

**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 titled Subrata Bhattacharya Vs SEBI, and notified in SEBI Press release no. 66 dated 08/12/2017).

**File no. 600**

**MR No.8377/16**

**Objectors** : Shri Chandan Singh and others

**Argued by** : Shri Rajan Goel, Chattered Accountant (Membership No. 83829)  
Delhi for the objectors.

**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 objectors above named seek delisting, from the list of properties shown attached on [www.auctionpacl.com](http://www.auctionpacl.com), the land in question measuring 74 Bighas and 16 Biswas comprised in Khasra No. 789 situated at village Khetasar in tehsil Pokhran of district Jaisalmer (Rajasthan) with the averments that they have purchased the said land from one Ram Pratap s/o Nathu Ram through registered sale deed and PACL Ltd has no right, title or interest therein.
3. The objectors have produced on record the under mentioned documents :-
  - (i) Certified copy of sale deed dated 05/04/2007 executed in respect of Khasra No. 789 measuring 74 Bighas and 16 Biswas by Smt. Durga Devi w/o Kan Singh in favour of Smt. Bhanwarkanwar w/o Bhura Ram for an amount of Rs.1,50,000/- paid in cash.
  - (ii) Certified copy of sale deed no.2012005551 dated 21/06/2012 executed in favour of Shri Rajender Singh in respect of Khasra No. 789 measuring 74 Bighas and 16 Biswas by Smt. Bhanwarkanwar w/o Bhura Ram, through her general attorney Bedu Singh s/o Karan Singh.

- (iii) Copy of attorney deed bearing the no. 1474/28/02/2011 executed by Smt. Bhanwarkanwar w/o Bhura Ram in favour of Bedu Singh s/o Karan Singh again for an amount of Rs.1,50,000/-, paid in cash.
- (iv) Copy of sale deed dated 22/02/2013 executed in respect of Khasra No. 789 measuring 74 Bighas and 16 Biswas by Rajender Singh s/o Shimbu Singh through Ram Pratap s/o Nathu Ram in favour of the said Ram Pratap s/o Nathu Ram himself for an amount of Rs.1,00,000/-.
- (v) Copy of general attorney dated 21/06/2012 executed by Rajender Singh s/o Shimbu Singh in favour of Ram Pratap s/o Nathu Ram.
- (vi) Copy of mutation no. 670 pertaining to land comprised in Khasra No. 789 measuring 74 Bighas and 16 Biswas in favour of Ram Pratap s/o Nathu Ram.
- (vii) Copy of sale deed dated 28/03/2018 executed in respect of land comprised in Khasra No. 789 measuring 74 Bighas and 16 Biswas by Ram Pratap s/o Nathu Ram in favour of objectors Chandan Singh and three others for an amount of Rs.6,00,000/-, paid in cash.
- (viii) Copy of mutation no. 674 pertaining to land comprised in Khasra No. 789 measuring 74 Bighas and 16 Biswas in favour of objectors Chandan Singh and three others.

4. It may be noticed at the outset that a chart running into seven pages containing details of as many as thirty nine properties has been placed on record which describes at Sr. No. 33, the sale of land measuring 74 Bighas and 16 Biswas comprised in Khasra No. 789 by Smt Durga Devi in favour of Smt. Bhanwarkanwar for an amount of Rs.1,50,000/- in favour of one Rajinder Singh resident of Village Khora, Tehsil-Todabhim, Distt.-Karauli and further by the said Rajinder Singh in favour of Ram Pratap resident of Village Khetolai, Tehsil-Pokharan, for an amount of Rs.1,00,000/- only vide sale deed dated 22/02/2013 and thereafter by the said Ram Pratap in favour of the objector Chandan Singh and others vide sale deed dated 28/03/2018 for an amount of Rs.6,00,000/-. There is thus vide disparity in the sale consideration starting from Rs.1,50,000/- in the year 2007, dipping to Rs.1,00,000/- in the year 2012, and then escalating to Rs.6,00,000/- in the year 2018. It needs to be highlighted at this stage that the property in question has been attached in pursuance of order dated 02/02/2016 of the Hon'ble Supreme Court passed in civil appeal no. 13301/2015 titled Subrata Bhattacharya Vs SEBI and therefore the sale deed dated 22/02/2013 whereunder the objectors herein claimed title to the land in question is incapable of being acted upon. The head note of the said chart pertaining to Patwar Mandal, Sankara mentions that the said thirty nine entries detailed therein pertained to purchase of agricultural land by PACL in the name of different persons which description does not appear to be misplaced because the names and addresses of the purchaser therein as contained in

column no. 8 thereof reveal that the said purchasers are residents of Bhatinda, Mohali, Roopnagar (Punjab), New Delhi, Chandigarh, Alwar (Rajasthan), Rewari and Gurgaon (Haryana), Ghaziabad and Noida (Uttar Pradesh) and Kolhapur (Maharashtra). In this view of the matter, it becomes necessary at this stage to advert to the order dated 22/08/2014 passed by Shri Prashant Saran, Whole Time Member, SEBI in the matter of PACL Ltd :-

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:

*“(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.

*RAV*

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.

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,*

*RM*

- 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;*

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.

*AM*



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 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.

RAM

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]

#### PROCEEDINGS

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

R/Vm

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:

- 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.

*R. Ma*

- 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.

5. It would also be useful in the context of foregoing paras to advert at this stage to the chart at page 76-77 of the above referred order dated 22/08/2014 passed by Prashant Saran, WTM, SEBI, mentioning amounts of commission paid by PACL to its agents as submitted by it during the investigation, as detailed hereunder :-

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



6. 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 a whopping amount of **Rs.49,100 crores**. 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.
- 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.

7. (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

*Q. C. M.*

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

8. 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.

9. The circumstances detailed in para 4 of this order above, read in the light of order dated 22/08/2014 of Shri Prashant Saran, WTM, SEBI are in my opinion sufficient to discard the claim of the objectors herein regarding their being bonafide purchasers of the land in question, more so when it is borne in mind that the purported sale consideration was not by way of any documented mode of transfer such as bank transactions etc., but was

by way of cash only. In this view of the matter, observations of the Hon'ble Supreme Court in 'Suraj Lamp and Industries Private Ltd Vs. State of Haryana & Anr reported in (2009) 7 SCC 363' cannot be considered to be applicable to the facts of the case in hand and consequently the objection petition is liable to be and is hereby dismissed.

**Date : 28/12/2018**

  
**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](http://www.sebi.gov.in/PACL.html).

**Date : 28/12/2018**

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