IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION (L) NO. 16103 OF 2021

IN

COMMERCIAL SUIT (L) NO. 16049 OF 2021

WITH

LEAVE PETITION (L) NO. 16508 OF 2021

IN

COMMERCIAL SUIT (L) NO. 16049 OF 2021

National Stock Exchange of India Ltd ...Plaintiff
Versus
Arcadia Share & Stock Brokers Pvt Ltd & Ors ...Defendants

Dr Birendra Saraf, Senior Advocate, *with Ranjeev Carvalho, Vikram Trivedi, Sachin Chandarana, & Mayur Bhojwani, i/b M/s. Manilal Kher Ambalal & Co., for the Plaintiff.*
Mr Anthony Sequeira, *Defendant No. 2 present in person.*

CORAM: G.S. PATEL, J
(Through Video Conferencing)
DATED: 9th August 2021

PC:-

1. Heard. Dr Saraf appears for the Plaintiff, National Stock Exchange of India (**"NSE"**). Mr Sequeira, the 2nd Defendant is present. He is the Managing Director of the 1st Defendant (**'Arcadia"**). The 3rd Defendant, Mr Brahmabhatt, is another director of Arcadia.

2. The plaint is a recovery action. It is filed in furtherance of the circular 28th September 2020 issued by the Securities & Exchange Board of India. NSE seeks a decree against the Defendants jointly and severally in an amount of Rs. 173.50 crores. The plaint says that there are 1,542 claims submitted by clients and investors after Arcadia was declared a defaulter. Arcadia is now an expelled member of the NSE. The Interim Application says that Arcadia through Mr Sequeira has admitted its liability to the extent of Rs. 96.50 crores. The NSE has distributed Rs. 3.11 crores to 6,295 clients of Arcadia. A further sum of Rs. 3.30 crores is about to be disbursed to another 1,646 clients / investors. The other claims are being adjudicated according to the terms of the NSE bye-laws. The NSE claims that all three Defendants have committed serious illegalities. There is even an allegation of misappropriation.

3. Mr Sequeira seeks time to engage an Advocate to file an Affidavit in Reply. I will grant him that time but there will have to be an ad-interim order in terms of prayer clauses (a) and (e), which read thus:

> "(a) this Hon'ble Court may be pleased to direct the Defendants to disclose the following on oath by filing an Affidavit:
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> i. their financial returns for the last three years;

ii. certified statements of bank accounts for the last one year;

iii. a list of all gross block fixed assets with complete particulars of location, area, details or encumbrances, name of secured lenders, date of security, amount due and the status;

iv. a list of all other movable assets, i.e., including all investments whether in public or private companies, debt, equity and every other portfolio;

v. all other movable items including automobiles, computers, servers, equipment and other assets of the acquisition or replacement value of more than Rs. 1 Lakh;

(e) this Hon'ble Court may be pleased to restrain the Defendants, their servants, agents, assigns, directors, officials or any person/s acting or claiming through or under it, by a 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 Defendants and/or kept or diverted to any other connected entity, including the assets disclosed on oath by the Defendants."

4. So far as prayer clause (a) is concerned, there will be three separate Affidavits from each of the Defendants. These are to filed and served on or before 30th August 2021.

5. So far as prayer clause (e) is concerned, there will be an order exactly in those terms against Arcadia, Defendant No. 1. As regards

Defendants Nos. 2 and 3, there will also be a similar injunction except that Defendants Nos. 2 and 3 will be at liberty to utilize their personal funds for their day-to-day and personal requirements. They are not to make any transfers of movable or immovable properties, gift or transfers of cash or movables without prior leave of this Court obtained after at least four days' prior written notice to the Advocates for the Plaintiff.

6. Dr Saraf seriously presses prayer clause (f) against Defendants Nos. 2 and 3. That requires a deposit of their passports. At this stage, I do not think that is warranted. But previous experience does tell us that when there are these large financial claims, investors, especially small investors are often left without recourse or remedy because the persons behind the defaulting corporate entity leave the jurisdiction of this Court. Apart from personal liability, this means that even the affairs of the corporate entity can no longer be handled. Matters then quickly spiral out of control. For this reason, I believe that until the next date there must be a restraint against Defendants Nos. 2 and 3 from leaving the country and the jurisdiction of this Court. Should they or either or them be required to travel, they must apply to this Court for leave to do so after giving at least three days' prior written notice to the Advocates for the Plaintiff.

7. The Affidavit of Disclosure may include an Affidavit in Reply on merits. An Affidavit in Reply is permitted to be filed and served on or before 16th September 2021.

8. List the Interim Application itself on 22nd September 2021.

9. This order will continue until that date.

10. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)