

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

**File no. 610**

**MR Nos. 9861/15 & 24738/16**

**Objector** : D.K. Vinodkumari  
**Present** : (i) Mr. Sudheer H.M., Advocate, Bangalore  
(Enrolment No. KAR/428/2005)  
(ii) Shri Satyam Bhatiya, Advocate for PACL  
(Enrolment No.D/1855/2016)  
(iii) None for CBI.

**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) 2<sup>nd</sup> 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. The above named objector D.K. Vinodkumari w/o Shantaraju (since deceased) who was holding GPA dated 13/04/1995 executed in his favour by Smt. Seethama, seeks delisting, from the list of properties shown attached on [www.auctionpacl.com](http://www.auctionpacl.com), the land in question, both comprised in Survey No. 5/2, measuring 3 acres 12 guntas and 3.3 acres respectively, with the averments that the subject property was earlier owned by one G.T. Sundararaj Iyengar in view of his having purchased the same vide registered sale deed no. 353/1939-40 dated 26/07/1939, copy whereof is appended to the objection petition as Annexure-B (in Kannada script). It is further averred that the above named G.T. Sundararaj Iyengar had during his lifetime executed a will, copy whereof is appended as Annexure-D to the objection petition (in Kannada script), dated 03/02/1987, whereby his wife Seethamma was granted life interest in the said properties and which after her death were to devolve upon his brother Gopalakrishnamachar except to the extent of land measuring 1 acre out of the subject property in favour of P.S. Ramesh and P.S. Poornima, both children of one P.S. Srinivas who was also residing with him in the joint family.
4. It is further averred by the objector above named that P.S. Ramesh and P.S. Poornima referred to in para 3 of this order above had filed O.S. No.100/2010 against Gopalakrishnamachar which was dismissed vide judgement and decree dated 28/08/2013 by the City Civil & Sessions Judge, Bangalore, copy whereof is appended as Annexure-E to the objection petition, which dismissal was challenged by way of RFA No.1829/13 before the Hon'ble High Court of Karnataka at Bangalore wherein an order for maintaining status-quo has been granted, copy whereof is appended as Annexure-A to the objection petition.
5. It is also averred that G.T. Gopalakrishnamachar above named had also filed a partition suit no. O.S. 4601/1995 against Seethamma above named (wife of deceased testator Sunderaraj Iyenger) seeking separate possession of half share in the subject property which was decreed on 22/10/2002 on the basis of compromise between the parties, copies whereof are appended as Annexures F & G to the objection petition.
6. It is claimed that prior to the aforesaid compromise decree dated 22/10/2002, Seethamma above named had executed an agreement of sale dated 10/03/1995 (Translated copy whereof is Annexure -H), as also GPA dated 13/04/1995 (Translated copy whereof is Annexure-I), in favour of one Shantaraju (husband of objector D.K. Vinodkumari), who during the pendency of aforesaid suit had in view of the above referred agreement of sale dated 10/03/1995, challenged before the High Court of Karnataka by way of writ petition no. 46002/1999 c/w W.P. no.46004-05/1999 the acquisition proceedings initiated by Bangalore Development Authority in respect of the

subject property which writ petition was allowed vide order dated 31/03/2004, copy whereof is appended as Annexure-J to the objection petition.

7. The State of Karnataka statedly challenged the aforesaid order dated 31/03/2004 by filing writ appeal no. 3825/2005 c/w 2622-24/2004 which was however dismissed vide order dated 31/10/2011, copy whereof is appended as Annexure-K to the objection petition.
8. It is claimed inter-alia that in view of above referred compromise decree dated 22/10/2002 passed in O.S. No. 4601/1995 and the above referred orders dated 31/03/2004 in writ petition no. 46002/1999 c/w W.P. no.46004-05/1999 read with order dated 31/10/2011 passed in writ appeal no. 3825/2005 c/w 2622-24/2004 by the Hon'ble High Court of Karnataka at Bangalore, the subject property has vested in favour of Seethamma above named as the owner and Shantaraju above named is her GPA holder in respect of the subject property. It is mentioned inter-alia that Seethamma above named expired on 15/03/2008 as so mentioned in the death certificate, copy whereof is appended as Annexure-M to the objection petition. It is further averred that Shantaraju above named had also subsequently passed away. Date of death of said Shantaraju has not however been specified.
9. (a) It is alleged that during pendency of writ appeal no. 3825/2005 c/w 2622-24/2004, the above named G.T. Gopalakrishnamachar had executed registered sale deed dated 17/07/2010, copy whereof is appended as Annexure-L to the objection petition, regarding the two subject properties both comprised in Survey No. 5/2, measuring 3 acres 12 guntas and 3.3 acres respectively in favour of one Prateek Kumar. The said subject property is shown to be attached vide MR No. 9861/15.  
  
(b) It is also averred that after the death of Shantaraju above named GPA holder of Seethamma, his wife and children namely D.K. Vinodkumar (objector herein), Dr. S. Sanjana, A.S. Abhinethra, Sourav Sandesh A.S. have executed an agreement of sale dated 30/04/2015 (copy whereof is appended as Annexure-N to the objection petition) qua the subject property comprised in Survey No. 5/2 measuring A3-12 guntas in favour of Prateek Kumar above named for a total amount of Rs.1,75,00,000/- (One crore seventy five lakhs) out of which they have received an amount of Rs.75,00,000/- as advance whereas the balance amount of Rs.1,00,00,000/- which was statedly agreed to be paid in two instalments before execution of confirmation deed but the said balance amount has allegedly not been paid and no confirmation deed has thus been executed. The said subject property is shown to be attached vide MR No. 24738/16.

10. Upon notice having been issued to the CBI, it has submitted in its reply dated 22/04/2019 to the above petition that it had seized sale deed dated 17/07/2010 (MR Nos. 9861/15 and 24738/16) from M/S PACL Ltd on 01/09/2014 and 04/08/2014 which revealed that this sale deed had been executed by G.T. Gopalakrishnamachar, in favour of Prateek Kumar for an amount of Rs.1,31,00,000/- and which has been handed over by it to the committee vide invoice no. 048166 dated 09/06/2016 and 048205 dated 18/07/2016 but did not deal specifically with the averments putforth by the objector as reproduced in paras 4 to 9 of this order above.
11. Consequent upon notice of this objection petition having been also issued to PACL vide my order dated 20/02/2019, it has filed a written reply dated 20/03/2019 (which is common to objection petition nos. 609, 610 and 611) under signatures of Sikandar Singh Dhillon, Director, PACL Ltd wherein it is contended that vide order dated 17/04/2017 (passed by Hon'ble Mr. Justice G.S. Patel of the High Court of Bombay in arbitration petition no. 363 of 2015), Mr. Justice Mohit Shah (former Chief Justice of Bombay High Court) was appointed as a sole arbitrator in the said petition filed by Prateek Kumar who had procured various properties out of funds provided to him by PACL to the tune of Rs.23,045,278,392/- and the said properties have been seized by the CBI from the said Prateek Kumar but which properties, including those forming the subject matter of the objection petition in hand, are now sub-judice in the arbitration petition referred to above and therefore the present objection petition is liable to be dismissed in toto. It did not however deal specifically with the legal challenge raised by the objector as reproduced in paras 4 to 9 of this order above.
12. I have heard the learned counsel for the parties and have gone through the case file. A perusal of the "summary of account of Mr. Prateek Kumar as on 09/10/2018" appended to the reply in hand contains the names of as many as thirteen companies controlled by Prateek Kumar to whom various advances, totalling Rs. 23,045,278,392/-, were made. The names of the said companies are detailed hereunder :-

<b>S. No.</b>	<b>Company Name</b>
I.	Ecom Trade World
II.	Ganraj Properties (P) Ltd.
III.	Greenfield Estate
IV.	Sunshine Developers
V.	Synergyone Infradevelopers Ltd. – (PK)
VI.	Shivpuri (PK)
VII.	Synergyone Infrastructure & Projects Pvt. Ltd.
VIII.	Synergy 1 Pvt. Ltd.
IX.	Ecom Trade World Pvt. Ltd.

- X. NSB Infrastructure & Projects (P) Ltd
- XI. Sunshine Developers
- XII. Greenfield Estate
- XIII. Bangalore – Ecom Trade World Pvt. Ltd.

13. It is deemed necessary to reproduce verbatim at this stage, paras 1 & 10 of the minutes of the third Arbitral meeting held on 21/11/2017 by Hon'ble Mr. Justice Mohit Shah, Sole Arbitrator in arbitration petition no. 363 of 2015 in the matter of arbitration between PACL Ltd as claimant therein and Prateek Kumar & others as respondents therein :-

**Para 1.** At the First Arbitral Meeting held on 16<sup>th</sup> June 2017 and at the second arbitral meeting held on 9<sup>th</sup> August 2017, PACL Ltd., (applicant in the Arbitration Application No. 20 of 2016 for appointment of the Arbitral Tribunal and also petitioner in Arbitration Petition No. 363 of 2015 under Section 9 of the Arbitration & Conciliation Act, 1996 (the Act) was represented by M/S Rajani Associates, Advocates through their Advocates Mr. Mayur Shetty and Mr. Dikshat Mehra.

**Para 10.** In the facts and circumstances of the case indicated above, the prayer for transposition appears to be reasonable. Hence, Prateek Kumar is transposed as Claimant and PACL Ltd is transposed as Respondent No. 1, Respondent Nos. 2 to 42 shall continue to be parties as Respondent Nos. 2 to 42.

Henceforth cause title in the minutes shall now show Prateek Kumar as the Claimant and PACL Ltd. & Ors. as the Respondents.

14. PACL has concealed/withheld the above discussed material aspect of abandonment by it of Arbitration Petition No. 363 of 2015 but despite the said abandonment of its claim as indicated in para 13 of this order above, PACL relies on the same arbitration petition before me seeking stay of present proceedings during pendency of the aforesaid petition which attempt cannot be viewed in any other manner except that of attempting to thwart the auction proceedings of the land in question by the committee ! Not only that, PACL is even relying on minutes of the 12<sup>th</sup> Arbitral Meeting held on 13/03/2019 in Arbitration Petition No. 1937 of 2014 which petition was filed by it "prior" to Arbitration Petition No. 363 of 2015 !

15. At the cost of repetition, it may be pointed out here that PACL is seeking stay of proceedings in the instant objection petition in view of the order dated 21/04/2017 passed by Hon'ble Mr. Justice G.S. Patel in arbitration petition no. 363 of 2015 despite PACL having abandoned its said arbitration petition no. 363 of 2015 wherein Hon'ble

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Mr. Justice Mohit Shah had been appointed as Sole Arbitrator and who in his said capacity had sent an email dated 08/01/2017 addressed to Justice (Retd.) R.M. Lodha Committee in the matter of PACL Ltd seeking its comments in the matter where to the nodal officer cum secretary of the said committee vide letter no. JRMLC/PACL/2930/2017 had responded as hereunder:-

*“The committee notes that PACL Ltd is neither in liquidation nor has the committee taken over its assets and liabilities. Further, the committee is also not representing the said company in the captioned arbitration proceedings. In light of the same, the committee has no comments to offer in respect of the captioned arbitration proceeding.”*

16. It will be pertinent to highlight at this stage that Synergyone Infrastructures and Projects Pvt. Ltd (referred to at S. No. VII in para 12 of this order above) had filed an objection petition no. 309 before me wherein the said company, with reference to a similar order dated 22/12/2014 passed by Hon'ble Mr. Justice S.J. Kathawalla of the High Court of Bombay in arbitration petition no. 1937 of 2014, had contended before me therein as under (reproduced verbatim with same sequence of para numbers) :-

- b) In the light of the above correspondence, the learned counsel for the objector has submitted that the committee should either get itself impleaded as a party in the said arbitration proceedings, or else stay its hands till final disposal of the said arbitration proceedings specially because PACL as claimant in the said arbitration proceedings has abandoned its claim by not pursuing the same leading to Prateek Kumar above named being transposed as a claimant and PACL Ltd being transposed as respondent no. 1 therein.
- c) It is next argued that the various agreements between PACL and PK Group of companies led by Prateek Kumar above named clearly suggest that the properties of PK Group to the extent of 20% are its own accretions, independent of PACL, and the committee cannot pass any orders for auction of the same. The agreements referred to in the above context are detailed hereunder:-
  - i) Principal Memorandum of Understanding “MOU” dated 21/09/2012,
  - ii) Master Arrangement Agreement “Agreement” dated 28/03/2013,
  - iii) Definitive Agreement for Settlement “Agreement” dated 02/10/2013,
  - iv) Supplemental Agreement to  
Definitive Agreement for Settlement dated 30/11/2013, and
  - v) Compromise deed dated 07/01/2014.

5. As mentioned in para 1 of this order above, the objectors Green Fortune Promoters & Developers Pvt. Ltd and Exquisite Infrastructure Pvt. Ltd. are both

mentioned at Sr. Nos. 15 & 25 respectively of schedule 1 (secondly) which is a part of the definitive agreement for settlement dated 02/10/2013 entered into between PACL on the one hand and Mr. Prateek Kumar and his group of companies set out in the said schedule referred to above and described therein as "P K Group".

6. While elaborating on the above referred agreements, it is firstly pointed out that clause "C" at page 2 of the above referred agreement dated 21/09/2012 contains a recital to the effect that PK (Prateek Kumar objector herein) is the promoter / founding partner / person in control (directly or indirectly) of the second party therein viz Synergyone Infrastructure & Projects Pvt Ltd as well as M/S Green Field Estate, which is indicative of the fact that even PACL acknowledges the objector Prateek Kumar to be the owner to the extent of 20% of the properties detailed in the said agreement dated 21/09/2012 . Elaborating on this aspect, the learned Senior Advocate has drawn my attention to the under mentioned acknowledgments between PACL on the one hand and Prateek Kumar and his group of companies on the other hand in respect of monetary transactions detailed hereunder:-

- a) **Principal Memorandum of Understanding "MOU" dated 21/09/2012** which mentions that PACL has already paid to the second party and or its associate concerns till then a total sum of Rs 1,722,81,76,928/- (Rs. One thousand seven hundred twenty two crores and eighty one lakhs seventy six thousand nine hundred twenty eight only) after settlement between the parties, refund or otherwise during the years 2009-10, 2010-11, 2011-12 and 2012-13 as detailed hereunder :-

(i)	Greenfield Estates	1610.35
(ii)	Ganraj Properties Pvt. Ltd.	20.00
(iii)	Ecom Trade World Pvt. Ltd.	15.00
(iv)	Sunshine Developers	53.50
(v)	Synergyone Infrastructure & Projects Pvt. Ltd.	19.20

- b) **Master Arrangement "Agreement" on dated 28/03/2013** which contains a recital to the effect that the first party has, in various tranches, paid a total amount of Rs. 1807,91,00,000/- (Rs. One thousand eight hundred seven crores and ninety one lakhs only) till then as aggregate consideration to the second party and / or its associate concerns:-

(i)	Greenfield Estates	1655,43,00,000
(ii)	Ganraj Properties Pvt. Ltd.	20,00,00,000
(iii)	Sunshine Developers	53,50,00,000
(iv)	Synergyone Pvt. Ltd.	66,00,00,000

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(v)	Synergyone Infra Developers Pvt. Ltd.	12,98,00,000
	<b>Total</b>	<b>1807,91,00,000</b>

c) **Definitive Agreement for Settlement dated 02/10/2013** which contains a recital to the effect that the first party has, in various tranches, paid a total amount of Rs.2285.79 crores/- (Rs. Two thousand two hundred eighty five crores and seventy nine lakhs) in various tranches as aggregate consideration till then to the second party and / or its associate concerns:-

(i)	Greenfield Estates	1885.03
(ii)	Sunshine Developers	64.50
(iii)	Synergyone Infrastructures & Projects Pvt. Ltd.	288.28
(iv)	Synergyone Infra Developers Pvt. Ltd.	12.98
	<b>Total</b>	<b>2250.79</b>

**Note:** In clause "E" of this Definitive Agreement it is mentioned that in order to acquire properties and various locations in India, the parties (PACL, Mr. Prateek Kumar and his Group of Companies, numbering 42 in all, detailed in schedule 1 thereof had entered into 14 different MOUs earlier as detailed in schedule 3 thereof.)

d) **Supplemental Agreement to Definitive Agreement for Settlement dated 30/11/2013** which contain provision regarding modification of clauses 2.10.1, 2.10.2, 2.10.3, 2.13 and clause three of settlement / definitive agreement dated 02/10/2013 referred to above; and,

- e) **Compromise deed dated 07/01/2014:-** which mentions interalia that,
- i) Prateek Kumar shall transfer and convey all the shareholdings of the said Company to PACL or its nominees and/ or assigns as may be suggested or instructed by PACL;
  - ii) PACL shall withdraw/not pursue the said Criminal Case being FIR no.246/13 registered with P.S. Hinjewadi Police Station, Pune Circle, Pune US 420, 467, 468 and 471 IPC against Prateek Kumar and shall file affidavits, applications and consents to enable Prateek Kumar to get the said Criminal case quashed/withdrawn in the court of law and for this purpose PACL shall co-operate and assist Prateek Kumar in all possible manner to get the Criminal case quashed/withdrawn;
  - iii) Prateek Kumar hereby agrees undertakes and confirms that he shall not make any complaint against PACL or its Directors, nominees, employees or anyone associated with it of its sister concern in any manner whatsoever including that of a criminal complaint, counter criminal or lay nay allegations against PACL or its Directors or employees and also shall not make any counter claim or initiate any civil proceedings against PACL on this account;

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- iv) Both parties shall execute necessary, comfort documents to the satisfaction of the other party for withdrawal of the cases/complaint;
- v) After the terms of compromise as mentioned above by both the parties are completed then neither party shall have any claim whatsoever against the other Party as alleged in the FIR report in No.246/13 nor there shall be any other dispute remaining between the parties.
- vi) The Second Party has signed this Compromise Deed out of its free violation and without coercion or undue influence from any quarter and has been executed on his own free will. Further, second party also declare that the second party has also signed this agreement in his capacity of authorized representative of Sunshine Infracity Pvt. Ltd. authorized vide Board Resolution dated 02/09/2013 and Sunshine Infracity Pvt. Ltd. shall remain bound by the terms of this agreement.
- vii) The Parties have agreed that they will not initiate any action against each other with respect to the disputes arising out of the Criminal Cases.
- viii) Both the Parties will be at liberty to file a petition U/S 482 of the Code of Criminal Procedures for quashing of any complaints/FIR before the appropriate court and both the parties shall have no objection for quashing of the respective FIR if any got registered by each of them against each of them.
- ix) That second party namely Prateek Kumar also declares and confirms that the land described in the schedule and transferred in favour of Sunshine Infracity Pvt. Ltd. Belongs to PACL and accordingly, the second party has agreed on his behalf and on behalf of Sunshine to transfer the shareholding of Sunshine Infracity Pvt. Ltd. to PACL or its nominee as stated in clause 1 herein above.

17. (a) The stand taken by PACL in the instant objection petition to the effect that no adverse order can be passed during the pendency of arbitration proceedings referred to in para 11 of this order above is identical to the stand taken by Synergyone Infrastructures and Projects Pvt. Ltd whose petition no. 309 was dismissed vide my order dated 15/02/2018 and uploaded on [www.sebi.gov.in/PACL.html](http://www.sebi.gov.in/PACL.html) vide catalogue no. 57.

(b) It will be pertinent to highlight at this stage that out of thirteen companies of Prateek Kumar to whom amounts totalling Rs.23,045,278,392/- had statedly been advanced by PACL, five companies namely Green Field Estates, Gunraj Properties Pvt. Ltd., Ecom Trade World Pvt. Ltd., Sunshine Developers and Synergyone Infrastructures and

Projects Pvt. Ltd are common in the objection petition no. 309 and in the reply filed by PACL to the objection petition no. 610 in hand filed by D.K. Vinodkumari.

18. It further needs to be highlighted at this stage that PACL as the respondent in the instant objection petition no. 610 has nowhere claimed, nor produced any documented proof, to show that it, or any of its group of companies, possessed any income / assets whatsoever of its own, independent of its collection from millions of investors spread all over India under “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 is 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.*

19. (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.

20. Thus the entire money collected from millions of investors but sought to be divided amongst themselves by PACL and PK Group (in the ratio of 80:20 as indicated in the above referred agreements etc as detailed in para 6 of objection petition no. 309) or even in the manner as claimed in the arbitration petition no. 363 of 2015 wherein the order dated 21/04/2017 has been passed by Hon'ble Mr. Justice G.S. Patel appointing Hon'ble Mr. Justice Mohit Shah (Retd.) as Sole Arbitrator cannot be permitted to be misappropriated either by PACL, or the objectors, amongst themselves by division of illgotten spoils, because the core funding is of the millions of investors who are not parties therein. No legal sanction can therefore 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."*

21. In view of the foregoing discussion, the objection petition no. 610 in hand cannot be stayed during pendency of arbitration proceedings before Hon'ble Justice Mohit Shah who has been appointed as Sole Arbitrator vide order dated 17/04/2017 (passed by Hon'ble Mr. Justice G.S. Patel of the High Court of Bombay in arbitration petition no. 363 of 2015) wherein PACL had abandoned its claim as detailed in para 13 of this order above.
22. Now reverting to the stand of the objector D.K. Vinodkumari, as raised in the objection petition in hand, it may be mentioned at the outset that it is the own case of the objector herein that the two parcels of the land in question, measuring 3 acres 12 guntas and 3.3 acres, both comprised in Survey No. 5/2, were the self-acquired property of one G.T. Sundararaj Iyengar in view of his having purchased the same vide registered sale deed no. 353/1939-40 dated 26/07/1939, copy whereof is appended to the objection petition as Annexure-B (in Kannada script). It is also the own case of the objector that the above named G.T. Sundararaj Iyengar had, during his lifetime, executed a will, copy whereof is appended as Annexure-D to the objection petition (in Kannada script), dated 03/02/1987 whereby his wife Seethamma was granted life interest in the said properties and which after her death were to devolve upon his brother Gopalakrishnammachar (except to the extent of land measuring 1 acre out of the subject property in favour of P.S. Ramesh and P.S. Poornima, both children of one P.S. Srinivas who was also residing with him in the joint family). It is also her own case that Seethamma above named expired on 15/03/2008 as so mentioned in the death certificate, copy whereof is appended as Annexure-M to the objection petition.
23. It needs to be highlighted at this stage that the land in question comprising two parcels of the land in question, measuring 3 acres 12 guntas and 3.3 acres, both comprised in Survey No. 5/2, formed the subject matter of Civil Suit No. 4601/95 filed by Gopalakrishnammachar against Seethamma which was disposed off through compromise decree dated 22/10/2002 (Annexure F at page no. 80 of the objection petition) whereby it was specifically decreed that in the event of acquisition proceedings pertaining to the land measuring 3 acres 12 guntas comprised in Survey No. 5/2 as instituted by one Shantaraju in the capacity of GPA holder of Seethamma being quashed by the High Court of Karnataka, G.T. Gopalakrishnammachar would be entitled to Rs.8,00,000/- (eight lakhs) in lieu of his share in the said land but if challenge to the acquisition proceedings fails, G.T. Gopalakrishnammachar would be entitled to Rs.6,00,000/- (six lakhs) out of the award amount. Despite the said compromise decree

dated 22/10/2002 in Civil Suit No. 4601/95 filed by Gopalakrishnammachar against Seethamma, the former namely Gopalakrishnammachar executed sale deed no. 3291 dated 17/07/2010, copy whereof is appended as Annexure-L to the objection petition, regarding the subject property in favour of Prateek Kumar above named. The said subject property is shown to be attached vide MR No. 9861/15.

24. (a) With specific reference to the averments putforth by the objector and adverted to in para 9 (b) of this order above, learned counsel for the objector has argued on her behalf that the GPA dated 13/04/1995 (translated copy whereof is Annexure-I of the objection petition) executed by Smt. Seethamma widow of Sundarraj Iyeengar had authorised her above named GPA holder Shantaraju to sell the land detailed therein, which included the land in question, on her behalf. However, it needs to be pointed out here that it is the own case of the objector D.K. Vinodkumari w/o Shantaraju above named that the said Shantaraju stands expired and further that after his death, she alongwith her children Dr. S. Sanjana, A.S. Abhinethra, Sourav Sandesh A.S. have executed an agreement of sale dated 30/04/2015 (copy whereof is appended as Annexure-N to the objection petition) qua the subject property comprised in Survey No. 5/2 measuring A3-12 guntas in favour of Prateek Kumar above named for a total amount of Rs.1,75,00,000/- (One crore seventy five lakhs) out of which they have received an amount of Rs.75,00,000/- as advance whereas the balance amount of Rs.1,00,00,000/- which was statedly agreed to be paid in two instalments before execution of confirmation deed but the said balance amount has allegedly not been paid and no confirmation deed has thus been executed.

(b) The question thus arises as to how could the widow and children of Shantaraju above named enter into agreement of sale, Annexure-N, dated 30/04/2015 with Prateek Kumar on the strength of GPA dated 13/04/1995 executed by Smt. Seethamma not in their own favour, but in favour of Shantaraju above named who admittedly stands expired. Apparently, the legal validity of the GPA, Annexure-I, dated 13/04/1995, stood extinguished on the date of death of Shantaraju above named and therefore D.K. Vinodkumari w/o Shantaraju and her children Dr. S. Sanjana, A.S. Abhinethra, Sourav Sandesh A.S. had no legal sanction to enter into agreement of sale, Annexure-N, dated 30/04/2015 with Prateek Kumar. Resultantly, the above named objector D.K. Vinodkumari has no locus standii to file the objection petition in hand on the strength of GPA, Annexure-I, dated 13/04/1995 executed by Smt. Seethamma in favour of Shri Shantaraju who stands expired without any part of the property in question having been legally transferred in his favour. The objectors thus have no locus standii to challenge the legality or otherwise of the sale deed no. 3291 dated 17/07/2010 executed by Gopalakrishnammachar in favour of Prateek Kumar which sale deed had as per the

reply of the CBI reproduced in para 10 of this order above had been seized by it from premises of M/S PACL Ltd on 04/08/2014 and 01/09/2014 as detailed in MR Nos. 9861/15, 24738/16 and which documents were thereafter handed over by it to the committee vide invoice no. 048166 dated 09/06/2016 and 048205 dated 18/07/2016.

25. In view of the foregoing discussion, the objection petition in hand is held to be devoid of any merit and stands dismissed.

**Date : 23/05/2019**

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

**Date : 23/05/2019**

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