

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Order Reserved : 1.7.2019**

**Date of Decision: 3.7.2019**

**Appeal No.262 of 2019**

IL&FS Securities Services Ltd.  
IL&FS House, Raheja Vihar,  
Chandivili, Andheri (East),  
Mumbai -400072 Maharashtra.

..... Appellant

Versus

1. NSE Clearing Ltd.  
Exchange Plaza, Plot No.C/1,  
G Block, Bandra Kurla Complex,  
Bandra East, Mumbai,  
Maharashtra – 400051.
2. Securities and Exchange Board of India  
SEBI Bhawan, Plot No.C4-A,  
'G' Block, Bandra Kurla Complex,  
Bandra (E), Mumbai 400051.
3. National Stock Exchange of India Ltd.  
Exchange Plaza, Plot No.C/1,  
G-Block, Bandra Kurla Complex,  
Bandra East, Mumbai,  
Maharashtra – 400051.
4. Allied Financial Services Pvt. Ltd.  
304-305, Vikas Deep Laxmi,  
District Center, Vikas Marg,  
New Delhi-110092.
5. Dalmia Cement (Bharat) Group  
11<sup>th</sup> & 12<sup>th</sup> Floor, Hansalaya Building,  
15, Barakhamba Road,  
New Delhi – 110001.
6. Novjoy Emporium Private Limited

2, Rupchand Mukherjee Lane,  
Kolkata – 700025.

7. National Securities Depository Ltd.  
Trade World, A Wing, 4<sup>th</sup> Floor,  
Kamala Mills Compound,  
Lower Parel, Mumbai – 400 013. ... Respondents

Mr. J.J. Bhatt, Senior Advocate with Mr. Venkatesh Thond,  
Mr. Piyush Raheja, Advocate with Ms. Shruti Rajan, Ms.  
Garima Joshi, Mr. Aditya Sikha, Mr. Rushin Kapadia,  
Advocates i/b. Cyril Amarchand Mangaldas for the Appellant.

Mr. P.N. Modi, Senior Advocate with Mr. Nihar Mody, Mr.  
Ashish Prasad, Mr. Abhiraj Arora, Mr. Vivek Shah, Advocates  
i/b. ELP for the Respondent no.1.

Mr. Mustafa Doctor, Senior Advocate with Mr. Mihir Mody  
and Mr. Sushant Yadav, Advocate i/b. K. Ashar & Co. for the  
Respondent No.2.

Mr. Shyam Mehta, Senior Advocate with Mr. Sachin  
Chandarana, Advocate with Mr. Rashid Boatwalla, Mr. Rahul  
Jain and Mr. Pruthvi, Advocates i/b. Manilal Kher Ambalal &  
Co. for the Respondent no.3.

Mr. Robin Shah, Advocate for the Respondent no.4.

Mr. Somasekhar Sundaresan, Advocate with Mr. Tomu Francis,  
Mr. Manish Chhangani and Mr. Arka Saha, Advocates i/b.  
Khaitan & Co. for the Respondent no.5.

Mr. Kunal Katariya, Advocate with Mr. Kunal Kothary,  
Advocates i/b. Mr. Zerick Dastur, Advocates & Solicitors for  
the Respondent no.6.

Mr. Pulkit Sukhramani and Ms. Stuti Shah, Advocates i/b. J.  
Sagar & Associates for the Respondent no.7.

Mr. Janak Dwarkadas, Senior Advocate with Ms. Anuja  
Bhansali, Advocate i/b. Raval Shah & Co. for Citi Bank.

**With  
Appeal No.257 of 2019**

1. Keshav Prasad Misra  
Flat No.1204, B-Wing, 12<sup>th</sup> Floor,  
Shah Arcade 2, Rani Sati Marg,  
Malad (East), Mumbai – 400097.

2. Adhirath  
B-10, Jwalaji Apartments,  
26-Mohini Road,  
Dalanwala, Dehradun-248001.
3. Ahipal Singh  
19/771, Indira Nagar  
Lucknow – 226016.
4. Ajeet Kumar Singh  
House No.227A, Rai Colony,  
Miyanpur, Jaunpur-222002.
5. Amit Kumar Singh  
House No.227A, Rai Colony, Miyanpur  
Jaunpur-222002.
6. Asha Rani Sekhri  
House No.C-3/157,  
Sector 36, Noida – 201301.
7. Ashutosh Narain Rai  
Village & Post-Pandah  
Ballia-277303.
8. Bethika Partap Singh  
Guru Hari Farm, Sultanpur Village,  
Mehrauli Gadaipur, Delhi-110030.
9. Celeste Towers Social Welfare Society  
D-194, Sector 10, Noida-201301.
10. Chandra Shekhar Rai  
5/802, C2, Shakti Kunj Apartment,  
Sector 62, Noida.
11. Dal Chandra Rastogi  
House No.B-53, Sarvodya Enclave,  
Delhi-110017.
12. Dinesh Kumar Rai  
19112 ATS Green Paradiso

Sector CHI 4, Greater Noida-201310.

13. Ennar Portfolio LLP  
5<sup>th</sup> Floor, SB Tower, Sector 16A,  
Noida-201301.
14. Gita Sikand  
House No.8, Kasturba Gandhi Marg,  
GPO, Delhi-110001.
15. Indira Sikand  
House No.8, Kasturba Gandhi Marg,  
GPO, Delhi-110001.
16. JJ Tradelinks Pvt. Ltd.  
A-70, Sector 58,  
Noida-201301.
17. Joydeep Nayar  
J 202, Pearl Gateway Towers,  
Sector 44, Noida-201301.
18. Kamaljit Kaur Viridi  
House No.212,  
Akashganga Apartment,  
Pocket -4, Sector 24,  
Rohini, Delhi-110085.
19. Kesar Singh  
House No.A-101, Mansara Apartment,  
Vasundhara Enclave,  
New Delhi- 110096.
20. Kirpal Singh Viridi  
House No.212,  
Akashganga Apartment Pocket-4,  
Sector 24, Rohini,  
Delhi-110085.
21. Kusum Sanduja  
A 91, Ground Floor,  
Sector 26, Noida – 201301.

22. Mridula Rai  
5/802, C2, Shakti Kunj Apartment,  
Sector 62, Noida.
23. Nakul Marwah  
H-37A, Kalkaji,  
Delhi-110019.
24. Neelam Rai  
19112 ATS Green Paradiso  
Sector CHI 4, Greater Noida-201310.
25. Niharika Rai  
House No.200, Sector 29,  
Noida-201303.
26. Onkar Nath Singh  
P2-04, Silver City Apartment,  
Sector 93, Noida – 201304.
27. Padmeshwari Prasad Rai  
Village & Post-Pandah Ballia,  
U.P.-277303.
28. Parul Sinha  
A-602, Rohtas Presidential Tower,  
Vibhuti Khand, Gomti Nagar,  
Lucknow – 226010.
29. Prakash Chandra Rai  
A-92, Meenal Residency,  
J.K. Road, Bhopal-462023.
30. Prem Kumar Sekhri  
House No.C-3/157,  
Sector 36, Noida – 201301.
31. Pushpa Rai  
House No.2, Sector 14,  
Kharagpur, Indira Nagar,  
Lucknow- 226016.
32. Rajeev Rai

House No.200, Sector 29,  
Noida-201303.

33. Ravi Sanduja HUF  
A 91, Sector 26,  
Noida-201301.
34. Ravinder Kaur  
E 254, Ground Floor,  
Greater Kailash Part 2,  
Delhi-110048.
35. Saroj Kumar Jha  
BH-499, East Shalimar Bagh,  
New Delhi – 110088.
36. Sarrthak Sanduja  
A 91, Sector 26,  
Noida – 201301.
37. Shakuntla Rastogi  
332 Dhruva Apartment  
I P Extension, Delhi-110092.
38. Siddharth Sanduja  
A 91, Sector 26,  
Noida – 201301.
39. Smita Singh  
16 NER Colony  
Bandariyabagh, Igartan Road,  
Lucknow – 226001.
40. Swarnim  
B-10, Jwalaji Apartments,  
26-Mohini Road,  
Dalanwala, Dehradun-248001.
41. Urmila Rai  
19/771, Indira Nagar,  
Lucknow-226016.
42. Vaishali Goyal

27A, Old Vijay Nagar Colony,  
Vijay Nagar, Agra-282004.

43. Vedangana Rai  
House No.200,  
Sector 29, Noida-201303.

44. Vinita Singh  
D 901, Sunshine Helios,  
Sector 78, Noida-201301.

..... Appellants

Versus

1. Securities and Exchange Board of India  
SEBI Bhawan, Plot No.C4-A,  
'G' Block, Bandra Kurla Complex,  
Bandra (E), Mumbai 400051.

2. National Stock Exchange of India Ltd.  
Exchange Plaza, Block G, C 1,  
Bandra Kurla Complex,  
G Block BKC, Banra Kurla Complex,  
Bandra East, Mumbai,  
Maharashtra – 400051.

3. National Securities Depository Ltd.  
Trade World, A Wing, 4<sup>th</sup> Floor,  
Kamala Mills Compound,  
Lower Parel, Mumbai – 400 013.

4. Dalmia Bharat Group  
(Dalmia Bharat Limited)  
Dalmiapuram, Thiruchirapalli  
Tamil Nadu-621651.

5. Allied Financial Services Pvt. Ltd.  
Flat No.1206, 12<sup>th</sup> Floor,  
Vijaya Building, 17 Barakhamaba Road,  
New Delhi-110 001.

6. Mr. Awanish Kumar Mishra  
Flat No.1807, Mahagun Maple,  
Sector 50, Noida – 201301.

7. Money Mishra Financial Services  
Flat No.1807, Mahagun Maple,  
Sector 50, Noida – 201301.
8. Money Mishra Overseas Pvt. Ltd.  
C-1/32, 3<sup>rd</sup> Floor, Old Village Jasola  
Okhla, New Delhi – 110025.
9. IL&FS Securities Services Ltd.  
IL&FS House, Raheja Vihar,  
Chandivili, Andheri (East),  
Mumbai -400072 Maharashtra ... Respondents

Mr. Kevic Setalvad, Senior Advocate with Mr. L.S. Shetty, Ms. Sanika Lalit and Mr. Amey Kulkarni, Advocates i/b. Shetty Malhotra & Associates for the Appellants.

Mr. Mustafa Doctor, Senior Advocate with Mr. Mihir Mody and Mr. Sushant Yadav, Advocate i/b. K. Ashar & Co. for the Respondent No.1.

Mr. Sachin Chandarana, Advocate with Mr. Rashid Boatwalla, Mr. Rahul Jain and Mr. Pruthvi, Advocates i/b. Manilal Kher Ambalal & Co. for the Respondent no.2.

Mr. Vikram Nankani, Senior Advocate with Mr. Pulkit Sukhramani and Ms. Stuti Shah, Advocates i/b. J. Sagar & Associates for the Respondent no.3.

Mr. Somasekhar Sundaresan, Advocate with Mr. Tomu Francis, Mr. Manish Chhangani and Mr. Arka Saha, Advocates i/b. Khaitan & Co. for the Respondent no.4.

Mr. Robin Shah, Advocate for the Respondent nos.5 to 8.

Mr. Piyush Raheja, Advocate with Ms. Shruti Rajan, Ms. Garima Joshi, Mr. Aditya Sikha, Mr. Rushin Kapadia, Advocates i/b. Cyril Amarchand Mangaldas for the Respondent no.9.

**With  
Appeal No.260 of 2019**

Novjoy Emporium Private Limited  
2, Rupchand Mukherjee Lane,  
Kolkata – 700025.

..... Appellant



## Versus

1. Securities and Exchange Board of India  
SEBI Bhawan, Plot No.C4-A,  
'G' Block, Bandra Kurla Complex,  
Bandra (E), Mumbai 400051.
  2. IL&FS Securities Services Ltd.  
IL&FS House, Raheja Vihar,  
Chandivili, Andheri (East),  
Mumbai -400072 Maharashtra.
  3. Allied Financial Services Pvt. Ltd.  
304-305, Vikas Deep Laxmi, District  
Centre, Vikas Marg, New Delhi-110092.
  4. NSE Clearing Ltd.  
Exchange Plaza, Block G, C 1,  
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Bandra East, Mumbai,  
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Exchange Plaza, Block G, C 1,  
Bandra Kurla Complex,  
G Block BKC, Banra Kurla Complex,  
Bandra East, Mumbai,  
Maharashtra – 400051.
  6. Dalmia Cement (Bharat) Group  
11<sup>th</sup> & 12<sup>th</sup> Floor, Hansalaya Building,  
15, Barakhamba Road,  
New Delhi – 110001.
  7. National Securities Depository Ltd.  
Trade World, A Wing, 4<sup>th</sup> Floor,  
Kamala Mills Compound,  
Lower Parel, Mumbai – 400 013.
- ... Respondents

Mr. Kunal Katariya, Advocate with Mr. Kunal Kothary, Advocates i/b. Mr. Zerick Dastur, Advocates & Solicitors for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Mr. Mihir Mody and Mr. Sushant Yadav, Advocate i/b. K. Ashar & Co. for the Respondent No.1.

Mr. Piyush Raheja, Advocate with Ms. Shruti Rajan, Ms. Garima Joshi, Mr. Aditya Sikha, Mr. Rushin Kapadia, Advocates i/b. Cyril Amarchand Mangaldas for the Respondent no.2.

Mr. Robin Shah, Advocate for the Respondent no.3.

Mr. P.N. Modi, Senior Advocate with Mr. Nihar Mody, Mr. Ashish Prasad, Mr. Abhiraj Arora, Mr. Vivek Shah, Advocates i/b. ELP for the Respondent no.4.

Mr. Sachin Chandarana, Advocate with Mr. Rashid Boatwalla, Mr. Rahul Jain and Mr. Pruthvi, Advocates i/b. Manilal Kher Ambalal & Co. for the Respondent no.5.

Mr. Somasekhar Sundaresan, Advocate with Mr. Tomu Francis, Mr. Manish Chhangani and Mr. Arka Saha, Advocates i/b. Khaitan & Co. for the Respondent no.6.

Mr. Pulkit Sukhramani and Ms. Stuti Shah, Advocates i/b. J. Sagar & Associates for the Respondent no.7.

**With  
Appeal No.261 of 2019**

Dalmia Cement (Bharat) Group  
11<sup>th</sup> & 12<sup>th</sup> Floor, Hansalaya Building,  
15, Barakhamba Road,  
New Delhi – 110001.

..... Appellant

Versus

1. Securities and Exchange Board of India  
SEBI Bhawan, Plot No.C4-A,  
'G' Block, Bandra Kurla Complex,  
Bandra (E), Mumbai 400051.

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IL&FS House, Raheja Vihar,  
Chandivili, Andheri (East),

Mumbai -400072 Maharashtra.

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304-305, Vikas Deep Laxmi, District  
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Exchange Plaza, Block G, C 1,  
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Bandra East, Mumbai,  
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Bandra Kurla Complex,  
G Block BKC, Banra Kurla Complex,  
Bandra East, Mumbai,  
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6. Novjoy Emporium Private Limited  
2, Rupchand Mukherjee Lane,  
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7. National Securities Depository Ltd.  
Trade World, A Wing, 4<sup>th</sup> Floor,  
Kamala Mills Compound,  
Lower Parel, Mumbai – 400 013. ... Respondents

Mr. Somasekhar Sundaresan, Advocate with Mr. Tomu Francis, Mr. Manish Chhangani and Mr. Arka Saha, Advocates i/b. Khaitan & Co. for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Mr. Mihir Mody and Mr. Sushant Yadav, Advocate i/b. K. Ashar & Co. for the Respondent No.1.

Mr. Piyush Raheja, Advocate with Ms. Shruti Rajan, Ms. Garima Joshi, Mr. Aditya Sikha, Mr. Rushin Kapadia, Advocates i/b. Cyril Amarchand Mangaldas for the Respondent no.2.

Mr. Robin Shah, Advocate for the Respondent no.3.

Mr. P.N. Modi, Senior Advocate with Mr. Nihar Mody, Mr. Ashish Prasad, Mr. Abhiraj Arora, Mr. Vivek Shah, Advocates i/b. ELP for the Respondent no.4.

Mr. Sachin Chandarana, Advocate with Mr. Rashid Boatwalla, Mr. Rahul Jain and Mr. Pruthvi, Advocates i/b. Manilal Kher Ambalal & Co. for the Respondent no.5.

Mr. Kunal Katariya, Advocate with Mr. Kunal Kothary, Advocates i/b. Mr. Zerick Dastur, Advocates & Solicitors for the Respondent no.6.

Mr. Pulkit Sukhramani and Ms. Stuti Shah, Advocates i/b. J. Sagar & Associates for the Respondent no.7.

CORAM: Justice Tarun Agarwala, Presiding Officer

Dr. C.K.G. Nair, Member

Justice M.T. Joshi, Judicial Member

Per : Justice Tarun Agarwala

1. This group of appeals are connected with each other in one way or the other and revolves around an issue with regard to an annulment of a trade. Thus all these appeals are being decided together.

2. We have heard the learned senior counsel for the parties at some length.

3. IL&FS Securities Services Limited (hereinafter referred to as 'ISSL') is a clearing member empanelled with NSE Clearing Limited (hereinafter referred to as 'NCL'). ISSL entered into a 'Clearing Member–Trading Member Agreement' dated 14<sup>th</sup> November, 2017 with Allied Financial Services Private Limited (hereinafter referred to as 'Allied') as a result

of which, ISSL acted as a clearing member for Allied on the F&O Segment of NCL. Under this agreement Allied was obligated to place the margin with ISSL. In case of non-payment of margins, ISSL as a clearing member was entitled to close out/liquidate open positions or disable trading facility of the trading member.

4. On 26<sup>th</sup> and 27<sup>th</sup> December, 2018, Allied sold NIFTY options contract on the F&O Segment of National Stock Exchange of India Ltd. (referred to hereinafter as 'NSE') which was to expire on 28<sup>th</sup> March, 2019 and 27<sup>th</sup> June, 2019 on the basis of mutual fund units that were placed as collateral by Allied to ISSL. These NIFTY option contracts were purchased by investors on NSE and Allied received an upfront premium of around Rs.380 crore from ISSL.

5. The NIFTY options contract which has now expired on 27<sup>th</sup> June, 2019 is the subject matter of the present appeal of ISSL wherein the appellant has prayed for annulment of the trades. ISSL filed an application dated 20<sup>th</sup> March, 2019 before SEBI praying that it has become a victim of fraud perpetrated by Allied and, therefore, SEBI should protect the interest of the appellant. It was contended that the option contract entered into by Allied were based on fraudulently transferred collaterals

which was not in the interest of the securities market and, therefore, the trades made by Allied should be annulled.

6. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') passed an ex-parte interim order dated 27<sup>th</sup> February, 2019 against Allied and other noticees and rejected the contention of ISSL that it had no locus standi to apply for modification of the ex-parte interim order. SEBI further held in its order of 29<sup>th</sup> March, 2019 that the appropriate authority for annulment of the trade was the Stock Exchange in terms of SEBI circular dated 16<sup>th</sup> July, 2016.

7. ISSL being aggrieved by the said order filed Appeal no.138 of 2019 which was disposed of by the Tribunal's order dated 15<sup>th</sup> May, 2019 directing ISSL to move an appropriate application under Clause 5 of Chapter VII of the Bye Laws of NCL for annulment of trades. This Tribunal directed that if such an application was filed, the Clearing Corporation would decide the matter at the earliest after hearing the parties.

8. The Clearing Corporation NCL by an order dated 24<sup>th</sup> June, 2019 rejected the application of ISSL for annulment of trade on the ground that appropriate orders can only be passed after investigation on all allegations of fraud is completed by SEBI and Economic Offence Wing (hereinafter referred to as

‘EOW’). The Clearing Corporation was of the view that it is not an appropriate case where NCL should start a parallel investigation and exercise its powers under Clause 5 of Chapter VII of the Bye Laws of NCL or pass any interim order.

9. Against the order of the Tribunal dated 15<sup>th</sup> May, 2019, ISSL filed a Special Leave Petition before the Supreme Court of India which was disposed of by an order dated 26<sup>th</sup> June, 2019 directing ISSL to file an appropriate appeal/petition before the appropriate forum questioning the veracity and legality of the order dated 24<sup>th</sup> June, 2019 passed by the Clearing Corporation. Based on the aforesaid direction, ISSL has filed the present appeal.

10. Appeal no.257 of 2019 Keshav Prasad Misra and 43 others have filed the appeal praying for a variety of reliefs, and one of them is, that NIFTY contract which was expiring on 27<sup>th</sup> June, 2019 should be annulled. The said appellants contended that they are innocent investors and victims of fraud perpetrated by Allied and that Allied have illegally diverted their investments for fraudulent trades. It was contended that the appellants had invested in monies in M/s. Allied Financial Services Private Limited which was transferred illegally by one Awanish Kumar Misra into his own firm Money Misra

Financial Services Ltd. which in turn were used in creating assets in pool account or were transferred to other entities by Awanish Kumar Misra. It was contended that the appellants individually sent emails during the period 12<sup>th</sup> May, 2019 to 17<sup>th</sup> May, 2019 and requested for a personal hearing but the same was not granted. Instead SEBI issued a confirmatory order dated 17<sup>th</sup> May, 2019. The complainant had again sent email on 2<sup>nd</sup> June, 2019 and 3<sup>rd</sup> June, 2019 requesting for annulment of the alleged trades and also lodged a formal complaint thereafter. Since no action was taken by SEBI nor there was any opportunity of hearing was granted the present appeal was filed praying for annulment of trades and further directed SEBI to pass appropriate orders on their complaints.

11. Navjoy Emporium Private Limited has filed Appeal Lodging No.353 of 2019 questioning the validity of the order dated 20<sup>th</sup> June, 2019 wherein SEBI modified the exparte interim order dated 27<sup>th</sup> February, 2019 which was subsequently confirmed on 17<sup>th</sup> May, 2019. The said appellant contends that they had opened a demat account with Allied and, without their authorization, certain units of mutual funds from their demat account was debited and was credited to another account. The appellant alleged that Awanish Kumar Misra who



was the Managing Director of Allied had illegally transferred its mutual fund units and placed as collateral for the NIFTY option trades. The appellant made a formal complaint to SEBI on 31<sup>st</sup> December, 2019 praying that the units which were transferred illegally to ISSL by Allied should be restored to their demat account. Further, a complaint was made to SEBI on 21<sup>st</sup> January, 2019 requesting that a personal hearing be granted. Emails dated 30<sup>th</sup> January, 2019 and 4<sup>th</sup> February, 2019 was sent seeking return of their securities. Since no action was taken nor any opportunity of hearing was given at the time of passing the exparte interim order by SEBI on 27<sup>th</sup> February, 2019 nor any opportunity was given to them by SEBI when the exparte interim order was confirmed on 17<sup>th</sup> May, 2019 nor any opportunity was given to the appellant when SEBI passed an order dated 20<sup>th</sup> June, 2019 modifying its earlier orders, the appellant has approached this Tribunal praying that they are vitally affected by the order dated 20<sup>th</sup> June, 2019 and, therefore, the said order should be set aside.

10. Dalmia Cement (Bharat) Limited has filed Appeal Lodging No.358 of 2019. Dalmia cement also alleged that certain shares and units kept in their demat account was illegally transferred by Allied to ISSL. Complaints were made

to SEBI as well as to EOW. SEBI did not act on their complaint. On the other hand EOW passed an order directing ISSL not to deal with the securities till further orders.

12. This appellant (Dalmia) contends that SEBI should have protected their interest while passing the exparte order and confirmatory order and should have heard them before modifying the confirmatory order. It was contended that since they are affected parties, the appellants have a right to be heard and since they were not given as appropriate hearing the order of 20<sup>th</sup> June, 2019 modifying the confirmatory order on the application of ISSL was in violation of the principles of natural justice.

13. One of the counterparties to the option contract, namely CITI Bank has requested that they may be heard. Though no impleadment application was filed, we, permitted the learned senior counsel Shri Dwarkadas to make his submissions.

14. Various submissions were made by the learned senior counsel for ISSL, SEBI and others and we proceed to decide this matter.

15. An objection was raised by the learned Senior Counsel for SEBI namely, that the present appeal filed by ISSL is not maintainable inasmuch as no appeal lies under Section 23L of

the Securities Contract (Regulation) Act, 1956 (hereinafter referred to as SCRA Act) against an order passed by the NCL. In this regard, we have heard the learned counsels for the parties at some length.

16. The appeal has been filed under Section 23L of the SCRA Act. For facility, the said provision is extracted hereunder:-

“23L. Appeal to Securities Appellate Tribunal.—

(1) Any person aggrieved, by the order or decision of the recognized stock exchange or the adjudicating officer or any order made by the Securities and Exchange Board of India under section 4B, may prefer an appeal before the Securities Appellate Tribunal and the provisions of sections 22B, 22C, 22D and 22E of this Act, shall apply, as far as may be, to such appeals.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order or decision is received by the appellant and it shall be in such form and be accompanied by such fee as may be prescribed: Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Securities Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer.

(5) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by

it to dispose of the appeal finally within six months from the date of receipt of the appeal.”

From a perusal of the aforesaid it is clear that, an appeal can be filed against an order or decision of a recognized stock exchange or the Adjudicating Officer or any order made by SEBI.

17. Section 2(J) defines stock exchange as under:-

“(j) “stock exchange” means—  
 (a) any body of individuals, whether incorporated or not, constituted before corporatisation and demutualisation under sections 4-A and 4-B, or  
 (b) a body corporate incorporated under the Companies Act, 1956 (1 of 1956), whether under a scheme of corporatisation and demutualisation or otherwise,  
 for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.”

The purpose of a stock exchange is to assist, regulate or control the business of buying, selling or dealing in securities.

18. Section 2(f) defines recognized stock exchange as under:-

“recognised stock exchange” means a stock exchange which is for the time being recognised by the Central Government under section 4.”

19. Section 4 of the Act gives power to the Central Government to recognize a stock exchange. Such recognition is required to be published in the Gazette of India and in the Official Gazette of the State under Section 4(3) of the Act.

20. From the aforesaid it is clear that, any decision made by a stock exchange which is recognized under Section 4 by the Central Government is appealable under Section 23L of the Act.

21. Section 8-A was inserted in the Act by Act 1 of 2005 with effect from 12/10/2004. The said provision is extracted hereunder:-

**“8A. Clearing corporation.—**

(1) A recognized stock exchange may, with the prior approval of the Securities and Exchange Board of India, transfer the duties and functions of a clearing house to a clearing corporation, being a company incorporated under the Companies Act, 1956 (1 of 1956), for the purpose of—

- (a) the periodical settlement of contracts and differences thereunder;
- (b) the delivery of, and payment for, securities;
- (c) any other matter incidental to, or connected with, such transfer.

(2) Every clearing corporation shall, for the purpose of transfer of the duties and functions of a clearing house to a clearing corporation referred to in sub-section (1), make bye-laws and submit the same to the Securities and Exchange Board of India for its approval.

(3) The Securities and Exchange Board of India may, on being satisfied that it is in the interest of the trade and also in the public interest to transfer the duties and functions of a clearing house to a clearing corporation, grant approval to the bye-laws submitted to it under sub-section (2) and approve the transfer of the duties and functions of a clearing house to a clearing corporation referred to in sub-section (1).

(4) The provisions of sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 shall, as far as may be, apply to a clearing corporation referred to in sub-section (1) as they apply in relation to a recognized stock exchange.”

From the aforesaid it is clear that, some of the duties and functions of a recognized stock exchange as a clearing house namely, the periodical settlement of contracts and differences thereunder, delivery of, and payment for, securities, and any other matter incidental to, or connected with was transferred to a clearing corporation. Sub-Section (4) of Section 8-A provides that the provisions of Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the Act will apply to a clearing corporation as it applies to a recognized stock exchange.

22. Pursuant thereto, the NSE Clearing Limited (NCL) came into existence as a clearing corporation under Section 8-A of the SCRA Act by a notification dated 26<sup>th</sup> September, 2017. The SEBI renewed the recognition for a period of three years under Section 4 read with Section 8-A of the SCRA Act. As a result of this notification, NCL is a recognized clearing corporation under the SCRA Act.

23. The limited question is, whether the respondent-NSE Clearing Ltd. being a recognized clearing corporation is akin to

a recognized stock exchange or not? We find that an order of the recognized stock exchange is appealable under Section 23L of the Act. Some of the duties and functions of a recognized stock exchange has been transferred to a clearing corporation namely, NSE Clearing Ltd. This clearing corporation has been recognized under Section 4 read with Section 8-A(4) which provision is to recognize a stock exchange. Thus if an order of a recognized stock exchange is appealable under Section 23L, the functions and duties of a recognized stock exchange which have been transferred to a clearing corporation would also be appealable under Section 23L. A clearing corporation cannot stand on a better footing or cannot stand outside the provisions of the SCRA Act especially when a superior body, namely, the recognized stock exchange's orders are appealable under Section 23L.

24. In the light of the aforesaid, we hold that the appeal filed by the ISSL is appealable under Section 23L against a decision of the NCL. The objection raised by SEBI is, thus, rejected.

25. ISSL has questioned the legality and validity of the order of NCL dated 24<sup>th</sup> June, 2019 whereby their application for annulment of the trade was rejected. NCL was of the opinion

that since parallel investigation in relation to fraud is being conducted by SEBI and EOW, the said corporation was not willing to start a parallel investigation. We find that the issue as to whether the trades have to be annulled on account of fraud has not as yet been decided by the clearing corporation on merits.

26. In the appeal of Keshav Prasad Mishra and others, the said appellants have also complained before SEBI for annulling the trades and for return of their securities which have been illegally used by Allied.

27. Similarly a complaint was made by Novjoy to SEBI that their securities have been illegally transferred by Allied to ISSL which needs to be returned. Similar, Dalmia and Novjoy are aggrieved by the modification of the confirmatory order dated 17.5.2019 passed by SEBI. The confirmatory order relates to the prima facie fraudulent activities being found against Allied in relation to the utilization of shares and mutual funds of other entities.

28. In the light of the aforesaid, we find that the NCL under its bye-laws can only hear an application for annulment of the trade by a clearing member, which NCL refused to do so on the application filed by ISSL on the ground that parallel



investigation of fraud is being conducted by SEBI and EOW. Further, the appellants Keshav Prasad Mishra and others, Novjoy and Dalmia are not clearing members and thus cannot apply for annulment of a trade / deal under clause 5 of the Bye-laws of the clearing corporation.

29. We find that Section 11 and 11B of the SEBI Act gives wide powers to the SEBI (Board) to protect the interest of investors in securities and to promote the development and regulate the securities market. Under Section 12A of the SCRA Act, SEBI (Board) has power to issue directions to any stock exchange, clearing corporation or an agency associated with the securities market. By our earlier Order dated 15/5/2019 in Appeal No.138 of 2019, IL&FS Securities Services Ltd. vs. SEBI and others, we held that SEBI has wide powers to consider the complaint with regard to an annulment of a trade.

30. We had also held in the said order held that even where a person is affected either directly or indirectly, the said person would have a right to apply for modification of the order and if such a person applies for being heard for protection of its interest, SEBI could not deny the opportunity of being heard. In the light of the aforesaid, we find that Novjoy and Dalmia made a specific request to SEBI for being heard because of

which they were kept outside the hearing room and were not heard leading to an order being passed by SEBI dated 20.6.2019 modifying the confirmatory order dated 17.5.2019. In our opinion, SEBI violated the principles of natural justice in denying Navjoy and Dalmia right to be heard inspite of specific directions given by this Tribunal in its order of 15/5/2019.

31. We find that SEBI after considering the complaints of Dalmia and Novjoy and others, investigated the matter and passed an ex-parte interim order which was subsequently confirmed and thereafter modified. The assets of Allied have been frozen and Allied have been debarred from accessing the securities market. Such interim arrangement is not sufficient by itself as the appellants before us are making specific claims namely, for annulment of a trade / trades, for return of their securities which have been illegally transferred by Allied to ISSL. Such issues for return of the securities, for annulment of the trades are not being considered by any authority till today and these entity/entities are running around in circle. These questions are required to be addressed at the earliest.

32. On the other hand, counter parties to the Nifty contracts and one such entity being Citi Bank has contended that a valid trade which has been executed in which they have paid a

premium upfront to Allied and which is required to be honoured on the expiry of the Nifty Option contract on the F&O segment of NSE on 27/6/2019. It was urged that the delay in the squaring off the contract is not only putting the counter parties to a huge loss, but will also have a cascading effect downstream which the counter parties will have to settle with other parties. In addition to the aforesaid NCL contends that any annulment will deny the protection bought by the option buyers and will shake the confidence in the risk management products even though in the instant case, it is a small amount.

33. Considering the aforesaid, we are of the opinion that a fraud, if any, should be crystalized and decided and should not percolate the entire securities market. Whether there has been a fraudulent transfer of mutual funds units by Allied to ISSL is a question which is required to be decided by some authority. Whether fraud has been perpetuated or whether a trade should be cancelled on a preponderance of probability that a fraud has been perpetuated, is again a question which is required to be decided by an authority. It is not appropriate for this Appellate Tribunal to go into the question at this stage. We are of the opinion that such matter is required to be decided by an

authority. Since NCL has refused to decide the application for annulment of trade on the ground that parallel investigation is being conducted by SEBI, we dispose of all the aforesaid appeals with the following directions:-

- (i) All the appellants will file an appropriate application for redressal of their grievances before SEBI by 8<sup>th</sup> July, 2019 annexing their earlier applications / complaints / emails and praying for specific relief / reliefs.
- (ii) Counter-parties like Citi Bank and similarly connected entities may appear before SEBI and place their objections, if they so desire.
- (iii) SEBI will consider all the complaints and applications and provide an opportunity of hearing to the appellants, to all interested parties and take a conscious decision by reasoned and speaking order;
- (iv) All the parties will appear before SEBI on 10<sup>th</sup> July, 2019 at 3 p.m. on which date SEBI will hear and decide the matter, and if for some reason, the hearing is not concluded on that day, SEBI will hear the same on a day to day basis till it is concluded.

SEBI would thereafter pass an order on or before 17<sup>th</sup> July, 2019.

- (v) Since an interim direction had been granted by the Supreme Court of India by its order dated 26.6.2019, we direct that the Nifty Option Contract on the F&O Segment of NSE which was to expire on 27<sup>th</sup> June, 2019 will remain in abeyance till 22<sup>nd</sup> July, 2019.

Sd/-  
Justice Tarun Agarwala  
Presiding Officer

Sd/-  
Dr. C. K. G. Nair  
Member

Sd/-  
Justice M.T. Joshi  
Judicial Member

3.7.2019

Prepared and compared by  
RHN/DDG