

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

AGAINST MR. KISHORE S. JAIN, MR. JAYANTILAL R. JAIN, MR. SHRIPAL J. SHAH, MR. RAJESH PRAKASHCHANDRA JAIN AND MR. PRAVIN KUMAR DEVICHAND JAIN IN THE MATTER OF PUBLIC ISSUE OF PYRAMID SAIMIRA THEATRE LTD.

Date of Hearing: November 06, 2008 and November 12, 2008

Appearances:

For Noticees: Mr. Kishore S. Jain
Mr. Jayantilal R. Jain
Mr. Shripal J. Shah
Mr. Rajesh Prakashchandra Jain, and
Mr. Pravin Kumar Devichand Jain

For SEBI: Mr. S. Ramann, Officer on Special Duty
Mr. Sanjay Puro, Deputy General Manager
Mr. Saroj Kumar Sahu, Manager
Mr. N. Murugan, Legal Officer, and
Mr. Mohamed Rahaz, Legal Officer

ORDER

UNDER SECTIONS 11B AND 11(4) (b) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

1. Pyramid Saimira Theatre Ltd. (hereinafter referred to as “PSTL” or “the Company”) made an initial public offer (IPO) of 84,44,000 equity shares through 100% book building. The issue opened on December 11, 2006 and closed on December 18, 2006. The allotment was made on January 02, 2007.

2. Securities and Exchange Board of India (SEBI) conducted an investigation into allotment of 4,22,200 shares (5% of the issue size) reserved for the employees (‘employee category’). The investigation *inter alia* revealed that a total of 13 persons had applied for shares under the employee category. Six persons applied for a total of 6,540 shares while seven others applied for a total of 4,26,060 shares. These seven others obtained 98.5% of the shares allotted under this category, received the shares in the demat accounts with the same depository participant, sold the shares through the same broker soon after listing and made a total unlawful gain of Rs. 2,31,94,612. The investigations also revealed that these seven persons, in collusion with PSTL, donned the cloak of ‘employee’ on the eve of the public

issue for 4 to 6 months with the sole purpose of receiving shares under the employee category. Five of them abandoned the cloak after making applications but before the allotment, whereas two others did so immediately after the allotment. The details of shares applied for and received on allotment by these seven persons and the duration of their ‘employment’ are as under:

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

3. Accordingly, vide notices dated February 22, 2008, SEBI called upon these seven persons and the Company to show cause as to why suitable directions under sections 11B and 11(4) of the SEBI Act, 1992 read with regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter to be referred as “PFUTP Regulations”), including directions to disgorge the amount/profit made by them from sale of shares received under the employee category, should not be issued to them.

4. I note that PSTL, two of the seven persons, namely, Mr. Sanjay Jhabak and Mr. Dheeraj Jain, and the remaining five persons applied to SEBI for the settlement of these proceedings through consent orders. While SEBI has settled the proceedings through consent orders in respect of the two persons, it declined to settle the proceedings against the remaining five persons and the Company. This Order, therefore, deals with the proceedings in respect of the following remaining five persons (hereinafter referred to as “the noticees”):

- a. Mr. Kishore S. Jain (Noticee 1)
- b. Mr. Jayantilal R. Jain (Noticee 2)
- c. Mr. Shripal J. Shah (Noticee 3)
- d. Mr. Rajesh Prakashchandra Jain, (Noticee 4), and
- e. Mr. Pravin Kumar Devichand Jain (Noticee 5).

5. No replies to the show cause notices (SCNs) were received. SEBI sent reminders dated March 28, 2008 to the noticees requiring them to reply to the SCNs by April 5, 2008. In

response, the noticees, vide separate letters dated April 4, 2008, sought time for filing replies to the SCNs. SEBI, vide separate letters dated April 17, 2008, granted time to the noticees up to April 25, 2008. The noticees sought further extensions of time vide their separate letters dated April 23 2008. SEBI once again granted an extension of time as sought, with a reminder, vide separate letters dated April 30, 2008, to furnish replies by May 6, 2008. However, the noticees vide their separate letters dated May 5, 2008, again sought extension of time. Vide letters dated September 12, 2008, SEBI advised them to submit the reply by September 25, 2008. The noticees filed separate replies dated September 29, 2008 broadly denying the charges.

6. Mr. Jayantilal R. Jain, Mr. Shripal J. Shah and Mr. Rajesh Prakashchandra Jain attended the personal hearing on November 6, 2008 and Mr. Kishore S. Jain and Mr. Pravin Kumar Devichand Jain attended the personal hearing on November 12, 2008 before me. Their submissions were along the lines of their respective replies to the SCNs.

7. After the hearing but before the order could be passed, the noticees, vide applications dated November 25, 2008, applied to SEBI for settlement of the pending proceedings through a consent order. SEBI, however, vide letter dated March 23, 2009 declined to settle the matter as the terms offered were not appropriate. The noticees, vide their separate letters dated April 9, 2009, offered revised consent terms. I note that the noticees had the option of seeking settlement through consent before the hearing. They did not do so. They did it after the hearing. They, however, did not offer appropriate terms. After SEBI declined to settle the matter on such terms, they have now offered revised terms. I think, quasi-judicial proceedings like this cannot be held in abeyance indefinitely to enable the noticees seek settlement of the matter by offering revised consent terms again and again. Therefore I, now proceed to dispose of the matter on merits.

8. There is no disagreement about the allotment of shares under the employee category to the noticees and the profits made from sale of such shares. What needs to be determined is: did these five noticees don the cloak of 'employee' of the Company with a view to acquire shares under the employee category. This, in turn, requires determination of three issues, namely, the evidence of employment, the likelihood of their employment, the understanding between the Company and the noticees. I am proceeding to examine these three issues.

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

(a) Attendance: The noticees no. 1 and 2 have stated that they never signed the register. The noticees no. 4 and 5 have stated that there was no attendance register. Noticee no. 3 has stated that he used to sign the attendance register daily. However, the on-site investigation of SEBI has found that the Bangalore office, where these noticees were stated to be posted, did maintain a register for recording attendance. The register did not even have the names of the noticees let alone their signatures. This makes it clear that none of the noticees ever attended the office.

(b) Salary: The noticees have claimed that they were paid salary by cash from Bangalore office. The investigation has found that the employees of the Company were paid salary by cheques. The Company (Mr. Venkatakrishnan, Supervisor at Bangalore office) has stated in his statement dated October 23, 2007 that the salary was paid to the noticees in cash from the Chennai office of the Company. The vouchers indicating payment of salary by cash did not have serial numbers, dates or the names/initials of persons checking and approving such payments. I find it difficult to rely on such vouchers to conclude that the salary was actually paid to the noticees. I also find no justification for a special dispensation to pay salary in cash to the noticees only and, that too, from Chennai office. Thus, I find that the noticees did not receive salaries.

(c) Provident Fund: Vide letter dated March 27, 2007, the Company requested Employee Provident Fund Organization (EPFO), Chennai to enroll the noticees as EPF members. I note that this followed SEBI's letter dated March 26, 2007 to the company seeking PF details for its investigation. I also note that the letters dated March 27, 2007 and April 25, 2007 of the Company to EPFO indicate two different sets of PF account numbers of the noticees. The noticees no. 2 and 5 have stated that since the money accumulated in PF was not so much, they did not seek refund. The noticees no.1, 3 and 4 have stated that they asked for refund of PF on various occasions but the same was not paid. They, however, could not produce any evidence of having asked the company for refund of PF balance. Thus, I find that the Company did not apply for PF accounts for the noticees when they were in 'employment'. It started arranging PF accounts for the noticees after it received SEBI's letter. The two different sets of numbers for the same noticees cast doubt on reliability of the records of the Company in this regard. I find difficult to believe that the noticees who take up

job for Rs.7,500 per month can forgo their balances in PF accounts. Hence, I conclude that the noticees did not have PF accounts.

(d) Location: All the noticees have claimed to have worked in Bangalore office and three of them have claimed to have stayed in the guest house of the Company at Bangalore. They have described the locations of office and guest house as under:

Notice e No.	Office Building	Guest House
1	Building of total 5 floors, Office at 1 st Floor	Building of total 5 floors, Guest house at 5 th floor – total 6 rooms.
2	Building of total 3 floors, Office at 2 nd Floor	N.A. (Stayed with his friends).
3	Building of total 3 floors, Office at 2 nd Floor	Building of total 5 floors, 1 big hall and 1 small kitchen.
4	Building of total 3 floors, Office at 2 nd Floor	Guest house at 5 th floor- 3 rooms, 1 kitchen. Distance between office and guest house is 5 kms.
5	Building of total 3 floors, Office at 1 st Floor	N.A. (Stayed with his friends).

The on-site inspection by SEBI has revealed that the Bangalore office was located on the ground and first floors of the building. The guest house was situated at around 15 kms. away from the office. The contradiction in the statements as well as ignorance about the location of office and guest house only strengthens the doubt that the noticees were not working and living at Bangalore.

From the above, it is clear that the noticees did not attend the office. Some of them were not even aware of the location of the office. The vouchers relating to payment of salary to the noticees are not authentic. They did not have PF accounts when they were in ‘employment’ nor did they claim the balance in PF accounts. These make it clear that the noticees were not employees of the Company. They donned the cloak of ‘employee’ of the Company.

10. **Likelihood of Employment:** One would look at qualification, experience and background to determine whether the noticees could have taken employment in the Company.

(a) Background: It is observed that the noticees were well settled in Mumbai for a long time and were carrying on established textile business. All, but notice No.4, were having an annual turnover of about Rs.1 crore each. The banking transactions of the noticees, as stated below, for December, 2006 indicate that they were high net worth individuals:

Notice No.	Bank Name	Account No.	Total Debit (Rs.)	Total Credit (Rs.)
1	OBC	00551010015310	2,29,33,327	2,27,67,242
2	SBBJ	51010505647	59,20,487	52,41,000
3	UBI	3174020120026801	42,02,375	43,52,759
4	UBI	331530401040284352	65,47,056	64,32,917
5	SBBJ	61006393976	5,26,557	6,20,294

The noticees had the following DP accounts with different Depository Participants (DPs) at the relevant time:

Noticee No.	No. of Accounts in CDSL	No. of Accounts in NSDL	Total
1	14	0	14
2	3	3	6
3	6	1	7
4	2	2	4
5	6	1	7

It is surprising that all the noticees bearing similar family names, having similar business background, good financial standing and residing normally in Mumbai would seek jobs at a company located in a far off place Chennai and subsequently accept posting at Bangalore, all for a paltry salary ranging from Rs.7,500 per month to Rs.15,000 per month. It is very unlikely that the noticees would apply for and accept 'any job' at such low levels of compensation at around the same period of time only to quit within days of each other.

(b) Qualification and Experience: The advertisements, the job applications of the noticees and the qualifications/experience as sought by the Company *vis a vis* actual qualification / experience of the noticees are as under:

Noticee No.	Position advertised	Job applied for	Position offered	Compensation / month	Required experience as per advertisement	Qualification and experience stated in bio-data of the applicant
1	Accounts officer	Cashier-cum-Manager	Cashier	Rs.12,500	ICWAI/CA-Inter/M.Com with Experience	B.Com, Stated as involved in family textile business-3 yrs.
2	Accounts officer	Any Office Job	Senior Accountant	Rs.15,000	ICWAI/CA-Inter/M.Com & Experience	B.Com, Stated as involved in family textile business-10 yrs.
3	Nil	Any Suitable	Junior Accountant	Rs.12,500	Not required	B.Com, Stated as involved in family

Notice No.	Position advertised	Job applied for	Position offered	Compensation / month	Required experience as per advertisement	Qualification and experience stated in bio-data of the applicant
		Job	nt			textile business-5 yrs.
4	Officer-Theatre Admn.	Ticketing Manager	Theatre Co-ordinator	Rs.7,500	Graduates with experience or non-graduate with thorough experience in film distribution	12th, Stated as involved in family textile business-8 yrs.
5	Officer-Theatre Admn.	Theatre Manager	Junior Executive	Rs.10,000	Graduates with experience	B.Com, Stated as involved in family textile business-11 yrs.

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

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

Given the back ground of the noticees, it is very unlikely that they would take up jobs, for which they do not have required qualification and experience, for less than six months only at a paltry salary at a location far away from home. Coupled with my observations at Para 9, I conclude that they were not employees of the Company and they could not have become so.

11. **Understanding between the Company and the noticees:** The employment is a relationship between two parties. The noticees can don the cloak of an employee only if the employer cooperates with or there is an understanding between the two.

(a) Probation: Only permanent employees are eligible to apply for shares in the employee category. As per Company policy, one becomes permanent employee after a probation period of 6 months. However, the noticees had a probation period of only 3 months. If the Company had abided by normal probation period, the noticees would not have become eligible for applying for shares under the employee category.

(b) Waiver of Notice Period: It is observed that the requests for resignation were immediately granted without awaiting a month's notice (as stated in the appointment letter) or pay in lieu of the notice period from any of the noticees.

(c) Work Supervision: From the statements of the noticees, I find the noticees visited Mumbai regularly. However, there is no record to indicate that they were on leave or tour to Mumbai. They were paid full salaries in cash from Chennai office, despite the admitted fact of frequently going on leave. The Company failed to put the names of noticees on the attendance register maintained at the Bangalore office and permitted the noticees not to sign it. It appointed the noticees for specific functions even though they did not have relevant qualifications and experience.

(d) Uniform job applications: The job applications of the noticees contained scanty details. The advertisements issued by the Company were for recruitment of senior management, experienced, technically qualified personnel whereas the noticees either applied for any suitable job or for jobs that were not advertised. Despite this, the Company offered the job to the noticees.

From the above facts, I find that the Company extended preferential treatment to the noticees in terms of the probation period. It also waived the notice period for resignation. It allowed the noticees to visit Mumbai regularly while paying them full salary without any deduction. More importantly, it offered the jobs to them it did not advertise for, and offered the jobs for which the noticees did not have required qualification and experience. It is thus evident that there was clear understanding among the noticees themselves and between the noticees and the Company.

12. A summary of facts about the 'employment' of the noticees with the Company, based on the show cause notices and replies of the noticees is presented below:

Sl. No.	Particulars	Noticee No.				
		1	2	3	4	5
1	Profession before job	Textile Business				
2	Profession after the job	Textile Business				
3	Place of residence before job	Mumbai				
4	Location of job	Bangalore				
5	Place of residence after job	Mumbai				
6	Residence in Mumbai	Sumer Tower, Mazgaon	Sumer Tower, Mazgaon	Vithalwadi, Kalbadevi	Sumer Tower, Mazgaon	Pawapuri Appts., Mazgaon
7	Did he apply for a job advertised?	No				
8	Job applied for	Cashier-cum-Manager	Any Office Job	Any Suitable Job	Ticketing Manager	Theatre Manager
9	Similar job advertised by the company on two occasions during October 2005 and April 2006	Accounts officer	No advt.	No advt.	Officer-Theatre Admn.	Officer-Theatre Admn.
10	Does he have the qualifications for the job he applied for?	No				
11	His qualifications	B.Com	B.Com	B.Com	12 th Std.	B.Com
12	Qualification required for job	ICWAI/CA-Inter/M.Com with Experience	Not required.	Not required.	Graduates with experience or non-graduate with thorough experience in film distribution	Graduates with experience
13	Position offered	Cashier	Senior Accountant	Junior Accountant	Theatre Co-ordinator	Junior Executive
14	Did he get the job he wanted?	No				
15	What was monthly salary?	Rs.12,500	Rs.15,000	Rs.12,500	Rs.7,500	Rs.10,000
16	When did he join?	13.08.2006	20.07.2006	06.08.2006	10.08.2006	12.07.2006
17	When did he resign?	21.12.2006	24.12.2006	8.01.2007	10.01.2007	30.12.2006
18	What is the duration of employment?	4+ Months	5 + Months	5 + Months	5 Months	5+ Months
19	Period of Issue	11.12.2006-18.12.2006				
20	Date of Allotment	02.01.2007				
21	When did he apply for shares?	11.12.2006	12.12.2006	11.12.2006	11.12.2006	12.12.2006
22	No. of shares applied for	50,040	48,000	18,000	22,020	48,000
23	Application Form Number	9599816	9599815	9599812	9599814	9599813
24	No. of shares received on allotment	48,837	46,846	17,567	21,490	46,846
25	When did he sell the shares?	08.01.2007	08.01.2007	08.01.2007	08.01.2007	08.01.2007
26	Depository participant who held and the broker who sold the shares for him?	Hem Securities Ltd.				
27	Profits made from sale (Rs.)	34,36,031	30,91,836	11,96,313	14,30,491	31,95,834
28	Did he sign attendance register as other employees do?	No	No	Yes	No	No
29	Did he get salary by cheque, as other employees get?	No				
30	Where did he stay during the period?	Guest house	With friend	Guest house	Guest house	With friend
31	Did Company obtain provident fund account for him?	Yes, after the noticees quit the jobs and after SEBI issued letters asking for the details of PF of the noticees.				
32	Did he collect provident fund dues?	No				
33	Was his period of probation reduced?	Yes				
34	Was the notice period for resignation waived?	Yes				

13. From the table, I find that all the noticees were from Mumbai carrying out similar family owned business activity. All of them come from a good financial background. They do not have the qualification and experience required for the jobs. Despite this, the Company offered them and they accepted the jobs at Chennai / Bangalore for a meager salary. The Company relaxed the requirements of attendance, probation period for confirmation, notice period for resignation, etc. for the noticees. They held jobs for about six months and they held the shares they received under employee category for 3 days. All of them acted in a similar manner in terms of application for shares, application for jobs, resignation from jobs, account with the same depository, trades through the same broker – these indicate commonality and complicity among them. From the above facts and circumstances, it is evident that the noticees were not interested in their jobs /salary at PSTL, but only wanted to corner the employee quota shares to the detriment of the common investors.

14. I also note that the five noticees were allotted a total of 1,81,586 shares. The noticees immediately upon listing, sold all the allotted shares in the market through a common broker, Hem Securities Ltd. at BSE within a span of three days and collectively made a profit of around Rs.1,23,50,505 as under:

Notice e No.	No. of Shares allotted	Value of Share allotted (Rs.)	Date of listing	Date of Sale	Value of the Share sold (Rs.)	Gains (Rs.)
1	48,837	48,83,700	5/1/2007	8/1/07	83,19,731	34,36,031
2	46,846	46,84,600	5/1/2007	8/1/07	77,76,436	30,91,836
3	17,567	17,56,700	5/1/2007	8/1/07	29,53,012	11,96,313
4	21,490	21,49,000	5/1/2007	8/1/07	35,79,490	14,30,491
5	46,846	46,84,600	5/1/2007	8/1/07	78,80,434	31,95,834
Total						1,23,50,505

15. The attendant circumstances as well as the conduct of the noticees, as elucidated above, amply demonstrates their motive and intent to corner shares of PSTL under employee category to the detriment of the common investors. Since the IPO was oversubscribed 15.5 times in the retail category, 28.09 times in the HNI category, 17.18 times in the QIB category and only 0.015 times in the employee category (excluding the applications made by the noticees and two other persons), the noticees benefited at the expense of other retail shareholders. But for the artifice employed by the noticees, there would have been a shortfall in the employee category. Clause 6.8.3.2 (i) of Chapter VI of DIP Guidelines, 2000 prescribes that unsubscribed portion of any category may be added to any other category. Therefore, if the noticees had not applied in the garb of the employees, there would have been an under

subscription of 4,15,660 shares in the employee category, which would have gone to other categories such as retail investors, high net worth individuals and qualified institutional buyers, which had over subscription.

16. In the background of the above findings, the issue that needs to be determined is as to whether donning the cloak of employees to corner the employee quota shares is in violation of Regulation 3(b) and (c) of PFUTP Regulations, 2003. In this regard, it is pertinent to reproduce the relevant provisions as under:

“Reg 3 Prohibition of certain dealings in securities: No person shall directly or indirectly-

(a).....

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;”

17. I find that the noticees donned the cloak of the employees with manipulative intent and cornered the shares under the employee category of the IPO of the PSTL. This artifice employed by them is prohibited under regulation 3(b) and (c) of the PFUTP Regulations. Therefore, I hold that the noticees have violated regulation 3(b) and (c) of PFUTP Regulations and necessary enforcement action is required to be taken against them for such violations and also for the disgorgement of the ill-gotten gains with interest.

18. **Order**

Having regard to the above, in order to protect the interest of investors and the integrity of the securities market, I, in exercise of the powers conferred upon me under section 19, read with sections 11(1), 11B, and 11(4) (b) of the Securities and Exchange Board of India Act, 1992, hereby issue the following directions:

a) The following persons are hereby restrained from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market, directly or indirectly, for a period of three years:

1. Mr. Kishore S. Jain (PAN No. AAAPJ6114G)
2. Mr. Jayantilal R. Jain (PAN No. AAKPR0370C)
3. Mr. Shripal J. Shah (PAN No. ABEPS4247E)
4. Mr. Rajeshkumar P. Jain (PAN No. AAKPJ9536E), and
5. Mr. Pravin Kumar Jain (PAN No. ACBPJ8397G).

b) They shall disgorge the unlawful gains made by them as under:

Sl. No.	Names of the Noticee	Amount (Rs.)
1	Mr. Kishore S. Jain	34,36,031
2	Mr. Jayantilal R. Jain	30,91,836
3	Mr. Shripal J. Shah	11,96,313
4	Mr. Rajesh Prakashchandra Jain	14,30,491
5	Mr. Pravin Kumar Devichand Jain	31,95,834

c) The noticees shall also pay an interest @20% on the above mentioned unlawful gains from the date of sale of the shares so allotted till the date of disgorgement. The noticees shall pay the said amount by way of demand draft drawn in favour of “Securities and Exchange Board of India”, payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to Mr. S. Ramann, Officer on Special Duty, Integrated Surveillance Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, “G” Block, Bandra Kurla Complex, Bandra (East), Mumbai-400 051. The amount received from the notices shall be remitted to the Consolidated Fund of India.

d) In case the aforesaid amount is not paid within the specified time, the noticees shall be restrained from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market, directly or indirectly, for a further period of seven years, without prejudice to SEBI’s right to enforce disgorgement.

19. A copy of this order shall be served on all recognized stock exchanges and depositories to ensure that the noticees are not allowed to undertake the transactions prohibited above.

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

PLACE: MUMBAI
DATE: June 25, 2009

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