

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO- 138/2013]

**UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT,
1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND
IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995**

In respect of

Mr. PS Saminathan

(PAN. No. ABHPS7396D)

In the matter of Pyramid Saimira Theatre Ltd

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an investigation into the trading in the scrip of Pyramid Saimira Theatre Ltd (hereinafter referred to as the ‘**Company/PSTL**’) during the period from June 01, 2008 to December 19, 2008 (hereinafter referred to as the ‘**period of investigation**’).
2. The shares of PSTL were listed on Bombay Stock Exchange Ltd (hereinafter referred to as ‘**BSE**’) and National Stock Exchange (hereinafter referred to as ‘**NSE**’) during the period of investigation.
3. Investigation observed that Mr. PS Saminathan (hereinafter referred to as the ‘Noticee’) was the Promoter, Chairman and Managing Director of PSTL during the relevant time. It was observed that the Noticee purchased and sold a total of 8,43,942 shares and 6,000 shares of PSTL in market transactions at an average price of ₹. 45.67 per share and ₹. 46.66 per share respectively during the period from October 24, 2008 to December 5, 2008.

4. As per the shareholding pattern of PSTL as on September 30, 2008, it was observed that the Noticee was holding 62,12,956 shares, accounting for 21.97% of the share capital of the company.
5. Investigation alleged that during the aforesaid transaction from October 24, 2008 to December 05, 2008 of the Noticee, there was a change in the Noticee's holding however, the Noticee made the disclosure only on December 19, 2008, whereas, the Noticee was required to make disclosure under SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the '**PIT Regulations, 1992**' for change in shareholding of more than 25,000 shares on 24-Oct-08, 19-Nov-08, 25-Nov-08, 26-Nov-08, 28-Nov-08, 1-Dec-08 and 5-Dec-08.
6. In view of the above, it is alleged that there was a delay in filing of disclosure by the Noticee under the PIT Regulations, 1992. Hence, it is alleged that through the aforesaid action the Noticee violated regulations 13 (4) read with 13 (5) of the PIT Regulations, 1992. Consequently, the above violation make the Noticee liable for monetary penalty under section 15 A (b) of the SEBI Act, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

7. I was appointed as the Adjudicating Officer, vide orders dated December 03, 2010 read with July 04, 2011 under Section 15 I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Rules**') to inquire into and adjudge under section 15 A (b) of the SEBI Act, 1992 for the alleged violation committed by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

8. Show Cause Notice dated July 06, 2011 (hereinafter referred to as '**SCN**') was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed under section 15 A (b) of the SEBI Act, 1992 for the alleged violations specified in the SCN.
9. Vide letter dated December 07, 2011 the Noticee was advised to file his submission to the above SCN by December 23, 2011.

10. The Noticee vide letter dated December 20, 2011 requested time till January 15, 2012 to reply to the SCN. The Noticee's request was acceded to vide letter dated December 26, 2011 and the Noticee was informed that no further extension to submit his reply would be given after January 15, 2012. Consequently, vide letter dated January 18, 2012 the Noticee sought to avail for consent proceeding.
11. Since no application for consent proceeding was received from the Noticee, vide letter dated May 18, 2012 the Noticee was asked to make his submission to the SCN by June 04, 2012. The Noticee vide letter dated July 05, 2012 was again reminded to make his submission to the SCN dated July 06, 2011 by July 20, 2012. However no submission was received from the Noticee.
12. In the interest of natural justice and in order to conduct an inquiry as per rule 4(3) of the Rules, an opportunity of personal hearing was granted to the Noticee on February 11, 2013 vide hearing notice dated February 01, 2013 at SEBI- SRO, Chennai. The Noticee appeared for the personal hearing on February 11, 2013 and sought to make his submission with documentary evidence by February 20, 2013. At the request of the Noticee a copy of the SCN was also given to him during the personal hearing.
13. Since no submission was received from the Noticee after the personal hearing, one final opportunity to make the necessary submission to the SCN was given to the Noticee vide email dated February 21, 2013. The Noticee was further informed that if no reply is received by March 01, 2013 the matter would be proceeded on the basis of evidence available on record.
14. The Noticee vide letter dated March 01, 2013 made the following submissions:
 - a) *The purchase of shares was on inter-se transfer executed through market and not in the nature of general purchase. The relevant declarations were made prior to purchase and after effecting the purchase. In this connection, please find enclosed submission of application and Regulation 4 of SEBI SAST Regulation submitted to SEBI on August 22, 2008.*
 - b) *SEBI in its reply dated September 8, 2008, No. CFD/DC/RTO/SG/137255/08 has given permission and acknowledged the said application.*
 - c) *Further on October 10, 2008, I have declared under Regulation 3/3 of SEBI Substantial acquisition of shares and Takeover regulation, intimation to acquire*

- 24.8852% of shares belonging to Mr. Nirmal Kotecha as inter-se transfer which will increase the holding of the undersigned from 21.97% to 46.88%.
- d) Further on November 27, 2008, both the relevant Stock Exchanges were informed of the acquisition as reflected in the increase of 1.41% in the relevant forms and also disclosed that the acquisition price shall be Rs. 200/- or the Market price whichever is less.
- e) Further on January 6, 2009, I have submitted a report of transaction filing under Regulation 3-IE to SEBI clearly disclosing the transaction which has increased the undersigned stakes from 21.97% to 24.45% and in the same form it can be observed the inter-se the seller's stake has reduced from 24.92% to 21.99% reflecting the corresponding decrease in the seller and the corresponding increase in the buyer (the undersigned) and in part-II of the said submission, it is clearly mentioned that share acquisition has taken place on various dates upto December 5, 2008 and complete compliance has been done by way of submission.

In view of the above, the following are clear:

- i. The acquisition of shares was in the nature of inter-se promoter holding.*
- ii. The acquisition is at the market price through market modalities.*
- iii. Proper intimations have been given and proper approvals have been obtained from SEBI prior to the said acquisition.*
- iv. Proper intimation have been given to Stock Exchange and SEBI, post acquisition.*

CONSIDERATION OF ISSUES AND FINDINGS:

15. I have carefully examined the SCN, the submission of the Noticee and the documents available on record. The allegations against the Noticee is as follows:

- a) It was alleged that there was a change in the Noticee's shareholding during the period from October 24, 2008 to December 05, 2008 when the Noticee purchased and sold a total of 8,43,942 shares and 6,000 shares respectively of PSTL in market transactions. Noticee was under obligation to disclose under PIT Regulations, 1992 for the change in shareholding of more than 25,000 shares on various dated i.e. on 24-Oct-08, 19-Nov-08, 25-Nov-08, 26-Nov-08, 28-Nov-08, 1-Dec-08 and 5-Dec-08. However, the Noticee made the disclosure only on December 19, 2008.

In view of the above, it was alleged that the Noticee violated provisions of Regulation 13(4) read with 13(5) of PIT Regulations, 1992.

16. Before moving forward, it will be appropriate to refer to the relevant provisions of the PIT Regulations, 1992 which reads as under:

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed company - Initial Disclosure.

Continual disclosure.

(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.]

(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within two¹ working days of :

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

17. The issues that arise for consideration in the present case are:
- i. Whether Noticee has violated Regulation 13 (4) read with 13(5) of the PIT Regulations, 1992?
 - ii. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 A (b) of SEBI Act?
 - iii. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act?
18. I now proceed with the alleged violation of the PIT Regulations, 1992:
- i. The Noticee purchased and sold a total of 8,43,942 shares and 6,000 shares of PSTL in market transactions at an average price of ₹ 45.67 per share and ₹ 46.66 per share during the period from October 24, 2008 to December 5, 2008.
 - ii. The details of the Noticee's in-market transactions in the scrip of PSTL from October 24, 2008 to December 5, 2008 are provided as below:

¹ Substituted from "4 days" by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2008, w.e.f. 19-11-2008.

Table –A

	At BSE			At NSE			Across Both the Exchanges	
Trade Date	GP	GS	Net	GP	GS	Net	GP	GS
24-Oct-08	30,600	0	30,600	0	0	0	30,600	0
28-Oct-08	2,000	0	2,000	300	0	300	2,300	0
19-Nov-08	4,00,000	0	4,00,000	0	0	0	4,00,000	0
25-Nov-08	60,892	0	60,892	5000	0	5,000	65,892	0
26-Nov-08	16,000	0	16,000	15,000	0	15,000	31,000	0
28-Nov-08	1,47,000	0	1,47,000	51,650	0	51,650	1,98,650	0
1-Dec-08	62,500	0	62,500	0	0	0	62,500	0
5-Dec-08	53,000	2,000	51,000	0	4,000	-4,000	53,000	6,000
Gross	7,71,992	2,000	7,69,992	71,950	4,000	67,950	8,43,942	6,000

- iii. As per the shareholding pattern of PSTL as on September 30, 2008, the Noticee as a Promoter, Chairman and Managing Director was holding 62,12,956 shares, accounting for 21.97% of the share capital of the company.
- iv. As per Regulation 13 (4) of SEBI (PIT) Regulations, 1992, any person who is a director or officer of a listed company, shall disclose to the company the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds 5 lakh in value or 25000 shares or 1 % of the total shareholding or voting rights, whichever is lower. As per Regulation 13 (5) of SEBI (PIT) Regulations 1992, the said disclosure shall be made within 2 working days (substituted for 4 working days w.e.f. 19-11-2008) of the acquisition or sale of shares or voting rights, as the case may be.
- v. In respect to the aforesaid transactions, there was change in the Noticee's holding and the Noticee was required to make the disclosure within stipulated time as detailed below:

Table – B

Trade Date	Gross Purchase (BSE and NSE)	Gross sale (BSE and NSE)	% Change in Holding	Cumulative % Change in Holding	Whether disclosure was required to be made under Regulation 13 (4) of SEBI (PIT) Regulations / Date by which to be disclosed:	Whether disclosure was made as per the regulation
24-Oct-08	30,600	0	0.11	0.11	Yes / 03-Nov-2008	No
28-Oct-08	2,300	0	0.01	0.12	No	NA
19-Nov-08	400,000	0	1.41	1.53	Yes / 21-Nov-2008	No
25-Nov-08	65,892	0	0.23	1.76	Yes / 27-Nov-2008	No
26-Nov-08	31,000	0	0.11	1.87	Yes / 28-Nov-2008	No
28-Nov-08	198,650	0	0.70	2.58	Yes / 02-Dec-2008	No
1-Dec-08	62,500	0	0.22	2.80	Yes / 03-Dec-2008	No
5-Dec-08	53,000	6000	0.17	2.96	Yes / 10-Dec-2008	No

- vi. From the NSE website, I find that the disclosures made by the Noticee under PIT Regulations, 1992 for the aforesaid trading as available on the website of NSE is as follows:

Table-C

No.	Date of disclosure	Disclosure made under Regulation	Details of the disclosure			Date of acquisition/sale of shares
1	19/12/2008	SEBI (Prohibition of Insider Trading) Regulations, 1992 and SEBI (Substantial Acquisition of shares & Takeovers) Regulations, 1997	Name of the acquirer and PAC with the acquirer	Number	% w.r.t. total paid up capital of Target Company	19/11/2008 to 05/12/2008
			Shares/Voting rights (VR) before acquisition/sale under consideration	6212956	21.97	
			Shares/voting rights acquired/sold	700500	2.445	
			Shares/VR after acquisition/sale	6913456	24.45	

- vii. As observed from the above, the disclosure was made only on December 19, 2008 for the acquisitions and sale of shares from November 19, 2008 to December 05, 2008. I further find that the Noticee has failed to make disclosure for change in the Noticee's shareholding exceeding 25,000 shares on October 24, 2008.
- viii. The Noticee in his submission dated March 01, 2013 has stated that the purchase of shares was on inter-se transfer executed through market and not in the nature of general purchase and the relevant declarations were made prior to the purchase and after effecting the purchase. In this connection the Noticee has enclosed a report as per Regulation 3 (4) of SEBI (SAST) Regulation, 1997 made to SEBI on August 22, 2008. On perusal of the submission of the Noticee, I find that the same is under SEBI (SAST) Regulation, 1997 whereas, the allegation against the Noticee in the present proceeding is under PIT Regulations, 1992. Hence, I am unable to accept the submission of the Noticee.
- ix. In the instant case, the allegation against the Noticee is non-disclosure under PIT Regulations and not under SEBI (SAST) Regulation. The Noticee in his reply has not mentioned whether he has made disclosure under PIT Regulations, 1992 as mandated under the Regulation for change in the shareholding of the Noticee as can be observed from Table B above. Thus, from the reply of the Noticee and the documents available on record, it can be concluded that the Noticee has not made disclosure under PIT Regulations on the dates as he was required to make.
- x. The object of the PIT Regulations, 1992 mandating disclosure of acquisitions beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of such information is required. In this regard, I would like to rely upon the findings of Hon'ble SAT in the matter of *Milan Mahendra Securities Pvt. Ltd Vs. SEBI* (Appeal No. 66 of 2003 and Order dated November 15, 2006) regarding the importance of

disclosure in which Hon'ble SAT has observed that, *“the purpose of these disclosures is to bring about transparency in the transactions and assist Regulator to effectively monitor the transactions in the market”*. In terms of Regulation 13 (4) read with 13 (5) of PIT Regulations, 1992, disclosure was required to be made and the failure to make disclosure within the stipulated time period provided in the regulation cannot be considered as trivial or of no consequence to be overlooked.

xi. After taking all the facts into consideration, it is established that the Noticee has violated the provisions of 13 (4) read with 13 (5) of the PIT Regulations, 1992.

19. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *“In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant”*.

20. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15 A(b) of the SEBI Act, 1992 which reads as under :

15A. Penalty for failure to furnish information, return, etc.- *If any person, who is required under this Act or any rules or regulations made thereunder,-*

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to [a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less];

21. While determining the quantum of monetary penalty under section 15 A (b) of the SEBI Act, 1992 I have considered the factors stipulated in section 15J of SEBI Act, 1992 which reads as under:-

“15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) The amount of loss caused to an investor or group of investors as a result of the default;*
- (c) The repetitive nature of the default.”*

22. In view of the charges as established, and the facts and circumstances of the case, and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the seriousness of the violation. The disclosure norms of PIT Regulation have been framed in order to bring about the transparency in the market and aim at preventing information asymmetry that may preclude any investor from equal treatment and opportunity with respect to the aforesaid information. Correct and timely disclosures are an essential part of the proper functioning of the securities market and by failure to do so results in preventing investors from taking well-informed decisions. The Noticee, being the Promoter, Chairman and Managing Director of the company had more responsibility in ensuring the compliance of disclosure norms. The disclosure was of some importance from the point of view of outside shareholders/other investors as that would have prompted them to buy or sell shares of the company. The Noticee had not made the disclosures to the exchange and hence there was no dissemination of information to the general investor. By virtue of the failure on the part of the Noticee to make the necessary disclosure, the fact remains that the shareholders/investors were deprived of the important information at the relevant point of time. Under these circumstances, the compliance with the disclosure requirements under PIT Regulations, 1992 assumes significance and the Noticee failure to do so have to be viewed seriously and a considerate view is taken with regard to imposition of monetary penalty in the matter.

23. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee. I find that the Noticee did not make the disclosure on time in more than one occasion. Hence, the default of the Noticee is repetitive in nature.

ORDER

24. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹ 5,00,000/- (Rupees Five Lakh only) under section 15 A(b) of the SEBI Act, 1992 on the Noticee which will be commensurate with the violations committed by him.
25. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Ms. Jenny John, Deputy General Manager, Investigations Department- 2, Securities and Exchange Board of India, Plot no. C4-A, G Block, Bandra Kurla Complex, Bandra East, Mumbai – 500051.
26. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **March 12, 2013**
Place: **Mumbai**

BARNALI MUKHERJEE
ADJUDICATING OFFICER