WTM/KMA/IVD/97/07/2009

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 MRS. VEENA KOTECHA IN THE MATTER OF PYRAMID SAIMIRA THEATRE LIMITED

Date of Hearing: July 01, 2009

Appearance:

For Mrs. Veena Kotecha:	Mr. Shyam Mehta, Advocate
	Mr. Ankit Lohia, Advocate
	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 Mrs. Veena Kotecha not to buy, sell or deal in the securities market including in Initial Public Offerings (IPOs) directly or indirectly, till further directions as she was *prima facie* found to have played a key role in facilitating Mr. Nirmal Kotecha in carrying out suspicious banking transactions, carrying out and disguising his manipulative intent and gaining advantage from the forgery. 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. Thereafter, Mrs. Veena Kotecha, vide letter dated May 15, 2009, had filed her objections to the said order and *inter alia* submitted as follows:

a. That the directions issued by the said order had resulted in deprivation of her rights to carry on legitimate investment activities in the securities market;

b. 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 her and that the imminent urgency has not been explained to support the order; There is no emergent situation warranting such an ex-parte order, that simply stating that the order is issued as an emergent measure is not adequate, that the order should demonstrate that the situation was emergent warranting an ad interim order in her case;

c. That funds withdrawn by her from the bank have been linked to the actions of Mr. Nirmal Kotecha, without appreciating the possibility of alternate use of these funds and without providing any evidence to show that the funds were directly or indirectly used for transactions/ abnormal designs in the securities market;

d. That the order issued at this juncture is neither preventive, remedial or curative, since she has never dealt in the securities market for even a single share and that she does not have a trading or a demat account;

e. That the provisions of Sections 11B and 11 (4) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the Act) do not give power or authority to SEBI to pass the said order;

f. That the said order is in total disregard to the mandatory provision in Section 11 (4) of the Act, wherein SEBI shall either before or after passing such orders give opportunity of hearing to such intermediaries or persons concerned;

g. That she is neither a SEBI registered intermediary nor a person associated with the securities market in terms of Section 12 of the Act and hence do not come within any of the category of persons specified therein;

h. 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) and therefore the directions based on the *prima facie* view that she has violated the provisions of the PFUTP Regulations is untenable;

i. That she is necessarily a housewife and that she has no connection either directly or indirectly with the securities market;

j. That the order has not made a single finding showing what the suspicious banking transactions were and no details regarding the same have been furnished in the order. No allegation/averment/observation/finding or whisper thereof has been made by SEBI that the money withdrawn by her has been directly or indirectly been put in the securities market;

k. That it has not been shown in the order as to what loss would have been caused to the securities market, if she was allowed to continue trading in the market or how the interest of the investor would be affected if she was not debarred with immediate effect;

l. That an order of this nature which is based merely on surmise and conjectures, would adversely affect her and would besmirch her impeccable reputation and would also result in irreparable damage to her and to her standing in the society circles.

3. In view of her submissions/objections, Mrs. Veena Kotecha requested that the said order to the extent it applied to her, be reconsidered and the directions against her be withdrawn. She had also requested that an opportunity of personal hearing be given to her. Accordingly, an opportunity of

personal hearing was given to her on July 01, 2009. In the meanwhile, Mrs. Veena Kotecha filed an appeal against the ad interim ex-parte order dated April 23, 2009 in Appeal No. 88 of 2009 before the Hon'ble Securities Appellate Tribunal. The Hon'ble Tribunal, vide order dated June 17, 2009 disposed of the said appeal 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"*. Mr. Shyam Mehta, Advocate represented Mrs. Veena Kotecha and made submissions on her behalf before me on July 01, 2009. The learned counsel reiterated the objections/submissions made by Mrs. Veena Kotecha (vide letter dated May 15, 2009) and requested that the directions passed by SEBI against her be vacated at the earliest.

4. I have considered the objections filed by Mrs. Veena Kotecha, the oral submissions made by Mr. Shyam Mehta, learned counsel on her 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 Mrs. Veena Kotecha, 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 Mrs. Veena Kotecha.

5. Before, considering the issue, I would like to mention in brief, the circumstances which led to the passing of the ex parte order dated April 23, 2009 against various persons/entities including Mrs. Veena Kotecha -

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 2006-97 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 Mrs. Veena Kotecha 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 Mrs. Veena Kotecha from buying, selling or dealing in the securities market including in IPOs, directly or indirectly, till further directions.

6. Coming to the facts of the present proceeding, the *prima facie* finding in respect of Mrs. Veena Kotecha as per the ex-parte order dated April 23, 2009, among other issues, was:

a. That an amount of Rs. 25,00,000/- was transferred on August 22, 2008 from Mr. Nirmal Kotecha's account to his mother Mrs. Veena Kotecha's account;

b. That subsequent to the same, from Mrs. Veena Kotecha's account, three self withdrawals of Rs. 8,00,000/- each have been done on September 11, 12 and 15, 2008 respectively;

c. That on December 11, 2008, two credits of Rs. 4,00,000/- each were received in the account of Mrs. Veena Kotecha;

d. That thereafter again two cash withdrawals of Rs. 5,00,000/-and Rs. 4,00,000/- have been done on the very same day i.e. December 18, 2008;

e. That the modus operandi of cash withdrawals and deposits followed appeared to be similar to the one observed in the accounts of the connected entities from where funds were transferred to Mr. Amol Kokane's account and which were ultimately transferred to stock market through the stock broker, India Capital Markets Private Limited.

f. Also, that cash of high value (Rs. 5,00,000/- and Rs. 4,00,000/-) in two lots was withdrawn on the very same day i.e. December 18, 2008 i.e. just a day prior to the dispatch of the forged SEBI letter to Mr. P.S. Saminathan;

g. That the same modus operandi (withdrawing high value cash by keeping individual cash withdrawals below Rs 10,00,000/- to avoid triggering of Rules framed under the Prevention of Money Laundering Act, 2002 was observed in the aforesaid suspicious transactions and subsequently transferring the funds to Mr. Amol Kokane's account), has been adopted in the transfer of funds into and out of Mr. Nirmal Kotecha's account, as well as the accounts of his immediate relatives/ his related entities etc.

7. In reply to the said banking transactions mentioned in the order, Mrs. Veena Kotecha stated in her reply dated May 15, 2009:

a. That she had received Rs. 25,00,000/- from her son Mr. Nirmal Kotecha and that Mr. Nirmal Kotecha had transferred the said amount to her account since the bank officials had intimated that for withdrawing cash to the tune of Rs. 24,00,000/- they would require 5 to 7 days prior intimation and there would be some more formalities;

b. Out of the said Rs. 25,00,000/-, she had withdrawn Rs. 8,00,000/- each on September 11, 12 and 15, 2008; The said money was withdrawn by her since the same was to be handed over to Mr. Nirmal Kotecha; The amount so withdrawn was utilized by her son for various expenses of his marriage and renovation etc.;

c. That out of the said amount of Rs. 24,00,000/-, an amount of Rs. 3,00,000/- was also given back by her son to her, which was utilized for meeting her own personal expenditure;

d. That Rs. 8,00,000/- was received by her in her bank account with HDFC Bank on December 11, 2008, was from her bank account with Corporation Bank, Cochin in two tranches of Rs. 4,00,000/- each, and, that the same is not a cash deposit as indicated in the order;

e. That Rs. 9,00,000/- was withdrawn by her on December 18, 2008 in two tranches of Rs. 5,00,000/- and Rs. 4,00,000/- each. That the amount of Rs. 5,00,000/-was used for buying jewellery for her personal use. Her reply further reads as follows: *"I enclose herewith a copy of bills of jewellery purchased by me from…….as* ***Annexure C".*** *[However, no such bills were enclosed to the reply and the same was brought to the notice of Mrs. Veena Kotecha]. She stated that* an amount of Rs. 4,00,000/- was withdrawn by her for carrying out day to day household expenses and her personal expenses;

f. That the money received by her is taxed in the hands of her son. That except for receipt of money from her son's account and cash withdrawal by her, there is no allegation in the entire order to draw any inference against her;

g. That since the money was received in her account in August and was withdrawn only in the month of September, itself shows the money had been transferred into her account for genuine use and had nothing to do with the alleged transactions in the securities market;

h. That she had denied the allegation in the said order that the withdrawals of Rs. 8,00,000/- were made to avoid triggering of rules framed under the Prevention of Money Laundering Act, 2002. She has in her reply submitted that if her intention was to escape any regulatory trail, she would have refrained from withdrawing money in series of transactions of Rs. 8,00,000/-each which could arouse suspicion of any prudent banker.

i. That she is not aware if any reporting of her transaction was made by her banker and that had the banker found the transaction to be suspicious, they would have themselves reported the transactions carried out by her.

8. Before dealing with the submissions of Mrs. Veena Kotecha in respect of her banking transactions, I find, it necessary to carefully look at the fact that Rs. 1,25,00,000/- (approx.) was withdrawn by Mr. Nirmal Kotecha in cash around the end of August 2008 and middle of September, 2008. Mr Nirmal Kotecha first transferred the money in tranches of Rs. 25,00,000/- each to the accounts of his relatives (Mrs Veena Kotecha, Mr. Manilal Kotecha etc.) and his associate companies (Nirman Management Services Private Limited, Nishwet Management Services Private Limited etc.) followed by individual cash withdrawal below Rs.10,00,000/- by the persons/entities, which *prima facie* was utilized for the alleged market manipulations. Further, as has been explained

vide the said ex-parte order, the same modus operandi was observed in the accounts of other entities/ persons, from where the money was directly or indirectly transferred to Mr. Amol Kokane's account, and ultimately found its way into the stock market through the stock broker, India Capital Markets Private Limited. Vide the said ex-parte order, it was *prima facie* found that Mr. Amol Kokane had facilitated Mr. Nirmal Kotecha in carrying out fraudulent, manipulative and illegal activities, detrimental to the interests of investors and to the integrity of the securities market.

9. The fact that Mrs. Veena Kotecha had received Rs. 25,00,000/-in her bank account from her son, Mr. Nirmal Kotecha and the subsequent withdrawal of Rs. 8 lakh each on September 11, 12 and 15, 2008 is not disputed. The reason for such receipt of money, according to her was that the HDFC Bank, Matunga Branch, had intimated that for withdrawing cash to the tune of Rs. 24,00,000/-, they would require 5 to 7 days prior intimation and there would be some more formalities. The said contention is contrary to the information provided by the aforesaid bank to SEBI. In response to a specific query by SEBI as to whether the branch prohibits withdrawal of cash by an individual account holder in a day above a certain limit, the aforesaid bank confirmed that regarding cash payments, the bank does not prohibit customers from withdrawing any amount of cash, and that neither is there <u>any limit per day for withdrawal from individual account</u>, however, an intimation is required for withdrawals and that necessary due diligence is done. The bank has further stated that if the branch is unable to give the same immediately then the branch arranges by same day or latest by next day. In view of this clarification given by the bank, I find the explanation given by Mrs. Veena Kotecha in this regard to be a false statement. Besides, I find that the same explanation is also given by all of the persons/entities to whom Mr. Nirmal Kotecha had transferred funds from his account in lots of Rs. 25,00,000/- each out of the total cash of Rs.1,25,00,000/- withdrawn by him during the period between August 22, 2008

and September 15, 2008. During the personal hearing, the learned counsel for Mrs. Veena Kotecha had submitted that '*own money*' was transferred between the accounts and withdrawn and such transfers are not wrong. I am unable to accept such a plea. If the money was for the use of Mr. Nirmal Kotecha, what was the necessity of transferring the same to her account and later withdrawing it? As the records show, Mrs. Veena Kotecha did not withdraw the amount in a day. The amount of Rs.24,00,000/- was in fact withdrawn over 5 days (September 11 to September 15, 2008). In such circumstances, Mr. Nirmal Kotecha could have withdrawn the money on his own in tranches, if any such condition was insisted on by the bank for withdrawing such huge sum of money. In the facts of the case, the only inference that can be drawn is that Mr. Nirmal Kotecha wanted to conceal his identity in the entire series of transactions, by transferring funds to his mother and other related persons/entities from where the said funds were withdrawn and may have been utilized for his unfair and fraudulent transactions. In view of the same, it was inter alia observed that the related/associated entities including the Mrs. Veena Kotecha would have played a key role in facilitating Mr. Nirmal Kotecha in the alleged manipulation.

10. On a perusal of the bank account (with HDFC) of Mrs. Veena Kotecha, I note that the said account appears to have been opened on February 01, 2006. Till August 22, 2008 (the date on which 25,00,000/- was transferred by Mr. Nirmal Kotecha), there were no high value credits/debits in the account and the said account maintained a balance in the range of Rs.10,000/- to Rs. 14,000/-. The high value transaction in the said account is first seen only on August 22, 2008. Thereafter, there was a credit of Rs.8,00,000/- on December 11, 2008 and a debit of Rs. 9,00,000/- on December 18, 2008. What is pertinent is that the withdrawal of Rs. 9,00,000/- (in two tranches of Rs. 5,00,000/- and Rs.4,00,000/-) on December 18, 2008, was made just a day prior to the purported SEBI letters (which were forged). Therefore, the timing of the

withdrawal by Mrs. Veena Kotecha makes the transactions *prima facie* suspicious.

11. The contention that Mrs. Veena Kotecha had used Rs.9,00,000/- towards purchasing jewellery, household and personal expenses cannot be accepted as satisfactory documentary proof/evidence have not been presented before SEBI to prove her claim. Further, she submitted that she had withdrawn Rs. 9,00,000/- on December 18, 2008 in two tranches of Rs. 5,00,000/- and Rs. 4,00,000/-. According to her, she utilized Rs.5,00,000/- for buying jewellery for her personal use. In this context, she had in her reply mentioned that *"I enclose herewith a copy of bills of jewellery purchased by me from……as Annexure C".* However, the name of the jeweller was left blank in dots (……..).She also failed to submit the same despite bringing it to her notice. In the facts and circumstances, I am not convinced about her version. This gives an impression that Mrs. Veena Kotecha may not have used the money for the purposes she has claimed in her reply. Therefore, that the money so withdrawn by Mrs. Veena Kotecha may have been used by Mr. Nirmal Kotecha for his nefarious activities cannot be ruled out. Besides, the claims in respect of household and personal expenses, seems to be unusual as seen from the transactions in her bank (HDFC Bank) account statement as the balance seen in the said account prior to August 22, 2008 was nominal (in few thousands of rupees) since the date of opening of the account. There is no convincing reason that explains such kind of transactions. It is difficult to accept that a person's household or personal expenses would manifoldly increase all of a sudden. It is sans logic to me as to how a housewife's day to day cash expenses which consistently ranged around a few thousands rupees over a considerably long period of time (as seen from the HDFC bank account of Mrs. Veena Kotecha), could suddenly surge up to a few lakhs. No explanation for the same has been given in the reply submitted by her.

12. Mrs. Veena Kotecha further denied the suggestion in the ex parte order that the withdrawals of Rs.8,00,000/- each were made in order to avoid triggering of Rules framed under the Prevention of Money Laundering Act, 2002. It was submitted that, if her intention was to escape any regulatory trail, she would have refrained from withdrawing money in series of transactions of Rs.8,00,000/- each, which could have aroused suspicion of any prudent banker. HDFC Bank has clarified that there is no restriction in withdrawing Rs.25,00,000/-. However, the said money was not withdrawn in one tranche but was done in three tranches of Rs.8,00,000/- each. Thus, the admitted banking transactions of Mrs. Veena Kotecha are *prima facie* suspicious in the given facts and circumstances for the above reason too. On the other hand, SEBI had all the reasons to *prima facie* consider that Mr. Nirmal Kotecha manipulated the securities market as stated in the ex parte order dated April 23, 2009 and for achieving the said object he may have made use of various entities/persons one of whom may have been his mother. Mrs. Veena Kotecha contended that except for the receipt of money from Mr. Nirmal Kotecha's account and cash withdrawal by her, there was no allegation in the entire order to draw any inference against her and no negative inference could be drawn against her solely on the basis that she is related to a person against whom various allegations have been alleged in the order. I cannot accept the plea of Mrs. Veena Kotecha that she was implicated in the order, for the reason that she was the mother of the alleged manipulator. The action of SEBI is *prima facie* justified on the basis of the material available on record as on the date of the order. The suspicious nature and timing of the banking transactions seen in the account of Mrs. Veena Kotecha , as indicated above, would *prima facie* indicate her role in the scheme of the things. The said *prima facie* view is further fortified by the fact that Mrs. Veena Kotecha was unable to justify the transactions which took place in her account. On the basis of the available material on record, as the investigation in the matter is ongoing, I can only *prima facie* conclude that Mrs. Veena Kotecha would have facilitated Mr. Nirmal Kotecha in his

manipulative scheme. Besides, Mrs. Veena Kotecha tried to mislead SEBI by stating that HDFC Bank has a restriction on the withdrawal of Rs.25,00,000/-on a particular day and that one has to wait for 5 to 7 days to withdraw Rs.25,00,000/-. The said claim was found to be false. Besides, she is unable to produce any evidence to show that the withdrawals made by her were for her personal expenses or buying jewellery. In view of the above, the plea that Mrs. Veena Kotecha had *prima facie* not violated the provisions of Regulation 3 and 4 of PFUTP Regulations does not hold good. The manner of fund transfers to her account by Mr. Nirmal Kotecha and the subsequent cash withdrawals which were admittedly given back to Mr. Nirmal Kotecha before and during the period when the alleged manipulation had taken place and the absence of transactions of similar nature prior to the said period casts doubts on her bonafides in this regard. In the facts and circumstances, as brought out in the ex parte order and also in this order, I would not have any hesitation to hold that Mrs. Veena Kotecha may have *prima facie* aided Mr. Nirmal Kotecha in allowing him to use her bank account as a conduit for routing of funds for his ulterior motives.

13. In view of the above, it would be prudent on the part of the investigations to further investigate into the money trail of the cash amount withdrawn by Mrs. Veena Kotecha. Further, it is not that only Rs. 25,00,000/- was transferred by Mr. Nirmal Kotecha to his mother's account and she withdrew the money in three tranches of Rs. 8,00,000/- on three different dates. In order to appreciate the gravity of the situation, it is necessary to have a holistic picture of the cash withdrawals done by Mr. Nirmal Kotecha and by related/associate persons/ entities at his behest, in the scheme of things. The *prima facie* view is further substantiated by the fact that during the same period (i.e. the period when about Rs. 1,25,00,000/- was withdrawn by Mr. Nirmal Kotecha in cash, first by transferring the money to his related/ associate persons/ entities accounts), high value cash has been seen deposited in certain accounts out of the 230 accounts which were *prima facie* identified in the preliminary investigation and

were also mentioned in the ex-parte order and some of them may have been used for channeling those funds either directly or indirectly into the stock markets.

14. I would now proceed to deal with the other submissions of Mrs. Veena Kotecha. She contended that not even a *prima facie* case has been made against her to warrant the issuance of such an ex-parte order of serious consequences to her. I can only reject the said contention outright, in view of the findings made above in this order. Besides, the prima facie case against her which warranted the issuance of the ex-parte order had been explained in the said order. The only inference which can be drawn from the sequence of events narrated above is that Mrs. Veena Kotecha *prima facie* aided Mr. Nirmal Kotecha. Though, she took efforts to 'legitimize' the banking transactions, under the cover of the 'withdrawal restriction of HDFC' and 'personal expense/purchase of jewellery', it has turned out to be a false or unproved claim. Besides, only after being *prima facie* satisfied that her banking transactions and the accommodative manner in which the same was done, Mrs. Veena Kotecha was restrained from dealing in securities vide the ex-parte order. She further contended that there was no emergent situation warranting such an ex-parte order, that simply stating that the order is issued as an emergent measure is not adequate and that the order should demonstrate that the situation was emergent warranting an ad interim order. She had also contended that the order issued at this juncture was neither preventive, remedial or curative as she had never dealt in the securities market for even a single share and she does not have a trading or a demat account. As pointed out earlier, the ex-parte order dated April 23, 2009 has already made a *prima facie* case against Mrs. Veena Kotecha. The immediate need for passing of such an ex-parte order was explained in detail in the interim order. 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. Therefore, the said contentions of Mrs. Veena Kotecha are without any merit.

15. Mrs. Veena Kotecha has also argued that the interim order was in total disregard to the mandatory provision of Section 11 (4) of the Act that SEBI 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. There is no merit in this contention. Needless to say, SEBI has to regulate and ensure orderly transactions in the market, and to deal with exigencies and requirements in the market. It has been empowered with the duty to protect the investors' interest. 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 Mrs Veena Kotecha after passing of the ex parte 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, as was done in this case. Further, she has contended that '*investigation'* and '*enquiry'* are two separate proceedings under the SEBI Act and not one and the same seems to be misconceived. In this regard, I note the following observation

of the Hon'ble Securities Appellate Tribunal in the matter of Karvy Stock Broking Limited Vs. SEBI:

> *"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. Mrs. Veena Kotecha has further contended that her banking transactions are outside the purview of the PFUTP Regulations. Though she may contend the same, the persons responsible for any transaction, either banking or off-market transactions may be guilty of market manipulation, if their acts had contributed to any unfair or fraudulent market practices or in any manipulation in the securities market. One can contribute to the manipulation of the securities market, indirectly too, without dealing in securities. In such a situation the focus should not be on the isolated act of the individual but on the combined act/effect of such acts of various persons involved in the said scheme taken as a whole. Therefore, her contention in this regard carries little weight.

17. It was further contended that the power to issue directions conferred under Section 11B of the Act is restricted to persons referred to in Section 12 or to any company in respect of any matters specified in Section 11A. According to Mrs. Veena Kotecha, she is neither a SEBI registered intermediary nor a person associated with the securities market in terms of Section 12, she does not come within any of the category of persons specified in Section 11B. This is a tenuous plea that does not merit consideration. The expression "*person associated with the securities market*" specified in Section 11B of the Act 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".

18. As seen above, the conduct of Mrs. Veena Kotecha in receiving funds from her son Mr. Nirmal Kotecha and withdrawing the same to give it back to Mr. Nirmal Kotecha, the withdrawal of Rs.9,00,000/- on December 18, 2008 just a day prior to sending the forged letter purported to be sent by SEBI, the magnitude of the fraud and manipulation that has been perpetrated in the securities market, does not justify any revocation of the ad interim directions passed against Mrs. Veena Kotecha as she is *prima facie* found to have accommodated and aided Mr. Nirmal Kotecha who is *prima facie* culpable for the aforesaid forgery which resulted in the manipulation of the share price of PSTL. While judging the conduct of parties alleged to be involved in a market manipulation, the case has to be seen in its whole and individual conduct should not be viewed in isolation. Furthermore, when multiple entities are linked together in a well orchestrated scheme of manipulation, it would give rise to an absurd situation where one or two entities central to this plot alone would be held responsible for the manipulation.

19. Taken the peculiar way 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, would itself indicate that the case is very serious indeed. 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 Mrs. Veena Kotecha till the completion of the investigations. While, doing so, I, place reliance in 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]

20. The modus operandi adopted by the alleged manipulators in the present case is one of its kind. They planned their action so meticulously that each one involved in the series of entire 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. The very nature of such forgery would indicate the manipulative intent of the parties involved therein. 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). Those who

anchored the entire episode also ensured that the news about such letters were published to 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 alleged manipulators ensured that the forged letter to Mr. P.S. Saminathan 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 unsuspecting investors may purchase shares in the hope that they can offer such shares in the open offer and reap benefits. These investors would not be aware of what was actually happening in such a situation, as had transpired in the present matter. Mr. Nirmal Kotecha, *prima facie* exploited the lack of information of such genuine investors. Prima facie, Mr. Nirmal Kotecha and others not only undermined the faith of investors but also tried to mislead the Regulator by forging letters as stated above in this order. 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 on the said date before the denial made by Mr. P. S. Saminathan in respect of the receipt of the forged letter. 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 stop further damage, whenever any manipulations happen. In his plan of execution, Mr. Nirmal Kotecha appears to have made use of various entities/persons including his close relatives (mother and wife), his companies/associate entities (Kotecha Capital Services Private Limited/Nirman Management Services Private Limited/Nishwet Management Services Private Limited) and persons like Mr. Rakesh Sharma, Mr. Rajesh Unnikrishnan, Mr. Amol Kokane etc. *Prima facie*, the specific role of those individuals had been designed by Mr. Nirmal Kotecha and he steered the scheme of things to achieve his desired objective of manipulation. For banking transactions, Mr. Nirmal Kotecha made use of the bank accounts of his mother, wife and others and utilized their accounts for channeling the funds obviously with their active

involvement. Though, Mrs. Veena Kotecha contended that she did not have any role, it is evidently seen from her bank account that the transactions in her bank account happened just before, during and after the alleged market manipulation. This *prima facie* arouses suspicion. She might have not been involved in the other events in the manipulation. That by itself will not absolve her of her responsibility, given the whole picture. There are other people 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 and to see 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 did not extend to any overt act which ultimately resulted in the alleged manipulation. Therefore, at this stage, where the investigation in the matter is in progress, I do not find this a fit case to revoke the ad interim directions till the completion of investigation. I am convinced that the interim order against Mrs. Veena Kotecha needs to continue. Her role or involvement in the whole manipulation will, needless to say, be reviewed again after the investigation is over.

21. 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 Mrs. Veena Kotecha.

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

Place: Mumbai

Date: July 15, 2009