

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 6753-6754 OF 2004

SECURITIES & EXCHANGE BOARD OF INDIA

Appellant (s)

VERSUS

PACL INDIA LTD. & ORS.

Respondent(s)

WITH

CIVIL APPEAL NO.2864/2006

O R D E R

CIVIL APPEAL NOS. 6753-6754/2004

1. IA No. 1 of 2004 (Application for impleadment) is allowed.
2. We have heard Mr. Parag Tripathi, learned senior counsel and Ms. Suruchii Aggarwal, learned counsel appearing for the appellant and Mr. Harish Salve, Mr. Abhishek Manu Singhvi, Mr. Vivek Tankha, Mr. Rakesh Dwivedi and Mr. P.H. Parekh, learned senior counsel appearing for the respondents.
3. In the course of his submissions Mr. Harish Salve, learned senior counsel for the first respondent contended that had the appellant issued necessary show cause notice before the passing of the orders dated 30.11.1999 and 10.12.1999, the first respondent would have placed the necessary materials and demonstrated as to how its business activities would not have fall under the definition of Collective Investment Schemes and there would have been no necessity to approach the High Court for the redressal of its grievances. The learned senior counsel also submitted that even now if the said orders dated 30.11.1999 and 10.12.1999 are treated as show cause notices and appropriate opportunity is extended to the first respondent that would enable the first respondent to vindicate its stand before the appellant.
4. After hearing the respective counsel and after noticing the orders dated 30.11.1999 and 10.12.1999 impugned in the writ petition filed before the High Court, which were set aside by the order impugned in these appeals, as well as, the order dated 24.6.2002 which order also got merged in the order impugned in these appeals, it was suggested to the learned counsel whether the impugned orders of the appellant dated 30.11.1999 and 10.12.1999 themselves can be treated as

show cause notices and an opportunity to be extended afresh to the first respondent company before passing final orders on the question as to whether or not the business of the first respondent company will fall within the category of Collective Investment Scheme (hereinafter being referred to as "CIS"). Further, depending upon the outcome of any such fresh orders to be passed by the appellant, further proceedings can be initiated by the appellant in accordance with law.

5. To the above suggestion, the learned senior counsel appearing for the respondents readily agreed. Learned counsels appearing for the appellant however, submitted that the appellant should have full cooperation from the first respondent Company, that appellant should be in a position to make an inspection, investigation, and inquiry of the first respondent Company, that it should have access to the verification of the records with the assistance of Auditors and only thereafter, the appellant would be in a position to issue any comprehensive show cause notice supplementing the proceedings dated 30.11.1999 and 10.12.1999. Learned counsel for the appellant also submitted that the first respondent Company should furnish the address and details of the persons as Nodal Officers who can be addressed while issuing any fresh proceedings by way of supplementary show cause notice in order to enable the appellant to carry out the above exercise. Learned counsel submitted that the appellant would require not less than three months' time to carry out the exercise and issue the supplementary show cause notice. Further, though learned counsel for the appellant submitted that the first respondent Company should be restrained from mobilising any fresh records, it was made clear that such a blanket prohibition cannot be issued, instead in the event of mobilisation of any fresh funds, the first respondent company would furnish the details of those transactions also to the appellant when the appellant proceed to hear the first respondent Company and before passing any fresh orders.

6. Having heard the learned counsel for the respective parties, we are convinced that the order of the High Court impugned in these appeals should be set aside and the proceedings dated 30.11.1999 and 10.12.1999 can themselves be treated as show cause notices apart from permitting the appellant to issue a comprehensive supplementary show cause notice to the first respondent Company within a period of three months after carrying out necessary inspection, investigation, inquiry and verification of the accounts and other records of the first respondent Company.

7. It is needless to state that the first respondent Company shall permit the appellant to have free access to the records and also the assistance of the Auditors for carrying out such inspection and verification of the records. On receipt of the supplementary show cause notice issued by the appellant, the first respondent Company shall submit its reply within six weeks from the date of receipt of such supplementary show cause notice. The appellant shall also extend an opportunity of personal hearing to the first respondent Company wherein it will be open to the first respondent Company to place all materials in support of its stand and also make its oral submissions. The appellant shall also furnish whatever material which it seeks to rely upon as against the first respondent Company to enable the first respondent Company to submit its reply within the six weeks' time granted to it. After the personal hearing is extended to the first respondent Company, the appellant shall pass orders within six weeks from the date of holding of the hearing to be afforded to the first respondent Company. The first respondent Company shall also furnish its e-mail address, contact nos. and other particulars as and when required by the appellant.

8. We also make it clear that the appellant shall pass fresh orders as regards the business activity of the first respondent

Company as to whether it falls under the category of CIS or not and depending upon the ultimate order to be passed it may proceed further in accordance with law. The appellant shall before taking any future action give prior notice to the first respondent Company.

9. We make it clear that such order shall be passed by the appellant uninfluenced by whatever stated by the High Court in the order impugned in these appeals as well as its own earlier orders including its order dated 24.6.2002. We also make it clear that we have not gone into the merits of the case of the respective parties.

10. Since the earlier orders of the appellant were of the year 1999 and long time gap has occurred in between, such time gap shall not cause any prejudice to either of the parties.

11. With these directions, the appeals stand disposed of.

CIVIL APPEAL NO.2864/2006

Heard Mr. A. Mariarputham, learned senior counsel appearing for the appellant and Mr. Parag P. Tripathi, Sr. Adv. and Ms. Suruchii Aggarwal, learned counsel appearing for the respondent. We find no merit in the appeal.

The appeal is dismissed.

.....J.
[DR. B.S. CHAUHAN]

NEW DELHI
FEBRUARY 26, 2013

.....J.
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

ITEM NO.101-PH

COURT NO.6

SECTION XV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 6753-6754 OF 2004

SECURITIES & EXCHANGE BOARD OF INDIA

Appellant (s)

VERSUS

PACL INDIA LTD. & ORS.

Respondent(s)

(With appln(s) for directions and permission to place addl. documents on record and impleadment and early hearing and permission to file additional affidavit and with office report)

WITH

CIVIL APPEAL NO.2864/2006

(With appln.(s) for stay and office report)

Date: 26/02/2013 These Appeals were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

C.A. Nos. 6753-6754/2004

For Appellant(s) Mr. Parag P. Tripathi, Sr. Adv.
Ms. Suruchii Aggarwal, Adv.
Ms. Monisha Handa, Adv.
Mr. Siddharth, Adv.

Union of India Mr. Mohan Jain, ASG
Mr. D.K. Thakur, Adv.
Ms. Manmeet, Adv.
Ms. Supriya Juneja, Adv.
Ms. Sushma Suri, Adv.

Mr. B.V. Balaram Das ,Adv

For Respondent(s)

CA No. 6753/2004 Mr. Harish Salve, Sr. Adv.
Mr. Rakesh Dwivedi, Sr. Adv.
Mr. D.P. Mohanty, Adv.
Ms. Pallavi Sharma, Adv.
Mr. Faisal Sherwani, Adv.
for M/S. Parekh & Co., Adv.

CA No. 6754/2004 Mr. Abhishek Manu Singhvi, Sr. Adv.
Mr. Vivek Tankha, Sr. Adv.
Mr. D.P. Mohanty, Adv.
Ms. Pallavi Sharma, Adv.
Mr. Faisal Sherwani, Adv.
for M/S. Parekh & Co., Adv.

IA No 1 in CA Nos.
6753-54/2004 Mr. P.H. Parekh, Sr. Adv.
Mr. Rohit Tandon, Adv.
Mr. Pavan Kumar, Adv.
Mr. Prathvi Pal, Adv.

C.A. No. 2864/2006

For Appellant(s) Mr. A. Mariarputham, Sr. Adv.
Mr. P. Parmeswaran, Adv.
Mr. Yusuf Khan, Adv.

For Respondent(s) Mr. Parag P. Tripathi, Sr. Adv.
Ms. Suruchii Aggarwal, Adv.
Ms. Monisha Handa, Adv.
Mr. Siddharth, Adv.

UPON hearing counsel the Court made the following
O R D E R

CIVIL APPEAL NOS. 6753-6754/2004

I.A. No. 1 of 2004(Application for impleadment) is allowed.

The appeals stand disposed of in terms of the signed order.

CIVIL APPEAL NO.2864/2006

Heard Mr. A. Mariarputham, learned senior counsel appearing for the appellant and Mr. Parag P. Tripathi, Sr. Adv. and Ms. Suruchii Aggarwal, learned counsel appearing for the respondent. We find no merit in the appeal.

The appeal is dismissed.

	(DEEPAK MANSUKHANI)		(M.S. NEGI)	
	Court Master		Court Maste	

(Signed order is placed on the file)