

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

appointed to hear objections/representations in the matter of PACL Ltd.  
(as referred to in the orders dated 15/11/2017, 13/04/2018 and 02/07/2018  
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).

**File no. 574**

MR No. 25045-16, 25052-16,  
25057-16 & 25059-16

**Applicant :** PACL Ltd. through its Accounts Officer Kavinder Singh Kapkoti  
(on the strength of Board Resolution dated 29/08/2018 bearing  
signatures of Sikander Singh Dhillon, Director, PACL)

**Argued by :** (i) Shri Shashank Sharma, Advocate, Delhi (Enrol. No. D/2082/2011)  
for applicant PACL Ltd.  
(ii) Shri Amit Kumar Jain, Advocate, Delhi (Enrol. No. D/338/2005)  
for Govind Jivan Uttamchandani and Rajesh Jivan Uttamchandani  
(of objection petition no. 371 as uploaded vide catalogue no. 201)  
(iii) Shri Prakash Bhaygude, Advocate, Pune (Enrol. No. MAH/5923/2009)for  
(a) Ramesh Kondiba Patil,  
(b) Pramod Babulal Shah,  
(c) Kishore Nandlal Shah and  
(d) Apporva Promoters and Developers.

**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.
2. (a) PACL Ltd has in its first ever appearance before me has by way of the petition in hand instituted on 01/10/2018, sought recall of my order dated 10/08/2018 passed in petition no. 467 whereby the earlier order passed in objection petition no. 43 was reviewed. It may be pointed out in this context that the objection petition no. 43 seeking release from attachment of land comprised in Gat Nos. 405 (0H 50 Are + 0H 36.44 Are), 421(0H 60 Are + 0H 43.32 Are), 427(0H 50 Are + 0H 36.85 Are) ; 408 (0H 27.25Are) and 422 (0H 78.6 Are) all situated at village – Wagholi, Taluka-Haveli, District-Punc filed by one Ramesh Kondiba Patil was dismissed vide my order dated 23/02/2018.

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(b) Subsequent thereto, the above named Ramesh Kondiba Patil filed a review application which was accepted vide my order in question dated 10/08/2018 whereby the above described parcels of land were held liable to be removed from the list of properties shown as attached on [www.auctionpacl.com](http://www.auctionpacl.com).

3. The applicant PACL Ltd claims that it is the owner of the above described property forming the subject matter of objection petition no. 43 decided on 23/02/2018, as reviewed vide order dated 10/08/2018 passed in petition no. 467, and this committee could not have ordered its release from attachment as done vide above referred order dated 10/08/2018. In support of its above plea of being owner of the property in question, the applicant PACL has in para 13 (c), at pages 04 and 05 of its application, mentioned that it had transferred funds to the tune of Rs. 2285.79 Crores in various tranches to one Prateek Kumar (who had statedly been working as a land aggregator for the applicant herein) through various entities detailed hereunder :-

S. No.	Name of receiving entities of Prateek Kumar	Amount (in Crores)
1	Green Field Estates	1885.03
2	Sunshine Developers	64.50
3	Synergyone Infrastructure and Projects Private Limited	288.28
4	Synergyone Infra Developers Private Limited	12.98
5	Ganraj Properties Private Limited	20.00
6	Ecom Trade World Private Limited	15.00
	Total	2285.79

4. The applicant PACL contends that the properties forming the subject matter of objection petition no. 467 decided on 10/08/2018 were procured by the objector Ramesh Kondiba Patil out of funds above detailed in pursuance of registered development agreement cum sale agreement, copies whereof are exhibit-D colly and that the said objection petition or infact any objection petition dealt with by me could not have been decided without issuance of notice to PACL and CBI which is the investigating agency involved. With reference to the above stated transfer of 2285.79 crores by it to various entities including Greenfield Estate mentioned at Sr. No.1 of the list above, it is contended that the applicant had entered into registered development agreement cum sale agreements with reference to land comprised in Survey Nos. 405, 421, 427, 408, 409 and 422 situated at village – Wagholi, Taluka-Haveli, District-Pune, where after differences and disagreements had occurred amongst themselves and in order to settle the same, it had arrived at a definitive agreement dated 02/10/2013 with Prateek Kumar above named and his group of entities. At page 8 of its petition dated 28/09/2018, PACL has claimed that arbitration proceedings instituted by it under section 11 of the Arbitration Act are sub-judice without however mentioning therein that vide order dated 21/11/2017 passed by Hon'ble Mr. Justice Mohit S. Shah (Retd.), Sole Arbitrator in the matter of arbitration between PACL Ltd

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and Prateek Kumar & Ors., had allowed Prateek Kumar respondent therein to be transposed as the claimant whereas PACL Ltd as claimant therein was transposed as respondent no. 1 therein on account of none having put in appearance before him on behalf of PACL Ltd. Furthermore, vide corrigendum to the aforesaid order dated 21/11/2017 the above named arbitrator had accepted the email request dated 08/09/2017 of Rajani Associates to be discharged from the matter for want of instructions from PACL Ltd.

5. It may also be mentioned here that the said “definitive agreement dated 02/10/2013” statedly arrived at between PACL and Prateek Kumar above named had also been the subject of discussion in objection petition nos. 309 (Synergyone Infrastructure & Projects Pvt. Ltd.), 307 (Exquisite Infrastructure Pvt. Ltd.) and 372 (Green Fortune Promoters & Developers Pvt. Ltd) which were all disposed off through my common order dated 15/02/2018 with reference whereto and other connected agreements produced therein, it was observed inter-alia by me in my said order as under : -

*“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 named therein as statedly 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.*

*It was further observed by me therein that 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 agreements referred to in the said objection petitions could not be permitted to be misappropriated amongst themselves, either by PACL, or the objector companies involved therein, by division of illgotten spoils, because the core funding was of the millions of investors who were not parties therein.”*

6. First coming to the contention raised by PACL Ltd in the application in hand dated 01/10/2018 that the review petition (no. 467 as uploaded vide catalogue no.281)culminating in the order dated 10/08/2018 (whereby the order dated 23/02/2018 earlier passed in objection petition no.43 dismissing the same was reviewed and the

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said objection petition seeking removal of the land involved therein from the list of properties attached as indicated on [www.auctionpacl.com](http://www.auctionpacl.com) was accepted) could not have been decided by me without issuance of notice to applicant PACL or the CBI which is the investigating agency involved, it suffices to mention that the cause list of all matters fixed for hearing for all working days are invariably forwarded by this office to one Piyush Kumar Mahajan of SEBI at his email id [piyushkumarm@sebi.gov.in](mailto:piyushkumarm@sebi.gov.in) for being uploaded on [www.sebi.gov.in/PACL.html](http://www.sebi.gov.in/PACL.html) in the light of SEBI press release no. 66/2017 dated 08/12/2017 wherein it was clearly stipulated by way of information to all concerned including the public at large that a cause list providing the list of matters to be heard by Shri R.S. Virk, District Judge (Retd.) shall be provided on the SEBI website on a daily basis. All the matters fixed for hearing before me so far since 08/12/2017 have thus been duly uploaded on the aforesaid website of SEBI from time to time. Similarly, all such matters fixed for pronouncement of orders are duly indicated in such cause lists and furthermore all such orders have also been duly uploaded soon after pronouncement on the SEBI website. The applicant PACL cannot therefore be heard to contend that the order in question dated 10/08/2018 could not have been passed by me without issuance of notice to PACL or the CBI more so because the applicant PACL is very much aware of the proceedings being conducted by me pursuant to my appointment by the Hon'ble Mr. Justice R.M. Lodha (Retd.) Committee (in the matter of PACL Ltd) as reflected in the orders dated 15/11/2017, 13/04/2018 and 02/07/2018 passed by the Hon'ble Supreme Court in civil appeal no. 13301/2015 titled Subrata Bhattacharya Vs SEBI which Subrata Bhattacharya is none other than one of the directors of PACL Ltd.

7. Nonetheless, the plea of the applicant PACL of its having placed hefty funds to the tune of Rs.2285.79 crores with the above named six companies detailed in para 4 of this order above being an admission against itself can be treated to be reliable piece of information specially when it is borne in mind that huge amount of money was collected by PACL in violation of the provisions of SEBI Act, 1992 from millions of investors spread all over India. Moreover, PACL Ltd has in compliance with my interim order dated 11/10/2018 in the light of its plea regarding an amount of Rs.2285.79 crores in all having been advanced by it in various tranches to six companies through one Prateek Kumar (as detailed in para 4 of this order above), PACL Ltd has produced on record certified copies of statements of its own accounts pertaining to payments made to Mr. Prateek Kumar and his associate companies as detailed hereunder :-
- (i) Statement of account running into 78 pages pertaining to advances to the tune of Rs.17,14,41,53,442/- made from 01/04/1996 to 31/03/2017 to Greenfield Estates;
  - (ii) Statement of account running into 13 pages pertaining to advances to the tune of Rs.55,72,35,750/- made from 01/04/1996 to 31/03/2017 to Sunshine Developers;

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- (iii) Statement of account containing 1 page pertaining to advances made to the tune of Rs.65,00,21,000/- from 01/04/1996 to 31/03/2017 to Synergyone Infrastructure and Projects Pvt Ltd;
- (iv) Statement of account containing 01 page pertaining to advances made to the tune of Rs. 12,97,60,000/- from 01/04/1996 to 31/03/2017 to Synergyone Infradevelopers Ltd ;
- (v) Statement of account running into 23 pages pertaining to advances made to the tune of Rs.34,92,44,685/- from 01/04/1996 to 31/03/2017 to Ganraj Properties Pvt. Ltd ;
- (vi) Statement of account running into 05 pages pertaining to advances made to the tune of Rs.20,11,04,400/- from 01/04/1996 to 31/03/2017 to Ecom Tradeworld Pvt. Ltd ;
- (vii) Statement of account running into 21 pages pertaining to advances made to the tune of Rs.2,22,27,77,111/- from 01/04/1996 to 31/03/2017 to NSB Infrastructure & Projects (P) Ltd ;
- (viii) Statement of account running into 07 pages pertaining to advances made to the tune of Rs.12,43,267/- from 01/04/1996 to 31/03/2017 to Himalayan Green Farms, Land Mark Innovations Pvt Ltd, Chahar Krishi Farm, Shasya Mangalam Krishi Farm (Shivpuri) through Devender Kumar (HUF) and Bhagat Investment (P) Ltd, Prateek Kumar ;

8. It may be pointed out at this stage that apart from the question of “source of money” utilised by the objectors:-

- (a) Ramesh Kondiba Patil to the tune of Rs. 2,14,15,962/- (Two crores fourteen lakhs fifteen thousand nine hundred and sixty two) in the purchase of lands forming the subject matter of objection petition no. 43;
- (b) Apporva Promoters and Developers to the tune of Rs.7,03,10,248/- (Seven crores three lakhs ten thousand two hundred and forty eight) in the purchase of lands forming the subject matter of objection petition no. 42;
- (c) Pramod Babulah Shah and Kishore Nandlal Shah totalling Rs.3,94,88,595/- (Three crores ninety four lakhs eighty eight thousand five hundred and ninety five) in the purchase of lands forming the subject matter of objection petition no. 295;

which three objection petition nos. 42, 43 and 295 referred to above were all earlier dismissed vide my three separate orders, all dated 23/02/2018, but which were all reviewed vide my three separate orders, again all dated 10/08/2018, by accepting the review petition nos. 466, 467 and 468 filed by the above named objectors, the moot question arising for consideration is as to whether or not the said three orders all dated 10/08/2018, could have been legally passed by me.

9. It may be pointed out here that the applicant PACL Ltd has no independent locus standii to challenge the aforesaid order dated 10/08/2018 passed by me in objection petition

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no. 43 of Ramesh Kondiba Patil, because my mandate is confined to hearing objections/representations “against” attachment of properties indicated on [www.auctionpacl.com](http://www.auctionpacl.com), yet the said order dated 10/08/2018 passed in review petition no. 467, as also the orders of the same date passed in review petition nos. 466 and 468 detailed above, which are all at the same pedestal, have also to be tested in the light of the observations of the Hon’ble Supreme Court in the case titled Haryana State Industrial Development Corporation Ltd Versus Mawasi and others reported in 2012 AIR SCW 422 wherein the Apex Court had referred to the undermentioned case law on the aspect of ‘review’ including the situations circumscribing the exercise of power of review by any court/tribunal :-

- (i) In Thungabhadra Industries Ltd. v. Govt. of A.P. (1964) 5 SCR 174, another three-Judge Bench reiterated that the power of review is not analogous to the appellate power and observed:  
“A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions, entertained about it, a clear case of error apparent on the face of the record would be made out.”
- (ii) In Aribam Tuleswar Sharma v. Aibam Pishak Sharma (1979) 4 SCC 389, this Court answered in affirmative the question whether the High Court can review an order passed under Article 226 of the Constitution and proceeded to observe:  
“But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court.”
- (iii) In Meera Bhanja v. Nirmala Kumari Choudhury (1995) 1 SCC 170, the Court considered as to what can be characterised as an error apparent on the fact of the record and observed:

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“.....it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale AIR 1960 SC 137 wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

“An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.”

- (iv) In Parsion Devi v. Sumitri Devi (1997) 8 SCC 715, the Court observed: “An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47 Rule 1 CPC..... A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise”.”
- (v) In Lily Thomas v. Union of India (2000) 6 SCC 224, R.P. Sethi, J., who concurred with S. Saghir Ahmad, J., summarised the scope of the power of review in the following words: “Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised.”
- (vi) In Haridas Das v. Usha Rani Banik (2006) 4 SCC 78, the Court observed: “The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing “on account of some mistake or error apparent on the face of the records or for any other sufficient reason”. The former part of the rule deals with a

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situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict.”

- (vii) In *State of West Bengal v. Kamal Sengupta* (2008) 8 SCC 612, the Court considered the question whether a Tribunal established under the Administrative Tribunals Act, 1985 can review its decision, referred to Section 22(3) of that Act, some of the judicial precedents and observed:

“At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.

The term “mistake or error apparent” by its very connotation signifies an error which is evident *per se* from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3) (f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment / decision.”

10. Now reverting in the light of the case law adverted to above to the question as to whether my review order in question dated 10/08/2018 can be recalled by me, the answer in my opinion has necessarily to be in the affirmative because a wrong order cannot be permitted to be perpetuated because the order in question dated 10/08/2018 passed in review petition no. 467 of Ramesh Kondiba Patil ; as also the order similarly dated 10/08/2018 passed in review petition no. 468 of Pramod Babulal Shah and Kishore Nandlal Shah (though not challenged in the application in hand dated 01/10/2018 moved by PACL Ltd); and even the order, again dated 10/08/2018, passed


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in review petition no. 466 of Apporva Promoters and Developers (which is also not under challenge in the application in hand dated 01/10/2018 moved by PACL Ltd) were all based on “reappraisal of the contentions of the parties in the light of additional documents appended to the review petitions” and not on account of “inadvertent error” or “error on the face of record” contemplated in section 114 read with order 47 of the court of civil procedure. Consequently, my aforesaid three orders, all dated 10/08/2018, passed in the above noted three review petition nos. 466, 467 and 468 are all liable to be and are hereby recalled because the wrong committed while accepting the said review petitions on the basis of additional documents appended to the review petitions and not on account of “inadvertent error” or “error on the face of record” have to be treated to be a nullity and cannot be permitted to be perpetuated for the benefit of the objectors Ramesh Kondiba Patil, Pramod Babulal Shah, Kishore Nandlal Shah and Apporva Promoters & Developers to the detriment of the millions of investors of PACL Ltd. Resultantly, the orders all dated 23/02/2018, passed in objection petition no. 42 of Apporva Promoters & Developers, objection petition no. 43 of Ramesh Kondiba Patil and objection petition no. 295 of Pramod Babulal Shah and Kishore Nandlal Shah whereby the said three petitions were earlier dismissed stand restored.

11. In so far as notice issued suo moto vide my interim order dated 11/10/2018 to Rajesh Jivan Uttamchandani and Govind Jivan Uttamchandani in objection petition no.371 decided vide order dated 27/03/2018, is concerned, the same is hereby withdrawn because the said order dated 27/03/2018 was not passed by way of “review” of any earlier order but is based on the documents appended to the said objection petition as filed originally and moreover in view of the case law adverted to in para 10 of this order above, the said order dated 27/03/2018 also cannot be reviewed by me, even if the sale consideration involved therein be considered, for the sake of arguments, to be emanating from PACL Ltd.


**Date : 26/10/2018**

  
**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. 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](http://www.sebi.gov.in/PACL.html).

**Date : 26/10/2018**

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