

न्यायमूर्ति (सेवानिवृत्त) आर.एम. लोढा समिति  
Justice (Retd.) R. M. Lodha Committee  
(पीएसीएल लि. के मामले से संबंधित / in the matter of PACL Ltd.)

संदर्भ सं. जेआरएमएलसी/पीएसीएल/  
Ref. No. JRMLC/PACL/

Order on the objection filed by Shri. Prabhudev.M  
SEBI/PACL/OBJ/NS/00027/2024

BEFORE THE RECOVERY OFFICER, SEBI  
ATTACHED TO  
JUSTICE (RETD.) R.M. LODHA COMMITTEE  
(IN THE MATTER OF PACL LIMITED)

File No.	SEBI/PACL/OBJ/NS/00027/2024
Name of the Objector(s)	Shri. Prabhudev. M
MR No.	25263/16

**Background:**

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") on 22.08.2014 had passed an order against PACL Limited, its promoters and directors, inter alia, holding the schemes run by PACL Ltd as Collective Investment Scheme ("CIS") and directing them to refund the amounts collected from the investors within three months from the date of the order. Vide the said order, it was also directed that PACL Ltd. and its promoters/directors shall not alienate or dispose of or sell any of the assets of PACL Ltd. except for the purpose of making refunds as directed in the order.
2. The order passed by SEBI was challenged by PACL Ltd. and four of its directors by filing appeals before the Hon'ble Securities Appellate Tribunal ("SAT"). The said appeals were dismissed by the Hon'ble SAT vide its common order dated 12.08.2015, with a direction to the appellants to refund the amounts collected from the investors within three months.

Page 1 of 15



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Aggrieved by the order dated 12.08.2015 passed by the Hon'ble SAT, PACL Ltd and its directors had filed appeals before the Hon'ble Supreme Court of India.

3. The Hon'ble Supreme Court did not grant any stay on the aforementioned impugned order dated 12.08.2015 of the Hon'ble SAT, however, PACL Ltd. and its promoters/ directors did not refund the money to the investors. Accordingly, SEBI initiated recovery proceedings under Section 28A of the SEBI Act, 1992 against PACL Ltd. and its promoters/ directors vide recovery certificate no. 832 of 2015 drawn on 11.12.2015 and as a consequence thereof, all bank/ demat accounts and folios of mutual funds of PACL Ltd. and its promoters/ directors were attached by the Recovery Officer vide attachment order dated 11.12.2015.
4. During the hearing on the aforesaid civil appeals filed by PACL Ltd. and its directors (*Civil Appeal No. 13301 of 2015 – Subrata Bhattacharya Vs. SEBI and other connected matters*), the Hon'ble Court vide its order dated 02.02.2016 directed SEBI to constitute a committee under the Chairmanship of Hon'ble Mr. Justice R.M. Lodha, the former Chief Justice of India (hereinafter referred to as "the Committee") for disposing of the land purchased by PACL Ltd. so that the sale proceeds can be paid to the investors, who have invested their funds in PACL Ltd. for purchase of the land. In the said civil appeals, the Hon'ble Supreme Court did not grant any stay on the orders passed by SEBI and the Hon'ble SAT. Therefore, directions for refund and direction regarding restraint on the PACL Ltd and its promoters and directors from disposing, alienating or selling the assets of PACL Ltd., as given in the order, continues till date.



Page 2 of 15

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5. The Committee has from time to time requested the authorities for registration and revenue of different states to take necessary steps and issue necessary directions to Land Revenue Officers and Sub-registrar offices, to not effect registration/mutation/sale/transfer, etc. of properties wherein PACL Ltd. and/ or its group or its associates have, in any manner, right of interest.
6. Also, the Hon'ble Supreme Court vide its order dated 25.07.2016 restrained PACL Ltd. and/ or its Directors/Promoters/agents/employees/Group and/or associate companies from, in any manner, selling/transferring/alienating any of the properties wherein PACL Ltd. has, in any manner, a right/interest situated either within or outside India.
7. In the recovery proceedings mentioned in para 3 above, the Recovery Officer issued an attachment order dated 07.09.2016 against 640 associate companies of PACL Ltd. In the said order, *inter alia*, the registration authorities of all States and Union Territories were requested not to act upon any documents purporting to be dealing with transfer of properties by PACL Ltd. and / or the group/ associate entities of PACL Ltd. mentioned in the Annexure to the said attachment order, if presented for registration.
8. The Hon'ble Supreme Court, vide its order dated 15.11.2017, passed in Civil Appeal No. 13301/2015 and connected matters directed that all the grievances/ objections pertaining to the properties of PACL Ltd. would be taken up by Mr. R.S. Virk, Retired District Judge.
9. On 30.04.2019, in the recovery proceedings initiated against PACL Ltd. and Ors, the Recovery Officer issued a notice of attachment in respect of 25 front companies of PACL Ltd. Thereafter, on 01.03.2021, the Recovery Officer issued another notice of attachment

Page 3 of 15



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in respect of 32 associate companies of PACL Ltd., which included 25 front companies of PACL Ltd. whose accounts were attached vide order dated 30.04.2019.

10. Vide order dated 08.08.2024 passed in *Civil Appeal No. 13301 of 2015 - Subrata Bhattacharya Vs. SEBI and other connected matters*, the Hon'ble Supreme Court has directed as under:

*“.....10. Since, we had directed in our order dated 25.07.2024, that no fresh applications or objections shall be filed before or entertained by Shri R.S. Virk, District Judge (Retd.) and that the same shall be filed before the Committee, the Committee may deal with such applications/ objections, if filed before it, and dispose them of as per the provisions contained under Section-28(A) of the SEBI Act.....”*

11. In compliance with the aforesaid order dated 08.08.2024 passed by the Hon'ble Supreme Court, all objections with respect to properties of PACL Ltd, which were pending before Shri R.S. Virk, Retired District Judge and all new objections, are now to be dealt by the Recovery Officer attached to the Committee.

**Present Objection:**

12. The instant objection has been filed by Shri Prabhudev. M S/o Mr. Muniyappa residing at Dodda Thimmasandra Village, Sarjapura Hobli, Anekal Taluk, Bangalore Urban District (hereinafter referred to as the “**Objector**”) through Mr. Vishnu T. Menon, Advocate, objecting the attachment of property, i.e. agricultural dry property, having Survey No. 85/2 admeasuring 4 acres situated at Kumbiganahalli Village, Jangamkote Hobli, Sidlaghatta Taluk, Chikkaballapur District (hereinafter referred as the “**impugned property**”), due to



Page 4 of 15

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attachment of property covered in MR No. 25263/16, which stands attached by the Committee.

13. The Objector in his objection petition has submitted that the impugned property was originally the absolute property of (i) Sri. K. Surya Kumar, (ii) Smt. Narayanamma, (iii) Smt. K.S. Indira, (iv) Smt. K.S. Bindu, (v) Smt. K.S. Sindhu and (vi) Master K.S. Amarnath Gowda ('Vendors'). A General Power of Attorney (GPA) was executed by Sri. K Surya Kumar and others and the impugned property was transferred by way of an Agreement to Sell dated 13.07.2010 between the Vendors and Mr. A.N. Srinivas ('Vendee'). Thereafter, a Deed of Absolute Sale was executed on 04.02.2011 by the aforementioned Vendors through the GPA holder viz. Mr. A.N. Srinivas in favour of Mr. Prateek Kumar with respect to the said impugned property. Later on, an Agreement to Sell dated 27.06.2014 was executed between Mr. Prateek Kumar ('Vendor'), represented by his Special Power of Attorney (SPA) holder Mr. Ayush Thapa and the Objector viz. Mr. Prabhudev. M with respect to the impugned property. Pursuant to the said Agreement to Sell dated 27.06.2014, the Objector claimed to have made a payment of Rs. 13,00,000/- in cash to the Vendor viz. Mr. Prateek Kumar as part payment of consideration towards the purchase of the impugned property. After signing the Agreement to Sell, the Objector states that he took possession of the impugned property without any opposition and till date is in possession of the said property.

14. The Objector has further submitted that at the time of discussions, Mr. Ayush Thapa, the SPA holder had not informed the Objector that the impugned property was part of the PACL Auction List or that there was any manner of encumbrance over the properties. After execution of the Agreement to Sell on 27.06.2014, the Objector states that he had on

Page 5 of 15



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numerous occasions reminded and requested Mr. Prateek Kumar, through his SPA holder Mr. Ayush Thapa, to prepare a Sale deed in favour of the Objector and it is the case of the Objector that he has even shown willingness to make payment of the balance consideration, in lieu of execution of Sale deed. However, Mr. Prateek Kumar failed to consider the requests of the Objector. In 2022, when the Objector desired to commercialize the impugned property and wanted to acquire some licenses and permissions related to the same, he had once again requested Mr. Prateek Kumar, through his SPA holder, to execute the sale deed. The SPA holder viz. Mr. Ayush Thapa at the said time had told the Objector to first pay the remaining consideration of Rs. 10,00,000/- which has been stated to have been paid by the Objector vide D.D. No. 010700 dated 27.04.2022. However, instead of executing a Sale Deed, another Agreement to Sell dated 16.02.2023 was executed between Mr. Prateek Kumar and the Objector, wherein, the Vendor has acknowledged the payment of Rs. 10,00,000/- made by the Objector. It is submitted that before the Agreement to sell dated 16.02.2023, a GPA dated 09.05.2022 was entered into between Mr. Prateek Kumar and the Objector vide which the Objector was given power of attorney by Mr. Prateek Kumar to deal in the property. Thereafter, when the Objector went to the relevant authorities to apply for some licenses and permissions, the Objector got to know that the impugned property is under litigation before the Hon'ble Supreme Court. The Objector has submitted that he is a genuine purchaser of the impugned property and was not aware of the property being that of PACL Ltd. The Objector, therefore, has filed the said petition seeking No Objection Certificate (NoC) in respect of the impugned property and to release the said property from the attachment.

15. The Objector was provided an opportunity of hearing on January 28, 2025 which was adjourned to January 31, 2025 on the request made by the Authorized Representative, Adv.

Page 6 of 15



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Vishnu T. Menon (AR). Considering the non-appearance on the scheduled date of hearing i.e. January 31, 2025, a last and final opportunity of hearing was granted to the Objector on February 05, 2025. On the said date, the AR appeared on behalf of the Objector and reiterated the submissions made in the objection petition. The AR submitted that Rs. 13,00,000/- was paid in cash to the Vendor, Mr. Prateek Kumar, on 27.06.2014 and an additional amount of Rs. 10,00,000/- was paid by him to the Vendor by way of D.D. No. 010700 dated 27.04.2022 for the impugned property when the second Agreement to Sell dated 16.02.2023 was executed. It is submitted that the EC and RTC records were verified with the relevant authorities and no reference of PACL Ltd or its associates was found by the Objector and therefore, it has been submitted that the Objector is a *bonafide* purchaser of the said property. Considering that no documentary proof was provided by the Objector along with the petition with respect to the payments, the AR was advised to furnish evidence showing payment made by the objector towards sale consideration for the purchase of the impugned property and time till February 12, 2025 was provided to the Objector for the same. It is noted that vide email dated February 12, 2025, the objector has provided bank statement in support of payment of Rs. 10,00,000/- made by him.

16. On perusal of the Agreements to sale dated 27.06.2014 and 16.02.2023 as submitted by the Objector, it is observed that the said documents are not registered Agreements to sale. It is a well settled position of law that in terms of Section 54 of the Transfer of Property Act, 1882 (TPA), "sale" is defined as a transfer of ownership in exchange for a price paid or promised or part-paid or part-promised. On the other hand, "Contract for sale" of immovable property is a contract that a sale of such property shall take place on the terms settled between the parties at a future date. Para 2 of Section 54 of TPA, however, provides that for tangible immovable property worth Rs. 100 or more, the transfer must be made

Page 7 of 15



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through a registered instrument, while for property valued less than Rs. 100, the transfer can be made either by a registered instrument or by delivery of possession; essentially meaning that a sale of significant value requires a registered document to be legally valid. Therefore, an agreement to sell, even though executed between the Vendor viz. Mr. Prateek Kumar and the Objector, can not be considered as giving any ownership to the Objector, in the absence of a registered sale deed.

17. In addition, it is noted from the submissions made by the Objector in the petition and as mentioned hereinabove, after execution of the first Agreement to Sell dated 27.06.2014 (*unregistered*) itself, the objector had taken possession of the impugned property and is in possession of the property even today. However, as has been mentioned in the preceding paragraph, even though the Objector is in possession of the impugned property since the year 2014, in the absence of a registered sale deed being executed for the said property, the ownership rights cannot be transferred to the Objector. In sale, there is an actual transfer of ownership in exchange for a consideration whereas, in a Contract of sale, there is only a contract between the parties that the sale will take place on the agreed terms on a later date. A transfer of immovable property by way of sale can only be by a deed of conveyance (*sale deed*). In the absence of a deed of conveyance (*duly stamped and registered as required by law*), no right, title or interest in an immovable property can be transferred.

18. In this regard, reliance is placed on the judgment passed by the Hon'ble Supreme Court in *Suraj Lamp and Industries Pvt. Ltd Vs. State of Haryana & Anr (2012) 1 SCC 656* wherein the Hon'ble Supreme Court has observed as under:



Page 8 of 15

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“..... 16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance.

*Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property.....”*

19. Having said this, since the Objector is relying on agreement to sell and is also claiming to be in possession of the impugned property, it is felt appropriate to draw reference to Section 53A of the TPA, which provides as under:

*“53A. Part performance. - Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,*

*and the transferee has performed or is willing to perform his part of the contract,*

*then, notwithstanding that, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the*

Page 9 of 15



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*property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract: Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."*

20. A plain reading of the said provision under the TPA shows that the said section protects the transferees, who have taken possession of the property on the basis of an agreement, by way of debarring the transferor or any person claiming under him from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continues to be in possession, other than a right expressly provided by the terms of the contract. However, following are the elements of the Doctrine of Part performance:

- 20.1 Existence of an Agreement, which is valid and enforceable under law
- 20.2 Payment of consideration
- 20.3 Taking possession or making improvements to the property

21. In the instant case, it is noted that the Objector and the Vendor have executed an Agreement to Sell dated 27.06.2014 which shows existence of an agreement. Further, upon execution of the said agreement, the Objector had taken possession of the impugned property which also fulfils another element required for claiming protection under Section 53A of the TPA. However, as noted in the preceding paragraphs, the Agreement to sell dated 27.06.2014 has not been registered and therefore, is an unregistered agreement which cannot be an enforceable agreement. The said position of law has even been recently laid down by the Hon'ble Supreme Court in the case of *Ramesh Mishrimal Jain Vs. Avinash Vishwanath*

Page 10 of 15



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*Patne & Anr (Civil Appeal No. 2549 of 2025 arising out of S.L.P (C) No. 13822 of 2020)* dated February 14, 2025. Further, it is noted from the Agreement to sell and as claimed by the Objector in his petition that, as part payment towards consideration, an amount of Rs. 13,00,000/- was paid by the Objector to the Vendor i.e. Mr. Prateek Kumar in cash. During the hearing, it was specifically advised to the Objector that documentary evidence showing payments made by him in cash as part payment towards purchase of the said impugned property and through DD at the time of execution of the second Agreement to sell may be provided by 12.02.2025. However, upon perusal of the material furnished by the objector vide email dated February 12, 2025, it is noted that no documentary evidence such as bank statement showing withdrawal of cash, receipt received from the Vendor viz. Mr. Prateek Kumar after receiving the part payment by cash from the objector, etc. has been provided by the Objector to show that he had indeed made payment in cash towards part payment for purchase of the said impugned property when the Agreement to Sell dated 27.06.2014 was executed. Thus, two elements i.e. agreement which is valid & enforceable under law and payment of consideration are missing in the present case and therefore, in the absence of the said key elements, the Objector cannot even claim the protection under Section 53A of the TPA. In view of the same, the possibility of protection under Section 53A of the TPA does not arise in the present facts of the case.

22. Here, reliance is placed on a recent judgement dated 20.12.2024 passed by the Hon'ble Supreme Court in the case of *Giriyappa & Anr Vs. Kamalamma & Ors. (SLP (Civil) No. 30804 of 2024 [Diary No(s). 56304/2024]* wherein the Apex Court has made the following key judicial observation with regard to protection sought by the Petitioner therein under Section 53A of the TPA:



Page 11 of 15

*[Handwritten signature]*

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**न्यायमूर्ति (सेवानिवृत्त) आर.एम. लोढा समिति**  
**Justice (Retd.) R. M. Lodha Committee**  
**(पीएसीएल लि. के मामले से संबंधित / in the matter of PACL Ltd.)**

संदर्भ सं. जेआरएमएलसी/पीएसीएल/  
Ref. No. JRMLC/PACL/

Order on the objection filed by Shri. Prabhudev.M  
SEBI/PACL/OBJ/NS/00027/2024

- (i) The Court noted that the petitioners failed to prove the existence of a valid sale agreement.
- (ii) The alleged agreement was unregistered, thereby failing to meet the statutory requirements under Section 17(1A) of the Registration Act, 1908.
- (iii) The Court reiterated that the doctrine of part performance under Section 53A could not be invoked in the absence of a valid and enforceable agreement.

23. Notwithstanding the above, on the basis of the said agreements to sell, the parties to the agreement had a right to seek specific performance of such agreement under Section 16 of the Specific Relief Act, 1964. However, during the hearing held on 05.02.2025, it was confirmed by the Objector that he has not sought for specific performance of the agreement dated 27.06.2014 which is now barred by limitation. Further, with respect to the agreement to sell executed on 16.02.2023, it is pertinent to note that the Hon'ble Supreme Court, vide orders dated 02.02.2016 and 25.07.2016 in the case of *Subrata Bhattacharya Vs. SEBI and other connected matters* had restrained selling/transferring/alienating any of the properties wherein PACL Ltd has, in any manner, a right/interest situated either within or Outside India. Even otherwise, the Agreement to sell dated 16.02.2023, being unregistered is hit by the judgment of the Hon'ble Supreme Court in *Suraj Lamps (Supra)* and therefore, cannot be taken into consideration. Furthermore, the agreement dated 16.02.2023 (*unregistered*) executed between the Objector and the Vendor viz. Mr. Prateek Kumar cannot be treated as valid contract since its executed after the order passed by the Hon'ble Supreme Court dated 02.02.2016 and 25.07.2016, therefore, the question of resorting to specific performance of the said agreement under Section 16 of the Specific Relief Act does not arise.

Page 12 of 15



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*Order on the objection filed by Shri. Prabhudev.M*  
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24. Regarding GPA dated 09.05.2022 relied upon by the Objector, it is noted that as per the terms of the said GPA, the Objector has been appointed as attorney by Mr. Prateek Kumar who was desirous of selling the Scheduled Property in favour of any prospective purchaser, only for the purpose of selling/disposing the Scheduled Property (i.e. impugned property). It is not like other GPAs which are given in cases where land is proposed to be sold through GPA and which confers right to enjoy or otherwise deal with property also. Therefore, right to impugned property, claimed by the Objector on the basis of said GPA is not tenable.
25. It can be argued that the transferor may still execute a sale deed in favour of the Objector as the agreement to sell dated 16.02.2023 has been executed between the transferor and the Objector after almost 9 years from the date of the first agreement to sell which was executed on 27.06.2014. However, as has been already submitted by the Objector himself in his objection petition and further submitted during the hearing dated 05.02.2025, even after repeated requests and follow ups with the transferor through his GPA holder Mr. Ayush Thapa, the transferor has not execute any sale deed and instead has again executed another agreement to sell (*unregistered*), which creates a doubt on the willingness of the transferor to execute any sale deed in favour of the Objector for transfer of property. Moreover, by virtue of orders dated 22.08.2014 and 02.02.2016, passed by SEBI and Hon'ble Supreme Court, respectively, no sale deed can be executed by anybody, in respect of the impugned property.
26. It is pertinent to mention that the registered sale agreement dated 04.02.2011 executed between the initial Vendors viz. Mr. Surya Kumar & Others and Mr. Prateek Kumar was seized from the possession of PACL Ltd and has been thereafter, attached by the Committee. The very fact that the said document was in possession of PACL Ltd gives rise

Page 13 of 15



*Pr.*

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SEBI/PACL/OBJ/NS/00027/2024

to a presumption that Mr. Prateek Kumar was holding the said impugned property on behalf of PACL Ltd and the actual beneficial owner of the said impugned property was no other than PACL Ltd. In this regard, reference can be made to the order dated 22.08.2014 passed by SEBI in the matter of PACL Ltd., wherein it has been observed that,

*".....At this stage, I note from the details submitted during the course of investigation that PACL had mobilized funds from its customers to the tune of ₹ 44,736 crores till March 31, 2012. Further by its own admission, it has collected ₹ 4364,78,08,345 from 39,97,357 customers during the period of February 26, 2013 to June 15, 2014. The total amount mobilized comes to a whopping 49,100 crore. This figure could have been even more if PACL would have provided the details of the funds mobilized during the period of April 01, 2012 to February 25, 2013. The collection of such huge funds suggests that PACL has many more customers than the stated 1.22 crore. In this regard, I also refer to the proposal of PACL and its directors as forwarded to SEBI through their advocates and note that it has 4,63,13,342 customers to whom the land has not yet been allotted. Thus, a quick calculation of the total number of the customer of PACL comes to around 5.85 crore which includes the customers who said to have been allotted land and who are yet to be allotted the land....." (at pp. 71-72)*

*".....From the above, it is noted that PACL has very limited stock of lands in its name and that most of the lands are held through General Power of Attorney/through Agreement to Sale/through associate companies. PACL in its reply has informed that the said associate companies are controlled by its friends and nears and dears of the management of PACL. I observe that PACL enters into an MoU with the associate companies for the purchase of land. The MoU inter-alia, states that as PACL is unable to purchase the land in its own name beyond certain limits due to the land laws and other applicable laws of the land in different States of the country, PACL has nominated the associate company*



Page 14 of 15

*[Handwritten signature]*

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SEBI/PACL/OBJ/NS/00027/2024

*to purchase the land for PACL and get the sale deed executed in the name of associate company....." (at p. 80)*

27. Thus, the aforesaid property, like so many other properties owned by PACL Ltd, was purchased by PACL Ltd. out of the funds collected from its investors. In the present case, the impugned property i.e. the agricultural dry property, having Survey No. 85/2 admeasuring 4 acres situated at Kumbiganahalli Village, Jangamkote Hobli, Sidlaghatta Taluk, Chikkaballapur District covered in MR No. 25263/16, as per the title records, is shown to be in favour of the Mr. Prateek Kumar and as mentioned in the earlier paragraph has been seized by CBI from the possession of PACL Ltd. Thus, transferor i.e. Mr. Prateek Kumar is the owner of the property for namesake and the real beneficial owner of the said property was PACL Ltd. and the impugned property was purchased by PACL Ltd. out of the funds collected from its investors. Therefore, the impugned property in question belongs to PACL Ltd. who in turn was holding the said property in trust for its investors.

**ORDER:**

28. Given the above facts, the objection raised by the Objector is liable to be disallowed and is accordingly, disposed of as disallowed.

Place: Mumbai  
Date: February 17, 2025

  
MS. RESHMA GOEL  
RECOVERY OFFICER



रश्मा गोयल / RESHMA GOEL  
उप महाप्रबंधक एवं वसूली अधिकारी  
Deputy General Manager & Recovery Officer  
न्यायमूर्ति (सेवानिवृत्त) आर.एम. लोढा समिति  
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पी ए सी एल लि. के मामले से संबंधित, मुंबई / In The Matter of PacL Ltd. Mumbai

Page 15 of 15

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