

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: DR. K. M. ABRAHAM, WHOLE TIME MEMBER**

ORDER

**DIRECTIONS UNDER SECTIONS 11, 11(4) AND 11B OF THE SECURITIES
AND EXCHANGE BOARD OF INDIA ACT, 1992, IN THE MATTER OF
PYRAMID SAIMIRA THEATRE LIMITED**

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI), vide an ex-parte ad interim order dated April 23, 2009 (hereinafter referred to as the Order), in the matter of Pyramid Saimira Theatre Limited (hereinafter referred to as PSTL) directed various entities/persons including Mr. Rakesh Sharma, Mr. Rajesh Unnikrishnan, Mr. Deepak Thakkar, Mr. Amol Kokane, Mr. Darshan Desai, Mr. Rajesh V. Jani, Mr. Raju G. Shah, Mr. Nitin Garodia and Mr. Nimesh H. Chitalia, not to buy, sell or deal in the securities market including in Initial Public Offerings (IPOs) directly or indirectly, till further directions as they were *prima facie* found to have played a key role in facilitating Mr. Nirmal Kotecha in the alleged manipulation. The objections (in respect of the Order) filed by the aforesaid persons are considered in the later part of this order. As requested by the aforesaid persons, an opportunity of hearing was granted to them as mentioned below.

- i. Mr. Amol Kokane was represented by Mr. Birendra Saraf and Mr. Ravi Dwivedi, Advocates on July 1, 2009.
- ii. Mr. Rakesh Sharma was represented by Mr. Kedar B. Dighe and Mr. Gaurav Vesavekar, Advocates on July 7, 2009.
- iii. Mr. Rajesh Unnikrishnan was represented by Mr. P.N. Modi, Mr. Ashwin Thoor, Mr. Joby Mathew and Mr. Vijay Devadia, Advocates on July 30, 2009

iv. Mr. Deepak Thakkar, Mr. Nitin Goradia and Mr. Darshan Desai were represented by Mr. Rohan Rajadhyaksha and Ms. Sandhya T, Advocates on July 2, 2009.

v. Mr. Nimesh H Chitalia and Rajesh V. Jani were represented by Mr. Bhosale and Ms. Poonam Gadkari, Advocates on July 2, 2009.

vi. Mr. Raju G. Shah was represented by Mr. Ravikumar Varanasi, Advocate on August 28, 2009.

2. I have considered the objections filed by the aforesaid persons, the oral submissions made on their behalf during the course of hearing and other material available on record. The issue for consideration at present is whether the directions issued under the Order need to be continued, revoked or modified in any manner, in so far as it relates to the aforesaid persons. SEBI observed that the contents of one of the forged letters (purported to be issued by SEBI) dated December 19, 2008 sent to Mr. P. S. Saminathan, directing him to make an open offer for acquiring additional stake of 20% at a price not less than Rs.250/- within fourteen days, was given wide publicity by media reports on December 21, 2008 (Sunday) and December 22, 2008 (Monday). The share price of PSTL shot up to Rs.83/- at National Stock Exchange of India Limited (NSE) and Rs.82.90/- at Bombay Stock Exchange Limited (hereinafter referred to as BSE), when the markets opened up on December 22, 2008. The preliminary findings led to a *prima facie* inference that Mr. Nirmal Kotecha had played a key role in the forgery of the SEBI letters dated December 19, 2008 and disseminated the contents of the said letter in order to manipulate the share price of PSTL and thereby benefit out of the said artificial price increase. It was also observed that Mr. Nirmal Kotecha was a major seller of the shares of PSTL on December 22, 2008, having sold 15,05,862 shares in the market at an average price of Rs.75.85 per share. The details of trades executed by him and others during the relevant period were explained in detail in the Order. The preliminary analysis of the case *inter alia* revealed that, there were fund transfers from and between Mr. Nirmal Kotecha and his close relatives,

related/associated entities/persons etc.; purchase of PSTL shares by related entities/persons just before the forgery of SEBI letters and the subsequent sale of substantial number of shares, immediately when the markets opened on December 22, 2008. It was *prima facie* found that Mr. Amol Kokane, Mr. Rakesh Sharma, Mr. Rajesh Unnikrishnan, Mr. Deepak Thakkar, Mr. Darshan Desai, Mr. Rajesh V. Jani, Mr. Raju G. Shah, Mr. Nitin Garodia and Mr. Nimesh H. Chitalia have all played a key role in facilitating Mr. Nirmal Kotecha in carrying out suspicious banking transactions, carrying out and disguising his manipulative intent and gaining advantage from the forgery. Their alleged role in the entire event was explained in detail in the Order.

3. It was alleged that Mr. Rakesh Sharma and Mr. Rajesh Unnikrishnan were instrumental in publicizing and publishing the contents of the forged SEBI letter that was sent to Mr. P.S. Saminathan, through their contacts in the media. Mr. Rajesh Unnikrishnan, during the relevant time, was an Assistant Editor with 'The Economic Times' and Mr. Rakesh Sharma was an executive with an advertisement agency namely, Adfcators PR Private Limited. Admittedly, Mr. Rajesh Unnikrishnan was a former colleague of Mr. Rakesh Sharma in 'The Business Standard' and were acquainted with each other for more than seven to eight years. It was stated by Mr. Rakesh Sharma that he was introduced to Mr. Nirmal Kotecha some time in October 2008. It was alleged that Mr. Nirmal Kotecha, Mr. Rakesh Sharma and Mr. Rajesh Unnikrishnan were together during the afternoon of December 20, 2008 i.e. the day and time when the forged SEBI letter was circulated to the media through Mr. Rakesh Sharma's contacts. It was mentioned in the Order that, Mr. Rakesh Sharma, before being arrested by the Police had stated (to SEBI, during the course of investigation) that the forged SEBI letter was e-mailed by him from Mr. Nirmal Kotecha's residence by using his own personal e-mail ID to Mr. Raj Nambisan of DNA (Daily News and Analysis), Mr. Partha Sinha of Times of India and Mr. Ashish Rukhaiyar of The Economic Times, before accompanying Mr. Rajesh Unnikrishnan to Dalal Street side around 2:00 p.m. Though, in his statement, he

had claimed that the forged SEBI letter was e-mailed by him to only three of his friends in the media, it was found that he had also forwarded the forged SEBI letter by e-mail to one Dheer Kothari (one of his ex-colleagues in Adfcators PR Private Limited), based in Kolkata. The electronic mail had been sent at 1:43 p.m. on December 20, 2008, when the tower location for all three of them viz. Mr. Nirmal Kotecha, Mr. Rakesh Sharma and Mr. Rajesh Unnikrishnan was Matunga (East)/ King Circle. Mr. Nirmal Kotecha's residence is also at Matunga (East)/ King Circle. Further, it was observed that Mr. Dheer Kothari, in turn had forwarded the information to three other newspapers-Business Standard, Telegraph and Hindu Business Line, for which he was allegedly paid Rs.10,000/-. The said money was transferred from the account of Mr. Rakesh Sharma to the bank account of Mr. Dheer Kothari. With respect to the fund transfers, he submitted that the transfer of Rs.10,000/- was towards the financial assistance requested by Mr. Dheer Kothari. The said submission also does not convince me as the preliminary findings of the case have revealed that the said Mr. Dheer Kothari had also forwarded the information to the media. Further, the payment was made around that time. In such circumstances, the only *prima facie* inference could be that the said money was the consideration to Mr. Dheer Kothari for forwarding the 'information' to his contacts in the media. Thus, I am not inclined to accept such arguments at this stage. It was also revealed that Mr. Rakesh Sharma had gone to the office of Mr. Ashok Jainani (of M/s. Khandwala Securities Limited) and had e-mailed the scanned letter (forged letter) to Mr. Ashok Jainani, who had in turn e-mailed the same to Business Standard. In the facts and circumstances, the connection among Mr. Nirmal Kotecha, Mr. Rakesh Sharma and Mr. Rajesh Unnikrishnan is established to the extent that the three persons are acquainted with each other during the relevant period. Mr. Rakesh Sharma in his letter dated May 19, 2009 stated that the alleged forged letter was handed over by a person claiming to be a peon working with Dalal Street Journal, for which he wrote in journals as a free-lancer. It was submitted that he had no occasion to doubt the said letter and innocently and genuinely believed the said letter. In his letter dated May 19,

2009, Mr. Rakesh Sharma stated “ forwarded the information pertaining to the said alleged letter to the media as a usual practice which he has been following since two decades with an intention to provide his friends in the media with news.....” He further stated “he has been made a scape goat by Mr. Nirmal Kotecha and /or his associates for their own selfish motives” Thus, the fact that the alleged forged letter was forwarded to the media people is admitted by him. His main plea is that, it was the responsibility of the media to test the authenticity of the information. He contended that he did not influence the media in publishing the news item. Mr. Rakesh Sharma pointed out that it would be suicidal for him to have sent the said information through his personal e-mail and mobile phone, after fully knowing that the letter was forged and that he had been made a ‘scape goat’ by Mr. Nirmal Kotecha and his associates. As a prudent person, he would be aware that passing of such price sensitive information would persuade the media to publish them. Besides, he was in touch with Mr. Nirmal Kotecha since mid October, 2008. The facts and circumstances of the case would *prima facie* give rise to a doubt about the conduct of Mr. Rakesh Sharma in the entire episode. His conduct in forwarding the information to the media as admitted by him would lead to a *prima facie* inference that the same was done with the ulterior motive of widely publicizing the contents of the forged letter. He cannot escape his responsibility by merely stating that the media personnel alone have the responsibility in checking the authenticity of the information received by them. Though, Mr. Rakesh Sharma stated that his trades in the stock market are miniscule and that he did not ever buy or sell or transact in any manner in the shares of PSTL, I note that his transactions may not be pertinent as he was mainly instrumental in publicizing the contents of the forged letter purported to have been issued by SEBI. Further, with regard to the couriering the said forged letter to Mr. P.S. Saminathan, it was submitted that the personnel at Blue Dart Couriers had denied that it was he who had booked the said courier. This submission also does not convince me, at this stage, for the simple reason that a courier office handles hundreds and thousands of couriers a day and that many people go

there to book their parcel/envelope. Therefore, it may be difficult for the staff on duty to remember and recollect the faces of each and every person who had visited their courier office. The origin of the forged letters is the subject matter of investigation which is in progress now. Further, Mr. Rakesh Sharma has already admitted that he had forwarded the information and the mobile phone number of the purported company secretary of PSTL to the media. He further stated that after having received the messages through Short Messaging Services (SMSes) from Mr. Nirmal Kotecha and Mr. Rajesh Unnikrishnan informing him about the phone number of the purported company secretary of PSTL, it was not expected of him to verify from the cellular phone service provider whether the said numbers actually belonged to Mr. Ganesan and/or Mr. Kanu Sahu (the purported Company Secretary) or whether the said two persons actually worked in their capacity as company secretaries of PSTL. He further stated that all that he did was to forward the said details as it was to his friends in the media. Assuming for argument sake that his submissions are correct, I note that, admittedly he had forwarded the information to the media personnel and subsequently, after obtaining the telephone numbers of the purported company secretary of PSTL, through SMS from Mr. Nirmal Kotecha and Mr. Rajesh Unnikrishnan, had forwarded the same to the media. This according to me, is sufficient enough to make a *prima facie* inference against him in the alleged manipulation. After giving a very thoughtful consideration to the submissions made and the large scale manner in which a market fraud was committed, I am of the view that the interim directions should not be modified or revoked and allowed to be continued in so far as Mr. Rakesh Sharma is concerned.

4. Mr. Rajesh Unnikrishnan submitted that Mr. Nirmal Kotecha had been a source for market related information and that he used to provide information relating to the activities of PSTL. As stated earlier, Mr. Rajesh Unnikrishnan was acquainted with Mr. Rakesh Sharma and Mr. Nirmal Kotecha. According to Mr. Rajesh Unnikrishnan, he had given the mobile phone number of Mr. Nirmal

Kotecha to Mr. Rakesh Sharma. He had also forwarded the telephone numbers of Mr. P.S. Saminathan and senior officials of PSTL (after obtaining the same from Mr. Nirmal Kotecha) to Mr. Rakesh Sharma. He further stated that merely because he was in touch with Mr. Rakesh Sharma and Mr. Nirmal Kotecha and because he obtained information from them, he cannot be considered as having acted together with them in any illegal or malafide scheme devised and implemented by them. According to him, in and around the first week of December 2008, Mr. Nirmal Kotecha had called him and informed that PSTL was not doing well as a business and that in the ongoing proceedings before SEBI in respect of the alleged violations of the SEBI Takeover Regulations, SEBI had not granted exemption to the promoters from making an open offer and that he (Mr. Nirmal Kotecha) expected an order from SEBI directing the promoters of PSTL to make an open offer to be passed shortly. Though, Mr. Rajesh Unnikrishnan denied having a meeting with Mr. Rakesh Sharma or Mr. Nirmal Kotecha on December 20, 2008 and stated that he was in his office from 14:17 hours on December 20, 2009, I find the circumstances of the case suggest a high probability that the three were together on that day during the relevant time. Further, it was noted that there were exchange of SMSes and telephone calls between Mr. Nirmal Kotecha and Mr. Rajesh Unnikrishnan on December 20, 2008. Mr. Rajesh Unnikrishnan admitted that Mr. Nirmal Kotecha had sent him the details of Mr. Kanu Sahu by SMS and that he merely forwarded the same to Mr. Rakesh Sharma. In the facts and circumstances of the case, the exchange of telephone calls and forwarding of messages (through mobile phones) on December 20, 2008, causes suspicion to be cast on Mr. Rajesh Unnikrishnan of his possible complicity. On a consideration of the case against Mr. Rajesh Unnikrishnan, I am of the considered view that since the investigation is ongoing, it would not be appropriate to revoke or modify the directions passed under the Order against him.

5. I note that Mr. Deepak Thakkar (maternal uncle of Mr. Nirmal Kotecha) had bought 19,758 shares, 80,000 shares and 85 shares of PSTL on December

16, 2008, December, 17, 2008 and December 22, 2008 respectively and sold 99,843 shares of PSTL on December 22, 2008. The same is admitted by Mr. Deepak Thakkar. With respect to the quantum of profit (of Rs.20,76,064/-) earned by Mr. Deepak Thakkar, he had stated in his reply that the correct amount of profit was Rs.20,15,645/- as the interest payment and brokerage charges were deducted from Rs.20,76,064/- earned as profit. The timing of his purchases is very material and appears suspicious as they were made just prior to the publication of the news about the forged SEBI letter that was sent to Mr. P. S. Saminathan on December 19, 2008. Further, the sale of shares by Mr. Deepak Thakkar was again done prior to the announcement by Mr. P.S. Saminathan denying the open offer, on the morning of December 22, 2008. Another important observation was that the buy-sell orders were placed with the stock broker, Kotak Securities Limited (Kotak) by Mr. Nirmal Kotecha on behalf of Mr. Deepak Thakkar. In this regard, Mr. Deepak Thakkar had submitted that as Mr. Nirmal Kotecha was continuously in touch with Kotak, he had given an authority letter in favour of Mr. Nirmal Kotecha. According to him, the same was done as he was not able to follow up with his transactions with Kotak on a daily basis. He further stated that he wanted to buy shares of PSTL on December 16, 17 and 22, 2008 and that Mr. Nirmal Nirmal had executed his orders through Kotak. He also submitted that he had instructed Kotak through Mr. Nirmal Kotecha to sell off his positions in PSTL as he did not have anymore money to invest and that, only in that perspective, shares purchased on December 16, 17 and 22, 2008 were sold on December 22, 2008. It is pertinent to note that Mr. Deepak Thakkar acquired shares of PSTL only on December 16, 17 and 22, 2008. Admittedly, he had sold the entire stake in PSTL on December 22, 2008 through Kotak. By the time the market opened on December 22, 2008, the information regarding the open offer to be made by Mr. P.S. Saminathan as directed in the forged SEBI letter was already made public. In such circumstances, a genuine investor would be interested in garnering more shares in the hope that they can offer them when an open offer is made by Mr. P.S. Saminathan at a higher price. Much against this general trend noticed in

such circumstances, Mr. Deepak Thakkar was found to have sold his entire stake on December 22, 2008, that too immediately on the opening of the stock market. This gives rise to a suspicion that he was aware of the fraud and wanted to take advantage before the said letter is denied for its lack of authenticity. In these circumstances, even the non payment for the shares purchased by Mr. Deepak Thakkar to Kotak gives rise to a suspicion that the same was a well thought of plan. This is so, because in case of non payment, when the stock broker demands the payment and Mr. Deepak Thakkar's sale of the shares under the guise of satisfying the previous obligations would appear legitimate. Further, from the preliminary analysis of the case, it was also seen that Mr. Nirmal Kotecha had routed funds through several entities/persons and the same appears to have been done to disguise the trail. In respect of the fund transactions between Mr. Deepak and Nirman Management Services Private Limited (Nirman), Mr. Deepak Thakkar had submitted that he had provided an interest free friendly loan to Nirman and that he had transferred Rs.50,00,000/- on April 16, 2008 and Rs.30,00,000/- to the account of Nirman. He stated that he had received back Rs.15,00,000/- on November 17, 2008 and another Rs.15,00,000/- on December 2, 2008 as repayment of loan from Nirman. He further stated that he is yet to receive the balance of Rs.50,00,000/- from Nirman. Further, the said transaction was not supported by any documentary evidence. It is noted that the funds transferred by Nirman were done only after it had received funds from Mr. Nirmal Kotecha. His submissions are not convincing enough to warrant any modification of the interim directions. The timing of the execution of his orders, the fact that Mr. Nirmal Kotecha was himself placing the orders on behalf of Mr. Deepak Thakkar, the fund transactions of Mr. Deepak Thakkar with Nirman (a company promoted by Mr. Nirmal Kotecha and his family), taking benefit of the price fluctuations consequent to the forged letters and earning a profit of over Rs.20 lakh, and the other attendant facts and circumstances give rise to a very strong presumption against Mr. Deepak Thakkar that he could be hand in glove with Mr. Nirmal Kotecha in his *prima facie* nefarious activities. The transactions on those days

coupled with the aforesaid fund transactions among Mr. Deepak Thakkar, Mr. Nirmal Kotecha and Nirman makes it more suspicious. For the reasons aforesaid, I find no reason to modify or revoke the interim directions issued to Mr. Deepak Thakkar at this stage.

6. The case against Mr. Amol Kokane was that he had lent his name for facilitating Mr. Nirmal Kotecha to carry out the alleged fraudulent, abusive, manipulative and illegal activities detrimental to the interests of investors and to the integrity of the securities market. Mr. Amol Kokane, in his reply has stated that he had opened a trading account with the stock broker, India Capital Markets Limited, at the behest of his brother-in-law, Mr. Sandeep Shripati Gavhane. He stated that, he had met Mr. Darshan Desai (employee of the said stock broker) a couple of times with regard to the opening of the account. He also stated that he used to sign on various slips and documents as instructed by his brother in law. He further submitted that he did not use the mobile phone, though the connection was taken in his name and that he did not pay any money towards the mobile bills. According to him, though the bills used to come to his residence, he handed over the same to his brother in law. He further stated that his sister had called Mr. Nirmal Kotecha to their residence when the SEBI officials were questioning them and that the family members had insisted that he should be present also. He further stated that he had not traded in a single share and that he had not taken any money from Mr. Nirmal Kotecha. He also stated that he was not a party to any transactions carried out in his name and that his late brother in law was taking care of all the transactions. I note from the bank trail that high value funds were transferred to Mr. Amol Kokane's account, from where they were transferred to the stock market. It was also revealed that these funds have been received from various entities/ persons who appear to be connected to each other. The funds appear to have been circulated through a large network of connected accounts, in a complex pattern and without any ostensible and bonafide business purpose. It was noted that funds to the tune of Rs. 10 lakhs, Rs. 15 lakhs and Rs. 10 lakhs were

transferred to Mr. Amol Kokane's account on September 10, October 4 and October 7, 2008 respectively, which in turn, were transferred to his client account with India Capital Markets Private Limited on September 16, October 6 and October 8, 2008 respectively. The details of the credits received in his accounts are given below:

- a. The first credit of Rs. 10 lakhs was transferred to Mr. Amol Kokane's account on September 10, 2008 from the account of one M/s. Om Associates, whose Proprietor is Mr. Kantilal Samelaji Purohit.
- b. The second credit of Rs. 15 lakhs was transferred to Mr. Amol Kokane's account on October 4, 2008 from the account of one Mr. Bhavik Hasmukh Shah of M/s. Amrut Trading Co.
- c. The third credit of Rs. 10 lakhs was received in Mr. Amol Kokane's account on October 7, 2008, again from the account of Mr. Bhavik Hasmukh Shah of M/s. Amrut Trading Co.

Further, it was also noted from the bank statement of Mr. Amol Kokane that an amount of Rs.50 lakhs was transferred on October 17, 2008 from his account to the account of one Nikhil Securities Limited. Prior to the said transfer, Mr. Amol Kokane's account had received credits of Rs. 5.25 lakhs, Rs. 2.75 lakhs, Rs. 15 lakhs and Rs. 12 lakhs from different parties on October 10, 2008 and of Rs. 18 lakhs on October 15, 2008, as given in the Order, which are reproduced herein below:

- i. The credit of Rs. 5.25 lakhs on October 10, 2008 was received in Mr. Amol Kokane's account from one Praful P. Vora of M/s. Viren Trading Agency.
- ii. The credit of Rs. 2.75 lakhs on October 10, 2008 was received in Mr. Amol Kokane's account from one Hemal H. Gandhi HUF (Datapro)

- iii. The credit against this debit of Rs. 2.75 lakhs in Mr. Hemal H. Gandhi HUF (Datapro) account, in turn, has also been received again from Mr. Rajesh Jani.
- iv. The credit of Rs. 15 lakhs on October 10, 2008 was received in Mr. Amol Kokane's account from one Nigam Vinod Shah
- v. The credit of Rs. 12 lakhs on October 10, 2008 was received in Mr. Amol Kokane's account from one Janak H. Chitalia of M/s. J.H. Chitalia & Co.. The credit against this debit of Rs. 12 lakhs in Mr. Janak H. Chitalia's account, in turn, is seen received from Mr. Rajesh Jani.
- vi. The credit of Rs. 18 lakhs on October 15, 2008 was received in Mr. Amol Kokane's account from one Jignesh Amrutbhai Patel of Classic Enterprises. M/s. Classic Enterprises also appeared to be one of the connected entities.

7. Though, the said details were given in the Order, no submissions were made by Mr. Amol Kokane in that regard. The investigation has also revealed frequent high value cash withdrawals and cash deposits, by limiting individual cash withdrawals and deposits to below Rs 10,00,000/-, in some of those accounts. In this context, it is pertinent to note that Mr. Amol Kokane was only a student during the relevant time and did not have a personal income. Admittedly, his brother in law used to take care of the family of Mr. Amol Kokane. From the above, the only logical inference at this stage is that the said bank accounts and demat accounts may have been opened with the sole intention of disguising the trail of the suspicious transactions which were being carried out in those accounts. Though, Mr. Amol Kokane has distanced himself from the 'trading' and 'fund transfers' by saying that he had only opened the account and did not know who operated it, the other attending circumstances like the employment of the late brother in law of Mr. Amol Kokane in Kotech Capital Services Limited; the presence of Mr. Nirmal Kotech at the residence of Mr. Amol Kokane when the statements were being recorded by SEBI officials; *prima facie* indicate the complicity of Mr. Amol Kokane in the alleged

fraudulent and unfair transactions. Further, it is very important to note that the mobile number '9819988816' though registered in the name of Mr. Amol Kokane, was used by Mr. Nirmal Kotecha. Above all, it is very pertinent to note that Mr. Amol Kokane was a student during the relevant period and did not have any personal income or financial capability to support huge securities market transactions. In view of the above, I am not inclined to modify or revoke the interim directions passed against Mr. Amol Kokane, at this stage.

8. In respect of Mr. Raju G. Shah, it is noted that he had traded in the shares of PSTL through the stock broker, India Capital Markets Limited (Borivali Branch) on two trading days, i.e. on December 19, 2008 and December 22, 2008 on BSE. Mr. Raju G. Shah contended that based on the advice of his stock broker that there was 'good opportunity' in shares of PSTL, he had carried out jobbing/arbitrage trades on the said dates. He had bought and sold 71,805 shares on December 19, 2008 and out of the said purchase, orders in respect of 13,731 shares matched with the sell orders of Mr. Nirmal Kotecha. On December 22, 2008, 7,345 shares bought by Mr. Raju G. Shah were matched with the sell orders placed by Mr. Nirmal Kotecha. At NSE, on December 19, 2008, out of 51,738 shares bought by Mr. Raju G. Shah, 4,006 shares matched with the sell orders of Mr. Nirmal Kotecha. Further, out of 1,05,202 shares bought by Mr. Raju G. Shah on December 22, 2008, trades in respect of 22,460 shares matched with the sell orders of Mr. Nirmal Kotecha. In total, trades in respect of 47,542 shares bought by Mr. Raju G. Shah matched with that of Mr. Nirmal Kotecha on December 19 and 22, 2008. The trades have not been disputed before me. Mr. Raju G. Shah had submitted that only 15% of his trades had matched with the orders of Mr. Nirmal Kotecha and has further stated that he did not have any connection with the fraud or forgery so committed. Mr. Raju G. Shah has stated that only 15% had matched and that matching of some of his trades with Mr. Nirmal Kotecha would not lead to an inference that he had manipulated or that he was connected directly or indirectly with Mr. Nirmal Kotecha. I cannot accept the said plea, given the facts

and circumstances of the case, at this stage. I note that he had matched a number of orders involving a substantial number of shares as mentioned above with Mr. Nirmal Kotecha on December 19 and 22, 2008. Further, it was revealed that Mr. Raju G. Shah had received Rs.5,00,000/- from Mr. Nigam Vinod Shah on November 4, 2008. In this regard, Mr. Raju G. Shah stated that he had been drawn into the present investigation merely on the ground of taking a 'personal temporary loan' from his friend, Mr. Darshan Desai who in turn received the same from Mr. Nigam Vinod Shah. He claimed that the amount received from Mr. Nigam Vinod Shah was utilized for clearing the debit balance, because of which he was not allowed trading in NSE. The said 'loan transaction' was not supported by any written agreement and the same creates a suspicion as to the genuineness of the said transaction. This assumes importance as Mr. Nigam Vinod Shah was found to have transferred Rs.15,00,000/- to the account of Mr. Amol Kokane, during the relevant period. In these circumstances, it needs to be further investigated whether the said transaction was bonafide or was done with any ulterior motive. Besides, according to Mr. Raju G. Shah, he was introduced to the stock broker, India Capital Markets Limited by none other than Mr. Darshan Desai, who allegedly played a key role. In the facts and circumstances, I am not inclined to modify or revoke the interim directions passed against Mr. Raju G. Shah, at this stage.

9. Mr. Darshan Desai *inter alia* stated that he was the branch manager of the stock broker, India Capital Markets Private Limited, at its Borivali Branch. He further stated that his wife, Ms. Priyanka Desai was a remisier of BSE and that the Borivali branch of the said stock broker was registered in his wife's name. It is stated that a person by name Siddhartha, who worked with him for a short period had introduced him to Mr. Sandeep Guvhane (brother in law of Mr. Mr. Amol Kokane), who in turn, introduced Mr. Amol Kokane and Mr. Nirmal Kotecha to him for the purposes of opening their trading accounts with India Capital Markets Private Limited. Further, it was mentioned in the Order that,

before November 3, 2008, Mr. Sandeep Guvhane used to place orders on behalf of Mr. Mr. Amol Kokane. As per the order, Mr. Darshan Desai had traded in the account of Mr. Kokane by debiting other client accounts that had credit balances and also stated therein that though it was he who was trading in Mr. Amol Kokane's account, the trade confirmations were automatically transmitted by SMS to Mr. Amol Kokane on his mobile number 9967838402. It was seen that trading was done on 13 trading days in the account of Mr. Amol Kokane since November 3, 2008 i.e. after the death of Mr. Amol Kokane's brother in law and on January 15, 2009, a pay out of Rs.4,29,562 was issued to Mr. Amol Kokane. The findings of the preliminary investigation in respect of Mr. Darshan Desai is that he had fraudulently traded in the account of Mr. Amol Kokane and that he stood as guarantor for the loans arranged by Mr. Nitin Goradia for Mr. Amol Kokane from Mr. Nigam V Shah (15 lakhs) and Mr. Hemal Gandhi (2.75 lakhs). In respect of the charge of trading in the account of Mr. Amol Kokane, Mr. Darshan Desai had drawn my attention to the broker-client agreement which authorized the stock broker to sell the shares in his account in order to take care of any amounts that may be due from the client by way of debit balance in the process of trading. The present stand seems to be completely different from the admission of Mr. Darshan Desai, when he had earlier stated to SEBI (which was subsequently retracted) that he had traded in the account of Mr. Amol Kokane after adjusting the credits lying to the accounts of other clients. He also stated that he had no connection with Mr. Nirmal Kotecha except that the latter had a trading account with the stock broker, India Capital Markets Private Limited where he was employed as a branch manager. It was further stated that he had no connection whatsoever with the trading of Mr. Nirmal Kotecha or Mr. Amol Kokane during the relevant period except executing trades (as an employee of the aforesaid stock broker) in the shares of PSTL held by Mr. Nirmal Kotecha and Mr. Amol Kokane. In respect of the allegation of being a guarantor for Mr. Amol Kokane, it was stated that the same was in the ordinary course of business and that he cannot be held responsible with the use that may be made by Mr. Amol Kokane of the loan amount. I find that his role as

a guarantor for Mr. Amol Kokane has not been convincingly explained. It is highly unlikely that a person would simply stand as a guarantor for a student who did not have any personal income that too for a huge sum of Rs.15,00,000/-. The suspicion created by the aforesaid would be put to rest only by a detailed investigation in the matter, which is ongoing. Thus, I do not intend to modify or revoke the interim directions against Mr. Darshan Desai at this stage.

10. In respect of the case against Mr. Nimesh H. Chitalia, Mr. Nitin Gorodia and Mr. Rajesh V. Jani, I note that Mr. Amol Kokane received credits of Rs. 5,25,000/-, Rs.2,75,000/-, Rs. 15,00,000/- and Rs. 12,00,000/- from various persons including Mr. Praful P. Vora of M/s. Viren Trading Agency, Mr. Hemal H. Gandhi HUF of Datapro, Mr. Nigam Vinod Shah and Mr. Janak H. Chitalia of M/s. J.H. Chitalia & Co., respectively on October 10, 2008. It was observed that, prior to the said transfers, the said persons had received credit of similar amounts from Mr. Rajesh V. Jani [director of Dynamic Stock Broking (India) Private Limited (hereinafter referred to as Dynamic)]. It was also found that Rs. 5,00,000/- that was transferred from Mr. Nigam Vinod Shah's account to Mr. Raju G. Shah's account on November 4, 2008 (as stated above in this order) was received from Mr. Rajesh V. Jani. Mr. Rajesh V. Jani, vide letter dated May 18, 2009 *inter alia* stated that he had taken loans from M/s. Viren Trading Agency, Mr. Hemal H. Gandhi, Mr. Nigam Vinod Shah and Mr. Janak H. Chitalia in the year 2007-2008 in the normal course of business. According to him, the said loans were arranged by Mr. Nitin Garodia. He also claimed that he had repaid the loans taken from M/s. Viren Trading Agency, Mr. Hemal H. Gandhi and Mr. Janak H. Chitalia and that he had paid Rs. 5,00,000/- to Mr. Nigam Vinod Shah. He further stated that there were no formal loan agreements. It is very surprising to note that no loan agreements were present when such huge sums were advanced as loans. Though, he stated that he had paid only Rs. 5,00,000/- to Mr. Nigam Vinod Shah, his bank statement (submitted along with his reply) reveal three debits of Rs. 5,00,000/- each on

October 8, 2008 in favour of Mr. Nigam Vinod Shah. Pertinently, this was the period, when Mr. Nigam Vinod Shah had transferred money to Mr. Amol Kokane. Further, it was mentioned in the Order that the financial status of Mr. Nigam Vinod Shah did not support the contention that he had lent a sum of Rs.25,00,000/- as his annual income was only Rs.50,000/- and that too without any written agreement. In this view of the matter, I am unable to accept the contention of Mr. Rajesh V. Jani that the transactions were just a loan and its repayment. Though, Mr. Rajesh V. Jani denied that Mr. Nitin Garodia is a link through him, Mr. Darshan Desai and Mr. Nimesh Chitalia for the transfer of funds to Mr. Amol Kokane, I am not inclined to accept the same at this stage, as Mr. Rajesh V. Jani was *prima facie* involved in either fund transactions or facilitated such fund transfers, in one or the other way. Thus, I see no convincing reasons to modify or to revoke the interim directions passed against Mr. Rajesh V. Jani.

11. It is seen that Mr. Nitin Goradia had a trading account with Dynamic which reflected a debit balance of Rs. 15,00,000/- since April 2008, which has not been cleared. Mr. Nitin Garodia, vide letter dated nil (received by SEBI on May 8, 2009) *inter alia* stated that he had never met Mr. Nirmal Kotecha or any of his relatives or associates. He further stated that he had advised some of his clients to give unsecured loans to Mr. Rajesh V. Jani, who had established the stock broking company Dynamic. He also stated that though, the rate of interest for the said loans was fixed 15%, Mr. Rajesh Jani while repaying the loan did not pay interest which was around Rs.13,00,000/- in 2008. In respect of the uncleared debit balance of Rs.15,00,000/- in his trading account with Dynamic, Mr. Nitin Gorodia had stated that he had requested Mr. Rajesh V. Jani to adjust his debit balance against the interest payable (to the clients of Mr. Nitin Gorodia) by Mr. Rajesh V. Jani . This submission seems to be doubtful and is not convincing. I note that the loans have been claimed to have been advanced by the clients of Mr. Nitin Gorodia and not by Mr. Nitin Gorodia. In such a case, the benefits in terms of the interest payable would accrue only to the lenders

and not to the facilitator (Mr. Nitin Gorodia). Even as per Mr. Nitin Gorodia, he was matching the money requirements of some of his clients with the other clients who wanted to invest (in expectation of a return on their investments) their surplus. I note that Mr. Nitin Gorodia wanted to benefit from the unpaid interest portion which actually is payable to the creditors. Moreover, there is no submission that the funds were paid to Dynamic but admittedly to Mr. Rajesh Jani. Therefore, there would be no question of having any such adjustment unless and until the same is approved and consented to by the clients. The same has also not been brought out. I note that Mr. Nitin Gorodia had further submitted that Mr. Darshan Desai had requested (in the last week of September 2008) him to arrange approximately Rs.50,00,000/- for 'his client' and that after the recovery of money from Mr. Rajesh Jani (on October 6, 2008), he had raised Rs.17,75,000/- from Mr. Nigam Vinod Shah and M/s. Datapro and decided to give loan on Mr. Darshan Desai's guarantee to his recommended client. He further states that he had no idea who the client was and that the said client turned out to be Mr. Amol Kokane. He stated that he had never met or spoken to Mr. Amol Kokane. He further submitted that M/s. J.H. Chitalia & Co. and M/s. Viren Trading Agency had given loans to Mr. Darshan Desai's client (Mr. Amol Kokane) as they were known to each other. It is highly difficult to accept such tenuous submissions in light of the fact that such high value funds were sought to be borrowed from the clients of Mr. Nitin Gorodia only on the guarantee of Mr. Darshan Desai in the absence of formal written agreements to that effect and also without knowing the identity of the ultimate client, as submitted by him. It is important to note that Mr. Amol Kokane was only a student during the relevant time and did not have the required financial capacity.

12. It is also noted that directors of Kankeshwari Securities Private Limited (which had lent an amount of Rs. 30,00,000/- to Mr. Rajesh V. Jani in April 2006, by way of friendly interest free loan as claimed by Mr. Rajesh Jani) are/were Ms. Rita N. Goradia (wife of Mr. Nitin Goradia), Mr. Nimesh H. Chitalia

(Head, Business Development of India Capital Markets Limited and the brother-in-law of Mr. Nitin Goradia) and one Mr. Vilas P. Shah. Mr. Janak H. Chitalia, who had lent an amount of Rs. 12,00,000/- to Mr. Rajesh V. Jani in December 2007, and subsequently lent funds to Mr. Amol Kokane in October 2008 immediately after receiving the amount from Mr. Rajesh V. Jani, is also the brother-in-law of Mr. Nitin Goradia. It is also noted that Mr. Rajesh V. Jani, Mr. Darshan Desai and Mr. Nimesh Chitalia were involved in the fund transfers and that funds were transferred from the accounts of Mr. Praful P. Vora of M/s. Viren Trading Agency, Mr. Hemal H. Gandhi HUF of Datapro, Mr. Nigam Vinod Shah and Mr. Janak H. Chitalia of M/s. J.H. Chitalia & Co. and finally to Mr. Amol Kokane. Mr. Nimesh H. Chitalia, vide letter dated May 21, 2009 *inter alia* stated that he had not introduced Mr. Nirmal Kotecha or Mr. Amol Kokane to India Capital Markets Private Limited, Borivali Branch. He further stated that he had no relation with Mr. Raju G. Shah. He also denied having any connection with Mr. Nirmal Kotecha or Mr. Amol Kokane. He stated that on the request of his brother in law (Mr. Nitin Garodia), he had introduced Mr. Nigam Vinod Shah to the Borivali Branch of Axis Bank Limited, in the year 2004. He also stated that neither he nor Kankeshwari Securities Private Limited (where Mr. Nimesh H. Chitalia is a director) cannot be held responsible for the end use of the money (which was given as loan by Kankeshwari Securities Private Limited) by Mr. Rajesh V. Jani. He claimed that he had no role in facilitating Mr. Nirmal Kotecha in allegedly carrying out the suspicious banking transactions. However, the relationship between the individuals as mentioned above and the huge fund transfers amongst them in the absence of any written loan agreement between the parties, create suspicion. The genuineness of the said transactions needs to be tested and this would be brought out in the investigation initiated in the matter by SEBI. Thus, I am unable to modify or revoke the the interim directions passed against Mr. Nitin Garodia and Mr. Nimesh Chitalia.

13. From the foregoing, I am of the view that while judging the conduct of parties alleged to be involved in a market manipulation, the case has to be seen

in its whole and individual conduct should not be detached from the main case and viewed in isolation. Furthermore, when multiple entities are linked together in a well orchestrated scheme of manipulation as in the present case, it would give rise to an absurd situation if only one or two entities central to this plot are held responsible for the manipulation and the others are allowed to get away. Thus, in such matters, the focus should be on the case in its entirety. The investigation conducted by SEBI so far *prima facie* revealed that Mr. Nirmal Kotecha was one of the major beneficiaries of the said manipulation and is alleged to have masterminded the forgery. This would further indicate that the letters may have been forged only in order to manipulate the market price of the shares of PSTL and thereby benefit from the artificial price rise, as stated in the Order. Further, those who masterminded the entire episode ensured that the news about such forged letters were published by the media on Saturday and Sunday so that on Monday, when the market opened up, the share price of PSTL would substantially increase. They also ensured that the forged letter to Mr. P.S. Saminathan was delivered only on the next trading day (Monday) after affording time for themselves to sufficiently publicise the contents of the forged letter through the media so as to attract investor interest. In his plan of execution, Mr. Nirmal Kotecha appears to have made use of various entities/persons including his close relatives (grandfather, mother and wife), his companies/associate entities (Kotecha Capital Services Private Limited/ Nirman Management Services Private Limited/Nishwet and persons like Mr. Rakesh Sharma, Mr. Rajesh Unnikrishnan, Mr. Amol Kokane and others covered in this order, in his allegedly nefarious design. *Prima facie*, the specific role of these individuals had been sculpted by Mr. Nirmal Kotecha and he appears to have planned the entire sequence of events in order to achieve his desired objective. As already mentioned above, Mr. Rakesh Sharma and Mr. Rajesh Unnikrishnan are alleged to be responsible for having forwarded the impugned letter (purported letter of SEBI) to the media and in publicizing its contents and the facts and circumstances at this stage *prima facie* supports the same. Fund transfers have been found between Mr. Deepak Thakkar and Mr. Nirmal

Kotecha/Nirman. He was also found to have sold the shares of PSTL substantially on December 22, 2008, when the price artificially shot up in view of the news of the impending public offer to be made by Mr. P.S. Saminathan (as purportedly directed in the forged letter). Further, it is seen that Mr. Amol Kokane's demat and banking accounts have been used in the manipulation. He was also found to have received high value funds from various other entities/persons and had transferred funds to the others also. Likewise, Mr. Darshan Desai, Mr. Rajesh V. Jani, Mr. Raju G. Shah, Mr. Nitin Garodia and Mr. Nimesh H. Chitalia have been found to have played their role, either by trading, enabling fund transfers to the parties concerned etc.. Therefore, at this stage, where the investigation in the matter is in progress, I do not find this a fit case to revoke the ad interim directions issued against Mr. Rakesh Sharma, Mr. Rajesh Unnikrishnan, Mr. Deepak Thakkar, Mr. Amol Kokane, Mr. Darshan Desai, Mr. Rajesh V. Jani, Mr. Raju G. Shah, Mr. Nitin Garodia and Mr. Nimesh H. Chitalia in the Order till the completion of the investigation now in progress. I am convinced that the interim order against them needs to continue. Their role or involvement in the whole manipulation would be reviewed again after the investigation is over.

14. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 read with Section 19 thereof, hereby confirm the ex-parte interim order dated April 23, 2009 in the matter of Pyramid Saimira Theatre Limited, against Mr. Rakesh Sharma, Mr. Rajesh Unnikrishnan, Mr. Deepak Thakkar, Mr. Amol Kokane, Mr. Darshan Desai, Mr. Rajesh V. Jani, Mr. Raju G. Shah, Mr. Nitin Garodia and Mr. Nimesh H. Chitalia, till further orders.

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

PLACE: MUMBAI
DATE: JANUARY 28, 2010