



Federal Court of Australia
District Registry: Queensland
Division: General

No: QUD528/2016

SUNANDA BALKRISHNA KADAM and others named in the schedule
First Applicant

MIRESORTS GROUP 1 PTY LTD ACN 140 177 395 and others named in the schedule
First Respondent

ORDER

JUDGE: JUSTICE LEE

DATE OF ORDER: 18 October 2017

WHERE MADE: Sydney

THE COURT ORDERS THAT:

1. Pursuant to section 33Y(2) of the *Federal Court of Australia Act 1976* (Cth) (**Act**) the form and content of the notice set out in Annexure A to these orders are approved as a notice to advise Group Members of the option to opt out of the proceeding (**Opt Out Notice**).
2. Pursuant to section 33Y(3) of the Act, the Applicants shall cause the Opt Out Notice to be published to Group Members in English, Marathi and Hindi:
 - a. by no later than 25 October 2017, by email, to the email address of the Group Members, or by WhatsApp to the phone number of the Group Members, held by the Janlok Prathishtan of Pune;
 - b. by no later than 25 October 2017 on the website owned and operated by the Janlok Prathishtan of Pune at the URL: <http://www.janlokprathishtan.org/>;
 - c. by no later than 25 October 2017 on the website owned and operated by Shine Lawyers at the URL: <https://www.shine.com.au/service/class-actions/pearls-ponzi-scheme/>.



3. By no later than 25 October 2017, the solicitors for the Applicants will arrange for an advertisement, on the terms and in the form and content set out in Annexure B to these orders to be published in the Indian newspapers “*Sakal*” and “*The Times of India*”.
4. Pursuant to section 33J(2) of the Act, any class member who does not wish to remain a class member and participate in this proceeding or any settlement thereof must file with the Queensland Registry of the Court a completed Opt Out Notice by no later than 4.30pm on 22 November 2017.
5. If the solicitors for any party receive, on or before 4.30pm on 22 November 2017, a notice purporting to be an Opt-Out Notice referable to this proceeding, the solicitors shall file the notice in the Queensland District Registry of the Court within 7 days and the notice shall be treated as an Opt-Out Notice received by the Court at the time it was received by the solicitors.
6. The matter be listed for further case management at 10.15am on 23 November 2017.
7. Pursuant to section 33ZF and/or section 37P(2) and/or section 54A of the Act, and Division 28.6 of the *Federal Court Rules 2011 (FCR)*:
 - a. The questions set out in the Annexure C to this order (**Relevant Questions**) be referred to the Hon. Ian Callinan AC QC (**Referee**) for the purposes of the Referee conducting an inquiry into the Relevant Questions (**Reference**) and making a report in writing to the Court on the Relevant Questions referred to the Referee stating, with reasons, the Referee’s opinion on the Relevant Questions (**Report**).
 - b. The Reference will commence by 23 October 2017, or on such other date as ordered by the Referee.
 - c. The Referee is to consider and implement such manner of conducting the Reference as will, without undue formality or delay, enable a just, efficient, timely and cost effective resolution of the Reference to allow completion of the Report including, if the Referee thinks fit:
 - i. the making of inquiries in person or by telephone or in writing;



- ii. direct communication (without the intervention of lawyers) in person or by other means with Justice K. S. P. Radhakrishnan and/or Justice A.K. Patnaik (both former judges of the Supreme Court of India) (**Current Experts**);
 - iii. to the extent the Referee considers it is necessary or appropriate for the Referee to obtain a submission from either Securities and Exchange Board of India (**SEBI**) or the applicants (**Janlok**), the Referee shall make any direction the Referee considers appropriate in relation to such submissions, including that any submissions be limited in length and in topic;
 - iv. the retention of assistance of any legal practitioner to assist the Referee in the completion of the report.
8. Without limiting what is set out in the preceding order, the matters set out in Annexure D to this order can be taken to be correct by the Referee for the purpose of answering the Relevant Questions.
 9. Further to orders 7 and 8 above, the Referee may make such inquiries as the Referee considers appropriate or necessary for the purposes of the Reference in relation to the documents and the circumstances surrounding the documents that are referred to in paragraphs 4, 5, 6, 7, 8 and 9 of Annexure D to this order.
 10. SEBI and Janlok are to deliver to the Referee forthwith upon the Referee's appointment a copy of this order, together with a copy of FCR Division 28.6, a copy of the pleadings and the expert reports of the Current Experts filed in this proceeding and Federal Court proceeding QUD147/2017.
 11. If the Referee so directs, SEBI and Janlok must provide security for the payment of the remuneration of the Referee by the payment into the Court, or, if SEBI and Janlok agree in writing, by payment into an interest bearing account in the names of the solicitors for SEBI and Janlok and:

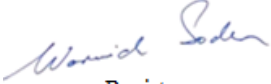


- a. the amount of security will be the amount proposed by the Referee, and ordered by the Court;
 - b. in the event that this direction not be complied with, the Reference will be stayed pending further order.
12. The security for the payment of the remuneration of the Referee is to be provided in the first instance in equal shares by SEBI and Janlok.
13. The sum provided by way of security for the remuneration of the Referee, including any interest, shall not be disbursed other than by consent of both SEBI and Janlok, or pursuant to an order of the Court.
14. Without affecting the powers of the Court as to costs, SEBI and Janlok are to be jointly and severally liable for the fees payable to the Referee including any disbursements incurred by the Referee.
15. The Referee is to submit the Report to the Court in accordance with FCR 28.66, addressed to the Queensland District Registrar on or before 16 November 2017.
16. The Referee:
 - a. is not bound to conduct the Reference in accordance with the rules of evidence; and
 - b. in the Report shall, to the extent it was necessary for the Referee to make any findings of fact in order to express his opinion on the Relevant Questions:
 - i. make a statement of the facts found by the Referee from which the Court may draw such inferences as it thinks fit; and/or
 - ii. submit any question arising on the Reference for the decision of the Court, and provide alternative opinions on the Relevant Question, depending on how the Court determines any question submitted to the Court.
17. Any amendments to Annexure C are to be the subject of an order made by the Court.



18. If, for any reason, the Referee is unable to comply with the order for delivery of the Report to the Court by the date provided for in this order, the Referee is to provide to the District Registrar an interim Report setting out the reasons for such inability and an application to extend the time within which to deliver the Report to the Court to a date when the Referee will be able to provide the Report.
19. The Referee, SEBI and Janlok have liberty to seek directions with respect to any matter arising in the Reference and the Referee have leave to communicate with the Associate to Lee J without notification to the parties to the proceedings.
20. Any application to adopt the Report or seek any other order under FCR 28.67 shall be filed and served by 21 November 2017 and be returnable for directions at 10.15 am on 23 November 2017.

Date that entry is stamped: 18 October 2017


Registrar

**Schedule**

No: QUD528/2016

Federal Court of Australia
District Registry: Queensland
Division: General

Second Applicant	VISHAL DILIP MHETRE
Third Applicant	ABASAHEB RUPNAR
Second Respondent	PEARLS INFRASTRUCTURE PROJECTS LIMITED (INDIA)
Third Respondent	PACL LIMITED (INDIA)
Fourth Respondent	NIRMAL SINGH BHANGOO
Fifth Respondent	SUKHWINDER KAUR
Sixth Respondent	GURPARTAP SINGH



Annexure A OPT OUT NOTICE

FEDERAL COURT OF AUSTRALIA

Janlok Class Action

Kadam & Ors v MiiResorts Group 1 Pty Ltd & Ors
QUD 528 of 2016

1. Why is this notice important?

A class action has been commenced in the Federal Court of Australia by Sunanda Balkrishna Kadam, Vishal Dilip Mhetre and Abasaheb Rupnar (**Applicants**) against MiiResorts Group 1 Pty Ltd, Pearls Infrastructure Projects Limited (India), PACL Limited (India), Nirmal Singh Bhangoo, Sukhwinder Kaur, and Gurpartap Singh (**Respondents**). The Securities and Exchange Board of India (**SEBI**) (the Indian statutory regulator) and the Australian Commissioner of Taxation are interveners in the class action. This class action will be referred to in this notice as the “**Janlok Class Action**”.

SEBI has also commenced a separate but related proceeding QUD147 of 2017 which relates to some of the same matters in the Janlok Class Action (referred to in this notice as the “**SEBI Proceedings**”).

The Janlok Class Action and the SEBI Proceedings are set down to be heard and determined together on 5 February 2018.

The class action concerns the unauthorised use of funds invested with PACL Ltd for the purchase land in India. In particular, the class action concerns the transfer of some of those funds to purchase property in Australia.

The Federal Court has ordered that this notice be published for the information of persons who might be members of the class action. You have been identified as a potential class member. **You should read this notice carefully. Any questions you have about this notice should not be directed to the Court. If there is anything in it that you do not understand, you should seek legal advice.**

2. What is a class action?

A class action is an action that is brought by one or more persons on their own behalf and also on behalf of a class of people (**class members**) against one or more other persons. The Applicants bring this action on behalf of the class members because they have similar claims against the Respondents.

Class members in a class action **are not** individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicants are responsible for the costs.



Class members are “bound” by the outcome in the class action, unless they have opted out of the proceeding. Class members may be bound in two ways. First, if there is a *judgment* following a trial. Second if there is a *settlement* at any time.

If there is a judgment or a settlement of a class action class members *will not* be able to pursue the same claims and *may not* be able to pursue similar or related claims against the Respondents.

If you consider that you have an individual claim against one or more of the Respondents (which is different to the claim described in the Janlok Class Action) or an additional claim to the claim described in the class action, you should seek independent legal advice about the effects of the class action **before** the deadline for opting out (see below).

3. What is this class action?

The Janlok Class Action is brought by each of the Applicants Sunanda Balkrishna Kadam, Vishal Dilip Mhetre and Abasaheb Rupnar on their own behalf and on behalf of all persons who are class members as defined in the proceeding.

The Applicants’ allegations are set out in the Amended Statement of Claim in Federal Court Proceeding QUD528 of 2016. They allege that from about 1994 to 2014, Nirmal Singh Bhangoo (**Bhangoo**) operated an unregistered collective investment scheme that purported to be a legitimate investment scheme whereby PACL Ltd was purchasing and redeveloping land across India and offering plots of lands to investors across India. The Applicants allege that the scheme was fraudulent.

Of the money received by PACL Ltd, approximately 133 million Australian dollars was transferred by PACL Ltd to Pearls Infrastructure Projects Ltd (**PIPL**) in India, which was then transferred onwards to bank accounts in Australia where it was used for unauthorised purposes.

The Applicants claim that these transfers were made as part of the fraudulent scheme, or alternatively that the money was used for improper, unauthorised purposes. The Applicants claims that they and class members suffered the loss of the funds they invested with PACL Ltd as a result of the Respondents’ conduct and claim that they and class members are therefore entitled to have those funds returned. The Respondents deny the allegations and are defending the class action. SEBI and the Australian Commissioner of Taxation are interveners in the class action.

Other related proceeding brought by SEBI

In March 2017, the Securities and Exchange Board of India (**SEBI**) commenced the SEBI Proceedings. The Janlok Class Action and the SEBI Proceedings are separate but related proceedings, which are scheduled to be heard together at a preliminary trial on 5 February 2017. SEBI is also an intervener in the Janlok Class Action.

SEBI contends that it acts on behalf of all of the approximately 58.5 million Indian investors in

PACL Ltd and related companies (including the class of investors in the Janlok Class Action) and that it has commenced the proceedings to collect all of the funds transferred from PACL



Ltd to Australia (including the proceeds from the sale of any assets purchased with those funds) for distribution to the investors.

The Applicants contend that SEBI does not have standing to bring the SEBI Proceeding. The issue of SEBI's standing is currently before the Court for determination in both the Janlok Class Action and the SEBI Proceeding. You can obtain copies of court documents relating to the SEBI Proceeding by contacting a District Registry of the Federal Court (contact details are available at www.fedcourt.gov.au) and paying the appropriate inspection fee.

4. What is Opt Out?

The Applicants in a class action do not need to seek the consent of class members to commence a class action on their behalf or to identify a specific class member. However, class members can cease to be class members by opting out of the class action. An explanation of how class members are able to opt out is found below in the section headed "How can you opt out of the proceeding?"

5. Are you a class member?

You are a class member if you are currently a member of Janlok Prathishtan of Pune, India and you were also a member at 13 July 2016, or if you executed a conditional costs agreement with Shine Lawyers in relation to these proceedings prior to 13 July 2016.

If you are unsure whether or not you are a class member, you should contact Shine Lawyers (whose contact details are set out below), or seek your own legal advice without delay.

6. Will you be liable for legal costs if you remain a class member?

You will **not become liable for any legal costs** simply by remaining as a class member in the Janlok Class Action for the determination by the Court of those questions that are common to the claims of the Applicants and the class members. However if your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Shine lawyers or other lawyers to do that work for you. Contact Shine Lawyers if you want further details about this.

If any money becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that money be used to help pay a share of the costs which are incurred by the Applicants in running the class action but which are not able to be recovered from the Respondents. Class actions are often settled out of court. If this occurs, you may be able to claim from the settlement amount without retaining a lawyer.

7. What will happen if you choose to remain a class member?

Unless you opt out, you will be bound by any settlement or judgment of the Janlok Class Action. If the class action is successful you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicants and class members, although you may have to satisfy certain conditions to share in the benefit. If the action is unsuccessful or is not as successful as you might have wished, you will not be able to pursue the same claims



and may not be able to pursue related claims against the Respondents in other legal proceedings.

8. What class members need to do

a. How can you remain a class member?

If you wish to remain a class member there is **nothing you need do** at the present time. The Applicants will continue to bring the proceeding on your behalf up to the point where the Court determines those questions that are common to the claims of the Applicants and the class members. You can contact Shine Lawyers, on the number below if you want to register and receive future notices about the class action.

b. How can you opt out of the class action?

If you do not wish to remain a class member you must opt out of the class action. If you opt out you will not be bound by or receive a share in the benefit of any order, judgment or settlement in the class action but for so long as the SEBI Proceeding continues, SEBI contends that it will continue to represent the interests of all Indian investors in that proceeding, including your interests. Aspects of both proceedings are to be heard by the Court in February 2018.

If you choose to opt out of the Janlok Class Action, you may bring your own claim against the Respondents provided that you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against the Respondents, you should seek your own legal advice about your claim and the applicable time limit **prior** to opting out.

If you wish to opt out of the class action you **must** do so by completing a “**Notice of opting out by a class member**” in the form shown below (Form 21 of the Court’s approved forms), and then return it to the Registrar of the Federal Court of Australia at the address on the form. **IMPORTANT: the Notice must reach the Registrar by no later than 4:30pm on 22 November 2017** otherwise it will not be effective.

You should submit the *Notice of opting out by a class member* if:

- (i) you qualify as a class member and you wish to opt out of the class action; or
- (ii) you believe that you have been incorrectly identified as a class member, because you do not meet the criteria set out in the section headed “Are you a class member” above.

Each class member seeking to opt out should fill out a separate form.

9. Limitation Period

Limitation periods are set by statute. If a person with an entitlement to claim does not commence legal proceedings by the time a limitation period expires, they may be barred from making a claim.

The commencement of this class action suspended the limitation periods for all class members who have not opted out. Time starts to run again once a person opts out of the class action. If you opt out of the class action and the statutory time limit on your claim expires, or



is found to have already expired because you are no longer covered by the class action, you will be barred from bringing proceedings against the Respondents.

Again, we remind you that so long as the SEBI Proceeding continues, SEBI contends that it will continue to represent the interests of all of the Indian investors in that proceeding, including your interests. If you wish to bring your own claim against the Respondents in Court, you should seek your own legal advice about your claim and the applicable time limit **prior** to opting out.

10. Where can you obtain copies of relevant documents?

Relevant documents are filed in both the class action and the SEBI Proceeding. Copies of these relevant documents, including the Amended Originating Application in the Janlok Class Action, the Originating Application in the SEBI Proceeding, the Amended Statement of Claim in the Janlok Class Action, the Statement of Claim in the SEBI Proceeding, the defence filed by MiiResorts Group 1 Pty Ltd, SEBI's reply to the defence filed by MiiResorts Group 1 Pty Ltd, and the defence filed by Sukhwinder Kaur, and Gurpartap Singh, may be obtained by:

- (a) downloading them from the website of Shine Lawyers at the URL:
<https://www.shine.com.au/service/class-actions/pearls-ponzi-scheme/>; or
- (b) inspecting them, by appointment, between 9.00am and 5.00pm at **Office No. 40, Chourang Smitshilp, Manjari Road, Mahadev Nagar, Hadpsar, Pune 412 307**, details for which are available by calling **020-65 272 737**.

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact the Applicants' lawyers, Shine Lawyers, through their website at <https://www.shine.com.au/service/class-actions/pearls-ponzi-scheme/> or by calling **+61 7 3837 8415** or seek your own legal advice. You should not delay in making your decision.



Form 21
Rule 9.34

Opt out notice

No. QUD528 of 2016

Federal Court of Australia
District Registry: Queensland
Division: General

Sunanda Balkrishna Kadam and others
Applicants

MiiResorts Group 1 Pty Ltd and others
Respondents

To: The Registrar
Federal Court of Australia
Queensland District Registry
Harry Gibbs Commonwealth Law Courts Building
119 North Quay (cnr Tank Street)
Brisbane 4000

Name of class member:....., a class member in this class action, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that Name of class member:..... is opting out of the class action.

Date:.....

Signed:.....

Name:

Capacity: [eg class member or lawyer for class member]

Filed on behalf of (name & role of party)

Prepared by (name of person/lawyer)

Law firm (if applicable)

Tel Fax

Email

Address for service

(include state and postcode)

[Version 2 form approved 9/10/13]



Annexure B
Federal Court of Australia

Draft Advertisement (219 words)

Federal Court of Australia Janlok Class Action

A class action has been commenced in the Federal Court of Australia by SUNANDA BALKRISHNA KADAM, VISHAL DILIP MHETRE, and ABASAHEB RUPNAR (the **Applicants**) alleging that Nirmal Singh Bhangoo (**Bhangoo**) through PACL Ltd operated an unregistered collective investment scheme which was a fraudulent scheme, of the type known as a 'Ponzi scheme' designed by Bhangoo as a means of obtaining substantial amounts of funds, which we used for purposes that were not authorised.

The Federal Court of Australia has set 22 November 2017 as the date by which class members may choose to opt out of the class action.

You are a class member if you are currently a member of Janlok Prathishtan of Pune, India and you were also a member at 13 July 2016, or if you executed a conditional costs agreement with Shine Lawyers in relation to these proceedings prior to 13 July 2016.

If you believe that you may be a class member then you should read the Notice that the Federal Court has ordered be published. The Notice is a very important document which may affect your legal rights. A copy of the Notice and further information about the class action may be obtained from <https://www.shine.com.au/service/class-actions/pearls-ponzi-scheme/> or by contacting the Applicants' lawyers, Shine Lawyers, on **+617 3837 8415**.



Annexure C

Under the law of the Republic of India:

1. Was the scheme operated by PACL Limited pursuant to which it collected funds from Indian investors was a “collective investment scheme” within the meaning of section 11AA of the *Securities and Exchange Board of India Act 1992* (India)?
2. Did PACL Limited hold the monies that it received from Indian investors on trust for those investors?
3. Having regard to the terms of the three Orders of the Supreme Court of India (Annexure B paragraphs 4, 5 and 6), the provisions of the SEBI Act 1992, the SEBI (Collective Investment Scheme) Regulation 1999 and the law of India, what is the right, interest, power or authority of SEBI (if any) as distinct from the Lodha Committee or Lodha CJ, in seeking relief in a foreign Court (being the Federal Court of Australia) being:
 - (a) a determination of the Court as to whether the proceeds of the sale of the Sheraton Mirage are held on trust for the Indian investors who invested monies in the collective investment scheme operated by PACL Limited?
 - (b) a determination of the Court as to whether the Indian investors who invested monies in the collective investment scheme operated by PACL Limited are entitled to equitable compensation and an account of profits from MiiResorts Group 1 Pty Ltd (**MiiResorts**);
 - (c) a determination of the Court as to whether a restitutionary order should be made against MiiResorts in favour of the Indian investors who invested monies in the collective investment scheme operated by PACL Limited?
 - (d) a determination of the Court as to whether the Sanctuary Cove Properties (which are Lots 19 and 20 on Group Titles Plan 107217 on the Gold Coast, Queensland) are held on trust for the Indian investors who invested monies in the collective investment scheme operated by PACL Limited?
 - (e) a determination of the Court as to whether the Indian investors who invested monies in the collective investment scheme operated by PACL Limited are entitled to equitable compensation and an account of profits from Pearls Infrastructure Projects Limited (India) (**PIPL**);



- (f) a determination of the Court as to whether a restitutionary order should be made against PIPL in favour of the Indian investors who invested monies in the collective investment scheme operated by PACL Limited?



Annexure D

1. The funds collected by PACL Limited from Indian investors can be traced to the monies used by MiiResorts to purchase the Sheraton Mirage.
2. The funds collected by PACL Limited from Indian investors can be traced to the monies used by PIPL to purchase the Sanctuary Cove Properties.
3. The Sheraton Mirage has been sold and, pursuant to an order of the Federal Court of Australia, the balance of the proceeds are held in an account.
4. On 2 February 2016, the Supreme Court of India in Civil Appeal No 13301/2015 made an order, a copy of which is attached as Attachment D-1, that included the following (where 'the Company' refers to PACL Limited):

'3. *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. Hon'ble Mr. Justice R.M. Lodha, the former Chief Justice of India, would be the Chairman of the said Committee. It would be open to the Hon'ble Chairman of the Committee to appoint such experts or other persons, as he might think it necessary, in consultation with the SEBI, so as to enable the Committee to sell the land and pay to the investors in a manner that might be decided by the said Committee.'*

'7 *The methodology with regard to recovery of amount by sale of the land and disbursement of the amount to the investors shall be overseen by the Members of the Committee.'*

'8. *Remuneration to be paid to the Chairman shall be determined by the Hon'ble Chairman himself after considering the quantum of work to be done by the Committee.'*

'9. *The work with regard to disposal of the land and disbursement of the proceeds to the investors be completed as soon as possible and preferably within six months from today.'*



5. On 5 April 2016, the Supreme Court of India in Writ Petition (Civil) No 500/2015 made an order, a copy of which is attached as Attachment D-2, that included ‘the Committee shall also have right to do the needful as per the order dated 2nd February, 2016 in respect of all properties wherein [PACL Limited] has a right, even if such properties are situated outside India.’
6. On 25 July 2016, the Supreme Court of India in A.A. No. 10/2016 in Civil Appeal No 13301/2015 made an order, a copy of which is attached as Attachment D-3, that included “prayer in terms of para (a) is granted which reads thus:
 - (a) Pass an order directing PACL Ltd. and/or its Directors/Promoters/agents/employees/Group and/or associate companies be restrained from in any manner selling/transferring/alienating any of the properties where in PACL has, in any manner, a right/interest situated in either within or outside of India;”
7. On 30 May 2016, the Justice (Ret’d) R.M. Lodha Committee sent a letter to the Australian High Commissioner in New Delhi and a copy of the letter is attached as Attachment D-4.
8. The Chairman of the Janlok Pratisthaan Committee and the Justice (Ret’d) R.M. Lodha Committee exchanged correspondence and a copy of two letters is attached as Attachment D-5.
9. On 27 July 2016, the Janlok Pratisthaan Committee, through its President, Mrs Sunanda Balkrishna Kadam, filed an application for intervention in the Supreme Court of India in Civil Appeal No. 13301 of 2015 and a copy of the application is attached as Attachment D-6.