

Before Shri R.S. Virk, District Judge (Retd.)

File no. 627

MR No. 17906/16

Objector : Giri Buildwell Pvt. Ltd

Argued by : Shri Rahul Sharma, Advocate (Enrolment No. D-2158/1999)

Order :

1. It may be noticed at the outset that vide order dated 02/02/2016, passed in civil appeal no. 13301/2015 bearing the title Subarata Bhattacharaya Versus Securities & Exchange Board Of India, the Hon'ble supreme court had directed constitution of a committee by SEBI to be headed by Hon'ble Mr. Justice R.M. Lodha former Chief Justice of India as its Chairman for disposing of the land purchased by PACL so that the sale proceeds recovered there from can be paid to the investors who have invested their funds in the company for purchase of the land. Subsequent thereto, I have been appointed by the said committee to hear objections/representations against attachments of various properties in the matter of PACL Ltd as so mentioned in the order dated 15/11/2017 (to be read with orders dated 13/04/2018, 02/07/2018 and 07/12/2018) of the Hon'ble Supreme Court in civil appeal no. 13301/2015 Subrata Bhattacharya Vs SEBI, and notified in SEBI Press release no. 66 dated 08/12/2017.
2. The objector above named seeks delisting, (from the list of properties shown attached on www.auctionpacl.com) the properties in question comprising first floor premises bearing the no. K-24 and K-24 B, Sector-18, Noida, lease hold rights whereof it claims to have purchased from M/S PGF Ltd vide registered Sub lease dated 02/06/2006 (copy whereof is appended as Annexure-A) for legal and valuable consideration. The objector has not mentioned the MR Number of the property in question and nor has it produced copy of Lease deed whereby M/S PGF Ltd had statedly been leased plot no. K-24 by NOIDA has been placed on record of this petition, but a perusal of MR No. 17906/16 which is included in the list of properties attached by CBI reveals that plot no. 24 measuring 96 Sq. mtrs. situated in Sector-18 of Gautam Budh Nagar had been leased vide lease deed no. 144/98 dated 21/01/1998 by NOIDA in favour of PGF Ltd for an amount of Rs.93,60,000/- (Ninety three lakhs sixty thousand).
3. The aforesaid registered Sub lease dated 02/06/2006 describes it to be a Tripartite Sub-lease executed between New Okhla Industrial Development Authority, a body corporate (constituted as such under section 3 of U.P. Industrial Area Development Act of 1976) as the "lesser", M/S PGF Ltd (through its authorized signatory Shri Rajeev Kumar Mishra duly authorized vide Board resolution dated 02/07/2005) as "lessee" and

M/S Giri Buildwell Pvt. Ltd (through its Director, Shri Vinod Tiwari) as “Sub-lessee” for two separate amounts of Rs.18,05,000/- (Eighteen lakhs and five thousand) each, in respect of covered areas measuring 92.10 Sq. Mtrs. (Super area measuring 103.44 Sq. Mtrs.) each, comprising the first floor hall no. K-24 and K-24 B in Sector-18, Noida.

4. The learned counsel of the objector contends that the very fact that the lessor namely Noida is a party to the aforesaid Sub- lease deed and which has created legal and financial liability on the objector Sub-lessee vis-à-vis the ‘lessor’, it is evident that the sale of lease hold rights by PGF Ltd in favour of the objector above named is for legal and valuable sale consideration and protects the objector as a ‘bonafide purchaser’ thereof and therefore the said property is liable to be removed from the list of attached properties sought to be sold by PACL Ltd under orders of the Supreme Court dated 02/02/2016 passed in civil appeal no. 13301/2015 Subrata Bhattacharya Vs SEBI.
5. The question whether PGF Ltd was legally competent to transfer its lease hold rights in the above property in favour of the objector above named and whether it is liable for sale by PACL Ltd necessarily takes us to the history of PGF Ltd and PACL Ltd.

6. **Brief History behind initiation of action against PGF Ltd & PACL Ltd by SEBI**

PGF Ltd

- i. Pearls Green Forests Ltd was incorporated on 19/01/1983 at Chandigarh and is called PGF Ltd w.e.f. 1997. At the time of its incorporation, Nirmal Singh Bhangoo was its Managing Director.
- ii. SEBI had issued a public notice dated 18/12/1997, besides specific letter dated 20/04/1998, to PGF Ltd whereby it was called upon to furnish various details as regards ‘collective investment schemes’.
- iii. In the backdrop thereof, SEBI passed an order dated 20/02/2002 under section 11B of SEBI Act against PGF Ltd which was challenged by PGF by filing CWP No.4620/2002 in the Punjab & Haryana High Court.
- iv. In pursuance of directions dated 29/04/2002 of the Punjab & Haryana High Court in the said writ, and after complying with the said order dated 29/04/2002 SEBI passed therein, an order dated 06/12/2002 prohibiting PGF from collecting any money from investors and directed PGF to refund the money already collected by it to the investors.
- v. PGF Ltd challenged the aforesaid order dated 06/12/2002 of SEBI by filing CWP No.188 of 2003 against Union of India and others before a division bench of the Punjab & Haryana High Court which was dismissed vide order dated 26/07/2004 by Hon’ble Mr. Justice J.S. Khehar and Hon’ble Mr. Justice Hemant Gupta.

- vi. Aggrieved against the said order dated 26/07/2004, PGF Ltd filed civil appeal no. 6572 of 2004 bearing the title PGF Ltd Versus Union of India, reported in 2015 (13 SCC 50) which was dismissed by the Hon'ble Supreme Court vide order dated 12/03/2013 with costs to the tune of Rupees Fifty lakhs. It was further observed by it in para 56 thereof as under :-

Apart from imposing cost for having wasted the precious time of the High Court as well as of this Court, in order to ensure that none of the investors/customers of the PGF Limited, who have parted with their valuable savings and earnings by falling a prey to the promise extended to them are deprived of their investments, we feel it just and necessary to direct for proper investigation both by the Central Bureau of Investigation as well as the Department of Income Tax and in the event of any malpractice indulged in by the PGF Limited, to launch appropriate proceedings, both Civil, Criminal and other actions against the PGF Limited, as well as, all those who were responsible for having indulged in such malpractice. We also direct the second respondent to proceed with its investigation/enquiry and inspection of the PGF Limited as well as all its other officers and other premises and after due enquiry to be carried out in accordance with law, take necessary steps for ensuring the refund of the monies collected by the PGF Limited in connection with the sale and development of land to its various customers.

- vii. Subsequently, the Hon'ble Supreme Court vide order dated 22/01/2016 appointed a committee headed by Hon'ble Mr. Justice Vikramjeet Sen (Retd) for realisation of the monies by way of sale of the immovable properties, as well as liquidation of fixed deposit receipts, for disbursement of monies collected by PGF to its investors.

7. PACL LTD

- i. PACL Ltd was incorporated on 13/02/1996 at Jaipur (Rajasthan) at which time Nirmal Singh Bhangoo was its founding director.
- ii. Vide order dated 02/02/2016, passed in civil appeal no. 13301/2015 bearing the title Subarata Bhattacharaya Versus Securities & Exchange Board Of India, the Hon'ble supreme court had directed constitution of a committee by SEBI to be headed by Hon'ble Mr. Justice R.M. Lodha former Chief Justice of India as its Chairman for disposing of the land purchased by PACL so that the sale proceeds recovered there from can be paid to the investors who have invested their funds in the company for purchase of the land.

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8. Information pertaining to launch of criminal proceedings against PGF Ltd as well as PACL Ltd by CBI

A. The CBI had averred (in two of the matters viz., petition nos. 367/2 and 367/3, decided by me on 16/05/2018 and uploaded vide catalogue no. 211 & 212 at www.sebi.gov.in/PACL.html) that its Bank Securities & Fraud Cell Branch, had upon conversion of Preliminary Enquiry No. PE/BD1/2013/E/0003, registered an FIR vide No. RC-BDA/2014/E/0004/CBI/BS&FC/ND on 19/02/2014 under sections 120-B r/w 420 IPC in pursuance of order of the Hon'ble Supreme Court of India dated 12/03/2013 passed in Civil Appeal No. 6572 of 2004 in the matter of M/s PGF Ltd Versus Union of India and others against :-

- (i) M/s PGF Ltd through its Managing Director namely
 - (a) Shri Nirmal Singh Bhangoo,
 - (b) And directors namely S/Shri Harchand Singh, Chander Bhushan Dhillon and Prem Seth
- (ii) As well as against M/s PACL Ltd
 - (a) through its Managing Director namely Shri Sukhdev Singh, and
 - (b) Whole time directors namely S/Shri Gurmeet Singh and Subrata Bhattacharya & Additional director namely Shri Gurjant Singh Gill and some unknown others,

B. It was further averred therein before me by the CBI that investigation revealed that the conspiracy is having National and International ramification in as much as directors of M/s PGF and M/s PACL in pursuance of criminal conspiracy with each other and others had illegally collected Rs.45,184 Crores from 5.46 Crore gullible investors and diverted the wrongful gain/fund through Sham Land Developments (11,000 Crore approximately). Further, in pursuance of said conspiracy, thousands of crores were paid illegally to the agents and PACL had also diverted those funds through sham transactions at all India level and also at International level to Dubai, Australia etc.

C. It was also claimed therein that during investigation of the aforesaid case, it had transpired that M/s PACL Ltd had purchased land/properties in the name of itself, its associate companies, its employees and in the name of other individuals, purportedly utilizing the deposits of investors. In order to safeguard the interest of such investors, CBI had seized/secured title deeds/documents relating to such properties acquired by M/s PACL Ltd and its associates.

D. It was inter-alia claimed inter-alia therein that since the properties in question seem to have been acquired from funds belonging to the general public under various schemes of M/s PACL Ltd, in order to verify the genuineness of these property details, CBI, letters under the signature of Joint Director, BS&FZ were sent to the Revenue Heads (Secretary – Revenue) of 6 states namely Delhi, Haryana, Punjab, MP, Rajasthan & Maharashtra, along with the details of property documents seized by CBI, with a request for the issuance of necessary directions to the Land Revenue

Offices and Sub-Registrar Offices under them that a prior NOC from competent Court/CBI may kindly be obtained before allowing any further alienation/transfer of said lands in future.

9. Reference also become necessary at this stage to section 12 (1B) of Securities and Exchange Board of India Act, 1992 (as amended vide Act 9 of 1995) which reads as under :-

“(1B) No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations:

***Provided** that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of section 30.”*

With this amendment, a ban was imposed on a person carrying on any Collective Investment Scheme (hereinafter referred to as ‘CIS’), unless a certificate of registration is obtained in accordance with the regulations framed by SEBI.

10. Collective investment scheme referred to in the above para is defined in Section 11AA of Securities and Exchange Board of India Act, 1992 as under :-

***Collective investment scheme.** 11AA. (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) [or sub-section (2A)] shall be a collective investment scheme: [Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme.] (2) Any scheme or arrangement made or offered by any [person] under which,— (i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement; (ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable, from such scheme or arrangement; (iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on*

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behalf of the investors; (iv) the investors do not have day-to-day control over the management and operation of the scheme or arrangement.

11. It needs to be specifically pointed out here that Pearls Green Forest Ltd (which remained in existence from 19/01/1983 to 1997) and its successor PGF Ltd (which came into existence with effect from 1997) are shown in the list of 13,863 properties uploaded on www.sebipaclproperties.com to have purchased as many as 13 and 1767 properties respectively. Furthermore, as per the said list of 13,863 properties, PGF Ltd is shown to have sold 70 number of properties to various persons/entities.
12. The money utilised by PGF Ltd in purchase of lease hold rights in the property in question vide registered lease deed dated 21/01/1998 (as so mentioned in the Sub lease dated 02/06/2006) was apparently subsequent to the public notice dated 18/12/1997 issued by SEBI to PGF Ltd whereby it was called upon to furnish various details as regards "collective investment schemes". The said notice culminated in the passing of order dated 26/07/2004 by the Hon'ble Supreme Court in civil appeal no. 6572 of 2004 as mentioned in para 6 of this order above.
13. Reference may at this stage be specifically made to the observations of the Hon'ble Supreme Court in para 55 of its judgement in civil appeal no. 6572 of 2004 bearing the title PGF Ltd Versus Union of India, reported in 2015 (13 SCC 50) which reads as under:-

"The details mentioned therein disclose that the total amount received by the PGF Limited under different schemes from 01/01/1997 to 31/12/1997 was approximately Rs.186.84 crores. Its paid up capital was stated to be Rs.94,90,000/- and it mobilized Rs.815.23 crores under joint venture schemes from 01/04/1996 to 30/06/2002. The future liabilities towards joint venture schemes was projected in a sum of Rs.655.41 crores. Total outstanding liabilities payable to investors under the old closed schemes as on 30/06/2002 was stated to be Rs.497 crores. As against the above, till 31/10/2002, the PGF Limited stated to have made a net payment of Rs.115.93 crores leaving the balance due in a sum of Rs.393.69 crores approximately."

14. There is no material available on the file of this objection petition that the money utilised by PGF Ltd in purchasing lease hold rights in the property in question from NOIDA vide registered lease deed dated 21/01/1998 came out of personal assets of PGF Ltd and was not taken out by it from the money illegally collected in the manner

indicated above, from crores of gullible investors spread all over India as detailed in the above quoted judgement of the Hon'ble Supreme Court. Consequently, further purchase of such lease hold rights by the objector herein through registered Sub-lease dated 02/06/2006 from PGF Ltd cannot place it on a higher pedestal than PGF Ltd under whom it claims title thereto.

15. Reference may also be made in the context of foregoing discussion to the observations of the Hon'ble Supreme Court in the case bearing the title S. P. Chengal Varaya Naidu (Dead) By Lrs. Versus Jagannath (Dead) By Lrs. and others reported in (1994) 1 Supreme Court cases 1 wherein it was held that "*a fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is 'cheating' intended to get an advantage*". It was further held therein that:-

"Fraud avoids all judicial acts, ecclesiastical or temporal observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and nonest in the eyes of law. Such a judgment / decree by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."

16. In view of the foregoing discussion, the objection petition in hand is liable to be and is hereby dismissed. File be consigned to records.

Date : 01/02/2019


R. S. Virk
Distt. Judge (Retd.)

Note:

Two copies of this order are being signed simultaneously, one of which shall be retained on this file whereas the other one, also duly signed, shall be delivered to the objector as and when requested /applied for. No certified copies are being issued by this office. However, the orders passed by me can be downloaded from official website of SEBI at www.sebi.gov.in/PACL.html.

Date : 01/02/2019


R. S. Virk
Distt. Judge (Retd.)