statements of persons, it may issue a fresh SCN after sparsing such statements and try the matter afresh. It was not agreed to as these statements have only corroborative value and fresh SCN would delay the proceedings further.

3.4 As would be seen in subsequent paragraphs, there is no disagreement about the allotment of shares under the employee category to the seven persons and the profits made by them from the sale of such shares. There is also no disagreement on the facts relating to special treatment meted by PSTL to the seven persons. PSTL has rather justified the special treatment. This special treatment has cast doubt if the seven persons were, in fact, employees of PSTL. This can be determined based on the appreciation of the evidence available and not disputed by the PSTL. Since the facts are not disputed, there is no need for cross examination.

3.5 The learned Advocate sought permission to submit additional written submissions. Accordingly he was granted 15 days to do so. However, this has not been received till date.

3.6 Thus, it is crystal clear that PSTL made serious attempts to derail the proceedings. It actively misled the proceedings by seeking adjournment of the hearing as it had not received the relevant documents while it had, in fact, received those. It made false statement that all seven persons had settled the proceedings by the consent procedure to justify the need for cross examination. It sought time again and again for filing the reply to the SCN. Though it never filed additional written submission, it sought time for the same. Though it sought settlement through the consent procedure, it did not agree to the consent terms suggested by SEBI. It sought a sparsed fresh SCN. This kind of deliberate attempts to mislead the proceeding and delay its disposal is not in the interest of an orderly securities market. It is also not a fair system of justice when the proceedings in respect of seven other co-accused in the same matter have already been disposed of, the proceeding in respect of PSTL alone is delayed on some pretext or other.

Therefore, I conclude that the conduct of PSTL in this proceeding has been, to say the least, deplorable.

4. The learned Advocate reiterated the submissions made in the written reply dated August 27, 2009. The summary of the submissions - written and oral - are as under:

a. PSTL has not colluded / conspired with any of the seven persons. It has not funded / aided any of them in the purchase of shares under the employee category. They applied for shares from their own money. It did not benefit or gain from these transactions.

b. PSTL relaxed some HR provisions in respect of these persons. It watered down the qualification requirement for these persons as appropriate candidates were not available. It did not maintain attendance register for these persons as it had granted them flexible working hours and they were constantly traveling. The requirements of probation and the notice period on resignation are discretionary matters and these were relaxed for these seven persons. It is an industry practice to pay the theatre employees in cash. It paid salaries in cash to these persons upon their request.

c. There was a delay in making applications to the Employee Provident Fund Organization (EPFO) in respect of all employees of Bangalore office and not only in respect of the seven persons.

d. A direction against PSTL from accessing the markets or from dealing in securities would not be in the interest of the capital market.

5. Given the special treatment dispensed to the seven persons by PSTL, what needs to be determined is: did PSTL collude with these seven persons to enable them to don the cloak of 'employee'. This, in turn, requires determination of three facts, namely, is there evidence of employment of these seven persons with PSTL, could these persons have become employees of PSTL, and was the preferential treatment to these seven persons warranted. I am proceeding to examine these three issues.

6. Evidence of Employment: One normally looks at the records of attendance, salary, provident fund, etc., as evidence to determine if a person is an employee of an organization.

6.1 Attendance: The on-site investigation of SEBI found that the Bangalore office, where seven persons were stated to be posted, did maintain a register for recording attendance. The register did not even have the names of the seven persons let alone their signatures. In its reply dated August 17, 2009, PSTL has stated that it did not maintain attendance register for these persons as it had granted them flexible working hours and they were constantly traveling. I find it

difficult to believe that only seven employees of an organization were allowed flexi hours. Further, I do not see any link between flexible hours and the requirement of signing attendance register. I find that three of the seven persons were stated to be cashier / accountant and one of them is physically challenged. It is difficult to believe that these persons were constantly traveling. I, therefore, conclude that these explanations are not tenable.

6.2 Salary: PSTL has replied that salary was paid in cash to the seven persons at their request. It is surprising that these seven persons were singled out for payment of salary in cash. What is intriguing further is that the vouchers indicating payment of salary in cash do not have serial numbers, dates or the names/initials of persons checking and approving such payments. These vouchers have been generated at Chennai office and not at the office where the seven persons are supposed to be employed. The cash book does not reflect the travel vouchers for these persons for August and Septembers, 2006. The numbers on the travel vouchers for the subsequent months do not tally with those in the cash book. I find from annexures to PSTL's letter dated September 25, 2007 that the vouchers do not have numbers in chronological sequence. For example, voucher number 2130 is dated December 20, 2006 while voucher number 903 is dated December 26, 2006. Further, as per the cash book, the total traveling expenses for the period add up to Rs.43,301, while the traveling expenses (as per vouchers) add up to around Rs.89,824. I, therefore, find it difficult to rely on such vouchers to conclude that the salary was actually paid to the seven persons.

6.3 Provident Fund: Vide letter dated March 27, 2007, PSTL requested Employee Provident Fund Organization (EPFO), Chennai to enroll the seven persons as EPF members. I find that this letter was sent only after receipt of SEBI's fax letter dated March 26, 2007 seeking PF details for its investigation. I also note that these persons have not yet received the balance in their PF accounts. PSTL, in its reply, has submitted there was a delay in making application to the EPFO in respect of all employees of the Bangalore office and not only with respect of the seven persons. It has, however, not provided data in support of the same. The issue is not the delay as such. The issue is that the applications for enrollment were made after they left the 'employment' and after SEBI served a notice asking for the details. And ultimately the seven persons did not claim the balance in the PF account.

6.4 I find that PSTL has claimed that the aberration in respect of PF account was for all employees and not for the seven persons. It has not made similar claim in respect of other aberrations. This means that other aberrations were only for the seven persons. From the above, it is clear that the seven persons did not attend the office. The vouchers relating to payment of salary to the noticees are not authentic. They did not have PF accounts when they were in

'employment' nor did they claim the balance in PF accounts. These make it clear that the seven persons were not employees of PSTL, which assisted them to don the cloak of 'employee'.

7. Likelihood of Employment: One would look at the background, qualification, experience and period of employment to determine whether the seven persons could have been in the employment of PSTL.

7.1 Background of seven persons: I note that the seven persons are well settled in Mumbai for a long time and were carrying on established textile business. The banking transactions of the seven persons for December, 2006, as stated below, indicate that they were high net worth individuals:

Name of the Persons	Bank Name	Account No.	Total Debit (Rs.)	Total Credit (Rs.)
Mr. Kishore S. Jain	OBC	00551010015310	2,29,33,327	2,27,67,242
Mr. Jayantilal R. Jain	SBBJ	51010505647	59,20,487	52,41,000
Mr. Shripal J. Shah	UBI	317402010026801	42,02,375	43,52,759
Mr. Rajesh Prakashchandra Jain	UBI	315304010028432	65,47,056	64,32,917
Mr. Pravin Kumar Devichand Jain	SBBJ	61006393976	5,26,557	6,20,294
Mr. Dheeraj Jain	Canara Bank	NTSB000111498	1,21,17,000	1,21,28,447
Mr. Sanjay Jhabak	IDBI Bank	019653800000204	4,31,93,493	4,36,85,115

The seven persons had the following beneficial accounts with different Depository Participants at the relevant time:

Name of the Persons	No. of Accounts in CDSL	No. of Accounts in NSDL	Total
Mr. Kishore S. Jain	14	0	14
Mr. Jayantilal R. Jain	3	3	6
Mr. Shripal J. Shah	6	1	7
Mr. Rajesh Prakashchandra Jain	2	2	4
Mr. Pravin Kumar Devichand Jain	6	1	7
Mr. Dheeraj Jain	4	2	6
Mr. Sanjay Jhabak	8	5	13

It is surprising that all the seven persons bearing similar family names, having similar business background and good financial standing and residing normally in Mumbai would seek employment with PSTL located at a far off place like Chennai and subsequently accept posting at Bangalore, all for a paltry salary ranging from Rs.7,500 per month to Rs.25,000 per month. It is very unlikely that the seven persons would together apply for and accept 'any job' at such low levels of compensation for 4-6 months at around the same period of time only to quit within days of each other and apply for the shares in IPO under employee category and sell those shares immediately.

7.2 Qualification and Experience: The advertisements and the qualifications/experience as sought by PSTL and the job applications of the seven persons *vis-à-vis the* actual qualification/experience of the seven persons is as under:

Name	Position advertised	Job applied for	Position offered	Wages / month (Rs.)	Required experience as per advertisement	Qualification and experience stated in bio-data of the applicant
Mr. Kishore S. Jain	Accounts officer	Cashier-cum-Manager	Cashier	12,500	ICWAI/CA-Inter/M.Com with Experience	B.Com, Stated as involved in family textile business-3 yrs.
Mr. Jayantilal R. Jain	Accounts officer	Any Office Job	Senior Accountant	15,000	ICWAI/CA-Inter/M.Com & Experience	B.Com, Stated as involved in family textile business-10 yrs.
Mr. Shripal J. Shah	Nil	Any Suitable Job	Junior Accountant	12,500	Not required	B.Com, Stated as involved in family textile business-5 yrs.
Mr. Rajesh Prakashchandra Jain	Officer-Theatre Admn.	Ticketing Manager	Theatre Co-ordinator	7,500	Graduates with experience or non-graduate with thorough experience in film distribution	12th, Stated as involved in family textile business-8 yrs.
Mr. Pravin Kumar Devichand Jain	Officer-Theatre Admn.	Theatre Manager	Junior Executive	10,000	Graduates with experience	B.Com, Stated as involved in family textile business-11 yrs.
Mr. Dheeraj Jain	Nil	Any Suitable Job	Junior Executive	10,000	Not required.	Stock market/ Director of Hem Sec (broker firm)
Mr. Sanjay Jhabak	DGM-MIS	Manager - MIS	Manager - MIS	25,000	BE (CS) & MBA	B.Com/15 Years Exp in Textiles, Capital market accounts and Company Law - Well "Averse" with computers

From the above table, I find that the jobs advertised for, the jobs applied for and the jobs offered are different from one another. Similarly, the qualification and experience of the seven persons are different from those required for the job given as well as the job offered. It is very unlikely that the seven persons, without having the required qualification and experience, would apply for jobs and PSTL would offer them jobs knowing well that they did not meet its requirements.

7.3 Period of employment: I note that the seven persons joined as 'employees' at around the same time in July - August 2006 on the eve of the IPO and resigned in quick succession in late December 2006 and early January 2007, immediately after close of the IPO issue / allotment of shares on January 02, 2007. It is surprising that all the seven persons gave up their textile businesses to take up jobs for less than 6 months and synchronized their entry and exit that exactly matched the IPO period.

7.4 It is very unlikely that considering the background of the seven persons, they would take up jobs at a paltry salary at a location far away from home for period of 4 – 6 months, especially when they did not have the required qualification and experience for the job and they are in the established textile business. It is also very unlikely that PSTL relaxed the requirement only in respect of the seven persons all of whom would apply for shares under the 'employee' category.

Therefore, I conclude that they were not employees of PSTL and they could not have become so.

8. Preferential Treatment: Employment is a relationship between two parties. A person can become an employee or don the cloak of an employee only if the there is an understanding and cooperation between him and the employer.

8.1 Probation: Only permanent employees are eligible to apply for shares in the employee category. As per the policy, one becomes a permanent employee after a probation period of 6 months. However, the seven persons had a probation period of only 3 months, as evidenced from appointment letters issued by PSTL. If PSTL had abided by the normal probation period, the seven persons would not have become eligible for applying for shares under the employee category. PSTL has contended that the probation period is solely a matter of discretion. While I agree that it is discretionary, exercise of this discretion - before appointment, that is, without observing the conduct or performance of persons and in favour of only seven persons all of whom would apply for shares under the 'employee' category - indicates the active collusion PSTL had with the seven persons.

8.2 Notice Period: It is observed that the requests for resignation were immediately granted without awaiting a month's notice (as stated in the appointment letter) or pay in lieu of the notice period from any of the seven persons. PSTL has made similar argument that it is discretionary. I hold the same view as in respect of probation above.

8.3 Jobs offered: PSTL had advertised for recruitment of senior management, experienced, technically qualified personnel, whereas the seven persons either applied for 'any suitable job' or for jobs that were not advertised. Despite this, PSTL offered the job to them. This kind of unusual aberration and unprecedented favour to only seven persons, all of whom would apply for shares under the 'employee' category, further substantiates the collusion PSTL had with the seven persons.

9. From the above, I find that there is no evidence of employment in terms of attendance, payment of salary and provident fund in respect of the seven persons. They could not have become employees given their qualification and experience. If they were 'employees', it is for the active connivance of PSTL. PSTL offered jobs to them it did not advertise for, and offered the jobs for which the seven persons did not have required qualification and experience. Further assuming that they were in fact employees, they could not have applied for shares under employee category if their probation period was not relaxed before the employment began. A summary of facts about the 'employment' of the seven persons with PSTL is presented below:

Sl No.	Particulars	Yes / No
1	Did PSTL relax standards for employment in respect of the seven persons?	Yes
2	Did it require them to sign the attendance as any other employee?	No
3	Did it pay them salary by cheque as it pays to any other employee?	No
4	Did it favour them in terms of confirmation?	Yes
5	Did it favour them in terms of notice period for resignation?	Yes
6	Did it obtain provident fund accounts for them while they were in employment?	No
7	Did it pay the provident fund balances to them?	No
8	Did it have reliable records supporting payment of salary / travel expenses to them?	No

Thus it is clear that PSTL actively helped the seven persons to don the cloak of employee only to enable them to apply for shares in the employee category in the imminent IPO. This conduct on the part of PSTL is corroborated by its conduct during this proceeding as elaborated in Para 3 above.

10. PSTL has submitted that the allegation that PSTL accorded preferential treatment is not maintainable since it did not benefit nor gain from according such treatment. The fact is that PSTL extended preferential treatment to the seven persons. This is not disputed. They collectively made an unlawful gain of Rs.2.31 crore. This is also not disputed. The investigation has, however, not established the sharing of the spoil between the seven persons and PSTL. But the fact remains that the unlawful gain could not have been made without active connivance of PSTL.

11. PSTL has submitted that a direction against PSTL from accessing the markets or from dealing in securities would not be in the interest of the capital market. I fail to appreciate this argument as to how the capital market would suffer if it were not allowed to participate in the market. Market is orderly if there are no miscreants. In fact, the interests of investors require that no miscreant is allowed to participate in the market.

12. I, therefore, find that PSTL aided and abetted the seven persons to corner shares of PSTL under the employee category to the detriment of the common investors. The IPO was oversubscribed 15.5 times in the retail category, 28.09 times in the HNI category, 17.18 times in the QIB category and only 0.015 times in the employee category (excluding the applications made by the seven persons). But for the artifice employed by PSTL and the seven persons, there would have been a shortfall in subscription in the employee category, which would have gone to other categories having over subscription. Thus, I conclude that PSTL assisted the seven persons to don the cloak of the employees and helped them to corner the shares under the employee category of the IPO of the PSTL. This artifice employed by PSTL is prohibited under regulation 3(b) and (c) of the PFUTP Regulations. Therefore, I hold that PSTL has violated regulation 3(b)

and (c) of PFUTP Regulations and necessary enforcement action is required to be taken for such violation in order to protect the interest of investors and the integrity of the securities market.

13. I, in exercise of the powers conferred upon me under section 19, read with sections 11(1), 11B, and 11(4) (b) of the Securities and Exchange Board of India Act, 1992, hereby issue the following directions:

a PSTL (PAN: AAECP0411H) is restrained from dealing in securities in any manner whatsoever or accessing the securities market, directly or indirectly, for a period of 7 years; and

b. PSTL shall include this order in the agenda of its next annual general body meeting.

14. A copy of this order shall be served on all recognized stock exchanges and depositories to ensure compliance with the directions in Para 13.

15. The order shall come into force with immediate effect.

Place: Mumbai
Date: November 10, 2009

M. S. SAHOO
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA