



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1488 OF 2015
IN
COMMERCIAL SUIT NO. 126 OF 2021**

NATIONAL SPOT EXCHANGE
LIMITED, a public limited company
incorporated under the provisions of
the Companies Act, 1956 and having
its registered office at FT Towers, CTS
No. 256 & 257, 4th Floor, Suren Road,
Chakala, Andheri (East),
Mumbai-400 093

..... Applicant

In the matter between :

NATIONAL SPOT EXCHANGE
LIMITED, a public limited company
incorporated under the provisions of
the Companies Act, 1956 and having
its registered office at FT Towers, CTS
No. 256 & 257, 4th Floor, Suren Road,
Chakala, Andheri (East),
Mumbai-400 093

..... Plaintiff

Versus

RAJESHWARI
RAMESH
PILLAI
Digitally
signed by
RAJESHWARI
RAMESH
PILLAI
Date:
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1. M/S. N.K. PROTEINS LIMITED,
(Trading cum Clearing Member on the
Plaintiff's Exchange) a public limited
company incorporated under the
provisions of the Companies Act, 1956
and having its registered office at 7th
Floor, Popular House, Ashram Road,
Ahmedabad, Gujarat, India.

2. M/S. N.K INDUSTRIES LTD a
company incorporated under the
provisions of the Companies Act, 1956
having its registered office at 7th Floor
Popular House, Ashram Road,
Ahmedabad-380009 Gujarat, India.

3. M/S. N.K CORPORATION
Promoter of Defendant No.1 and a
Partnership Firm having its registered
office at 7th floor Popular House
Ashram Road Ahmedabad-380009 and
13/B, Dariyapur, Patel Society,
Usmanpura, Ahmedabad- 380 013,
Gujarat, India.

4. M/S. TIRUPATI RETAIL (INDIA)
PVT. LTD. A company incorporated
under the provisions of Companies
Act, 1956 having its office at 2nd floor,

Popular House, Ashram Road,
Ahmedabad, Gujarat, India

5. DARSHAN BALDEVBHAI PATEL
an Indian Inhabitant, residing at 11-A,
Dariapur Patel Society, Usmanpura,
Ahmedabad-380013, Gujarat, India
Defendant Nos. 2 to 5 are Clients of
Defendant No.11

6. Mr. NIMISHBHAI KESHAVLAL
PATEL, Chairman and Managing
Director of Defendant No.1 and
Managing Director of Defendant No.2,
and Director of Defendant No. 4,
residing at 41, Ashwamegh Bunglow,
Scheme No.3, Satellite,
Ahmedabad- 380015, Gujarat, India

7. Mr. NILESH KESHAVLAL PATEL
Managing Director of Defendant No 1.
residing at 13-B, Dariapur Patel
Society, Usmanpura,
Ahmedabad 380013, Gujarat, India

8. Ms. SONALBEN N. PATEL
W/o Defendant No.6 and Partner of
Defendant No.3 (Promoter of
Defendant No.1). residing at 41,

Ashwamegh Bungalow, Scheme No. 3,
Satellite, Ahmedabad-380015, Gujarat,
India.

9. Ms. ASHITABEN N. PATEL W/o
Defendant No.7 and Partner of
Defendant No.3 (Promoter of
Defendant No.1) Residing at 13/B,
Dariyapur, Patel Society, Usmanpura,
Ahmedabad- 380 013, Gujarat, India,

10. Ms. VENUSHREE N.PATEL d/o
Defendant No.6 and Promoter of and
Key Management Person of Defendant
No. 4, Indian Inhabitant, residing at
residing at 41, Ashwamegh Bungalow,
Scheme No.3, Satellite, Ahmedabad
380015, Gujarat, India

11. PRIYASHI N.PATEL, d/o
Defendant No.7 and Promoter of
Defendant No 1 and Key Management
Person of Defendant No. 4 of Indian
Inhabitant residing at 13-B, Dariapur
Patel Society, Usmanpura,
Ahmedabad 380013, Gujarat, India

12. KAMLESH LALBHAI PATEL,
Whole Time Director and Shareholder

of Defendant No. 1, residing at 6,
Devansh Bungalows, Thaltej,
Ahmedabad-380054, Gujarat, India

13. JAYESH PANNALAL CHOKSI
Director of Defendant No.1 (resigned
on 16th August 2013), residing, at
Siddhi Priya, North South, JVPD
Scheme, Vile Parle (West),
Mumbai- 400056, Maharashtra, India

14. RAJIV M TODI, authorized
signatory of Defendant No. 1 (for
conducting trades on Plaintiff's
Exchange Trades), Residing at 31,
Chinmay Complex, Nr Renuka Hall,
Judges Bungalow Road, Ahmedabad-
380005, Gujarat, India

15. ZIRCON FINANCE AND LEASING
PVT. LTD., a company incorporated
under the Companies Act, 1956,
having its office at Siddhi Priya, North
South, JVPD Scheme, Vile Parle
(West), Mumbai-400056,
Maharashtra, India.

16. GUFIC LTD., a company
incorporated under the provisions of

Companies Act, 1956 having its office at Siddhi Priya, North South, JVPD Scheme, Vile Parle (West), Mumbai, 400056, Maharashtra, India.

17. Mr. PRANAV J CHOKSI, of Indian Inhabitant residing at Siddhi Priya, North South, JVPD Scheme, Vile Parle (West), Mumbai, 400056, Maharashtra, India

18. VEDANSHRI N PATEL, D/O defendant No. 6 Nimishbhai K Patel residing at 41, Ashwamegh Bungalow Scheme No. 3, Satellite, Ahmedabad-380015, Gujarat, India

19. PRIYAM N.PATEL s/o Defendant No.7 of Indian Inhabitant residing at 13-B, Dariapur Patel Society, Usmanpura, Ahmedabad 380013, Gujarat India

20. A) K V PATEL (HUF) through its karta and manager, having its office at 13/B Dariapur Patel Society, Usmanpura, Ahmedabad-380013. Gujarat, India.

20.B) Keshavlal Patel Karta & manager of Defendant No. 20 A of Indian Inhabitant residing at 13/B Dariapur Patel Society, Usmanpura, Ahmedabad 380013, Gujarat, India.

21. BALDEVBHAI R PATEL, 7/B Sureshwari Society, B/H Naranpura Bus Stand, Ahmedabad 380013, Gujarat, India.

22. GOMTIBEN K PATEL, of Indian Inhabitant residing at 7/B Sureshwari society, Naranpura bus stand, Ahmedabad 380013 Gujarat, India.

23. ANANT B PATEL residing at 103 Anviksha Apartment, Shantiniketan Paril, Naranpura, Ahmedabad-380013, Gujarat, India

24. REKHABEN A PATEL residing at 819/2 Sector-5C, Gandhinagar Gujarat, India

25. LALBHAI S PATEL, residing at Dewansh Bunglow, No. 6 Nr Surdhara circle, Thaltej, Ahmedabad-380052. Gujarat, India.

26. TRUPTIBEN K PATEL., residing at Dewansh Bungalow, No. 6 Nr Surdhara circle, Thaltej, Ahmedabad 380052. Gujarat, India.

27. JASHMATIBEN K PATEL., residing at Dewansh Bungalow, No. 6 Nr Surdhara circle, Thaltej, Ahmedabad 380052. Gujarat, India.

28. VAISHNAVI D PATEL, residing at 11/A Dariyapur Patel Society, Usmanpura, Ahmedabad Gujarat, India
Defendant Nos 6 to 28 are Shareholders of Defendant No 1

29. BHARAT JAYANTILAL PATEL residing at 30/31, Ashwavilla Bungalow, Nr. Sindhu Bhavan, Thaltej, Ahmedabad-380054 Gujarat, India

30. Ms. RIMA C PATEL, Director of Defendant No 1. C/o NK Proteins, 7th Floor, Popular house, Ashram Road, Ahmedabad, Gujarat, India

31. RAMAKANT C CHATURVEDI, Indian Inhabitant residing at c/o NK

Proteins, 7th Floor, Popular house,
Ashram Road, Ahmedabad, Gujarat,
India. [Defendant Nos 29 to 31 are
Directors of Defendant No 1]

32. SHANTI STOCK HOLDINGS PVT
LTD a company incorporated under the
Companies Act, 1956, Shareholder of
Defendant No.2, having its registered
office at 13/A Dariyapur Patel Society,
Usmanpura, Ahmedabad-380 013

33. NK OIL MILLS PVT LTD. A
company incorporated under the
Companies Act, 1956, having its
registered office at 7th Floor, Popular
house, Ashram Road, Ahmedabad,
Gujarat, India.

34. NK ROADWAYS PVT LTD. A
company incorporated under the
Companies Act, 1956, having its
registered J office at 7th Floor, Popular
house, Ashram Road, Ahmedabad,
Gujarat, India.

35. N.K. ESTATE DEVELOPERS PVT.
LTD. A company incorporated under
the Companies Act, 1956, having its

registered office at 7th Floor, Popular house, Ashram Road, Ahmedabad, Gujarat, India Defendant Nos. 32 to 35 are Shareholders of Defendant No 2.

36. ASHWINBHAI PARSHOTTAMDAS PATEL, whole time Director of Defendant No.2 (Till 1st April, 2014) and member of Audit Committee (From 12th November, J 2012) residing at 222/6, Patel Park, Navrangpura, Ahmedabad-380009, Gujarat, India.

37. JAYESHKUMAR DHIRAJLAL THAKKAR, Director of Defendant No.2, residing at 9, Suryaja Bungalows, Nr. Sarthi Hotel, Vastrapur, Ahmedabad,-380054, Gujarat, India.

38. MAITRAY DASHRATHBHAI PATEL
Director of Defendant No.2 and Member of Audit Committee till 5th October, 2012, residing at 20, Devarshi Bungalows, Drive In Road, Ahmedabad-380052, Gujarat, India.

39. ASHOKBHAI BALDEVBHAI PATEL., Additional Director of

Defendant No.2 (From 13th March, 2013 to 1st April, 2014) and Member of Audit Committee, residing at Plot no. 819/2, Sector 5/c, Gandhinagar-382006, Gujarat, India.

40. HASMUKHBAI KACHARABHAI PATEL Additional Director of Defendant No.2 and Member of Audit Committee, residing at A/36, Silvar Flat, Satellite, Ahmedabad- 380015, Gujarat, India.

Defendant Nos 36 to 40 are Directors of Defendant No 21

41. DHARMENDRA SAKARCHAND PATEL Director of Defendant No.4, residing at 20, N.R. Patel Park Co-op. Housing Soc., Nr. Vividh Bhav Society. New Wadaj, Ahmedabad-380013, Gujarat, India [Defendant No. 41 is Director No. 4)

42. MANISH P KELLA Company Secretary of NK Proteins Ltd 6, Aditya Apartment, 20 Jaihind Society, Rambaug, Maninagar, Ahmedabad-380008, Gujarat, India [Defendant No.

42 Is The Company Secretary Of
Defendant No.1]

43. M/S PARIKH AND MAJUMDAR
Statutory Auditor of Defendant No 1
and 2, B-303, GCP Business Centre,
Opp. Memnagar Fire Station,
Navrangpura,
Ahmedabad-380009 Gujarat, India
[Defendant No. 43 Is The Auditor Of
Defendant No.1 And 21]

44. M/S CHANDULAL M. SHAH & CO.
Statutory Auditors for Defendant No 4
Chartered Accountants, 601,
Samruddhi, Sattar Taluka Society,
Ahmedabad - 380 009 Gujarat, India
[Defendant No. 44 Is The Auditor Of
Defendant No.4]]

45. NK Protein Singapore Pte Ltd.
having its registered office at 80,
Raffles place, 26-01 UOB Plaza,
Singapore- 048624 [Defendant No. 45
Is The Subsidiary Of Defendant No.1]

46. BHARTI STOCK HOLDING PVT.
LTD. a company incorporated under
the Companies Act, 1956, having its

registered office at 7th Floor, Popular house, Ashram

47. NK INFRAVENTURES PVT. LTD a company incorporated under the Companies Act, 1956, having its registered office at 7th Floor, Popular house, Ashram Road, Ahmedabad, Gujarat, India

48. NK FLOUR MILLS Ltd. a company incorporated under the Companies Act, 1956, having its registered office at 7th Floor, Popular house, Ashram Road, Ahmedabad, Gujarat, India

49. TIRUPATI PROTEINS PVT,LTD, a company incorporated under the Companies Act, 1956, having its registered office at 9th Floor, Popular house, Ashram Road, Ahmedabad, Gujarat, India

50. ADRENAL ADVERTISING AND PROMOTIONS PVT LTD., a company incorporated under the Companies Act, 1956, having its registered office at 13/B Dariyapur Patel Society, Usmanpura, Ahmedabad-380013

..... Respondents

[Defendant Nos. 46 to 50 are related parties of 1 Defendant No.4]

Mr. Ashish Kamat, Senior Advocate a/w. Mr. Vaibhav Bhure, Mr. Shlok Parekh, Mr. Shray Mehta, Mr. Ibrahim Shaikh i/b. Vaish Associates for the Applicant/Plaintiff.

Mr. Kevic Setalvad, Senior Advocate a/w. Mr. Jehan Lalkaka, Mr. Vishal Maheshwari and Ms.Kamini Pansare i/b. V. M. Legal for Defendant No. 1.

CORAM : GAURI GODSE, J.

RESERVED ON : 1st DECEMBER 2025

PRONOUNCED ON : 30th MARCH 2026

JUDGMENT :

1. The plaintiff has prayed for a decree to recover a sum of approximately Rupees 937 crores jointly and severally from defendants nos. 1, 3 to 41 and 45 to 50. The plaintiff has pleaded that it is a company incorporated under the Companies Act, 1956, and that it was a National Spot Exchange ('NSEL') providing an electronic trading platform for spot contracts in commodities on a compulsory-delivery basis. Defendant no. 1 is a trading cum clearing member of the plaintiff. Defendant no. 1, on behalf of itself and various

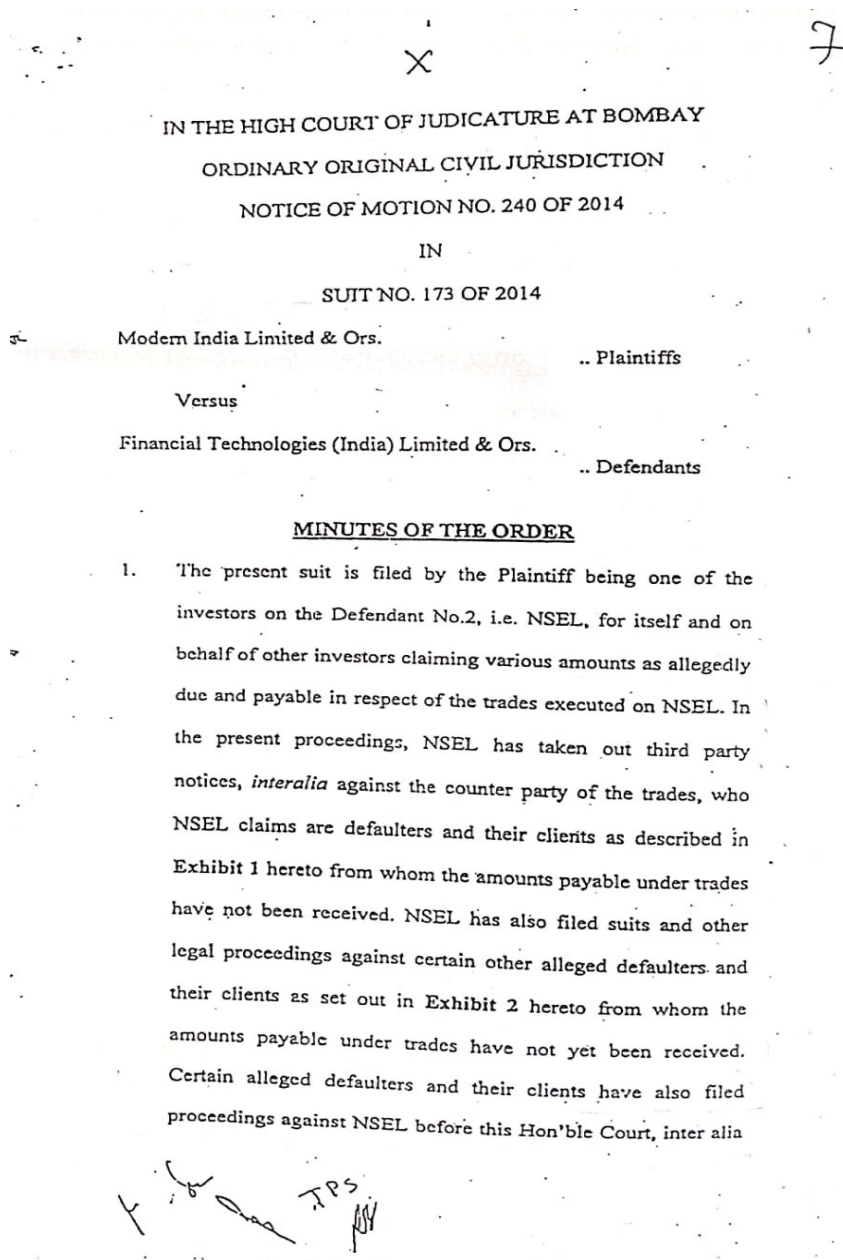
clients, including defendant nos. 2, 3, 4 and 5, traded in various commodities. The other defendants are described as promoters, partners, directors, shareholders, auditors, the company secretary and subsidiary companies.

2. This notice of motion is filed by the plaintiff seeking directions to apply and extend to the defendants in this suit, the order and mechanism provided under the Order dated 2nd September 2014 (constituting a Three Member Committee) in Notice of Motion No. 240 of 2014 in Suit No. 173 of 2014, including the order in terms of the minutes passed as a part and parcel of the said order. In the alternative, the plaintiff prays that a similar order in terms of the order dated 2nd September 2014 be passed in this suit.

3. The said Suit No. 173 of 2014 is a representative suit filed by one of the investors who dealt on the plaintiff's platform and entered into transactions on it. The present plaintiff is defendant no. 2 in the said suit. By order dated 2nd September 2014, the notice of motion filed in the said suit is disposed of in terms of the minutes of order by constituting a committee of three members. As directed in the said order, the committee is expected to peruse the papers,

comprehend the overall exercise involved and accordingly make a report to this court of the work carried out by the committee in terms of the minutes of order.

4. To understand the exact functioning and powers of the committee, it is necessary to reproduce a scanned copy below;



disputing their liabilities as set out in Exhibit 3 hereto. NSEL claims that there are more than 13000 investors and 22 defaulters. In the present circumstances, it is felt that in the larger public interest and in the interest of justice, a committee of three persons headed by a retired judge be formed, as a fact finding authority to determine the amount payable by the alleged defaulters/third parties. It was also felt the committee should be empowered to ascertain the various assets of the alleged defaulters/third parties, and amounts which were received directly or indirectly from NSEL in respect of various trades. In view of the above background the following order is passed.

2. Without prejudice to the rights and contentions of the parties, the following arrangement is agreed upon by the Plaintiffs and Defendant Nos.1, 2, 3 and 5, pending the hearing and final disposal of the Notice of Motion.
3. The Court hereby constitutes a Committee of the following persons with the powers mentioned below:
 - a. Mr. Justice V.C. Daga (Retd.), Chairman
 - b. Mr. J S Solomon
 - c. Mr Yogesh Thar, Partner of M/s Bansi S. Mehta & Co., Chartered Accountants.

The Committee upon perusing the papers will make a report to the Hon^{ble} Court to fix their remuneration.

9

4. The Committee may issue notices to various parties including the alleged defaulters/third parties, their clients and any other party, and if necessary, the Committee may make an application to the Court after giving notice to the affected party (i) to request relevant authorities including the EOW, the Income Tax Department ("IT"), the FMC, etc. to furnish copies of any relevant records to the Committee for purpose of carrying out the functions of the Committee as provided by this order and/or (ii) to direct service of summons, to order appearance of parties, to order discovery and inspection of various documents, production of the documents summoning the witnesses and enforcing the attendance and take all necessary steps for enforcement of the aforesaid directions as per the provisions of the Civil Procedure Code, 1908.

5. Without prejudice to the aforesaid the committee may also -

- a) (i) explore and negotiate mutual settlements between NSEL and the alleged defaulters/third parties and their clients and receive the amount from such settlements either from the defaulting member or from their clients being, the third party noticees or from any other persons to whom the funds have been traced as also from any third party who comes forward for settlement of dues,

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subject to the directions obtained on a report by the committee from this Hon'ble Court,

(ii) record, supervise and implement any settlement that may have already been arrived at,

- b) issue notices and call upon the alleged defaulting Members/clients of the members/ defaulters/ of Defendant No.2 or other parties to whom the monies of the alleged defaulters can be traced and all other parties concerned, for the purposes of determining the extent of liability, if any and propose a determination by making a report to this Hon'ble Court for further directions.
- c) seek appropriate directions from the Court pursuant to any report made by the Committee and after hearing the affected parties including the parties to the suit:
- i. To sell/monetize the assets both immovable and / or movable assets including incorporeal assets of such alleged defaulting members and their clients and any other persons and also to hold the assets as interim security until sale and realization of monies.
 - ii. To take steps to recover amounts due from defaulting members, their clients & others.
- d) The committee shall meet at such times and places as it may decide from time to time.

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- e) The committee may give directions to Defendant No. 2 for initiation, prosecution and/or to defend any proceedings against or by defaulters, both civil and criminal to which Defendant No 2 may be a party.
- f) The Committee may carry out forensic audits of the alleged defaulting entities from experts, obtain legal and other opinions for the purpose of recovering amounts from such defaulting entities.
- g) The members of the committee shall be provided infrastructure and assistance of staff by NSEL to perform functions conferred by this order. The Committee shall also be entitled to independently employ such support staff as it may in its sole discretion think fit to assist it in its functioning.
- h) for performing their functions as mentioned in this order, remuneration will be paid to the members of the committee and such staff as may be employed by it by NSEL/FTIL in the first instance subject to further Orders of the Court.
- i) Any party affected by any decision of the Committee shall be entitled to approach this Hon'ble Court.
6. With respect to all orders of attachment by the EOW, the IT or the FMC or any other statutory authority ^{if any} in respect of assets of the alleged defaulters or any other persons to whom the monies

12

are traced by the said authorities, the assets so attached shall not be dealt with without the leave of this Hon'ble Court.

7. In the event of any of the assets of the alleged defaulters/third parties which are presently attached by the Enforcement Directorate (ED), being released from attachment, the alleged defaulters/third parties and ED shall forthwith inform the Defendant No. 2 and the Plaintiffs as well as the Committee appointed by this Hon'ble Court and the Committee shall take all steps as may be necessary to take charge of the assets as an by way of interim security in accordance with the aforesaid directions.
8. Before any mutual settlement between NSEL and the alleged defaulters/ third parties and their clients is arrived ^{at} or finalized, the FMC shall be heard on the same by the Committee. Further, before settlement is given effect to or any money is received thereunder in terms of Clause 5 (a)(i) above, FMC shall be given notice of such settlement along with the copy of the Committee's report and shall be heard by the Court concerning any objection or suggestion that it may have about such settlement, before any directions are issued for giving effect to such settlement and receipt of money in pursuance thereof. The Committee and FMC shall work in coordination in working out such mutual settlements.
9. Separate directions will be sought by the Committee from the Court if any assets which may have been attached by any

13

statutory authority, including the EOW, the IT, the FMC have to be accessed for the purpose of carrying out these directions. The Court may determine the arrangements for custody, preservation and management of such assets after hearing the concerned statutory authority.

10. As and when the Committee realizes funds and assets and finds the matter to be ripe for distribution of amounts amongst non-defaulting members and parties entitled to the same, the Committee shall prepare a report to the Court. The parties will be at liberty to apply to the Court on such report for distribution of amounts held by the Committee towards their dues.

Dated this 27th day of August 2014

Handwritten signatures and initials: "H", "P", "TOS", and "AN".

Submissions on behalf of the Plaintiff:

5. The order in terms of the minutes of the order passed in the representative suit was passed after hearing all the necessary parties, including defendant no. 1 herein. The plaintiff had taken out third-party notices against all the defaulting members in the representative suit. However, at

that time, the third-party notice could not be filed against defendant no.1 and its clients as the plaintiff had already filed an arbitration petition under section 9 of the Arbitration and Conciliation Act 1996 ('Arbitration Act') against defendants nos. 1 to 4 by invoking the arbitration clause under the bye-laws of the plaintiff. The minutes of order records that, in the larger public interest, the committee is formed as a fact-finding authority to determine the amount payable by alleged defaulters/third parties. While noting the committee's powers and functions, it is stated that the committee is empowered to issue notices to various parties, including defaulters and their clients. Thus, all defaulters were covered, including defendant no. 1 and its clients.

6. The committee is permitted to call upon the various defaulting members, clients of the members, defaulters of NSEL, or other parties, and to seek information and documents for the purpose of determining the extent of the liability, if any, and to propose a determination thereof by making a report to this court for further directions. The minutes of the order were accepted, and it was observed that it would inure to the benefit of the plaintiff in the companion

suits as mentioned therein. One such suit is the one filed by NSEL against M/S PD Agro Processing Private Ltd and its clients, who are the defaulters. Thus, the objective and intent of the order was to cover all defaulters, irrespective of whether any third-party notice had been filed by NSEL against the defaulters in the representative suit. After the committee was constituted, the committee issued notice to defendant no. 1 to remain present before the committee.

7. The plaintiff, therefore, withdrew the arbitration petition filed against defendants nos. 1 to 4, with liberty to take out appropriate proceedings. Accordingly, the present suit was filed, and a notice of motion was filed before the court for urgent relief. This court on 2nd March 2015 passed an injunctive order restraining defendant nos. 1 to 4 from disposing of, alienating, encumbering, transferring or creating third-party rights in respect of their movable and immovable assets. In the appeal filed by defendant no. 1, interim relief was granted, directing that the order accepting the minutes of the order in the representative suit would not operate against defendant no. 1. The plaintiff filed the present notice of

motion seeking appropriate relief for applying the order passed in the representative suit to defendant no. 1.

8. The Hon'ble Apex Court, on 4th May 2022, ordered, in a petition filed by NSEL, the formation of a Supreme Court committee comprising a former Chief Justice of this Court, with a view to expeditiously executing the decrees, orders, and awards passed against all the defaulters. The said order also noted the role of the High Court committee in crystallising the liability of the defaulters and in filing reports before the court for the grant of decrees and orders. Thus, every effort is made by this Court and the Apex Court to consolidate the proceedings against all the defaulters in the interest of justice to recover the dues from the defaulters. Defendant No.1, being a defaulter, stands on the same footing as other defaulters, and there is no reason for any exception in applying the same mechanism that was developed and conceived by invoking the inherent powers of this court.

9. On 22nd August 2024, the appeal filed by defendant no. 1 was allowed to be withdrawn in view of the pendency of this notice of motion by issuing directions that defendant no.

1 shall not be entitled to raise challenge to the order passed in the representative suit, forming the committee either on the correctness or powers to constitute a committee and the powers and functions of the committee in any proceeding, including the present suit. Thus, the hearing of the present suit was expedited with a limited scope of enquiry, whether there are any facts or circumstances that would justify defendant no. 1's contention that the order passed in the representative suit should not be applied to their case.

10. Learned senior counsel for the plaintiff relied upon the decision of the Apex Court in *Immani Appa Rao and Others vs. Gollapalli Ramalingamurthi and Others*¹. He submits that the Hon'ble Apex Court held that in deciding the question where both the parties before the court are confederates in the fraud, the approach that would be less injurious to public interest should be adopted, and therefore it is necessary to enquire as to which party's success would be less injurious to public interest. The learned senior counsel for the plaintiff has relied upon the decisions of Apex Court in *Nagindas Ramdas vs Dalpatram Ichharam alias Brijram and Others*² and *Sangramsinh P. Gaekwad and Others vs. Shantadevi P.*

¹ 1961 SCC Online Sc 43

² (1974) 1 SCC 242

*Gaekwad (Dead) through LRs and Others*³. He also relied upon the decision of this Court in *Mulji Umershi Shah vs. Paradisia Builders Pvt. Ltd. And Others*⁴

11. He therefore submits that the mechanism adopted by this court in the representative suit is in the public interest and should be applied in the present case as well. Only because defendant no. 1 has also alleged any fraud, the same would not have any deterrent effect for not applying the same mechanism in the present suit.

Submissions on behalf of Defendant No.1

12. On 5th June 2007, the Central Government issued a notification under Section 27 of the Forward Contracts (Regulation) Act 1952 ('FCRA'), exempting all contracts of one day duration for the sale and purchase of commodities traded on the plaintiff's Exchange, subject to certain conditions set out therein. On 11th October 2008, Defendant No. 1's application to become a member and trade on the plaintiff's Exchange was accepted. On 15th October 2008, plaintiff's Exchange became operational. On 27th April 2012, the plaintiff received a show-cause notice from the Central

³ (2005) 11 SCC 314

⁴ (1997(3) Mh. L. J. 532

Government alleging a violation of the conditions of the Notification dated 5th June 2007. On 12th July 2013, the Central Government directed the plaintiff that no further/fresh contracts were to be launched until further instructions from the concerned authority, and that all existing contracts were to be settled on their due dates.

13. On 27th July 2013, the plaintiff issued a Circular amending the settlement procedure for trades w.e.f. 23.07.2013. On 31st July 2013, the plaintiff issued a Circular suspending all contracts (except e-series contracts) and merging the delivery and settlement of all pending contracts w.e.f. same date and to defer it for a period of 15 days, and consequently, the positions outstanding in the contracts were to be settled by way of delivery and payment after expiry of 15 days. On 6th August 2013, the Central Government issued a notification: (i) restraining the plaintiff from undertaking any further or fresh one-day forward contracts in any commodity, without prior approval of the Central Government. (ii) Settlement of all outstanding one-day forward contracts at NSEL shall be done under the supervision of FMC, and any order or direction issued by the FMC in this regard shall be

binding upon the plaintiff and any person, intermediary or warehouse connected with the plaintiff.

14. On 12th September 2013, the plaintiff filed an Arbitration Petition No. 27 of 2014 against defendant no. 1 under Section 9 of the Arbitration Act. The plaintiff inter alia sought security for Rs. 964,73,81,477.62, on account of pay-in obligations for the trades done on the plaintiff's Exchange. On 23rd September, 2013, this Court rejected ad-interim relief in the plaintiff's Section 9 petition on the grounds that the plaintiff's ledger statements were contrary to the Notification dated 6th August 2013 and Circular dated 31st July 2013. It was held that, when the dispute is adjudicated, it will have to be seen how the ledger account came to be maintained by the plaintiff showing the aforesaid liability. The said order was not challenged, and the Section 9 Petition was withdrawn. The ledger statement filed in the arbitration petition is the same as the one in the present suit, which the plaintiff seeks to have reconciled through the committee. Thus, filing of the present suit is an admission that the issues require a trial.

15. The representative suit seeks to recover Rs. 5,087.22 crores from the plaintiff herein. Defendants are not a party to that suit. No third-party notice was issued to the defendants herein as the plaintiff's arbitration petition was pending. On 27th August 2014, Minutes of Order were signed by some of the parties in the representative suit. Defendant No. 1 was neither a party to the said representative suit nor the said Minutes of Order. On 22nd October 2014, the High Court Committee issued a notice calling upon defendant no. 1 to appear before the Committee; however, defendant No. 1 informed the Committee that it was not submitting to its jurisdiction and that an appeal challenging the order passed in the representative suit was pending.

16. The learned Division Bench granted interim protection to defendant no. 1 in the appeal filed to challenge the order in the representative suit by passing a common order in three appeals. In the operative part regarding the other two appeals, it was observed that the order shall apply to those appellants; however, the Committee shall function in accordance with Section 75 of the CPC whilst discharging its functions, and the Committee shall not have any adjudicatory

powers. These directions in the two other connected appeals continue to operate, and have attained finality, notwithstanding the withdrawal of the appeal by defendant no. 1. By the prayers in the present notice of motion, the plaintiff, by assuming that the issues in the suit have already been decided in its favour, effectively seeks to avoid adjudication of the present suit by seeking reference to the Committee, which has no adjudicatory power.

17. The Hon'ble Supreme Court in ***63 Moons Technologies Ltd vs. Union of India***⁵, held that the contracts launched by the plaintiff were in contravention of the exemption conditions granted under the FCRA, as well as the provisions of the FCRA. The Supreme Court was considering the Notification dated 5th June 2007, which forms the subject matter of the present suit and the plaintiff's claim. Thus, it is a concluded fact that the plaintiff floated illegal contracts. The Hon'ble Supreme Court in ***State of Maharashtra vs. 63 Moons Technologies Ltd.***⁶ sets out the fraud committed by the plaintiff. The learned senior counsel for the defendant also relied upon the decisions in ***B.O.I. Finance Limited vs.***

⁵ 2019 (18) SCC 401

⁶ 2022 (9) SCC 457

*Custodian and Others*⁷, and *Khurshed Banoo W/o. Murtaza Hasan (Deceased by LRS) vs. Vasant Mallikarjun Manthalkar (Deceased by LRs)*⁸.

18. The Division Bench in the appeal of defendant no. 1 held that the present Notice of Motion shall be decided on its own merits and the enquiry would be limited to whether there are any facts or circumstances which would justify defendant no. 1's contentions that the Order dated 2nd September 2014 passed in the representative suit should not be applied to their case. The expression "any facts or circumstances" is wide and all-encompassing and places no limitation on the facts and circumstances which may be considered in this notice of motion.

19. The plaintiff has made an application for a decree on admission. By Order dated 2nd March 2025, this Court has granted ad-interim relief restraining defendant no. 1 from alienating or creating any third-party interest in respect of their movable and immovable assets. Hence, the interest of the plaintiff is protected. The plaintiff seeks to avoid a trial by referring defendant no. 1 to the Committee, as if all issues in

⁷ (1997) 10 SCC 488

⁸ AIR 2003 Bombay 52

the suit stand decided in the plaintiff's favour. The plaintiff is under an obligation to prove that the amounts claimed in the suit are payable by defendant no. 1. Hence, neither the order passed in the representative suit can apply in the present suit, nor do facts and circumstances warrant any such similar order.

CONSIDERATION AND CONCLUSIONS:

20. The plaintiff has alleged that the defendants entered into fraudulent and collusive transactions and committed massive fraud against the plaintiff and various other trading clients, and that they wrongfully profited from the fraudulent transactions. The plaintiff invoked the arbitration clause under its bye-laws and filed an arbitration petition under Section 9 of the Arbitration Act. However, after withdrawing the said petition by seeking liberty, this suit is filed. By order dated 2nd March 2015, this court granted ad-interim relief restraining the defendants no. 1 to 4 from creating any third-party interest or encumbering their movable and immovable assets and defendants nos. 1, 3 to 41, 45 to 50 were directed to file their respective affidavit of disclosure. The plaintiff has

also applied for a decree of admission. The said notice of motion is still pending for hearing.

21. The order dated 2nd September 2014, passed in the representative suit, records the basic facts of the said suit. As recorded in the said order, the suit has been filed as a representative suit on behalf of the investors and traders, claiming various amounts due and payable in respect of trades executed on the National Spot Exchange platform. It is the case of the plaintiff in the said suit that there were fraudulent contracts entered into with the knowledge and/or consent and/or collusion on the part of defendant no. 1 therein, who is the holding company of the National Spot Exchange and one Mr Jignesh Shah, who is the chairman and managing director of defendant no. 1 therein. NSEL is defendant no. 2 in the said suit. Third-party notices were taken out against various counter-parties to the said trades, who are claimed by the NSEL as defaulters, and their clients. Thus, in the said suit, NSEL contends that the amounts payable under various trades by the parties have not been received. In the representative suit, no third-party notice was taken out against the defendants in this suit.

22. The parties in the said representative suit had proposed minutes of order that involved acts touching upon the statutory functions of the competent authorities, including the Enforcement Directorate ('ED') and the Forward Markets Commission ('FMC'). Hence, notices were issued to various statutory authorities, including the ED and FMC. It appears that defendant no. 1 in the present suit was also represented and heard when the order in terms of minutes of order was passed. It is the case of defendant no.1 herein that they had objected and made grievances about the formation of the committee and the terms of the minutes of the order. After considering all the grievances, the learned Single Judge was of the view that it was in the interests of justice to accept the proposed minutes of the order as submitted by the parties. Accordingly, the order dated 2nd September 2014 was passed in terms of the minutes of the order.

23. The minutes of the order recorded that there were more than 13,000 investors and 22 defaulters. In such circumstances, it was found that, in the larger public interest, a committee of three persons, headed by a retired high court judge, should be formed as a fact-finding authority to

determine the amount payable by alleged defaulters/third parties. It was also felt that the committee should be empowered to ascertain the various assets of the alleged defaulters, third parties, and the amounts received directly or indirectly from the NSEL in respect of various trades. Thus, without prejudice to the rights and contentions of the parties, an arrangement was agreed upon by the plaintiffs and defendant nos. 1, 2, 3 and 5 in the said suit, during the hearing and final disposal of the notice of motion in the said suit.

24. Without prejudice to the aforesaid powers, the committee is empowered to explore and negotiate mutual settlements, record and supervise the implementation of such a settlement as provided in the terms of the minutes of the order. It is, however, clarified that if any assets are traced and attached by the authorities, the same shall not be dealt with without leave of the court. It is also clarified that before any mutual settlement between NSEL and the alleged defaulters/third parties and their clients is arrived at or finalized, the FMC shall be heard, and the committee and the

FMC shall work in coordination in working out such mutual settlements.

25. Thus, from the reading of the order and the minutes of the order, it appears that the committee was formed as a fact-finding authority to determine the amount payable by alleged defaulters/third parties. Hence, the committee was empowered to ascertain the various assets of the alleged defaulters/third parties and the amounts which were received directly or indirectly from NSEL in respect of various trades. The arrangement arrived at by the minutes of order is without prejudice to the rights and contentions of the parties, and with necessary safeguards for taking appropriate approval from the court as specified in the minutes of order. Thus, the basic intention appears to be in the public interest to reach a settlement among NSEL, defaulting members, third parties, and investors, and, in the event of any disagreement, to apply to the court, with all the committee's reports made subject to the court's approval. Thus, the said order is in the interest of the investors in a representative suit filed by the investor making allegations against the trading member therein and NSEL as defendant no.2.

26. The order appointing committee is in a representative suit filed by investors to recover amounts from the plaintiff herein and the trading member through whom the investors have traded. In the present case, no aggrieved investor is a party to the suit. The dispute is between the plaintiff and defendant no. 1, who is the trading member. The plaintiff's prayer for recovery of amounts is based on allegations of fraud and defaults by defendant no. 1. The plaintiff has pleaded about different types of contracts, the ledgers maintained by the plaintiff, directions issued by the Government to stop the contracts and that all the existing contracts be settled on the due dates. The plaintiff has further pleaded that the plaintiff issued a circular, suspending trading in all the contracts and merging the delivery and settlement of all pending contracts. The plaintiff has alleged illegal removal of commodities, failure to make payment in funds, and falsification of the books of accounts.

27. The plaintiff has contended that it is entitled to receive and recover the amount under the Bye-Laws and the contracts as a facilitator of the trades which were executed on the plaintiff's exchange. The plaintiff has referred to and

relied upon various minutes of meetings held between the plaintiff and defendant no. 1 for the purpose of settling outstanding amounts. The plaintiff has alleged that, after agreeing to the liability, defendant no. 1 addressed a letter to the plaintiff, stating that the minutes of the meeting were signed under duress and denying that defendant no. 1 had ever agreed to make the payment. The plaintiff has also relied upon an agreement dated 1st June 2013, alleging that defendant no. 1 had agreed to honour the pay-in obligations and had undertaken not to commit any default and to comply with the rules and the bye-laws. The cheque issued towards payment of the outstanding amounts for settlement of accounts was dishonoured, and thus the plaintiff has contended that proceedings under the Negotiable Instruments Act have been initiated. The plaintiff has also pleaded about the criminal proceedings initiated by the economic offences wing and the action taken against the directors of defendant no.1. The plaintiff has thus expressed apprehension that amounts would be siphoned off before the settlement of the accounts

28. The plaintiff has further pleaded that in such circumstances, the arbitration clause was invoked against defendant no. 1 under the bye-laws. However, out of the same transactions, the plaintiff has rights and a cause of action against the other defendants, which are directly linked to the transactions and to defendant no. 1. Hence, the plaintiff has pleaded that the arbitration petition under section 9 was withdrawn with liberty to file this suit. Thus, the plaintiff's claim is based on the ledger accounts maintained by the plaintiff and the allegations of fraudulent transactions and alleged default committed by defendant no. 1. These allegations are denied by the defendants. Defendant no. 1 has alleged that action has already been taken against the plaintiff for violating the provisions of the FCRA. Hence, there are allegations of fraud against the plaintiff.

29. Learned senior counsel for defendant no. 1 has relied upon the observations of the Apex Court in the decisions referred to above regarding the violations committed by the plaintiff. Hence, learned senior counsel for defendant no. 1 is right in submitting that the issues involved in the present suit would warrant a trial, and the plaintiff would be under

obligation to prove the allegations of fraud and is also under obligation to lead evidence to prove the ledger accounts maintained by the plaintiff to prove that defendant no. 1 would be liable to make the payment as alleged in the suit. Apart from defendant no. 1, who is the trading member of the plaintiff, allegations are also made against other defendants, which, according to the plaintiff, were the grounds to withdraw the arbitration petition and file this substantive suit.

30. Even before the representative suit was filed, the plaintiff herein, i.e. NSEL, had invoked the arbitration clause and filed a petition under Section 9 of the Arbitration Act. Ad-interim relief in the said petition was refused. During the pendency of the Section 9 petition, the investor of some other trading member filed the representative suit, and the order constituting the committee was passed. Defendant no. 1 challenged the said order, and its implementation was stayed by the Division Bench qua defendant no. 1. In the meantime, the plaintiff withdrew the Section 9 petition and, in view of the liberty granted in said petition, filed the present suit.

31. The controversy regarding categorising the subject transactions as ready forward transactions or otherwise, as argued on behalf of defendant no. 1, cannot be decided at this preliminary stage. Hence, the decision in ***B.O.I Finance Ltd.***, where the contract between two independent parties was the subject matter of the controversy, cannot be applied to the present case at this stage, where the plaintiff had provided a platform for the transactions. The controversy in the present case regarding the alleged fraudulent transactions requires examination in a full-fledged trial.

32. In ***63 Moons Technologies Ltd.***, the batch of appeals and writ petitions raised questions regarding the applicability and construction of Section 396 of the Companies Act, 1956, which deals with the compulsory amalgamation of companies by a Central Government order when this becomes essential in the public interest. In the said decision, the Apex Court has referred to the facts that the appellant, 63 Moons Technologies Ltd., formerly known as Financial Technologies (India) Limited (“FTIL”) whose name was changed to 63 Moons Technologies Ltd. is a 99.99% shareholder of NSEL and a listed company. About 45% of FTIL’s shareholding is

held by Shri Jignesh Shah and family, and about 43% is held by members of the Indian public. Approximately 5% of the shareholding is held by institutional investors. FTIL is a profitable company with a positive net worth of over INR 2500 crores and is in the business of providing software used by brokers and exchanges for trading across the country. FTIL has about 900 employees and a Board of Directors that differs from the Board of Directors of its wholly owned subsidiary, i.e., NSEL. On the other hand, NSEL was incorporated in 2005 by Multi Commodities Exchanges (MCX) and its nominees. NSEL provided an electronic platform for the trading of commodities between willing buyers and sellers through brokers representing them.

33. The Apex Court observed that NSEL had not denied that paired commodity contracts were in operation, and, excluding E-series contracts, at least 46% of NSEL's turnover was made up of such paired contracts. It is also observed that such paired contracts were financing transactions which were distinct from sale and purchase transactions in commodities and were, thus, in breach of both the exemptions granted to NSEL and the FCRA. The

observations of the Apex Court are cited here to better understand the controversy, as defendant no. 1 has alleged fraud against the plaintiff, and the dispute in this suit pertains to the same controversial transactions.

34. In *State of Maharashtra v. 63 Moons Technologies Ltd.*, the appeal arose from a judgment of the Bombay High Court, by which certain notifications attaching the property of the respondent under Section 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 ('MPID Act') were quashed. The core of the dispute was whether NSEL is a "financial establishment" within the meaning of Section 2(d) of the MPID Act. The Apex Court allowed the appeals and set aside the impugned judgment of the Bombay High Court and the notifications issued under Section 4 of the MPID Act, attaching the properties of the respondent, i.e. 63 Moons Technologies Ltd., are held valid.

35. In *Khurshed Banoo*, this court disapproved the trial Court's approach in proceeding to decree the suit, essentially relying on the Commissioner's report and on the assumption that the said report had been proved. It is held that there is

an established procedure known to the law by which the Commissioner's report can be proved on evidence, and thus, in the absence of any oral evidence, a court commissioner's report cannot be accepted.

36. In the facts and circumstances of the present case, allegations of fraud and violation of FCRA provisions against the plaintiff cannot be ignored. As per the order passed in the representative suit, the committee is formed as a fact-finding authority to determine the amount payable by the alleged defaulters/third parties to the investors. The plaintiff chose not to file any third-party notice in that suit against the defendants herein. Defendant no. 1 had challenged the order in the representative suit, and the learned Division Bench granted liberty to defendant no. 1 to show facts and circumstances to justify its contentions that the said order should not apply to defendant no. 1.

37. In the decision of this court, in ***Mulji Umershi Shah***, while deciding the challenge to the order passed by the trial court appointing a court receiver while rejecting the plaintiff's application for injunction, it is held that in suitable cases, the court is not powerless to pass appropriate orders to meet the

ends of justice. This court also held that such power must be exercised sparingly and only in exceptional cases.

38. In the decision of the apex court in *Immani Appa Rao*, it is held that, having regard to the fact that both the parties before the court are confederates in the fraud, whichever approach is adopted, one party would succeed, and the other party would fail; thus, it is necessary to enquire as to which party's success would be less injurious to public interest. After considering the various decisions on this issue, the Apex Court in paragraph 22 referred with approval to the judgment of Lord Mansfield, CJ, which is often quoted in various decisions. Paragraph 22 reads as under:

"22. In judicial decisions where this question has been considered from the judgement of Lord Mansfield, C.J. in *Holman v. Johnson* [(1775) 1 Cowper, 341] is often quoted. If we may say so with respect the said passage, very succinctly and eloquently brings out the true principles which should govern the decision of such cases. Said Lord Mansfield, C.J., "the objection that a contract is immoral or illegal as between plaintiff and defendant sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that

the objection is ever allowed; but it is founded in general principles of policy which the defendant has the advantage of, contrary to the real justice, as, between him and the plaintiff, by accident, if I may say so. *The principle of public policy is this: ex dolo malo non oritur actio. No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff's own stating or otherwise, the cause of action appears to arise ex turpi causa or the transgression of a positive law of this country, there the court says he has no right to be assisted. It is upon that ground the court goes; not for the sake of the defendant, but because they will not lend their aid to such a plaintiff."*

emphasis applied by me

39. The decisions of the Apex Court in *Nagindas Ramdas* and *Sangraminh Gaekwad* are relied upon by the learned senior counsel for the plaintiff on the aspect of admissions in pleadings or judicial admissions. These legal principles are relied upon to support his submissions that the contents of the appeal filed by defendant no. 1 to challenge the order passed in the representative suit would amount to judicial admissions, and thus the arguments raised on behalf of

defendant no. 1 are not available to object to the prayers in this application. In my view, the reliance placed on the legal principles in the said decisions would not apply at this stage when deciding the prayer to apply the order passed in the representative suit to these defendants or to pass a similar order. It is important to note that defendant no. 1 has raised objections to the passing of the order of formation of the committee and the terms in the minutes of the order. The grounds raised in the appeal filed to challenge the order in the representative suit would not amount to any kind of admissions for applying the order in the present case. The learned Division Bench has granted liberty to raise contentions and point out the facts and circumstances as to why the order should not apply to these defendants. From the office report on record, it appears that service of the writ of summons on all the defendants in the present case is not yet complete, and the suit is at the pleadings stage.

40. Learned senior counsel for the plaintiff submitted that by invoking powers under Section 151 of the CPC, read with Order XXVI Rule 11 and Section 75 of the CPC, this court can either apply the order passed in the representative suit to

these defendants or pass a similar order. I do not find any substance in the said submissions. In the present case, the defendants have not admitted their liability to pay. Under Order XXVI Rule 11, the court may, in any suit in which an examination or adjustment of the accounts is necessary, issue a commission to such person as it deems fit, directing him to make such examination or adjustment. Under section 75, the court is empowered to issue commissions to examine any person, to make a local investigation or to examine or adjust accounts. A report submitted pursuant to such an order by the commissioner is never final and is always subject to proof. A party is entitled to file objections to such a commission report and also cross-examine the court commissioner.

41. In the present case, considering the allegations of fraud, the court must first examine the issue of fraud to ascertain whether defendant no. 1 is liable to make any payment. The question in the present suit is not only of the adjustment of the accounts. No aggrieved investor is a party to the present suit for applying public policy principles in the public interest. Hence, no purpose would be served by

applying the order passed in the representative suit to the defendants herein. The legal principles in the decision of the Apex Court in *Immani Appa Rao*, as discussed above, would squarely apply to the facts of the present case. It is a well-established legal principle that a party cannot be permitted to use the court machinery without discharging its burden to prove its pleadings. The prayers in this Notice of Motion are premature. After the pleadings are complete and the issues are framed, this court, at an appropriate stage during the trial, may consider whether the facts and circumstances of the case warrant the invocation of the powers under section 75, read with Order XXVI of the CPC, to appoint a court Commissioner.

42. Hence, for the reasons recorded above, the notice of motion is dismissed.

[GAURI GODSE, J.]