Before Shri R.S. Virk, District Judge (RETD.)
appointed to hear objections/representations in the matter of PACL Ltd.
as 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.

File no. 309

MR NO. 24641-16, 24643-16, 24645-16, 24649-16, 24650-16, 24652-16, 24654-16, 24656-16, 24658-16, 24661-16, 24647-16, 24685-16, 24686-16, 24737-16, 24739-16, 24740-16, 24934-16, to 24945-16, 25263-16, 25264-16, 25579-16 to 25598-16, 25451-16, 25452-16, 25453-16, 25455-16, 25456-16, 25457-16, 24875-16, 24885-16, 24886-16, 24958-16, 24959-16, 25773-16 to 25812-16, 25815-16, 25845-16, 25856-16, 25858-16 to 25943-16, 25999-16 to 26003-16, 25080-16, 25081-16, 25083-16,25085-16, 25086-16, 26020-16, 26021-16

Objector : Synergyone Infrastructure & Projects Pvt. Ltd.

Present : Sh. Subramonium Prasad, Sr. Advocate with Sh. Varun Singh, Gaurav Nath, and Pranati Bhatnagar, Advocates for the objector

File no. 307

MR NOs. 25266 to 68/16

Objector : Exquisite Infrastructure Pvt. Ltd.

Present : Sh. Varun Singh, Gaurav Nath, and Pranati Bhatnagar, Advocates for the objector

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File no. 372

MR. Nos. 24494/16, 24504/16, 24513/16, 24523/16, 24534/16, 24543/16, 24553/16, 24564/16, 24573/16, 24582/16, 24591/16, 24612/16, 24493/16, 24503/16, 24512/16, 24522/16, 24533/16, 24542/16, 24552/16, 24563/16, 24572/16, 24581/16, 24590/16, 24600/16, 24611/16, 24558/16, 24558/16, 24559/16, 24560/16, 24561/16, 24562/16, 24564/16, 24565/16, 24567/16, 24568/16, 24569/16, 24570/16, 24571/16, 24574/16, 24575/16, 24576/16, 24577/16, 24578/16, 24579/16, 24580/16, 24583/16, 24584/16, 24585/16, 24586/16, 24587/16, 24588/16, 24589/16, 24591, 24592/16, 24593/16, 24594/16, 24595/16, 24596/16, 24597/16, 24598/16, 24599/16, 24602/16, 24603/16, 24604/16, 24492/16, 24493/16, 24494/16, 24495/16, 24496/16, 24497/16, 24498/16, 24499/16, 24499/16, 24500/16, 24501/16, 24502/16, 24503/16, 24505/16, 24506/16, 24606/16, 24606/16, 24609/16, 24610/16, 24611/16, 24613/16, 24614/16, 24615/16, 25984/16, 25986/16, 25990/16, 26043/16, 25989/16, 25985/16, 25985/16, 26042/16, 26044/16, 26046/16, 25988/16, 24529/16, 24555/16

Objector : Green Fortune Promoters & Developers Pvt. Ltd.

Present : Sh. Varun Singh, Gaurav Nath, and Pranati Bhatnagar, Advocates for the objector

1. This common order will dispose off the above noted three file nos. 309, 307 and 372, because the learned counsel for the objectors in file nos. 307 and 372 stated during the course of arguments on 13/02/2018 that he adopts the arguments advanced in file no. 309 by Sh. Subramonium Prasad, Sr. Advocate on behalf of the objector therein namely Synergyone Infrastructure & Projects Pvt. Ltd and also because the legal implications in all these three objection petitions are common. It may also be mentioned that the above named objectors namely 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 schedule 1 (secondly) which is heavily relied upon in the objection petition or Synergyone Infrastructure Project Pvt Ltd and described therein as "P K Group".

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2. It may firstly be mentioned here 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. The said committee was asked to collect relevant record including title sale deeds from the CBI (Central Bureau of Investigation) if it is in possession of any documents.
The committee on its part has put up various properties, including the properties forming the subject matter of the present three objection petitions, for auction sale on its website www.auctionpacl.com.

3. It may now be noticed that the objectors above named seek delisting of as many as "242" properties of Synergyone Infrastructure & Projects Pvt. Ltd comprising flats situated in Ashoka Apartment, Pune (described at Sr. Nos 4 to 15 of annexure 1 to the objection petition) and agricultural lands situated in Kerala, Karnataka, Tamil Nadu, Maharashtra, U.P. and Delhi (as so described in the said annexure 1 of the said objection petition); '3' properties of Exquisite Infrastructure Pvt. Ltd comprising agricultural land measuring 37.60 Acres and '100' properties of Green Fortune Promoters & Developers Pvt. Ltd. comprising agricultural land measuring 57.2387 Acres (all of which stand attached under orders of the committee) with the averments that the said properties had been purchased by the above named three companies independently of PACL and that the above named objector companies are neither subsidiaries nor associate companies of PACL even per as the letter forwarded by PACL to SEBI containing the list of its 640 subsidiaries / associates.

4. The learned counsel for the objectors have, in support of their respective objection petitions, raised two fold argument viz:-
   a) PACL had filed arbitration petition no. 1937 of 2014 in the High Court of Judicature at Bombay against Prateek Kumar and 41 others including Synergyone Infrastructure and Projects Pvt. Ltd as also several other companies listed at Sr.nos. 2 to 36 thereof (which are statedly under exclusive control of Prateek Kumar) wherein the Bombay High Court vide order dated 22 December 2014 while restraining Prateek Kumar above named and his group of companies (respondents 2 to 36 therein including the objectors Green

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Fortune Promoters & Developers Pvt Ltd and Exquisite Infrastructure Pvt Ltd as respondents 15 and 25 respectively therein) from disposing off, alienating or creating any encumbrance on the properties forming the subject matter of the said arbitration petition (and which are also involved in the objection petition in hand) had appointed Justice Mohit S. Shah (Retd. Chief Justice of Bombay High Court as Sole Arbitrator and who vide his email dated 08/01/2017 addressed to Justice (Retd.) R. M. Lodha Committee (In the Matter of PACL Ltd.) had sought 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."

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.

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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 21/09/2012contains 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

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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)	SynergyonePvt. 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**

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 threreof.)

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;

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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.

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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.

7. Now first coming to the argument raised on behalf of the objector as contained in para 4 above, it suffices to mention that the reply dated 08/01/2017 sent on behalf of the committee to Justice Mohit Shah (Retd.), Sole Arbitrator in the matter of arbitration between PACL Ltd and Prateek Kumar above named is conclusive of the fact that the committee has not taken over the assets and liabilities of PACL. In fact, the committee in the discharge of its duty, in compliance with the order of the Supreme Court dated 02/02/2016, is only confining itself to put the properties of PACL to auction / sale as indicated on its website www.auctionpacl.com. No question thus arises on the part of the committee to either become a party in the arbitration proceeding referred to above, or to stay its hands till final disposal of the said arbitration proceedings.

8. Next coming to the argument as reproduced in para 6 above, it needs to be highlighted at the outset that Prateek Kumar above named for himself, or on behalf of any of the forty one companies led by him and known as 'P K' Group has nowhere claimed nor produced any documented proof to show that he, or any of his group of companies, possessed any income / assets whatsoever of their own, except as that derived out of business with PACL and which PACL on its own part also is nowhere shown to have ever had any income / assets 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*

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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.

9. 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 (a to e above) and as so argued on behalf of the three objectors herein (which as per the own claim of the objector Prateek Kumar above named are controlled by him and his group of companies / associates) 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 herein. It may borne in mind here that no revenue document such as mutation or Jamabandi etc exist on record to show as to how the various properties numbering '242' in the case of Synergyone, '3' in the case of Equisite Infrastructure and '100' in the case of Green Fortune Promoters, forming the subject matter of the present objection petition came to be aggregated / acquired by Prateek Kumar above named and subsequently transferred in the name of Synergyone Infrastructure and Project Pvt Ltd. 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:-

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"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."

10. In view of the foregoing discussion, I do not find any merit in any of the three objection petitions detailed above which are all hereby dismissed.

Date : 15/02/2018

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

Note:

Two copies of this order are being signed simultaneously, one of which shall be retained on this file whereas the other one, also duly signed, shall be delivered to the objector as and when requested /applied for.

Date : 15/02/2018

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