

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

File no. 609

**MR Nos. 26021/16, 25084/16
& 25083/16**

Objectors : Mrs. Mamta d/o H.C. Muthappa Reddy and
Mrs. Gayathri d/of H.C. Krishna Reddy

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) 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.

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(b) My said appointment is also duly mentioned in the order dated 15/11/2017 (to be read with subsequent 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 objectors above named seek delisting, (from the list of properties shown attached on www.auctionpacl.com) the land in question :-
 - (i) Land measuring 3 acres 12 guntas comprised in Survey No. 50/3A (Old no. 50/3), hereinafter referred to as item 1 property; and
 - (ii) Land measuring 30 guntas comprised in Survey No. 46/1, (hereinafter referred to as item 2 property), both situated in village Hulimavu, Begur Hobli, Bangalore South.
4. It is claimed that item property no. 1 detailed in para 3 of this order above which is comprised in Survey no. 50/3 situated in village Hulimavu, Begur Hobli, Bangalore South, is a part of total land measuring 4 acres 18 guntas (excluding 3 guntas of kharabh land) originally belonged to their great grandfather Muniswamappa and subsequent thereto, the said property was partitioned vide registered partition deed no. 5785/47-48 dated 17/05/1948 (copy whereof is appended as Annexure-B to the objection petition) amongst Muniswamappa above named and his children namely Venkatappa, Marappa, (who were born to Muniswamappa above named from his first wife named Narasamma); and Muniyappa, Thimmappa and Narayanappa, (all three of whom were born to Muniswamappa above named from his second wife named Thippakka).
5. It is further averred that Muniyappa, Thimmappa and Narayanappa (above named sons of Muniswamappa born to him from his second wife named Thippakka) had further partitioned their joint properties vide registered partition deed no. 3966/1957-58 dated 19/02/1958 (copy whereof is appended as Annexure-D to the objection petition in hand) whereby the above detailed area measuring 4 acres and 10 guntas comprised in Survey No. 50/3 had fallen to the share of Muniyappa, Thimmappa and Narayanappa. As per the said partition deed dated 19/02/1958, Muniyappa and Thimmappa were both allotted one acre each in Survey No. 50/3 whereas their younger brother Narayanappa Reddy was given some other property. There is no mention therein about the remaining land measuring 2 acres 10 guntas out of 4 acres 10 guntas in the said partition deed of the year 1958, translated copy whereof is Annexure-D.
6. It is further claimed that item 2 property detailed in para 3 of this order above and measuring 30 guntas which is comprised in Survey No. 46/1 situated in village Hulimavu, Begur Hobli, Bangalore South, had been allotted to the objectors' grandfather Muniyappa Reddy under the 1958 partition deed.

7. It is averred inter-alia that Bangalore Development Authority had amongst other lands, notified the land forming the subject matter of the petition in hand for acquisition vide notification dated 28/07/1990, copy whereof is appended as Annexure-E to the objection petition in hand, for formation of "Byrasandra Tavarekere Madivala" whereafter final notification dated 05/06/2010 was issued whereby certain lands, including the land in question, detailed in para 3 of this order above, was excluded from said acquisition proceedings.
8. (a) Prior to the aforesaid exclusion notification dated 05/06/2010, Shri Thimmappa Reddy alongwith his brother Munniyappa Reddy (also known as Munniyappa) above named had filed a civil suit no. 1393/1998 (copy of the plaint whereof is Annexure-G) before the City Civil Judge, Bangalore against their nephew Honnappa Reddy s/o Venkata Reddy (also known as Venkatappa) seeking a declaration of their being absolute joint owners of the land measuring 4 acres 10 guntas comprised in Survey No. 50/3 which suit was decreed vide judgement and decree dated 08/03/2011 (copies whereof are Annexures - H& I).

(b) The said judgement was challenged by Honnappa Reddy above named by filing RFA No. 556/2011 (copies whereof are Annexures - J & K) before the High Court of Karnataka wherein the parties have been directed to maintain status quo till further orders. The legal heirs of Thimmappa Reddy have also filed an appeal as cross objectors in RFA CROB 13/2011 (copy of the orders passed therein is Annexure - L).
9. It is claimed that during pendency of aforesaid civil suit no. 1393/1998 before the City Civil Court, her father alongwith his other family members and her uncle Munniappa's family members had executed sale deed no. 1721/2010-11 dated 20/04/2010 in respect of area measuring 3 acres 12 guntas of the land comprised in Survey No. 50/3A (old Survery No. 50/3) and sale deed no. 3200/2010-11, also dated 20/04/2010, in respect of an area measuring 30 guntas comprised in Survery No. 46/1 in favour of one Prateek Kumar (copy whereof is Annexure-M), but the objectors herein were not parties thereto though they have a share in the said properties.
10. After purchase of the subject property vide registered sale deed no. 1721/2010-11 dated 20/04/2010, the purchaser Prateek Kumar above named had statedly filed a civil suit no. 26738/2012 before the City Civil Judge, Bangalore against her father Thimmappa Reddy (who expired in the year 2011) and others, including her uncle Muthappa Reddy (who expired in the year 2016), seeking relief of permanent injunction.
11. The above named objectors Mrs. Mamta d/o H.C. Muthappa Reddy and Mrs. Gayathri d/of H.C. Krishna Reddy contend that they alongwith the other children of Thimmappa Reddy have filed civil suit no. 26333/2018 (copy of the plaint whereof is Annexure-R)

before the City Civil Judge, Bangalore seeking declaration to the effect that the aforesaid sale deed no. 1721/2010-11 dated 20/04/2010 executed in favour of Prateek Kumar is not binding on them.

12. They thus seek removal of the property forming the subject matter of sale deed no. 1721/2010-11 dated 20/04/2010 executed by M. Thimappa Reddy and others in favour of Prateek Kumar (as attached vide MR entry no. 25083/16) from the list of attached properties proposed to be sold by the Committee in the matter of PACL Ltd, till disposal of above referred matters pending before the City Civil Court, Bangalore and Hon'ble High Court of Karnataka.
13. 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 deeds dated 20/04/2010 (MR Nos. 25083/16 and 25084/16) from M/S PACL Ltd on 07/08/2014 which revealed that both these sale deeds had been executed by M. Thimappa Reddy and others, in favour of Prateek Kumar for amounts of Rs.2,00,00,000/- and 45,00,000/- respectively which sale deeds have been handed over to the committee vide invoice no. 048207 dated 19/07/2016 but it did not deal specifically with the legal challenges raised by the objector as reproduced in paras 4 to 11 of this order above.
14. Consequent upon notice of this objection petition having been 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), Hon'ble 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 challenges raised by the objectors as reproduced in paras 4 to 11 of this order above.
15. (a) I have heard the learned counsel for the parties and have gone through the case file. The learned counsel for the objectors has argued that auction of the subject property cannot be held by the committee in view of pendency of proceedings before the Hon'ble High Court of Karnataka.

(b) A perusal of the “summary of account of Mr. Prateek Kumar as on 09/10/2018” appended to the reply filed by PACL contains the names of as many as thirteen companies to whom various advances totalling above mentioned amount of Rs. 23,045,278,392/- were made. The names of the said companies are detailed hereunder:-

S. No.	Company Name
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.	Banglore – Ecom Trade World Pvt. Ltd.

(c) 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 as detailed in para 14 of this order above, 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 the reply appended by PACL to the objection petition no. 609 in hand filed by Mrs. Mamta d/o H.C. Muthappa Reddy and Mrs. Gayathri d/o H.C. Krishna Reddy.

16. Reverting to the stand of PACL as detailed in para 14 of this order above, 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 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 16th June 2017 and at the second arbitral meeting held on 9th 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.

17. PACL has concealed/withheld the above discussed material aspect of abandonment by it of Arbitration Petition No. 363 of 2015 but despite abandonment of its claim by PACL in aforesaid petition no. 363 of 2015 as indicated in para 14 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 thwarting the auction proceedings of the land in question by the committee ! Not only that, PACL is even relying on minutes of the 12th 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 !

18. 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 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 whereto 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."

19. It will be pertinent to highlight at this stage that Synergyone Infrastructures and Projects Pvt. Ltd referred to at S. No. V in para 15 (b) of this order above had filed an objection petition no. 309 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:-

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- 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
(v)	Synergyone Infra Developers Pvt. Ltd.	12,98,00,000
	Total	1807,91,00,000

- 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
	Total	2250.79

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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;
 - 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 than 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.

20. The position in the objection petition in hand cannot be any different because the stand taken by PACL in the instant objection petition that no adverse order can be passed during the pendency of arbitration proceedings referred to in para 14 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 vide catalogue no. 57. It may be recalled 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 referred to above and the reply appended by PACL to the objection petition no. 609 in hand filed by Mrs. Mamta d/o H.C. Muthappa Reddy and Mrs. Gayathri d/o H.C. Krishna Reddy.

21. It further needs to be highlighted at this stage that PACL as the respondent in the instant objection petition no. 609 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

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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.

22. (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**.

23. The attempt on the part of PACL to get the objection petition in hand stayed during pendency of arbitration proceedings detailed in para 14 of this order above, is obviously aimed at thwarting the impending auction of the subject property by staking claim to the extent of 80% out of the entire money running into several thousand crores collected by it unauthorisedly from millions of investors as

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indicated in the above referred agreements etc or even in the manner as claimed in the arbitration petition no. 363 of 2015 wherein vide 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 but it may be recalled here that the committee has already responded in the matter in response to email dated 08/01/2017 received by it from Hon'ble Mr. Justice Mohit Shah (Retd.) as under :-

"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."

24. 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 was misappropriated by PACL for buying property in personal names or companies setup by it 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."

25. In view of the foregoing discussion, the objection petition no. 609 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 16 of this order above.

Q.M.


26. (a) Now reverting to the stand of the objectors Mrs. Mamta d/o H.C. Muthappa Reddy and Mrs. Gayathri d/o H.C. Krishna Reddy as raised in the objection petition in hand, it may firstly be noticed that the land in question wherein the objectors above named claim a share stands sold vide sale deed no. 1721/2010-11 dated 20/04/2010 in respect of area measuring 3 acres 12 guntas of the land comprised in Survey No. 50/3A (old Survey No. 50/3) in favour of one Prateek Kumar (copy whereof is Annexure-L) and sale deed no. 3200/2010-11, also dated 20/04/2010, in respect of and area measuring 30 guntas comprised in Survey No. 46/1 also in favour of above named Prateek Kumar (copy whereof is Annexure-M), but the objectors herein were not parties thereto though they have a share in the said properties. I cannot however go into the question of title to a share in the said property set up by the objectors above named because my mandate is confined to dealing with objections/representations received by the Committee 'against' attachment of properties detailed in www.auctionpacl.com, which aspect is duly referred to in the order dated 15/11/2017 of the Hon'ble Supreme Court passed in civil appeal no. 13301/2015 titled Subrata Bhattacharya vs SEBI, and also duly notified in SEBI Press release no. 66 dated 08/12/2017 for the guidance of investors.

It will be pertinent to highlight here that the objectors are claiming a 'share' in the land in question measuring 3 acre 12 guntas comprised in Survey No. 50/3A (old survey no. 50/3) sold vide sale deed no. 1721/2010-11 dated 20/04/2010 and land measuring 30 guntas comprised in Survey No. 46/1 vide sale deed no. 3200/2010-11 also dated 20/04/2010 to Prateek Kumar by the father and other family members of objectors herein including family members of their uncle Muniyappa.

(b) Even the prayer of the objectors above named seeking removal of the property forming the subject matter of sale deed no. 1721/2010-11 dated 20/04/2010 executed by M. Thimappa Reddy and others in favour of Prateek Kumar (as attached vide MR entry no. 25083/16) from the list of attached properties proposed to be sold by the Committee in the matter of PACL Ltd till disposal of above referred matters pending before the City Civil Court, Bangalore and Hon'ble High Court of Karnataka cannot be entertained by me, specially when, it is the own case of the objectors above named that they have filed Civil Suit No. 26333/2018 (copy of the plaint whereof is Annexure-R) before the City Civil Judge, Bangalore seeking declaration to the effect that the aforesaid sale deed no. 1721/2010-11 dated 20/04/2010 executed in favour of Prateek Kumar is not binding on them.

27. In view of the foregoing discussion, the objection petition in hand stands dismissed.

Date : 24-05-2019


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 : 24-05-2019


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