

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. 41

**MR NO. 2546-14 & 2547-14,
2548-14**

Objector : I.I.T.L.

**Present : Sh. Debesh Panda, Advocate (Enrolment No. D984/2008)
with Sh. Neil Chatterjee, Advocate (Enrolment No.D/1058/2016)**

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. 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. It may be highlighted at the outset that this objection petition relates to two different properties as detailed hereunder:-

RBW
20/3/18

- i) Flat no. 1101 & 1101A, situated on the 11th floor of Lokhandwala Galaxy purchased from PACL for an amount of Rs. 4,50,00,000/- (Four crore fifty lakhs only) on 20/11/2013 by IIT Investrust Limited.

Note: Above three BHK flats has been formed by merging a two BHK flat and one room flat, measuring 1257 Sq. Ft. (1571 Sq. Ft. Super built up area) on 11th floor of Lokhandwala Galaxy Building, Mumbai.

- ii) Flat no. 702, 7th floor, Shanta Shivam CHS. Ltd purchased from PACL for an amount of Rs. 9,50,00,000/- (Nine crore fifty lakhs only) on 22/11/2013 by IIT Investrust Limited.

Note: This 3 BHK flat comprises 1850 Sq. Ft, super built up area on 7th Floor of Shivam Co-operative Housing Society Limited, Mumbai.

4. It is the common case of the same objector, qua both the above noted properties, that it had purchased the same in pursuance of advertisement dated 24/08/2013 published in the Times of India inviting offers for the said properties whereupon they had got the title investigation thereof carried out from a law firm - M/s Padiyar & Co. which reported that M/s PACL Ltd. had earlier purchased the said property from the developer in the year 2005 and was in peaceful possession thereof with clear and valid title and that the said property was not the subject matter of any litigation. It is further averred that after obtaining the consent of the society where in the said flats are situated, the above referred two deeds of transfer were executed on 15/11/2013 and 20/11/2013 and got registered on 20/11/2013 and 22/11/2013 respectively.
5. Learned counsel for the objector contends that it is a bona fide purchaser, for valuable consideration, of both properties already paid for by it to PACL and in the event of these two properties being put to auction, the PACL as ultimate beneficiary of the sale consideration derived there from (which will go to its account) will be a double beneficiary in as much as it has already received aforesaid amounts of sale consideration qua the said two flats from the objector and any further amount fetched during auction would again be credited in its account, even if for disbursal to investors.

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20/3/18

6. The objector in paras 30 and 31 of its written submissions has also questioned the legality of the procedure adopted by this committee. The said paras are being reproduced verbatim here under for facility of ready reference :-

i) *“Regard may also had to be to the law declared in a similar situation involving summary proceedings, in Tax Recovery Officer II, Sadar, Nagpur v. Gangadhar Vishwanath Ranade, (1998) 6 SSC 658. In that case, after a conveyance of immovable property had been made by a registered deed in the year 1969, proceedings for attachment of that property were initiated in the year 1972. An order was passed, declaring the transfer made in 1969 as void, which was challenged. The Hon’ble Supreme court held that the finding that the transfer was void was without jurisdiction. It further held that if the transfer made in the year 1972 was to be treated as void, a suit would have to be filed and a declaration to that effect would have to be obtained.*

Applying the same principle, Objector respectfully submits that the proposed auction could not be carried out, unless a decree is granted by a court of competent jurisdiction pursuant to a suit, declaring the deed of transfer executed by the Objector to be void. Since even a Court, by an order, could not vest an authority with jurisdiction, which it has not been vested with by Parliament, as held in Zuari Cement Ltd. v. ESI Corpn., (2015) 7 SSC 690, the deed of transfer could not be declared as void by this Committee.”

ii) Firstly, the above argument qua challenge to the procedure is not maintainable before me as the same has been provided for by a co-equal bench of the Hon’ble Supreme Court vide order dated 02/02/2016 passed in civil appeal No. 13301/2015 bearing the title Subrata Bhattacharya versus Securities & Exchange Board of India wherein it was directed interalia in para 3 thereof as under:-

“The SEBI shall constitute a Committee for disposing of the land purchased by the Company so that the sale proceeds can be paid to the investors, who have invested their funds in the Company for purchase of the land.”

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iii) Moreover, in Gangadhar's case (Supra) the powers of the Tax Recovery Officer under the Income Tax Act, 1961 were being decided but no such situation exists in the case in hand wherein this committee has been constituted under above referred order of the Hon'ble Supreme Court.

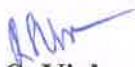
7. It is also argued that the committee has been constituted only for disposal of the 'land' purchased by the company and the jurisdiction of the committee does not therefore extend to the property in question which comprises 'flats'. I find myself unable to accept this contention because the purchases by PACL by utilising the moneys collected from the investors as "*collective investment scheme*" but without the requisite permission of sebi under the SEBI Act, 1992 were not confined to purchase of land alone but also included flats which is 'property' referred to as such in para 13 of the aforesaid order of the Hon'ble Supreme Court dated 02/02/2016 passed in civil appeal no. 13301/2015 which has to be read in its entirety and not in a disjunctive manner as is being attempted to be done and consequently I am of the view that this committee has the power to find out as whether or not the property in question is liable to sale.
8. It is also argued that the only order passed for restraining the sale of properties by PACL is dated 25/07/2016 for which reason also the purchase of the properties in question by the objector vide sale deed dated 20/11/2013 and 22/11/2013 are not liable to sale but this argument again is not tenable because various properties were acquired by PACL with funds collected from gullible investors spread all over India soon after its incorporation around the year 1996 despite SEBI having issued a press release dated 26/11/1997 to the effect that regulations for collective investment scheme (CIS) are under preparation and till they are framed and finalised, no person can sponsor any new CIS (as so mentioned at page 3 of the order dated 22/08/2014 of Sh. Prashant Saran, whole time member, SEBI). Such illegally collected amounts were later invested by PACL in various properties and consequently the genuineness or otherwise of sale of properties by PACL to various persons / entities even prior to 25/07/2016 (on which date PACL was restrained by the Hon'ble Supreme Court from selling its properties) can certainly be gone into by this committee.
9. Nonetheless, the fact cannot be lost sight of that as per the registered sale deed dated 12/11/2013, Flat No. 1101 and 1101A was purchased against payment of

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20/3/18

sale consideration of Rs. 4,45,50,000/- (Four crore forty five lakhs and fifty thousand only- net after TDS) by way of Cheque No. 138461 dated 08/10/2013 drawn on Axis Bank and similarly Flat No. 702 was purchased through registered sale deed dated 12/11/2013 for an amount of Rs. 9,40,50,000/- (Nine crore forty lakhs and fifty thousand only- net after TDS) by way of two cheques one bearing the No. 637614 dated 08/10/2013 in the sum of Rs. 5,00,00,000/- (Five crores only) and another cheque bearing the No. 637615 dated 08/10/2013 in the sum of Rs. 4,40,50,000/- (Four crore forty lakhs and fifty thousand only), both drawn on Axis Bank Ltd. which entries find corroboration from statement of account number 004010202935898 of the objector with Axis Bank (existing at pages 132 to 381- relevant entry at page 321 of the second volume of written arguments which is specific to Flat no. 702).

10. In view of the foregoing discussion and specifically for the reasons detailed in para 9 above, the objection petition in hand is liable to be and is hereby accepted.

Date : 20/03/2018


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 : 20/03/2018


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