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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION No. 530 of 2014
IN
SUIT No. 295 OF 2014.

IL&FS FINANCIAL SERVICES LTD.	]	
A Company incorporated under the	]	
Companies Act, 1956	]	..Applicant
	]	Orig. Plaintiff.

In the matter between :

IL&FS FINANCIAL SERVICES LTD.	]	
A Company incorporated under the	]	
Companies Act, 1956	]	
	]	Orig. Plaintiff.
Metropolitan Stock Exchange of India	]	
Ltd, a Company incorporated under	]	
the Companies Act, 1956 and 1 Anr	]	..Defendants.

Mr. Ashish Kamat a/with Ms. Oendri Neogi and Ms. Anushka Shah I/by AZB & Partners for the Applicant/Plaintiff.

Mr. Akshay Patil a/with Mr. R.P. Shirole I/by Khare Legal Chambers for Defendant No.1.

Mr. Sameer Pandit a/with Ms. Sarrah Khambati I/by Wadia Ghandy & Co. for Defendant No.2.

CORAM : B. P. COLABAWALLA, J.
DATED :- 12th June, 2019.

<u>P.C.</u> :-

1. This Notice of Motion has been filed seeking a temporary injunction restraining and prohibiting defendant Nos. 1 and 2, their respective Directors, Officers and/or Agents from (i) proceeding with defendant No.1's proposed rights issue offering defendant No.1's shares to its existing shareholders at Rs.5/- per share, without seeking the consent and approval of the plaintiff in terms of clause 5.5 (a) of the Share Purchase Agreement, (ii) from issuing any further and/or other shares of defendant No.1 in any manner whatsoever and/or otherwise altering, increasing or decreasing the shareholding of defendant No.1, without seeking the plaintiff's prior consent.

2. These reliefs are sought on the basis of Clause 5.5 (a) of the Share Purchase Agreement (for short "**the SPA**") dated 20th August, 2009 executed between the plaintiff (as the purchaser), defendant No.2 (as the seller) and defendant No.1 (as the Company). By this agreement, the plaintiff agreed to purchase 4,42,00,000 shares of defendant No.1 with a further option to

purchase additional 1,80,00,000 shares of defendant No.1 at a price of Rs.36/- per share.

3. Originally when this Notice of Motion was moved for ad-interim reliefs, this Court by its order dated 14th March, 2014 passed the following order :-

> **"Heard the learned Advocates appearing for the parties and the following order is passed:-**
>
> **(i) The Defendant No.1 shall seek consent from the Plaintiff as required under Clause 5.5(a) of the Share Purchase Agreement (Exhibit A to the Plaint) and the learned Advocate for the Plaintiff states that they shall give consent to the Rights issue as required under Clause 5.5 (a);**
>
> **(ii) It is clarified that this order is passed without prejudice to the rights and contentions of the parties to the suit and that the parties to the Suit shall be entitled to raise all contentions available to them in law at the time of hearing and final disposal of the Notice of Motion;**
>
> **2. Place the Notice of Motion for hearing and final disposal on 28.4.2014; and**
>
> **3. The Plaintiff shall remove office objections, if any, within a period of two weeks from today, failing which, the Suit shall stand dismissed without further reference to this Court."**

4. Now the Notice of Motion has come up for hearing and final disposal.

5. Before I advert to the legal submissions that were canvassed by the plaintiff as well as the defendants, it would be apposite to set out some basic facts. The plaintiff is a company incorporated and registered under the provisions of the Companies Act, 1956 and is in the business of lending, finance and/or investments. Defendant No.1 is a company incorporated and registered under the Companies Act, 1956 and is a recognized stock exchange regulated by the Securities Exchange Board of India ("**SEBI**"). Defendant No.2 is also a company incorporated and registered under the provisions of the Companies Act, 1956 and is a recognized commodity exchange. Defendant No.2 was one of the promoters of defendant No.1 when the SPA dated 20th August, 2009 was executed. Mr. Jignesh Shah and Mrs. Rupal Shah were Promoters and 100% Shareholders of a company called La-Fin Financial Services Pvt. Ltd. (for short "**La-Fin**"). In turn, La-Fin was the Promoter of a company called Financial Technologies (India) Limited (for short "**FTIL**"), a Promoter of defendant No.2. In turn, defendant No.2 and FTIL were the promoters and shareholders of defendant No.1. According to the plaintiff, therefore, Mr. Jignesh Shah, Mrs. Rupal Shah, La-Fin, FTIL and defendant Nos. 1 and 2 were all constituents of the same

Group, namely, the MCX Group.

6. According to the plaintiff, prior to 20th August, 2009, the plaintiff held approximately 5% of the equity share capital of defendant No.2. Pursuant to negotiations by and between the plaintiff and the MCX Group, it was agreed that (i) the plaintiff would exit defendant No.2 and its investment would be sold and transferred to another Financial Institution viz., IFCI Ltd.; (ii) a part of the proceeds realised by the plaintiff from the foregoing transaction, would be used by it to acquire 4,42,00,000 equity shares held by defendant No.2 in defendant No.1 (representing 2.46% of its then equity share capital) at the price of Rs.36/- per share; and (iii) La-Fin would buy-back or cause to be bought—back from the plaintiff, the said 4,42,00,000 shares at an agreed buy-back price within an agreed period.

7. To facilitate this arrangement, the Share Purchase Agreement (for short "**the SPA**") dated 20th August, 2009 was executed between the plaintiff, defendant No.1 and defendant No.2 respectively. The SPA defined the plaintiff as the purchaser, defendant No.1 as the company and defendant No.2 as the seller.

It further recorded that as on that date, defendant No.2 was the owner and holder of 68,85,00,000 shares of defendant No.1 (representing 44.93% of its share capital) out of which the plaintiff had agreed to purchase 4,42,00,000 share of defendant No.1 (representing 2.46% of its share capital) with an option to purchase additional 1,80,00,000 shares of defendant No.1.

8. On the very same date, namely, 20th August, 2009, in addition to the execution of the above SPA, La-Fin also executed a Letter of Undertaking (**"the LOU"**). By this LOU, La-Fin agreed that for the period of one year from the date of investment but not later than 3 years (the agreed period) to buy-back the said 4,42,00,000 shares of defendant No.1 which had been purchased by the plaintiff under the aforesaid SPA. This buy-back was to be at an Agreed Price which was either providing the plaintiff an Internal Rate of Return ("**IRR"**) of 15% on the investment or the price at which the most recent transaction of defendant No.1's share was carried out by the MCX Group, whichever was higher. It is pursuant and in view of the representations given in the SPA and the LOU that the plaintiff purchased from defendant No.2 4,42,00,000 shares of defendant No.1 at price of Rs.36/- per share

aggregating to Rs.159,12,00,000/-.

9. Thereafter, on 20th November, 2009, defendant No.1 issued a notice scheduling an Extra-Ordinary General Meeting ("**EOGM**") of its members on 15th December, 2009 to consider and pass a Special Resolution effectuating a scheme of reduction of defendant no.1's share capital. According to the defendants, this was required in order to be able them to comply with certain regulations passed by SEBI, including the *"Securities Contracts (Regulation) (Manner of Increasing and Maintaining Public Shareholding in Recognised Stock Exchange) Regulations, 2006"* (for short the "**MIMPS Regulations**").

10. The issuance of this notice led to certain differences between the plaintiff and the MCX Group (including the defendants). These differences were finally resolved by defendant No.2 issuing a letter dated 14th December, 2009. According to the plaintiff, defendant No.2 referred to, acknowledged and confirmed the SPA as well as the LOU. Defendant No.2 acknowledged that the reduction of share capital would reduce the plaintiff's shareholding from 4,42,00,000 shares to 2,71,65,000 and since

1,70,35,000 shares of the plaintiff would be extinguished under the Scheme, defendant No.2 acknowledged that warrants in lieu thereof would be issued to the plaintiff. In addition to this, defendant No.2 also gave an unconditional and irrevocable undertaking to cause to be purchased the said 1,70,35,000 warrants at a price which would yield the minimum rate of return of 15% on the plaintiff's entry price of Rs.36/- per share to be calculated from 21st August, 2009. According to the plaintiff, the issuance of this letter dated 14th December, 2009 amounted in clear terms as an affirmation and an acknowledgement of the plaintiff's rights. Considering this letter and in view of the fact that the plaintiff's interests were fully protected, the plaintiff voted in favour of the Scheme for reduction in the share capital of defendant No.1 in the EOGM dated 15th December, 2009. This Scheme (of reduction of share capital) was thereafter approved by this Court on 12th March, 2010 and as promised, on 26th March, 2010, defendant No.2 purchased the said 1,70,35,000 warrants issued to the plaintiff.

11. Thereafter, the defendants were embroiled in disputes with SEBI for alleged violations of the MIMPS Regulations. By

virtue of these disputes with SEBI, on 23rd August, 2010 defendant No.1 issued a communication to the plaintiff stating that FTIL and defendant No.2 had purportedly passed a resolution not to honour the buy-back of equity shares or honour any other arrangement in respect of equity shares of defendant No.1, which would result in violation of the MIMPS Regulations. In addition, defendant No.1 (on behalf of La-Fin), according to the plaintiff, wrongfully and falsely alleged that the obligations under the LOU (issued by La-Fin) had become infructuous and superseded upon the sanction of the Scheme of the reduction of share capital of defendant No.1.

12. This was obviously disputed by the plaintiff vide its letter dated 10th September, 2010. The plaintiff asserted that both the SPA and the LOU continued to remain valid, binding and subsisting and the defendants and La-Fin were obliged to comply with their obligations thereunder.

13. Be that as it may, in view of the on-going disputes with SEBI, the defendants approached this Court by filing Writ Petition No. 213 of 2011. This writ petition was filed by defendant No.1 challenging SEBI's rejection of its application to undertake

business as a stock exchange other than for the currency derivatives segment. Defendant No.2 herein was also a party – respondent to the said writ petition. I will refer to the averments in this petition as well as the detailed judgment passed therein, a little later.

14. As mentioned earlier, under the LOU executed by La-Fin, the buy-back period of the entire shares purchased by the plaintiff from defendant No.2 was to expire on 19th August, 2012. Hence, on 3rd August, 2012 the plaintiff addressed a letter to La-Fin exercising its option and called upon La-Fin to buy back the entire shareholding (of 2,71,65,000 shares) held by the plaintiff in defendant no.1 and fulfill their obligations under the LOU. This obligation (of buy back of shares) was sought to be repudiated by La-Fin vide their letter dated 16th August, 2012. According to La-Fin, the *Securities Contracts Regulations (Stock Exchange and Clearing Corporations) Regulations, 2012* ("SECC Regulations") prevented it from fulfilling its obligations under the LOU. It is in these circumstances that the plaintiff was constrained to file Suit No.449 of 2013 against La-Fin to enforce its rights.

15. It appears that thereafter the Management of defendant No. 1 & 2 changed between the period of September, 2013 to December, 2013. In these circumstances, on 3rd January, 2014 defendant No.1 issued a communication to the plaintiff stating that there was a change in control of the Management of defendant no.1 and that its Board of Directors had accorded an approval for a proposed rights issue and was holding a meeting on 13th January, 2014 to seek the concurrence of the institutional shareholders. According to the plaintiff, since this proposed rights issue was without its consent and in violation of the terms of the SPA, the plaintiff objected to the same vide its letter dated 22nd January, 2014. According to the plaintiff, this proposed rights issue (i) fell foul of the undertaking recorded by this Court in its order dated 18th June, 2013; and (ii) was in blatant violation of the terms of the SPA wherein defendant Nos. 1 and 2 had covenanted that any increase/expansion in the shareholding of defendant No.1 would be with the prior written consent of the plaintiff.

16. According to the plaintiff, thereafter several meetings were held, and in the meeting held on 27th January, 2014, the representatives of defendant No.1 once again sought the plaintiff's

approval on the proposed rights issue and stated that they would honour the SPA and abide by clause 5.5 thereof. It is in view of the meetings and discussions between the plaintiff and the defendants, that on 11th February, 2014 the plaintiff addressed an email to Mr. Sarat Chandran (Legal Head of defendant No.1) making a reference to their previous discussions and attaching two letters that were required to be issued by defendant Nos.1 and 2 respectively asking for the plaintiff's consent.

17. According to the plaintiff, instead of seeking the plaintiff's consent, on 17th February, 2014, the plaintiff was shocked to receive a letter from defendant No.1 repudiating its obligations under Clause 5.5(a) of the SPA and taking a complete U-turn on the understanding between the parties. Defendant No.1 sought to repudiate its obligation under Clause 5.5(a) by questioning the legality and validity of the SPA as well as Clause 5.5(a) thereof. Thereafter, a meeting was held between the representatives of defendant No.1 as well as the plaintiff which yielded no result. It is in these circumstances, that the present suit was filed in this Court on 3rd March, 2014.

18. In this factual backdrop, Mr. Kamat, the learned Counsel appearing on behalf of the plaintiff submitted that the conduct of the defendants and especially looking at all the facts in their totality, is totally reprehensible. Mr. Kamat placed heavy reliance on the SPA dated 20th August, 2009 and submitted that the plaintiff had purchased originally 4,42,00,000 shares (and which were reduced to 2,71,65,000) on a clear understanding that these shares would be bought-back by La-Fin as per its LOU within the agreed period and at the agreed price. It was further agreed between the parties that defendant No.2 and defendant No.1, on and from the Target Completion Date, would not increase/expand the shareholding of defendant No.1, without the prior consent of the plaintiff. In this regard, he placed heavy reliance on Clause 5.5 of the SPA and which deals with the Seller and Purchaser's covenants. Mr. Kamat submitted that on a plain reading of Clause 5.5 (a), it was clear that defendant No.2 and defendant No.1 had covenanted with the plaintiff that the shareholding of defendant No.1, on and from the Target Completion Date, shall be as set-forth in Schedule-I, unless expanded/increased by the Company (defendant No.1) with the prior written consent of the plaintiff. The Clause further stipulated that this consent would not be

unreasonably withheld or denied or delayed by the plaintiff. Mr. Kamat submitted that when defendant No.1 sought to come out with a right issue in January, 2014 the plaintiff objected to the same as according to the plaintiff their written consent was not obtained. When this suit came to be filed, at the ad-interim stage, this Court directed defendant No.1 to obtain the consent of the plaintiff and in turn the plaintiff was directed to give its consent, and that is how the rights issue fructified. Mr. Kamat submitted that this was done clearly in view of Clause 5.5 (a) of the SPA. This being the case, Mr. Kamat submitted that even in the future, defendant No.1 and in terms of Clause 5.5(a) ought not to be allowed to increase/expand its share capital without the prior written consent of the plaintiff, which he submits would not be unreasonably withheld as mentioned in Clause 5.5 (a). He submitted that looking at the past conduct of the defendants a strong prima facie case has been made out for granting this relief in favour of the plaintiff injuncting the defendants in any manner whatsoever from increasing/expanding the shareholding of defendant No.1 without seeking the plaintiff's prior consent. In these circumstances, Mr. Kamat submitted that the Notice of Motion be made absolute in terms of prayer Clause (a) (ii) thereof.

19. On the other hand, the learned Advocate appearing on behalf of defendant Nos. 1 and 2 opposed the Notice of Motion and the grant of any reliefs on the following five grounds and which are without prejudice to one another:-

(i) that the SPA was signed by one Mr. V Hariharan who was never authorized by the Board of Directors of defendant No.1 to enter into and execute the said SPA. This being the position, the SPA was wholly invalid and was unenforceable against defendant No.1;

(ii) that clause 5.5 (a) as contained in the SPA was a one-time transaction referring to a particular shareholding and once that status was changed with the consent of the plaintiff, defendant No.1 did not require to once again to obtain the consent of the plaintiff for any further increase/expansion of its share capital. In other words, the consent was required only at the first instance and not thereafter. Without prejudice to the aforesaid argument, it was claimed that in any event considering that La-Fin was to purchase the shareholding of the plaintiff by 19th August, 2012 pursuant to its LOU, and the fact that the plaintiff had offered its shares to La-Fin and has also filed a suit for enforcement of its rights, Clause 5.5(a) could not operate beyond 19th August, 2012;

(iii) that Clause 5.5(a) is contrary to the Articles of Association of the 1st defendant in as much as the Articles of Association do not restrict or prohibit defendant No.1 in any manner whatsoever from increasing/expanding its share capital;

(iv) that the suit was ex-facie barred by the Law of Limitation; and

(v) In addition to the aforesaid arguments, defendant No.2 submitted that the SPA was for a limited period at-least in so far as defendant No.2 was concerned. Defendant No.2's submission was that this is a Share Purchase Agreement unlike a Share Holders Agreement and therefore once the shares were purchased and the period for buying the additional shares also had expired, the covenant as contained in Clause 5.5 (a) could not be binding on defendant No.2. In addition to the aforesaid argument, defendant No.2 also submitted that in any event, today it did not hold a substantial interest in defendant No.1 and therefore it would be futile to grant any injunction against defendant No.2 because it was not in a position to direct defendant No.1 to increase/expand its share capital or otherwise. As of today, according to defendant No.2 it held only around 5% of the share capital of defendant No.1.

20. On the aforesaid five grounds and on which I shall

elaborate a little later, it is submitted by the defendants that there is no merit in the Notice of Motion and the same ought to be dismissed with costs.

21. I have heard the learned Counsel for the parties at length and have perused the papers and proceedings in the Suit as well as in the Notice of Motion. The only controversy in the present Notice of Motion revolves around clause 5.5 (a) of the SPA and which reads thus:

> "**5.5. Seller and Purchaser Covenants.**
>
> (a) The Seller and the Company covenant to the Purchaser that the shareholding of the Company on and from the Target Completion Date shall be as set forth in Schedule I, <u>unless expanded/increased by the Company with the prior written consent of the Purchaser</u>, which consent shall not be unreasonably withheld or delayed or denied by the Purchaser.**"**
>
> (emphasis supplied).

22. As can be seen from the aforesaid Clause, the Seller (defendant No.2) and the Company (defendant No.1) covenant to the Purchaser (the plaintiff) that the shareholding of the Company (defendant No.1) on and from the Target Completion Date shall be as set-forth in Schedule I unless expanded/increased by the Company (defendant No.1) with the prior written consent of the

plaintiff, which consent shall not be unreasonably withheld. The Target Completion Date has been defined in Clause 1.1 (h) to mean 30th September, 2009 or such other date as may be mutually agreed to in writing between the parties.

23. I must also mention that there are two Schedules annexed to this SPA, namely, Schedule-I and Schedule-II. Schedule-I shows the shareholding of defendant No.1 on the Execution Date and Schedule-II shows the shareholding of the Company as on the Completion Date. Schedule-I shows the total shareholding of the Company as 1,532,500,000 shares whereas Schedule-II shows the shareholding of the Company (as on the Completion Date) as 1,800,000,000 shares. For the sake of completeness, I may also refer to Clause 4.1 which refers to a Completion Date and states that the completion shall take place at Mumbai within three business days after the Conditions Precedent have been fulfilled or waived but in any event prior to the Target Completion Date, or at such other time and place as the parties may agree. In turn, the Conditions Precedent have been set out in Clause 3.

24. Having perused the SPA, I shall now deal with the contentions raised by the defendants. The first contention raised by the defendants and especially defendant No.1, was that the SPA was signed by a person (Mr. V. Hariharan) who did not have any authority to do so. Mr. Hariharan was not authorized to execute the SPA and therefore the same was invalid and unenforceable against defendant No.1, was the submission. I find absolutely no merit in this contention whatsoever. As mentioned earlier, defendant No.1, defendant No.2, La-Fin, Mr. Jignesh Shah and Mrs. Rupal Shah were all part of MCX Group. None of them and who were in Management at the time when the SPA was entered into, have even once mentioned or suggested that Mr. V. Hariharan was not authorized on behalf of defendant No.1 to execute the SPA. This apart, it is quite clear that the SPA has been affirmed, time and time again, by defendant No.1. This is evident from the averments that have been made by defendant No.1 in W.P. No.213/2011. In that Writ Petition, defendant No.1 herein (the petitioner therein) has categorically stated that the two Promoters of defendant No.1 sold and transferred equity shares to two reputed Financial Institutions, namely, IFCI and the plaintiff in July and August, 2009. In line with the customary practice

surrounding such Company, these institutions (including the plaintiff) demanded some kind of price protection and exit arrangement. Accordingly, the promoters, after negotiations with the said institutions, gave certain price protection and exit option to them. As far as the plaintiff is concerned, defendant No.2 offered for sale a part of its equity shareholding in defendant No.1 to the plaintiff through the SPA dated 20th August, 2009. In turn, La-Fin (and who was one of the Promoters of FTIL) issued a LOU providing a standard exit option to the plaintiff. It is also averred that the above investments (with IFCI and the plaintiff) were duly disclosed to SEBI by defendant No.1's quarterly report filed under Regulation 11 of the MIMPS Regulations for the quarter ending 30th September, 2009. The same was also disclosed in detail to SEBI during the inspection carried out at defendant No.1's (the petitioners') premises and which was duly recorded by Inspection Team of SEBI in their inspection report dated 16th April, 2010. What is quite clear on reading the averments in this writ petition is that defendant No.1 relied upon and affirmed the SPA that was entered into by it with the plaintiff. Never once, until the the letter of repudiation written by defendant No.1 (dated 17th February, 2014), did defendant No.1 take a stand or contend that the SPA was unenforceable in view of the fact that the Board of Directors of defendant No.1 had never authorized the execution of the SPA. In fact, in the letter dated 14th January, 2014 written by defendant No.1 to the plaintiff, they in fact stated that after taking into account the views expressed in the shareholders meeting, the Board of Directors have decided to come out with a rights issue on 1:1 basis at a price of Rs. 10 per share and called upon the plaintiff to kindly consider the offer favourably and process the same for an early investment decision by the plaintiff. What is clear is that even as on 14th January, 2014 never once did defendant No.1 raise the contention that its Board had never authorized Mr. V. Hariharan to execute the SPA. This contention is raised for the first time in the letter of repudiation dated 17th February, 2014. Looking at the correspondence on record, I find that this argument of defendant No.1 cannot be sustained from any angle. When one looks at the averments in the writ petition as well as order passed therein, at least, prima facie it is clear that the SPA has been ratified by defendant No. 1 and therefore I do not find that defendant No.1 is correct in its submission, at least prima facie, that the SPA is invalid or unenforceable against defendant No.1 as it was executed by a person who was not authorized to do so.

Prima facie, I do not find any merit in this argument and hence would have to be rejected.

25. The next contention raised by the defendants was that the SPA was a one-time transaction, namely, that once the plaintiff had given its consent for increasing the share capital, it could not insist upon this condition being imposed on defendant No.1 for all times to come or at least every time defendant No.1 sought to increase/expand its capital. To my mind, at least prima facie this argument runs contrary to the plain and unambiguous language of clause 5.5(a). There is nothing in clause 5.5(a) which even remotely seems to suggest that once consent for expansion/increase of the share capital of the Company (defendant No.1) is given at one time, it would, thereafter, entitle defendant no.1 to expand/increase in its share capital without the prior consent of the plaintiff. In fact, on a reading of clause 5.5 (a) it is quite clear that every time defendant No.1 wants to increase its share capital, it would have to take the consent of the plaintiff, which consent would not be unreasonably withheld. Not only is this the plain language of clause 5.5(a) but this would also be the correct interpretation in view of the fact that this covenant was

entered into in order to safeguard the plaintiff's shareholding in defendant No.1 and to ensure that their shareholding is not diluted without their consent. I therefore do not find any merit in the contention of defendant No.1 that merely because the plaintiff consented in the past for increasing the share capital of the 1st defendant, the same relieved defendant No.1 from obtaining the plaintiff's consent for all future increase/expansion of its share capital. This contention is also therefore rejected.

26. As far as alternative argument, namely, that Clause 5.5 (a) could not survive beyond 19th August, 2012 is concerned, I find this argument also to be without any substance. It is not in dispute that La-Fin had undertaken to purchase the shareholding of the plaintiff in the 1st defendant Company. It is also not in dispute that La-Fin has reneged on this undertaking and which is the subject matter of Suit No. 449/2013 and which is pending in this Court. What therefore transpires is that the plaintiff even today continues to be a shareholder of defendant No.1. If it continues to be a shareholder, it certainly can insist upon enforcement of the covenant which is contained in clause 5.5 (a) of the SPA. Merely because it has filed a suit against La-Fin seeking specific

performance of the LOU would make no difference as far as this Notice of Motion is concerned. Until the litigation between La-Fin and the plaintiff comes to an end and depending upon the result thereof, clause 5.5 (a) of the SPA would continue to bind defendant No.1. Every time it seeks to increase / expand its share capital it would require the consent of the plaintiff. This being the position, I am not inclined to agree with the contention of the 1st defendant that clause 5.5(a) operates only until 19th August, 2012 and not thereafter.

27. The next contention raised on behalf of defendant No.1 is that Clause 5.5 (a) is contrary to its Articles of Association and therefore not binding on defendant No.1. This argument is canvassed only to be rejected. Nothing has been brought to my notice in the Articles of Association which prohibits the 1st defendant either from entering into the SPA or into a covenant as contained in Clause 5.5(a) of the said SPA. Merely because the Articles do not put any restriction on increasing its share capital, does not, without anything more, disentitle the 1st defendant to enter into a covenant in the nature it has done as set out in Clause 5.5 (a). This being the position, I find that even this contention

holds no merit and is hereby rejected.

28. The next contention raised on behalf of the defendants was that the suit was barred by Law of Limitation. In this regard, the learned Counsel appearing on behalf of defendant No.1 submitted that a perusal of the plaint indicates that the plaintiff is seeking specific performance of the SPA and more particularly Clause 5.5(a) thereof. The learned counsel submitted that a perusal of Paragraphs 11, 16 and 41 (b) of the plaint indicate that it is the plaintiff's own case that defendant No.1 acted in disregard to the provisions of the SPA, particularly Clause 5.5 (a) thereof by (i) allotting shares to various Banks and Financial Institutions between August, 2009 to November, 2009, (ii) effecting a Scheme of Reduction of share capital of defendant No.1 in the year 2009-10; (iii) addressing a letter dated 23rd August, 2010; and (iv) consistently breaching and/or violating the terms of the SPA. According to the learned Counsel therefore, the cause of action, if any, for breach of the SPA arose in the year 2009 and consequently the suit is barred by the Law of Limitation. I find this argument wholly without any merit. On a plain reading of Clause 5.5 (a) it is quite clear that it is a continuous obligation of defendant No.1 to

obtain the consent of the plaintiff before it chooses to increase/expand its share capital. Of course, the Clause also provides that this consent shall not be unreasonably withheld. This obligation would apply every single time the 1st defendant chooses to increase its share capital. Even if I was to assume for the sake of argument that the 1st defendant had breached the covenants given in Clause 5.5(a) in the year 2009 and the same was to the notice of the plaintiff (which the plaintiff vehemently disputes) even then, it would make no difference. What the plaintiff seeks is specific performance of the SPA dated 20th August, 2009. This SPA was repudiated for the first time only on 17th February, 2014. The suit for specific performance has been lodged on 3rd March, 2014. This being the position, at least prima facie, and especially considering the averments in the plaint and read as a whole, I do not think that the claim in the present suit is barred by the Law of Limitation. I may hasten to add that these are only prima facie findings and the same will not bind the Court as and when the suit goes to trial.

29. Lastly, in addition to the aforesaid contentions, defendant No.2 submitted that the SPA was for a limited period, at

least in so far as defendant No.2 was concerned. This submission was made on the basis that in the present case specific performance was sought of a Share Purchase agreement (SPA) unlike a Share Holders Agreement (SHA). Once the shares were purchased under the SPA and the period for buying the additional shares had also expired, the covenant contained in Clause 5.5(a) could not be binding on defendant No.2. I find this argument also wholly without any merit. As discussed earlier, Clause 5.5(a) was a covenant that was entered into by defendant Nos. 1 and 2 with the plaintiff to ensure that the plaintiff's shareholding in defendant No.1 is safeguarded and that it is not diluted without the consent of the plaintiff. This being a continuing obligation, I am unable to agree with the learned Advocate appearing for defendant No.2 that once their shares had been sold under the SPA, their obligations thereunder were complied with and Clause 5.5 (a) was given a complete go-bye. If I was to hold this, it would effectively render Clause 5.5(a) of the SPA as superfluous and nugatory. Clause 5.5(a) in no unambiguous terms clearly states that defendant No.2 as well as defendant No.1 covenanted with the plaintiff that the shareholding of defendant No.1 on and from the Target Completion Date, shall be as set forth in Schedule-I, unless expanded/increased by defendant No.1 with the prior written consent of the plaintiff. On a plain reading of Clause 5.5(a) it is clear that this was a continuing obligation on defendant Nos. 1 and 2 and did not in any way come to an end the moment the plaintiff purchased the shares of defendant No.1 from defendant No.2. This argument therefore will have to be rejected.

30. Faced with this situation, the learned Advocate appearing on behalf of defendant No.2 submitted that in any event today it did not hold a substantial interest in defendant No.1 and therefore it would be futile to grant any injunction against defendant No.2 because it was not in a position either to direct defendant No.1 to increase / expand its share capital or otherwise. According to defendant No.2, it held only 5% of the share capital of defendant No.1 and therefore was not in a position to influence any decision taken by defendant No.1 regarding the increase/expansion of its share capital. Even this argument is of no assistance to defendant No.2. Firstly, at the time when the SPA was entered into, it is not in dispute that defendant No.2 and defendant No.1 along with La-Fin, FTIL, Mr. Jignesh Shah and Mrs. Rupal Shah were all part of the same Group, namely, the

MCX-Group. At the time when the SPA was entered into, defendant No.2 certainly held a substantial shareholding in defendant No.1. It is for this very purpose that Clause 5.5(a) stipulates that defendant No.2 and defendant No.1 covenant to the plaintiff that the shareholding of defendant No.1, on and from the Target Completion Date, shall be as set forth in Schedule I, unless expanded/increased by defendant No.1 with the prior written consent of the plaintiff. In other words, and to put it simply, the share capital of defendant No.1 was not be increased either at its own insistence or at the insistence of defendant No.2 without the prior written consent of the plaintiff. Merely because the shareholding of defendant No.2 in defendant No.1 is now reduced to 5% will make no difference. The covenant as set out in Clause 5.5 (a) would therefore equally apply to defendant No.2 as it applies to defendant No.1. In fact, if what defendant No.2 contends is correct, then, in any event, granting the injunction against defendant No.2 would not in any way prejudice it considering that in its own submissions it is unable to influence any decision taken by defendant No.1. Therefore, looking at it from any angle, I do not think that the learned Counsel for defendant No.2 is correct in submitting that no injunction ought to be granted against defendant No.2.

31. In these circumstances, I find that the plaintiff has made out a case for interim reliefs. It is therefore ordered that defendant Nos. 1 and 2, their respective Directors, Officers and/or Agents shall be restrained either directly or indirectly from issuing any further shares of defendant No.1 in any manner whatsoever without seeking the plaintiff's prior written consent in accordance with and/or in terms of Clause 5.5(a) of the SPA dated 20th August, 2009. It is clarified that if, in the opinion of the defendants, the plaintiff unreasonably withholds it consent, the defendants shall be at liberty to approach this court for appropriate orders. The Notice of Motion is disposed of in the aforesaid terms. There shall be no order as to costs.

(B.P. COLABAWALLA, J.)