

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. 218

MR NO. 28268-16

Objector : Mr. Harjit Singh Arora

Present : Sh. Yogender Vashist, Advocate for the objector

File no. 232

MR NO. 379-16

Objector : Anu Aggarwal & Vibhu Aggarwal

Present : Sh. Yogender Vashist, Advocate for the objector

1. This common order will dispose off the above described two objection petitions as the issue raised in both these petitions is common viz., forfeiture of earnest money to the tune of Rs. 5,50,00,000 /- (five crores and fifty lakhs), in each of these two petitions.
2. It may firstly be noticed 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. 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.

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3. The above named objector Harjit Singh Arora seeks release from attachment the property comprising commercial shops / office bearing the numbers 3, 4 and 6 on the ground floor and 2, 4, and 5 on the first floor of the building constructed on plot no. 34, pocket C-9, Sec – 8, Rohini, Delhi with the averments that he had entered into an agreement of sale dated 19/05/2014, with PACL Ltd in respect of the above described commercial property agreeing to sell the same for a total amount of Rs. 11,50,00,000/- (eleven crores and fifteen lakhs) which amount was to be paid to him by PACL Ltd through M/S Wittal See Marketing Ltd. It is claimed that as per clause 3(i) of the said agreement, an amount of Rs. 5,50,00,000/- (five crores and fifty lakhs) was to be paid to him within 30 days to be computed from the date of signing of the agreement of sale dated 19/05/2014 which was so paid to him by M/S Wittal See Marketing Ltd on behalf of PACL. As per clause 3(ii) of the said agreement, the balance amount of Rs. 6,00,00,000/- (six crores) was also to paid to him by PACL through M/S Wittal See Marketing Ltd within 90 days to be computed from the signing of the agreement of the sale dated 19/05/2014, that is upto 18/08/2014 but was not so paid despite his reminder dated 12/08/2014 and consequently as per clause 7 of the aforesaid agreement of sale dated 19/05/2014, the initial amount of Rs. 5,50,00,000/- (five crores and fifty lakhs) paid to him by M/S Wittal See Marketing Ltd on behalf of PACL stood forfeited. It is claimed that in view of the circumstances enumerated above, the inclusion of the aforesaid property in the list put up by the committee for auction / sale is uncalled for and instead the said property needs to be released from attachment.
4. The objectors Anu Aggarwal & Vibhu Aggarwal above named seek release from attachment the property comprising 1st Floor of residential property no. 13, East Avenue, East Punjabi Bagh, New Delhi with the averments that they had entered into an agreement of sale dated 17/05/2014, with PACL Ltd in respect of the above described residential property agreeing to sell the same for a total amount of Rs. 11,00,00,000/- (eleven crores) which amount was to be paid to them by PACL Ltd through M/S Wittal See Marketing Ltd. It is claimed that as per clause 3(i) of the said agreement, initial payment of Rs. 5,50,00,000/- (five crores and fifty lakhs) was to be paid to them within 30 days to be computed from the date of signing of the agreement of sale dated 17/05/2014 which was so paid to them by M/S Wittal See Marketing Ltd on behalf of PACL. As per clause 3(ii) of the said agreement, out of the balance amount, a sum of Rs. 3,00,00,000/- (three crores) was also to be paid to them by PACL through M/S Wittal See Marketing Ltd within 60 days to be computed from the signing of the agreement of sale dated

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17/05/2014 that is upto 18/08/2014 whereas the entire balance amount of Rs. 2,50,00,000/- (two crores and fifty lakhs) was further to paid to them by PACL through M/S Wittal See Marketing Ltd within 90 days to be computed from the signing of the agreement of the sale dated 17/05/2014 but even the second instalment of Rs. 3,00,00,000/- (three crores) though required to be paid by 16/07/2014 was not so paid despite their reminder dated 10/07/2014 and consequently as per clause 6 of the aforesaid agreement of sale dated 17/05/2014, the initial amount of Rs. 5,50,00,000/- (five crores and fifty lakhs) paid to them by M/S Wittal See Marketing Ltd on behalf of PACL stood forfeited. It is claimed that in view of the circumstances enumerated above, the inclusion of the aforesaid property in the list put up by the committee for auction / sale is uncalled for and instead the said property needs to be released from attachment.

5. It may be pointed out at the outset that both the above described properties are situated at Delhi where agreement of sale in respect of immovable property since the year 2001 onwards is required to be registered but none of the above referred two agreements of sale are registered.
6. The objectors herein rely on observations of the Hon'ble Supreme Court in the case bearing the title Satish Batra Versus Sudhir Rawal arising out of civil appeal no. 7588 of 2012 in support of their stand that both of them in their respective cases are entitled to forfeit an amount of Rs. 5,50,00,000/- each in their respective cases due to non payment of the remaining amounts to them by PACL within the stipulated period but a co-equal bench of the Hon'bel Supreme Court, and which is later in time to Sudhir Rawal's case (supra), has while relying on constitution bench judgement of the supreme court in the case of Fateh Chand Versus Bal Kishan Dass reported in AIR1963SC1405 held interalia in the case titled Kailash Nath Associates Versus DDA & Another reported in (2015) 4 SCC 136 that it is settled law that mere breach of contract does not entitle grant of damages and its is necessary that unless by breach of contract losses are caused, a person who is guilty of breach cannot be held liable for damages and the aggrieved party for such alleged damages cannot forfeit an amount received from the other party. It referred to therein to section 73 of the Indian Contract Act, 1872 which clearly provides that an aggrieved person cannot claim damages unless losses are proved to be caused to him on account of breach of contract by the other side. In the case in hand, it may be recalled that it is not the case of either of the objectors that they had suffered any losses due to breach of contract dated 19/05/2014 and 17/05/2014 respectively by PACL. In fact their respective properties had remained

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in their possessions throughout for which reason also no damages whatsoever can be considered to have been caused to either of them. While relying on observations of the Hon'ble Supreme Court in the case titled Suraj Lamp & Industries Pvt Ltd versus state of Haryana and another reported in 183 (2011) DLT 1 (SC) it is argued that an unregistered deed of conveyance would fall short of the requirements of sections 54 & 55 of the TP Act and will not confer any title nor transfer any interest in immoveable property and consequently no right whatsoever accrued in favour of PACL on the basis of two agreements of sale dated 19/05/2014 and 17/05/2014 respectively pertaining to the objectors herein. The above argument raised on behalf of the objectors through written submissions is being mentioned to be rejected out right because on the one hand the objectors are asserting forfeiture to the tune of Rs. 5,50,00,000/- in each of their respective cases, thus totaling Rs. 11,00,00,000/- on the strength of unregistered agreements of sale and on the other hand they are claiming that after forfeiture of the aforesaid amounts in their respective cases, these agreements became pieces of waste paper. No doubt unregistered document does not confer title but in the case in hand, the objectors are seeking to legitimize the receipt of an amount of Rs. 5,50,00,000/- in each of their respective objection petitions as earnest money without establishing any damage or loss as discussed in the foregoing paras of this order above which cannot therefore be permitted.

7. It may be noticed here that a perusal of the order of the Hon'ble Supreme Court dated 26/02/2013 passed in civil appeal nos. 6753-6754 of 2004 bearing the title SEBI Versus PACL India Ltd. and others, reveals that SEBI had issued notices to PACL as far back as in the year 1999 which were challenged by PACL in the Rajasthan High Court which had set aside the said notices. The matter ultimately reached the Supreme Court resulting in the above referred order dated 26/02/2013 being passed whereby the orders of Rajasthan High Court were set aside. It is thus evident that PACL was aware right from the year 1999 onwards that its activities had come under scanner of SEBI and therefore the transaction referred to in paras 3 & 4 above have to be viewed with caution.
8. The callous in difference shown by PACL to the provisions of Securities and Exchange Board of India Act, 1992, is evident from the above referred agreement of sale dated 19/05/2014 in Harjit Singh Arora's objection petition (file no. 218) and the agreement of sale dated 17/05/2014 in Anu Aggarwal & Vibhu Aggarwal objection petition (file no. 232) whereby PACL put in jeopardy such huge amounts of Rs. 5,50,00,00/- (five crore and fifty lakhs) in each of these two cases,

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thus totaling Rs, 11,00,00,000/- (eleven crores) in all, belonging to lakhs of investors spread all over India by agreeing to permit the objectors herein to forfeit the said amount in the event of non execution of regular sale deed within three months that is by 18/08/2014 in Harjit Singh Arora's case and 16/08/2014 in Anu Aggarwal & Vibhu Aggarwal's case during which period the fate of continuity of operations of PACL was itself under cloud as discussed in para 7 above. For the aforesaid reason, the possibility of the above referred agreements dated 19/05/2014 and 17/05/2014 pertaining to objection petition nos. 218 & 232 respectively having been collusive ones between the above named objectors Harjit Singh Arora with PACL and similarly of Anu Aggarwal & Vibhu Aggarwal also with PACL, acting in both these cases through M/S Wittal See Marketing Ltd, cannot be ruled out and in this view of the matter also, the observations of the Hon'ble Supreme Court in Satish Batra's case (supra) cannot be considered to be applicable to the facts of the case in hand. Permitting the objectors herein to retain the aforementioned amounts of Rs 5,50,00,000/- (five crore and fifty lakhs) in each of these two cases, thus totalling Rs. 11,00,00,000/- (eleven crores) under the garb of "forfeiture" would tantamount to playing into the hands of colluding parties viz the objectors herein and PACL to deprive lakhs of investors of the aforesaid sum which has apparently been illegally parked by PACL with the above named objectors herein.

9. In view of the foregoing discussion, both these objection petitions are liable to be and are hereby dismissed.

Date : 16/02/2018



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 : 16/02/2018



R. S. Virk

Distt. Judge (Retd.)