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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 3306 OF 2022
IN
COMMERCIAL SUIT NO. 15 OF 2022

National Stock Exchange of India Ltd. … Applicant/Plaintiff

Vs.

Arcadia Share and Stock Brokers Private Limited and Others … Defendants

Mr. Ranjeev Carvalho a/w. Mr. Mayur Bhojwani, Mr. Amol Rasal, Mr. Ulrik Jehangir and Ms. Dhamini Nagpal i/b. Manilal Kher Ambalal & Co. for the Plaintiff (NSE).
Mr. Surin Usgaonkar for Defendant Nos. 1 to 3.

CORAM : GAURI GODSE, J.

DATE : 9th FEBRUARY 2026

ORDER :

1. This application is filed by the plaintiff seeking reliefs for the disclosure of accounts, directing the defendants to deposit the amount claimed in the suit, in this court or furnish a bank guarantee. The plaintiff also prays for issuing a warrant of attachment before judgment in terms of Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 ("CPC"),

to attach all the assets of the defendants, including all the receivables from the clients/ debtors of the defendants, in terms of disclosure made on oath. The plaintiff further prays for the appointment of the Court Receiver, High Court, Bombay, to take charge of all the assets, both movable and immovable, of the defendants as disclosed by them. The plaintiff has also prayed for an order of injunction restraining the defendants from transferring, alienating, selling, disposing of, and/or dealing with, and/or parting with possession of, the movable and immovable properties as disclosed by them.

2. By order dated 9th August 2021, ad-interim relief in terms of prayer clauses (a) and (e) was granted by directing the defendants to file a disclosure affidavit and further restraining the defendants from alienating or creating any encumbrance in respect of the disclosed assets. Accordingly, separate disclosure affidavits of all three defendants were filed in this court in 2021.

3. By order dated 27th January 2026, the defendants were directed to file a fresh disclosure affidavit in view of the encumbrance noted in the 2021 disclosure affidavits.

Accordingly, the defendants have filed an affidavit of disclosure dated 2nd February 2026.

4. Learned counsel for the plaintiff has tendered a brief note on the assets disclosed by the defendants in 2021 and the assets disclosed in the fresh affidavit dated 2nd February 2026. On perusal of the disclosure affidavits filed in 2021 and the recent disclosure affidavit filed in 2026, it appears that the defendants further dealt with the assets that were disclosed in 2021. Some of the properties appear to have been attached in the proceedings initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act"). I have perused the disclosure affidavits and the defendants' reply. It is difficult to ascertain the exact unencumbered assets of the defendants.

5. On a query put to the learned counsel for the defendants as to whether the defendants would be agreeable to secure the amounts claimed in this suit, learned counsel for the defendants, on instructions, submits that the defendants would not be agreeable to make any statement before the court for securing the amount. In such

circumstances, the interim application is examined on merits based on the rival submissions made by the learned counsel for the respective parties.

6. The suit is filed for recovery of an amount of Rs.1,10,89,95,902.38. Learned counsel for the plaintiff has relied upon the regulatory framework by placing reliance upon various provisions of the bye-laws, circulars issued by SEBI and the policy for evaluation of the claims against the trading members whose accounts are disabled or suspended.

7. The submissions made on behalf of the plaintiff are summarised as under : -

a) Defendant no. 1 was admitted as a trading member against execution of Trading Membership Undertakings in favour of the plaintiff. The necessary Form of Undertakings is referred to and relied upon in the plaint. As per the undertakings given at the time of admitting defendant no. 1 as a trading member, defendant no. 1 is obliged to adhere to the bye-laws and regulations framed from time to time. Defendants nos 2 and 3 are directors of defendant no. 1. In view of an off-site supervision mechanism, the plaintiff had received alerts of certain off-market transfers of shares to the extent of Rs. 5.51 crores to defendant no. 1's clients' demat account, without sufficient collateral security. Hence, emails were addressed to the defendants, calling upon their response and explanation regarding the transfer of shares.

b) The plaintiff had received an alert from the Central Depository Services Limited ("CDSL") regarding the invocation of certain pledged securities by the bank from the proprietary accounts of defendant no. 1. Thereafter, the defendants provided limited information for the transfer of shares. Considering the larger ramifications, the plaintiff had called upon the defendants to provide an explanation along with supporting documents. During the off-site supervision, the plaintiff discovered a transfer of shares without justification from defendant no. 1 to its clients' demat accounts.

c) After exchanging emails, the plaintiff appointed KPMG as a third-party auditor. Accordingly, the Forensic Audit Report was submitted, which revealed irregularities in the defendant no. 1's client's securities holdings and fund balance. A shortfall in client securities and funds, and the misappropriation of funds and securities, were revealed by the Forensic Audit Report. In view of the preliminary findings of the Forensic Audit Report, the plaintiff initiated action in accordance with the SEBI circular dated 1st July 2020.

d) The plaintiff had learnt that defendant no. 1 had entered into a loan transaction. In view of the SEBI circular dated 1st July 2020, a meeting was called for to ascertain the status of the availability of defendant no. 1's clients' assets. The plaintiff accordingly, in the exercise of its regulatory power, initiated action through the Member and Core Settlement Guarantee Fund Committee of the plaintiff. Learned counsel for the plaintiff submitted that the committee is authorised to exercise powers as the Defaulters Committee under the Bye-Laws, Rules and Regulations of the plaintiff.

e) On 7th February 2021, the committee passed an order disabling the terminals of defendant no. 1 across all trading terminals in all segments. Learned counsel for the plaintiff relied upon the preliminary observation of the committee based on the Forensic Audit Report, which revealed the non-availability of the client's security and misappropriation of funds. The plaintiff issued a show-cause notice to defendant no. 1, demanding an explanation for the alleged illegalities. A procedure as prescribed under the bye-laws was followed, and the committee observed that defendant no. 1 failed to provide an explanation to disprove the charges in the show cause notice.

f) On 5th June 2021, a conditional order was passed by the committee by recording findings on the conduct and violation of defendant no. 1. Seven days time was provided to defendant no. 1 to comply with the directions. Despite seeking an extension of time to comply with the conditions, defendant no. 1 failed to comply with the conditions as directed by the order dated 5th June 2021. Hence, by order dated 2nd July 2021, the committee observed the non-compliance of the conditional order. In the absence of any satisfactory explanation to the charges levelled against defendant no. 1, the committee passed an order on 2nd July 2021, where defendant no. 1 was declared a defaulter and expelled from the membership of the plaintiff.

g) Learned counsel for the plaintiff submitted that the order of expulsion is accepted by the defendants. Though the order is appealable, the defendants have neither complied with the conditions nor appealed the order of expulsion, which confirms the findings in the Forensic Audit Report. Learned counsel for the plaintiff, therefore, submits that as per the order of expulsion based on the Forensic Audit Report, the defendants would be liable to make payments towards the claims received from the clients of defendant no. 1.

h) Learned counsel for the plaintiff relied upon the public notice issued calling upon the client constituents of defendant no. 1 to lodge their claims. The plaintiff has received claims from 1542 clients aggregated to Rs. 110.89 crores. Hence, the present suit is filed with a prayer for interim relief to secure the claim received from defendant no. 1’s clients.

i) Learned counsel for the plaintiff relied upon Rule 28 of Chapter XII of the National Stock Exchange Bye-laws, along with SEBI Circulars dated 28th September 2020 and 26th September 2016. Learned counsel for the plaintiff relies upon the SEBI circular dated 28th September 2020, issuing advice to initiate suitable actions for liquidating the assets, both movable and immovable, of defaulter members, including those of debit balance clients, within six months of the declaration of defaulter for recovery of the assets before the appropriate court. The plaintiff, therefore, submits that immediately after the irregularities were noted, the plaintiff took immediate action and, after giving due opportunity to the defendants, initially passed a conditional order. In view of the non-compliance with the conditional order and in the absence of any explanation, the committee has passed the order of expulsion. Hence, the claim amount based on the claims received by the plaintiff needs to be secured during the pendency of the suit.

j) Learned counsel for the plaintiff submits that defendant nos. 2 and 3 who were directors of defendant no. 1, in collusion with one another and with an intent to misappropriate the funds of defendant no. 1 thereby causing wrongful gain to themselves, have caused wrongful loss to the plaintiff. He submits that defendant nos. 2 and 3 were aware of the plaintiff Core Settlement Guarantee Fund Committee and the payable compensation by the plaintiff to the client and investors of defendant no.1. However, the defendants have deliberately indulged in illegal activities in breach of their fiduciary duties.

k) Learned counsel for the plaintiff, therefore, submits that the affidavits of disclosure submitted by the defendant in the year 2021 and the recent disclosure reveal the precarious financial condition of the defendants and their securities. As observed by the committee, defendant no. 1 did not have sufficient securities to settle the investor's complaint. Learned counsel for the plaintiff submits that to secure the plaintiff's claim, it would be necessary to direct the defendants to deposit the amount in this court as per the suit claim.

l) Learned counsel for the plaintiff also relied upon the relevant observations and findings in the Forensic Audit Report and the conditional order and committee's order of expulsion of defendant no.1 as a member of the plaintiff. Learned counsel for the plaintiff therefore submits that the defendants be directed to secure the entire amount by depositing the amount in this court within a reasonable period, failing which necessary orders be passed to issue warrant of attachment before judgment by appointing Court

Receiver to take possession of the assets of the defendants in terms of the disclosure affidavits filed in 2021 and the recent disclosure affidavit of 2026.

Submissions on behalf of the Defendants:

a) Learned counsel for the defendants submits that the reasons and findings recorded in the order of expulsion, based on the Forensic Audit Report, are disputed by these defendants. The transfer of the amounts as disclosed in the Forensic Audit Report and the Committee order would not amount to a fraudulent transaction or misappropriation. By filing an affidavit in reply, the defendants point out obvious errors in the calculations made by the plaintiff based on the alleged claims submitted by the client/investors of defendant no.1. In view of the errors pointed out by the defendants, the plaintiff amended the plaint and reduced the claim amount by deducting the amount which were erroneously added in the list of claims.

b) With reference to the reliance placed by the learned counsel for the plaintiff on the SEBI circulars and the bye-laws, learned counsel for the defendants submits that the defendants had time and again requested the settlement of accounts by requesting the inspection of the claims received and the relevant transactions. However, the defendants were never granted time. Since the client trading of defendant no. 1 was initially suspended and thereafter the order of expulsion was passed, the defendants were unable to continue with the trading and thus were unable to satisfy the claims of defendant no.1's clients.

c) Learned counsel for the defendants relied upon the relevant pleadings in the written statement to support his contentions that there were no fraudulent transactions made by defendant no. 1. He also relied upon the relevant paragraphs in the written statement, thereby explaining the complaints alleged to have been received by the plaintiff. He submits that the defendants have explained that the shares given under the new collateral scheme were issued through the OTP route and that such transactions, included in the figure of Rs. 110.89 crores, cannot be accepted as fraudulent. He submits that the shares lying with Axis Bank and the clients' ownership remained with the clients, and that Axis Bank was supposed to return the shares to the clients. Hence, these claims cannot be put up against defendant no. 1.

d) Learned counsel for the defendants, therefore, submits that sufficient explanation is given by the defendants regarding the claim raised by the plaintiff. Hence, an arguable case is made out by the defendants, which would be substantiated by leading evidence. Hence, at this stage, only based on the Forensic Audit Report and the committee's order, the plaintiff would not be entitled to seek an attachment before judgment against these defendants. He submits that only receiving the claims from defendant no. 1's clients cannot be considered as any prima facie case made against these defendants. To seek a money decree, the plaintiff is required to lead evidence to prove the claim as per the statement of particulars of the claim in the plaint. Hence, at this stage, the plaintiff would not be entitled to any relief as claimed in the interim application.

Analysis and Conclusions:

8. I have considered the rival submissions made on behalf of the parties. I have carefully examined the rival pleadings, the documents and the relevant regulations relied upon by the parties. So far as the initial submissions made

with regard to the show cause notice issued and the order of the committee suspending defendant no. 1’s membership and further expulsion order, and the facts as recorded in the preceding paragraphs are not disputed. It is also not disputed that, though the order of the committee expelling defendant no. 1 from the membership is an appealable order, no steps have been taken by the defendants to challenge the order of expulsion. Hence, at this stage, the committee's observations based on the Forensic Audit Report would be binding on the defendants. The defendants have not challenged the correctness of the findings recorded by the committee in the expulsion order.

9. On perusal of the Forensic Audit Report, the particulars of misappropriation alleged by the plaintiff are prima facie evident therein. The report rightly reveals the modus operandi regarding the misappropriation of securities and the shortfall in the clients’ findings. All the particulars regarding the alleged misappropriation and the potential irregularities by defendant no. 1 in clients’ security holdings are explained in detail in the Forensic Audit Report. The irregularity in the defendant no. 1’s clients balance funds are also explained

with reference to the shortfall in the clients' securities. Based on the findings recorded in the Forensic Audit Report, the plaintiff's committee has passed a detailed order calling upon defendant no. 1 to comply with the necessary directions by granting time. Despite granting an extension of time to comply with the order dated 31st May 2021, the defendants have failed to comply. Hence, after following the prescribed procedure under the bye-laws, the committee has passed an order of expulsion. There is no dispute raised on the regulatory powers of the plaintiff.

10. While passing the order of expulsion, the committee has recorded findings of misappropriation of securities and funds, with reference to funds flowing to other entities and to the engagement in activities of borrowing securities from its clients. Thus, based on a detailed inquiry and the Forensic Audit Report, the committee has concluded that there was misrepresentation and misleading information regarding the client's funds reported to the exchange.

11. On the date the expulsion order was issued, 748 complaints had already been received and were never disputed by the defendants. The plaintiff has filed this suit based on the SEBI advisory requiring immediate action after

a member is declared a defaulter, with the purpose of securing the claims of the clients/ of the defaulter member. Based on such advisory the plaintiff has taken immediate action to file this suit. The suit claim is based on the complaints received from defendant no. 1's clients in response to the public notice issued by the plaintiff. The particulars of the claim received are pleaded in the plaint with supporting documents and their claims. Thus, in view of the claims received pursuant to defendant no. 1 declared a defaulter and thereafter the order of expulsion, the plaintiff is required to settle the claims in view of the Investor Protection Fund as per SEBI circular dated 26th September 2016.

12. The plaintiff has therefore made out a prima facie case with regard to the default committed by the defendants and the claims submitted by defendant no. 1's clients. In the event the assets of the defendants are further encumbered, the defendant no. 1's clients whose claims are pending before the plaintiff are likely to be defeated.

13. Pursuant to the ad-interim order passed by this court, the defendants have filed disclosure affidavits. On perusal of the recent disclosure affidavit filed on behalf of the

defendants, prima facie, it is clear that the defendants have further dealt with the assets disclosed in 2021. As per the fresh disclosure, the defendants have a fixed office in the name of defendant no. 3. The various assets disclosed earlier have been encumbered. As per the note submitted on behalf of the plaintiff, approximately an amount of Rs. 40,97,28,257.77 would be unencumbered. Further, there is no clarity in the disclosure affidavit regarding the defendants' fixed or unencumbered assets. Hence, to secure the claim, it would be necessary that the defendants deposit the amount as claimed in the suit by the plaintiff. The suit claim is purely based on the claims received from defendant no. 1's clients. The particulars of the same are disclosed in the plaint.

14. It is well-established legal principles that the discretion of the court must be exercised to grant a temporary protection when the requirements of the existence of a *prima facie* are made out, necessitating protection of the plaintiff's rights. The need for protection of the plaintiff's rights when compared with or weighed against the need for protection of the defendant's rights or likely infringement of the defendant's rights, the balance of convenience when tilting in

favour of the plaintiff and there is a clear possibility of irreparable injury to the plaintiff, an equitable relief must be granted by exercising the discretion.

15. The plaintiff is a leading stock exchange of India, offering trade services to its members. The pleadings and supporting documents, shows that the action taken against defendant no. 1 is in accordance with the bye-laws and the regulatory framework. In the present case, the plaintiff has prima facie established that defendant no. 1 would be liable to satisfy the plaintiff's claims for settling the claims of defendant no. 1's clients. If the unencumbered assets of the defendants are further dealt with, it is likely to defeat the genuine claims received from defendant no. 1's clients. The claims would be settled by the plaintiff after following the due procedure prescribed under the bye-laws and the standard operating procedures published by the plaintiff based on the directions issued by SEBI. Hence, all the parameters for seeking prayers, as claimed in the application, are satisfied. Based on the defendants' reply, pointing out the errors in the calculations, the plaintiff amended the plaint and corrected the error. The plaintiff has proved a prima facie case based

on the Forensic Audit Report and the Order of expulsion of defendant no. 1. If the defendants further deal with their assets, it would cause irreparable loss to the plaintiff. The defendants have not initiated proceedings to challenge the forensic audit report or the order of expulsion. Thus, the said findings are binding upon them. Therefore, the balance of convenience is in favour of the plaintiff. The plaintiff is therefore entitled to interim orders to secure the claim during the pendency of the suit.

16. The interim application is therefore allowed by passing the following order:

(i) The defendants shall deposit an amount of Rs.1,10,89,95,902.38 in this court within eight weeks from today.

(ii) If the amount directed by this order is not deposited by the defendants, the assets of the defendants, as disclosed in the affidavits dated 8th September 2021 and the additional affidavit of disclosure of the defendants dated 2nd February 2026, shall be attached through the Court Receiver, High Court, Bombay.

(iii) Accordingly, if the amount is not deposited as directed by this court, the Court Receiver, High Court Bombay, is directed to attach the properties as disclosed in the affidavits dated 8th September 2021 and the additional affidavit of disclosure of the defendants dated 2nd February 2026.

(iv) In the event the amounts are not deposited as directed by this order, the plaintiff, on expiry of the time granted by this order, shall submit a copy of this order to the office of the Court Receiver, High Court, Bombay, for further process.

(v) There will be an ad-interim injunction in terms of prayer clause (e) in respect of all the assets described in the disclosure affidavit dated 8th September 2021 and the additional affidavit of disclosure of the defendants dated 2nd February 2026. Prayer clause (e) reads as under :

> *"(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".

(vi) Defendant nos. 2 and 3 shall not leave India without seeking prior permission of this court. Such an application, if filed, should be served upon the learned Advocate for the plaintiff in advance.

(vii) The plaintiff is at liberty to intimate this order to the concerned immigration authorities.

(viii) Interim Application is allowed in the aforesaid terms.

[GAURI GODSE, J.]