

**BEFORE THE RECOVERY OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA**

NEW DELHI

Recovery Certificate no 832 of 2015

ORDER

Under Section 28A of the Securities and Exchange Board of India Act, 1992 read with Section 222(1) of the Income Tax Act, 1961 and Second Schedule to Income Tax Act 1961.

In respect of Employees of Pearls Infrastructure Projects Ltd. & Nirmal Chhaya Insurance Services Ltd. in the matter of PACL Ltd.

Background:

1. On receipt of a complaint alleging illegal mobilization of funds from public by PACL Ltd., SEBI examined the matter and passed an order dated August 22, 2014 *inter alia* directing PACL Ltd., its promoters and directors to wind up all the existing Collective Investment Schemes (CIS) of PACL Ltd. and refund the monies collected under its schemes with returns due to its investors as per the terms of offer, within a period of three months from the date of the Order. PACL Ltd. filed an appeal against the directions before the Hon'ble Securities Appellant Tribunal (SAT) which was dismissed by the Hon'ble Tribunal with a direction to refund the money.
2. On failure of PACL Ltd. to comply with the directions contained in the SEBI order dated August 22, 2014, recovery proceedings were initiated against PACL Ltd. and its promoters/directors ["Defaulters"] under Certificate no 832 of 2015 dated December 11, 2015 for recovery of a sum of Rs. 49,100 Crores (Rupees Forty Nine Thousands One Hundred Crores) along with promised returns, further interest, all costs, charges and expenses incurred in recovering the said sum.



3. Subsequently, an appeal was filed by PACL Ltd. before the Hon'ble Supreme Court of India against SEBI order dated August 22, 2014. The Hon'ble Supreme Court vide order dated February 02, 2016 directed SEBI to constitute a Committee under Chairmanship of former Hon'ble Chief Justice of India—Justice (Retd.) R M Lodha with a direction to sell off the land owned/purchased by PACL Ltd. and refund the money to the investors.
4. Further, the Hon'ble Supreme Court vide order dated July 25, 2016 restrained PACL and/or its promoters/directors/agents/employees/group and/or associate entities from selling/transferring /alienating any of the properties wherein PACL has, in any manner, a right/interest whether situated within or outside India. Accordingly, in compliance with the order of the Hon'ble Supreme Court, an attachment notice no 2644 of 2016 dated September 07, 2016 under Recovery Certificate no 832 of 2015 was issued against 640 group/associate companies of PACL Ltd. *inter-alia* directing all banks, depositories and mutual fund houses to attach bank, demat accounts, lockers and mutual fund folios of the defaulters. The said notice also included *Nirmal Chhaya Insurance Services Ltd* (hereinafter referred to *NCISL* or the company or the defaulter) and *Pearls Infrastructure Projects Ltd* (hereinafter referred to *PIPL*)

Fund transferred to Directors and employees/ex-employees of Pearls Infrastructure Projects Ltd [PIPL].

5. After issuance of the said attachment notice dated September 07, 2016, it was *prima facie* observed that PIPL had diverted funds to the tune of Rs 57.60 Lacs (approx.) to the bank accounts of certain entities including its directors and employees/ex-employees. The details of funds diverted to the entities are mentioned as under:



Table-1

SI No.	Name of the Entities	Funds transferred (Rs)
1	Anil Kumar M. Kamashetty	1,50,000
2	Ashok Kumar	50,000
3	Bhuwan Chandra	50,000
4	Bidhu Shekar	500,000
5	Deepchand	50,000
6	Devender Kumar Goswami	50,000
7	IYPE Oomen	7,50,000
8	Jivan Dhingra	500,000
9	Kanwaljeet Singh Tour	4,78,000
10	Kunal Jha	150,000
11	Lokesh Kumar Chaubey	40,000
12	Mahesh Kumar Sharma	100,000
13	Mithilesh kumar Jha	50,000
14	Mohan Chand Sati	50,000
15	Mohan Lal Sehjpal	600,000
16	Naresh Sharma	200,000
17	Nitin Kumar Garg	1,00,000
18	Pankaj Mathur	120,000
19	Raj Kumar	50,000
20	Rajesh Kumar Saini	50,000
21	Rajiv Kumar Singh	75,000
22	Rupesh B	70,000
23	Saji Varghese	3,50,000
24	Sandeep Mehta	500,000
25	Sanjay Kumar Sharma	3,00,000
26	Santosh kumar	50,000
27	Sarvesh Kumar	750,000
28	Shital Rai	300,000
29	Siya Ram Yadav	200,000
30	Sudhanshu Kumar	200,000
31	Tarun Kumar	200,000
32	Vineet kumar	300,000
33	Vinod Kumar P	100,000
34	Gurpinder Jeet Brar	55,000
35	Sunil Kr. Sharma	50,000
36	Rajan Wahal	100,000
	Total	57,60,000



6. In order to protect the interest of the investors of PACL Ltd and to ensure compliance with the directions of the Hon'ble Supreme Court, it was necessary to stop the further siphoning of money diverted by PIPL. Therefore, as an interim measure to protect the funds from further transfer, the bank account/s of the aforesaid entities wherein the funds were transferred by PIPL were attached with immediate effect to the extent as mentioned against the respective employees through attachment notice dated 19th January, 2017, issued in exercise of powers conferred under Section 28A(1)(b) and 11(2) (i)(a) of SEBI Act, 1992 read with Section 226 and the Second Schedule of the Income Tax Act, 1961.
7. Further, the banks were advised to provide the following immediately at ***recoverynro@sebi.gov.in*** on service of the Attachment Notice:
- Confirmation of Attachment of the said account/s.
 - Copy of the Statement/s in respect of the employee accounts for the last one year;
 - KYC documents of transferee.
8. A copy of the attachment notice dated 19th January, 2017 was also sent to the entities as mentioned at Table 1 above to show cause as to why the said amounts so transferred shall not be recovered by SEBI and file objections, if any, to the aforesaid notice indicating whether they desire to avail themselves an opportunity of personal hearing.

Submissions of the parties:

9. Subsequently, the directors/employees/ex-employees of *Pearls Infrastructure Projects Ltd [PIPL]* lodged their claims/objections to the attachment proceedings and sought a personal hearing in the matter. Accordingly, a hearing was granted to them on 23.03.2017 and subsequently the following documents were submitted by PIPL:



- a. Policy document of PIPL for Advance Salary Grant.
- b. Advance Salary request letter by employees to PIPL Management.
- c. Lien withdrawal request letter by Employee and Management to SEBI.
- d. Salary Statement of 1 year of Transferee (Employee).
- e. Bank account statement of Transferee (Employee).
- f. Details of Advance salary granted in past three years.

Consideration of the submissions:

10. The objections/claims of directors/employees/ex-employees of PIPL have been considered and examined under Section 28A of SEBI Act read with Section 11(1) of the Second Schedule of Income Tax Act 1961, which *inter alia* states that where any objection/claim is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Recovery Officer shall proceed to investigate the claim or objection.
11. Accordingly, details/documents provided by the directors/employees/ex-employees and PIPL in support of their claim have been perused and examined. The following Inconsistencies/discrepancies/irregularities have been observed:
 - a. **Policy Document:** As per the details mentioned in the policy document of the company, submitted to Recovery Officer, SEBI, the maximum salary advance cannot exceed 4 times the gross monthly salary of the employee which is recoverable in maximum period of 4 months on pro-rata calculations. However, it was observed that in case of two employees, *PIPL has granted salary advance in excess of 4 months gross salary*. This raises doubt on the authenticity of the Policy document.
 - b. **Advance Salary Request Letter:** On examination of the letters requesting Advance Salary it was observed that majority of requests



of Salary Advance by employees were placed in the month of August 2016 i.e. prior to the date of issue of Attachment Notice, however *the funds were transferred subsequent to the date of attachment notice*. Since transfer of funds occurred after the issuance of attachment notice the possibility of manipulation in date of application requesting for advance cannot be completely ruled out.

- c. **Bank account statement of Transferee (Employee):** From the bank account statements it is observed that *all the fund transfers, as mentioned in Table 1 above, were executed after the issue of Attachment Notice dated 07.09.2016*.
- d. **Details of Advance Salary:** PIPL was asked to provide status of Salary Advances granted to its employees in past 3 financial years. As per the submission of PIPL *only 2 employees were granted salary advance in the past 3 years* whereas in the month of September 2016, 36 employees have been granted salary advance. From the aforesaid submission of PIPL it can be concluded that granting salary advances to employees is not a regular practice in the company. Thus, the inconsistency between the salary advances granted in past 3 years and in the month of September 2016 raises clear suspicion on the nature of transaction.

Fund transferred to Directors and employees/ex-employees of Nirmal Chhaya Insurance Services Ltd [NCISL]:

- 12. After issuance of the said attachment notice dated September 07, 2016, it was *prima facie* observed that NCISL had diverted funds to the tune of Rs 61.70 Lacs (approx.) to the bank accounts of certain entities including its directors and employees/ex-employees. The details of funds diverted to the entities are mentioned as under:



Table-2

SI No.	Name of the entities	Funds transferred (Rs)
1	Sh Ashim Kumar Mazumder, Director	22,42,000
2	Sh Kesar Singh, Director	6,88,906
3	Sh Sukhjit Singh Gill, Director	11,67,252
4	Sh Rajesh Rana, Ex-employee	2,27,783
5	Sh Balam Singh, Ex-employee	2,70,198
6	Sh Fateh Singh, Ex-employee	3,37,685
7	Sh Kundan Singh Routela, Ex-employee	2,69,687
8	Sh Rajendra Bahadur, Ex-employee	2,95,920
9	Sh Lalesh, Ex-employee	40,585
10	Ms Shalini, Ex-employee	3,41,346
11	Ms. Poonam Oberoi Nee/Ahuja, Ex-employee	2,88,977
Total		61,70,339

13. In order to protect the interest of the investors of PACL Ltd and to ensure compliance with the directions of the Hon'ble Supreme Court, it was necessary to stop the further siphoning of money diverted by NCISL. Therefore, as an interim measure to stop the funds from further transfer, the bank account/s of the aforesaid entities wherein the funds were transferred by NCISL were attached with immediate effect to the extent as mentioned against the respective entities through attachment notice dated 20th January, 2017, issued in exercise of powers conferred under Section 28A (1) (b), 11(2) (i)(a) of SEBI Act, 1992 read with Section 226 and the Second Schedule of the Income Tax Act, 1961.
14. A copy of the attachment notice dated 20th January, 2017 was also sent to the entities as mentioned at Table 2 above to show cause as to why the said amounts so transferred shall not be recovered by SEBI and file objections, if any, to the aforesaid notice indicating whether they desire to avail themselves an opportunity of personal hearing.



Submissions of the parties:

15. Subsequently, the said directors/employees/ex-employees of NCISL lodged their claims/objections to the attachment proceedings and sought a personal hearing in the matter. Accordingly, a hearing was granted wherein they *inter-alia* submitted the following:

(i) Directors of the company-Sh. Ashim Kumar Mazumder, Sh. Sukhjit Singh Gill & Sh. Kesar Singh:

Sh. Ashim Kumar Mazumder, Sh. Sukhjit Singh Gill and Sh. Kesar Singh, directors of NCISL vide letter dated March 24, 2017 and January 25, 2017 submitted that they were working as a director with the company since May 2015 and whatever payment/amount received from the company i.e. total Rs 41 Lacs (approx.) is their legitimate dues in the capacity of employee, as per law.

(ii) Employees/Ex-employees of the company-Sh Rajesh Rana & Others:

The employees/ex-employees of the company to whom funds of Rs 20.70 Lacs (approx.) were transferred, have submitted vide letter dated February 06, 2017 that they have nothing to do with SEBI's proceedings in the matter of PACL Ltd. They have further, claimed that their employer i.e. NCISL offered them 06 months' salary as retrenchment compensation in lieu of submitting voluntary resignation w.e.f. September 30, 2016. Therefore, all of them resigned from the services of the company vide letter dated September 13, 2016. In support of their claim, employees/ex-employees have furnished details viz appointment letter, salary slip, bank statements, resignation letter along with settlement details and etc.

16. While issuing attachment directions against the said entities, a notice was also sent to NCISL with a direction to show cause as to why the said amounts so transferred, shall not be recovered. In response of the notice, NCISL vide letter dated 26.04.2017 has submitted that the



company vide its board resolution dated September 01, 2016 decided that all the employees of the company shall be retrenched with effect from September 30, 2016 considering the current position of the company and offered to pay a retrenchment compensation equivalent to six months advance salary to all employees of the company.

17. Further, Nirmal Chhaya stated that the company vide office order dated September 02, 2016, served 30 days advance notice to its employees for their retrenchment from services of the company and granted 6 month's salary as retrenchment compensation. Thereafter, all the aforesaid employees accepted the company's proposal of 6 months' advance salary as retrenchment compensation and tendered their resignation vide letter dated September 13, 2016.
18. The objections/claims of the directors/employees/ex-employees have been considered under Section 28A of SEBI Act, 1992 read with Section 11(1) of the Second Schedule of Income Tax Act 1961 which *inter-alia* states that where any objection/claim is made to the attachment, the Recovery Officer shall proceed to investigate the claim or objection.

Consideration of the submissions:

19. The objections/claims of NCISL have been considered and examined under Section 28A of SEBI Act 1992 read with Section 11(1) of the Second Schedule of Income Tax Act 1961, which *inter alia* states that where any objection/claim is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Recovery Officer shall proceed to investigate the claim or objection.
20. Accordingly, details/documents provided by the directors/employees/ex-employees of NCISL in support of their claim have been perused and examined. The following inconsistencies/ discrepancies/ irregularities have been observed:



- (i) The company vide its board resolution dated September 01, 2016 decided to retrench all employees with effect from September 30, 2016 and communicated the same to its employees vide office order dated September 02, 2016. However, it is observed that *funds towards settlement amount were released to the directors and employees/ex-employees on September 14, 2016 well before 15-16 days to the effective date of the board decision i.e. September 30, 2016.* In such a situation, bonafide of the transactions is doubtful as to why the company paid the settlement amount 15-16 days earlier which was supposed to be due with effect from September 30, 2016.
- (ii) The directors of the company namely Sh. Ashim Kumar Mazumder, Sh Sukhjrit Singh Gill and Sh Kesar Singh has claimed that whatever funds transferred by NCISL are their legitimate dues towards bonus, salary, advance salary, earned leaves and gratuity. In this regard, it is pertinent to mention that *gratuity is paid to the employees on retirement/termination as per applicable provisions of law.* However, *gratuity amount is found to be included in the settlement amount in respect of two of the directors, who are still continuing as directors of the company.*
- (iii) As regards funds transferred to employees/ex-employees of the company, clause 14 of their appointment letter states that *".....After confirmation of your services, your services may be terminated at one month's notice or paid salary in lieu thereof. You may resign giving one month's notice or forfeit salary in lieu thereof."* However, it is noted that employees/ex-employees were paid 6 months' advance salary towards retrenchment compensation which is contrary to the terms of appointment.
- (iv) Further, amount of Rs 40,585 and Rs 2,70,198 were found to be transferred to the employees/ex-employees namely Sh. Lalesh and Sh. Balam Singh. However, it is further noted that an



adjustment between their bank accounts was made so that additional Rs. 82,785 can be paid to Sh. Lalesh to settle his total settlement amount of Rs 1,23,370 from bank account of Sh. Balam Singh to whom Rs. 1,87,413 instead of Rs. 2,70,198 was supposed to be due & paid.

- (v) The inconsistency/discrepancy in due settlement amount and actual paid amount in respect of the aforesaid employees/ex-employees, raises questions as to why such kind of arrangement/adjustment was made by the company to settle the dues between both the employees provided that both of them were maintaining separate bank accounts. It seems calculation of the due settlement amount of the said employees/ex-employees was an afterthought in effort to divert the funds by the company.
- (vi) Settlement details of the directors and employees/ex-employees indicate that bonus for two years i.e. 2015-16 and 2016-17 have been paid to them despite that financial condition of the company was claimed not to be good. Further, bonus should be paid in the same year, however, the company also paid the bonus for financial year 2015-16 in 2016-17.

21. Therefore, instances of fund transferred by the company creates a *prima facie* suspicion on the genuineness of the transactions taking into account the Hon'ble Supreme Court's directions vide order dated July 25, 2016 and subsequent attachment proceedings dated September 07, 2016 initiated by SEBI.

22. On seeking clarification on bonafide of the said transactions, the company vide letter dated May 25, 2017 has admitted that in light of the Hon'ble Supreme Court's directions passed vide order dated July 25, 2016, the company in its board meeting dated September 01, 2016 decided to retrench all employees of the company. It indicates that the company was well aware that the proceedings may be initiated against



it. Therefore, diverting the funds available in its bank accounts on September 14, 2016 appears to be an attempt on the part of Nirmal Chhaya Insurance Services Ltd to circumvent the purpose of the attachment directions and the Hon'ble Supreme Court's order dated July 25, 2016.

Conclusion

The documents, submissions and details submitted by the Employees/Directors/Promoters of the companies during hearing were perused and examined and the following is concluded.

Pearls Infrastructure Projects Ltd [PIPL]

23. Employees/Directors/Promoters of *Pearls Infrastructure Projects Ltd* have failed to produce any evidence in support of their claim that the fund transfer from the company to their respective accounts were genuine in nature therefore, the claim/objection of Employees/Directors/Promoters of Pearls Infrastructure Pvt. Limited does not sustain.

Nirmal Chhaya Insurance Services Ltd [NCISL]

24. Employees/Directors/Promoters of *Nirmal Chhaya Insurance Services Ltd* have failed to produce any evidence in support of their claim that the fund transfer from the company to their respective accounts are genuine in nature therefore, the claim/objection of Employees/Directors/Promoters of Nirmal Chhaya Insurance Services Ltd does not sustain.

Order

25. Therefore, in exercise of powers conferred under Section 28A read with Section 11 (5) of the Second Schedule of Income Tax Act 1961, the claims/objections of the Employees/Directors/Promoters of the entities on attachment to their bank accounts are disallowed.



26. Hence, in compliance of the Hon'ble Supreme Court order dated July 25, 2016 the attachment proceedings in respect of the bank accounts of Employees/Directors/Promoters of *Nirmal Chhaya Insurance Services Ltd & Pearls Infrastructure Projects Ltd*, shall remain in force.

Given under my hand and seal at New Delhi on 31st day of August 2017.

Date: August 31, 2017

Place: New Delhi


Mohammad Atif Alvi

Deputy General Manager & Recovery Officer



मोहम्मद अतिफ अलीव
वसूली अधिकारी/Recovery Officer
भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India
उ. प्रादेशिक कार्यालय/N. Regional Office
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