

**WTM/KMA/IVD/98/07/2009**  
**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 KOTECHA  
CAPITAL SERVICES PRIVATE LIMITED, IN THE MATTER OF PYRAMID  
SAIMIRA THEATRE LIMITED**

Date of Hearing: July 01, 2009

Appearance:

For Kotecha Capital Services Private Limited:	Mr. Shyam Mehta, Counsel Mr. Ankit Lohia, Counsel Mr. Sanjay Asher, Partner, Crawford Bayley & Co. Mr. Manik Joshi, Sr. Associate, Crawford Bayley & Co. Mr. Aditya Bhansali, Partner, Mindspright Consultants Ms. Akshaya, Partner, Mindspright Legal
For Securities and Exchange Board of India:	Dr. Pradnya Saravade, Officer on Special Duty Ms. Anita Kenkare, General Manager Mr. Vijayakrishnan G, Deputy Legal Adviser Mr. T. Vinay Rajneesh, Legal Officer

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI), vide an ex-parte ad interim order dated April 23, 2009, in the matter of Pyramid Saimira Theatre Limited (hereinafter referred to as PSTL), *inter alia* directed Kotecha Capital Services Private Limited (hereinafter referred to as KCSPL) not to buy, sell or deal in the securities market including in Initial Public Offerings (IPOs) directly or indirectly, till further directions as KCSPL was *prima facie* found to have played a key role in facilitating Mr. Nirmal Kotecha in the alleged manipulation. The entities/persons against whom the said order was passed were advised that they may file their objections, if any, within thirty days

from the date of the said order and, if they so desire, avail of an opportunity of personal hearing.

2. KCSPL, vide letter dated May 15, 2009 submitted its objections to the said interim order of SEBI. While denying the allegations made against it in the said order, it *inter alia* submitted the following:

- i. That not even a prima facie case has been made out to warrant the issuance of such an ex-parte order of serious consequence against it and that the imminent urgency has not been explained to support the order;
- ii. That as on date of passing of the order Mr. Nirmal Kotecha was neither a director nor a shareholder of the company;
- iii. That Mr. Sandeep Shripati Gavhane was never its employee and that SEBI has wrongly relied upon the statement of Mr. Amol Kokane stating that Mr. Sandeep Shripati Gavhane worked as an accountant with it;
- iv. That the order is neither preventive, remedial or curative, since it has never dealt in the securities market for even a single share and that it does not have a trading or a demat account;
- v. That the said order is in total disregard to the mandatory provision in section 11 (4) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the Act) that SEBI shall either before or after passing such orders give opportunity of hearing to such intermediaries or persons concerned;
- vi. That no direction can be given to it under section 11 (4) (b) and 11B of the Act;
- vii. That the trade practices in respect of bank transactions are outside the purview of the 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) Regulations and that therefore the directions based on the prima facie view that they have violated the provisions of the PFUTP Regulations is untenable;

- viii. That no allegation/ averment/ observation/ finding or whisper thereof has been made by SEBI as to what is its role in facilitating Mr. Nirmal Kotecha;
- ix. That a company is a separate and distinct legal entity in the eye of law and no negative reference can be drawn against it simply because one of its directors is alleged to be involved in some manipulation;
- x. That an order of this nature, which is based merely on surmises and conjectures, would adversely affect them and would besmirch their impeccable reputation and would also result in irreparable damage to them and to their standing in the financial markets.

In view of the above submissions, KCSPL requested that the said order to the extent it applied to it, be reconsidered and the directions against it be withdrawn. KCSPL also requested that an opportunity of personal hearing be granted to it.

3. Besides, KCSPL vide its letter dated May 15, 2009, stated that it was not provided with any relevant details/ documents/ statements relied upon by SEBI in the order. Accordingly, SEBI, vide letter dated May 28, 2009, granted an opportunity of inspection on June 01, 2009 to KCSPL in order to inspect the relevant documents. However, vide letter dated June 01, 2009, KCSPL *inter alia* requested for the list of the documents relied upon by SEBI and the same were subsequently provided to KCSPL by SEBI, vide letter dated June 29, 2009.

4. Thereafter, an opportunity of personal hearing was afforded to it on July 01, 2009. In the meanwhile, KCSPL filed an appeal against the ad interim ex-parte order in Appeal No. 86 of 2009 before the Hon'ble Securities Appellate Tribunal. The Hon'ble Tribunal, vide its order dated June 17, 2009 had disposed of the said appeal mentioning that the order made in Appeal No. 88 of 2009 would apply. It may be noted that Appeal Nos. 86 & 88 of 2009 was disposed of after taking into consideration the submission made by the Learned Counsel for SEBI that *"the whole time member shall consider the entire matter qua the appellants on July 1, 2009 on which day he shall afford them a personal hearing as well and thereafter pass an order on or before July 15, 2009."* In the hearing on July 01, 2009, KCSPL was represented by Mr. Shyam Mehta, Advocate who made submissions on behalf of KCSPL. The learned counsel reiterated the objections/submissions made by KCSPL and requested that the directions passed by SEBI against it be vacated at the earliest.

5. I have considered the objections filed by KCSPL, the oral submissions made by Mr. Shyam Mehta, learned counsel on its behalf and other material available on record. In the facts and circumstances, the limited issue for consideration at this juncture is, whether based on the available materials on record and after considering the submissions made by KCSPL, the directions issued by SEBI vide ad interim ex parte order dated April 23, 2009 need to be continued, revoked or modified in any manner, in so far as it relates to KCSPL.

6. Before, considering the issue, I would like to place this case in its context against the circumstances which led to the passing of the ex parte order dated April 23, 2009 against various persons/entities including KCSPL -

- i. SEBI, while investigating the case of forged letters dated December 19, 2008 purported to be issued by SEBI to Mr. P. S. Saminathan (Chairman and Managing Director, PSTL) and Mr. Nirmal Kotecha (who was a

person acting in concert with the promoters of PSTL and was a major shareholder in the said company), found that Mr. Nirmal Kotecha had offloaded substantial number of shares of PSTL on December 22, 2008 at artificially inflated prices. It was found that one of the forged letters (purported to be issued by SEBI) dated December 19, 2008 was sent to Mr. P. S. Saminathan, directing him to make an open offer under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as SAST Regulations) for acquiring additional stake of 20% at a price not less than Rs.250/- within 14 days. Another forged letter (also purported to be issued by SEBI) dated December 19, 2008 was addressed to Mr. Nirmal Kotecha, seeking certain details about his acquisitions in PSTL, his relationship with Mr. P. S. Saminathan and Mr. N.C.Ravichandran (promoter/shareholder of PSTL), the agreement entered into with Mr. P.S. Saminathan, if any, for the *interse* transfer of shares, copies of his bank accounts and demat statements for the period January 2007 till December 2008, advances made to PSTL, if any and the details of his networth certificate and Income Tax Returns for the period 2006-07 and 2007-08, which were to be furnished within a period of fourteen days.

- ii. The contents of the forged letter issued to Mr. P.S. Saminathan were given wide publicity by media reports on December 21, 2008 (Sunday) and December 22, 2008 (Monday) stating that SEBI had ordered Mr. P.S. Saminathan, one of the promoters of PSTL to make an open offer (as stated above), for allegedly violating creeping acquisition norms. The closing share price of PSTL on December 19, 2008 was Rs.75.45/- at National Stock Exchange of India Limited (hereinafter referred to as NSE). The share price of PSTL shot up to Rs.83/- at NSE and Rs.82.90/- at Bombay Stock Exchange Limited (hereinafter referred to as BSE), on December 22, 2008, when the markets opened up. In the meanwhile,

PSTL informed (in the morning on December 22, 2008) BSE and NSE, that it had not received any communication from SEBI as published in the media with respect to the open offer (as mentioned in the forged letter). Subsequently, PSTL claimed to have received the said letter (forged letter purported to be issued by SEBI) at around 10.30 a.m. on December 22, 2008. Thereafter, Mr. P.S. Saminathan informed BSE and NSE about the receipt of the letter from SEBI. It was revealed by the courier company (Blue Dart) that they were instructed by the 'sender' to deliver the forged letter (though dated December 19, 2008) to PSTL only on December 22, 2008 (Monday). With respect to the letter issued to Mr. Nirmal Kotecha, it was claimed by Mr. Nirmal Kotecha that the purported letter was received at his residence by his wife on Saturday (December 20, 2008) through courier and that his wife was unable to recollect the name of the courier service. The preliminary analysis of the case by SEBI *inter alia* revealed the following:

- a. that there were fund transfers from and between Mr. Nirmal Kotecha and his close relatives (his mother, wife) and related/associated entities/persons etc.,
  - b. purchases made just before the forgery of the SEBI letters and sale of substantial number of shares of PSTL immediately when the markets opened on December 22, 2008 when the news of the impending offer to be made by Mr. P.S. Saminathan was made public.
  - c. Mr. Nirmal Kotecha offloaded almost his entire stake in PSTL at artificially inflated price levels on December 22, 2008 and benefited from the price increase in the shares of the company.
- iii. The above preliminary findings led to a *prima facie* inference that Mr. Nirmal Kotecha had played a key role in the forgery of the above mentioned SEBI letters dated December 19, 2008 and disseminated the

contents of the forged letter in order to manipulate the share price of PSTL and thereby benefit out of the said artificial price increase. Besides, it was *prima facie* found that there were entities and persons including KCSPL who had played a key role in facilitating Mr. Nirmal Kotecha in carrying out suspicious banking transactions, disguising his manipulative intent and gaining advantage from the forgery.

- iv. In view of the grave emergency that had arisen because of the forged letter (purported to have been issued by SEBI) which was sent to a promoter of PSTL and taking into consideration the fraudulent, abusive, manipulative and illegal activities committed by certain entities/persons to the detriment of the genuine investors and adversely affecting the integrity of securities market, it became necessary for SEBI as a regulator to immediately intervene in order to restore the confidence of the investors and to stop further harm to the securities market and the investors. The said manipulative conduct had resulted in substantial losses to investors, who were left holding stocks with little or no value. It *prima facie* emerged that Mr. Nirmal Kotecha was one of the major beneficiaries of the said manipulation and had masterminded the forgery. Therefore, with a view to protect the interest of investors and securities market from further damage, pending investigation and passing of final order and invoking powers under the Act, SEBI vide the said interim order had passed certain directions in the matter. One of the directions was restraining KCSPL from buying, selling or dealing in the securities market including in IPOs, directly or indirectly, till further directions.

7. In respect of the case against KCSPL, I find that the *prima facie* charge against it is that it had played a key role in facilitating Mr. Nirmal Kotecha in carrying out suspicious banking transactions, disguising his manipulative intent and gaining advantage from the forgery. The forgery of the letters purported to

be issued by SEBI and the manipulation that followed has already been explained in detail in the said interim order. KCSPL had submitted that the interim order has not made a single finding showing what the suspicious banking transactions were and that no details regarding the same have been furnished in the order. It further submitted that no allegation/averment/observation/finding was made by SEBI as to what its role was in facilitating Mr. Nirmal Kotecha. In this connection, I observe that the KCSPL was incorporated on July 20, 2007. As per the records available on the website of the Registrar of Companies (RoC), I find that Mr. Nirmal Narendra Kotecha, Mrs. Shweta N. Kotecha and Mr. Manilal Kotecha held 9,800 shares, 100 shares and 100 shares, respectively, as on March 20, 2007. There does not appear to be any change in the shareholding, as per the RoC website. However, in its reply, KCSPL stated that as on date of passing of the order, Mr. Nirmal Kotecha was neither a director nor a shareholder of KCSPL. As per Form - 32 filed by KCSPL with RoC, I find that Ms. Shweta Nirmal Kotecha had resigned from directorship of KCSPL with effect from March 03, 2008 and that Mrs. Veena Narendra Kotecha was appointed as the Executive Director with effect from the same date i.e. March 03, 2008. I find from Form – 23 AC filed by KCSPL with RoC that Mr. Nirmal Narendra Kotecha, Mr. Manilal Kotecha and Mrs. Veena Narendra Kotecha were the directors of KCSPL as on September 01, 2008 (the date when the Board of Directors met when the balance sheet as on March 31, 2008 was approved). From the Form – 32 filed with the RoC, I find that Mr. Nirmal Kotecha had resigned (as director) with effect from March 16, 2009 and that Mrs. Viral Dinesh Doshi, wife of Mr. Nirmal Kotecha has been appointed as the Executive Director with effect from March 17, 2009. Thus, it can be seen that during the relevant point on time (period when the forged letter was issued to Mr. P S Saminathan and the manipulation that followed during December 2008), Mr. Nirmal Kotecha was a director in KCSPL. It is also found that Mr. Nirmal Kotecha had offloaded almost his entire stake in PSTL on December 22, 2008 when the markets opened, at artificially inflated prices.

Thus, the plea that Mr. Nirmal Kotecha was not a director when the SEBI interim order was passed, would not absolve KCSPL of the charges leveled against it in the interim order. Even so, in a case like this, I have to observe that KCSPL despite being a separate legal persona is in reality nothing but a family concern as all the directors whether past or present are none other than the blood relatives of Mr. Nirmal Kotecha.

8. It is also very important to note that the finances of KCSPL are actually controlled by Mr. Nirmal Kotecha, despite his not being a director in KCSPL in view of his resignation. This is because, he still continues to be the sole authorized signatory for the bank account of KCSPL maintained with HDFC Bank, Matunga Branch. From the certified true copy of the resolution passed at the meeting of the Board of Directors of KCSPL held on October 06, 2007, it is observed that it has been resolved that an account in the name of the company be opened with HDFC Bank and that Mr. Nirmal N. Kotecha was authorized to do so and sign the necessary forms and necessary documents. It was resolved further that only Mr. Nirmal Kotecha is authorized to operate the said account singly without limit. As mentioned above, even after the resignation of Mr. Nirmal Kotecha, the bank account of KCSPL is still being operated by him. Therefore, KCSPL, is without any doubt being controlled by Mr. Nirmal Kotecha. Incidentally, another important fact that was revealed is that the entire paid-up capital of Rs.1,00,000/- of KCSPL was brought in by Mr. Nirmal Kotecha alone.

9. Though KCSPL may contend that it never dealt in securities or traded in even a single share, I find that from its Memorandum of Association (MoA) filed with RoC, that its 'main objects' clauses permits it to carry on the activities of commercial, financial and investment counseling to Indian and Foreign Companies, and to act as financial consultants, advisors and counselors in investments and in capital markets, in addition to providing underwriting and custodian services. An Investment counselor or financial advisor advises clients

as to value of the securities, or, as to the advisability of investing in, purchasing, selling or otherwise dealing in securities. In view of the same, KCSPL has to be construed to be a “person associated with the securities market”. Further, though, KCSPL may not have a demat account or a trading account and may never have traded in a single share, their directors Mr. Nirmal Kotecha and Mr. Manilal Kotecha (from the past set of directors) and Mr. Manilal Kotecha and Mrs. Viral Doshi (from the present set of directors) have demat accounts and have traded in the securities market.

10. I further note that Mr. Nirmal Kotecha resigned from the directorship of KCSPL only after the commencement of SEBI investigations in the scrip of PSTL and just a month prior to the issue of the SEBI ex-parte interim order dated April 23, 2009. From the replies given to SEBI by each of the present set of directors to the interim order, it appears that none of them were involved in the day to day affairs of KCSPL. I note that Mrs. Veena Kotecha in her reply had stated that she is a housewife, though also a partner in a medical store run by her husband in Cochin and has no connection either directly or indirectly with the securities market. Mr. Manilal Kotecha in his reply had stated that he is a senior citizen aged about 85 years. Mrs. Viral Doshi in her reply has also claimed that she is not a person associated with the securities market. As already said earlier, Mr. Nirmal Kotecha continues to handle the finances of KCSPL and also operates its bank accounts, and that entire paid-up capital of Rs.1,00,000/- of KCSPL had also been brought in by Mr. Nirmal Kotecha alone. Though on record, Mr. Nirmal Kotecha may have resigned from the directorship of KCSPL and also may not be a shareholder in KCSPL, he clearly is the sole person behind Kotecha Capital Services Private Limited. Hence, I find it justifiable to treat Mr. Nirmal Kotecha and KCSPL as one and the same. In such cases, the corporate veil needs to be lifted and what we find is that Mr. Nirmal Kotecha is solely the real person behind KCSPL. It is to be noted that the courts have been inclined to lift the corporate veil when it is felt ‘fraud’ or ‘mischief’

could have been perpetrated using the cover of the separate legal person that goes with a corporate entity. Further, the courts have also ignored the principle enunciated in the matter of Solomon vs. Solomon when it is used as a camouflage by fraudsters in their fraudulent and clandestine operations. In this context, it is pertinent to quote the following observation of the Hon'ble Supreme Court of India in Delhi Development Authority v. Skipper Construction Company Private Limited [AIR 1996 SC 2005]:

*“28. The concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned”.*

Further, the Hon'ble Securities Appellate Tribunal in a number of cases including the matter of Rajendra Mehta vs. Whole Time Member, SEBI (Appeal No. 79 of 2008, decided on June 24, 2009) has observed thus *“.....It is true that the companies are different legal entities but when allegations of market irregularities of the kind alleged against the appellant are made, it is open to lift the corporate veil and find out who is behind the transactions”.*

11. I also note that the bank account of KCSPL maintained with HDFC Bank, Matunga shows an initial credit of Rs. 1,00,000/- on October 24, 2007, which was received from Mr. Nirmal Kotecha's account maintained with the same branch. Subsequent to the same, except for one transaction of Rs. 6,000/- on January 19, 2008, I find that there is no transaction in this account except the deduction of Average Quarterly Balance (AQB) service charge levied by the bank for non-maintenance of the average balance of Rs. 1,00,000/- per quarter.

The bank account of KCSPL with HDFC, Matunga Branch does not show any payment of salaries to employees either, however, some entries in the account of Mr. Nirmal Kotecha point towards possible salary payments to some of the employees of KCSPL. Besides, as per the statement dated February 27, 2009 of Mr. Amol Kokane, his brother-in-law (late Mr. Sandeep Shripati Gavhane) was working for Mr. Nirmal Kotecha at 'Kotecha Capital', 1304, Regent Chambers, 208, Jamnadas Bajaj Marg, Nariman Point, Mumbai-400 021. Though, KCSPL in its reply dated May 15, 2009 and during the time of personal hearing had stated that Mr. Sandeep Shripati Gavhane was never its employee, Mr. Amol Kokane in his reply dated May 06, 2009 has reiterated the fact that his brother-in-law was employed as an accountant with KCSPL. Further, the fact that on February 27, 2008, when the process of recording of Mr. Amol Kokane's statement by SEBI officials was in progress at his residence, Mr. Nirmal Kotecha had come to Mr. Amol Kokane's residence and directed him not to disclose any material information to SEBI officials and only to record the statement to the effect that he does not have any knowledge of anything in the matter of PSTL, would ex-facie go to show that Mr. Nirmal Kotecha had nexus with Mr. Amol Kokane or that he had come to his residence as Mr. Amol Kokane was the relative of late Mr. Sandeep Shripati Gavhane. Besides this, Mr. Deepak Thakkar, the uncle of Mr. Nirmal Kotecha, in his statement made on March 31, 2009 had also stated that Mr. Sandeep Shripati Gavhane was working in the office of Mr. Nirmal Kotecha. This aspect is being examined by the investigation, which is in progress.

12. It has been brought out in the ex-parte interim order dated April 23, 2009, that Mr. Darshan Desai, who was the Branch Head of the Borivali (West) branch of India Capital Markets Private Limited, informed SEBI officials that one of the peons by the name Siddhartha, who worked with him for only 15 days had introduced him to Mr. Sandeep Shripati Gavhane, who in turn, introduced Mr. Amol Kokane and Mr. Nirmal Kotecha. It has further been brought out in the

ex-parte interim order dated April 23, 2009 that it *prima facie* emerged that Mr. Amol Kokane had facilitated Mr. Nirmal Kotecha in carrying out his fraudulent, abusive, manipulative and illegal activities, detrimental to the interests of investors and the integrity of the securities market. It *prima facie* also emerged vide the said ex-parte order that Mr. Nirmal Kotecha was one of the major beneficiaries of the said manipulation and has masterminded the forgery.

13. In view of the above facts, it appears that KCSPL may be a company created to serve as a front or cover for other companies by giving the appearance of being real, but, lacking the capacity to function independently other than carry out the personal designs of any single dominant partner as seen in this case. Further, the annual turnover of KCSPL at the time of opening of the bank account with HDFC Bank, Matunga Branch was shown to be Rs.300 crore. In view of the same, there is still a suspicion around the actual activities of the company, which needs to be cleared through investigation. There is also an apprehension that KCSPL may have been used or would be used to cover or serve as a façade for the illegal, fraudulent acts of persons behind the company if the same are against public interest. The wrongful activities of individuals behind KCSPL cannot be allowed to be protected and defended by the shield of a corporate entity. In light of the above, I am of the considered view that there is no justification to revoke the interim order against KCSPL at this stage, since the investigations are still in progress and it is necessary and essential that the interim order is continued till completion of investigation and further evidence is collected. It is, therefore, imperative that the restraint order dated April 23, 2009 against KCSPL is continued pending completion of investigation to protect the safety and integrity of the market. KCSPL would be given a fair and reasonable opportunity to defend their case in accordance with the principles of natural justice. In view of the above, I find it appropriate to confirm the directions issued against KCSPL vide ex-parte interim order dated April 23, 2009 in the matter of investigation in the scrip of

PSTL till further orders, taking into consideration the fact that the ultimate aim of the enabling legislation, the SEBI Act, is to do justice in public interest to protect investors in the securities market. I further *prima facie* find that my aforesaid decision is further strengthened by the following further acts of KCSPL which have come out in the investigation. I find that on April 27, 2009 i.e. immediately after the issue of ex-parte SEBI order dated April 23, 2009, almost the entire balance in the HDFC bank account of KCSPL (i.e. Rs. 85,000 out of the total balance of Rs. 85,603.90) has been transferred to the account of Skyz Financial Consultants Private Limited (hereinafter referred to as Skyz) held with HDFC Bank, Matunga itself. Skyz account with HDFC Bank, Matunga shows sudden huge inflow and outflow of funds to and from this account and to and from the accounts of Mr. Nirmal Kotecha, Nirman Management Services Private Limited, Nishwet Management Services Private Limited (all of whom form a part of the ex-parte interim order dated April 23, 2009) and also transfer of funds to the account of mother of Mrs. Viral Doshi (Mr. Nirmal Kotecha's wife). Further, it is seen that Skyz has a similar shareholding pattern, similar directorship pattern (past and present) and also exactly similar Main Objects clause as that of KCSPL. This clearly reflects the fact that KCSPL and Skyz are mirror images of each other. Here too, only Mr. Nirmal Kotecha is authorized to operate the bank account of Skyz singly without limit.

14. Given the unusual background of this case, in which a letter was forged and purported to be sent by SEBI to Mr. P. S. Saminathan directing him to make an open offer, publicizing the contents of the forged letter in the media and Mr. Nirmal Kotecha benefiting by the upper price movement it caused in the market, would itself indicate that the case is very serious indeed. One of the objectives of SEBI is to protect the interests of investors in securities and considering the large public participation in the securities market, investors' confidence in market integrity can only be sustained by ensuring that they are adequately protected. To achieve the said objective, SEBI had to urgently intervene whenever such market irregularities

happen to stop or prevent such manipulators from causing damage or to prevent further harm. Considering the unusual scheme adopted to manipulate the market in the present case, SEBI was justified in passing the said ex-parte order. Further, as the investigations in the matter are on going, it would be just and reasonable to continue with the ex-parte directions passed against KCSPLs till the completion of the investigations. While, doing so, I, place reliance on the following observation of the Hon'ble Securities Appellate Tribunal in the matter of Ketan Parekh [Appeal No. 2 of 2004, decided on July 14, 2006] -

***“Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn.”*** [Bold supplied]

Thus, I am convinced that the interim order against KCSPL needs to continue. Furthermore, needless to say the role or involvement of KCSPL in the manipulation will be reviewed after the investigations are completed when KCSPL will be heard afresh at the stage of the final disposal of the quasi judicial proceedings initiated against it in this case.

15. It was also argued that the interim order was in total disregard to the mandatory provision of Section 11 (4) of the Act shall either before or after passing such orders give opportunity of hearing to such intermediaries or persons concerned, and that the provisions of Sections 11B and 11 (4) of the Act do not give power or authority to SEBI to pass the said order. The interim directions issued in the present matter have been issued invoking the powers of Sections 11, 11(4)(b) and 11B of the 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. Further, in accordance with the *Proviso* to Section 11(4) of the Act, an opportunity of hearing has been afforded to the concerned persons after passing of the order. Section 11(4) empowers SEBI to take any of the measures stated therein, either pending investigation or inquiry or on completion of such investigation or inquiry. Therefore, SEBI is statutorily authorized to pass such interim orders and to afford a post-decisional hearing, which has been done in this matter. Further, it was contended that ‘*investigation*’ and ‘*enquiry*’ are two separate proceedings under the SEBI Act and not one and the same seems to be misconceived. The following observation of the Hon’ble Securities Appellate Tribunal in the matter of Karvy Stock Broking Limited vs. SEBI, is worth noting in that regard:

*“As is clear from the language of sub section (4) the measures that the Board may take or the orders that it may pass would be “either pending investigation or enquiry or on completion of such investigation or enquiry”. The word ‘investigation’ as used in section 11(4) has not been defined. It obviously refers to the investigation as ordered under section 11-C of the Act because sections 11-C and 11(4) were introduced simultaneously in the year 2002 when Parliament found that the Board prior to their introduction did not have statutory power to investigate. The word ‘inquiry’ too has not been defined in the Act though it finds mention in Sections 11, 11B, 11D and 15I. Under section 12(3) of the Act also, the Board holds an inquiry under*

*the inquiry regulations for imposing major or minor penalties including the penalty of suspension or cancellation of a certificate of registration. It is, thus, clear that an inquiry is held under sections 11, 11B and 11D, it is also held under section 12(3) and also under section 15I. Having regard to the scheme of the Act, the rules and regulations made thereunder we are clearly of the view that even though the inquiries contemplated by the Act may be held under different set of provisions, their object is one and the same viz. to help the Board to promote the development of and to regulate the securities market and protect the interests of investors. The inquiry under section 11 of the Act is held by the Board to find out what measures it needs to take to protect the interests of the investors and what steps it needs to take to promote the development of and to regulate the securities market.....*

*As already observed, the Board also causes an inquiry to be made by an inquiry officer under the inquiry regulations and/or by an adjudicating officer under Chapter VIA. It is during the pendency of any of these inquiries or on their completion that the Board may pass appropriate order – interim or final. This is clear from the language of section 11(4).”*

16. It was further contended that the power to issue directions conferred under Section 11B is restricted to persons referred to in Section 12 or to any company in respect of any matters specified in Section 11A. Section 12 deals with registration of stock brokers, sub brokers, share transfer agents etc. As KCSPL is neither a SEBI registered intermediary nor a person associated with the securities market in terms of Section 12, it does not come within any of the category of persons specified in Section 12. “Person associated with the securities market” is very wide in its connotation. Any person who has any association either directly or indirectly with the securities market shall be a person associated with the securities market. In this regard, the observation of

the Hon'ble Gujarat High Court in the matter of Karnavati Fincap Limited (1996 INDLAW GUJ 87) needs to be noted:

*"In ordinary meaning, the persons associated with the securities market would include all and sundry who have something to do with the securities market. It is to be noted that the securities market in the sense is not confined to stock exchanges only. The words "persons associated with the securities market" are of much wider import than intermediaries. "Persons associated with" denotes a person having connection or having intercourse with the other; in the present case that "other" with whom a person is to have connection or intercourse is the securities market".*

17. The modus operandi adopted by the alleged manipulators in the present case is one of a kind. They planned their action so meticulously that each one involved in the series of events in the said manipulation had a specific independent/combined role to play. The investigation conducted by SEBI so far prima facie revealed that Mr. Nirmal Kotecha had masterminded the forging of letters purported to be that of SEBI. One of such letters was in the nature of a direction from SEBI to Mr. P.S. Saminathan to make an open offer at the rate of Rs.250/- per share. The market price of the shares of PSTL on December 19, 2008 (the date of the forged letters) was very low at Rs. 75.45/- as compared to the price of Rs.250/- per share. This indicates that the letters may have been forged only in order to manipulate the market price of the shares of PSTL. It is also brought out in evidence that the said forged letter (sent to Mr.P. S. Saminathan) was couriered to him on December 20, 2008 (Saturday) with a specific instruction to deliver it only on December 22, 2008 (Monday). They also took steps to see that the news about such letters were published in the media on Saturday and Sunday so that on Monday, when the market opened up, there would be a substantial increase in share price of PSTL. Thus, the persons who were behind the forgery of the letters, ensured that the same was

delivered only on the next trading day (Monday) after having time for themselves to sufficiently publicise the contents of the forged letter through the media so as to attract investor interest. Needless to say, when such a price sensitive information (open offer (@ Rs.250/-) is made public, the innocent investors would purchase shares in the hope that they can offer such shares in the open offer and reap benefits. Unsuspecting investors would not be aware of what was actually happening in such a situation. Mr. Nirmal Kotecha, *prima facie* exploited this lack of information of the genuine investors. It is also brought by the investigation that Mr. Nirmal Kotecha sold substantial shares of PSTL on December 22, 2008. More pertinently, he sold substantial shares before 10.30 am before the denial made by Mr. P. S. Saminathan in respect of the receipt of the forged letter. I would not be doing justice to genuine investors for whose protection SEBI has been established if I were to hastily revise the earlier directions of SEBI against KCSPL even as the investigation is in progress. As a regulator of the securities market, it is the endeavour of SEBI to prevent market manipulation and to act proactively and ensure that the damage is controlled and further damage is prevented, whenever any manipulations or fraud are identified in the market. In his plan of execution, Mr. Nirmal Kotecha made use of various entities/persons including his close relatives (mother, wife etc.), his companies/associate entities (Kotecha Capital Services Private Limited/Nirman Management Services Private Limited/Nishwet Management Services Private Limited etc.) and persons like Mr. Rakesh Sharma, Mr. Rajesh Unnikrishnan, Mr. Amol Kokane, Late Mr. Sandeep Gavhane etc. Their actions have been planned and designed by Mr. Nirmal Kotecha. For his banking transactions, he used the bank accounts of his mother and wife and utilized their accounts for channeling the funds clearly with their active involvement. Though Mrs. Viral Doshi and Mrs. Veena Kotecha have contended that they did not have any role, it is evidently seen from their bank accounts that the transactions happened before, during and after the alleged market manipulation. These entities might have not been involved in the other acts that

served to build the structure and processes used in the manipulation. But that by itself will not absolve them from their responsibility when the whole picture is seen as one. There are other entities who played their role in various capacities taking part in forging letters, its publication, routing funds, offloading substantial shares at an artificial inflated price on December 22, 2008 etc. In a case like this, individual acts should not be isolated from the case; rather the focus should be on the case in its entirety to assess the ultimate goal of the manipulators. Otherwise, it may lead to an unacceptable situation where every player may take a plea that his or her role was restricted to a particular act and that he or she was not responsible in any manipulation. Therefore, at this stage, where the investigation in the matter is still continuing, I do not find this case a fit case to revoke the ad interim directions till the completion of investigation.

18. KCSPL has contended that not even a *prima facie* case has been made out to warrant the issuance of such an ex-parte order of serious consequences to it. In this regard, it is to be noted that a grave emergency had arisen because the forged letter (purported to have been issued by SEBI) was sent to Mr. P.S. Saminathan which resulted in an artificial upward movement in the share price of PSTL and only after taking into consideration the fraudulent, abusive, manipulative and illegal activities committed by certain entities/persons to the detriment of the genuine investors and adversely affecting the integrity of securities market, SEBI had to immediately intervene to restore the confidence of the investors and to stop further harm to investors from being committed by the persons, by way of an ad interim ex-parte order and directions were issued pending investigations and passing of final order. As already established above, Mr. Nirmal Kotecha and his close family members (wife/mother) are the directors in KCSPL and that Mr. Nirmal Kotecha is the person actually managing the affairs of the said entity, it was apprehended that Mr. Nirmal Kotecha would utilize it for covering up his activities and/or causing further

damage to the free and fair functioning of the stock market and the interests of the investors, the said entity was also restrained from dealing in the securities market. Mr. Nirmal Kotecha is also the signatory of the cheques issued by Kotecha Capital Services Private Limited. Further, the case has to be appreciated in the light of the fact that substantial losses were caused to investors who had purchased shares of PSTL on account of the media reports about the 'open offer' for Rs.250/- directed to be made by Mr. P.S. Saminatham, who now possesses shares of PSTL whose value has deeply depreciated.

19. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11, 11B and 11(4) of the Securities and Exchange Board of India Act, 1992, hereby confirm the ex-parte interim order dated April 23, 2009 in the matter of Pyramid Saimira Theatre Limited, against Kotecha Capital Services Private Limited.

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

**Place: Mumbai**

**Date: July 15, 2009**