

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 in civil appeal no. 13301/2015 Subrata Bhattacharya Vs SEBI, and notified in SEBI Press release no. 66 dated 08/12/2017).

File no. 533

MR Nos. 9899-15, 25071-16

Objector : Mr. M. Manjunath s/o Mallappa

Argued by : Sh. Sudheer H.M., Advocate, Bangalore (Enrolment No. KAR/428/2005)

Order :

1. 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.
2. For some inexplicable reasons best known to the objector herein, this objection petition has been instituted on 08/08/2018 despite the fact that the order of the Supreme Court dated 15/11/2017, quoted in my designation head note above, clearly specified that such like matters were to be dealt with on an urgent basis and I was required to submit my report within four months, to be computed from the date of my joining (which was 06/12/2017). My appointment for dealing with objections/representations in the matter of PACL Ltd was duly notified in SEBI Press release no. 66 dated 08/12/2017. No doubt, my tenure was subsequently extended by the Hon'ble Supreme Court vide orders dated 13/04/2018 and 02/07/2018, yet the objectors herein have no justification in having not filed the objections in hand expeditiously, soon after attachment of the properties in question herein, following the order of the Hon'ble Supreme Court dated 02/02/2016 in Civil appeal No. 13301/2015 titled Subrata Bhattacharya Vs SEBI. The objection petition in hand should in fact have been filed shortly after my taking up this assignment on 06/12/2017.

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3. The objector above named seeks delisting of the **three** properties, all situated at Village Bychapura, Kasba Hobli, Taluk Devanahalli, District Bangalore (Rural) and separately detailed hereunder, all of which stand attached, as depicted against entries in **MR Nos.** (which MR numbers set out in bold letters in the heading above have been given by the CBI during the course of investigation) :-
- (i) Land measuring 09 guntas comprised in Survey No. 44 which was statedly purchased earlier by the objector herein from Sri Kantharaju vide registered sale deed no. 2232/06-07 dated 15/06/2006 (photocopy of said sale deed in Kannad Language produced as Annexure B-1 without translation thereof);
 - (ii) Land measuring 01 acre 16 guntas comprised in Survey No. 59/1 which was statedly purchased earlier by the objector herein from Shivappa vide registered sale deed no. 499/06-07 dated 19/04/2006 (photocopy of said sale deed in Kannad Language produced as Annexure B-3 without translation thereof); and
 - (iii) Land measuring 11 guntas comprised in Survey No. 59/4 which was statedly purchased earlier by the objector herein from Smt. Narayanamma vide registered sale deed no. 3457/06-07 dated 14/07/2006 (photocopy of said sale deed in Kannad Language produced as Annexure B-2 without translation thereof).
 - (iv) Instead photocopy of sale deed no. 9205/06-07 dated 08/03/2007 executed by Sri Doda Venkatappa and others in favour of Bhikaram Solonky and other has been produced on record on 27/09/2018 which describes sale of land measuring 1 acre 11 guntas comprised in Survey No. 59/4 in favour of Bhikaram Solonky and Pannaram by Sri Doda Venkatappa and three others including a minor (**without any indication of having obtained requisite permission of the court under Section 8 of the Hindu Minority and Guardianship Act, 1956**) for an amount of Rs.3,20,000/- through eight cheques, all dated 01/03/2007 in the sum of Rs.40,000/- each.
 - (v) The objector has also produced on record on 27/09/2018 photocopy of registered sale deed no. 3469/09-10 dated 26/10/2009 executed by Sri Narayanaswamy and five others in favour of Pannaram an area measuring 04 guntas comprised in Survey No.59/4 for an amount of Rs. 2,00,000/- **in cash.**
4. (a) The objector M. Manjunath herein claims to have subsequently sold the above described land vide registered sale deed no. 5724/10-11 dated 17/06/2010 (copy whereof is Annexure- B-4 at page 35-76 of the objection petition) in favour of Prateek Kumar for an amount of Rs.38,00,000/- (Thirty eight lakhs) as statedly paid vide cheque no. 416635 dated 16/01/2011 drawn on Citi Bank, Noida Branch, Delhi but **supporting bank transactions have not however been produced on record.**

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(b) Subsequent thereto, an unregistered confirming party agreement cum receipt dated 01/12/2010 (copy whereof is Annexure B-5 at the page 77-91 of the objection petition) was also executed wherein it is surprisingly mentioned (in para 8 thereof) that at the time of registering the above referred sale deed dated 17/06/2010, the purchaser (Prateek Kumar) had assured the vendor (M. Manjunath) that he will issue five post dated cheques for **the remaining sale consideration** and had thus issued five separate cheques as detailed hereunder :-

- (i) Cheque no. 663373 dated 10/12/2010 in the sum of Rs. 38, 70, 000/-
 - (ii) Cheque no. 663369 dated 15/01/2011 in the sum of Rs. 38, 70, 000/-
 - (iii) Cheque no. 663363 dated 20/02/2011 in the sum of Rs. 38, 70, 000/-
 - (iv) Cheque no. 663366 dated 20/02/2011 in the sum of Rs. 38, 70, 000/-
 - (v) Cheque no. 663377 dated 20/02/2011 in the sum of Rs. 38, 70, 000/-,
- all drawn on IDBI Bank, Yerawada Branch, Pune but **supporting bank transactions have not however been produced on record.**

(c) However, a perusal of the said sale deed 5724/10-11 dated 17/06/2010 (copy whereof is Annexure- B-4 at page 35-76 of the objection petition) reveals that there was no such undertaking therein by Prateek Kumar of issuing aforesaid number of five cheques in the sum of Rs. 38,70,000/- each. In fact, the total sale consideration therein was mentioned as 38,00,000/-.

(d) The above referred registered sale deed no. 5724/10-11 dated 17/06/2010 (copy whereof is Annexure- B-4 at page 35-76 of the objection petition) was however cancelled vide registered cancellation deed no. 56/11-12 dated 06/04/2011 (copy whereof is Annexure B-6 at the page 96-104 of the objection petition) as executed between Sri M. Manjunath on the one hand and Prateek Kumar through his GPA Ayush Thapa on the other hand. The said cancellation deed makes no mention whatsoever regarding refund of the total amount of Rs.2,31,50,000/- (two crores thirty one lakhs fifty thousand) detailed in para 4 (a) and (b) of this order above and shockingly contains a recital to the effect that the first party namely the vendor M. Manjunath had delivered to the second party all the original relevant documents of the title pertaining to the property in question and relinquishes/releases all his rights therein in favour of the second party namely Prateek Kumar who was already the purchaser therein!

5. (a) Intriguingly, on the date of execution of above referred registered cancellation deed no. 56/11-12 dated 06/04/2011 (Annexure B-6), another registered sale agreement no. 57/11-12 dated 06/04/2011 (copy whereof is Annexure B-7 at the page 110-123 of the objection petition) in respect of the same land was executed by Sri M.

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Manjunath on the one hand and Prateek Kumar on the other hand whereby M. Manjunath had again agreed to sell the aforesaid land to Prateek Kumar for an amount of Rs.38,00,000/- (Thirty eight lakhs) which was statedly paid **in cash** by Prateek Kumar and accepted by Sri M. Manjunath **in cash**.

(b) The aforesaid sale agreement no. 57/11-12 dated 06/04/2011 (copy whereof is Annexure B-7 at the pages 110-123 of the objection petition) was also however cancelled vide registered cancellation deed no. 7946/15-16 dated 13/10/2015 (copy whereof is Annexure B-9 at the pages 139-152 of the objection petition)

6. M. Manjunath above named had also earlier executed registered GPA no. 10/11-12 dated 07/04/2011 (copy whereof is Annexure B-8 at the pages 125-140 of the objection petition) in favour of Prateek Kumar as represented by Ayush Thapa in respect of aforesaid land comprised in Survey No. 44, 59/1 and 59/4 but which was also cancelled vide registered cancellation deed no. 789/15-16 dated 13/10/2015 (copy whereof is Annexure B-10 at the pages 153-162 of the objection petition).
7. M. Manjunath objector herein thus claims to continue as owner of the three separate parcels of land as detailed in para 3 above on the strength of the three sale deeds referred to therein as executed in his favour by Sri Kantharaju, Shivappa and Smt. Narayanamma copies of sale deed of which transactions have only been produced in Kannad language but English translations thereof have not been produced on record.
8. In the absence of any material being available on the file regarding the source of hefty amounts of total money to the tune of Rs.2,31,50,000/- (two crores thirty one lakhs fifty thousand) involved in the purchase of the different parcels of land as under attachment as detailed above, the objector above named cannot be considered to be genuine owner of said lands because the money collected by way of "collective investment scheme" without obtaining requisite permission under Section 11AA of the Securities and Exchange Board of India Act, 1992 from millions of investors on false pretexts of multiplied returns has been misappropriated by PACL for buying property in personal names of its associates, or companies, to the exclusion of the gullible investors and apparently used in the purchases of lands forming the subject matter of the above detailed nine objection petitions. No legal sanctity can therefore be attached to the various sale transactions relied upon by the objectors in the above noted objection petition. I stand fortified in my above view from the observations of the Hon'ble Supreme Court in the case bearing the title S. P. Chengal Varaya Naidu (Dead) By Lrs.


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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.”

9. On the above analogy, the question of utilization of misappropriated money in acquiring ownership of the lands detailed above can certainly be looked into by this committee.
10. In view of the foregoing discussion, the objection petition in hand is hereby dismissed.

Date : 27/09/2018


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 : 27/09/2018


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