

ITEM NO.7

COURT NO.9

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 2538-2540/2020

MANJAY PRAKASH SHAH

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(List on 09.03.2022 as a first case after fresh matters.
IA No. 118644/2021 - ADDITION / DELETION / MODIFICATION
PARTIES)

WITH

C.A. No. 4645-4647/2021 (XVII)

FOR ADDITION / DELETION / MODIFICATION PARTIES ON IA
118567/2021

IA No. 118567/2021 - ADDITION / DELETION / MODIFICATION
PARTIES)

C.A. No. 2555-2556/2020 (XVII)

FOR DELETING THE NAME OF PETITIONER/RESPONDENT ON IA
117398/2021

IA No. 117398/2021 - DELETING THE NAME OF
PETITIONER/RESPONDENT)

C.A. No. 4648-4649/2021 (XVII)

FOR DELETING THE NAME OF PETITIONER/RESPONDENT ON IA
117405/2021

IA No. 117405/2021 - DELETING THE NAME OF
PETITIONER/RESPONDENT)

C.A. No. 1000/2021 (XVII)

FOR ADDITION / DELETION / MODIFICATION PARTIES ON IA
118887/2021

IA No. 118887/2021 - ADDITION / DELETION / MODIFICATION
PARTIES)

Date : 09-03-2022 These matters were called on for
hearing today.

CORAM :

**HON'BLE MR. JUSTICE VINEET SARAN
HON'BLE MR. JUSTICE ANIRUDDHA BOSE**

For Parties:

**Mr. Mukul Rohatgi Sr. Adv.
Mr. KV Vishwanathan Sr. Adv.
Mr Mahesh Agarwal Adv,
Mr Ankur Saigal Adv,
Ms Priyanka Vora Adv,
Mr. Arvind Lakhawat Adv.
Ms Mansi Taneja Adv,
Ms Ayushi Amod Adv.
Mr. M. Thangathurai Adv.
Mr. Rahul Sangwan, Adv.,
Mr. Devansh Srivastava, Adv.
Mr. Johnson Subba, Adv.
Mr. E.C. Agrawala AOR**

**Dr. Singhvi Sr. Adv.
Mr Mahesh Agarwal Adv.
Mr Ankur Saigal Adv.
Ms Priyanka Vora Adv.
Mr. Arvind Lakhawat Adv.
Mr. Amit Bhandari, Adv.
Ms Mansi Taneja Adv.
Ms Ayushi Amod Adv.
Mr. E.C. Agrawala AOR
Ms. Misha Rohatgi, AOR**

**Mr. Guru Krishna Kumar, Sr. Adv.
Ms. Misha Rohatgi Mohta, AOR
Ms. Priyanka Vora, Adv.
Mr. Devansh Srivastava, Adv.
Mr. Nhonson Subba, Adv.**

**Ms. Shagufa Salim, AOR
Mr. Joel, AOR**

**Mr. Shailesh Madiyal, Adv.
Ms. Swarupama Chaturvedi, Adv.
Mr. Rajat Nair, Adv.
Mr. Arvind Kumar Sharma, AOR**

Mrs. Shally Bhasin, AOR

Mr. Abhinav Agrawal, AOR

Ms. Radhika Gautam, AOR

UPON hearing the counsel the Court made the following
O R D E R

These five appeals are filed against the order of NCLAT dated 12th March, 2020 affirming the order of NCLT dated 04.06.2018. By the order under appeal, three nominee directors of the Central Government have been appointed on 16.03.2020 and the three appellants in Civil Appeal Nos. 2538-2540/2020, 4645-4647/2021 and 2555-2556/2020 have been debarred for life from being directors of 63 Moons Technologies Limited, (Appellants in Civil Appeal Nos. 4648-4649/2021) as well as National Spot Exchange Limited (for short 'NSEL') and any other company. The Union of India had filed an application before the erstwhile Company Law Board under Sections 397-398, 301, 408 read with Section 388B of the Companies Act, 1956 (since repealed) alleging oppression and activities prejudicial to the interest of the public by the specified members of the Board of Director of 63 Moons. Earlier, this company was known

as Financial Technologies (India) Ltd. 63 Moons is holding company of NSEL, holding more than 99% equity capital thereof. NSEL had practically collapsed, allegedly on account of various statutory breaches and violation of a number of stipulations that were required to follow. We are apprised by the learned counsel for both the parties in course of hearing that the activities of NSEL at present stand suspended. The case against the appellants was instituted by the Union of India mainly on account of their role as directors in the holding company, which in substance was treated as participation in misdeeds of the subsidiary company.

We have heard Mr. Mukul Rohatgi, Dr. A.M. Singhvi and Mr. Guru Krishna Kumar and Mr. K.V. Vishwanathan, learned senior counsel for the appellants as well as Mr. Shailesh Madiyal, learned counsel for the respondents at some length and have perused the record. At this stage, we are considering the appellant's prayer for interim order only.

The contention of the learned counsel for the appellants is that the parent company 63 Moons and their subsidiary, NSEL were independent juridical entities. It is submitted that there may have been

certain lapses in the functioning and management of the subsidiary company NSEL, for which the parent company 63 Moons Technologies Limited and its directors could not be held liable. It is further contended that in the entire petition filed by the Union of India before the NCLT, there was no allegation against the parent company 63 Moons Technologies Limited and its directors, except for passing reference in paragraph 9.1 of the petition, which was neither pressed nor there was any finding with regard to the said assertions in the orders passed by the Tribunals. It is also contended that the appellants in Civil Appeal Nos. 2538-2540/2020 and Civil Appeal Nos. 4645-4647/2021 were the directors only in 63 Moons and have nothing to do with the affairs of the NSEL regarding which there are allegations of mass mismanagement.

The appellant in Civil Appeal No. 2555-2556/2020 namely, Mr. Jignesh Prakash Shah was the director in both the companies i.e. 63 Moons Technologies Limited as well as its subsidiary NSEL. It is contended that with regard to Mr. Jignesh Prakash Shah, who is the director in both the companies, the punishment awarded of life time ban of being a director in 63 Moons

Technologies Limited, NSEL or any other company is highly disproportionate as he was not involved in the day to day functioning of either of the two companies. The other directors, on whom similar punishment has been awarded, have contended that since there was no allegation of mismanagement of the company of which they were directors i.e., 63 Moons Technologies Limited, the ban so imposed is totally unjustified and highly unreasonable. It is also contended that this case would be governed by the provisions of Section 241(2) of the Companies Act, 2013, which provides for the opinion to be formulated with regard to the affairs of the company, which are being conducted and not which have been conducted. It has thus been submitted in the alternative that since there is no allegation of any misconduct which is being conducted and even assuming, without admitting, that some misconduct had been conducted by the appellants in the past, the same cannot be the basis of action being taken against the appellants in all these cases. In the appeal of 63 Moons Technologies Limited, it has been contended that as there is no averment of mismanagement of the affairs of the parent company, which is an entity independent

of the subsidiary company, appointment of the three government nominees as directed was wholly unwarranted and unreasonable, even if there was any mismanagement found in the case of the subsidiary company- NSEL.

Per contra, learned counsel for the respondents has submitted that NSEL was practically a wholly owned subsidiary of 63 Moons Technologies Limited of which the appellants in Civil Appeal Nos. 2538-2540/2020, 4645-4647/2021 and 2555-2556/2020 were the directors. In such capacity, they would be responsible for the misdeeds or mismanagement of the subsidiary company - NSEL and as such the action taken against the directors as well as the parent company is fully justified. On being questioned as to what action has been taken against the other directors of the subsidiary company NSEL, learned counsel for the respondent could not specifically state about the same.

Prima facie, we are of the opinion that as the two companies are separate entities in the eye of the law and though the Parent company may have substantial holding in the subsidiary company, that factor by itself would not amount to the directors of the parent company governing or controlling the affairs of the

subsidiary company. We say so because no material has been placed before us to substantiate that the affairs of NSEL were governed or controlled by the parent company. Thus, we are of the opinion that the appellants have made out a prima facie case for grant of stay of the orders passed by the NCLT and NCLAT to the extent as stated below:-

(1) The nomination of the three nominee directors of the government vide Order dated 16.03.2020 shall remain stayed.

(2) The Director Identification Number (DIN) of Mr. Manjay Prakash Shah and Mr. Dewang Sunderraj Neralla in Civil Appeal Nos. 2538-2540/2020 and 4645-4647/2021 shall be restored. They shall be entitled and eligible to be directors of all other companies except 63 Moons Technologies Limited and NSEL. The life ban imposed regarding their being director of any other Company is thus stayed.

(3) The question of ban as imposed with regard to Mr. Jignesh Prakash Shah, who was the director in both the companies, shall be considered at the time of final hearing.

List the matter after six weeks for final hearing.

(NISHA KHULBEY)
(SR. P.A.)

(RANJANA SHAILEY)
(BRANCH OFFICER)

(ASHWANI THAKUR)
AR-CUM-PS