

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

**appointed to hear objections/representations in the matter of PACL Ltd.
as so referred to in the order dated 15/11/2017, of the Hon'ble Supreme Court
passed in civil appeal no. 13301/2015 titled Subrata Bhattacharya vs SEBI and
duly notified in SEBI Press release no. 66 dated 08/12/2017.**

File no. 346

MR NO. 2552-14

Objector : Mr. Prateek Kumar Praful Kumar

Present : Mr. Varun Singh and Ms. Pranati Bhatnagar, Advocates, Delhi

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. The said committee was asked to collect relevant record including title sale deeds from the CBI (Central Bureau of Investigation) if it is in possession of any documents.
2. The committee on its part has put up various properties including the property forming the subject matter of the present objection petition for auction sale on its website www.auctionpacl.com.
3. The objector above named seeks delisting of property measuring 356.90 sq. meters commonly known as "*victory building*" bearing the number 287 (part), plot no. 22, Suvarna Cooperative Housing Society Ltd., situated at the junction of east west road no. 3 and north south road no. 5, bearing CTS No. 5, village Vile-Parle (west), Juhu, Taluka Andheri, Distt. Mumbai with the averments that he had purchased the same from Nirmal Singh Gurdyal Singh Bhangoo for an amount of Rs. 16,00,00,000/- (sixteen crore only) which amount has been acknowledged by the above named vendors in para 3 of the agreement of sale as having been duly received and the objector has been in uninterrupted use, occupation and possession of the said property

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ever since and all original document pertaining to the said property. It is claimed that exhibit the are copied o bank statement evidence of payment of the said transaction and added that in year 2013 disputes had arisen between the above named vendor and the objector in respective of this property whereupon hear filed suit (L) no. 1249 of 2014 (final suit no. 396 of 2015) wherein the High court of Bombay vide interim order dated 29/04/2015 directed that two security guards each, of the parties, the posted outset the said property as both parties had made a statement therein that no third party rights would be created in respect of the said property.

4. I have heard the learned counsel for the objector and have gone to case file which reveals that the agreement of sale dated 29/12/2011 appended as exhibit A to the objection petition though mentioning that the vendors above named viz Nirmal Singh Gurdyal Singh Bhangoo to have acknowledged receipt of the entire sale consideration amounting to Rs. 16,00,00,000/- (sixteen crore only) but para 3 of the said agreement which contains recital regarding payment of the aforesaid amount by the objector but reveals that the details of “cheque no”, “dated”, “drawn on” and “amount (Rs.)” are all blank which aspect assumes significance because the bank statement statedly evidencing payments appended as “exhibit B” does not contain any payment whatsoever to the above named vendors in or around the time of the said agreement of sale. Infact, the said exhibit contains 7 pages of bank transactions out of which file page nos. 100 to 103 relate to IDBI Bank whereas file page nos. 95 to 99 relate to Axis Bank. Only one entry of payment of Rupees Two Crores to Nirmal Singh Bhangoo dated 10/10/2012 through RTGS by IDBI Bank which is thus prior to the agreement of sale dated 29/12/2011. Two other entries dated 23/07/2012 and 12/09/2012 pertaining to Axis Bank exist at file page nos. 97 & 98 regarding payment of Rupees Four Crores in all to Nirmal Singh Bhangoo which too are both prior to the agreement of sale dated 29/12/2011. Obviously therefore, these three transactions totalling Rupees Six Crores in all have no concern whatsoever with the alleged payment of Rs. 16,00,00,000/- (sixteen crore) by Prateek Kumar objector herein to the above named Nirmal Singh Gurdyal Singh Bhangoo. No “*sale consideration*” within the meaning of section 54 of the TP Act, 1882 can thus be considered to have exchanged hands between the said parties in pursuance of alleged agreement of sale dated 29/12/2011 adverted to above. Infact the objector has not produced any material such as certified bank statements regarding his having remitted the amount of Rs. 16,00,00,000/- (Sixteen Crore) in lumpsum, or in instalments, from any of his known accounts to Nirmal Singh Gurdyal Singh Bhangoo through cheque / DD / RTGS etc. Even the filing of civil suit by the objector herein against the above named Nirmal Singh Gurdyal Singh Bhangoo is thus not sufficient in itself to indicate ownership of the objector herein over the property in question. The said suit could well be shadow

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boxing between the objector herein and Prateek Kumar above named specially when it is borne in mind that Prateek Kumar above named has been raising objections against attachment of around 400 properties of PACL attached under orders of the committee as so mentioned in volume I (at page 33) of the second status report of Justice (Retd.) R. M. Lodha committee in PACL matters. It may be mentioned in this context that PACL has in response to the letter of the committee, sent through its Nodal Officer cum Secretary forwarded to it forwarded a list of as many as 639 companies which are its associates / subsidiaries. Out of them several have filed objection petitions which have been dealt with by me such as file nos. 301, 303, 309 etc, wherein the name of Prateek Kumar above named has repeatedly surfaced in establishing linkage between the said Prateek Kumar and Nirmal Singh. In aforesaid file no. 309 containing objections filed by a company known as Synergyone Infrastructure and Projects Pvt Ltd, it was observed interalia by me in paras 5 and 6 thereof as under:-

Para 5

“Next coming to the argument as reproduced in para 6 above, it needs to be highlighted at the outset that Prateek Kumar above named for himself, or on behalf of any of the forty one companies led by him and known as ‘P K’ Group has nowhere claimed nor produced any documented proof to show that he, or any of his group of companies, possessed any income / assets whatsoever of their own, except as that derived out of business with PACL and which PACL on its own part also is nowhere shown to have ever had any income / assets independent of its collection from millions of investors spread all over India under “collective investment scheme” within the meaning of section 11AA of Securities and Exchange Board of India Act, 1992 but without obtaining the requisite permission from SEBI as contemplated in the said Act and the rules framed thereunder. The relevant extract of the said section is 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

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

Para 6


“Thus the entire money collected from millions of investors but sought to be divided amongst themselves by PACL and PK Group in the ratio of 80:20 as indicated in the above referred agreements etc as detailed in para 6 (a to e above) and as so argued on behalf of the three objectors herein (which as per the own claim of the objector Prateek Kumar above named are controlled by him and his group of companies / associates) cannot be permitted to be misappropriated either by PACL or the objectors amongst themselves by division of illgotten spoils, because the core funding is of the millions of investors who are not parties herein. It may borne in mind here that no revenue document such as mutation or Jamabandi etc exist on record to show as to how the various properties numbering ‘242’ in the case of Synergyone, ‘3’ in the case of Equisite Infrastructure and ‘100’ in the case of Green Fortune Promoters, forming the subject matter of the present objection petition came to be aggregated / acquired by Prateek Kumar above named and subsequently transferred in the name of Synergyone Infrastructure and Project Pvt Ltd. No legal sanction can therefore be extended to such like situations where the money collected from millions of investors on false pretexts of multiplied returns is misappropriated for buying property in personal names or companies setup for personal gains, to the exclusion of the gullible investors. Reference may in this context be made 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:-“

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“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.”

5. In view of the foregoing discussion, the objection petition in hand is liable to be and is hereby dismissed.

Date : 16/03/2018


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.

Date : 16/03/2018


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