

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. 569 (For review of order dated 03/01/2018 File No. 34)

MR No. 5589-15

Objector : Bhagyashree Buildtech Pvt. Ltd.

Argued by : Shri Debesh Panda, and Shri Anshuman Ray, Advocates for the applicant

Order :

1. Objection petition no.34 filed by the applicant herein against attachment of land bearing Survey Nos. 16/1(2-12), 17/1(3-16), 18/1(3-6), 19/1(4-0), 7(8-0), 8/1(4-0), 13/2(4-2) and 14(8-0) situated at village Murthal, Tehsil and District Sonapat as attached by the committee and indicated on its website www.auctionpacl.com with specific reference to MR No. detailed in the headnote above as (given by the CBI during the course of investigation) was dismissed vide my order dated 03/01/2018. The said order was soon thereafter uploaded on SEBI website www.sebi.gov.in/PACL.html as Catalogue No. 6.
2. I have heard the learned counsel for the applicant objector. By way of the application in hand instituted on 24/08/2018, the applicant/objector seeks review of the aforesaid order dated 03/01/2018 on the following grounds which are simultaneously being dealt with seriatum :-
 - (a) "The applicant objector was issued a notice through email 28/12/2017, enclosed whereto was a notice dated 18/12/2017 for appearance."

The above contention is however factually incorrect because notice was issued for 02/01/2018 through email dated 28/12/2017 (copy whereof is appended as Annexure-7 at page 48 of the application in hand). In addition thereto, notice dated 18/12/2017 requiring appearance of the objector before me on 02/01/2018 (copy whereof is appended at page 49 of the application in hand) was also duly despatched through speed post. Obviously in response thereto, Mr. Dinesh authorized signatory of the

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applicant had appeared in person on 02/01/2018 on which date he was duly heard and the matter was posted for orders for 03/01/2018 which was so announced on the said date.

(b) "The proposal for auction of the property having emanated from the Justice R.M. Lodha (Retd.) Committee in the matter of PACL Ltd, the onus was squarely on it to specify the grounds in support of proposed auction which was not done, and furthermore in the face of the objector having tendered its letter dated 14/09/2016 enclosing therewith the sale deed, details of mutation/possession and the manner in which consideration for the property was paid, the burden shifted on the said committee to specify as to why it would disregard the said documents evidencing title and possession of the objector on the land in question."

The above ground is being mentioned to be rejected outright because it was nowhere the duty of the committee to inform the objector regarding the grounds in support of the proposed auction because the said land was attached by the CBI during the course of investigation conducted by it in the matter of PACL Ltd/PGF under orders of the Hon'ble Supreme Court.

(c) It is next contended that the observation in the said order that the applicant objector's vendor Walia and Majumdar Unique Promoters Pvt Ltd could have been a front for PACL is unsustainable because copy of the list of subsidiaries/associates of PACL was not supplied to it before it being relied upon while passing the said order which is thus against principles of natural justice.

The above contention is misconceived because the CBI, had during the course of investigation against PACL/PGF, attached the said property and the Hon'ble Supreme Court vide its order dated 02/02/2016 passed in civil appeal no. 13301/2015 titled Subrata Bhattacharya Vs SEBI had directed sale of the properties of PACL for refund to the investors who have invested their funds in the said company for purchase of the land. Since the land in question bearing Survey Nos. 16/1(2-12), 17/1(3-16), 18/1(3-6), 19/1(4-0), 7(8-0), 8/1(4-0), 13/2(4-2) and 14(8-0) situated at village Murthal, Tehsil and District Sonapat is indicated against MR Register entry number 5589-15 by the CBI as belonging to Walia and Majumdar Unique Promoters Pvt. Ltd, (which as per entry at Sr. No. 587 of the list of subsidiaries/associates of PACL Ltd as furnished to SEBI by PACL itself is one of its own subsidiaries), no notice was required nor could be issued to the applicant objector Bhagyashree Buildtech Pvt. Ltd merely because mutation no. 14225 dated 05/12/2014 stands recorded in its favour in view of stated purchase by it of the said land by it vide registered sale deed no. 8660 dated

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24/11/2014 for an amount of Rs.3,88,12,500/- (Three crore eighty eight lakhs twelve thousand five hundred) executed in its favour by M/S Walia and Majumdar Unique Promoters Pvt. Ltd, (copy of which sale deed or supporting certified bank transactions had not been produced on record). In any case, mere mutation entry does not confer title.

(d) It is further contended that the applicant objector was not called upon by the committee to furnish particulars considered necessary.

The above contention is also untenable because the objector knew that the property in question stood attached and as the same was being claimed by him to be its own, it was incumbent upon it to produce all relevant documents and it was not the duty of the committee to inform it as to which documents to produce.

(e) It is also contended that the observation in the said order that the sale deed does not contain any particulars is factually incorrect because the said sale deed does contain a recital to the effect that the vendor had earlier purchased the land in question, along with some other land, from Mount Carmel School Society, Delhi and in respect whereof mutation of sale effected vide transfer no. 12736 had been sanctioned on 10/06/2011.

The above quoted observation of my order dated 03/01/2018 is being misconstrued and misinterpreted by the applicant. What was intended to be conveyed therein was that the identity of the persons executing the sale deed on behalf of Mount Carmel School Society, Delhi, or the amount of sale consideration involved in sale deed no. 1549 dated 13/05/2011 as mentioned therein, was not disclosed in as much as the said sale deed dated 13/05/2011 had not been produced on record. Mere production of mutation entry no.14225 as done in the objection petition was thus inconclusive because mutation does not confer title. Infact, photocopy of an affidavit dated 24/11/2014 executed by M/S Walia and Majumdar through its directors Deepak Gautam and Tarachand produced on record during the hearing of review application in hand mentions that the original registry pertaining to the land in question has been lost by it and would be handed over to the purchaser applicant society as and when traced which is apparently a lie because entry at Sr. No. 5193 with reference to MR No. 5589-15 pertaining to the property in question mentions that the sale deed no. 1549/11 executed by Mount Carmel School Society, Dwarka in favour of M/S Walia and Majumdar Unique Promoters Pvt. Ltd has been seized and taken into possession by the CBI during investigation.

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(f) It is next contended that copy of order dated 03/01/2018 was not 'communicated' to the applicant objector which has thus been deprived of an opportunity to adequately protect its legal rights. Qua the said objection, the learned counsel for the applicant has argued that copy of the notice intimating the date fixed for hearing as 02/01/2018 was duly intimated to the objector vide email dated 28/12/2017 as sent by this office and therefore copy of the order dated 03/01/2018 should also have been similarly communicated to the objector by email.

In so far as the question of non-forwarding of copy of the order dated 03/01/2018 to the objector through email is concerned, the said contention is being mentioned to be rejected outright because the said order dated 03/01/2018 was duly forwarded to SEBI for being uploaded on its website for intimation to all concerned which was duly uploaded on SEBI website www.sebi.gov.in/PACL.html as Catalogue No. 6.

(g) When the objector attended the proceedings on 02/01/2018, not a single question was asked to it nor was it informed orally as to what was weighing on the committee's mind. The objector thus merely reiterated what it had stated in the letter dated 14/09/2016.

The above contention is also untenable because Mr. Dinesh, authorised signatory of the objector had appeared before me on the said date on its behalf. Since a notice had been duly issued to the objector with reference to the petition filed by the objector, it was open to the objector to furnish requisite documents in support of the objection petition after obtaining such legal advise as may have been necessary in the matter and it was nowhere required of me to indulge in oral dialogue with the above named Dinesh.

(h) It is lastly contended that even assuming the purchase of the property in question having been effected from PACL or its subsidiary, auction of the property would tantamount to PACL receiving consideration twice over from the sale of the same property.

It will be pertinent to highlight in this context that as per the recital in the sale deed no. 8660 dated 24/11/2014 executed by M/S Walia and Majumdar Unique Promoters Pvt. Ltd through its authorised signatory Hoshier Singh (whose purported thumb impression has been affixed thereon) in favour of the applicant objector Bhagyashree Belltech Pvt. Ltd, the sale was affected against receipt of Rs.3,88,12,500/- (Three crore eighty eight lakhs twelve thousand five hundred) as per sale transactions detailed here under :-

- (a) Cheque No. 000005 dated 17/11/2014 drawn on HDFC Bank, Delhi for Rs.1,00,00,000/- (One crore)
- (b) Cheque No. 000006 dated 21/11/2014 drawn on HDFC Bank, Delhi for Rs.50,00,000/- (Fifty lakhs)

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- (c) Cheque No. 000007 dated 21/11/2014 drawn on HDFC Bank, Delhi for Rs.50,00,000/- (Fifty lakhs)
- (d) Cheque No. 000008 dated 21/11/2014 drawn on HDFC Bank, Delhi for Rs.50,00,000/- (Fifty lakhs)
- (e) Cheque No. 000009 dated 21/11/2014 drawn on HDFC Bank, Delhi for Rs.50,00,000/- (Fifty lakhs)
- (f) Cheque No. 000010 dated 21/11/2014 drawn on HDFC Bank, Delhi for Rs.84,24,375/- (Eighty four lakhs twenty four thousand three hundred seventy five)

It may be pointed out that the copies of the aforesaid cheques pertaining to account no. 50200002810870 of M/S Bhagyashree Buildtech Pvt. Ltd were not appended to the objection petition but have now been produced along with supporting bank statements (at pages 208-210 read with Form-26QB at page 207) and appended to the review application.

3. The moot question arising for consideration here in the face of various objections referred to above and specially the last mentioned contention in para 8 of this order above is as to whether the said contentions fall within the purview of the grounds permissible for review within the meaning of section 114 CPC read with order 47 thereof. The learned counsel for the applicant objector, besides citing Bhikji Keshao Joshi and another Versus Brijlal Nandlal Biyani and others reported in AIR 1955 SC 610; Tirath Singh Versus Bachittar Singh and others reported in AIR 1955 SC 830; Balwan Singh Versus Lakshmi Narain and others reported in AIR 1960 SC 770 ; State of Orissa Versus Dr. (Miss) Binapani Dei and others reported in AIR 1967 SC 1269; Sahi Ram Versus Avtar Singh and others reported in (1999) 4 Supreme Court Cases 511; Sardar Harcharan Singh Brar Versus Sukh Darshan Singh and others reported in (2004) 11 Supreme Court Cases 196 and Alagaapuram R. Mohanraj and others Versus Tamil Nadu Legislative Assembly reported in (2016) 6 Supreme Court Cases 82, also relies on observations of the Hon'ble Supreme Court in Grindlays Bank Ltd. Versus Central Government Industrial Tribunal and others reported in 1981 Supreme Court Cases (L&S) 309 wherein it was held inter-alia as under :-

“Different considerations arise on review. The expression 'review' is used in two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in Narshi Thakershi's case held that no review lies on merits unless a statute specifically provides for it. Obviously when a review

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is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal.”

4. Reference may at this stage be also made to the undermentioned cases and the observations of the Hon’ble Supreme Court therein with reference to the question as to under what circumstances plea for review can be entertained :-

(i). In *Thungabhadra Industries Ltd. v. Govt. of A.P.* (1964) 5 SCR 174, another three-Judge Bench reiterated that the power of review is not analogous to the appellate power and observed:

“A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions, entertained about it, a clear case of error apparent on the face of the record would be made out.”

(ii). In *Aribam Tuleswar Sharma v. Aibam Pishak Sharma* (1979) 4 SCC 389, this Court answered in affirmative the question whether the High Court can review an order passed under Article 226 of the Constitution and proceeded to observe:

“But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court.”

(iii). In *Meera Bhanja v. Nirmala Kumari Choudhury* (1995) 1 SCC 170, the Court considered as to what can be characterised as an error apparent on the fact of the record and observed:

“.....it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of *Satyannarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale* AIR 1960

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SC 137 wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

“An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.”

(iv). In *Parsion Devi v. Sumitri Devi* (1997) 8 SCC 715, the Court observed:

“An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47 Rule 1 CPC..... A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise”.”

(v). In *Lily Thomas v. Union of India* (2000) 6 SCC 224, R.P. Sethi, J., who concurred with S. Saghir Ahmad, J., summarised the scope of the power of review in the following words:

“Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised.”

(vi). In *Haridas Das v. Usha Rani Banik* (2006) 4 SCC 78, the Court observed:

“The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing “on account of some mistake or error apparent on the face of the records or for any other sufficient reason”. The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict.”

(vii). In *State of West Bengal v. Kamal Sengupta* (2008) 8 SCC 612, the Court considered the question whether a Tribunal established under the Administrative Tribunals Act, 1985 can review its decision, referred to Section 22(3) of that Act, some of the judicial precedents and observed:

“At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.

The term “mistake or error apparent” by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3) (f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment / decision.”

5. Reverting to the grounds of challenge as referred to in para 2 of this order above, as viewed in the light of the case law adverted to above, it needs to be pointed out that there is neither any inadvertent error committed while passing the order in question dated 03/01/2018 and nor is there any “error apparent on the face of record” to warrant a ‘review’ thereof on merits. Infact, review of the said order if undertaken would tantamount to my sitting in appeal over my own order which is impermissible as per the principles enunciated in state of West Bengal Versus Kamalsen Gupta reported in (2008) 8 SCC 612 (Supra) and the other case law adverted to above.
6. In view of the foregoing discussion, the application in hand for review of my earlier order dated 03/01/2018 passed in objection petition no. 34 is hereby dismissed.

Date : 16/10/2018


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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 : 16/10/2018


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