IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO.1817 OF 2021
IN
COMMERCIAL SUIT (L) NO.1814 OF 2021

National Stock Exchange of India Ltd. ...Applicant

IN THE MATTER BETWEEN:

National Stock Exchange of India Ltd. ...Plaintiff
V/S
Modex International Securities Ltd. ...Defendant

Dr. Birendra Saraf, senior counsel, Mr. Ranjeev Carvalho, Counsel a/w. Mr. Sachin Chandarana, Mr. Pruthvi Dhinoja i/b. Manilal Kher Ambalal & Co. for Applicant / Plaintiff.
Mr. Nimay Dave a/w. Aparna Wagle & Swapna Roopvate i/b. Alliance Law for Defendant.

CORAM : B. P. COLABAWALLA, J.
DATED : 23rd FEBRUARY, 2021.

P.C.

The above Suit has been filed by the National Stock Exchange of India Ltd., seeking a decree against the Defendant in the sum of approximately Rs.200 Crores. The Defendant has been a trading member of the Capital Market, Future and Options (F & O) and Currency Derivative Segment of the

Plaintiff.

2 Apart from being a trading member, the Defendant is also clearing member of the Plaintiff – Exchange.

3 From March to December 2019, when the Plaintiff conducted an inspection of the Defendant, it observed various non-compliances. These non-compliances are in the inspection report, annexed as Exhibit 'C' to the plaint. This report was, thereafter, forwarded to the Securities and Exchange Board of India (for short 'SEBI') seeking its intervention. The Plaintiff also appointed KPMG to perform a forensic review of the books and records of the Defendant for the period from 01st April 2017 to 24th January 2020. This report was submitted on 18th March 2020 and which is annexed at Exhibit 'E' to the plaint. It is the case of the Plaintiff that after examining the forensic report / review of KPMG, it learnt that the Defendant had entered into third party transactions, which appeared to be illegal and unlawful and were undertaken by the Defendant solely with the

intention of mis-appropriating and siphoning off securities of its clients / investors. The forensic report of KPMG was also forwarded by the Plaintiff to SEBI vide its e-mail dated 22nd March 2020.

4 Taking cognizance of the material furnished by the Plaintiff from time to time, SEBI passed an ad-interim order under Sections 11(1), 11(4), 11(B) and 11(D) of the SEBI Act, 1992, read with Regulation 35 of the SEBI Regulations against the Defendant and 9 others, *inter alia*, restraining them from accessing the securities market; to provide a full inventory of their assets or any interests or investment or charge in any such assets; a direction not to dispose of or alienate any assets or create or release any interest or charge in any such assets, without the prior permission of the Plaintiff.

5 Subsequently, a Director of the Defendant has made a disclosure in which he has mentioned to have accumulated assets worth only Rs.3.48 crores. In fact, looking at the

conduct of the Defendant and after giving an opportunity of a hearing on 15th September 2020, the Member and Core Settlement Guarantee Fund Committee (MCSGFC) passed an order expelling the Defendant from the membership of the Plaintiff under Rules 1 and 2 of Chapter IV of the Rules of the Plaintiff and declared the Defendant as a defaulter.

6 It is in these circumstances, that the present Suit is filed and on the basis of a Circular of SEBI wherein the Stock Exchanges including the Plaintiff and the clearing corporation had been advised to initiate suitable action for liquidating the assets, both movable and immovable, of the defaulter member and for recovery of the assets not in the possession of Stock Exchange.

7 Mr. Dave, the learned counsel appearing on behalf of the Defendant submitted that the Defendant would like to file a reply and hence sought time for a period of four weeks. He submitted that in the interregnum, no order be passed against

the Defendant as the orders passed by SEBI restraining the Defendant from disposing of its assets is already in place and hence would adequately protect the interests of the Plaintiff at this stage.

8 Though I am inclined to grant time to the Defendant to file their affidavit-in-reply, I am unable to agree with the submission of Mr. Dave. Firstly, the charges made against the Defendant are very serious. Secondly, even as per the disclosure made by one of the Directors of the Defendant before SEBI also shows that his net worth is only Rs.3.48 crores. Today, Mr. Dave is unable to state whether any such disclosure is made by the Defendant company. In these circumstances, and especially considering that the claim against the Defendant is approximately Rs.200 crores, I am of the view that certain protective orders are absolutely necessary.

9 I must mention the argument canvassed by Mr. Dave has, in fact, been considered by a learned single Judge of this

Court in Interim Application (Lodg.) No.8272 of 2020 in Commercial Suit (Lodg.) No.8265 of 2020, *National Stock Exchange of India Ltd. Vs. BRH Wealth Kreators Ltd. and Ors*. In that case also, it was the argument of the Defendants that there were protective orders passed by SEBI, which would adequately protect the interest of the Plaintiff. This argument was negated and the Court proceeded to pass ad-interim relief in favour of the Plaintiff. The fact situation in that case and the present one are very similar, and therefore, I do not see why I should not grant ad-interim relief in favour of the Plaintiff.

10 In these circumstances, there shall be an ad-interim relief in terms of paragraph 32(i) and 32(v) which read thus:

> *"(i) this Hon'ble Court may be pleased to direct the Defendant to disclose on oath by filing an Affidavit (A) all its assets / properties, both movable and immovable, including securities, investments, shareholdings in its group companies and all other related entities, all the receivables from the clients/debtors, together with details of all encumbrances and valuation in respect thereof; (B) all income-tax returns, audited or otherwise, for the period of last three years till date; and (C) nature of transactions entered into by the Defendant with its Related Parties, including Klassy Constructions Pvt. Ltd.,*

with all supporting information / documents, including but not limited to the utilization of the amounts by Klassy Constructions Pvt. Ltd.;

(v) this Hon'ble Court may be pleased to restrain the Defendant, their servants, agents, assigns, directors, officials or any person/s acting or claiming through or under it, by temporary order and injunction of this Hon'ble Court from in any manner transferring, alienating, selling, disposing of and / or dealing with and / or parting with possession and / or encumbering or creating any third party, right, title and interest in all assets, movable and immovable, tangible and intangible, securities, shares, debentures, investments owned by the Defendant and/or kept or diverted to any other connected entity, including the assets disclosed on oath by the Defendant, as also the assets disclosed by the Defendant before SEBI, as detailed in Exhibit I hereto."

11 The Defendant shall file its affidavit-in-reply on or before 23rd March 2021 and serve a copy of the same on the advocates for the Plaintiff.

12 List the above Interim Application for hearing on 30th March, 2021.

13 This order shall be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned shall

act on production by fax or e-mail of a digitally signed copy of this order.

(B. P. COLABAWALLA, J.)