

**Before Shri R.S. Virk, District Judge (Retd.)
In the matter of PACL Ltd.**

File nos. 642 and 655

MR No. 4420-14

- Objectors** : (i) Shri Rakesh Pant s/o K.N. Pant, Dehradun
(ii) Smt. Sunita Kala and Six others of Dehradun
- Present** : (i) Shri Dinesh Khanduri, Advocate, Dehradun
(Enrolment No. UP-7721/2000 and Utrakhand-4062/2004)
for the objectors above named.
(ii) None for CBI.
(iii) Shri Satyam Bhatiya, Advocate for PACL
(Enrolment No.D/1855/2016)

Order :

1. (a) 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.

(b) 2nd Status Report (Volume-I) of the Justice (Retd.) R.M. Lodha Committee (in the matter of PACL Ltd) submitted before the Hon'ble Supreme Court, had at page 77 thereof, proposed as under :-

“It would be in the interest of the investors of the Company, that all objections based on documents purportedly executed after 02-02-2016 be scrutinized and then heard and disposed of by a retired Judicial Officer(s) assisted by requisite number of Advocates, appointed by the Committee.”

(c) The aforesaid proposal of committee was accepted by the Hon'ble Supreme Court.

2. (a) Subsequent thereto, I have been appointed by the said committee to hear objections/representations against attachments of various properties in the matter of PACL Ltd which appointment has been duly notified in SEBI Press release no. 66 dated 08/12/2017.

(b) My said appointment is also duly mentioned in the order dated 15/11/2017 (to be read with orders dated 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.

3. This common order will dispose off the above noted two objection petitions because of commonality involved in as much as the objectors Smt. Sunita Kala and six others in petition no. 655 are seeking title qua their respective claims under Rakesh Pant who is the objector in petition no. 642.
4. (a) The above named Rakesh Pant seeks delisting, from the list of properties shown attached on www.auctionpacl.com the land in question comprised in Khasra No. 495 measuring 0.3520 Hectares, situated at Mauja Rampur Bhauwala, Pargana Pachwadoon, Tehsil Vikasnagar, District Dehradun, Utrakhand with the averments that the said land was earlier owned by one Puran Singh and Shri Atar Singh ss/o Balcoo, as well as Shri Vijay s/o Puran Singh, all residents of Badonwala, District Dehradun who had sold the same to Smt. Tajenderi Devi Rana for an amount of Rs.1,76,000/- vide registered sale deed dated 09/01/2001.

(b) Thereafter, the above named Tajenderi Devi Rana had statedly sold the above described land to Shri Preetpal Singh Kang s/o B.S. Kang for an amount of Rs.3,52,000/- vide registered sale deed no. 7150 dated 16/11/2005.

(c) Subsequent thereto, the above named Preetpal Singh Kang s/o B.S. Kang had statedly sold the above described land to the above named objector Rakesh Pant vide registered sale deed no. 4956 dated 02/06/2015, for an amount of Rs. 17,60,000/- out of which Rs.10,60,000/- was statedly paid vide cheque no. 005968 dated 02/06/2015 and Rs.7,00,000/- vide cheque no. 005969 dated 05/06/2015, both drawn on Union Bank of India.

5. The above named objectors Smt. Sunita Kala and six others (in objection petition no. 655) claim to have further purchased separate portions, out of the above described land, from Rakesh Pant above named (objector in petition no. 642) as detailed hereunder :-

Name	Area (in Sq. mtrs.)	Sale amount	Sale Deed No. & date	Mutation & date
Smt. Sunita Kala	150.80	4,23,000/-	2131 dated 14/06/2017	3581/17 dated 16/08/2017
Smt. Rekha Badoni	150.80	4,23,000/-	2130 dated 14/06/2017	3565/17 dated 16/08/2017
Shri Lio Baijamin	96.65	2,71,000/-	2566 dated 13/07/2017	3867/17 dated 06/09/2017

Smt. Nupur Bhatt	130.48	3,66,000/-	5112 dated 21/09/2017	501/17-18 dated 02/01/2018
Smt. Laxmi Bhatt	130.43	3,66,000/-	3555 dated 21/09/2017	499/17-18 dated 02/01/2018
Smt. Kamla Devi	188	5,27,000/-	7185 dated 22/12/2017	1999/17-18 dated 15/02/2018
Smt. Anju Bisht	257.10	7,20,000/-	5223 dated 25/09/2017 Correction deed no. 4141 06/11/2017	515/17-18 dated 28/03/2018

6. The objector Rakesh Pant contends that the above referred purchase dated 02/06/2015 is in compliance with the provisions of Section 41 of the Transfer Property Act and is protected under Section 53(A) thereof, more so when the said land was never recorded in any revenue record to be in the name of PACL. It is averred inter-alia by the objector Rakesh Pant that he has, subsequent to the aforesaid purchase, further transferred it to as many as sixteen different persons (including objectors Smt. Sunita Kala and six others of objection petition no. 655) vide separately registered sale deeds.
7. Upon notices having been issued to the CBI in both the above noted objection petitions, it has submitted in its reply dated 16/04/2019 that it had seized sale deed no. 7150 dated 16/11/2005 from M/S PACL Ltd on 22/04/2014 which revealed that Smt. Tajendri Devi Rana had sold the land in question to Preetpal Singh Kang for Rs.3,52,000/- which sale deed was handed over by it to the Committee vide invoice no.048194 dated 23/06/2016. CBI did not however deal specifically with the legal challenge raised by the objector Rakesh Pant as reproduced in para 6 of this order above.
8. (a) Upon notice having been sent to PACL through email at its given email address amarjit.bedi@gmail.com, it filed its reply dated 08/05/2019 to the objection petition no. 642 only, contending therein that the property in question was infact purchased by PACL through its associate Mr. Preet Pal Singh Kang s/o Shri B.S. Kang from Smt. Tajenderi Devi w/o Shri Balwant Singh Rana vide sale deed no. 7150/08. It has produced copies of its ledger accounts showing payments of substantial amounts as land advance to P.S. Kang from the year 2005 onwards upto the year 2011 which includes payments of Rs.3,52,000/-, 35,200/- and 5810/-, (all on 31/03/2009), to P.S. Kang with specific reference to sale deed no. 7150 (dated 16/11/2005) as so recorded at page 58 of the ledger sheet. It is contended that bank accounts of PACL had been seized by CBI in 2014 during raid at its offices and therefore the alleged transaction

between Preet Pal Singh Kang above named and the objector Rakesh Pant herein smells of a conspiracy to siphon away the land of PACL Ltd.

(b) Despite due opportunity for 20/05/2019 as per my order dated 08/05/2019, PACL did not file any reply to objection petition no. 655.

9. I have heard the learned counsel for the objectors above named, as also the learned counsel for PACL Ltd, and have gone through the case file. Learned counsel for the objectors has vehemently argued that the purchase of the land in question by the objector Rakesh Pant vide sale deed no. 4956 dated 02/06/2015 is protected under section 41 of the TP Act more so when he had duly come into possession thereof on the strength of the said sale deed and mutation no. 760/15 dated 21/08/2015 also stands entered in favour of the said objector.

10. (a) The objectors (in file no. 655) have in the written arguments filed by them reiterated their contentions as said forth in paras 4 to 6 of this order above, besides contending that PACL is habitual of changing its record to gain advantage, and has done so in respect of the transactions in question by claiming Preet Pal Singh Kang to be its associate despite the fact that he had purchased the property in question in his own name and mutation was also entered in respect thereof in his personal name.

(b) It was contended inter-alia that PACL figures nowhere mention purchase of the land in question in the year 2005, and further sale thereof to Rakesh Pant, predecessor in interest of the objectors above named, on 02/06/2015. Elaborating on this aspect, it is contended that had the land in question been the property of PACL, it would have firstly authorised Preet Pal Singh Kang through legal document to purchase the same in its name, or resort to the cancellation of sale deed executed by Preet Pal Singh Kang, if done by him unauthorisedly but no such steps was taken by PACL.

(c) It was also contended that the objector Rakesh Pant (in objection petition no. 642) and the objectors Sunita Kala and six others (in objection petition no. 655) had taken due precaution in purchase of the property in question by looking up the revenue record which existed in their favour and are therefore bonafide purchasers of the land in question which sale is thus protected under the provisions of the Registration Act, 1908.

(d) It is argued inter-alia that the property in question had earlier been purchased by Preet Pal Singh Kang vide sale deed no. 7150 dated 16/11/2005 whereas the ledger book entries of PACL show that the amounts of sale deed, registration charges and

stamp charges to the tune of Rs.3,52,000/-, 35,200/- and 5,810/- are dated 31/03/2009 which ledger entries cannot therefore be readily acted upon.

11. For analysing the above contentions, it is necessary to first advert to the history of PACL (which was incorporated as such on 13/06/1996 at Jaipur, Rajasthan), as can be glanced from the order dated 22/08/2014 passed by Prashant Saran, Whole Time Member, SEBI. Paras 1 to 10 thereof, which have relevance to the controversy in hand, are being reproduced verbatim hereunder for facility of ready reference :-

(I) 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 accordingly 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:

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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.

- (II) 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.

- (III) 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

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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;*

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.

- (IV) 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.

- (V) 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*)

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(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.

- (VI) 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.

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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.

- (VII) 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."*
- (VIII) 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.

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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

(IX) 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

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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

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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.

(X) 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.

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- 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

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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.

12. (a) The large scale sale/purchase of various properties by PACL as indicated above has to be appreciated in the light of 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, to its commission agents/field associates as extracted from Table H at page 76 of the above referred order dated 22/08/2014 of Shri Prashant Saran, WTM, SEBI :-

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

- (b) The aforementioned amounts were a part of the amount of **Rs.49,100 crores** collected by PACL from **5,85,40,150 number of customers**.

13. (a) The above referred order dated 22/08/2014 passed under section 11, 11 B and 19 of the SEBI Act, 1992 read with regulation 65 of the SEBI (collective investment scheme) regulations, 1999 was the outcome of proceedings initiated against PACL Ltd for violating section 12 (1B) of the SEBI Amendment Act, 1995 which reads as under :-

“(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.”

(b) After taking into consideration the various aspects, it was concluded in para 38 of the above referred order dated 22/08/2014 that PACL was infact running a collective investment scheme within the meaning of section 11AA of Securities and Exchange Board of India Act, 1992, but without obtaining the requisite permission from SEBI as contemplated in the said Act and the rules framed thereunder. The relevant extract of the said section reads as under:-

Collective investment scheme. 11AA. (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) [or sub-section (2A)] shall be a collective investment scheme: [Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme.] (2) Any scheme or arrangement made or offered by any [person] under which,— (i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized 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.

14. It may be recalled at this stage that the objector Rakesh Pant claims title to the land in question on the strength of sale deed no. 4956 dated 02/06/2015 statedly executed in

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his favour by Preet Pal Singh Kang s/o B.S. Kang who on his own part had earlier statedly acquired title thereto on the strength of sale deed no.7150 dated 16/11/2005 executed prior thereto in his own favour by Smt. Tajenderi Devi Rana but which original sale deed no. 7150 dated 16/11/2005 had been seized by the CBI from the premises of M/S PACL Ltd on 22/04/2014 and which sale deed was further handed over by the CBI to this Committee vide invoice no.048194 dated 23/06/2016. Therefore, the entering into of sale transaction no. 4956 dated 02/06/2015 by the objector Rakesh Pant with Preet Pal Singh Kang without taking delivery of earlier title deed dated 16/11/2005 of the said property in favour of said Preet Pal Singh Kang speaks volumes of the connivance of the objector Rakesh Pant with the said vendor Preet Pal Singh Kang.

15. (a) In view of the circumstances detailed above, the arguments putforth on behalf of the objectors as detailed in para 10 of this order above do not stand close scrutiny when it is noticed that the entire sale consideration of Rs. 3,52,000/-, as also stamp duty therein to the tune of Rs.35,200/-, and registration fee amounting to Rs.5010/- pertaining to sale deed no. 7510 dated 16/11/2005 executed by Smt. Tajenderi Devi Rana in favour of Preet Pal Singh Kang s/o B.S. Kang are all recorded in the ledger account books running into 82 + 4 pages (extending from 19/07/2005 onwards upto 26/03/2011) which inter-alia contains three specific entries, all dated 31/03/2009, corroborating earlier advance payment of aforementioned three sums of money by PACL to Preet Pal Singh Kang regarding purchase of the land in question measuring 0.352 Hectares at village Rampur Bhauwala (Dehradun) on behalf of PACL, as so specifically asserted by it in para 2 of its reply dated 08/05/2019 The said three entries do not necessarily relate to actual payment of these said three amounts on 31/03/2009 only, but record earlier payment of the said three amounts, including scores of similar other amounts involving various land transactions on earlier occasions. The said three entries coupled with several similar other entries showing payments of various other amounts by PACL Ltd to Preet Pal Singh Kang for purchase of separate parcels of land in different villages of District Dehradun leave no room for doubt that Preet Pal Singh Kang was merely a land aggregator, acting as such on behalf of PACL, and had not purchased the land in question in his individual capacity. This aspect is further evident from the fact that the above named Preet Pal Singh Kang was a purchaser, alongwith five other associates, namely Kanwaljeet Singh Toor, M.L. Sehejpal, Parminder Singh, Gurpreet Singh and Sikander Singh, apparently on behalf of PACL, in 21 sale transactions involving huge chunks of land at Village Aamwala Tarla forming the subject matter of petition nos. 333, 334 and 382, (all three of which were disposed off through my common judgement dated 20/04/2018 as uploaded on www.sebi.gov.in/PACL.html vide catalogue no. 206) at which time the ledger account of PACL was unfortunately not available with me.

Had the said ledger account of PACL been made available to me during the hearing of the said petitions, the verdict would have been different because these ledger entries, as now produced, reveal that payments in respect of purchases of separate parcels of lands by Preet Pal Singh Kang and others at Village Aamwala Tarla, and several other villages in district Dehradun, had also been advanced by PACL. The mention of earlier decided objection petition nos. 333, 334 and 382 in this petition is however confined to fortifying my conclusion that Preet Pal Singh Kang above named was a land aggregator, acting as such on behalf of PACL and had not purchased the land in question out of his personal funds, or in his individual capacity.

(b) In the backdrop of various circumstances detailed above, no legal sanction can be extended to such like situations where the money collected from millions of investors on false pretexts of multiplied returns is misappropriated for buying property in personal names or companies setup for personal gains, to the exclusion of the gullible investors. Reference may in this context be made to the observations of the Hon'ble Supreme Court in the case bearing the title S. P. Chengal Varaya Naidu (Dead) By Lrs. Versus Jagannath (Dead) By Lrs. and others reported in (1994) 1 Supreme Court cases 1 wherein it was held that "*a fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is 'cheating' intended to get an advantage*". It was further held therein that:-

"Fraud avoids all judicial acts, ecclesiastical or temporal observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and nonest in the eyes of law. Such a judgment / decree by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."

16. It may next be highlighted that the sale deed no. 4956 dated 02/06/2015 purportedly executed by Preet Pal Singh above named is subsequent to the order dated 22/08/2014 passed by Mr. Prashant Saran, Whole Time Member, Securities and Exchange Board of India which reads in para 38 (d) thereof as under :-

"PACL Limited, its promoters and directors including Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh and Mr. Subrata Bhattacharya, shall not alienate or dispose off or sell any of the assets

of PACL Limited except for the purpose of making refunds to its investors as directed above.”

17. (a) In view of the foregoing discussion, it is evident that the aforesaid advancement of Rs.3,52,000/-, Rs.35,200/- and Rs.5010/- by PACL to Preet Pal Singh Kang as detailed in its ledger account sheet dated 31/03/2009, specifically with reference to the land in question, was out of funds (to the tune of 45,184 crores) illegally derived by PACL from its 5.46 investors spread all over India in which context the CBI had averred before me in its applications dated 07/02/2018 (moved in file nos. 367/2 and 367/3, as decided by me on 16/05/2018 and uploaded vide catalogue no. 211 & 212 at www.sebi.gov.in/PACL.html) that its Bank Securities & Fraud Cell Branch had, upon conversion of Preliminary Enquiry No. PE/BD1/2013/E/0003, registered an FIR vide No. RC-BDA/2014/E/0004/CBI/BS&FC/ND on 19/02/2014 under sections 120-B r/w 420 IPC in pursuance of order of the Hon'ble Supreme Court of India dated 12/03/2013 passed in Civil Appeal No. 6572 of 2004 in the matter of M/s PGF Ltd Versus Union of India and others against :-

- (i) M/s PGF Ltd through its Managing Director namely
 - (a) Shri Nirmal Singh Bhangoo, and directors namely
 - (b) S/Shri Harchand Singh,
 - (c) Chander Bhushan Dhillon and
 - (d) Prem Seth
- (ii) As well as against M/s PACL Ltd
 - (a) through its Managing Director namely Shri Sukhdev Singh, and
 - (b) Whole time directors namely S/Shri Gurmeet Singh and Subrata Bhattacharya & additional director namely Shri Gurjant Singh Gill and some unknown others,

(b) It was also averred therein by the CBI that investigation revealed that the conspiracy is having National and International ramification in as much as directors of M/s PGF and M/s PACL in pursuance of criminal conspiracy with each other and others had illegally collected Rs.45,184 Crores from 5.46 Crore gullible investors and diverted the wrongful gain/fund through sham land development schemes. Further, in pursuance of said conspiracy, thousands of crores were paid illegally to the agents and PACL had also diverted those funds through sham transactions at all India level and also at International level to Dubai, Australia etc.

(c) It was further claimed therein that during investigation of the aforesaid case, it had transpired that M/s PACL Ltd had purchased land/properties in the name of itself, its associate companies, its employees and in the name of other individuals, purportedly utilizing the deposits of investors. In order to safeguard the interest of such investors, CBI had seized/secured title deeds/documents relating to such properties acquired by M/s PACL Ltd and its associates.

(d) It was claimed inter-alia therein that since the properties in question seem to have been acquired from funds belonging to the general public under various schemes of M/s

PACL Ltd, and in order to verify the genuineness of these property details, CBI had sent letters under the signature of Joint Director, BS&FZ to the Revenue Heads (Secretary – Revenue) of 6 states namely Delhi, Haryana, Punjab, MP, Rajasthan & Maharashtra, along with the details of property documents seized by CBI, with a request for the issuance of necessary directions to the Land Revenue Offices and Sub-Registrar Offices under them that a prior NOC from competent Court/CBI may kindly be obtained before allowing any further alienation/transfer of said land in future.

18. In the face of above referred criminal proceedings initiated against PACL by the CBI through lodging of FIR No.RC-BDA/2014/E/0004/CBI/BS&FC/ND on 19/02/2014 under sections 120-B r/w 420 IPC in pursuance of order of the Hon'ble Supreme Court of India dated 12/03/2013 passed in Civil Appeal No. 6572 of 2004 in the matter of M/s PGF Ltd Versus Union of India and others, besides action initiated against PACL by SEBI inter-alia through passing of above referred restraint order dated 22/08/2014 by Mr. Prashant Saran, Whole Time Member, Securities and Exchange Board of India, the transfer of land in question by Preet Pal Singh Kang s/o B.S. Kang in favour of the objector Rakesh Pant vide sale deed no. 4956 dated 02/06/2015 for Rs.17,60,000/- in view of his being a land aggregator acting as such on behalf of PACL cannot be considered to be protected under section 41 of the TP Act, 1882 and nor can the entering of consequent mutation no. 7670/15 dated 21/08/2015 protect such transfer under section 53A of the TP Act 1882, more so when it is borne in mind that mutation does not confer title. In any case, in view of the above referred restraint order dated 22/08/2014 passed by Mr. Prashant Saran, Whole Time Member, Securities and Exchange Board of India, the objector Rakesh Pant cannot be heard to contend that the sale in question dated 02/06/2015 being prior to the order of the Hon'ble Supreme Court dated 02/02/2016 in civil appeal no. 13301/2015 or the stay order dated 25/07/2016 passed therein is protected under section 41 of the TP Act.

19. I thus find myself unable to accept any of the arguments raised on behalf of objectors because it is their admitted case that the land in question was earlier owned by Smt. Tajenderi Devi Rana who had sold the same vide sale deed no.7150 dated 16/11/2005 to Preet Pal Singh Kang, who in turn had further sold the same in favour of the objector Rakesh Pant vide sale deed no. 4956 dated 02/06/2015. It therefore belies comprehension as to how the objector Rakesh Pant can be considered to be a bonafide purchaser when it is borne in mind that the sale deed no. 7150 dated 16/11/2005 executed by Tajenderi Devi Rana in favour of his predecessor in interest namely Preet Pal Singh Kang was not taken by him from his above named vendor Preet Pal Singh Kang and which sale deed no. 7150 dated 16/11/2005 was in fact taken into possession by the CBI on 22/04/2014 from the premises of M/S PACL Ltd as so mentioned by the

CBI in its reply. Moreover, the mere description of Preet Pal Singh Kang as the vendor would not clothe him with title over the land in question because the money utilised by him in purchase thereof was not his own but of PACL Ltd collected by it from millions of investors spread all over India.

20. For the same reasons as detailed above, the objectors Smt. Sunita Kala and six others who are claiming title to the same land as subsequent purchasers thereof from the above named objector Rakesh Pant cannot be considered to have acquired any better or superior title vis-a-vis Rakesh Pant.

21. In view of the foregoing discussion, both the objection petitions in hand are held to be devoid of any merit and are accordingly dismissed.


Date : 22/05/2019


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

Note:

Three copies of this order are being signed simultaneously, one of which shall be retained on this file whereas the other two, also duly signed, shall be delivered to the objector and PACL Ltd 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 : 22/05/2019


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