

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

Show Cause Notice No. SEBI/PSTL/AK/190939/2010 dated January 14, 2010 issued to Pyramid Saimira Theatre Ltd., Mr. P. S. Saminathan and Mrs. Uma Saminathan in the matter of Pyramid Saimira Theatre Ltd.

Date of Hearing: August 23, 2010

Appearances:

For Noticees:

1. Mr. P. S. Saminathan, Managing Director, Pyramid Saimira Theatre Ltd.
2. Mrs. Uma Saminathan, Promoter, Pyramid Saimira Theatre Ltd., and
3. Mr. M. R. Venkatesh, Partner, GSV Associates.

For SEBI:

1. Mr. Kumar Desai, Advocate
2. Dr. Pradnya Saravade, Executive Director
3. Ms. Anita Kenkare, General Manager
4. Mr. Madhusudhanan S., Asstt. General Manager
5. Mr. Amitesh Kumar, Asstt. Legal Adviser
6. Mr. Nitesh Bhati, Manager, and
7. Mr. Kirtikumar Jadhav, Legal Officer.

ORDER

Under Sections 11, 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 read with Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 and Regulation 107 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009

1. Vide a common show cause notice dated January 14, 2010 (SCN) issued to Pyramid Saimira Theatre Ltd. (PSTL), Mr. P. S. Saminathan, promoter and the then Chairman and Managing Director of PSTL, and his wife Mrs. Uma Saminathan, co-promoter of PSTL, it is alleged that PSTL inflated its profits and revenues by fictitious entries in its accounts, disclosed the same in quarterly and annual results for the financial year 2007-08 and thereby misled the public in their investment decisions. It is also alleged that PSTL allotted convertible warrants to Mr. Saminathan on preferential basis and allotted equity shares to Mrs. Saminathan upon conversion of such warrants without consideration towards the issue of warrants and allotment of shares. It is further alleged that that PSTL did not co-operate with the investigation by failing to produce various documents and records required by investigation despite summons and did not maintain certain books of accounts. The SCN, therefore, alleges that the noticees violated Section 12A of the SEBI Act, 1992 and regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2) (a), 4(2) (b), 4(2) (d), 4(2) (e), 4(2) (f), 4(2) (g), 4(2) (k) and 4(2) (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations') and provisions of Clause 13.1.2.3 (a) and (b) of the SEBI DIP Guidelines, 2000, as saved by the relevant provisions of the SEBI (Issue of Capital and Disclosure

Requirements) Regulations, 2009 ('ICDR Regulations'). The SCN called upon the noticees to show cause as to why appropriate directions under Sections 11, 11B and 11(4) of the SEBI Act, 1992 read with regulation 11 of the PFUTP Regulations, 2003 and regulation 107 of the ICDR Regulations be not issued against them.

2. PSTL, vide letter dated February 4, 2010 sought time to submit reply to the SCN. The noticees, vide letter dated March 3, 2010, submitted a joint reply on the allegations relating to issue and conversion of warrants. They appeared for a personal hearing on August 23, 2010 and made oral submissions. At the hearing, they claimed that PSTL received Rs.14.55 crore on October 15, 2007 from a proprietary concern of Mrs. and Mr. Saminathan and not from a group entity of PSTL, as alleged in the SCN. They undertook to provide within a week the documentary evidence in support of receipt of the amount from the proprietary concern. They, however, did not provide any documentary evidence despite reminders. Instead, two of the noticees, namely, Mrs. and Mr. Saminathan made a written submission vide an e-mail dated December 06, 2010 which did not have any mention about this amount. I have carefully considered the SCN, the reply, the oral and written submissions of the noticees, the oral submission of the learned Advocate for SEBI as well as other material available on records, and accordingly proceed to dispose of the proceedings.

3. The noticees have made two preliminary issues:

3.1 The noticees have submitted that under Section 11C of the SEBI Act, 1992, SEBI can initiate an investigation only if it has reasonable ground to believe that securities are being dealt in a manner detrimental to the investors or the securities market. The noticees have not dealt in securities and hence there is no reasonable ground to believe that securities have been dealt in a detrimental manner. Further, the investigating authority has power to investigate dealings in securities, not the accounts of a company. The investigation order does not cover accounts within the scope of investigation. Hence the investigation is illegal and without jurisdiction and the consequential SCN is without sanction of law. I, however, find that Section 11C allows SEBI to initiate an investigation if it has reasonable ground to believe that either securities are dealt in a detrimental manner or any person associated with the securities market has violated any of the provisions of the SEBI Act, 1992 or the rules or the regulations made or directions issued by the Board thereunder. I find from the SCN as well as the interim order dated April 23, 2009 which was passed pending investigation in the matter that the securities have been dealt at artificial prices based on false disclosures and this is detrimental to securities market and investors, and PSTL, which is a listed company, has violated provisions of the SEBI Act, 1992 and the PFUTP Regulations. I find from the records that competent authority has taken various factors into account for his belief while ordering investigation on January 22, 2009. It is not open for me to determine if the competent authority had reasonable

ground to believe unless it is proved to be unreasonable by the noticees. Further, I find that under Section 11C, an investigation authority can investigate the affairs of persons associated with the securities market. The affairs would necessarily include the accounts of such person. I find from records that SEBI had initiated an investigation into buying, selling and dealing in shares of PSTL vide its order dated January 22, 2009 and while doing so, it called upon the noticees to provide certain documents relating to income / revenues of PSTL. Since the noticees did not co-operate with the investigation, SEBI ordered verification of books of accounts of PSTL on July 1, 2009. Hence I find that the investigation covers the books of accounts of PSTL. Therefore, the investigation as well as the consequential SCN is within the four corners of law.

3.2 The noticees have submitted that they cannot be charged under Section 12A which basically deals with intermediaries and they are not covered under the said section. Similarly, they have stated that they cannot be charged under PFUTP Regulations, as they have not dealt in shares of PSTL. I, however, find that Section 12A prohibits any person from employing manipulative and deceptive devices. This Section is not limited to intermediaries, as claimed by the noticees, and includes any person, including the noticees. Further, PFUTP Regulations prohibit a person from employing any manipulative or deceptive device in connection with purchase or sale of securities or engaging in any act which operates as fraud or deceit upon any person in connection with dealing in securities. The SCN alleges various accounting irregularities and false disclosures which operate as fraud on investors dealing in shares of PSTL. It is not necessary that the fraudster itself has to deal in securities to attract PFUTP Regulations. It is enough if it has committed the fraud which has the potential to induce others to deal in securities. I, therefore, find that Section 12A covers the noticees within its ambit and PFUTP Regulations cover their allegedly illegal activities.

4. As regards inflated profits and revenues, the noticees have stated that SEBI is not an expert body on accounts and the investigation into accounts of PSTL cannot be conducted by students of political science who are working with SEBI, but by an independent audit firm. SEBI's refusal to go ahead with audit by independent audit firm indicates its bias against the noticees. Since the SCN is based on investigation of accounts of PSTL by SEBI, the noticees would not respond to the allegations in the SCN and would not provide the relevant records to the investigation authority. They have, however, stated that it is the prerogative of PSTL to maintain accounting records in a manner fit to the business exigencies and SEBI has no power to draw any inference in this regard. I find that the noticees wish to dictate how a statutory authority, which is authorized under the law to conduct investigations, would conduct investigation. Unfortunately, this privilege is not available to the noticees under the law. Refusal to conduct investigation in the way the noticees desire no way indicates bias on the part of a statutory authority. Besides the allegations about competence of SEBI

officials to investigate into affairs of a company is not in good taste. I find that though the noticees have repeatedly committed to provide the records and agreements to investigation authority and sought time for the purpose, they did not provide complete records despite summons issued under the law. Their failure to provide the necessary documents to the investigation authority not only amounts to non-cooperation with investigation in breach of law, but also gives a strong indication that they are trying to hide something which, if disclosed, would go against them or there are no records, as alleged by SEBI. Similarly, they sought time to reply to the SCN, but their reply did not cover accounting related charges. They merely responded that it is their prerogative to maintain the accounting records in the manner to fit business exigencies. I, however, find that the charge alleged in the SCN is fictitious entries in the books of accounts, which is definitely not warranted by business exigencies. To a suggestion if they would produce records before me to refute the accounts related allegations, they replied in negative. The refusal to respond on merits to the accounts related allegations in the SCN or produce records even before me only indicates that the noticees have nothing to say in the matter.

5. I find from the SCN that for the financial year 2007-08, total revenue of Rs.749.30 crore included an income from theatres of Rs.549.58 crore as under:

(In Rs. crore)			
Region	From PSTL Theatres	From Non-PSTL Theatre	Total Revenue from Theatres
Tamil Nadu	303.46	41.51	344.97
Andhra Pradesh	74.66	62.04	136.70
Karnataka	45.86	7.60	53.45
Kerala	12.95		12.95
Others	0.28	1.23	1.52
Total	437.21	112.38	549.58

Own theatre income Rs.303.46 crore from Tamil Nadu region included 11 consolidated credit entries for Rs.244 crore with corresponding consolidated debits to 'Theatre Collection Receivables Account'. This account did not show any income from April, 2008 onwards. The journal vouchers in respect of these entries did not carry any narration such as daily collection report number, name of theatre, etc. The receivables were adjusted against cost of content, transferred to advance / security deposit account or remained unrealised. The receivables account continued to have consolidated entries. As on 31st March, 2008, the total receivables of PSTL from Tamil Nadu region was Rs.38.58 crore. Out of this, Rs.2.19 crore was outstanding against 162 theatres and the balance Rs.36.39 crore was outstanding in one account only which did not contain the theatre-wise break-up. Similarly, the entire amount of Rs.75 crore from own theatres in Andhra Pradesh was accounted by a single journal voucher which did not have any narration. PSTL did not provide theatre wise daily collection reports, theatre-wise break up and other supporting documents in support of these

consolidated entries or journal vouchers, despite assurance to provide the same. None of these has been disputed by the noticees. This leads to inevitable conclusion that these revenues were never earned by PSTL; these are fictitious income booked to inflate the revenues and profits. PSTL disclosed this inflated figures in its annual report for 2007-08 and thereby misled the investing public.

6. I find from the SCN that PSTL disclosed to exchanges on January 30, 2009 that it had entered into agreement with 802 theatres as on June 30, 2008. Out of 802 agreements, PSTL could show only 257 original agreements to SEBI officials. These have not been disputed by the noticees. This leads to inevitable conclusion that the balance 545 agreements never existed. Probably the revenues accounted against these 545 agreements have been entered as consolidated entries in the accounts. I further find that there was no payment for security deposit in respect of the agreements. The fictitious revenues have been converted to 'theatre collection receivables' which, in turn, have been converted to 'security deposits'. For example, PSTL booked receivables of Rs.84.77 crore against income in Tamil Nadu region and converted the same into security deposits. Similarly, it booked receivables of Rs.57.58 crore against income in Andhra Pradesh region and converted the same into security deposits. Therefore, the security deposits are not genuine, but were created to hide the theatre receivables in the balance sheet, since outstanding receivables for a period of six months had to be compulsorily disclosed in its annual report. Therefore PSTL made a false corporate announcement to the effect that it had entered into agreements with 802 theatres and thereby misled the investing public.

7. It has been alleged in the SCN that PSTL issued 36,40,000 convertible warrants to Mr. Saminathan in its board meeting held on October 22, 2007 without receipt of subscription @10% of the issue price of Rs.310 amounting to Rs.11.28 crore. As per the auditor's certificate dated April 9, 2009, an amount of Rs.11.28 crore had been received on October 12, 2007. As per bank account statements of PSTL, no such amount had been received by PSTL on October 12, 2007. However, there was receipt of Rs.14.55 crore on October 15, 2007 from another PSTL entity, namely, Pyramid Saimira Production Limited (PSPL). The payment for subscription could not have been received before board decision to allot warrants. There is no receipt of Rs.11.28 crore in the accounts of PSTL. The amount of Rs.14.55 crore has been received from another entity of PSTL. Hence the SCN alleges that no money has been received towards subscription of the warrants. The noticees have responded that the issue of warrants was approved by board on September 1, 2007 and approved by shareholders on September 29, 2007 and hence the subscription money has been after that date. Further, the subscription money has been paid by Pyramid Saimira Productions (PSP), which is a sole proprietorship firm and has no connection with PSTL or its group. Hence the

subscription money for issue of warrants has been received by PSTL. I, however, find from the annexure No. V to the SCN that the amount of Rs.14.55 crore had been received from PSPL and not from any proprietary concern. The noticees were advised at the hearing to produce records in support of payment of Rs.14.55 crore by PSP to PSTL. They agreed to do so within a week. They have not done yet, though they have filed a written submission dated December 6, 2010, which has no mention of payment by PSP. Further, there is no reason for Mr. Saminathan to pay Rs.14.55 crore to PSTL when he was liable to pay only Rs.11.28 crore. I, therefore, conclude that PSTL allotted warrants to Mr. Saminathan without receiving the subscription amount.

8. It has been alleged in the SCN that PSTL allotted 14,85,000 shares on conversion of warrants on March 5, 2009 to Mrs. Saminathan. As per records and the auditor's certificate, an amount of Rs.41.43 crore had been received before the date of conversion from various third parties. Since the amount could not have been received before the conversion and, that too, from third parties, the SCN alleges that PSTL did not receive the amount towards allotment of shares to Mrs. Saminathan. The noticees have responded that law permits flow of consideration from third parties. In the instant case, the consideration has flown in on instructions of Mrs. Saminathan and on her account. Further, law contemplates the consideration to flow in prior to or on the date of allotment of security. Accordingly, the consideration has come before the allotment of shares. I am satisfied with the explanation of the noticees in this regard and hence this charge is not established. However, the noticees could not provide any evidence of gift or otherwise transfer of warrants from Mr. Saminathan to Mrs. Saminathan. In any case, since the subscription amount was not received on issue of warrants, the issue of warrants and their subsequent conversion is illegal.

9. I find that the SCN alleges that PSTL did not maintain certain books of accounts and the noticees did not co-operate with the investigation. However, it has not charged them for violation of any provision of law. Nor the noticees have responded to these allegations. I, therefore, do not take notice of these allegations.

10. The noticees, Mrs. and Mr. Saminathan, have submitted in their written submission dated December 6, 2010 that in any case, PSTL is under the process of winding up and the right person to represent PSTL is the official liquidator. I note that the official liquidator had not taken over PSTL, when the SCN was issued, the reply to SCN was filed and the matter was heard. PSTL has replied to the SCN and appeared before me for the personal hearing. Hence any further representation of PSTL in this proceeding does not arise.

11. Section 446 of the Companies Act, 1956 deals with proceedings against companies under liquidation. Section 446(1) of the Companies Act, 1956 reads: "*When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be*

commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the [Tribunal] and subject to such terms as the [Tribunal] may impose." I note that SEBI proceedings are certainly not 'suit'. The question is whether it will come within the meaning of 'other legal proceeding'. Perusal of the relevant judgments of various courts and the provisions of SEBI Act under which the present proceedings have been initiated lead to the conclusion that the present proceedings will not fall within the meaning of 'other legal proceedings'. The Hon'ble Kerala High Court in the matter of **B. V. John and Ors. vs. Coir Yarn and Textile Ltd.**¹ held as under:

"In my opinion Section 446 of the Companies Act can have no application to proceedings pursuant to a reference under Section 10 of the Industrial Disputes Act. Giving the term, "other legal proceedings" appearing in Sub-section 1 of that section, the wide meaning given to the same term in the corresponding section, Section 171 of the 1913 Act in Governor-General-in-Council V. Shiromani Sugar Mills Ltd. (in liquidation) 1946 AIR (PC) 16, and not confining it by an ejusdem generis construction to proceedings analogous to a suit, I still think that to come within the scope of this section, the proceeding must be in the nature of an action against the property of the company. To put it somewhat differently, the proceeding must be for the enforcement of something in the nature of personal right against the assets of the company and not one in vindication of a public interest...."

The Hon'ble Kolkata High Court in the matter of **Official Liquidator, High Court, Calcutta Vs. Commissioner of Income Tax, West Bengal**² held as under:

"....If the proceeding against the company in liquidation be such as not to affect by itself the assets and properties of the company in liquidation and be of such a nature which the Court, notwithstanding the exclusive jurisdiction conferred on it by Sub-section (2) of Section 446, is not in a position to entertain or dispose of, leave of Court under Section 446 of the Companies Act will not be necessary to commence or continue such proceeding against the company in liquidation and such proceedings cannot be construed to be included within 'the other legal proceeding' referred in Section 446(1) of the Companies Act 1956."

I note that the directions contemplated under this order shall not affect by itself the assets and properties of PSTL. Further, SEBI has the exclusive jurisdiction to pass such directions conferred on it by a special statute, namely, SEBI Act. Such directions are sought to be issued in the interest of the investors and securities market. I am, therefore, of the view that the present proceedings against PSTL can be continued without the leave of the Court and concluded in accordance with law.

12. In view of the above, I find that:

12.1 PSTL inflated its profits and revenues by fictitious entries in its accounts, disclosed the same in quarterly and annual results for the financial year 2007-08 and thereby misled the public in their investment decisions. It also made false corporate announcements regarding agreements with

¹ 1960 (30) Comp Cas 162

² AIR 1970 Cal 349

theatres. Thus it violated the provisions of violated Section 12A of SEBI Act, 1992 and regulations 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(e), 4(2)(f), 4(2)(k), 4(2)(r) of the PFUTP Regulations. PSTL also allotted convertible warrants to Mr. P. S. Saminathan on preferential basis without consideration towards the issue of warrants and thereby violated Clause 13.1.2.3 (a) and (b) of the SEBI DIP Guidelines, 2000, as saved by the relevant provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

12.2 Mr. Saminathan, being MD, promoter and member of the audit committee of PSTL, is responsible for all the acts of omission and commission of PSTL. He, therefore, violated Section 12A of the SEBI Act, 1992, Regulations 3 (b), 3 (c), 3 (d) and 4(1), 4(2)(e) and 4(2)(r) of the PFUTP Regulations and Clause 13.1.2.3 (a) and (b) of the SEBI DIP Guidelines, 2000, as saved by the relevant provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

12.3 In concert with Mr. Saminathan, Mrs. Saminathan managed to receive 14,85,000 PSTL shares on conversion of illegally allotted warrants and thereby violated Clause 13.1.2.3 (a) and (b) of the SEBI DIP Guidelines, 2000, as saved by the relevant provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

13. The fictitious entries in the books of accounts with a view to paint a rosy picture about the financial health of the company, disclosure of the inflated financial position and false corporate announcements mislead the investing public and constitute worst kind of fraud on the part of the company, management and promoters. The issue of share warrants to promoters without receiving the consideration constitutes worst kind of breach of trust of the investors. It is necessary to guard the integrity of market and the safety of investors against the entities responsible for these fraudulent activities and protect the investors who have fallen prey to their design.

14. I note that SEBI, vide order dated November 10, 2009, has directed PSTL *inter alia* to restrain from dealing in securities in any manner whatsoever or accessing the securities market directly or indirectly for a period of seven years. Further, the appeals filed against this order have been dismissed by the Hon'ble Securities Appellate Tribunal and the Hon'ble Supreme Court vide orders dated April 7, 2010 and July 16, 2010 respectively. I also note that the official liquidator has been appointed as provisional liquidator in the winding up petition filed in the matter of PSTL. In view of these, no useful purpose would be served by issuing any direction under this proceeding against PSTL which would have otherwise been issued

15. Therefore, in exercise of the powers conferred upon me under Section 19 read with Sections 11, 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 and regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market)

Regulations, 2003 and Regulation 107 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, I hereby:

- (a) restrain Mr. P. S. Saminathan (Permanent Account Number: ABHPS7396D and DIN: 00001162) from buying, selling or dealing in securities in any manner whatsoever or accessing the securities market, directly or indirectly, and from being a director in any listed company for a period of ten years from the date of this order;
- (b) direct Mr. P. S. Saminathan to make a public offer through a merchant banker to acquire shares of PSTL from public shareholders by paying them the value determined by the valuer in the manner prescribed in Regulation 23 of the SEBI (Delisting of Equity Shares) Regulations, 2009 and acquire the shares offered in response to the public offer, within three months from the date of this Order;
- (c) direct BSE to facilitate valuation of shares to be purchased as at (b) above, and compulsorily delist PSTL, if the public shareholding reduces below the minimum level in view of aforesaid purchase.
- (d) restrain Ms. Uma Saminathan (Permanent Account Number:AAXPU0535F) from buying, selling or dealing in securities in any manner whatsoever or accessing the securities market, directly or indirectly, and from being a director of any listed company for a period of five years from the date of this Order.

16. A copy of this Order shall be served on all recognized stock exchanges and depositories to ensure that the direction given in Para 15 above are strictly complied with.

17. This Order shall come into force with immediate effect.

DATE: December 23, 2010
PLACE: MUMBAI

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