

Before Shri R.S. Virk, District Judge (RETD.)
appointed to hear objections/representations in the matter of PACL Ltd.
(as referred to in the orders dated 15/11/2017, 13/04/2018 and 02/07/2018 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).

File no. 478 and 553

(For review of order dated 30/01/2018 in File No. 227)

MR No. 3599/15, 3601/15, 3602/15, 3499/15 (File No.227)

(And for review of orders dated 22/03/2018 in File Nos. 227/1 to 227/6)

MR Nos. 3495-15, 3498-15, 3496-15, 3600-15 (File No. 227/1),

MR Nos. 3552-15, 3551-15, 3548-15, 3550-15 (File No. 227/2),

MR No. 27283-16, (File No. 227/3),

MR Nos. 27092-16, 27163-16, 27428-16, (File No. 227/4),

MR No. 27282-16 (File No. 227/5),

MR No. 2583-14 (File No. 227/6).

Objector : Naveketan Agricultural Marketing Cooperative Society Limited

Present : Shri Harsh Kumar Gautam, Advocate (Enrolment No. D/1537/2001), Delhi
with Sh. D.K. Singh, Director for applicant society

Order :

1. The applicant above named had filed a cryptic hand written application dated 12/06/2018 through Shri D.K. Singh, Director seeking a review of order dated 30/01/2018 (in file No.227), but thereafter filed a fresh application through the above named Shri D.K. Singh running into 208 pages on 09/07/2018 seeking a review of orders dated 22/03/2018 and 18/01/2018 passed by me. It may be mentioned here that no order dated 18/01/2018 has been passed by me in the above noted matters.

The applicant had simultaneously moved another application dated 09/07/2018 addressed to Hon'ble Mr. Justice (Retd.) R.M. Lodha at the Mumbai address seeking reconsideration of the matter which has been received by me through forwarding letter dated 30/07/2018 of the Nodal Officer cum Secretary to Justice (Retd.) R.M. Lodha Committee in the matter of PACL Ltd.

2. First coming to the prayer seeking recall of order dated 30/01/2018 in file No. 227, it may be noticed that the applicant had sought delisting of a total area measuring 61 Acres

situated at village Bagoda, Tehsil and District Shivpuri, Madhya Pradesh as per details contained hereunder:-

S.No.	Name of Seller	Buyer Name	Sale Deed No.	Location of Land		Survey No.	Area in Acres	Sale Consideration
				Village	Teh & Distt.			
1	M/S B.H.S. Township Developers Pvt. Ltd	Navkettan Agricultural Marketing Co-op. Society Ltd	Dated 11/11/2013 Vol No.5009 and Doc No.832	Bagoda	Shivpuri	326,327,331, 335,340,344, 346,348,355, 392,394,397, 401,404,405 (15 Kitas)	23.22	Rs.92,88,000/-
2	M/S B.H.S. Developers Pvt. Ltd	Navkettan Agricultural Marketing Co-op. Society Ltd	Dated 11/11/2013 Vol No.5009 and Doc No.833	Bagoda	Shivpuri	330,338,349, 352,359,403, 406 (7 Kitas)	13.86	Rs.55,44,000/-
3	M/S B.H.S. City Developers Pvt. Ltd	Navkettan Agricultural Marketing Co-op. Society Ltd	Dated 11/11/2013 Vol No.5009 and Doc No.834	Bagoda	Shivpuri	324,329,360, 363,364,379, 388,393,396, 399,408,342, 356,357,381, 391 (16 Kitas)	23.925	Rs.94,56,000/-

3. Vide my order dated 30/01/2018, the above noted prayer was declined and the applicant society seeks review of the said order dated 30/01/2018 on the grounds detailed hereunder :-

- (i) The Hon'ble Distt. Judge (Retd.) has failed to discuss the documents brought on record by the present objector which conclusively proved the independent status of the applicant/objector.
 - (ii) The order under review is absolutely silent as to how an independent appraisal of the documents of applicant the Hon'ble Distt. Judge (Retd.) could justify the pre-arrived conclusion i.e. applicant society was subsidiary of third party?
 - (iii) The order under review omits to appreciate that the expression "subsidiary" under law has a definite connotation and without spelling out the existence of all ingredients in the case of the applicant, any conclusion of applicant on the basis of a letter of a third party, can only be deemed to be based on conjectures and surmises.
 - (iv) The order under review omits to spell out any circumstances or any other independent evidence of a nexus between the applicant and PACL. Thus the positive statement of applicant along with numbers of documents (more than 160 pages) was disagreed by the Hon'ble Distt. Judge (Retd.) in coming to a conclusion which was against law as well as against the facts.
- (v) The order under review omits to take into account that the order may have the effect of jeopardizing the interest and rights of applicant.

4. In the absence of any specified procedure, I have been following procedure and principles of civil law and natural justice while dealing with objections/representations received against attachment of their respective properties from the various objectors but none of the grounds reproduced above fall within the purview of principles governing the review of orders as contemplated in order 47 Rule 1 CPC. With reference to the delay involved in moving the application dated 12/06/2018 (as repeated on 09/07/2018) for review of order dated 30/01/2018, learned counsel for the applicant has argued that it came to know of the order dated 30/01/2018 only on 21/03/2018 and obtained copy of the order dated 30/01/2018 on 12/06/2018. It is also argued that the copy of the order dated 30/01/2018 was collected by the applicant only on 12/06/2018 from which date the period of delay should commence. The above argument carries no weight because an Advocate named Saroj Kumar Mishra (Enrolment No. 0-136/2001) from cuttack had argued the case on behalf of the applicant objector on 19/01/2018 and in whose presence the case was posted for orders for 30/01/2018 which explains the mention of the name of the above named advocate in the order dated 30/01/2018 with reference to the arguments advanced by him. Furthermore, the said order dated 30/01/2018 was duly uploaded on the website of SEBI within less than a week there from. The gross delay of 168 days cannot therefore be treated lightly.
5. It may next be pointed out here that the applicant objector has appended to the application in hand photocopies of the cheques detailed hereunder :-

Cheque No.	Date	Amount	Name of Payee	Remarks
000078	03/08/2013	Rs.9,57,000/-	BHS City Developers Pvt. Ltd	No supporting bank statement
843797	11/11/2013	Rs.59,99,000/-	-DO-	-DO-
843796	06/11/2013	Rs.25,00,000/-	-DO-	-DO-
000076	03/08/2013	Rs.5,61,000/-	BHS Developers Pvt Ltd	-DO-
843794	06/11/2013	Rs.25,00,000/-	-DO-	-DO-
843795	11/11/2013	Rs.24,83,000/-	-DO-	-DO-
843793	11/11/2013	Rs.58,48,000/-	BHS Township Developers Pvt. Ltd	-DO-
358424	22/07/201?	Rs.58,48,000/-	-DO-	-DO-
843791	06/11/2013	Rs.25,00,000/-	-DO-	-DO-
000075	03/08/2013	Rs.9,40,000/-	-DO-	-DO-

6. The aforesaid details are however inconsequential because supporting documents such as certified copies of bank statements of the accounts of the applicant society out of which these amounts may have been withdrawn have for the reasons best known to the applicant

not been produced though the same could have easily been collected from the concerned bank. No doubt, the applicant has produced photocopy of certificate of its registration dated 12/11/2012 but in the face of non-production of supporting bank statements pertaining to the account of the applicant objector with reference to the above described cheque numbers, mere issuance of the same is inconsequential because encashment of such cheques cannot be considered to be proved. Learned counsel for the applicant has argued that payments was made through RTGS as so indicated in the payment details of the applicant society but a perusal of the said payment details reveals that no details of RTGS such as date, amount etc are indicated anywhere for which reason no notice can be taken of the payment details chart prepared by the society.

7. In view of the foregoing discussion, the applications dated 12/06/2018 and 09/07/2018 seeking review of order dated 30/01/2018 are hereby dismissed.
8. Next coming to the application for review of order dated 22/03/2018, it may be noticed that the applicant society has averred that it had entered into an **agreement of sale** dated 21/10/2014 with M/s Pearls Structure Pvt. Ltd and had in this context paid to it Rs.45,61,654/- for purchase of land as described in the table below :-

Company Name	MR No	Survey No	Area in acre	Sale Amount	Ch. No.	Ch. Date	Ch. Amount
Pearls Structure Pvt. Ltd	3495-15	1100,1102,1114,1119,1134,1188	20.188	10094050	714449	03/11/2014	686000
	3498-15	1099,1112,1121,1153,1157/1,1158			190611	20/07/2015	2400000
	3496-15	1185, 1157/2,			000167	20/07/2015	1395654
	3600-15	646,647,648,650,658,659,660,662,655 & 661					

9. The applicant society issued a notice that 17/12/2016 to the above named company **seeking refund** of the aforementioned amount of Rs. 45,61,654/- mentioning therein that the said amount was paid against total sale consideration of Rs. 1,00,94,050/- in respect of the land detailed above situated in District Shivpuri, **but the sale deed had not been executed** despite the period of two years stipulated in the agreement of sale having expired and therefore the above named company liable to refund the advance to the tune of Rs.45,61,654/- failing which the applicant society would be constrained to initiate appropriate proceedings against the above named company. Copy of the aforesaid notice dated 17/12/2016 was forwarded by the above named applicant society to Hon'ble Mr.

Justice (Retd.) R.M. Lodha Committee in the matter of PACL Ltd for information and necessary action.

10. The applicant society has further averred that it had also entered into an **agreement of sale** dated 21/10/2014 with M/s Pearls Colonisers Pvt. Ltd and had in this context paid to it Rs.1,04,27,600/- for purchase of land as described in the table below :-

Company Name	MR No	Survey No	Area in acre	Sale Amount	Ch. No.	Ch. Date	Ch. Amount
Pearls Colonisers Pvt. Ltd	3552-15	1021,1041,1042, 1043,1044,1046, 1050,1054,1058, 1079,1080, 1053, 1057,1069,1086	20.855263	10427600	714449	03/11/2014	1090000
	3551-15	1098			760464	02/03/2015	2350000
	3548-15	1016,1017,1019, 1028			460479	24/03/2015	2500000
	3550-15	663,689 & 690			358745	20/05/2015	2200000
					358746	21/05/2015	1600000
					190610	20/07/2015	687600

11. The applicant society issued a notice that 17/12/2016 to the above named company **seeking refund** of the aforementioned amount of Rs.1,04,27,600/- mentioning therein that the said amount was paid against total sale consideration of Rs.1,04,27,600/- in respect of the land detailed above situated in District Shivpuri, **but the sale deed had not been executed** despite the period of two years stipulated in the agreement of sale having expired and therefore the above named company liable to refund the advance to the tune of Rs.45,61,654/- failing which the applicant society would be constrained to initiate appropriate proceedings against the above named company. Copy of the aforesaid notice dated 17/12/2016 was forwarded by the above named applicant society to Hon'ble Mr. Justice (Retd.) R.M. Lodha Committee in the matter of PACL Ltd for information and necessary action.

12. The applicant society has further averred that it had also entered into an **agreement of sale** dated 21/10/2014 with M/s Vrisini Hi-fi Realtors Pvt. Ltd and had in this context paid to it Rs.13,56,000/- against total sale consideration of Rs.1,23,33,045/- for purchase of land as described in the table below :-

QW

Company Name	MR No	Survey No	Area in acre	Sale Amount	Ch. No.	Ch. Date	Ch. Amount
VrisiniHiFi Realtors Pvt. Ltd	27283-16	1081,1082, 1083,1084, 1087,1089, 1101,1103, 1104,1106, 1107,1111, 1113, 1117, 1122,1108, 1115,1124, 1123,1109, 1125,1116, 1120,1105, 1110,1118	24.660609	12333045	714449	03/11/2014	1356000

13. The applicant society issued a notice that 17/12/2016 to the above named company **seeking refund** of the aforementioned amount of Rs.13,56,000/- mentioning therein that the said amount was paid against total sale consideration of Rs. 1,23,33,045/- in respect of the land detailed above situated in District Shivpuri, **but the sale deed had not been executed** despite the period of two years stipulated in the agreement of sale having expired and therefore the above named company liable to refund the advance to the tune of Rs.13,56,000/- failing which the applicant society would be constrained to initiate appropriate proceedings against the above named company. Copy of the aforesaid notice dated 17/12/2016 was also forwarded by the above named applicant society to Hon'ble Mr. Justice (Retd.) R.M. Lodha Committee in the matter of PACL Ltd for information and necessary action.

14. The applicant society has further averred that it had also entered into an **agreement of sale** dated 21/10/2014 with M/s Narayan & Bareth Promoters Pvt. Ltd and had in this context paid to it Rs.93,28,000/- against total sale consideration of Rs. 93,28,000/- for purchase of land as described in the table below :-

Company Name	MR No	Survey No	Area in acre	Sale Amount	Ch. No.	Ch. Date	Ch. Amount
Narain&Bareth Promoters Pvt. Ltd	27092-16	1141,1142 1145,1147 1165,1172 1179,1181 1182,1174 1183 &1186	18.656071	9328000	714449	03/11/2014	1079000
	27163-16	1163			067127	10/12/2014	5000000
	27428-16	1162			067128	08/01/2015	3000000
					067112	04/02/2015	249000

15. The applicant society issued a notice that 17/12/2016 to the above named company **seeking refund** of the aforementioned amount of Rs. 93,28,000/- mentioning therein that the said amount was paid against total sale consideration of Rs. 93,28,000/- in respect of the land detailed above situated in District Shivpuri, **but the sale deed had not been executed** despite the period of two years stipulated in the agreement of sale having expired and therefore the above named company liable to refund the advance to the tune of Rs. 93,28,000/- failing which the applicant society would be constrained to initiate appropriate proceedings against the above named company. Copy of the aforesaid notice dated 17/12/2016 was also forwarded by the above named applicant society to Hon'ble Mr. Justice (Retd.) R.M. Lodha Committee in the matter of PACL Ltd for information and necessary action.

16. The applicant society has further averred that it had also entered into an **agreement of sale** dated 21/10/2014 with M/s Narayan & Bareth Affordable Estates Pvt. Ltd and had in this context paid to it Rs.13,11,000/- against total sale consideration of Rs. 1,61,01,589/- for purchase of land as described in the table below :-

Company Name	MR No	Survey No	Area in acre	Sale Amount	Ch. No.	Ch. Date	Ch. Amount
Narain & Bareth Affordable Estates Pvt Ltd	27282-16	1126,1128/2, 1129,1130, 1131,1132, 1133,1136, 1138,1143, 1156,1160, 1162,1168, 1175,1184, 1135,1140, 1155,1180, 1154,1170, 1169 & 1176	23.845177	11922589	714449	03/11/2014	1311000

17. The applicant society issued a notice that 17/12/2016 to the above named company **seeking refund** of the aforementioned amount of Rs. 13,11,000/- mentioning therein that the said amount was paid against total sale consideration of Rs. 1,61,01,589/- in respect of the land detailed above situated in District Shivpuri, **but the sale deed had not been executed** despite the period of two years stipulated in the agreement of sale having expired and therefore the above named company liable to refund the advance to the tune of Rs. 13,11,000/- failing which the applicant society would be constrained to initiate appropriate proceedings against the above named company. Copy of the aforesaid notice dated 17/12/2016 was also forwarded by the above named applicant society to Hon'ble Mr. Justice (Retd.) R.M. Lodha Committee in the matter of PACL Ltd for information and necessary action.

Handwritten signature

18. The applicant society had also appended photostat copy of a chart indicating that it had entered into an **agreement of sale** dated 21/10/2014 with M/s BHS Decent Homes Builders Pvt. Ltd and had in this context paid to it Rs.32,87,750/- against total sale consideration of Rs. 48,70,000/- for purchase of land as described in the table below :-

Company Name	MR No	Survey No	Area in acre	Sale Amount	Ch. No.	Ch. Date	Ch. Amount
BHS Decent Homes Builders Pvt. Ltd	2583-14	337,351,358,361,387390	12.033783	4870000	000077	03/08/2013	487000
					843798	06/11/2013	2500000

19. The applicant society issued a notice that 17/12/2016 to the above named company **seeking refund** of the aforementioned amount of Rs. 32,87,750/- mentioning therein that the said amount was paid against total sale consideration of Rs. 48,70,000/- in respect of the land detailed above situated in District Shivpuri, **but the sale deed had not been executed** despite the period of two years stipulated in the agreement of sale having expired and therefore the above named company liable to refund the advance to the tune of Rs. 32,87,750/- failing which the applicant society would be constrained to initiate appropriate proceedings against the above named company. Copy of the aforesaid notice dated 17/12/2016 was also forwarded by the above named applicant society to Hon'ble Mr. Justice (Retd.) R.M. Lodha Committee in the matter of PACL Ltd for information and necessary action.

20. All the above noted six applications were dismissed vide my common order dated 22/03/2018 operative part whereof reads as under :-


“The prayer for refund of the aforesaid amounts statedly paid by the applicant society to the above named companies as detailed at Sr. Nos. 1 to 5 as earnest money in pursuance of agreements of sale, all dated 21/10/2014, entered into by it with each of them individually for purchase of land situated at Village Mudheri of Tehsil & District Shivpuri of Madhya Pradesh, or refund of Rs. 32,87,750/- referred to in para 6 (vi) above cannot be entertained by this committee because 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 off the land purchased by PACL so that the sale proceeds recovered there from can be paid

AWM

to the investors who have invested their funds in the company for purchase of the land. The said committee has thus not taken over the liabilities of PACL or any of its subsidiaries/associates. The applicant may seek such other remedy as may be available under the civil law for recovery of the aforesaid amounts but the petitions in hand are all liable to be and are hereby dismissed.”

21. Learned counsel for the applicant society has argued that no notice was issued to it prior to passing of the order in question dated 30/01/2018. This argument carries no weight because through this petition the applicant society was seeking refund of the amounts as detailed above paid by it to the companies detailed above in paras 8, 10, 12, 14, 16 and 18. My mandate is confined to dealing with objections/representations against attachment of properties by the Committee as uploaded on www.auctionpacl.com. No notice of this petition was therefore required to be issued to the applicant society. It will not be out of place to mention here that Pearls Structure Pvt. Ltd., Pearls Colonisers Pvt. Ltd., Vrisini HiFi Realtors Pvt. Ltd., Narain & Bareth Promoters Pvt Ltd., Narain & Bareth Affordable Estates Pvt. Ltd. and BHS Decent Homes Builders Pvt. Ltd with whom agreements of sale had been entered into by the applicant society as detailed in paras 8, 10, 12, 14, 16 and 18 are all associates/subsidiaries of PACL as included in the list at S.Nos. 390, 377, 580, 334, 332 and 53 respectively of the list forwarded by PACL itself to the Committee in response to the information sought for in this context. In any case, the order reproduced in para 20 above neither contains any factual infirmity nor does any valid ground exist in the light of principles governing Order 47 Rule 1 CPC to warrant any review for which reason the prayer for review of order dated 22/03/2018 in File Nos. 227/1 to 227/6 is also declined.


Date : 14/08/2018


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. 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 :14/08/2018


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