

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. 164

MR NO: 27455/16

Objector : Madhusudhan B.R. s/o Ram Murthy

Present : Sh. Manju Nath Advocate, Bangalore
(Enrolment No. KAR/2360/99 dated 13/04/1999)

Order :

1. The objector above named while relying on sale deed dated 27/07/2013 executed in his favour by Muninanjappa through his GPA Sh. K. Muniraju has averred that by virtue of the said sale deed he is the absolute owner in possession of agricultural land bearing survey no. 25 measuring 05 Acres and 16 guntas of Kharab Land situated at village Sanne Amanikere, Kasba Hobli, Devanhalli Taluk, Bangalore Rural District but the CBI has wrongly included this property vide **MR No. 24755-16** in the list of properties forming the subject matter of investigation and pursuant where to it has been included in the list uploaded on www.auctionpacl.com for proposed auction and sale. It is asserted inter alia that PACL has had no connection with this property which came under scrutiny by CBI merely because there was an agreement of sale dated 05/05/2011 by above named Muninanjappa acting through his GPA Sh. K. Muniraju in the name of one Prateek Kumar s/o Praful Kumar r/o Pune which however came to be cancelled on 23/09/2015 whereby an amount of Rs. 2,99,50,000/- (two crores, ninety nine lakhs and fifty thousand) earlier paid by the said Prateek Kumar s/o Praful Kumar r/o Pune through cheque no. 890642 dated 23/04/2011 drawn on IDBI Bank, Yerawada, Pune as earnest money was refunded through cheque no. 087449 dated 22/09/2015 in the sum of Rs. 1,50,00,000/- (one crore and fifty lakhs) drawn on Canara Bank, Bangalore and Rs. 1,49,50,000/- (one crore, forty nine lakhs and fifty thousand) by way of another cheque no. 087450 also dated 22/09/2015 drawn on the same bank by the above named Muninanjappa to the above named Prateek Kumar s/o Praful Kumar r/o Pune. However no copy of any such bank transaction evidencing payment to the tune of Rs. 2,99,50,000/- (two crores, ninety nine lakhs and fifty

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thousand) by Prateek Kumar in favour of Muninanjappa on 23/04/2011 in favour of Muninanjappa and subsequent refund of the said amount of Rs.2,99,50,000/- (two crores, ninety nine lakhs and fifty thousand by Muninanjappa in favour of Prateek Kumar has been produced on the file for which reason MR entry no. 24755-16 regarding sale deed of said land by above named Muninanjappa in favour of M/S Sunshine Infrapromoters Pvt Ltd alongwith Prateek Kumar cannot be excluded from consideration more so when it is borne in mind that an interval of almost one and a half years was involved in the return of the aforesaid amount but no interest etc., is shown or claimed to have been paid for such a huge amount of Rs. 2,99,50,000/- (two crores, ninety nine lakhs and fifty thousand) which is indeed a highly suspicious circumstance because the parties are not related inter-se and nor are they residents of the same city. Moreover, the cancellation of agreement of sale dated 05/05/2011 was being effected on 27/09/2015 despite the period of one year stipulated in clause 2 of the said agreement having been just one year and even otherwise the said agreement had been rendered unexecutable upon the expiry of 3 years to be computed from 05/05/2011 as per the provisions of the Limitation Act, 1963.

2. A perusal of the list of properties put up for auction reveals that the CBI had placed this property under scrutiny because Muninanjappa had agreed to sell the same in favour of M/S Sunshine Infrapromoters Pvt Ltd and Mr. Prateek Kumar. It may be pointed out here that in para 2. b. at page 33 of second status report dated 11/04/2017 of the committee submitted to the Hon'ble Supreme Court it is mentioned that the letter dated 30/09/2016 issued by PACL contains the name of Mr. Prateek Kumar a list of brokers to whom PACL has advanced huge amount of money for purchase of lands. As per the list, he had received around Rs.1500 crores for the purchase of lands which is outstanding. Nonetheless, the fact cannot be loss site of that the agreement of sale dated 05/05/2011 executed between Muninanjappa through his GPA holder K. Muniraju on the one part and Sh. Prateek Kumar on the other part which was got cancelled through registered deed of cancellation dated 23/09/2015 prior to which date, Muninanjappa above named, acting through the same GPA holder K. Muniraju, had sold this very land in favour of the objector herein namely BR. Madhusudhan vide registered sale deed dated 27/07/2013 which transfer according to the counsel for the objector being prior in time to the order of the Hon'ble Supreme Court dated 02/02/2016 cannot be brushed aside. It needs to be highlighted at this stage that the above referred agreement of sale dated 5/05/2011 stipulated sale of this land for amount of Rs. 3,00,00,000/- out of which Rs. 2,99,50,000/- was paid through cheque and yet the registered sale deed dated 27/07/2013 as subsequently executed by Muninanjappa in favour of the objector BR. Madhusudhan is for amount of Rs. 49,00,000/- only which too is not in cash but acknowledged to have been received on


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various dates prior thereto. In this context, it will be appropriate to refer to observations of the Hon'ble Supreme Court in the case bearing the title **S.P Chengalvaraya Naidu vs Jagannath reported in 1994 AIR 853, 1994 SCC (1) 1** wherein it was observed interalia as under:

"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 non est 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.

3. The very fact that the registered sale deed dated 27/07/2013 relied upon by the objector B. R. Madhusudhan is merely for just one sixth of the amount stipulated in the agreement of sale dated 05/05/2011 and duly transferred back and forth between the parties thereto, it is apparent that the objector above named is merely a front for the above named M/S Sunshine Infrapromoters Pvt Ltd and Mr. Prateek Kumar whose properties are liable to attachment and sale. At the cost of repetition, it may be pointed out that not a single transaction of any amount whatsoever in respect of any payment by the objector B.R. Madhusudhan to the vendor Muninanjappa at any stage of time has been shown to have been conducted through bank and nor has the objector specified his account no. and the name of the bank wherefrom he might have withdrawn various amounts from time to time for payment to the vendor above named. No sale consideration whatsoever within the meaning of section 54 of the Transfer of Property Act, 1882 thus exchanged hands through any bank transaction etc. Mere payment of registration of charges regarding purported sale consideration of Rs. 49,00,000/- which is just one sixth of the sale consideration of Rs 3,00,00,000/- earlier fixed vide agreement of sale dated 05/05/2011 is thus apparently a sham transaction.
4. In view of the foregoing discussion, the objection petition in hand is liable to be and is hereby dismissed.

Date : 24/01/2018


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