

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**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

In respect of :

Sr.No.	Noticees	PAN
1	Shivgurunathan	Not Available
2	Nirmal Kotecha	AEZPK2016H

In the matter of Pyramid Saimira Theatre Limited.

1. On the basis of investigation carried out by Securities and Exchange Board of India (hereinafter referred to as 'SEBI') in the scrip of Pyramid Saimira Theatre Ltd. (PSTL or the company), a common show cause notice (SCN) dated January 13, 2010 was issued to Shivgurunathan and Nirmal Kotecha (collectively referred to as 'noticees'), among others alleging that PSTL inflated its revenues and profits by fictitious entries in its accounts, disclosed the same in quarterly and annual accounts for the financial year 2007-08 and thereby misled the public in their investment decisions.

2. Shivgurunathan was Vice President, Finance and Chief Financial Officer (CFO) of PSTL and Nirmal Kotecha was director of PSTL at the relevant time. Therefore, the SCN accordingly alleged that the noticees have violated Section 12A of SEBI Act, 1992 and Regulation 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 SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (PFUTP 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 be not issued against them.

3. The SCN issued to Shivgurunathan could not be served at his last known address at “G1, 1252, Pushp Raag, 19th Main Road, Anna Nagar (W), Chennai, 600040” and in view of the same, the SCN was published on the SEBI website under the head “Enforcement- Unserved Summons / Notices”. Shivgurunathan failed to submit any reply to the SCN. As the first hearing notice sent to Shivgurunathan was undelivered, another opportunity of hearing was granted to Shivgurunathan on March 15, 2018 by newspaper publication. Neither any reply was received nor did the noticee Shivgurunathan appear on March 15, 2018. In view of the same, I am convinced that sufficient opportunities have been granted to Shivgurunathan and that he is not keen to avail any opportunity of hearing in this regard. I further note that the noticee has not even filed any written reply/submission to the SCN. In view of these facts and circumstances, I deem it appropriate to decide the matter *ex-parte* requesting him on the basis of material available on record.

4. Nirmal Kotecha filed reply dated June 01, 2010 in which he *inter alia* submitted that:-

- a) He was inducted as a director on June 28, 2006 and was never involved into the day to day business affairs of the Company. The Board Directors had never vested any authority and/or power to him to perform any executive act. Thus, he had only been associated with the Company as a Director in a Non-Executive capacity;
- b) He was not associated with any of the group companies in any capacity;
- c) During his tenure he had not executed any business for and on behalf of the company;
- d) He had attended only five board meetings of the company during his tenure of 2 years and 5 months;
- e) He was primarily located in Mumbai, while the company had majority operation in southern part of the country more specifically in and around Chennai. In view of the huge distance between his place of abode and the business location of PSTL, he did not have any first hand ground experience or knowledge of the activities of the Company as far the areas of operation are concerned;
- f) He belonged to a different operational industry of finance and securities and had negligible experience of the day to day working and running of the media industry. Thus, most of the operations of the company were alien to him and hence he did not look into the day to day operation of the company.
- g) He never had any occasion to sign any document for the Company as he was never authorised in that behalf by the Board of Directors.
- h) He was not related/known to the auditors/key management persons/directors/

secretaries/ any other employees in any capacity except as the director of the company.

- i) After resigning from the board of the company on November 17, 2008, he did not have any link / connection with the company or any of its directors.
- j) He had not gained anything from the activities of the company either directly or indirectly.

5. Considering the facts and circumstances of the case, an opportunity of personal hearing was granted to Nirmal Kotecha on February 9, 2018. Mr. Shyam Mehta, Senior Counsel along with Mr. Ankit Lohia, Advocate, along with Nirmal Kotecha and Advocates from Mindspright Legal (hereinafter referred as the “ARs”) appeared on behalf of Nirmal Kotecha and made submissions.

- ARs submitted that the noticee was a non-executive director of the company from June 02, 2006 to November 17, 2008. They further submitted that the noticee attended only five board meetings of the company during his tenure of 2 years and 5 months. During this period, there was only one meeting in which the Books of Accounts were adopted by the company.
- ARs submitted that the noticee suffered losses because on January 25, 2008, he purchased 2,26,554 PSTL shares, from the open market at a price of Rs. 334.27 per share and on June 20, 2008 sold 13,70,000 at a price of Rs. 250 per share.
- ARs relied upon the SEBI order in the matter of Amazan Capital Limited for showing the liability of non-executive director. They also referred to the dissimilarity of the noticee's case and the Judgment of Supreme Court of India in the matter of N. Narayanan, a co-noticee in the matter. They submitted that N. Narayanan was a whole time director, taking part in day to day activities of the company and he pledged shares and thus derived higher price from the accounting fraud. All these features are lacking in the case of noticee.
- In reply to a query regarding sale of shares to P.S Saminathan at a price less than the purchase price, ARs submitted that P.S Saminathan wanted to increase his stake in the company and requested all promoters including the noticee, to sell their shares to him. They submitted that the weighted average price of purchase for the noticee is approximately Rs. 11 and he made profit by selling the shares of PSTL.
- In reply to a query regarding the involvement of noticee in the deliberation of PSTL board, noticee accepted that he received the agenda papers of the board meeting during the period of his directorship but he found nothing suspicious in them though the net sales, total income and expenditure and net profit quadrupled between March 31, 2007 to December 31, 2007.

6. During the personal hearing on February 9, 2018 Nirmal Kotecha also filed additional reply *inter alia* submitting that :-

- Noticee was an investor dealing in the finance and securities markets for the last sixteen years. He had invested in both listed and un-listed companies. In the past, he had funded various un-listed companies by investing in their equity, thus participating and supporting the companies with real potential to grow their business.
- He had invested as a private equity investor in PSTL. His association as an investor with the Company initiated before its listing. He had invested substantial funds in the PSTL and even after PSTL came out with an IPO in 2007, he wanted to continue holding the shares held by him and did not want to sell the shares to any other person.
- To give representation to his shareholding, the Noticee was appointed as a non-executive director of PSTL and his role in PSTL was of non-independent non-executive director with a view to keep himself aware about his investment and the Company in which he has made an investment. Accordingly, he was never vested with any authority or powers by the Board of Directors of the Company and did not ever have any role in day to day affairs of PSTL.
- Later during the year, due to major global financial crisis, the stock markets became weak worldwide and the noticee being an active market participant and as all market participant review their investment strategy from time to time, he had decided to reduce his overall investments and PSTL being one of the many companies in his portfolio, he decided to reduce his exposure therein as well.
- Since the deal of selling shares with Saminathan was not concluded between November 19, 2008 and December 01, 2008, the noticee decided to sell further shares on November 28, 2008 and December 01, 2008
- On December 21, 2008, the noticee learned about the news that SEBI had directed Mr. Saminathan to make an open offer. The Noticee realized that the order of SEBI would be troublesome for Mr. Saminathan as he was already under financial pressure and his woes would be increased by the impending open offer.
- Therefore, the noticee, looking at the financial position of Mr. Saminathan, continued reducing his position and sold shares of PSTL between October 2008 and January 2009. It is pertinent to note here that Mr. Saminathan had pledged all the shares held by him to various banks and was in no financial position to comply with what the noticee believed to be SEBI's direction to make an open offer and felt that Mr. P. S. Saminathan was likely to be declared as

defaulter. During this period, Noticee also decided to quit from the Board of PSTL and accordingly resigned as a director on November 17, 2008.

- It can be seen from the SCN that there is no specific averment, allegation or statement against the Noticee in respect of the alleged violation by PSTL of various rules and regulations of SEBI.
- The SCN proceeds to treat the noticee at par with director on executive capacity who were involved in day to day affairs of PSTL and the noticee has been wrongly painted with the same brush. The allegations of SEBI levelled against PSTL are general in nature without any specific details as to the role played by noticee despite him being a director in a non-executive capacity who was not in charge of any of the affairs of PSTL.

7. I have carefully considered the SCN, the oral submissions, and other material available on record. I note that the SCN alleges that the noticees / PSTL:

- a. manipulated accounts by fictitious entries,
- b. made false disclosures to the stock exchange,
- c. did not co-operate with the investigations, and
- d. did not maintain certain books of accounts.

Consideration on the role of Noticee No. 1, Shivgurunathan:-

8. The noticee no. 1, Shivgurunathan has not contested the facts based on which allegations have been made. Shivgurunathan was Vice President, Finance and Chief Financial Officer (CFO) of PSTL . I find from the SCN that for the financial year 2007-08, total revenue of Rs.749.30 crore included an income of Rs.549.58 crore from theatres 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

9. The income from own theatres of Rs.303.46 crore from Tamil Nadu region included 11 consolidated credit entries of Rs.243.99 crore with corresponding consolidated debits to 'Theatre Collection Receivables Account'. The same 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.

10. As on March 31, 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. This leads to a conclusion that these revenues were never earned by PSTL; these are fictitious incomes booked to inflate the revenues and profits. PSTL disclosed these inflated figures in its annual report for 2007-08 and thereby misled the investors.

11. PSTL also disclosed to stock 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. This leads to the 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. 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.

12. Therefore, I find that the Shivgurunathan as a CFO had actively allowed the management to fabricate accounts and make false disclosures as alleged in the SCN. Thus, the noticee is guilty of violating Section 12A of SEBI Act, 1992 and regulation 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 SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

Consideration on the role of Noticee no. 2, Nirmal Kotecha:-

13. The sum and substance of the contention / defence of Nirmal Kotecha is that he was a Non-Executive director and not involved in day to day activities of PSTL. He had further contended that SCN has not brought out his specific role in the whole fraud. I do not agree with the plea taken by Nirmal Kotecha. I note that Nirmal Kotecha was holding 41.92 % pre-issue equity capital of PSTL whereas promoter holding was only 27.32 %. Post-issue equity capital of Nirmal Kotecha was 29.40 %, whereas public and promoter holding was 26.58 % and 22.47 % respectively. Thus Nirmal Kotecha was not a non-executive director of PSTL simpliciter but a major shareholder of the company who had sufficient shareholding to direct the management.

14. Nirmal Kotecha has also contended that he did not have any experience or knowledge of the activities of the Company as far as the areas of operation are concerned. In my opinion, this contention is also hard to believe for the simple fact that without understanding the activities of the company and its operational nitty-gritties, no experienced investor will hold 41.92 % shares of an unlisted company.

15. Nirmal Kotecha has also contended that during his tenure of two and half years, he attended only 5 board meetings and he had no occasion to sign any document for the Company as he was never authorised in that behalf by the Board of Directors and therefore he was not liable for the fraud. I do not agree with this submission also. As part of the board of directors of the PSTL, Nirmal Kotecha was receiving all the board agenda papers during the relevant period and as a board member and an experienced investor in securities market, he should have asked the right questions at the right time. This would have unraveled the fraud being played by the company on the innocent investors. By failing to ask the right questions at the right point of time, I find that the Nirmal Kotecha has failed in his duty as a director.

16. Nirmal Kotecha has also submitted that during his tenure as a director, he found nothing suspicious in the agenda papers. I find it difficult to agree to this submission. The major financial indicators of PSTL from 31st March, 2007 to 31st March, 2009 are as follows:-

Particulars	For the quarter ended (in Rs. Lakh)								
	March 31, 2007	June 30, 2007	Sept. 30, 2007	Dec. 31, 2007	March 31, 2008	June 30, 2008	Sept. 30, 2008	Dec. 31, 2008	March 31, 2009
Net Sales	6756.89	12271.43	14418.79	23141.87	24556.12	25014.87	25225.72	13794.81	8069.04
Other Income	23.24	13.68	231.75	152.90	144.05	12.94	-	2.08	-
Total Income	6780.13	12285.11	14650.54	23294.77	24700.17	25027.81	25225.72	13796.89	8069.04
Total Expenditure	6122.60	9936.44	12513.42	19718.54	22366.93	22886.72	23478.48	12997.58	6859.02
Net profit/loss	583.47	1600.77	1511.31	2986.50	-311.22	1349.72	870.42	-7474.35	-8537.25

17. From the above table, I note that profits almost tripled in the quarter ending June 2007 over the preceding quarter. It doubled in the quarter ending December 2007 over the preceding quarter. The quarter ending March 2008 reported a loss of Rs.3.11 crore compared to a profit of Rs.29.87 crore in the preceding quarter. Net sales quadrupled between March 31, 2007 to March 31, 2008. Net profit rose by 600% in three quarter period (March 31, 2007 to December 31, 2008). Other income increased more than 1500% within a period of 3 months (June 30, 2007 to September 30, 2007). All these figures were sufficient to draw the attention of a prudent person and raise suspicions.

18. Similarly, though the number of screens in theatres increased from 487 as on September 30, 2007 to 655 as on December 31, 2007, security deposits with theatres during the same period increased disproportionately from Rs.36.05 crore to Rs.170.38 crore. Such aberrations in financial figures would alert any person of ordinary prudence. I find that the noticee was too negligent to notice the aberrations in performance of the company.

19. Nirmal Kotecha has also relied on several case laws in order to advance his defence but considering the peculiarity of the case, shareholding and dominant position held by Nirmal Kotecha, I do not find that the case laws sighted apply in this case. Thus, the noticee is guilty of violating 4(1), 4(2) (e), 4(2) (f), 4(2) (k), 4(2) (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

Direction

20. 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, I hereby :-

- 1) Restrain Shivgurunathan (Permanent Account Number: Not available) for a period of three years from the date of this Order, 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;

- 2) Restrain Nirmal Kotecha (Permanent Account Number: AEZPK2016H) for a period of one year from the date of this Order, 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.

21. A copy of this Order shall be served on all recognized stock exchanges to ensure that the directions given in Para 20 above are strictly complied with. A copy of this Order shall also be served on Ministry of Corporate Affairs for actions as may be considered appropriate.

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

Date: October 10, 2018

Place: Mumbai

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA