

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO - 137/2013]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 AND SECTION 23I OF SECURITIES CONTRACT (REGULATION) ACT, 1956.

In respect of

Shri. P.S. Saminathan

(PAN: ABHPS7396D)

In the matter of Pyramid Saimira Theatre Limited

FACTS OF THE CASE

1. Shri. P.S. Saminathan (hereinafter referred to as "**Noticee**"), promoter of Pyramid Saimira Theatre Limited (hereinafter referred to as the "**target company**") submitted to Securities and Exchange Board of India (hereinafter referred to as the "**SEBI**") vide letter dated February 21, 2009 the details of transaction done by him from April 3, 2008 till December 5, 2008.

2. From the submissions made by the Noticee it was observed that Noticee was holding 14.14% of the total voting rights of the target company as on April 3, 2008 and further acquired shares amounting to 3.15% of the total voting rights of the target company due to which his shareholding in the target company increased to 17.29% of the total voting rights of the target company. Thereafter, Noticee further acquired shares amounting to 6.39% of the total voting capital of the target company. It was further observed that during November 19, 2008 to December 05, 2008 Noticee acquired 7,00,500 shares that resulted in increase in his shareholding by 2.48% to 24.450% of the total voting rights of the target company. Due to

aforesaid acquisitions it was alleged that Noticee failed to make a public announcement to acquire shares of the target company when his shareholding exceeded fifteen per cent of the total voting rights of the target company and exceeded the five per cent creeping acquisition limit within a financial year as stipulated under Regulation 10 and Regulation 11(1) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as "**Takeover Regulations**"), respectively. It was further alleged that Noticee failed to disclose to the company and the stock exchange where the shares of the target company is listed of his shareholding when his shareholding in the target company crossed the two per cent limit specified under Regulation 7(1A) read with 7(2) of the Takeover Regulations. It was also alleged that Noticee entered into the Share Purchase Agreement (SPA) on February 13, 2008 and executed it after two month and thus violated Section 16 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCRA**") read with Notification No. SO 184(E), dated 1-3-2000.

3. In view of the above it was alleged that the Noticee failed to comply with the provisions of 7(1A) read with 7(2), 10, 11(1) of Takeover Regulation and Section 16 of SCRA read with Notification No. SO 184(E), dated 1-3-2000. Consequently the Noticee was liable for penalty under Section 15A (b), 15H of SEBI Act and 23H of SCRA.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as Adjudicating Officer vide order dated January 13, 2010 under Section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules**') and order dated October 19, 2011 under 15 I of SEBI Act read with rule 3 of SEBI Rules and Section 23 I of SCRA to inquire into and adjudge the alleged violations of Takeover Regulations and SCRA.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. Show Cause Notice No. EAD-6/BM/DJ/197658/2010 dated March 08, 2010 (hereinafter referred to as "**SCN dated March 08, 2010**") was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be held and penalty be not imposed under Section 15A(b), 15H(ii) of SEBI Act for the alleged violation specified in the said SCN dated March 8, 2010. The said SCN was delivered and acknowledged by the Noticee. Vide letter dated May 4, 2010 Noticee denied all the allegations set forth in the SCN dated December 22, 2011 and inter alia and made following submissions:

- i. That if one takes the transactions which occurred up to November 9, 2008 I have acquired only 4.97% which is within the creeping acquisition norms.*
- ii. That with respect to transaction done on November 19, 2008 for 1.415% the said transactions is an inter-se transaction and also declared properly as inter-se.*
- iii. That I have submitted application under regulation 4 of the Takeover Regulation on August 22, 2008 properly for acquiring shares inter-se and SEBI vide letter no. CFD/DCR/TO/SG/1327255/08 dated September 08, 2008 confirmed that the said transaction is covered under 3(1)(e)(iii)(b) of the regulation and therefore the above said acquisition on November 19, 2008 does not breach creeping acquisition limit.*

In the interest of natural justice an opportunity of hearing was provided to the Noticee on July 16, 2010 vide hearing notice dated July 01, 2010. Noticee vide letter dated July 13, 2010 sought for an adjournment and the same was provided to him. Vide hearing notice dated July 28, 2010 another opportunity of personal hearing was provided on August 11, 2010 at the SEBI head office. Noticee vide letter and email dated August 10, 2010 requested to club the proceedings against him with the proceedings against the directors and further requested to conduct the hearing at Chennai. Hence, hearing notice dated August 17, 2010

was issued to Noticee to appear for personal hearing on September 6, 2010 at SEBI Southern Regional Office (SRO), Chennai. In the said hearing notice Noticee was asked to furnish the following information:

- i. Disclosure made under Regulation 3(3) of the Takeover Regulations.
- ii. Disclosure made under regulation 8(2) of the Takeover Regulation for the year 2008.
- iii. Disclosure made under Regulation 7(1), 7(1A) and 7(2) of the Takeover Regulation during the year 2008.
- iv. Register maintained by the company under Regulation 8(4) of the Takeover Regulation.

Noticee appeared for the hearing and sought time to submit the written submissions by September 15, 2010 along with the details sought in the hearing notice dated August 17, 2010 including the disclosures made by him and Shri. Nirmal Kotecha since the date of subscription of the shares of the target company and the details of his shareholding from the date of IPO of the target company. However, no submissions were made by the Noticee.

6. A supplementary Show Cause Notice No. EAD-6/BM/VS/38563/2011 dated December 22, 2011 (hereinafter referred to as "**SCN dated December 22, 2011**") was issued to the Noticee under rule 4 of the Rules and rule 4 of Securities Contract (Regulation) (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 2005 (hereinafter referred to as "**SCRA Rules**") to show cause as to why an inquiry should not be held and penalty be not imposed under Section 15H of SEBI Act and 23H of SCRA for the alleged violation specified in the said SCN dated December 22, 2011. The said SCN was delivered and acknowledged by the Noticee. Noticee did not file any reply to the aforesaid SCN therefore, a reminder was sent vide letter dated February 2, 2012 wherein Noticee was advised to file reply by February 15, 2012. Vide letter dated

February 16, 2012 Noticee denied all the allegations set forth in the SCN dated December 22, 2011 and inter alia and made following submissions:

- i. That proper disclosures have been made for acquisition of shares at appropriate and relevant time with appropriate authorities in the year 2008 itself as has been noted in the SCN itself.*
- ii. That the purchase of shares was an inter se transfer of shares between promoters which was fully exempted under the Takeover Regulations and the allegations in the SCN itself says alleged violation is executing SPA more than two months after entering it.*
- iii. That the disclosures as required under Regulation 7 has been made properly within appropriate time frame.*
- iv. That the company has been taken over by the Provisional Liquidator appointed by Hon'ble High Court, Chennai, and the winding-up is legally effective from May, 2009.*
- v. That I do not have any access to the secretarial documents of the company.*

In the interest of natural justice an opportunity of hearing was provided to the Noticee on April 9, 2012 vide hearing notice dated March 26, 2012 at SEBI SRO, Chennai. Noticee did not appear for the hearing. Thereafter, another opportunity of personal hearing was provided to the Noticee on May 2, 2012 vide hearing Notice dated April 16, 2012 however, Noticee failed to appear for the hearing. Vide email and letter dated May 2, 2012 Noticee mentioned his inability to attend for the hearing and sought for a fresh date of hearing. Accordingly final opportunity was provided to Noticee in May 11, 2012 vide email dated May 3, 2012. Noticee vide email dated May 19, 2012 showed its incapacity to attend the hearing and reiterate same submission as submitted by him vide reply dated February 16, 2012. During the course of proceeding information regarding Share Purchase Agreement (SPA) was sought from the Noticee vide letters dated July 9, 2012, September 17, 2012 December 31, 2012 wherein Noticee was requested to provide a copy of SPA entered into by him

and Shri. Natarajan on February 13, 2008 for inter-se transfer of shares. However no response was received from the Noticee. I observe that the Noticee was provided with enough opportunity to appear for the hearing and provide necessary documents; hence, I am constrained to proceed with the matter on the basis of the material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully examined the documents available on record. The allegations against the Noticee are as follows:
 - i. Noticee failed to disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company and stock exchanges where the shares of the target company is listed as specified under regulation 7(1A) read with 7(2) of the Takeover Regulations.
 - ii. Noticee failed to make a public announcement to acquire shares in the target company when his shareholding exceeded the fifteen per cent of the total voting rights of the target company as stipulated under Regulation 10 of the Takeover Regulations.
 - iii. Noticee failed to make a public announcement to acquire shares in the target company when his shareholding exceeded the five per cent creeping acquisition limit within a financial year as stipulated under Regulation 11(1) of the Takeover Regulations.
 - iv. Noticee violated Section 16 of SCRA read with Notification No. SO 184(E), dated 1-3-2000 by entering into the Share Purchase Agreement (SPA) and executing it after two month.

8. In view of the above it was alleged that the Noticee has not complied with the provisions of Regulation 7(1A) read with 7(2), 10, 11(1) of Takeover Regulation and Section 16 of SCRA read with Notification No. SO 184(E), dated 1-3-2000.

9. Before moving forward, it will be appropriate to refer to the relevant provisions of Regulation 7(1A), 7(2), 10, 11(1) of Takeover Regulation and Section 16 of SCRA read with Notification No. SO 184(E), dated 1-3-2000, which reads as under:

The continual disclosure requirement under Regulation 7 of Takeover Regulations:

(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation (2) of regulation 11 shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

Explanation.—For the purposes of sub-regulations (1) and (1A), the term ‘acquirer’ shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.

(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

Regulation 10 of Takeover Regulations: Acquisition of fifteen percent or more of the shares or voting rights of the company.

No acquirer shall acquire shares or voting rights which taken together with shares or voting rights, if any, held by him or person acting in concert with him, entitle such acquirer to exercise fifteen percent or more of the voting rights in the company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.

Regulation 11 Takeover Regulations: Consolidation of holdings.

(1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, with post acquisition shareholding or voting rights not exceeding fifty five per cent, in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.

Section 16. (SCRA) Power to prohibit contracts in certain cases .-

- (1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.*
- (2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of the notification issued thereunder shall be illegal.*

Notification No. SO 184(E), dated 1-3-2000

In exercise of the powers conferred by sub-section (1) of section 16 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), read with Government of India Notification No. S.O. 573(E), dated 30th July, 1992 and Notification No. 183 (E), dated 1st March, 2000 issued under section 29A of the said Act, the Securities and Exchange Board of India (hereinafter referred to as 'the Board') being of the opinion that it is necessary to prevent undesirable speculation in securities in the whole of India, hereby declare that no person in the territory to which the said Act extends, shall, save with the permission of the board, enter into any contract for sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under the said Act or the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognized stock exchange :

Provided that any contracts for sale or purchase of Government securities, gold related securities, money market securities and ready forward contracts in debt securities entered into on the recognised stock exchange shall be entered into in accordance with,—

- (a) the rules or regulations or the bye-laws made under the Securities Contracts (Regulation) Act, 1956 (42 of 1956), or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the directions issued by the Securities and Exchange Board of India under the said Acts;*
- (b) the rules made or guidelines or directions issued under the Reserve Bank of India Act, 1934 (2 of 1934) or the Banking Regulations Act, 1949 (10 of 1949) or the Foreign Exchange Regulation Act, 1973 (46 of 1973) by the Reserve Bank of India;*
- (c) the provisions contained in the notifications issued by the Reserve Bank of India under the Securities Contracts (Regulation) Act, 1956 (42 of 1956).*

10. The issues that arise for consideration in the present case are:

- i. Whether Noticee was required to disclose to the target company and stock exchanges where the shares of the target company is listed of the purchase or sale aggregating two per cent or more of the share capital of the target company as specified under regulation 7(1A) read with 7(2) of the Takeover Regulations?
- ii. Whether Noticee was under an obligation to make a public announcement to acquire shares in the target company under Regulation 10 of the Takeover Regulations?
- iii. Whether Noticee was under an obligation to make a public announcement to acquire shares in the target company under Regulation 11(1) of the Takeover Regulations?
- iv. Whether Noticee violated Section 16 of SCRA read with Notification No. SO 184(E), dated 1-3-2000 by entering into the Share Purchase Agreement (SPA) and executing it after two month?
- v. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15A (b), 15H of SEBI Act and 23H of SCRA?
- vi. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act and 23J of SCRA?

FINDINGS:

11. I now proceed with the alleged violations of Regulation 10 Takeover Regulations.

- i. From the submissions made by the Noticee it was observed that Noticee was holding 14.14% of the total voting rights of the target company as on April 3, 2008 and further acquired shares amounting to 3.15% of the total voting rights of the target company due to which his shareholding in the target company

increased to 17.29% of the total voting rights of the target company. Details of the transactions as submitted by the Noticee are given below:

Sr. no.	Date of transaction	Mode of Transfer	Shareholding before transaction (%)	No of shares acquired	Shareholding after transaction (%)	Change in shareholding (%)
1	03/04/2008	Inter-se	13.747	1,11,335	14.141	0.39
2	14/04/2008	Inter-se	14.141	8,90,665	17.291	3.15
Total						3.54

- ii. Due to aforesaid transfers the shareholding of the Noticee increased by 3.15% to 17.29% of the total voting rights of the target company on April 14, 2008 thereby exceeding 15% of the total voting rights of the target company. Such change in shareholding required Noticee to make a public announcement to acquire shares of the target company in accordance to Regulation 10 of Takeover Regulations. Noticee submitted that the aforesaid purchase of share was inter-se transfer of shares between the promoters which was fully exempted under the Takeover Regulations. I note that the transaction dated April 14, 2008 was between the promoters for which exemption under Regulation 3(1)(e)(iii)(b) was available to the qualifying promoters. For availing such exemption a report was required to be filed by the acquirer with SEBI in the specified format within 21 days from the date of acquisition along with the requisite fees in terms of Regulation 3(4) read with 3(5) of the Takeover Regulations. The Regulations are reproduced below:

Regulation 3(4) of Takeover Regulations:

In respect of acquisition under clause (a), (b), (e) and (i) of sub-regulation (1), the acquirer shall, within 21 days if the date of acquisition, submit a report along with supporting documents to the Board giving all details in respect of acquisitions which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him) would entitled such person to exercise 15 per cent or more of the voting rights in a company.

Regulation 3(5) of Takeover Regulations:

The acquirer shall, along with the report referred to under sub-regulation (4), pay a fee of twenty five thousand rupees to the Board, either by a banker's cheque or demand draft in favour of the Securities and Exchange Board of India, payable at Mumbai.

- iii. As observed from the above table the Noticee acquired shares and crossed 15% of the paid up capital of the company on April 14, 2008. The Noticee claimed that the said transaction was exempted under Takeover Regulations in view of the inter-se transfer of promoter holdings. However in order for a person to claim the said exemption, a person/ acquirer is required to file report under Regulation 3(4) of the Takeover Regulations within 21 days of acquisition i.e. by May 5, 2008 to claim exemption from making public offer. Thus, on the acquisitions mentioned above i.e. April 14, 2008, the acquirer had triggered the Takeover Regulations for open offer, provided the provisions of the regulations were complied within 21 days – in this case by May 06, 2008. As per the records available with SEBI it is observed that SEBI has not received any such report on or about the date mentioned above. However SEBI has received a letter on June 14, 2008 from the target company along with a demand draft of ₹ 25,000. Apart from this it was mentioned in the letter that the necessary inter-se promoter report was filed with SEBI but inadvertently fees of ₹ 25,000 was not paid, and thus enclosed the payment. SEBI vide e-mail dated July 24, 2008 informed the target company that the alleged inter-se report under Regulation 3(4) of the Takeover Regulations was not filed with SEBI and only demand draft of ₹ 25,000 dated June 14, 2008 was received. In response to this vide letter dated August 2, 2008, target company forwarded a copy of inter-se report dated April 21, 2008 which was purportedly claimed to be filed by the Noticee.
- iv. From the documents available before me I note that no such report was filed by the Noticee on April 21, 2008. Noticee had been provided enough opportunities

to produce receipt of the report filed with SEBI. However, the Noticee has failed to provide any such document. While I also find it intriguing that the target company is making the payment on behalf of the acquirer, as it is not the present matter of enquiry, I do not dwell on this matter.

- v. Even considering the document presented by the Noticee in support of his claim that the report was filed with SEBI, I note that "SEBI receipt" is nowhere present in any of the pages of the report. Thus, I am not able to accept that this is a copy of the report submitted by the Noticee to SEBI, and given the circumstances mentioned above, it looks more like an after thought.
- vi. Thus I arrive at a conclusion that the first such report by the Noticee, though not filed by him but by the target company, has been filed on August 02, 2008. Mere filing of the fee on June 14, 2008 cannot be treated as filing of the report, as the report is the essence of the provisions, the payment of the fees is a mere technicality. There is thus no doubt in my mind while concluding that Noticee indeed failed to comply with Regulation 3(4) read with Regulation 3(5) of the Takeover Regulations.
- vii. I further note that, inter-se transfers exemption is available from making public offer subject to transferor and transferees having complied with Regulation 6, 7 and 8 of the Takeover Regulation as stipulated in explanation (2) of Regulation 3(1)(e). Noticee was required to comply with Regulation 7 due to his acquisition crossing 14% on April 3, 2008 and acquiring more than 2% of the shares on April 14, 2008. Noticee claimed that disclosures as required under Regulation 7 have been made properly within appropriate time frame. Vide report filed with SEBI, Noticee claimed that the requisite disclosures under Regulation 7 of the Takeover Regulations were done by him on April 03, 2008 and April 14, 2008 i.e. within the time stipulated as per Regulation 7 of the Takeover Regulations. However, Investigations have concluded that the no such reports were disclosed

at the BSE website. Further, Noticee failed to produce requisite documents before me showing that he has made disclosures as required under Regulation 7 to the BSE. Thus, I note that the inter-se transfer as submitted by the Noticee vide letter dated February 21, 2009 does not meet requisite pre-conditions necessary to avail exemption from open offer obligations as Noticee has not complied with the conditions laid down in Regulation 7 of the Takeover Regulations.

In view of non-fulfillment of the pre-conditions for grant of exemption, the claim of the Noticee that the purchase of share was inter-se transfer of shares between the promoters which was fully exempted under the Takeover Regulations is not accepted. Noticee was thus under obligation to make open offer in terms of Regulation 10 of the Takeover Regulation. Thus, I conclude that Noticee has not complied with Regulation 10 of the Takeover Regulations by not making public announcement for an open offer.

12. I now proceed with the alleged violations of Regulation 11(1) Takeover Regulations.

- i. It was observed that Noticee was holding 17.29% of the total capital of the target company as on May 24, 2008 and further acquired 1.41% shares on November 19, 2008 amounting to 6.38% of the total voting capital of the target company.

Details of the transactions as submitted by the Noticee are given below:

Sr. no.	Date of transaction	Mode of transfer	Shareholding before transaction (%)	No of shares acquired	Shareholding after transaction (%)	Change in share holding (%)	Cumulative change in share holding
1	24/05/2008	Off-market	17.291	35,350	17.416	0.125	-----
2	21/06/2008	Off-market	17.416	13,70,000	22.261	4.845	4.970
3	19/11/2008	Inter-se	21.973	4,00,000	23.388	1.415	6.385

- ii. It was observed from the above that the Noticee acquired 6.38% of the total voting rights of the target company from May 24, 2008 to November 19, 2008

(i.e. transactions mentioned at serial no. 1 to 3 above) which is in breach of the 5% creeping acquisition limit within a financial year as stipulated under Regulation 11(1) of the Takeover Regulations. Noticee submitted that if one takes the transactions which occurred upto November 19, 2008 he acquired only 4.97% which was within creeping acquisition norms. Noticee further claimed that the transaction dated November 19, 2008 was an inter-se transfer of shares and an application under Regulation 4 of the Takeover Regulation on August 22, 2008 was submitted to SEBI for acquiring shares inter-se.

- iii. I note that in terms of regulation 3(1)(e) exemptions can be sought from making public offer under Regulation 11 by filing report under Regulation 3(4) & (5) of Takeover Regulations Further I also note that the explanation 2 to the regulation 3 is very clear on the grounds for such exemptions - *the benefit of availing exemption under this clause (referring to regulation 3), from the applicability of the regulations for increasing shareholding or interse transfer of shareholding shall be subject to such transferor and transferee having complied with regulation 6,7 &8.*
- iv. As can be observed from para 11(vii) above the Noticee failed in the first place to comply with Regulation 7(1) of Takeover Regulations for his inter-se transaction made on April 3, 2008, it cannot be thus eligible to claim any exemptions under Regulations 3 as it has not satisfied any of the compliances which are a prerequisites for being eligible for claiming exemptions. Hence, I conclude that the Noticee was not qualified to claim any exemptions for any subsequent inter-se transactions due to the non-fulfillment of the clauses mentioned in explanation 2 of Regulation 3(1)(e). Given this there is no other way but to hold the Noticee liable to make open offer under Regulation 11. This the Noticee has, as a matter of fact, not done. Thus, it concludes that the Noticee has violated Regulation 11(1) of Takeover Regulations.

13. I now proceed with the alleged violations of Regulation 7(1A) read with 7(2) Takeover Regulations.

- i. It was observed that Noticee acquired 7,00,500 shares during November 19, 2008 to December 05, 2008. By such acquisitions the shareholding of the Noticee increased by 2.48% to 24.450% of the total voting rights of the target company as given below:

Sr. no.	Date of transaction	Mode of transfer	Shareholding before transaction (%)	No of shares acquired	Shareholding after transaction (%)	Change in share holding (%)	Cumulative change in holding
1.	19/11/2008	Inter-se	21.973	4,00,000	23.388	1.415	---
2.	28/11/2008	Inter-se	23.388	1,76,000	24.01	0.622	2.037
3.	01/12/2008	Inter-se	24.01	62,500	24.231	0.221	2.258
4.	05/12/2008	Inter-se	24.231	53,000	24.418	0.187	2.445
5.	05/12/2008	Inter-se	24.418	9,000	24.45	0.032	2.477

- ii. It is observed that vide acquisitions with the acquisition on November 28, 2008 there was change in holding by 2.037% thereby crossed the 2% limit specified under regulation 7(1A) of the Takeover Regulations. This required him to make necessary disclosures within two days to the target company and to the stock exchange where the shares of the target company is listed as stipulated under Regulation 7(1A) read with 7(2) of the Takeover Regulations. Noticee has submitted that the disclosures as required under Regulation 7 were made properly within appropriate time frame. Noticee has submitted that he had made disclosure under 7(1A) & (2) on December 15, 2008. However, there are no documents available on record to show that disclosures were made on December 15, 2008. Noticee was advised before hearing and also during hearing to submit the copies of the disclosures as claimed to be made by him. The Noticee undertook to submit the documents by September 2010 but no documents were submitted by him. Subsequently, Noticee replied that proper disclosures were made at relevant time in 2008 and as the company has been wound up he does not have any access to the secretarial documents. Even if it is

considered that the Noticee made the disclosure on December 15, 2008 for the transactions of November 19, 2008 and November 28, 2008 when the acquisition crossed 2% of the paid up capital it cannot be ruled out that he delayed in making disclosure by 15 days.

- iii. Timely disclosure as envisaged under Regulation 7 of the Takeover Regulations is very important for achieving the object of the Regulation. The requirement of making a time bound disclosure to the stock exchanges as envisaged under the Regulations is important material information and has a bearing on the investment or disinvestment decisions of the investing public. By not making requisite disclosure on time it can be concluded Noticee has not complied with Regulation 7(1A) read with 7(2) of the Takeover Regulations and thus violated the said Regulation.

14. I now proceed with the alleged violations of SCRA read with Notification No. SO 184(E), dated 1-3-2000.

- i. It was observed that Noticee acquired 3.54% of the total voting rights of the target company from V. Natarajan by way of an inter-se transfer of shares vide transactions dated April 3, 2008 and April 14, 2008. As per the report filed by the Noticee under Regulation 3(4) of the Takeover Regulations, it was observed that the parties to the transfer entered into Share Purchase Agreement (SPA) on February 13, 2008 and decided the consideration price at ₹.449.10 whereas the actual transfer happened on April 3, 2008 and April 14, 2008. It was therefore alleged that by entering into the Share Purchase Agreement (SPA) and executing it after two month Noticee has violated Section 16 of SCRA read with Notification No. SO 184(E), dated 1-3-2000.
- ii. Notification issued by SEBI under section 16(1) of SCRA provides that no person in the territory to which the said Act extends, shall save with the permission of the

Board, enter into any contract for sale or purchase of securities other than spot delivery contract or contract for cash or hand delivery or special delivery or contracts in derivatives as is permissible under the Act or SEBI Act and the rules and Regulations made under such acts, rules regulations and bye-laws of a recognized stock exchange.

- iii. As per SEBI Notification SO 184(E) dated March 1, 2000 no person in the territory to which SCRA extends, shall, save with the permission of SEBI, enter into any contract for sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under the said SCRA or the SEBI Act and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognized stock exchange

- iv. As per section 2 (i) (a) of the SCRA, a contract in securities market will be completed on the actual delivery of shares and payment of consideration either on the same day or the next day of the contract. Section 2 (i) (b) of SCRA deals with transfer of securities which are in the demat mode. Section 2(i)(b) of SCRA deals only with transfer of securities and do not specify anything relating to payment of consideration for such securities. A spot contract in securities market is said to be complete only if delivery/transfer of securities and payment therefore have been executed. I am of the view that if a transaction in securities has been executed through the depository system, the same has to satisfy the provisions of section 2(i)(b) – for transfer of securities and section 2(i)(a) for payment therefore. In other words, the provisions of section 2(i)(a) and section 2(i)(b) have to be read in conjunction and not in isolation to arrive at a meaningful conclusion.

- v. In the instant case I observe that the SPA was entered into on February 13, 2008 and the price was specified in the agreement but actual delivery of shares was made after two months i.e. on April 3, 2008 and April 14, 2008. Takeover

Regulation specially recognize SPAs and the acquisition cannot be completed unless the acquirer complies with his obligations mandated by Takeover Regulations. The information available before me is only the date of the agreement and the consideration for acquisition. There is no specific information available before me or nor is the copy of the share purchase agreement available to me to ascertain whether the SPA specified the price, quantity of shares to be transferred and the actual time of delivery of shares and the payment of consideration. The document was not provided by the Noticee, nor was the same provided by the investigation department to as it had not been procured at the time of filing of the report by the Noticee with SEBI. In absence of specific details/documents as stated above it would not be possible to establish whether the transactions were done on spot delivery or not and hence whether there was any violation of Section 16 of SCRA read with Notification No. SO 184(E), dated 1-3-2000. Hence I am inclined to give benefit of doubt to the Noticee. In view of the same the above charge against the Noticee is not established.

15. Noticee has submitted that the target company has been wound-up and the company has been taken over by Provisional Liquidator appointed by Hon'ble High Court, Chennai, and the winding-up is legally effective from May, 2009. I note that the violations committed by the Noticee is non compliance of Regulation 7(1A), 10 and 11(1) of the Takeover Regulations which require him to make public announcement open offer and acquire further 20% shares of the target company. The plea of the Noticee that the target company has been wound up and undergoing liquidation proceedings does not absolve him from the violation committed by him as stated above.

16. In view of the above I hold that the Noticee violated the provisions of Regulation 7(1A) read with 7(2), 10, 11(1) of the Takeover Regulations.

17. The next issue for consideration as to whether the failure on the part of the Noticee to comply with the provisions of Regulation 7(1A) read with 7(2), 10, 11(1) of the Takeover Regulations attracts monetary penalty under Section 15A (b), 15H of SEBI Act and if so what would be the monetary penalty that can be imposed on the Noticee.

18. The object of the Takeover Regulation mandating disclosure of acquisitions beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of such information is required. In this regard I would like to rely upon the findings of Hon'ble SAT in the matter of *Milan Mahendra Securities Pvt. Ltd Vs. SEBI* (Appeal No. 66 of 2003 and Order dated November 15, 2006) regarding the importance of disclosure in which SAT has observed that:

“the purpose of these disclosures is to bring about transparency in the transactions and assist Regulator to effectively monitor the transactions in the market”.

Failure to make disclosure within the stipulated time period provided in the regulation cannot be considered as trivial or of no consequence to be overlooked. After taking all the facts into consideration, it is established that the Noticee has violated the provisions of Regulation 7(1A) read with 7(2) of the Takeover Regulations. Noticee was also required to make public announcement to an open offer which he has failed to make as required under Regulation 10, 11(1) of the Takeover Regulations. Hence, I am convinced that it is a fit case to impose monetary penalty under Section 15A(b) and 15H of SEBI Act, which reads as under:

15A(b). Penalty for failure to furnish information, return, etc.-

To file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of

one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

15H. Penalty for non-disclosure of acquisition of shares and take-overs:

If any person, who is required under this Act or any rules or regulations made thereunder, fails to,-

- (i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or
- (ii) make a public announcement to acquire shares at a minimum price;
- (iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or
- (iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer.

he shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

19. While determining the quantum of penalty under sections 15A(b) and 15HA of SEBI Act, it is important to consider the factors stipulated in section 15J of SEBI Act which reads as under:-

Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to an investor or group of investors as a result of the default;
- (c) the repetitive nature of the default.

20. In view of the charges as established, and the facts and circumstances of the case, and the various judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the seriousness of the violation. The Takeover Regulation have been framed in order to bring about the transparency in the market and timely disclosure to the investors. Correct and timely disclosures are an essential part of the proper functioning of the securities market and by failure to do so results in preventing investors from taking well-informed decisions. The Noticee, had responsibility in ensuring the compliance of disclosure norms. The timely disclosure was of importance from the point of view of outside shareholders/other investors as such disclosure would have prompted them to buy or sell shares of the target company. By virtue of the failure on the part of the Noticee to make the necessary disclosure, the fact remains that the shareholders/investors were deprived of the information. Under these circumstances, the compliance with the disclosure requirements under the Takeover Regulations assumes significance and the Noticee's failure to do so needs to be viewed seriously and an appropriate view is being taken with regard to imposition of monetary penalty in the matter.
21. In the instant case, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee.
22. While it has been concluded hereinabove that Noticee has violated the provisions of Regulation 10 and 11(1) of the Takeover Regulations, the consequences thereon for such violation ought to follow. However, in this instant case, the target company, that is, Pyramid Saimira Theatre Limited, is under liquidation and official liquidator had been appointed. Given these peculiar circumstances, the issue is being considered a fit case of imposing a monetary penalty.

ORDER

23. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹ 1,50,000 (Rupees One lakh fifty thousand only) under Section 15A(b) and ₹. 6,00,000 (Rupees six lakh only) under Section 15H of SEBI Act { i.e. consolidated amount of ₹ 7,50,000 (Rupees seven lakh fifty thousand only)} on the Noticee which will be commensurate with the violations committed by him.
24. The Noticee shall pay the said amount of penalty by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Mr. V.S. Sundaresan, Chief General Manager, Division of Corporate Restructuration, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.
25. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **March 8, 2013**

Place: **Mumbai**

BARNALI MUKHERJEE

ADJUDICATING OFFICER