

Before Shri R.S. Virk, District Judge (RETD.)
appointed to hear objections/representations in the matter of PACL Ltd.
as 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.

File no. 347

MR NO. 32874-16

Objector : Mr. Harish Vijay Kapoor and Mrs. Reema Harish Kapoor

Present : Ms. Anubha Goel, Advocate, Delhi (Enrolment No. D2226/2014)

Order :

1. 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. 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.
2. The above named objectors seeks removal from the list of properties put up for auction / sale at www.auctionpacl.com flat no. 602, situated on 6th floor of building no. 4 known as "Sejal Tower" constructed by Sejal Construction Pvt. Ltd. on land bearing survey no. 161 (part) and now bearing CTS No. 1073 and 1074 in village Pahadi, situated at 120 feet, link road, Goregaon (west) in Greater Mumbai. The aforesaid flat having carpet area of 817.33 sq.ft was earlier purchased by PACL through registered agreement of sale dated 20/01/2012 for an amount of Rs. 90,00,000/- (ninety lakhs) at pre-construction stage and after completion thereof, possession was duly delivered after the developers having obtained occupation permission of the building no. 4 comprising this flat and other flats therein.

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3. PACL after obtaining NOC from the above named builder viz Sejal Construction Pvt. Ltd on 28/04/2011 entered into registered agreement of sale dated 20/01/2012 with the objectors herein against a sale consideration of Rs. 90,00,000/- (ninety lakhs) which amount was paid by the objectors after securing housing loan from HDFC Bank out of which an amount of Rs. 30,00,000/- was paid on 29/12/2011 and another amount of Rs. 60,00,000/- was paid on the 10/02/2012 as per bank transactions on record after obtaining no objection certificate dated 01/02/2012 from the builder viz Sh. Sejal Construction Pvt. Ltd. Upon receipt of the aforesaid amount, and no objection certificate issued by the builder above named for securing loan against mortgage of the said flat, PACL delivered possession of the said flat to the objectors herein on 17/02/2012.
4. The objectors thus claim that they are bona fide purchasers of the above described flat against due consideration and therefore the said property should be removed from the list of properties put up for auction / sale at www.auctionpacl.com.
5. a) I have heard the arguments of the learned counsel for the objector and have gone through the documents on record as also the orders dated 02/02/2016, 04/08/2017 and 15/11/2017 of the Hon'ble Supreme Court in civil appeal no. 13301/2015 bearing the title Subarata Bhattacharaya versus SEBI as relied upon by the counsel for the objectors.
b) It is argued with the reference to SEBI Press Release dated 04/05/2017 that the committee is authorised to effect sale of the properties wherein PACL Ltd. has interest / right directly or indirectly but in the case in hand PACL has no subsisting right pursuant to delivery of possession of the flat in question on 17/02/2012 upon receipt of an amount of Rs. 90,00,000/- (ninety lakhs) in the light of agreement of sale dated 20/01/2012.
c) It is also argued that the order dated 04/08/2017 of the Supreme Court clearly mentions in para 2 thereof that PACL was called upon to furnish details of properties that are still owned by PACL directly or indirectly meaning thereby that PACL has no subsisting right upon receipt of entire agreed amount of Rs. 90,00,000/- (ninety lakhs). It is also pointed out that para 3(c) of the aforesaid order dated 04/08/2017 clearly mentions that any amount received after February 2017 by PACL was required to be recovered and deposited.
d) The above contentions do carry weight because possession of the flat in question was duly delivered by PACL to the objectors above named on 19/03/2012 which is duly protected under section 53 A of the TP Act, read in the light of the observation of the Hon'ble Supreme Court in the case titled Suraj Lamp and Industries Pvt Ltd versus state of Haryana reported in 2009 (7) SCC 363. Furthermore, PACL having received the entire sale consideration of Rs. 90,00,000/- (ninety lakhs) at the time of execution of the

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registered agreement of sale dated 20/01/2012, it had no right, title or interest whatsoever left in this property.

6. In view of the foregoing discussion, the objection petition in hand is hereby accepted holding that the above described property is liable to be removed from the list of properties put up for auction / sale on www.auctionpacl.com.

Date : 08/02/2018



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