

Before Shri R.S. Virk, District Judge (Retd.)

appointed to hear objections/representations in the matter of PACL Ltd.

(as referred to in the orders dated 15/11/2017, 13/04/2018, 02/07/2018 and 07/12/2018 of the Hon'ble Supreme Court in civil appeal no. 13301/2015 Subrata Bhattacharya Vs SEBI, and notified in SEBI Press release no. 66 dated 08/12/2017).

File no. 599

**MR Nos. 28606-16, 28607-16,
28608-16, 28609-16,
28610-16, 28611-16,
28538-16.**

Objector : Vishnupriya Farms Pvt. Ltd.

Argued by : Shri Ankit Parhar, Advocate, Delhi (Enrol. No. D/1662/2008)

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.
2. The objector above named seeks delisting from the list of properties shown attached on www.auctionpacl.com, the various parcels of land in question, measuring 44 acres 36 cents, described as schedule "B" land at page 13 of the objection petition. As per the details set out in the charts set out in the objection petition, the objector had exchanged a total of 44.61 acres in all earlier owned by it (described as "Schedule A" lands in paras 3 to 8 below) with 44.36 acres owned by the different persons (named in paras 3 to 8 below and described as "Schedule B" lands therein). The objector further seeks delisting of an area measuring 1.72 acres statedly purchased by it from one S. Kandasamy vide sale deed no. 5148/2008 dated 02/07/2008 for an amount of Rs.41,353/- .
3. It is claimed that by virtue of registered exchange deed no. 5981 dated 18/06/2013 entered into between the objector herein namely M/S Vishnupriya Farms Pvt. Ltd through its authorised signatory Shri R. Venkatesan s/o Mr. Rangan on the one hand and Mr. Bhagaban Gahan s/o Purushottam Gahan through his power of attorney holder

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Mr. Gurunathan s/o Mr. Perumalsamy had exchanged the land denoted as “B” & “A” schedules as described above with each other on the ground that the land detailed in Schedule “A” above earlier owned by the objector herein was adjacent to the other properties of Mr. Bhagaban above named whereas the land detailed in Schedule “B” above earlier owned by Mr. Bhagaban Gahan above named was adjacent to the other properties of the objector herein namely M/S Vishnupriya Farms Pvt. Ltd which schedule “B” land taken in exchange by the objector from Mr. Bhagaban Gahan above named is statedly described in dark shade on the site plan appended as Annexure-A at page 9 of the objection petition.

Schedule “A” land

| S.No. | Survey Nos. | Area in Hectares | Area in Acres/Cents | Market Value* |
|-------|--------------|------------------|---------------------|-------------------|
| 1 | 436 | 0.62.5 | 1.54 | 2,31,875/- |
| 2 | 318 | 0.31.5 | 0.77 | 1,16,865/- |
| 3 | 251/7 | 0.40.0 | 0.99 | 4,44,800/- |
| 4 | 251/1 | 0.02.0 | 0.05 | 22,240/- |
| | Total | 1.36 | 3.35 | 8,15,780/- |

* Please see para 11 below.

Schedule “B” land

| S.No. | Survey Nos. | Area in Hectares | Area in Acres/Cents | Market Value |
|-------|--------------|------------------|---------------------|-------------------|
| 1 | 183/1 | 0.66.5 | 1.64 | 2,46,715/- |
| 2 | 183/2 | 0.62.5 | 1.54 | 2,31,875/- |
| 3 | 482 | 0.90.5 | 2.24 | 3,35,755/- |
| | Total | 2.19.5 | 5.42 | 8,14,345/- |

Note :- “Schedule A” lands detailed above denote the lands given by the objector herein to Maheshwar Naik and others in exchange for the lands taken as detailed in “Schedule B” lands above from the above named Maheshwar Naik and others.

4. It is further claimed that by virtue of registered exchange deed no. 5982 dated 18/06/2013 entered into between the objector herein namely M/S Vishnupriya Farms Pvt. Ltd through its authorised signatory Shri R. Venkatesan s/o Mr. Rangan on the one hand and Mr. Maheshwar Nayak s/o Mr. Raghunath Nayak through his power of attorney holder Mr. Gurunathan s/o Mr. Perumalsamy had exchanged the land denoted as “B” & “A” schedules (as described at pages 116 & 117 of the objection petition and reproduced as such in the chart hereunder) with each other on the ground that the land

detailed in Schedule "A" above earlier owned by the objector herein was adjacent to the other properties of Mr. Maheshwar Nayak above named whereas the land detailed in Schedule "B" above earlier owned by Mr. Maheshwar Nayak above named was adjacent to the other properties of the objector herein namely M/S Vishnupriya Farms Pvt. Ltd which schedule "B" land taken in exchange by the objector from Mr. Maheshwar Nayak above named is statedly described in dark shade on the site plan appended as Annexure-A at page 9 of the objection petition.

Schedule "A" land

| S.No. | Survey Nos. | Area in Hectares | Area in Acres/Cents | Market Value* |
|-------|--------------|------------------|---------------------|--------------------|
| 1 | 335/1 | 0.58.5 | 1.44 | 2,17,035/- |
| 2 | 322/1 | 2.05.0 | 5.06 | 22,79,600/- |
| 3 | 328 | 0.90.5 | 2.24 | 3,37,610/- |
| 4 | 389 | 0.57.0 | 1.41 | 2,11,470/- |
| 5 | 319 | 0.40.0 | 0.98 | 1,46,545/- |
| 6 | 335/1 | 0.58.0 | 1.43 | 2,15,180/- |
| 7 | 252/3 | 0.48.5 | 1.19.5 | 5,39,320/- |
| | Total | 05.57.5 | 13.75.5 | 39,47,760/- |

* Please see para 11 below.

Schedule "B" land

| S.No. | Survey Nos. | Area in Hectares | Area in Acres/Cents | Market Value |
|-------|--------------|------------------|---------------------|--------------------|
| 1 | 173/2 | 1.10.5 | 2.73 | 12,28,760/- |
| 2 | 426/1 | 0.50.5 | 1.25 | 1,87,355/- |
| 3 | 399/2 | 2.55.5 | 6.31 | 9,47,905/- |
| 4 | 485 | 0.63.5 | 1.56 | 7,06,120/- |
| 5 | 486 | 0.80.0 | 1.98 | 8,89,600/- |
| | Total | 05.60.0 | 13.83 | 39,59,740/- |

Note :- "Schedule A" lands detailed above denote the lands given by the objector herein to Maheshwar Naik and others in exchange for the lands taken as detailed in "Schedule B" lands above from the above named Maheshwar Naik and others.

5. It is further claimed that by virtue of registered exchange deed no. 5983 dated 18/06/2013 entered into between the objector herein namely M/S Vishnupriya Farms Pvt. Ltd through its authorised signatory Shri R. Venkatesan s/o Mr. Rangan on the one hand and Mr. Dasharath Behera s/o Mr. Panchanan Behera through his power of attorney holder Mr. Gurunathan s/o Mr. Perumalsamy had exchanged the land denoted as "B" & "A" schedules (as described at page 240 of the objection petition and

reproduced as such in the chart hereunder) with each other on the ground that the land detailed in Schedule “A” above earlier owned by the objector herein was adjacent to the other properties of Mr. Dasharath Behera above named whereas the land detailed in Schedule “B” above earlier owned by Mr. Dasharath Behera above named was adjacent to the other properties of the objector herein namely M/S Vishnupriya Farms Pvt. Ltd which schedule “B” land taken in exchange by the objector from Mr. Dasharath Behera above named is statedly described in dark shade on the site plan appended as Annexure-A at page 9 of the objection petition.

Schedule “A” land

| S.No. | Survey Nos. | Area in Hectares | Area in Acres/Cents | Market Value* |
|-------|--------------|------------------|---------------------|-------------------|
| 1 | 288 | 0.74.5 | 1.84 | 2,76,395/- |
| 2 | 362 | 1.41.0 | 3.48 | 5,23,110/- |
| | Total | 2.15.5 | 5.32 | 7,99,505/- |

* Please see para 11 below.

Schedule “B” land

| S.No. | Survey Nos. | Area in Hectares | Area in Acres/Cents | Market Value |
|-------|--------------|------------------|---------------------|-------------------|
| 1 | 225/1 | 0.36.5 | 0.90 | 1,35,415/- |
| 2 | 222/2 | 0.30.0 | 0.74 | 1,11,300/- |
| 3 | 400 | 0.73.5 | 1.81 | 2,72,685/- |
| 4 | 401 | 0.76.0 | 1.88 | 2,81,960/- |
| | Total | 2.16.0 | 5.33 | 8,01,360/- |

Note :- “Schedule A” lands detailed above denote the lands given by the objector herein to Maheshwar Naik and others in exchange for the lands taken as detailed in “Schedule B” lands above from the above named Maheshwar Naik and others.

6. It is further claimed that by virtue of registered exchange deed no. 5984 dated 18/06/2013 entered into between the objector herein namely M/S Vishnupriya Farms Pvt. Ltd through its authorised signatory Shri R. Venkatesan s/o Mr. Rangan on the one hand and Mr. Ajit Kumar Behera s/o Mr. Nilakantha Behera through his power of attorney holder Mr. Gurunathan s/o Mr. Perumalsamy had exchanged the land denoted as “B” & “A” schedules (as described at pages 331 & 332 of the objection petition and reproduced as such in the chart hereunder) with each other on the ground that the land detailed in Schedule “A” above earlier owned by the objector herein was adjacent to the other properties of Mr. Ajit Kumar Behera above named whereas the land detailed in Schedule “B” above earlier owned by Mr. Ajit Kumar Behera above named was

adjacent to the other properties of the objector herein namely M/S Vishnupriya Farms Pvt. Ltd which schedule "B" land taken in exchange by the objector from Mr. Ajit Kumar Behera above named is statedly described in dark shade on the site plan appended as Annexure-A at page 9 of the objection petition.

Schedule "A" land

| S.No. | Survey Nos. | Area in Hectares | Area in Acres/Cents | Market Value* |
|-------|--------------|------------------|---------------------|--------------------|
| 1 | 275/2 | 0.79.5 | 1.96 | 2,94,945/- |
| 2 | 321 | 0.90.6 | 2.24 | 3,36,125/- |
| 3 | 280/2 | 0.97.0 | 2.40 | 3,59,870/- |
| 4 | 363 | 0.38.0 | 0.94 | 1,40,980/- |
| 5 | 397/1a & 1b | 0.47.0 | 1.15 | 1,74,370/- |
| | Total | 3.52.1 | 8.69 | 13,06,290/- |

* Please see para 11 below.

Schedule "B" land

| S.No. | Survey Nos. | Area in Hectares | Area in Acres/Cents | Market Value |
|-------|--------------|------------------|---------------------|--------------------|
| 1 | 170/1 | 0.05.5 | 0.14 | 61,160/- |
| 2 | 170/3 | 0.63.5 | 1.57 | 7,06,120/- |
| 3 | 226/6 | 0.66.5 | 1.64 | 2,46,715/- |
| 4 | 448/2B | 0.76.5 | 1.89 | 2,83,815/- |
| | Total | 02.12 | 5.24 | 12,97,810/- |

Note :- "Schedule A" lands detailed above denote the lands given by the objector herein to Maheshwar Naik and others in exchange for the lands taken as detailed in "Schedule B" lands above from the above named Maheshwar Naik and others.

7. It is further claimed that by virtue of registered exchange deed no. 5985 dated 18/06/2013 entered into between the objector herein namely M/S Vishnupriya Farms Pvt. Ltd through its authorised signatory Shri R. Venkatesan s/o Mr. Rangan on the one hand and Mrs. Rita Rani Panda w/o Mr. Hemanta Panda through her power of attorney holder Mr. Gurunathan s/o Mr. Perumalsamy had exchanged the land denoted as "B" & "A" schedules as described (as described at pages 430 & 431 of the objection petition and reproduced as such in the chart hereunder) with each other on the ground that the land detailed in Schedule "A" above earlier owned by the objector herein was adjacent to the other properties of Mrs. Rita Rani Panda above named whereas the land detailed in Schedule "B" above earlier owned by Mrs. Rita Rani Panda above named was adjacent to the other properties of the objector herein namely M/S Vishnupriya Farms

Pvt. Ltd which schedule “B” land taken in exchange by the objector from Mrs. Rita Rani Panda above named is statedly described in dark shade on the site plan appended as Annexure-A at page 9 of the objection petition.

Schedule “A” land

| S.No. | Survey Nos. | Area in Hectares | Area in Acres/Cents | Market Value* |
|-------|--------------|------------------|---------------------|--------------------|
| 1 | 255/1 | 0.03.0 | 0.07 | 33,360/- |
| 2 | 320 | 0.44.5 | 1.10 | 1,65,095/- |
| 3 | 354 | 0.44.5 | 1.10 | 1,65,095/- |
| 4 | 254/8B | 1.36.5 | 3.37 | 15,17,880/- |
| | Total | 02.28.5 | 5.64 | 18,81,430/- |

* Please see para 11 below.

Schedule “B” land

| S.No. | Survey Nos. | Area in Hectares | Area in Acres/Cents | Market Value |
|-------|--------------|------------------|---------------------|--------------------|
| 1 | 155/2A | 1.04.0 | 2.57 | 11,56,480/- |
| 2 | 208/2 | 0.77.5 | 1.91 | 2,87,525/- |
| 3 | 225/2 | 0.31.0 | 0.77 | 1,15,010/- |
| 4 | 204/2A | 0.21.5 | 0.53 | 79,765/- |
| 5 | 412 | 0.66.0 | 1.63 | 2,44,860/- |
| | Total | 3.00.0 | 7.41 | 18,83,640/- |

Note :- “Schedule A” lands detailed above denote the lands given by the objector herein to Maheshwar Naik and others in exchange for the lands taken as detailed in “Schedule B” lands above from the above named Maheshwar Naik and others.

8. It is further claimed that by virtue of registered exchange deed no. 5986 dated 18/06/2013 entered into between the objector herein namely M/S Vishnupriya Farms Pvt. Ltd through its authorised signatory Shri R. Venkatesan s/o Mr. Rangan on the one hand and Mr. Nandalal Nayak s/o Mr. (?) Nayak through his power of attorney holder Mr. Gurunathan s/o Mr. Perumalsamy had exchanged the land denoted as “B” & “A” schedules (as described at page 505 of the objection petition and reproduced as such in the chart hereunder) with each other on the ground that the land detailed in Schedule “A” above earlier owned by the objector herein was adjacent to the other properties of Mr. Nandalal Nayak above named whereas the land detailed in Schedule “B” above earlier owned by Mr. Nandalal Nayak above named was adjacent to the other properties of the objector herein namely M/S Vishnupriya Farms Pvt. Ltd which schedule “B” land taken in exchange by the objector from Mr. Nandalal Nayak above named is

statedly described in dark shade on the site plan appended as Annexure-A at page 9 of the objection petition.

Schedule “A” land

| S.No. | Survey Nos. | Area in Hectares | Area in Acres/Cents | Market Value* |
|-------|--------------|------------------|---------------------|--------------------|
| 1 | 286/1 | 1.63.5 | 4.04 | 6,06,685/- |
| 2 | 322/2 | 0.43.0 | 1.06 | 4,78,160/- |
| 3 | 355/2 | 1.01.5 | 2.50 | 3,76,565/- |
| | Total | 03.08.0 | 7.60 | 14,61,410/- |

* Please see para 11 below.

Schedule “B” land

| S.No. | Survey Nos. | Area in Hectares | Area in Acres/Cents | Market Value |
|-------|--------------|------------------|---------------------|--------------------|
| 1 | 128/1 | 0.35.5 | 0.88 | 1,31,705/- |
| 2 | 208/4 | 0.48.0 | 1.18 | 1,78,080/- |
| 3 | 267/2 | 1.10.5 | 2.73 | 4,09,955/- |
| 4 | 443 | 1.05.0 | 2.59 | 3,89,550/- |
| | Total | 2.99.0 | 7.38 | 11,09,290/- |

Note 1:- “Schedule A” lands detailed above denote the lands given by the objector herein to Maheshwar Naik and others in exchange for the lands taken as detailed in “Schedule B” lands above from the above named Maheshwar Naik and others.

Note 2 :- It is mentioned in para 13 of the objection petition that the land comprised in Survey Nos. 128/1 (0.88 cents) & 267/2 (2 acres . 73cents) of “Schedule B” land described above has further been sold by the objector herein to Gemini Geoss Energy Pvt. Ltd and the objector has no right title therein.

9. A perusal of the entries in the MR register against MR Nos. 28606-16, 28607-16, 28608-16, 28609-16, 28610-16, 28611-16, 28538-16 reveals that the said lands detailed as “Scheduled B” lands in paras 3 to 8 of this order above, as attached by the CBI during the course of investigation had been acquired by the objector herein namely Vishnupriya Farms Pvt. Ltd from as many as six different persons as detailed below:-

| S.No. | MR Nos. | Sale Deed Nos. | Buyer | Seller | Area | Survey Number |
|-------|----------|----------------------------|---|--|---------------|--|
| 1 | 28606/16 | 5982/13 (Exchange deed) | Maheshwar Naik s/o Raghunath Naik r/o Mayurbhanj, Orissa, GPA Holder Gurunathan | Vishnupriya Farms Pvt. Ltd. r/o Jalladampet, Chennai, Auth. Person R. Venkatesan | 13.83 Acre | 173/2, 426/1, 399/2, 485, 486 |

| | | | | | | |
|---|----------|----------------------------|--|--|------------------------|--|
| 2 | 28607/16 | 5986/13 (Exchange deed) | Nandalal Nayak s/o Nayak r/o Mayurbhanj, Orissa, GPA Holder Rintu Kundu | Vishnupriya Farms Pvt. Ltd. r/o Jalladampet, Chennai, Auth. Person R. Venkatesan | 7.38 Acre | 128/1, 208/4, 267/2, 443 |
| 3 | 28608/16 | 5985/13 (Exchange deed) | Rita Rani Panda w/o Hemanta Panda r/o Mayurbhanj, Orissa, GPA Holder Gurunathan | Vishnupriya Farms Pvt. Ltd. r/o Jalladampet, Chennai, Auth. Person R. Venkatesan | 7.41 Acre | 155/2A, 208/2, 225/2, 204/2A, 412 |
| 4 | 28609/16 | 5983/13 (Exchange deed) | Dasharath Behera s/o Panchanan Behera r/o Mayurbhanj, Orissa, GPA Holder Gurunathan | Vishnupriya Farms Pvt. Ltd. r/o Jalladampet, Chennai, Auth. Person R. Venkatesan | 5.33 Acre | 225/1, 222/2, 400, 401 |
| 5 | 28610/16 | 5981/13 (Exchange deed) | Bhagaban Gahan s/o Purushottam Gahan r/o Mayurbhanj, Orissa, GPA Holder Gurunathan | Vishnupriya Farms Pvt. Ltd. r/o Jalladampet, Chennai, Auth. Person R. Venkatesan | 5.42 Acre | 183/1, 183/2, 482 |
| 6 | 28611/16 | 5984/13 (Exchange deed) | Ajit Kumar Wehera s/o Nilakantha Behera r/o Mayurbhanj, Orissa, GPA Holder Gurunathan | Vishnupriya Farms Pvt. Ltd. r/o Jalladampet, Chennai, Auth. Person R. Venkatesan | 5.24 Acre | 170/1, 170/3, 226/6, 448/2B |
| 7 | 28538/16 | 2832/07 | Ajit Kumar Wehera s/o Nilakantha Behera r/o Mayurbhanj Orissa, GPA Holder, Gurunathan | Balasubramanian s/o Paramasivam r/o Tuticorin TN | 11.71 Acre | 170/1 Part, 170/3 Part, 226/4, 226/6, 280/2, 369/3, 448/2B |
| | | | | Total Area | 56.32 Acres | |

Note :-

It needs to be specifically highlighted that the objector herein has claimed to have acquired by way of "exchange" 44.36 acres of "Schedule B" land with 44.61 acres of "Schedule A" lands, but the total area of "Schedule B" lands comes to 44.61 acres whereas the total area of "Schedule A" lands comes to 44.35.5 acres. This misdiscription by the objector of the total area comprising "Schedule A" and "Schedule B" lands is again vastly different from the total area attached during the course of investigation by the CBI in as much as the MR register entries show the area attached to be 56.32 acres in all, acquired by the objector herein from Maheshwar Naik and others against 44.36 acres of "Schedule B" lands claimed by the objector to have been acquired from above named Maheshwar Naik and others.

10. As per documents on record, the area described as Schedule “B” land in paras 3 to 8 of this order above had earlier been purchased by the various persons involved in the exchange deeds dated 18/06/2013 namely Maheswar Naik and others as named in para 9 of this order above from various other persons namely Balasubramanium and others as detailed hereunder :-

| Sale Deed Nos. | Page no. of objection petition | Total land purchased | Purchaser | Seller | Sale consideration | Market value | Mode of payment |
|-----------------------|--------------------------------|----------------------|---|---|----------------------|---------------|-----------------|
| 1614 dated 01/03/2007 | 200-209 | 29 acres 02 cents | Maheswar Naik s/o Raghunath Naik r/o Mayurbhanj, Orissa, GPA Holder Gurunathan | Balasubramanium s/o Paramasivam | Rs.1,66,000/- | Rs.1,66,000/- | In cash |
| 4102 dated 14/05/2007 | 546-554 | 17 acres 51 cents | Nandalal Nayak s/o Nayak r/o Mayurbhanj, Orissa, GPA Holder Rintu Kundu | Balasubramanium s/o Paramasivam | Rs.93,655/- | Rs.93,655/- | In cash |
| 3704 dated 30/04/2007 | 476-484 | 19 acres 83 cents | Rita Rani Panda w/o Hemanta Panda r/o Mayurbhanj, Orissa, GPA Holder Gurunathan | Balasubramanium s/o Paramasivam | Rs.1,03,085/- | Rs.1,03,085/- | In cash |
| 2744 dated 30/03/2007 | 294-303 | 21 acres 62 cents | Dasharath Behera s/o Panchanan Behera r/o Mayurbhanj, Orissa, GPA Holder Gurunathan | Rajamanickam s/o Ayyavu and Balasubramanium s/o Paramasivam | Rs.1,13,090/- | Rs.1,13,090/- | In cash |
| 2304 dated 21/03/2007 | 68-77 | 12 acres 13 cents | Bhagaban Gahan s/o Purushottam Gahan r/o Mayurbhanj, Orissa, GPA Holder Gurunathan | Rajamanickam s/o Ayyavu and Balasubramanium s/o Paramasivam | Rs.78,065/- | Rs.78,065/- | In cash |
| 2832 dated 04/04/2007 | 400-409 | 11 acres 71 cents | Ajit Kumar Wehera s/o Nilakantha Behera r/o Mayurbhanj, Orissa, GPA Holder Gurunathan | Balasubramanium s/o Paramasivam | Rs.64,220/- | Rs.64,220/- | In cash |
| Total Value | | | | | Rs.6,18,115/- | | |

Note 1:-


The total sale considerations of the seven transactions involving six purchasers and comprising “Schedule B” lands measuring 44.36 acres were for a meagre amount of Rs.6,18,115/- only.

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Note 2:

- (i) It may be noticed that all the above detailed purchases carried out between March to May 2007 by Maheshwar Naik, Rita Rani Panda, Dashrath Bahera, Bhagaban Gehen and Ajit Kumar Wehera are all through their common GPA holder Gurunathan. Thereafter, the six exchange deeds, all dated 18/06/2013, were executed by above named Maheshwar Naik and others in favour of the objector herein namely Vishnupriya Farms Pvt Ltd which on its own part had earlier purchased the Schedule "A" lands, total measuring 44 acres 61 cents, from as many as 31 different executants during the years 2007 and 2008 for an amount totalling Rs.58,46,694/-. Out of the aforesaid 31 sale deeds executed in favour of Vishnupriya Farms Pvt. Ltd, the seller named S. Balasubramaniam was common in as many as eleven sale deeds detailed at Sr. Nos. 3, 6, 7, 10, 12, 14, 15, 20, 23, 25 and 29 of the chart in para 11 of this order below. The above named S. Balasubramaniam is also the seller in as many as five out of the six sale deeds executed during the year 2007 in favour of Maheshwar Naik, Nandlal Nayak, Rita Rani Panda and Ajit Kumar Vehera as detailed in para 9 of this order above. The said land measuring 44.36 acres described as Schedule "B" land has been taken in exchange by Vishnupriya Farms Pvt Ltd from the above named Maheshwar Naik and others.
- (ii) The entire sale consideration of all the above referred seven transactions comprising Schedule "B" land, totalling Rs.6,18,115/-, for 44.36 acres, was all paid in cash. Similarly, the entire sale consideration in respect of 31 sale transactions detailed in para 11 of this order below worth Rs. 58,46,694/-, was all paid in cash.

11. (a) It needs to be mentioned at the outset that the "market value" pertaining to "Schedule A" lands and "Schedule B" lands in paras 3 to 8 above is taken from the value thereof mentioned by the objector in the exchange deeds detailed in the said paras but does not appear to be genuine because the same is vastly different from the "market value" of the said "Schedule A" lands as given in the 31 sale deeds pertaining thereto detailed in this para below and also of "Schedule B" lands as given in the seven sale deeds detailed in para 9 of this order above.

 (b) It further needs to be noted that the objector above named has claimed that the area measuring 44.61 acres described as "Schedule A" lands in paras 3 to 8 of this order above and exchanged for "Schedule B" lands measuring 44.36 acres described as

“Schedule B” lands in the said paras with Maheshwar Naik and five others, (all situated in the state of Tamil Nadu) had been purchased by it prior to the six exchange deeds dated 18/06/2013 from various other thirty one persons as detailed hereunder.

| S. No. | Sale Deed Nos. | Particulars of land purchased | Sale consideration amount | Market Value | Seller | Mode of payment |
|--------|-----------------------|---|---------------------------|---------------|--------------------------|-----------------|
| 1 | 8188 dated 14/10/2008 | Survey No. 436 & 362 | Rs.79,433/- | Rs.79,433/- | Mr. M. Rakkamuthu | In cash |
| 2 | 5145 dated 02/07/2008 | Survey No. 251/7 | Rs.23,800/- | Rs.23,800/- | Mr. M. Lakshmana Perumal | In cash |
| 3 | 6216 dated 08/08/2008 | Survey Nos. 249/1, 250/4, 250/19, 251/1, 240/2, 250/12, 250/13, 250/14, 250/17, 237/2, 230 | Rs.1,60,652/- | Rs.1,60,652/- | Mr. S. Balasubramanian | In cash |
| 4 | 6233 dated 08/08/2008 | Survey No. 318, 319 | Rs.42,543/- | Rs.42,543/- | Mr. C. Marimuthu | In cash |
| 5 | 2304 dated 21/03/2007 | Survey No. 183/1, 183/2, 243, 886/1A1 (west eastern side), 907 & 482 | Rs.78,065/- | Rs.78,065/- | Mr. Rajamanigkkam | In cash |
| 6 | 1941/2007 | Survey No. 183/1 and 183/2 | Rs.26,500/- | Rs.26,500/- | Mr. S. Balasubramanian | In cash |
| 7 | 6651 dated 08/08/2008 | Survey Nos. 432/1, 150/1B, 150/3B, 335/1, 405, 408/1B, 408/4B, 415/1 | Rs.2,18,070/- | Rs.2,18,070/- | Mr. S. Balasubramanian | In cash |
| 8 | 8189 dated 14/10/2008 | Survey No. 322/1 | Rs.1,21,975/- | Rs.1,21,975/- | Mr. Thangamuthu | In cash |
| 9 | 6239 dated 08/08/2008 | Survey No. 328 | Rs.53,848/- | Rs.53,848/- | Mr. C. Marimuthu | In cash |
| 10 | 6222 dated 08/08/2008 | Survey Nos. 343/2, 410, 389, 406/2B, 363, 343/1, 343/2, 402/1, 402/3, 169/1, 343/1, 402/1, 402/3, 172/4, 172/3, 394/2, 396, 391 | Rs.5,39,372/- | Rs.5,39,372/- | Mr. S. Balasubramanian | In cash |
| 11 | 6233 dated 08/08/2008 | Survey Nos. 318 & 319 | Rs.42,543/- | Rs.42,543/- | Mr. C. Marimuthu | In cash |
| 12 | 6651 dated 08/08/2008 | Survey Nos. 432/1, 150/1B, 150/3B, 335/1, 405, 408/1B, 408/4B, & 415/1 | Rs.2,18,070/- | Rs.2,18,070/- | Mr. S. Balasubramanian | In cash |
| 13 | 5149 dated 02/07/2008 | Survey No. 252/3 | Rs.28,858/- | Rs.28,858/- | Mr. R. Karuppasamy | In cash |
| 14 | 1614 dated 01/03/2007 | Survey Nos. 705/2, 426/1, 1026 part (western side), 1028/1, 399/2, 335/2, part (undivided 2/3 share), 336/2B, 337 part (undivided 2/3 share), 351/1 part (undivided 2/3 share), 352 part (undivided 1/3 share), 353 part (undivided 2/3 share), 382 part (undivided 2/3 share), 385 part (undivided 2/3 share), 485, 486, | Rs.1,66,000/- | Rs.1,66,000/- | Mr. Balasubramanian | In cash |

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|----|-----------------------|---|------------------|------------------|--------------------------|------------------|
| | | 173/2, 336/2A & 341/1 | | | | |
| 15 | 6231 dated 08/08/2008 | Survey No. 288 | Rs.44,700/- | Rs.44,700/- | Mr. S. Balasubramanian | In cash |
| 16 | 6221 dated 08/08/2008 | Survey Nos. 362 & 444 | Rs.41,650/- | Rs.41,650/- | Mr. P. Chinna Karuppaiah | In cash |
| 17 | 6227 dated 08/08/2008 | Survey Nos. 444, 362, 150/1A, & 150/3A | Rs.74,673/- | Rs.74,673/- | Mr. Vel Mayil | In cash |
| 18 | 8188 dated 14/10/2008 | Survey Nos. 436 & 362 | Rs.79,433/- | Rs.79,433/- | Mr. M.Rakkamuthu | In cash |
| 19 | 2744 dated 10/03/2007 | Survey Nos.1389, 284, 322/4, 222/2, 225/1, 286/1 part (undivided 2/3 share), 400 part (undivided) & 401 part (undivided) | Rs.1,13,090/- | Rs.1,13,090/- | Mr.Rajamanickkam | In cash |
| 20 | 6240 dated 08/08/2008 | Survey Nos. 247/8, 248/7, 249/8, 250/12, 247/7, 248/6, 248/12, 249/6, 249/7, 250/11, 250/10, 246/2, 247/4, 250/6B, 247/2, 248/2, 249/2, 250/5, 247/3, 248/3, 249/3, 247/5, 247/6, 248/4, 248/5, 249/4, 249/5, 250/8, 250/9, 278, 275/2, 251/2C, 242/1, 250/6A, 253/2, 229, 212/1, & 226/5 | Rs.8,71,979/- | Rs.8,71,979/- | Mr. S. Balasubramanian | In cash |
| 21 | 8184 dated 14/10/2008 | Survey Nos. 320, 321 & 322/2 | Rs.1,05,911/- | Rs.1,05,911/- | Mr. P.S. Gopal | In cash |
| 22 | 5147 dated 02/07/2008 | Survey Nos. 286/1 & 280/2 | Rs.1,56,300/- | Rs.1,56,300/- | Mr. S.Ramamoorthy | In cash |
| 23 | 6222 dated 08/08/2008 | Survey Nos. 343/2, 410, 389, 406/2B, 363, 343/1, 343/2, 402/1, 402/3, 169/1, 343/1, 402/1, 402/3, 172/1, 172/3, 394/2, 396 & 391 | Rs.5,39,372/- | Rs.5,39,372/- | Mr. S. Balasubramanian | In cash |
| 24 | 6246 dated 08/08/2008 | Survey Nos. 397/1A & 397/1B | Rs.27,965/- | Rs.27,965/- | Mr. M.Annadurai | In cash |
| 25 | 2832 dated 04/04/2007 | Survey Nos. 170/1 part (undivided 1/2 share), 170/3 (undivided 1/2 share), 226/4, 226/6, 280/2, 369/3 & 448/2B, | Rs.64,220/- | Rs.64,220/- | Mr. Balasubramanian | In cash |
| 26 | 4403 dated 12/04/2012 | Survey Nos. 254/8B & 255/1 | Rs.15,51,240/- | Rs.15,51,240/- | Mr. D.Rajendren | In cash |
| 27 | 8184 dated 14/10/2008 | Survey Nos. 320, 321 & 322/2 | Rs.1,05,911/- | Rs.1,05,911/- | Mr. P.S. Gopal | In cash |
| 28 | 10418 | In Tamil script, | In Tamil script. | In Tamil script. | In Tamil script. | In Tamil script. |
| 29 | 3704 dated 30/04/2007 | Survey Nos. 377/2, 383, 384, 155/2A, 298/4, 318, 225/2, | Rs.1,03,085/- | Rs.1,03,085/- | Mr. Balasubramanian | In cash |

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| | | | | | | |
|----|--------------------------|---|-----------------------|-------------|--------------------|---------|
| | | 412, 204/2A, 208/2, 501 & 505/3 | | | | |
| 30 | 8186 dated 14/10/2008 | Survey Nos. 355/2 & 442/2 | Rs.73,781/- | Rs.73,781/- | Mr. V. Vallaru | In cash |
| 31 | 4102 dated 14/05/2007 | Survey Nos. 208/4, 267/2, 443, 451, 461/1, 462, 128/1, 134/1 & 450 | Rs.93,655/- | Rs.93,655/- | Mr. Nandalal Nayak | In cash |
| | | Total Value | Rs.58,46,694/- | | | |

12. Keeping in view this wide disparity in the value of “Schedule B” lands worth Rs.6,18,115/- vis-à-vis “Schedule A” lands worth Rs. 58,46,694/- clearly indicates that this exchange is not a genuine exercise but a subterfuge for taking out the “Schedule B” lands from the purview of attachment on the false ground that the objector has no concern with PACL although infact the said land is apparently PACL land, but standing in the name of its nominees. In the backdrop of circumstances enumerated above, reference becomes necessary at this stage to the order dated 22/08/2014 passed by Shri Prashant Saran, Whole Time Member, SEBI in the matter of PACL Ltd who has in paras 1 to 10 of his said order with reference to the conduct of PACL observed as under :-

1. During the early nineties, several entities had started mushrooming across the country for operating financial schemes in the market. Such entities ostensibly undertook plantation activities on commercial scale through various plans/schemes and mobilized huge sums of money by issuing various instruments and offering plans with very high rates of return (inconsistent with the normal rate of return) in such schemes. The funds so mobilized were misutilized by such entities for the purpose not disclosed at the time of inviting the investments. During the mid nineties, such entities started defaulting in making payments to their customers/investors. This not only caused huge losses to the investors who lost their life savings to such unscrupulous entities, but also eroded the confidence of the general public in financial savings. It was noticed that the promoters of such entities had themselves invested a minimal amount in such ventures and raised a majority of the funds for the plans/schemes from ordinary small investors. Considering the high element of risk associated with such schemes, the Government of India felt that it was necessary to regulate such financial schemes and set up an appropriate regulatory framework for regulating such entities. Accordingly, the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘SEBI Act’) was amended vide Act 9 of 1995 and the following was added in Section 12 thereof:

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“(1B) No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations:

Provided that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of section 30.”

With this amendment, a ban was imposed on a person carrying on any Collective Investment Scheme (hereinafter referred to as ‘CIS’), unless a certificate of registration is obtained in accordance with the regulations framed by SEBI.

2. In order to protect the interest of the investors and to ensure that only legitimate investment activities are carried on, vide press release dated November 18, 1997, the Government of India communicated its decision that schemes through which instruments such as agro bonds, plantation bonds, etc., issued by the entities, would be treated as schemes under the provisions of the SEBI Act and directed Securities and Exchange Board of India (hereinafter referred to as ‘SEBI’) to formulate Regulations for the purpose of regulating these CISs. Thereafter, several press releases and newspaper advertisements/notices were issued by SEBI from time to time in leading newspapers, bringing to the notice of the investors and the persons concerned, the various instructions issued by SEBI/Central Government in respect of the functioning of the CIS. The press releases further stated that instruments such as agro bonds, plantation bonds should be treated as CIS, and are subject to the jurisdiction of the SEBI Act. More specifically, SEBI had issued a press release dated November 26, 1997, inter alia, stating that the regulations for CIS are under preparation and till they are framed and finalized, no person can sponsor any new CIS. It was further notified vide this press release that the persons desirous of availing the benefit provided under the proviso to Section 12 (1B) of the SEBI Act, may send such information within 21 days. Thereafter, SEBI also issued another public notice dated December 18, 1997 and *inter alia* directed the existing schemes to comply with the provisions of Section 12 (1B) of the SEBI Act and to send desired information to SEBI by January 15, 1998.

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3. Meanwhile, a committee was formed by SEBI to examine and finalize the draft regulations for CIS and to structure a comprehensive regulatory framework. It was in this background that the SEBI (Collective Investment Schemes) Regulations 1999 (hereinafter referred to as 'the CIS Regulations') were framed and notified on October 15, 1999. Further, the definition of CIS was also provided in the SEBI Act through insertion of Section 11AA of the SEBI Act vide the Securities Laws (Amendment) Act, 1999 w.e.f. February 22, 2000. Accordingly to the definition, 'Collective Investment Scheme' means any scheme or arrangement which satisfies the conditions specified in Section 11AA of the SEBI Act i.e.
- (i) *the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement;*
 - (ii) *the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;*
 - (iii) *the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;*
 - (iv) *the investors do not have day to day control over the management and operation of the scheme or arrangement.*

In terms of the Section 11AA(3), the following activities shall not be a CIS:

Any scheme or arrangement:

- i. made or offered by a co-operative society*
- ii. under which deposits are accepted by non-banking financial companies*
- iii. being a contract of insurance*
- iv. providing for any scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund*
- v. under which deposits are accepted under section 58A of the Companies Act, 1956*
- vi. under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society*
- vii. falling within the meaning of Chit business as defined in clause(d) of section 2 of the Chit Fund Act, 1982 (40 of 1982);*
- viii. under which contributions made are in the nature of subscription to a mutual fund;*

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The term 'securities' in Section 2(h) of the Securities Contracts (Regulation) Act, 1956 was also amended vide the said Securities Laws (Amendment) Act, 1999 to include units or any other instrument

issued by any CIS to the investors in such schemes for the purposes of proper regulation of CIS and in turn to protect the interest of the innocent investors in such CISs.

In terms of the Regulation 3 of the CIS Regulations, no person other than a Collective Investment Management Company which has obtained a certificate under the CIS Regulations shall carry on or sponsor or launch a CIS. This clearly mandates that only entities which have obtained a certificate of registration can offer or launch CIS. Further, under Regulation 5, any person who has been operating a CIS at the time of commencement of the CIS Regulations was required to make an application to SEBI for grant of registration under the provisions of the said regulations, within a period of two months from the date of the notification.

4. In the meantime, it had come to light that a company, namely, PACL Limited (hereinafter referred to as 'PACL' or 'the company') was running CIS and was one of the companies which had failed to submit the information/details with SEBI in terms of the press release dated November 26, 1997 and the public notice dated December 18, 1997. In view of such default, SEBI vide its letter dated March 04, 1998, had intimated PACL that it was not eligible to take the benefit under the *proviso* to Section 12 (1B) of the SEBI Act and therefore could neither launch any new schemes nor continue raising funds under its existing schemes. In the said letter, the attention of PACL was also drawn to the press release dated February 24, 1998 made by SEBI, which directed that the existing CISs can mobilize money from the public or from the investors under their existing schemes only if a rating from any one of the credit rating agencies has been obtained.

PACL vide its letter dated March 23, 1998, replied to the SEBI and challenged the jurisdiction of SEBI, by stating that its transactions are in the nature of sale and purchase of agricultural land and thus outside the purview of the securities market.

5. A Public Interest Litigation (hereinafter referred to as 'PIL') was filed before the Hon'ble Delhi High Court by one Mr. S.D. Bhattacharya against SEBI and Anrs. in the year 1998, bringing into light, the activities of various agro-plantation companies who had duped the hard earned money of several investors. The petitioner also filed an application for impleading 478 agro-plantation companies in the matter. The Hon'ble Delhi High Court vide an order dated October 07, 1998, in the said matter, *inter alia* directed all plantation companies, agro companies and companies running CIS to get themselves credit rated from Credit Rating Companies approved by SEBI, restrained

such companies from selling, disposing of and/or alienating their immovable property or parting with the possession of the same. The order also restrained such companies from floating new schemes to raise further funds without the permission of the Hon'ble Court. As regards, the existing schemes, such companies were directed to strictly comply with the SEBI directive published on February 28, 1998 (*sic*) (to be read as February 24, 1998). The Hon'ble Delhi High Court also allowed the application of the petitioner to implead the said 478 companies as respondents and directed that notices be issued to such companies by publication in the newspaper.

It is pertinent to mention here that the name of PACL was also mentioned in the said list of 478 companies which were allowed to be impleaded by Hon'ble Court. PACL vide its application dated December 08, 1998, approached Hon'ble Delhi High court for deletion of its name from the list of respondents and for vacating/modifying the *interim* orders passed by Hon'ble Delhi High Court. Hon'ble Delhi High Court vide another order dated May 26, 1999, had directed SEBI to appoint auditors for ascertaining the genuineness of the transactions executed by PACL. In compliance with the order of Hon'ble Delhi Court, an audit was conducted and the report thereof was submitted on February 22, 2000. This report, highlighted various deficiencies/discrepancies such as the cost of the land was taken to be uniform irrespective of its location, huge commissions were being paid to agents by PACL out of the funds collected from the public, etc. Thereafter, on November 16, 2000, the Hon'ble High Court of Delhi appointed Justice K. Swamidurai (Retd.) to physically verify the genuineness of the agreement to sell and the transactions entered into and also to supervise the registrations of the sale deeds.

6. In the meantime, SEBI issued letter dated November 30, 1999 to PACL, alleging that PACL was operating CIS, wherein the funds of the investors were pooled and utilized towards the cost of land, registration expenses, developmental charges and other incidental expenses. Vide the said letter PACL was advised to comply with and abide by the provisions of the CIS Regulations.

SEBI also sent another letter dated December 10, 1999 to PACL advising it to comply with the CIS Regulations by December 14, 1999. PACL vide its letter dated December 13, 1999, replied to the letter of SEBI wherein it *inter alia* was stated that SEBI has no jurisdiction to scrutinize its transactions. According to PACL, it mainly deals in the sale and purchase of agricultural land and development of the land. It

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has been said that it had discontinued its scheme numbers 10-27 as there were certain operational problems in running of these schemes. It has also been said that 8 out of total 1,941 customers had opted to withdraw from the schemes who have been repaid.

PACL then challenged these letters of SEBI before the Hon'ble High Court of Judicature for Rajasthan at Jaipur by filing a Writ Petition, in December 1999, claiming therein *inter alia* that its scheme does not fall under the definition of CIS as defined under the CIS Regulation/SEBI Act. Vide this Writ Petition, PACL also challenged the constitutional validity of the CIS Regulations.

While the Writ Petition filed before the Hon'ble High Court of Judicature for Rajasthan was pending, SEBI vide order dated June 24, 2002, held that the schemes floated by PACL fall squarely within the definition of CIS as defined under Section 11AA of the SEBI Act and required PACL to comply with the provision of the CIS Regulations subject to the directions of the Hon'ble High Court of Judicature for Rajasthan at Jaipur.

7. On September 20, 2002, Justice K. Swamidurai submitted his final report stating therein that the transactions entered into by PACL with its customers were genuine. Thereafter, on March 03, 2003, the Hon'ble High Court of Delhi modified its earlier orders dated October 07, 1998, October 13, 1998, October 29, 1998 and allowed PACL to execute the sale deed in favour of the customers duly verified by Justice K. Swamidurai. The Hon'ble Court also directed that future registrations may continue after the same were duly verified by Justice K. Swamidurai. As there were no representation by SEBI before the Hon'ble High Court of Delhi, when such directions were issued vide order dated March 03, 2003, SEBI filed an application for modification/clarification of such order of Hon'ble High Court of Delhi. The Hon'ble High Court of Delhi considered the application of SEBI and vide order dated May 30, 2002 held that "*there was no adjudication of the status of the PACL India Limited. We clarify that neither this Court held PACL India Limited to be a CIS company nor it was held that it is not a CIS company. This would be for SEBI to decide and our order discharging notice would not stand in the way of SEBI to so decide. With this observation the application stands disposed off.*"
8. Subsequently, the Hon'ble High Court of Judicature for Rajasthan at Jaipur vide its order dated November 28, 2003 allowed the Writ Petition filed by PACL. The Hon'ble High Court *inter alia* held that

the schemes of PACL were not CIS as they did not possess the characteristics of a CIS as defined under Section 11AA of the SEBI Act and quashed the letters dated November 30, 1999 and December 10, 1999, issued to PACL by SEBI.

SEBI preferred an appeal before the Hon'ble Supreme Court of India against the said order of Hon'ble High Court. The Hon'ble Supreme Court of India vide order dated February 26, 2013, **set aside the order of Hon'ble High Court** and ordered as under:

"... .. Having heard the learned counsel for the respective parties, we are convinced that the order of the High Court impugned in these appeals should be set aside and the proceedings dated November 30, 1999 and December 10, 1999 can themselves be treated as show cause notices apart from permitting the appellant to issue a comprehensive supplementary show cause notice to the first respondent Company within a period of three months after carrying out necessary inspection, investigation, inquiry and verification of the accounts and other records of the first respondent Company.

7. It is needless to state that the first respondent Company shall permit the appellant to have free access to the records and also the assistance of the Auditors for carrying out such inspection and verification of the records. On receipt of the supplementary show cause notice issued by the appellant, the first respondent Company shall submit its reply within six weeks from the date or receipt of such supplementary show cause notice. The appellant shall also extend an opportunity of personal hearing to the first respondent Company wherein it will be open to the first respondent Company to place all materials in support of its stand and also make its oral submissions. The appellant shall also furnish whatever material which it seeks to rely upon as against the first respondent Company to enable the first respondent Company to submit its reply within the six weeks' time granted to it. After the personal hearing is extended to the first respondent Company, the appellant shall pass orders within six weeks from the date of holding of the hearing to be afforded to the first respondent Company. The first respondent Company shall also furnish its e-mail address, contact nos. and other particulars as and when required by the appellant.

8. We also make it clear that the appellant shall pass fresh orders as regards the business activity of the first respondent Company as to whether it falls under the category of CIS or not and depending upon the ultimate order to be passed it may proceed further in accordance with law. The appellant shall before taking any future action give prior notice to the first respondent Company.

9. We make it clear that such order shall be passed by the appellant uninfluenced by whatever stated by the High Court in the order impugned in these appeals as well as its own earlier orders including its order dated June 24, 2002." [emphasis supplied]

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9. In compliance with the aforesaid directions of the Hon'ble Supreme Court, PACL was advised by SEBI vide its letter dated March 18, 2013, to submit the email address, contact numbers and other particulars. PACL vide its letter dated March 22, 2013, submitted the details of the contact person to SEBI. Thereafter, SEBI initiated investigation and issued various letters to PACL, *inter alia* seeking the following information/details (since incorporation to till the date of respective letters):
- a. details of all schemes / plans of PACL, soliciting investment from investors/ raising funds from the investors since incorporation, till date. The mode of payment (instalment / lump sum) available to the investor/ customer for the said schemes/plan.
 - b. for each scheme/ plans of PACL, copies of the minutes of Board/ Committee meeting wherein the resolution was passed for raising funds from investors, tenure/ status/ terms and conditions of the schemes, application forms, brochures/ pamphlet/ other promotional material circulated, circulars issued to the agents/ agreement executed between PACL and its investor/ customer (highlighting the changes in the agreement, if any), year-wise quantum of funds raised through the scheme/ plan and number of investors/ customers (including the name, address, contact no. and identity proof), the list of the registered offices and branch offices for the purpose of soliciting investment through its scheme/ plan, year-wise details of the number of agents/ employees deployed for the scheme/ plan, details of structure of commissions/ incentives paid to the agents/ employees deployed for the scheme/ plans, etc.
 - c. details of area, location and price of the total land acquired for the scheme, area of land allotted/ sold to the investors, number of such investors who have been allotted/ sold the land, details of the development and the sale deeds executed, copies of the sale deeds on sample basis, year-wise list of investors who were allotted land and who had received payment on maturity, list of investors who have defaulted in making payment.
 - d. year wise shareholding pattern of PACL, name of the promoters and directors, details of intimations of resignation of Directors to Registrar of Companies (hereinafter referred to as 'RoC').
 - e. the details of the total business activities of PACL including turnover, employees, total profit from such activities, annual report filed with RoC.
 - f. sample copies of executed/ filled application forms, agreements, allotment letters, registered sale deeds and all documents concerning investments in the schemes, etc.

- g. list of customers who have opted for development of land on their own.
 - h. details of development activities done by the company on the land allotted to the customers.
 - i. the details (including name and address) of seller, power of attorney (hereinafter referred to as 'PoA') of the seller, buyer, PoA of the buyer for land in khasra no. 01/4 in Ottudanpatti village of Thoothukudi district including the location map/ land demarcation, copy of agreement, sale deeds etc.
 - j. year wise details of the number of customers who were given compensation in the event of accidental disability/ death and the compensation disbursed, the number of customers who were given loan and the loans given, customers who did not avail the facility of development with regard to sale of land pursuant to expiry of the term of plan.
10. PACL replied to the letters of SEBI and submitted that it was incorporated with the name of Gurwant Agrotech Limited, subsequently, the name was changed to Pearls Agrotech Corporation Limited, later the name was changed to the current name i.e. PACL Limited. It also submitted the following details/ documents:
- a. list of its office, corporate office and customer service centers,
 - b. the details of the directorships of its directors, the addresses, PAN of promoters and directors, the date of appointment and resignation of directors,
 - c. copy of the memorandum and articles of association, list of the key management persons of PACL.
 - d. certified copies of balance sheets along with the annual reports for the financial years starting from the years 1996-97 to 2010-11, certified copies of Income Tax returns for the assessment years 1996-97 to 2012-13.

PACL also requested for time to submit the other information sought by SEBI on the ground that the records were voluminous and spread over several years. SEBI vide its letter dated April 11, 2013, intimated PACL about the timelines set by the Hon'ble Supreme Court for the issuance of the supplementary SCN and also granted a week's time to submit the information as sought. Upon this, PACL vide its letters dated April 18, 2013, April 26, 2013, May 06, 2013, May 14, 2013 and May 17, 2013 submitted the following documents/ information:

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- a. details of the shareholding pattern since inception, copy of the balance sheet of the company for the financial year 2011-12, details of the shareholders of PACL as on March 30, 2002, December 30, 2002, December 31, 2003, September 30, 2005, December 30, 2006, details regarding the business plans of PACL since inception along with their name, closure, amounts mobilized in a tabular form, copies of rule book along with subsequent circulars as amended from time to time, extracts of minutes of board/ committee wherein the business plans and its subsequent amendment were duly considered and approved by the Board/ committee of PACL.
- b. sample copies of the application form, sample sale deeds executed in favor of the customers, agreement as amended from time to time along with the copies of the agreements.
- c. list of customers for last 5 years to whom land has been allotted, details of the advances received from the customers for the last 5 years, details of the total area of land allotted and number of customers for the last 5 year, year wise list of active customers who executed agreement with PACL, details of customers who opted out of the plot-buyer agreement in last five years and who preferred to receive refund of their consideration in lieu of land.
- d. list of customers to whom land has been allotted, details of advances received from such customers, details of customers who had opted out of the plot-buyer agreement and preferred to receive fund of their consideration in lieu of land since inception. The details were provided for the period since inception till 2005-06 and 2006-07 who executed agreement with PACL.
- e. details of the persons employed with PACL, field associates engaged for the promotion of the business, copies of circulars issued to the field associates, structure of commission/ incentives, year-wise details of commission/ incentives paid to the field associates, details of the field associates since inception till 2006-07, year-wise details of commission/incentives paid to the field associates engaged in the business promotion activities of the company since inception till 2006-07, State wise details of land owned by PACL for its business purpose along with its holding pattern and price paid for the procurement of land effective from 2005-06 and 2006-07.
- f. list of customers' complaints,
- g. State wise details of land procured by PACL for business purpose along with the holding pattern and price paid,

- h. detailed note showing the basis of calculating estimated or expected value of land at the end of the tenure of the plan.
- i. tabular sheets showing month-wise status of customers' land liability vis-à-vis land availability in acres owned by PACL by way of sale deed, general power of attorney, agreement of sell, snapshot of land availability while booking of plots in different State of the country.
- j. details regarding the projects and marketing materials published by the companies with whom PACL executed the development agreement/ project management contract and the agreements
- k. year-wise number of customers who have been given compensation in the event of the accidental disability/ death and compensation disbursed, customers who have been given load along with loan amount disbursed.
- l. year-wise details of the land procured by PACL through sale deeds/ GPA/ ATS/ associate companies from 1996-1997 till 2011-2012, land allotted/ sold to the customers from 1996-97 till 2011-12, customers who opted out from the agreement.
- m. valuation report of the land owned by the company in some of the States.
- n. copy of notices published by PACL from time to time in the newspapers regarding circulation of un-authorized documents in the name of the company.

However, PACL failed to submit the complete information in all respects as sought by SEBI during the course of investigation vide the said various letters.

13. The involvement of the above named S. Balasubramaniam in as many as 'eleven' sale deeds in all referred to at Sr. Nos. 3,6,7,10,12,14,15,20,23,25 and 29 and the involvement of Mr. M. Rajamanigkkam in two such sale deeds referred to at Sr. Nos.5 and 19, in para 11 of this order above, and of the same S. Balasubramaniam in all six sale deeds detailed in para 10 of this order above, as well as the involvement of Mr. M. Rajamanigkkam in as many as 'two' more such sale deeds referred to in para 10 of this order above are a strong pointer to their involvement in these transactions, not in their individual capacities, but as agents or field associates of PACL. Reference in this context may further be made to Table H at page 76 of the above referred order dated 22/08/2014 of Shri Prashant Saran, WTM, SEBI detailing the chart of payments made by PACL to its agents/field associates which is as under :-

| Financial year | Amount Paid |
|----------------|-------------------|
| 1996-1997 | 1,12,23,818.86 |
| 1997-1998 | 6,00,46,682.88 |
| 1998-1999 | 6,51,90,054.53 |
| 1999-2000 | 6,18,05,900.28 |
| 2000-2001 | 10,31,33,043.45 |
| 2001-2002 | 19,48,00,742.68 |
| 2002-2003 | 31,24,87,763.87 |
| 2003-2004 | 45,13,59,663.53 |
| 2004-2005 | 107,33,42,001.05 |
| 2005-2006 | 364,14,00,910.72 |
| 2006-2007 | 657,75,16,858.12 |
| 2007-2008 | 950,00,04,002.94 |
| 2008-2009 | 1118,22,17,766.22 |
| 2009-2010 | 1285,21,04,794.64 |
| 2010-2011 | 1731,74,64,064.83 |
| 2011-2012 | 1553,39,30,463.93 |

14. The above detailed whopping amounts of commission, paid as per the own admission of PACL, before above named Shri Prashant Saran, WTM, SEBI from the years 1996-97 to 2011-12 need to be perused in the light of the fact that PACL had **5,85,40,150 number of customers** from whom it had collected **49,100 crores** as so mentioned at page 72 of the said order dated 22/08/2014. Although the number of agents/field associates who must have been mobilized by PACL for collecting money of its behalf from the aforesaid **5,85,40,150 number of customers**, yet it can easily be inferred that the number of agents/field associates must also be running into several lakhs which factor assumes significance in the light of the fact that the above referred order dated 22/08/2014 of Shri Prashant Saran, WTM, SEBI mentions at page 74 thereof as under:-

Having examined the samples selected, my observation on the same are as under:

- The 'power of attorney' holder has executed the documents on behalf of the customers. The power of attorney (PoA) given by the customers have been notarised at New Delhi i.e. a place none of the customers have any relation except that PACL has its registered office at New Delhi. Given this fact, it could also be inferred that the PoA was used for 'changing location' and thereafter to 'opt out' on behalf of the customer than for registration of the sale deed on behalf and in favour of the customer.
- The land sold is not in the name of PACL. It has been stated in the sale deeds that PACL is in agreement with such land holders. However, I note that no such agreement have been made part of the sale deed. The same suggests that PACL does not own the land even on the date of sale deeds.

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- The date of purchase of land by sellers and the date of sale deed are close. For e.g. in the case of the customer namely Ms. Marriet Pinto, the land was purchased on June 18, 2007, the same was transferred in the name of the customer on December 08,2007, i.e. just after 6 months. The same shows that PACL pools in the money for the purchase of land and does not do any development of the land. However, this type of cases are very negligible.
- The land allotted are located at places which are far off from the places where the customers are generally residing.

15. (a) It is further mentioned in the above referred order dated 22/08/2014 at page 81 thereof as under :-

From the above, I conclude as under:

- i. The customer while applying authorizes PACL for development/maintenance, without which agreement will not be entered with the customer/investor. In the words of PACL, the contract of transfer of plot and development of plot are non-severable. The customer only gets a right to give suggestions.
- ii. The plot of land is not identified either in the application form cum agreement or in the registration letter which are the primary documents. The only document which mentions the plot of land is the allotment letter, however, there is no mechanism to precisely identify the land, at this stage also.
- iii. PACL has disbursed large amounts to its agents, under the head 'pre-paid commission'.
- iv. PACL statedly gives the un-partitioned land to its customers, which appears to be of no effective use to the customers mainly for the two reasons, **the first** being the size of the plot which is very small for any kind of agriculture activity, **secondly**, the land is far off from the places where the customers of PACL are ordinarily residing.
- v. PACL has designed the schemes in such a way that the customers will never ask for the possession of its plot of land from the company.

(b) The above referred order dated 22/08/2014 at page 82 thereof mentions inter-alia as under :-

It is observed that the registration letter also does not identify the land or even the specific State where the land will be allotted. It only provides for the plot size. The registration letter also provides for the 'expected value' of the land which has not yet been allotted and as such the location of plot/land is undisclosed. From the available records, I observe that while allotting the land to the customers vide the allotment letter, PACL reserves its right to change the location of

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the allotment of land. The discussion on this right of PACL to change the location has been elaborately discussed above.

16. The above referred order dated 22/08/2014 mentions inter-alia at page 73 thereof as under:-

An analysis of the details available shows that since inception PACL has allotted lands in 8 states only, out of which majorly the land has been allotted in Rajasthan, Tamil Nadu and Madhya Pradesh. I further note that during the year 2010-11, 99.90% of the customers were allotted land in 3 States only namely Rajasthan, Tamil Nadu and Madhya Pradesh.

17. The learned counsel for the objector M/S Vishnupriya Farms Pvt Ltd has argued that the area measuring 44.61 acres described as "Schedule A" land in paras 3 to 8 of this order above had been purchased by it prior to the exchange deeds dated 18/06/2013 from as many as thirty one persons namely M. Rakkamuthu and thirty others as detailed in the chart in para 11 of this order above, which is roughly equal in value, as well as in area, in as much as the market value of "Schedule B" lands measuring 44.36 acres in all and exchanged by it with Maheshwar Naik and five others (as detailed in para 9 of this order above) but I find this argument to be misleading because the market value of "Schedule B" lands measuring 44.36 acres taken by the objector herein by way of exchange from Maheshwar Naik and five others is taken merely from the "market value" thereof described as such in the six exchange deeds detailed in paras 3 to 8 of this order above, but which exchange deeds are evidently documents of mutual convenience between the parties and do not necessarily reflect the actual market value specially when it is borne in mind that the market value as mentioned in the said exchange deeds is vastly different from the market value of the same lands described in the respective sale deeds of the said lands earlier executed by the respective vendors in favour of M/S Vishnupriya Farms Pvt. Ltd. It needs to be highlighted in this context that Maheshwar Naik and others who have exchanged "Schedule A" lands, earlier owned by them with the objector herein for "Schedule B" lands previously owned by the objector are all residents of District Mayurbhanj in the state of Odisha whereas the said "Schedule A" lands are all situated in the state of Tamil Nadu. This aspect assumes significance in the light of the fact that the order dated 22/08/2014 of Shri Prashant Saran, WTM, SEBI mentions inter-alia at page 73 thereof that an analysis of the details available shows that since inception, PACL has allotted lands in 8 states only, out of which majorly the land has been allotted in Rajasthan, Tamil Nadu and Madhya Pradesh and further that during the year 2010-11, 99.90% of the customers were allotted land in 3 States only namely Rajasthan, Tamil Nadu and Madhya Pradesh.

18. In addition to the lands detailed in paras 3 to 8 of this order above, the objector herein also seeks removal from the list of attached properties, an area measuring 1 acres 72 cents comprised in Survey No. 226/4 which it claims to have purchased bonafidely from one Mr. S. Kandasamy vide sale deed no. 5148/2008 dated 02/07/2008 which Mr. S. Kandasamy above named had on his part earlier purchased the said land from one Mr. M. Thangam and Mr. M. Rakkamuthu vide sale deed no. 4990/2007 dated 13/06/2007 and which Mr. M. Thangam and Mr. M. Rakkamuthu on their part had earlier purchased the said land from Mr. N. Ajit Kumar Behera vide sale deed no. 4705/2007 dated 04/06/2007. The objector thus claims itself to be bonafide purchaser of the said land also, measuring 1 acres 72 cents comprised in Survey No. 226/4. It is claimed by the objector that title documents such as patta, chitta, adgangal etc have been issued by the revenue authorities in its favour and even the encumbrance certificates do not reflect any encumbrance against land measuring 1 acres 72 cents comprised in Survey No. 226/4 (which has been described as Schedule "C" land in the petition). The quick succession in which the above referred sale deeds dated 04/06/2007, 13/06/2007 and 02/07/2008 were executed by the above named Ajit Kumar Behera, Mr. M. Thangam and another and thereafter by S. Kandasamy in favour of the objector herein respectively, besides being a suspicious circumstance in itself, further has to be viewed in the light of the fact that no boundaries or site plan of the area sold are mentioned either in the sale deed no. 4705/2007 dated 04/06/2007 executed by Mr. N. Ajit Kumar Behera in favour of Mr. M. Thangam and Mr. M. Rakkamuthu, nor in the subsequent sale deed no. 4990/2007 dated 13/06/2007 executed by the said Mr. M. Thangam and Mr. M. Rakkamuthu in favour of Mr. S. Kandasamy, and nor even in the sale deed no. 5148/2008 dated 02/07/2008 executed by S. Kandasamy in favour of the objector herein. Moreover, the sale consideration of Rs.41,353/- was paid in cash despite the objector herein being a private limited company apparently having huge financial transactions.

19. The above discussed facts and circumstances raise genuine apprehension that the various amounts incurred in purchase of properties under attachment vide MR Nos. 28606-16, 28607-16, 28608-16, 28609-16, 28610-16, 28611-16 and 28538-16 may also have been purchased with the amounts collected by PACL. Keeping in view the sequence of events pertaining to PACL from the date of its incorporation viz, 13/02/1996 onwards (as detailed in the order dated 22/08/2014 passed by Shri Prashant Saran, Whole Time Member, SEBI in the matter of PACL Ltd and reproduced in para 12 of this order above), it is obvious that PACL and its agents/field associates were very well aware on the date of exchange viz, 18/06/2013 of the lands in question that activities of PACL were under scanner of the statutory authorities and yet they went ahead with such exchanges without any qualms. It may be recalled in the context of


large scale involvement of agents/field associates of PACL that they became involved in view of huge amounts of commission paid by PACL as detailed in para 12 of this order above. Keeping in view such colossal amounts of money being paid by way of commissions for purchase of properties on behalf of PACL etc., it would be imperative to find out through income tax returns etc., as to whether the properties purchased by Maheshwar Naik and others (as detailed in para 9 above) were their independent accretions, or whether the same were purchased with PACL money on its behalf through the land aggregator but the said Maheshwar Naik and others are not the objectors herein and instead Vishnupriya Farms Pvt. Ltd., which had exchanged its own lands with that of Maheshwar Naik and others is the objector herein and for which reason no such exercise as contemplated above is possible, more so when the learned counsel for the objector has also stated that the objector is not in a position to produce above referred income tax returns etc., of Maheshwar Naik and others to find out the source of their funding involved in purchase of the land in question which was subsequently exchanged by them with the objector herein.

20. Learned counsel for the said objector has further argued that the land forming the subject matter of the petition in hand should be released and instead the land now in the hands of Maheshwar Naik and others above named, by virtue of exchange, should be attached which is of equivalent value but I find myself unable to accept this argument firstly because the land is not of equivalent value as discussed in the foregoing paras of this order above, secondly in view of the fact situation referred to in paras 12 and 13 of this order above with reference to involvement of PACL and lastly because the land purchased with PACL money only is liable for attachment. In any case, SEBI cannot be burdened with pursuing litigation on its own with above named Maheshwar Naik and others with respect to the land exchanged by them with the objector herein moreso when it is borne in mind that PACL was aware from the date of its incorporation viz., 13/02/1996 regarding the bar contained in section 12 (1B) of the SEBI, Act 1992, as amended vide Act 9 of 1995, against sponsoring or carrying on any collective investment scheme. If the properties in question acquired by the objector herein from Maheshwar Naik and others above named were earlier purchased by the said Maheshwar Naik and others with PACL money, subsequent exchange thereof by them with the land of objector herein would be inconsequential though of course the objector herein would have the right to initiate legal redress against said Maheshwar Naik and others for having passed on by way of exchange to it the properties which had earlier been acquired by them with PACL money.

21. The various circumstances enumerated in the foregoing paras of this order above when read in the light of the fact that the objector has not disclosed the source of money utilised in purchase of thirty one properties comprising "Schedule A" lands and exchanging the same with "Schedule B" lands leave no room for doubt that the alleged exchange deeds in question relied upon by the objector and detailed in paras 3 to 8 of this order above are not genuine documents and have been fraudulently created to mask the transactions in question which are indicative of their having been entered into with PACL money which is sought to be usurped by the objector to the detriment of the investors of PACL.

22. In view of the foregoing discussion, the objection petition in hand is liable to be and is hereby dismissed.


Date : 26/12/2018


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. No certified copies are being issued by this office. However, the orders passed by me can be downloaded from official website of SEBI at www.sebi.gov.in/PACL.html.

Date : 26/12/2018


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