

**Before Shri R.S. Virk, District Judge (Retd.)
In the matter of PACL Ltd.**

File no. 673

MR No. 26488-16

Objectors : Rajendra Vyas and Asheesh Calla

Present : (i) Ms. Vrinda Jhingan, Advocate, Delhi
(Enrolment No.D/4541/2018) as proxy counsel for
Shri Ajay Chaudhary, Advocate
(ii) None for CBI.
(iii) Shri Satyam Bhatia, Advocate, PACL
(Enrolment No. D/1855/2016)

Order :

1. (a) 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.

(b) 2nd Status Report (Volume-I) of the Justice (Retd.) R.M. Lodha Committee (in the matter of PACL Ltd) submitted before the Hon'ble Supreme Court, had at page 77 thereof, proposed as under :-

“It would be in the interest of the investors of the Company, that all objections based on documents purportedly executed after 02-02-2016 be scrutinized and then heard and disposed of by a retired Judicial Officer(s) assisted by requisite number of Advocates, appointed by the Committee.”

(c) The aforesaid proposal of committee was accepted by the Hon'ble Supreme Court.

2. (a) Subsequent thereto, I have been appointed by the said committee to hear objections/representations against attachments of various properties in the matter of PACL Ltd which appointment has been duly notified in SEBI Press release no. 66 dated 08/12/2017.

R.M. (b) My said appointment is also duly mentioned in the order dated 15/11/2017 (to be read with orders dated 13/04/2018, 02/07/2018, 07/12/2018 and 08/07/2019) of the

Hon'ble Supreme Court in civil appeal no. 13301/2015 Subrata Bhattacharya Vs SEBI.

3. The objectors above named seek delisting, (from the list of properties shown attached on www.auctionpacl.com) the land comprised in Khasra No. 1070/484 (old Khasra Nos. 484, 484/915) situated at village Bhaisada, Tehsil Pokhran, District Jaisalmer, Rajasthan. It is averred by them that as described in mutation no. 414, Bhur Singh and Padam Singh sons of Kalyan Singh and their other family members had sold their entire lands comprised in Khasra No. 481/914 (530 Bighas), Khasra No. 484/915 (1650 Bighas 18 Biswas), as also 1200 Bighas of Gair mumkin land, total measuring 3380 Bighas 18 Biswas, to eight different persons one of whom was V. Vijayram s/o Virasuma who had sold his share measuring 422 Bighas in the above described land to Saryu Farms Pvt. Ltd on 21/10/2010 in which context mutation no. 590 was entered in favour of Saryu Farms Pvt. Ltd. It is further averred that out of the said land measuring 422 Bighas, Saryu Farms sold 322 Bighas from the undivided share of Khasra Nos. 481/914 and 484/915 to one Prakash Kumar s/o Kanji on 28/09/2016. It is averred inter-alia that on 02/11/2016, all khatedar owners of Khasra Nos. 481/914 and 484/915 moved an application before the Tehsildar, Baniyana, District Jaisalmer for recording partition of the said land by way of their mutual consent whereby Khasra No. 484/915 measuring 2850 Bighas 18 Biswas was divided into three parts. It is also averred that in Khasra No. 1070/484, total measuring 2130 Bighas 10 Biswas, the share of Prakash s/o Kanji above named came to 255 Bighas 0.08 Biswas out of which the said Prakash Kumar sold 170 Bighas to the objector Rajender Vyas for an total amount of Rs.1,24,10,000/- and 41 Bighas for an amount of Rs.29,93,000/- to the objector Asheesh Calla in which context mutation nos. 973 and 974 were entered in the revenue record. The objectors thus claim themselves to be 'bonafide purchasers' of the land in question and contend that the said land has been erroneously shown on the PACL auction website as belonging to PACL.
4. Upon notice having been sent to CBI through email at its given email address sp1bsfcdel@cbi.gov.in vide my order dated 09/07/2019 for 05/08/2019, it submitted its reply on 05/08/2019 wherein it is averred that it had seized sale deed no.2903/06 (detailed in MR No. 24688/16 from M/S PACL Ltd whereby Bhur Singh and Padam Singh had statedly sold their land to eight different persons (as so claimed in the objection petition) including one V. Vijay Ram on 28/10/2006 which sale deed has been seized by it and has been handed over by it to the committee.
5. Upon notice having been sent to PACL through email at its given email address amarjit.bedi@gmail.com, it submitted its reply wherein it is mentioned that the land

in question was infact purchased by PACL Ltd, in the name of one of its associate company namely Saryu Farms Pvt. Ltd, on 21/10/2010 vide sale deed no. 5790/10, copy whereof is Annexure-4 from Mr. Vijay Raman s/o Virasuma as so detailed in its record, copy whereof in Annexure-2, whereas details of payment made qua this transaction pertaining to sale deed no. 5790/10 are detailed in Annexure-3. It is averred inter-alia that one U.M. Singh s/o Lal Singh was authorized by Saryu Farms Pvt. Ltd for procurement of said land in which context board resolution was passed, copy whereof is Annexure-5. It is contended that the purported sale by Saryu Farms Pvt. Ltd to Prakash Kumar on 28/09/2016 is subsequent to the order of Hon'ble Supreme Court dated 02/02/2016 and added that no funds were received by Saryu Farms Pvt. Ltd in its bank accounts from Prakash Kumar as accounts of this company had been seized by SEBI on 07/09/2016. It is also contended that Saryu Farms Pvt. Ltd had not sold any such land, nor had it authorised any person including Um Singh s/o Lal Singh for sale of land in question to Prakash Kumar. It is asserted that the copy of purported sale deed in favour of V. Vijay Raman has infact been extracted from page nos. 7 to 16 of auction website of SEBI for PACL's assets.

6. I have heard the learned counsel for the objector and the counsel for PACL and have gone through the documents produced on record of this file.
7. It may firstly be pointed out that vide sale deed no. 2903 dated 28/10/2006 Bhur Singh and others had sold the land comprised in Khasra No. 481 measuring 531 Bighas and land comprised in Khasra No. 484/915 measuring 1650.18 Bighas, besides 1200 Bighas, totalling 3380.18 Bighas situated at Bhaisada, Tehsil Pokhran, District Jaisalmer, Rajasthan in favour of Shri V. Vijay Raman resident of Tamil Nadu (only and not in favour of eight persons as wrongly mentioned in para 2 of the objection petition). It may next be noticed that the land in question comprised in Khasra No. 1070/484 out of the above described land was purchased in the name of Saryu Farms Pvt. Ltd vide sale deed no.5790 dated 21/10/2010 by PACL India Ltd as general attorney of above named Mr. Vijay Raman s/o Virasuma on the strength of GPA dated 20/11/2006 executed by the said Vijay Raman in favour of PACL India Ltd (copy whereof is hereby marked as Annexure C-1) who had also executed agreement of sale on the same date in favour of PACL Ltd (copy whereof is hereby marked as Annexure C-2), both of which copies have been duly marked and signed by me today. Details of payments made qua this transaction pertaining to sale deed no. 5790/10 are fully detailed in Annexure-3. It may next be noticed that Saryu Farms Pvt. Ltd is infact an associate company of PACL Ltd duly mentioned as such at Sr. No.440 of the list appended to the letter of PACL Ltd sent vide its forwarding letter no.PACL/JRMLC/2016-035 dated 21/06/2016, addressed to the then Nodal

Officer cum Secretary, Justice (Retd.) R.M. Lodha Committee, (in the matter of PACL Ltd) in response to information sought from it in this context vide JRMLC letter no.90 dated 15/06/2016. In this view of the matter, the authenticity of board resolution of PACL India Ltd dated 03/09/2010 with reference to the land situated at village Bhisada, (which includes the land in question) and regarding which land it held GPA dated 20/11/2006 referred to above that the power to sell the said land on behalf of PACL Ltd was thereby conferred jointly/severally upon the four persons named therein, has to be acted upon, to the exclusion of the purported board resolution dated 05/10/2010 of Saryu Farms Pvt. Ltd which being a subsidiary of PACL India Ltd could not have subsequently passed a contrary resolution dated 05/10/2010 and consequently the sale deed dated 28/09/2016 allegedly executed by Saryu Farms Pvt. Ltd through one U.M. Singh s/o Lal Singh on the strength of purported board resolution dated 05/10/2010 of Saryu Farms Pvt. Ltd cannot be acted upon, specially when it is borne in mind that the said sale deed dated 28/09/2016 is subsequent to the order of the Hon'ble Supreme Court dated 02/02/2016 passed in civil appeal no. 13301/2015 bearing the title Subarata Bhattacharaya Versus Securities & Exchange Board Of India wherein it was observed inter-alia as under :-

Upon hearing the learned counsel and looking at the peculiar facts of the case, in the interest of the investors, we think it proper to pass this order with regard to interim arrangement, without going into the legality of the impugned judgment and without prejudice to the submission which might be made by the counsel at the time of further hearing of these matters and we direct that the appellant-Company shall not collect any further amount from any of the investors.

The SEBI shall constitute a committee for disposing of the land purchased by the company so that the sale proceeds can be paid to the investors, who have invested their funds in the company for purchase of the land.

8. In view of the above quoted order of the Hon'ble Supreme Court, not only the purported sale deed dated 28/09/2016 (which has not been produced on record) allegedly executed by Saryu Farms Pvt. Ltd in favour of Prakash Kumar, but even the two subsequent sale deeds pertaining to the land in question, both dated 22/10/2018, executed by Prakash Kumar above named on the strength of sale deed dated 28/09/2016, in favour of the objectors herein namely Rajendra Vyas and Asheesh Calla are incapable of being acted upon and consequently the objectors herein cannot be considered to be 'bonafide purchasers' for value of the land in question merely on the strength of entries in mutation nos. 973 and 974, moreso when it is borne in mind that mutation does not confer title. If the argument of the learned counsel for the petitioners herein to the effect that the petitioners were not personally aware of any

cloud over the title of PACL Ltd, or its associates/subsidiaries/nominees is to be acted upon, it would mean that every sale transaction carried out by PACL Ltd, either on its own, or through its associates/subsidiaries/nominees etc., would have to be exempted despite PACL Ltd and its associates/subsidiaries/nominees etc., having been specifically debarred vide order dated 22/08/2014 passed by SEBI from selling any property except for the purpose of making refunds to its investors. The said order extracted from para 38 (d) thereof is reproduced verbatim hereunder for facility of ready reference :-

“PACL Limited, its promoters and directors including Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh and Mr. Subrata Bhattacharya, shall not alienate or dispose off or sell any of the assets of PACL Limited except for the purpose of making refunds to its investors as directed above.

9. In view of the foregoing discussion, I am of the considered view that the prayer of the objectors herein, if allowed, would infact tantamount to permitting PACL Ltd to get away with such monumental fraud played upon innocent investors, and nor can the objectors be permitted to cry foul in as much as they apparently failed to check, before entering into the two sale deeds dated 22/10/2018 with Prakash Kumar above named as to whether he had acquired ‘valid title’ to the land in question on the strength of purported sale deed dated 28/09/2016 executed in his favour by Saryu Farms Pvt. Ltd despite the fact that it was a subsidiary of PACL Ltd which company as detailed above in its reply has categorically averred that the land in question was purchased by it in the name of Saryu Farms Pvt Ltd which was one of its associate companies as detailed in para 7 of this order above.
10. In view of the foregoing discussion, the objection petition in hand is held to be devoid of any merit and is accordingly dismissed.

Date : 11/09/2019


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

Note:

Three copies of this order are being signed simultaneously, one of which shall be retained on this file whereas the other two, also duly signed, shall be delivered to the objector and PACL Ltd 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 : 11/09/2019


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