

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

I.A.No.5/2016 in Civil Appeal No(s).13301/2015

SUBRATA BHATTACHARYA

Appellant(s)

VERSUS

SECURITIES & EXCHANGE BOARD OF INDIA
(For appropriate orders)

Respondent(s)

WITH

I.A.No.4/2016 in C.A.No.13319/2015

I.A.No.7/2016 in C.A.No.13394/2015

I.A.No.3/2016 in C.A.No.13410/2015

(For appropriate orders)

Date : 02/05/2016 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ANIL R. DAVE

HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

For Appellant(s)

Mr. Amit Pawan, Adv.

Mr. Abhishek, Adv.

Mr. E.C. Agrawala, Adv.

M/s. Temple Law Firm, Adv.

For Respondent(s)

Mr. Pratap Venugopal, Adv.

Ms. Surekha Raman, Adv.

Ms. Niharika, Adv.

For M/s. K.J. John & Co., Adv.

Mr. Prakash Kumar Singh, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Taken on board.

By way of interim relief, prayer (a) is granted.

Signature Not Verified
Digitally signed by
SARITA PUROHIT
Date: 2016.05.05
11:49:53 IST
Reason: []

(Sarita Purohit)
Court Master

(Sneh Bala Mehra)
Assistant Registrar

INDEX

<u>SL. NO.</u>	<u>PARTICULARS</u>	<u>PAGE(S)</u>
1.	An Application on behalf of the Securities and Exchange Board Of India – Respondent for appropriate orders with affidavit in support.	1-14
2.	<u>ANNEXURE – A/1:</u> Copy of the order dated 02.02.2016 passed by this Hon'ble Court.	15-22
3.	<u>ANNEXURE – A/2:</u> Copy of the order dated 05.04.2016 passed by this Hon'ble Court.	23-24
4.	<u>ANNEXURE – A/3:</u> Copy of the Plaint filed by Shri Kewal Kumar before the Court of Civil Judge, Senior Division, Bathinda.	25-37
5.	<u>ANNEXURE – A/4:</u> Copy of the summons issued to the Defendants 9 to 13 in the Plaint.	38-42
6.	<u>ANNEXURE – A/5:</u> Copy of the summons dated 16.03.2016 issued to SEBI in the Plaint.	43
7.	<u>ANNEXURE – A/6:</u> Copy of the summons dated 10.02.2016 received by SEBI in the Suit.	44
8.	<u>ANNEXURE – A/7:</u> Copy of the Pliant dated Nil.01.2016 filed by Mr. Rajesh Kumar before the Civil Court at Fatehabad District, Fatehabad In CS/90/2016.	45-51

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

I.A. NOS. OF 2016

IN

CIVIL APPEAL NO.13301 OF 2015

IN THE MATTER OF:

Subrata Bhattacharya

...Appellant

Versus

Securities and Exchange Board of India

...Respondent

WITH

C.A.NO.13319/2015

IN THE MATTER OF:

Gurmeet Singh

...Appellant

Versus

Securities and Exchange Board of India

...Respondent

WITH

C.A.NO.13394/2015

IN THE MATTER OF:

PACL Ltd.

...Appellant

Versus

Securities and Exchange Board of India

...Respondent

WITH

C.A.NO.13410/2015

IN THE MATTER OF:

Sukhdev Singh & Anr.

...Appellants

Versus

Securities and Exchange Board of India

...Respondent

2

**AN APPLICATION ON BEHALF OF THE SECURITIES AND
EXCHANGE BOARD OF INDIA – RESPONDENT FOR
APPROPRIATE ORDERS**

TO,

THE HON'BLE THE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA.

THE HUMBLE APPLICATION OF THE
APPLICANT/ RESPONDENT ABOVENAMED.

MOST RESPECTFULLY SHEWETH:

1. The Applicant / Respondent submits that this Hon'ble Court had vide order dated 02.02.2016, inter alia directed as under:

"3. The SEBI shall constitute a Committee for disposing of the land purchased by the Company so that the sale proceeds can be paid to the investors, who have invested their funds in the Company for purchase of the land. Hon'ble Mr. Justice R.M. Lodha, the former Chief Justice of India, would be the Chairman of the said Committee. It would be open to the Hon'ble Chairman of the Committee to appoint such experts or other persons, as he might think it necessary, in consultation with the SEBI, so as to enable the Committee to sell the land and pay to the investors in a manner that might be decided by the said Committee."

A copy of the said order dated 02.02.2016 is annexed hereto and marked as **ANNEXURE – A/1 – (PAGES 15 TO 22)**.

2. Thereafter, in compliance with the aforementioned order dated 02.02.2016, a Committee known as the Justice (Retd.) R. M. Lodha Committee (in the matter of PACL Ltd.) was constituted on 17.02.2016 and currently its members are as under:

1. Mr. Justice R.M. Lodha, Former CJI - Chairman
2. Mr. S. Raman, WTM, SEBI - Member
3. Mr. Prashant Saran, Co-opted Member
4. Mr. Amit Pradhan, CGM & RD, SEBI - Member
5. Mr. Rakesh Kumar Singh, DGM, SEBI - Nodal Officer cum Secretary.

3. This Hon'ble Court by an order dated 05.04.2016 in W.P. (C) No.500/2015 titled PACL Employees and Customers Protection Forum Vs. Union of India & Ors., inter alia, directed :

"In pursuance of the above statement, the Committee shall also have right to do the needful as per the order dated 2nd February, 2016 in respect of all properties wherein respondent No.3 has a right, even if such properties are situated outside India."

A copy of the said order dated 05.04.2016 is annexed hereto and marked as **ANNEXURE - A/2 - (PAGES 23 TO 24)**.

4. The Committee has since commenced its task envisaged by an order under the above mentioned orders dated 02.02.2016 and 05.04.2016 passed by this Hon'ble Court.

5. The Applicant /Respondent submits that various investors of the Company PACL Ltd. have instituted suits for recovery of investments /deposits against PACL Ltd., arraying therein as parties/ Defendants, the Hon'ble Chairman and other Members of the Committee and/or the Securities and Exchange Board of India. These suits include the following:

- (i) Civil Suit for Recovery of Rs.44,45,000/- filed by Kewal Kumar Vs. PACL Ltd. & Ors. in the Court of the Civil Judge, Senior Division, Bhatinda, Punjab, arraying SEBI (wrongly described as Stock Exchange Board of India), the Hon'ble Chairman Mr. Justice R.M. Lodha, Mr. Amit Pradhan, Member, Mr. Rakesh Kumar Singh, Nodal Officer and Mr. S. Raman, Member of the Committee constituted by and under the order of this Hon'ble Court dated 02.02.2016, as Defendants 9 to 13 therein. A copy of the plaint filed in the said suit is annexed hereto and marked as ANNEXURE - A/3 - (PAGES 25 TO 37) . A copy of the summons issued to Defendants 9 to 13 in the aforesaid suit is annexed hereto and marked as ANNEXURE - A/4 - (PAGES 38 TO 42).
- (ii) Civil Suit CS/451/2016 for declaration that the plaintiff is entitled to receive matured amount under Cash Down Payment Plan of PACL Ltd. instituted in the Court of the Civil Judge (Junior Division), Hisar, Haryana titled Sudesh Sachdev Vs. PACL Ltd. with SEBI arrayed as a Defendant.

5

A copy of the summons dated 16.03.2016 issued to SEBI in the said Suit is annexed hereto and marked as **ANNEXURE - A/5 - (PAGES 43)**.

- (iii) Civil Suit CS/90/2016 for declaration with respect to amount deposited in the Cash Down Payment Plan of PACL Ltd. instituted in the Court of the Civil Judge (Junior Division), Fatehabad titled Rajesh Kumar Vs. PACL Ltd., arraying SEBI as Defendant No.3. A copy of the summons dated 10.02.2016 received by SEBI in the said suit is annexed hereto and marked as **ANNEXURE - A/6 - (PAGES 44)**. A copy of the plaint dated Nil.01.2016 in the said suit is annexed hereto and marked as **ANNEXURE - A/7 - (PAGES 45 TO 51)**.

6. The Applicant most respectfully submits that there have been instances in recent past when this Hon'ble Court has given extraordinary directions in public interest to meet necessities of the case. Before a Bench of seven Hon'ble Judges of this Hon'ble Court in the case of SBP & Co. Vs. Patel Engineering Ltd. and Another reported in (2005) 8 SCC 618, when correctness of earlier decision of a Bench of five Hon'ble Judges was considered, this Hon'ble Court directed that all questions touching upon the jurisdiction, even if it involves disputed questions of facts, have to be decided by Hon'ble the Chief Justice of India and Hon'ble the Chief Justices of High Courts or their nominees under Section 11 of the Arbitration and Conciliation Act, 1996 [in short, "the Act"].

6

It has been ruled by the Bench of seven Hon'ble Judges in larger public interest and to achieve the objective of the Act, that when such issue is decided under Section 11 of the Act by Single Judges of High Courts being nominees of Hon'ble Chief Justices of the High Courts, the aggrieved party can move this Hon'ble Court by filing a Special Leave Petition under Article 136 of the Constitution which means that such a person is precluded from availing the remedy of Appeal before Division Bench of the High Court which has been provided as a matter of right either under Letters Patent of High Court or State Legislation.

7. This Hon'ble Court, in the case of *Shahid Balwa v. Union of India*, reported in (2014) 2 SCC 687, had directed that if in relation to 2G a prosecution is launched, an accused cannot invoke jurisdiction of High Court either under inherent powers or revisional ones provided under the Code of Criminal Procedure or even its writ jurisdiction.
8. It may not be out of place to mention that even High Courts have been compelled to make such an exercise to meet the necessities of the case. For example, in Patna High Court when a Public Interest Litigation was taken up suo motu giving rise to CWJC No. 6192 of 1997 for cleaning of drainage and removal of encroachments there from in Patna, which is the State capital of Bihar, various directions were given and as in its implementation, the High Court apprehended that hindrance may be created. It

7

passed order on 11.05.1998, relevant portions whereof run thus:-

"For carrying out the directions of this Court in various orders passed in this writ application, all officers of the State Government, Central Government and their instrumentalities shall give full cooperation to the persons who are engaged in undertaking the work. In case, any citizen is found obstructing the officers in discharging their duties, he shall be liable to be prosecuted under the provisions of the Penal Code and dealt with by his immediate arrest apart from making himself amenable to be dealt with by this Court, under the provisions of Contempt of Courts Act.

No interference shall be made by any person howsoever high he may be in carrying out the aforesaid orders passed by this Court in this writ application and if any attempt is made for interference in the work undertaken, the same shall be ignored and matter shall be immediately reported to this Court so that the concerned person may be suitably dealt with."

"Any order henceforth passed by Civil, Criminal or Revenue Court and any statutory authority in the State of Bihar which is in conflict with various orders passed in this case and may hamper the work undertaken pursuant to our orders shall be ignored, but brought to our notice for necessary orders. We may, however, make it clear that if any order passed by either the apex Court or this Court in any case is brought to their notice, the same shall be immediately implemented even if it is in conflict with our orders passed in this case, but the same shall be immediately brought to our notice."

9. That this Hon'ble Court in the matter of Contempt Petition (Civil) No. 412 and 413 of 2012 and 260 of 2013, titled as SEBI v. Sahara India Real Estate Corporation and Others, on 17.07.2013 was pleased to pass order as follows:

".....Registry is directed to get numbered the contempt petition filed against this Court's order dated 5.12.2012 and post the same along with these matters on 24.07.2013 at 2.00 P.M. We call for the Appeals Nos.42/2013 (titled Subrata Roy Sahara v. SEBI), 48/2013 (titled SHICL v. SEBI), 49/2013 (titled SIRECL v. SEBI) and 50/2013 (titled Ashok Roy Chaudhary & Ors.,v. SEBI) pending before the Securities Appellate Tribunal Mumbai and W.P. No.2088 of 2013 (titled Sahara India Lucknow & Anr., v. SEBI) pending before the High Court of Judicature at Allahabad, which shall stand transferred to this Court.

We make it clear that no High Court, Securities Appellate Tribunal and any other Forum shall pass any orders against the orders passed by Securities and Exchange Board of India (SEBI) in implementation of this Court's judgment dated 31.08.2012."

10. The Applicant/ Respondent therefore submits that it would be expedient that general directions be made in order to ensure that action taken by the Committee, its Members as well as SEBI and its officers for implementation of the directions contained in Orders dated 02.02.2016 and 05.04.2016 passed by this Hon'ble

Court are given effect to without any hindrance and delay, as it has been mandated by Article 144 of the Constitution that all Authorities, Civil and Judicial, in the territory of India, shall act in aid of this Hon'ble Court.

11. The Applicant respectfully submits that in view of this Hon'ble Court already having directed constitution of a Committee to sell the properties wherein PACL has an interest and effect refund to the erstwhile investors /depositors /customers of PACL Ltd. and further in order to ensure the smooth functioning of the Committee without any hindrance whatsoever and to prevent the diversion of its limited manpower and resources as well as the manpower and resources of SEBI, in contesting such suits, it would be just, expedient and in the interest of justice that this Hon'ble Court may be pleased to direct that no Civil Court or other Authority or Forum shall entertain any suit or other proceeding in respect of any claim or related matter against the Justice (Retd.) R. M. Lodha Committee (in the matter of PACL Ltd.) and/or its Chairman and/or its Members and/or the Securities and Exchange Board of India and further no injunction shall be granted by any court or other authority in respect of any action taken or to be taken by the Justice (Retd.) R. M. Lodha Committee (in the matter of PACL Ltd.) and/or its Chairman and/or its Members and/or the Securities and Exchange Board of India, with respect to claims relating to investments /deposits etc. in /with PACL Ltd. or its Directors /Promoters / Group Companies /Entities

/0

/Individuals etc., including in the proceedings referred to in paragraph 5 herein above. The Applicant further submits that a direction that any judgment /decree passed by the Civil Court /Forum in the aforesaid cases or in any other Suit or proceedings where SEBI is not a party with respect to deposits /investments in /with PACL Ltd. or its Directors /Promoters / Group Companies /Entities /Individuals etc., be submitted to the Justice (Retd.) R. M. Lodha Committee (in the matter of PACL Ltd.) to be dealt in accordance with the order dated 02.02.2016 passed by this Hon'ble Court in C.A. No.13301/2015 and connected matters and no execution proceedings be instituted or entertained without leave of this Hon'ble Court.

PRAYER

In the foregoing circumstances, the Applicant Securities and Exchange Board of India most respectfully prays that this Hon'ble Court may be pleased to:

- (a) pass an order directing that no Civil Court or other Authority or Forum shall entertain any suit or other proceeding in respect of any claim or related matter(s) pertaining to PACL Ltd. and/or its Directors /Promoters / Group Companies /entities /Individuals etc., arraying therein as parties/ Defendants /Respondents the Justice (Retd.) R. M. Lodha Committee (in the matter of PACL Ltd.), and/or its Chairman and/or its Members and/or the Securities and Exchange Board of India and further no injunction shall be

//

granted by any Court or other Authority or Forum in respect of any action taken or to be taken by the Justice (Retd.) R. M. Lodha Committee (in the matter of PACL Ltd.) and/or its Chairman and/or its Members and/or the Securities and Exchange Board of India, with respect to claims and/or matter(s) relating to investments /deposits etc. in /with PACL Ltd. or its Directors /Promoters / Group Companies /Entities /Individuals etc.;

- (b) pass an order directing deletion of the Chairman and Members of the Justice (Retd.) R. M. Lodha Committee (in the matter of PACL Ltd.), constituted by and under the order dated 02.02.2016 passed by this Hon'ble Court in C.A. No.13301/2015 and connected matters, as parties/ Defendants in Suit for Recovery titled Kewal Kumar Vs. PACL Ltd. & Ors. pending in the Court of the Civil Judge, Senior Division, Bhatinda, Punjab;
- (c) pass an order directing deletion of the Securities and Exchange Board of India, as party/ Defendant in Civil Suit CS/451/2016 titled Sudesh Sachdev Vs. PACL Ltd. & Ors. pending in the Court of the Civil Judge, junior Division, Hisar, Haryana;
- (d) pass an order directing deletion of the Securities and Exchange Board of India, as party/ Defendant in Civil Suit CS /90/2016 titled Rajesh Kumar Vs. PACL Ltd. & Ors.

12

pending in the Court of the Civil Judge, Junior Division,
Fatehabad, Haryana;

- (e) pass an order directing that any judgment /decree passed by the Civil Court /Forum in the aforesaid cases or in any other Suit or proceedings where SEBI is not a party with respect to deposits /investments in /with PACL Ltd. or its Directors /Promoters / Group Companies /Entities /Individuals etc., be submitted to the Justice (Retd.) R. M. Lodha Committee (in the matter of PACL Ltd.) to be dealt in accordance with the order dated 02.02.2016 passed by this Hon'ble Court in C.A. No.13301/2015 and connected matters and no execution proceedings be instituted or entertained without leave of this Hon'ble Court; and
- (f) pass such other and /or further direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS, THE APPLICANT/
RESPONDENT SHALL AS IN DUTY BOUND, EVER PRAY.

FILED BY :

M/s. K.J. JOHN & CO.,
Advocates for the Applicant/ Respondent

FILED ON : 29.04.2016

13

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
I.A. NOS. OF 2016
IN
CIVIL APPEAL NO.13301 OF 2015

IN THE MATTER OF:

Subrata Bhattacharya

...Appellant

Versus

Securities and Exchange Board of India

...Respondent

WITH
C.A.NO.13319/2015

IN THE MATTER OF:

Gurmeet Singh

...Appellant

Versus

Securities and Exchange Board of India

...Respondent

WITH
C.A.NO.13394/2015

IN THE MATTER OF:

PACL Ltd.

...Appellant

Versus

Securities and Exchange Board of India

...Respondent

WITH
C.A.NO.13410/2015

IN THE MATTER OF:

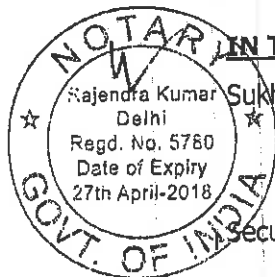
Rajendra Kumar Sukhdev Singh & Anr.

...Appellants

Versus

Securities and Exchange Board of India

...Respondent



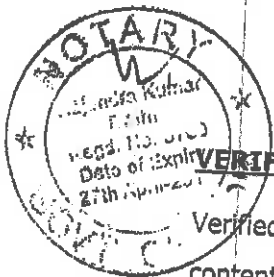
14

AFFIDAVIT

I, Amit Yadav, S/o Shri R.N. Yadav, aged about 25 years, presently working as Assistant Manager, Securities and Exchange Board of India, Northern Regional Office, Bank of Baroda Building, 5th Floor, 16, Parliament Street, New Delhi - 110 001, do hereby solemnly affirm and state as under:

1. I am fully conversant with the facts and circumstances of the present case and am authorized and competent to depose to the present Affidavit on behalf of the Respondent No.1.
2. I have read and understood the contents of the accompanying Application on behalf of the Securities and Exchange Board of India - Respondent for appropriate orders and say that the facts set out therein are true to my knowledge as derived from the records maintained by the Respondent and the submissions made therein are on legal advice received from the Advocates for the Respondent and believed to be true and correct.
3. I say that the Annexures - A/1 to A/7 to the accompanying Application are true and correct copies of their respective originals.

[Signature]
DEPONENT



VERIFICATION:

Verified at New Delhi on this the 29th day of April, 2016, that the contents of paragraphs 1 to 3 of my above affidavit are true and correct to the best of my knowledge, information and belief, that no part of it is false and nothing material has been concealed there from.

[Signature]
PRATAP VENUGOPAL
Advocate
TV876-A/1980

CERTIFIED THAT THE CONTENTS EXPLAINED TO THE DEPONENT EXECUTANT WHO IS SEEMED PERFECT TO UNDERSTAND & AFFIRMED DEPOSED BEFORE ME AT DELHI ON 29.04.2016 IDENTIFIED BY *[Signature]*
I IDENTIFY THE EXECUTANT/DEPONENT WHO IS SEEMED PERFECT TO UNDERSTAND & AFFIRMED DEPOSED BEFORE ME AT DELHI ON 29.04.2016 IDENTIFIED BY *[Signature]*
SIGNED IN MY PRESENCE *[Signature]*
WITNESSED IN MY PRESENCE *[Signature]*

[Signature]
DEPONENT
RAJENDRA KUMAR
PROTARY, DELHI-R-8768
GOVERNMENT OF INDIA
SUPREME COURT OF INDIA
COMPOUND, NEW DELHI
Register Pg./Sl. No. 29.04.2016