

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. 329

MR NO. 32894-16

Objector : M/S Beaming Infra Developers Pvt. Ltd.

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

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. The objector above named has averred that it had purchased for an amount of Rs. 21,63,42,500/- (twenty one crores, sixty three lakhs, forty two thousand and five hundred only) the 'leasehold rights' of the property described as "Divya Drishti" situated on plot no. 1, CTS no. 256 corresponding to survey no. 287 (part) of village vile-parle, Swastik Co-operative Housing Society Ltd., NS Road no. 1, vile-parle west, Mumbai – 400056 vide deed of assignment dated 30/05/2012 which is registered under registration no. 6049 of 2012 with sub-registrar Bandra, Mumbai from PACL Ltd. against whom it had filed Civil suit no. 2638 of 2014 wherein the said court has passed an order dated 05/12/2016 restraining the defendants, their

RGV
16/3/18

servants and agents or anybody on their behalf from in any manner entering upon or remaining in / or from preventing or obstructing or interfering with the peaceful use, occupation and possession of the Plaintiffs in respect of the said premises or from forcibly disposing the Plaintiffs from the said property or inducing any third party in the said premises i.e. plot No. 1 bearing CTS No. 256 corresponding to Survey No. 287 (part) of village vile-parle admeasuring 5557.33 sq. yards equivalent to 465.8 sq. meters and the owners of 'Divya Drishti' building consisting of basement ground floor, mezzanine floor and 1st to 5th floor totally admeasuring 9219.10 sq. ft. carpet area situated at Swastik Co-operative Housing Society Ltd. at NS Road No. 1 vile-parle (west), Mumbai - 400056 without following due process of law.

4. The objector above named thus seeks withdrawal of auction notice passed by the committee in respect of the above described property.
5. It may be highlighted at the outset that in the letter dated 11/03/2017 received on behalf of the objector above named, it was claimed that the objector had purchased leasehold rights in the above property for an amount of Rs. 21,63,42,500/- (twenty one crores, sixty three lakhs, forty two thousand and five hundred only) but in para 8 of the plaint of Civil Suit no. 2014 filed by it against PACL before the City Civil Court, Mumbai it has been mentioned in para 8 thereof that out of the total sale consideration of Rs. 21,63,42,500/- (twenty one crores, sixty three lakhs, forty two thousand and five hundred only), the defendant therein namely PACL had encashed an amount of Rs. 8,00,00,000/- (eight crore only) whereas another amount of Rs. 2,57,00,000/- (two crores and fifty seven lakhs only) was deposited by the objector herein through RTGS in the bank account of PACL which did not however encash the cheques for the balance amount for the reasons best known to it. It is thus the admitted case of the objector that the sale transaction did not fructify for whatever reason. It may be pointed out that the objector apparently had the account number of PACL Ltd with it and therefore, it could have very well, after cancelling the cheques for the remaining amount statedly issued by it in favour of PACL, deposited the outstanding balance also through RTGS in the same account of PACL as done earlier by depositing Rs. 2,57,00,000/- (two crores and fifty seven lakhs) but which was not done and even the civil suit filed by it only seeks relief of declaration and injunction under sections 34 and 38 of the Specific Relief Act, 1963 and not "specific relief of due performance of the contract" by PACL by accepting the balance payment of Rs. 11,06,42,500/- (eleven cores, six lakhs, forty two thousand and five hundred) admittedly due from it. No transfer of title can thus be considered to have validly passed over from PACL in favour of the objector herein. The institution of the said civil suit by the objector herein against PACL thus appears to be a case of shadow

Admitted
16/3/18

boxing and is in any case a dubious transaction which suspicion is strengthened from the notice dated 27/09/2014 issued by PACL to one Prateek Kumar with specific reference to the property in question to the effect that neither he himself nor any of his employees or associate was given any authority to transfer the said property. It is further mentioned therein that PACL has not received any consideration for the said property which still stands in its own name in its books of account. The objector cannot thus be considered to be in lawful possession of the property in question in order to protect the same under section 53 A of the Transfer of Property Act. 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:-

"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."

6. Reference may at this stage be also made to the **MR and entry no. 32894-16** wherein on the basis of documents taken into possession by the CBI during the course of investigation PACL is recorded as the owner of the above described property as having purchased the same from one Sonali w/o Atul Chota Lal Ajmera, & other r/o Mumbai Maharashtra.
7. 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.)