

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5665/2021 & CM APPL 17694/2021**

Date of Decision: 13.03.2023

IN THE MATTER OF:

SURBHI SINGHAL @ MITTAL
W/O SH. RAHUL SINGHAL
R/O D-308, GROUND FLOOR
NIRMAN VIHAR, DELHI-110092 PETITIONER NO. 1

SANJAY PANDE
S/O LATE HARISH CHANDRA PANDE
R/O B-502, STELLER KINGS COURT,
SECTOR 50, NOIDA-201301 (U.P.) PETITIONER NO. 2

MRS. RAJ KUMARI GOEL
W/O LATE SHRI ANIL KUMAR GOEL
7, STATE BANK COLONY,
GARH ROAD,
MEERUT (UP)-250001 PETITIONER NO. 3

Through: Mr. G.S. Chaturvedi, Advocate

Versus

UNION OF INDIA
THROUGH SECRETARY
DEPT. OF ECONOMICS AFFAIRS,
MINISTRY OF FINANCE,
NORTH BLOCK, NEW DELHI-110001 RESPONDENT NO. 1

SECURITIES AND EXCHANGE BOARD OF INDIA
THROUGH ITS CHAIRMAN
SEBI BHAWAN PLOT No. 'C'-4A, G BLOCK
BANDRA KURLA COMPLEX, BANDRA(EAST)
MUMBAI-400051 RESPONDENT NO. 2

ALSO AT:

SECURITIES AND EXCHANGE BOARD OF INDIA
BANK OF BARODA BUILDING, SANSAD MARG
NEW DELHI-110001.

NATIONAL STOCK EXCHANGE
JEEVAN VIHAR BUILDING, 4TH FLOOR, ROAD AREA, 3
SANSAD MARG, JANPATH, CONNAUGHT PLACE,
NEW DELHI - 110001 RESPONDENT NO. 3

ALSO AT:
NATIONAL STOCK EXCHANGE OF INDIA LTD.
EXCHANGE PLAZA, PLOT NO. C/1, G BLOCK,
BANDRA-KURLA COMPLEX,
BANDRA(E), MUMBAI-400051

BOMBAY STOCK EXCHANGE
PHIROZE JEEJEEBHOY TOWERS
DALAL STREET, MUMBAI, MAHARASHTRA- 400001
..... RESPONDENT NO. 4

NATIONAL SECURITIES DEPOSITORY LTD.
UNIT NOS.601, 603, 604, SIXTH FLOOR, TOWER A
NAURANG HOUSE, K.G. MARG, NEW DELHI- 110001
..... RESPONDENT NO. 5

CENTRAL DEPOSITORY SERVICES (INDIA) LTD.
MARATHON FUTUREX, A WING, 25TH FLOOR
M.M. JOSHI MARG, LOWER PAREL
MUMBAI - 400013 RESPONDENT NO. 6

ENFORCEMENT DIRECTORATE
THROUGH ITS DIRECTOR
LOKNAYAK BHAWAN, KHAN MARKET, NEW DELHI - 110002
..... RESPONDENT NO. 7

SERIOUS FRAUD INVESTIGATION OFFICE
THROUGH ITS DIRECTOR
2ND FLOOR, PARYAVARAN BHAWAN, CGO COMPLEX

LODI ROAD, NEW DELHI - 110003 RESPONDENT NO. 8

KARVY STOCK BROKING LTD.
THROUGH ITS MANAGING DIRECTOR
HAVING ITS REGISTERED OFFICE AT
46, AVENUE 4 BANJARA HILLS,
HYDERABAD

..... RESPONDENT NO. 9

ALSO AT:

KARVY MILLENNIUM, PLOT NO.31, 2ND FLOOR, FINANCIAL
DISTRICT, GACHIBOWLI
HYDERABAD - 560032

Through: Mr. Ravi Prakash, CGSC alongwith Mr.
Farmon Ali, Mr. Varun Aggarwal and Ms. Usha,
Advocates for respondent No. 1

Ms. Udit Singh, Advocate for respondent No. 2

Mr. Neeraj Malhotra, Senior Advocate alongwith
Mr. Ishan Bisht and Mr. Nimish Kumar, Advocates
for respondent No. 3

Ms. Surekha Raman and Mr. Pratap Venugopal,
Advocates for Respondent No. 4

Mr. Sidharth Sethi and Mr. Avinash Das,
Advocates for respondent No. 5

Ms. Aayushi Sharma and Ms. Sukanya Joshi,
Advocates for Respondent No. 6

Mr. Anurag Ahluwalia, CGSC for respondent No.7

Mr. Mahfooz A. Nazki and Ms. Rajeswari
Mukherjee, Advocates for Respondent No. 9

AND

+

W.P.(C) 14371/2021

RANI SAWHNEY

R/O E-32, GREATER KAILASH ENCLAVE-1,
NEW DELHI-110048

....PETITIONER NO. 1

NARENDRA KUMAR SAWHNEY

R/O E-32, GREATER KAILASH ENCLAVE-1

NEW DELHI- 110048

....PETITIONER NO. 2

Through: Mr. Arjun Prasad Sinha and Mr. Saurabh
Kumar, Advocates

Versus

UNION OF INDIA
THROUGH SECRETARY
DEPT. OF ECONOMIC AFFAIRS, MINISTRY OF FINANCE
NORTH BLOCK, NEW DELHI-1 RESPONDENT NO. 1

SECURITIES EXCHANGE BOARD OF INDIA,
THROUGH ITS CHAIRMAN,
SEBI BHAWAN, PLOT NO. 'C-4A', G/BLOCK,
BANDRA KURLA COMPLEX, BANDRA (EAST),
MUMBAI-400051 RESPONDENT NO. 2

ALSO AT:
SECURITIES EXCHANGE BOARD OF INDIA,
BANK OF BARODA BUILDING, SANSAD MARG,
NEW DELHI-110001.

NATIONAL STOCK EXCHANGE (NSE),
JEEVAN VIHAR BUILDING, 4TH FLOOR, ROAD AREA,
3, SANSAD MARG, JANPATH, CONAUGHT PLACE,
NEW DELHI-110001 RESPONDENT NO. 3

ALSO AT:
SECURITIES EXCHANGE BOARD OF INDIA,
EXCHANGE PLAZA, PLOT NO.C/1, G/BLOCK
BANDRA-KURLA COMPLEX,
BANDRA (E), MUMBAI-400051

BOMBAY STOCK EXCHANGE (BSE),
PHIROZE JEELEEBHOY TOWER,
DALAL STREET, MUMBAI, MAHARASHTRA-400001
..... RESPONDENT NO. 4

NATIONAL SECURITIES DEPOSITORY LTD. (NSDL),

UNIT NOS.601, 603, 604, 6th FLOOR, TOWER 'A',
NAURANG HOUSE, K.G. MARG, NEW DELHI-110001

..... RESPONDENT NO. 5

CENTRAL DEPOSITORY SERVICES (INDIA) LTD. (CDSIL),
MARATHON FUTURES, 'A' WING, 25TH FLOOR, MUMBAI-
400013

..... RESPONDENT NO. 6

ENFORCEMENT DIRECTORATE (ED),
THROUGH ITS DIRECTOR,
LOKNAYAK BHAWAN, KHAN MARKET,
NEW DELHI-110003

..... RESPONDENT NO. 7

SERIOUS FRAUD INVESTIGATION OFFICE (SFIO),
THROUGH ITS DIRECTOR,
2ND FLOOR, PARYAVARAN BHAVAN, CGO COMPLEX,
LODHI ROAD, NEW DELHI-110003. RESPONDENT NO. 8

KARVY STOCK BROKING LTD. (KARVY).
THROUGH ITS MANAGING,
HAVING ITS REGISTERED OFFICE AT:
46, AVENUE 4 BANJARA HILLS, HYDERABAD.

..... RESPONDENT NO. 9

ALSO AT:

KARVY MILLENNIUM, PLOT NO.31, 2ND FLOOR,
FINANCIAL DISTRICT, GACHIBOWLI,
HYDERABAD-560032

Through: Mr. Anurag Ahluwalia, CGSC for
respondent Nos. 1 and 8

Ms. Ekta Choudhary, Advocate for respondent
No.2

Mr. Neeraj Malhotra, Senior Advocate alongwith
Mr. Ishan Bisht and Mr. Nimish Kumar, Advocates
for respondent No. 3

Ms. Surekha Raman and Mr. Pratap Venugopal,
Advocates for Respondent No. 4

Mr. Sidharth Sethi and Mr. Avinash Das,
Advocates for respondent No. 5

Ms. Aayushi Sharma and Ms. Sukanya Joshi,
Advocates for Respondent No. 6

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The present petitions have been filed under Article 226 of the Constitution of India on behalf of the petitioners seeking the following reliefs:-

“(a) issue writ of mandamus or any other writ, order or direction for preventing all Respondents from disposing off the Property in the shape of Securities and restoring the same to the Petitioners and other small investors;

(b) issue writ of mandamus or any other writ, order or direction for constituting the Committee with its mandate as suggested in Paras 24 and 21 of the present writ petitions respectively and may kindly monitor the functioning of the Committee and the Special Investigation Team as suggested in Paras 24 & 21 as above;

(c) the cost of the present writ petition may kindly be also awarded in favour of the Petitioners and against the Respondents;

(d) pass any other or further order(s) as this Hon'ble Court deems and proper under the facts and circumstances and in the interest of justice”.

2. The issue involved in both the petitions is common, therefore, the same are being decided by this common order.

3. For the sake of clarity, the facts are taken from the petition being W.P.(C) 5665/2021.

4. The brief facts of the case are that respondent No. 9-*Karvy Stock Broking Ltd.*, (hereinafter referred to as '*Karvy*') was registered as a stock broker under the provisions of Security and Exchange Board of India Act, 1992 (hereinafter referred to as '*SEBI Act, 1992*'). *Karvy* was also registered with other stock exchanges for instance, the National Stock Exchange (NSE) and Bombay Stock Exchange (BSE) etc. *Karvy* then allegedly committed fraud with respect to thousands of investors.

5. Learned counsel appearing on behalf of the petitioners, therefore, pray that this court in exercise of power under Article 226 of the Constitution of India should constitute appropriate committee of experts to examine the details of the manner in which the innocent investors have been fraudulently cheated and to take appropriate action not only against respondent No. 9/ *Karvy* but to ensure that the innocent investors should get their refunds. They further submit that this entire scam/irregularity has been committed under the nose of regulatory authorities such as the BSE, NSE and SEBI.

6. Learned counsel for the petitioners have placed reliance on a decision of the Hon'ble Supreme Court in the case of *Indian Bank v. Godhara Nagrik Cooperative Credit Society Limited and Another*¹ and a recent decision of the Hon'ble Supreme Court in the case of *Vishal Tiwari v. Union of India (UOI) and Ors.*² and they submit that under the facts of those cases the Hon'ble Supreme Court has either approved the order of constitution of appropriate committee or itself has directed for the same in the larger public interest. He further submits that if the facts of the present case are examined,

¹ (2008) 12 SCC 541

² MANU/SC/0194/2023

the same would depict a larger conspiracy and the magnitude is higher than, in those cases, which have been dealt with by the Hon'ble Supreme Court in the case of *Vishal Tiwari (supra)* and *Indian Bank (supra)*.

7. Learned senior counsel appearing on behalf of respondent No. 3-NSE and learned counsel appearing on behalf of respondent No. 4-BSE strongly opposed the present petitions.

8. It is submitted on behalf of respondent No. 3-NSE that under the applicable Bye-Laws, on receipt of the complaint, the NSE is to examine the same and if need arises, NSE has to declare the concerned stock broker as a defaulter. It is further submitted that if the concerned stock broker is declared as a defaulter, the NSE can further take a decision to expel and then to constitute a defaulter committee. It is, therefore, submitted that in the present cases after respondent No. 9-Karvy was declared as a defaulter, the NSE expelled it to undertake any business with respect to securities etc. and defaulter committee was also constituted. He, therefore, submits that the claim of the investors was considered by the defaulter committee and, if at all any of the investors has any grievance, the remedy would lie under Section 23L of the Securities Contract Regulation Act, 1956.

9. In rejoinder submission, learned counsel appearing on behalf of the petitioners submits that the decision so taken with respect to declaration of respondent No. 9-Karvy as a defaulter or to expel it, is with respect to investor protection fund and certain amount came to be refunded. However, the point which has been raised in the instant petition is of utmost importance from perspective of larger public interest. He, therefore, submits that if this court deems appropriate, an appropriate committee may be

constituted to also consider the stand taken by NSE/BSE, if need arises, and this court can issue further directions regarding the same.

10. Learned counsel appearing on behalf of the petitioners in the petition being W.P.(C) 14371/2021, however, submits that the dispute raised by the petitioners in this petition is not covered under Securities Contract Regulation Act, 1956, therefore, the petitioner does not have any forum to redress his grievances. He, therefore, submits that the petition being W.P.(C) 14371/2021 is maintainable.

11. It be first noted that learned counsel appearing on behalf of respondent No.4-BSE and respondent No.2-SEBI submit that when they received certain complaints from the petitioners and other investors, the same were dealt with in accordance with law. Respondent No.2-SEBI directed the Stock Exchanges and Depositories to initiate appropriate action against Respondent No. 9-Karvy. However, the claim of the petitioners was to be submitted to respondent No.3-NSE and it is respondent No.3-NSE who were required to take into consideration any of the claims so submitted by either the petitioners or any other investors.

12. It is also to be noted that the present petitions are moved at the instance of the private investors, who were dealing in the sale and purchase of securities. Chapter-XII of NSE Bye-Laws provides for the declaration of a trading member as a defaulter. The assets of the defaulter trading members vest *ipso facto* in the NSE for the benefit of persons including investors like the petitioners. The Member and Core Settlement Guarantee Fund Committee ('defaulter's committee') distributes the assets of the defaulter trading members on *pro rata* basis amongst its creditors including investors,

other trading members and sub-brokers after clearing the dues to the Exchange. There are various other provisions under the NSE Bye-Laws to ensure that the investors claims are appropriately dealt with and their grievances are mitigated. One of the Circular issued by NSE, *i.e.*, Circular No. 4/2020 stipulates for settlement of claim made by affected investors once a trading member is declared as a defaulter. Under Circular No. 4/2020 all investors' claims are placed before the defaulter's committee for approval.

13. The Circular No. 4/2020 further provides for the investors to file a review against an order within a period of 90 days, furthermore, the investors also have a statutory remedy before Securities Appellate Tribunal (hereinafter referred to as 'SAT') against orders passed by NSE under Section 23L.

14. The counter affidavit filed by respondent No. 3-NSE would further indicate that the respondent No.9-Karvy was registered with NSE as a trading member in the Capital Market segment in May, 1995 and for Futures and Options segment in October, 2001 and Currency Derivatives segment in August 2008. In around January, 2017, the respondent No.3-NSE noticed certain discrepancies in the management of Securities by respondent No.9-Karvy and certain information was sought. On verification, the respondent No.3-NSE noted that there were 23,109 mismatches and respondent No. 9-Karvy could only provide clarification with respect to 14,876 mismatches. The respondent No.9-Karvy however, failed to provide details/clarifications for remaining 8,233 mismatches. The stand taken by respondent No. 3-NSE in its counter affidavit from paragraph Nos. 20 to 34 would also indicate that various steps were taken and by 10.11.2020, the respondent No. 3-NSE had

already facilitated the settlement of fund to the tune of Rs.96.92 Crores belonging to 2,14,402 of Karvy's clients/investors and securities to the tune of Rs. 2,345.82 Crores belonging to 1,57,641 of Karvy's clients/investors. The counter affidavit would further show that as on 09.01.2022, the respondent No. 3-NSE's defaulter's committee has approved 23,845 claims of about Rs.341.18 Crores for compensation from the Investor Protection Fund (IPF). Paragraph Nos. 20 to 34 with respect to the steps taken against respondent No. 9 by NSE are reproduced as under:-

"20. Karvy registered itself as a trading member with NSE in the Capital Market segment in May 1995, the Futures & Options segment in October 2001, and Currency Derivatives segment in August 2008. It is humbly stated that the Answering Respondent has consistently acted with the objective of protecting investors and maintaining the integrity of the securities market and the same is borne out by its actions in response to Karvy's misconduct. Indeed, NSE noted discrepancies in the management of securities by Respondent No. 9 as early as January 2017, when it sought information from other regulators in this regard.

21. Thereafter, NSE coordinated with SEBI to undertake a client-level reconciliation of Karvy's security balances as on 16 May 2019. During the verification, NSE noted that there were 23,109 mismatches of which Karvy provided clarifications only for 14,876 mismatches. In view of the same, NSE repeatedly followed up with Karvy seeking clarifications for the remaining mismatches. However, Karvy failed to provide any details or clarifications for the remaining 8,233 mismatches.

22. In view of Karvy's failure to provide the requisite details and clarifications, on 19 August 2019, NSE carried out a Limited Purpose Inspection of the books, records etc. at Karvy's registered office. During the said inspection, NSE found inter alia the following discrepancies in Karvy's accounts:

i. Mismatches between the client securities reported under the weekly holding submissions and the securities reported in the monthly monitoring of client securities.

ii. Differences in the depository participant balances and the balances reported for the month of June 2019.

iii. 75 unreported depository participant accounts

iv. Non-availability of client securities of around Rs. 415 crores as on 31 July 2019 and Rs. 271 crores on 22 August 2019.

23. After an inspection of Karvy's books and records, NSE coordinated with SEBI, the Bombay Stock Exchange, National Securities Depository Limited and other market infrastructure institutions to appoint a forensic auditor and conduct a joint inspection of Karvy's activities. Thereafter, on 22 September 2019, NSE sent a joint inspection report to SEBI with the following observations:

i. Misuse of funds raised by pledging client securities to the tune of Rs. 728 crores.

ii. Non-availability of client securities to the tune of Rs. 80 crores as on 08 September 2019.

iii. Transfer of securities over and above the balance available with Karvy.

iv. Non-availability of client funds to the tune of Rs. 161 crores as on 11 September 2019.

24. NSE also raised the issue before the Defaulter's Committee. In its meeting on 06 November 2019, the Defaulter's Committee advised NSE to monitor the situation closely and take synchronized action in consultation with the market infrastructure institutions. NSE also prepared a preliminary inspection report in November 2019, which was shared with SEBI on 22 November 2019. In fact, it was pursuant to NSE's aforesaid report that the Whole Time Member, SEBI passed an ex-parte ad interim order dated 22 November 2019 restraining Karvy from taking any new clients as well as directing Respondent Nos. 5 and 6 to refrain

from acting on any instructions given by Karvy in order to prevent any further misuse of investors' securities.

25. On 02 December 2019, the Managing Director & CEO of the Answering Respondent temporarily suspended Karvy's trading operations from all segments with effect from 02 December 2019 under Rule 13A (a), Chapter IV of the NSE Rules. A true copy of NSE's aforesaid order dated 02 December 2019 is annexed herewith and marked as Annexure R-1.

26. On the same day, NSE also issued circular No. NSE/COMP/42798 and informed other market infrastructure institutions regarding Karvy's temporary suspension, resulting in the suspension of Respondent 9 from other trading platforms including that of Respondent No. 4. Pertinently, Karvy's appeal against NSE's order of temporary suspension dated 02 December 2019 was dismissed by the Defaulter's Committee vide order dated 06 December 2019.

27. It is humbly stated that the Answering Respondent and its Defaulter's Committee pursued the issue assiduously. In its meeting held on 13 November 2020, the Defaulter's Committee observed that several opportunities had been provided to Karvy for more than 12 months to settle claims of its investors. However, even though Karvy was given multiple opportunities to be heard and to settle the claims of its investors, Karvy sought to delay the proceedings on one pretext or the other, giving only assurances and no solution.

28. In view of the same, by order dated 23 November 2020, the Defaulter's Committee declared Karvy a defaulter under Byelaw I(a) of Chapter XII of the NSE Byelaws and expelled it from the membership of NSE in accordance with Rules 1 and 2, Chapter IV of the NSE Rules with immediate effect.

29. Pertinently, in light of NSE's investigation and a forensic audit report submitted by it, by an order dated 24 November 2020, the Whole Time Member of SEBI was pleased to confirm its ex-parte ad interim order dated 22 November 2019, by which order SEBI had inter alia prohibited Karvy from taking new clients in respect

of its stockbroking activities. Pertinently, the aforesaid order also directed that Karvy shall not alienate any of its assets without prior permission of the Answering Respondent until the settlement of all investor claims, unless directed to do so by any court or tribunal. Pertinently, the Whole Time Member also directed the stock exchanges and depositories (Respondents 3-6 herein) to initiate appropriate action against Karvy and its directions for violations of their respective byelaws. NSE was also directed to invite and deal with the claims of Karvy's clients, in accordance with its byelaws. The relevant portion of SEBI's aforesaid order is extracted below for convenient reading (with emphasis supplied):

“... 31. Transfer of funds/securities made by KSBL to its clients subsequent to SEBI order dated November 22, 2019, would not absolve KSBL or its directors from violations of the provisions of the securities laws, as have been found in the forensic audit report received in the matter. It is clarified that confirmation of the directions issued in the ex parte order by the present order shall not in any way come in the way of transfer of the funds/securities, to be made by KSBL to its clients. KSBL shall not alienate any of (its assets. except with the prior permission of NSE till the settlement of claims o[the investors or under direction or order by any Court or Tribunal.

32. Stock Exchanges and Depositories shall initiate appropriate action against KSBL and its directors. (or the violations of their respective bye-laws, as have been found in the forensic audit report received in the matter, in accordance with law. NSE shall invite and deal with the claims of the clients of KSBL, in accordance with its bye-laws.

30. Moreover, NSE has also initiated criminal proceedings and filed a criminal complaint dated 17 May 2021 being Criminal Case No. 68/SW /2021 against Karvy and its officials before the Court of the Ld. Metropolitan Magistrate at Bandra, Mumbai seeking for the Ld. Magistrate to take cognizance of the matter and issue process under Sections 403, 406, 409, 418, 420, 467, 468, 471 and 474 r/w Section 120 Band Section 34 of the Indian Penal Code (IPC) Steps taken by NSE to settle investors' claims.

31. Pursuant to SEBI's order dated 24 November 2020, NSE issued Public Notice dated 26 November 2020 inviting claims against Karvy from its constituents/investors. A copy of the said Public Notice dated 26 November 2020 is annexed herewith and marked as Annexure R-2. 32. Pertinently, by 10 November 2020, the Answering Respondent had already facilitated the settlement of funds to the tune of Rs. 96.92 crores belonging to 2,14,402 of Karvy's clients/investors and securities to the tune of Rs. 2,345.82 crores belonging to 1,57,641 of Karvy's clients/investors.

32. Pertinently, by 10 November 2020, the Answering Respondent had already facilitated the settlement of funds to the tune of Rs. 96.92 crores belonging to 2,14,402 of Karvy's clients/investors and securities to the tune of Rs. 2,345.82 crores belonging to 1,57,641 of Karvy's clients/investors.

33. Since Karvy's assets have been insufficient to meet all of its clients' claims, NSE's Defaulter's Committee has made payments to investors from the IPF. As on 9 January 2022, NSE's Defaulter's Committee has approved 23845 claims of about Rs. 341.18 crores for compensation from the IPF.

34. In view of the same, the Petitioners' contentions regarding the lack of action by NSE and their averments regarding the alleged need for the constitution of a special committee are entirely false and contrary to the record."

15. The respondent No.3-NSE also explains the steps taken by it with respect to the claim of the petitioners on merit. With respect to each of the petitioners, in the instant writ petitions, orders have been passed by NSE and the copies of those orders have been placed on record. Paragraph Nos. 35 to 41 are also reproduced as under:-

"III. Petitioners ' claims on merits

35. As aforesaid, in the guise of a public interest litigation, the Petitioners have sought to challenge the Answering Respondent's

rejection of their claims for compensation out of the IPF. While it is the NSE's case that the captioned Petition ought to be dismissed on the ground of maintainability, without prejudice to its other contentions, the Answering Respondent denies the Petitioners' averments regarding each of the claims as false and misconceived.

36. It is humbly stated and submitted that the claims of each of the Petitioners herein were rejected only after due verification and in accordance with the rules, byelaws and regulations of the NSE. Each of the said Petitioners was informed of the NSE's reasons for such rejection by way of separate letters.

Claim by Petitioner 1

37. Petitioner 1's claim before the Defaulter's Committee dated 22 January 2021 was for Rs. 4,42,195/- (Rupees Four Lakh Forty-Two Thousand One Hundred and Ninety-Five Only) towards the alleged value of 500 shares of Granules India Limited, 500 shares of Delta Corp Limited and 900 shares of Transport Corporation of India Limited. The total claim amount being Rs. 4,42,195/- (Rupees Four Lakh Forty-Two Thousand One Hundred and Ninety-Five Only). The aforesaid claim was allowed partially by the Defaulter's Committee vide letter dated 26 March 2021, to the extent of an admitted amount of Rs. 63,950/- (Rupees Sixty-Three Thousand Nine Hundred and Fifty Only), which amount was disbursed to Petitioner No. 1 on 02 April 2021.

38. The remaining claim was valued by the Answering Respondent at Rs. 3,19,285/- (Rupees Three Lakh Nineteen Thousand Two Hundred and Eighty-Five Only), which claim was held to be inadmissible for payment out of the IPF, being against securities which are the subject matter of litigation before the Hon'ble SAT. Pertinently, by its said letter dated 26 March 2021, NSE informed the Petitioner that the remainder of its claim may be payable based on the outcome of the proceedings before the Hon'ble SAT and in accordance with its directions. A true copy of the NSE's aforesaid letter dated 26 March 2021 is annexed herewith and marked as Annexure R-3.

Claim by Petitioner 2

39. *Petitioner 2's claim before the Defaulter's Committee dated 19 January 2021 was for an amount of Rs. 1,22,57,180.25/- (Rupees One Crore Twenty-Two Lakhs Fifty-Seven Thousand One Hundred and Eighty and Twenty-Five Paise Only) towards the alleged value of 8351 shares of ICIC Lombard General Insurance Co. Ltd. The aforesaid claim made by Petitioner No. 2 was held to be inadmissible for payment out of the IPF, being entirely against securities which are the subject matter of litigation before the Hon'ble SAT. The aforesaid decision of the Defaulter's Committee was challenged by Petitioner No. 2 by way of a review application. By its said letter dated 30 March 2021, NSE's Defaulter's Committee upheld its original decision. Pertinently, by the aforesaid letter dated 30 March 2021, NSE informed the Petitioner that its claim may be payable based on the outcome of the proceedings before the Hon'ble SAT and in accordance with its directions. A true copy of the NSE's aforesaid letter to Petitioner No. 2 dated 30 March 2021 is annexed herewith and marked as Annexure R-4.*

Claim by Petitioner 3

40. *Petitioner 3's claim before the Defaulter's Committee dated 03 December 2020 was for an amount of Rs. 63,13,603.25/- (Rupees Sixty-Three Lakhs Thirteen Thousand Six Hundred and Three and Twenty-Five Paise Only) towards the alleged value of 200 shares of Ashok Leyland Ltd. worth Rs. 18,670/-, 1024 shares of Reliance Industries Ltd. and 2250 shares of L&T worth Rs. 45,12,178.50/-, 100 shares worth Rs. 39,030/- of Minda Industries Ltd. as well as 630 shares of Torrent Pharmaceuticals Ltd. and 85 shares of United Spirits Ltd. worth Rs. 17,43,724.75. The aforesaid claim made by Petitioner No.3 was also held to be inadmissible for payment out of the IPF, being entirely against securities which are the subject matter of litigation before the Hon 'ble SAT. The claim was also held to be inadmissible under the norms laid down by the Defaulter's Committee, arising out of transactions executed over 90 days prior to the date of disablement of the trading rights of the member. The aforesaid decision of the Defaulter's Committee was challenged by Petitioner No. 3 by way of a review application. By its said letter dated 30 March 2021, NSE's Defaulter's Committee*

upheld its original decision. Pertinently, by the aforesaid letter dated 30 March 2021, NSE informed the Petitioner that its claim may be payable based on the outcome of the proceedings before the Hon'ble SAT and in accordance with its directions. A true copy of the NSE's aforesaid letter to Petitioner No. 3 dated 30 March 2021 is annexed herewith and marked as Annexure R-5.

41. In view of the above, it is humbly stated and submitted that the Petitioners' contentions regarding its claims are false, contrary to the record and an attempt to circumvent and overreach the proceedings before the Hon'ble SAT."

16. Learned counsel for respondent No.5-NSDL submits that pursuant to the directions by respondent No. 2-SEBI and termination of membership of respondent No.9-Karvy by respondent No.3-NSE, respondent No.5-NSDL issued a letter dated 01.12.2020 informing Karvy about termination of its participant ship w.e.f. 30.12.2020 in accordance with NSDL Bye-laws and thereafter, all the demat accounts of investors remaining with respondent No.9-Karvy were transferred to another depository participant. The counter-affidavit of respondent No.6 states that the grievance of the petitioners does not fall within its ambit and it has taken the necessary steps in its limited sphere of action, under directions from respondent No.2-SEBI. Learned counsel appearing on behalf of respondent No.8-SFIO states that respondent No.9-Karvy is protected by an interim order granted by the Hon'ble High Court of Telangana and hence, has not been able to carry out its investigations against respondent No.9-Karvy.

17. Having considered the submissions made by learned counsel appearing for the parties, it is seen that with respect to respondent No. 9-Karvy, the respondent No.3-NSE has taken appropriate steps in accordance with the applicable Bye-Laws. The cases of the individual investors

including the petitioners have also been taken into consideration and appropriate orders have been passed therein.

18. So far as the argument made by learned counsel for the petitioners on the basis of the decision of the Hon'ble Supreme Court in the case of ***Vishal Tiwari (supra)*** and ***Indian Bank (supra)*** is concerned, it being that notwithstanding the steps being taken by respondent No.3-NSE with respect to individual investors, this court must consider the aspect of there being a larger conspiracy and form a committee of independent experts to take these matters to their logical end, the same does not have any substance and deserves to be rejected.

19. So far as the case relied upon learned counsel for the petitioners in the case of ***Indian Bank (supra)*** is concerned, the same relates to the investment made in a Co-operative Bank registered under the Cooperative Societies Act, 1912. Various directions were issued by the High Court in exercise of power under Article 226 of the Constitution of India and finally while considering the facts and situation involved therein, the Hon'ble Supreme Court, no doubt, has held that a writ petition undisputedly would be maintainable even in relation to the matter arising out of a contract. The proposition of law laid down by the Hon'ble Supreme Court in the said decision cannot be disputed. However, the facts and situation in the present case is completely different, the case is, therefore, distinguishable.

20. So far as the decision in the case of ***Vishal Tiwari (supra)*** is concerned, the Hon'ble Supreme Court in exercise of its power under Article 32 of the Constitution of India in a PIL has issued certain directions. The present petition is at the instance of some of the investors and the respondent

No.3-NSE in its counter affidavit has clearly revealed that the decision has been taken with respect to thousands of the investors. At the instance of few investors, this court, in the present petitions, is not inclined to accept the prayer for the constitution of a committee.

21. The facts of the present case are to be seen in the right perspective which has been discussed hereinabove and it would clearly reveal that not only the grievance of the petitioners but the grievance of similarly situated investors has also been considered by the appropriate authority as per the procedure prescribed by law. The manner in which grievances have been considered of course, would not be relevant at this stage as the investors and the petitioners would have appropriate remedy to test the validity of those decisions.

22. Under the facts of the present case, this court is not inclined to accept the prayer for constitution of any individual committee or to monitor the further action to be taken by respondent No.3-NSE. Accordingly, the instant petitions stand dismissed alongwith pending application.

PURUSHAINDRA KUMAR KAURAV, J

MARCH 13, 2023

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