2026 INSC 941

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No.31 of 2024

Edelweiss Custodial Services Limited
... Appellant

Versus

NSE Clearing Ltd. & Anr.
... Respondents

With

Civil Appeal No. 7313 of 2024
Civil Appeal No. 2187 of 2024
Civil Appeal No. 3179 of 2024
Civil Appeal No. 4238 of 2026

J U D G M E N T

K. VINOD CHANDRAN, J.

When the future holds out promises and options for everyone; in the Futures & Options (F&O) Segment they were faced with eternal damnation and loss of valuable securities, lament the individual investors, who are the intervenors in these appeals. Whether the reparations are to be borne by the Share Broker, herein termed the Trading Member (TM) or the Professional Clearing Member (PCM), the appellants herein, is the dispute raised by the appellants, who distance themselves from the individual clients/investors, on the ground of absence of privity of contract with those clients of the TM and lack of visibility of their debit/credit positions.

I) Overview of the F&O Segment and the case:

2. First, a broad overview of the hierarchy and the operations in the Stock Exchange; here the National Stock Exchange (NSE), the 2nd respondent in Civil Appeal No.31 of 2024, which appeal is taken as the lead case and the documents referred to therefrom, unless otherwise specified. The operations, of clearing and settlement of the various transactions are controlled by the NSE Clearing Corporation (NCL), a subsidiary of the NSE. The hierarchy in the NSE, is that, under its subsidiary, the NCL, termed the Clearing Corporation, there are three types of Clearing Members: Clearing Members (CM), Professional Clearing Members (PCM) and Self-Clearing Members (SCM). A CM does proprietary trades on its own account, has its own clients and also handles the proprietary trades of the TM and their clients. A Self-Clearing Member trades in its own account and also for and on behalf of its clients; while a PCM deals only with their constituent TMs and do not have proprietary trades or individual clients. The PCM is registered only with the NCL while CM and SCM are registered with the NSE and the NCL. The PCMs have as their constituents a number of TMs, who in turn have clients, the individual investors, who through their respective TMs carry out the operations in listed shares and other derivatives on the platform provided by the NSE.

3. As for the operations, a brief overview of the mechanism of the F&O Segment, as understood from the records is necessary. F&O Segment deals in major stock derivatives traded in the stock market, recognized under Section 18A of the Securities Contract (Regulations) Act, 1956[1]. Though the F&O Segment operates in a complex manner, simply put, it allows investors to buy or sell or lock in the prices of, an underlying asset such as a stock, index or commodity at a future date without actually owning it. Contracts are entered for trading a stock asset at a pre-determined price, applicable on a later date. The NCL ensures that the money and security change hands safely on completion of the trade and the obligation of investors to each other are duly met. The NCL acts as a regulatory body in the operation of the trading platform of the NSE and provides a settlement guarantee to the participants. The investment made can lead to astronomical profits, without any

[1] For short, the Securities Act

actual purchase or sale being carried out, or lead to massive losses, often driving the speculators to penury. Quick money is the lure and therein lies the trap too.

4. The execution of derivatives contracts, in the F&O Segment as in any other trade and especially so for reason of its speculative nature, requires collaterals in the form of money/stock/securities. The clients, the individual investors place their collaterals with the TM while the TM in turn place their own or their client's collateral, with the PCM. The PCM provides collaterals to the NCL and together this provides a settlement guarantee ecosystem, since every profit earned has a corresponding loss suffered. When a client fails to carry out the final settlement, the TM recoups by enforcing the securities offered to it as collateral and likewise on the TM's default, the PCM liquidates the collaterals with them and similar would be the consequence when the PCM defaults to the NCL.

5. Insofar as the present case, the default was by the TM whose collaterals were sold out in the market, allegedly without reference to the debit/credit positions of their individual clients. The compelling argument of the appellants, the PCMs, is that they have no privity of contract with the clients of the TM and it was the default of the respective TMs that resulted in the collaterals being sold. It is also the submission of the appellants that the default occurred within a short period and the sale of collaterals were made over that period of time, at various instances, on the default of the TM. While, the end clients contend that the PCM had an obligation to look at their debit/credit positions; the PCM argues that neither was there any mechanism in place for the PCM to know the debit/credit positions of the individual clients nor was there any statutory obligation on the PCM to find that out. At that point of time, there were weekly settlements which made the verification impossible and the system was more complex, unlike now, when the Securities & Exchange Board of India (SEBI) has introduced a daily clearing regime which also ensures the credit/debit positions of the individual client to be known to all the constituents in the hierarchy of trading in the F&O Segment.

6. By the actions of the TM, the clients lost the security offered by them; even those who did not have any debit balance, for reason of the securities offered on their behalf by the TM to the PCM having been sold out. The TM is nowhere in the picture, since for all practical purposes they are defunct and bankrupt. The intervenors (the speculators) approached various forums:-

the SEBI, the Securities Appellate Tribunal (SAT) and the High Court which were not entertained. They sought for compensation before the NSE which proceedings were closed on the compensation being awarded by the impugned order of the Committee appointed by the NCL. The Committee appointed by the NCL found the PCM to be guilty of giving too much elbow room to the TM, thus resulting in a situation where they had to recoup their losses, by the sale of securities offered by the TM, which was done without complying with the regulatory mechanism in place. If remedial measures were taken on the initial default, the losses could have been minimized; but free play was given to the TM, putting in jeopardy the valuable securities of the individual clients of the TM. This, according to the NCL and the individual investors makes liable the PCM to reimburse those clients of the TM who, though had proffered securities, but had no debit balance in their accounts.

II) The Professional Clearing Members:

7. Mr. Shyam Divan, learned Senior Counsel appearing for the appellant in Civil Appeal No.31 of 2024, who is also the appellant in Civil Appeal No.3179 of 2024, assails the impugned judgment, essentially on the ground, the Committee constituted by the NCL having no jurisdiction to pass an order like the instant one, directing restitution of securities, which on the date of liquidation were worth about Rs.460.32 crores and as on the date of the order, would stand in excess of Rs.900 crores; in Civil Appeal No.31 of 2024. The restitution as ordered by the Committee is in effect, an order of disgorgement; the power to direct that being available exclusively under Section 11B of the Securities & Exchange Board of India Act,1992 (SEBI ACT herein after) and Section 12A of the Securities Act. Section 9(3)(b) of the Securities Act empowers the stock exchanges to make Byelaws which only provides for imposition of penalties as specified therein, which particularly excludes any penalization in terms of payment of money. The restitution of securities as ordered by the Committee and approved by the SAT in effect is penalization by payment of money, which is without jurisdiction and statutorily prohibited.

8. Mr. Divan also took us through the applicable Regulations and Circulars to point out that the regulatory mechanism in place did not oblige the PCM to verify the credit/debit positions of the individual clients of the TM. Nor was there a verification method in place for the purpose of liquidation, on the failure of TM to settle its dues; even those incurred on behalf of the TM's individual clients. If the enforcement of collaterals by sale of securities offered by the TM, is carried out by the PCM, on the TM's failure; the remedy of an individual client of the TM against any sale of securities belonging to that client, proffered by the TM, would be against the TM and not the PCM. It would also be the responsibility of the TM to apprise the PCM, with the debit/credit positions of an individual; bereft of which there can be no such information ferreted out by the PCM.

9. The Show Cause Notice, never contemplated a penalty in the nature of the one awarded and there is clear violation of principles of natural justice in the Committee having imposed a penalty, impugned herein without any notice to the PCM. It is also argued that the foundation of such imposition of penalty was never disclosed to the appellant and the determination of the restitution was without proper disclosure of the details to the PCM. It is also alleged, without prejudice to the contention of lack of jurisdiction, that the penalty imposed is grossly disproportionate.

10. The other two appellants before us, also PCMs, adopt the arguments of the appellant in Civil Appeal No.31 of 2024, but pointed out certain distinguishing factors. Mr. Niranjan Reddy, learned Senior Counsel appearing for the appellants in Civil

Appeal No. 2187 of 2024 pointed out that as against them the alleged default and liquidation of collaterals occurred between 06.03.2020 and 25.03.2020 wherein regulatory proceedings were initiated by the National Company Law Tribunal (NCLT), culminating in the order of the Tribunal to reinstate securities worth Rs.1.9 crores; which as on the date of the order would have a value of Rs.7.9 crores. The TM had provided the collaterals for the purpose of preparatory trading, as belonging to the TM itself. When the amounts due spiraled, on warnings being issued, the TM agreed to furnish a bank guarantee and provided one for Rs.6.05 crores. On 23.03.2020, while scoring off the positions of the TM, there was remaining an obligation of Rs.7.8 crores of which Rs.6.5 crores were satisfied on enforcement of the bank guarantee and the balance by sale of collaterals. It is pointed out that the clients of the TM filed a Civil Suit against them for recovery of the monies and some received relief from the Investors Protection Fund of NSE. The further claim from the PCM would only result in duplication of the loss and, in any event, there cannot be any loss recovery from the PCM.

11. Mr. Amar Nath Saini learned Senior Counsel appearing for the appellants in Civil Appeal No.7313 of 2024 also distinguishes the case from that of Civil Appeal No.31 of 2024 on the ground that the TM had specifically instructed the PCM to sell off the collaterals. The TM was declared a defaulter on 06.09.2021 and the liquidation of the collaterals insofar as the present appellant is concerned, occurred between 22.10.2019 and 03.07.2020. It is also pointed out that there is a specific arbitration clause as available in the byelaws of the NCL which enables such arbitration to be carried out, of disputes existing between the TM and its clients. The attempt to recover loss from the PCM is a statutory overreach, especially when there is clear collusion between the TM and its clients. Both the appellants reiterated the grounds raised of absence of privity of contract with the clients of the TM, regulatory provisions having been misread by the Committee and the SAT to find lack of due diligence, when no such statutory prescription existed. Warning mechanism was brought in by the SEBI, only later to the liquidation of securities, which alone brought about the visibility to the PCM, of the credit/debit positions of the individual clients of the TM. The lack of jurisdiction to impose the penalty in the nature of restitution of the liquidated collaterals is asserted by the PCMs.

III) The NSE Clearing Corporation:

12. Sri Arvind P. Dattar, learned Senior Counsel, appeared for NCL and vehemently categorized the liquidation of the securities by the appellants as a wrongful act, depriving innocent investors; the clients of the stockbroker, of valuable securities placed as collaterals without any dues remaining unpaid from that individual investor. It is argued that there is no reason for this Court, much less any question of law arising, to interfere with the concurrent findings of fact by the Member and Core Settlement Guarantee Fund Committee (MCSGFC), as upheld by the SAT. The NCL manages the clearing and settlement of trades in the NSE which has over 2,200 CMs. The appellants are registered as a CM under the PCM category, bound to follow the regulations of the NSE and NCL, as also the notifications of the SEBI, as a member of the F&O Segment of the NSE. All provisions applicable to a CM are equally applicable to PCMs and so is the liability and responsibility of an entity acting as a PCM, to follow the rules, regulations, bylaws and circulars, regardless of the fact that they fall under the category of PCM. The regulations are pointed out to argue that there is clear restriction of utilizing a collateral furnished by a client to satisfy the dues of one another client, or even that of a CM.

13. The settlement principles brought in by the regulations provide a broad definition of 'client/constituent' which insofar as the PCM is concerned, takes in both the TM and the individual client of the TM. The circulars of the NCL also provide for reporting of trades, with client-wise collaterals to be uploaded which provides the necessary visibility insofar as the individual client-wise credit/debit positions to the PCM also. The SEBI Circulars also prohibit the collateral of one client being used against the dues of another. The CM-TM agreement is read to impress upon us that there is an authority coupled with a duty enjoining the CM to ensure the debit/credit positions of the individual clients, before collaterals are accepted and in extreme cases, liquidated. The TM too has a responsibility to ensure that the securities proffered as collaterals are in existence and are owned by the respective clients which are also free from any charge, lien or encumbrance whether prior or otherwise; to which end, an undertaking is given by them.

14. Mr. Dattar, emphasizes the power of MCSGFC to direct restitution relying on the principle of a larger power having within its fold a lesser power, as has been held by a Constitution Bench of this Court in ***Ahmedabad St. Xavier's College Society and***

Another v. State of Gujarat and Another[2]. The larger power, according to the NCL, is of expulsion, within which is ensconced the lesser power of restitution of the liquidated securities, which inure to the benefit of the innocent investors and ensures the maintenance of integrity of the stock market. The disciplinary power to impose a penalty, conferred on the NCL, cannot be restricted on the ground of a restitution not being literally spelt out in the byelaws. Penalty, according to the NCL, is a larger concept as held in ***Director of Enforcement v. M.C.T.M. Corporation Pvt. Ltd. and Others***[3] & ***Shiv Dutt Rai Fateh Chand and Others v. Union of India and Another***[4]. Reliance is also placed on the extract from *Corpus Juris Secundum.* The jurisdiction to make restitution, is inherent in every authority and has to be exercised when justice demands it, as held in ***South Eastern Coalfields Ltd. v. State of M.P. and Others***[5] and ***Kavita Trehan and Another v. Balsara Hygiene Products Ltd.***[6]. ***Dr. Poornima Advani v. Government of NCT***[7] held that restitution is used in three senses, first and foremost, the restoration of a

[2] (1974) 1 SCC 717
[3] (1996) 2 SCC 471
[4] (1983) 3 SCC 529
[5] (2003) 8 SCC 648
[6] (1994) 5 SCC 380
[7] (2025) 7 SCC 269

specific thing to its rightful owner. The contention raised of the appellant having not been heard on the aspect of restitution, was countered, pointing out the additional written statement filed wherein the appellant had responded to the demand of restitution of liquidated securities, as coming out in the hearings before the Committee.

IV) The End Clients of the Trading Members:

15. The investors who had intervened in the proceedings before the SIT, were represented before this Court and Ms. Meenakshi Arora, learned Senior Counsel, led the arguments on their behalf. The rationale behind the introduction of a CM is not merely to facilitate settlement of trades but also to ensure that the critical functions are discharged by the various entities in full compliance of the institutional safeguards. The regulatory framework places the PCM in a fiduciary capacity and enjoins on them statutory responsibilities, even when permitting them to independently discharge their clearing and settlement functions, in accordance with the applicable regulations. It does not permit a clearing member to mechanically or indiscriminately discharge its functions without undertaking due diligence and without satisfying regulatory obligations cast upon it.

16. The appellants violated SEBI circulars dated 17.04.2008, 26.09.2016 and 20.06.2019, respectively dealing with the 'Collateral deposited by Clients with Brokers', the 'Enhanced supervision of stockbrokers/depository participants' and the last specifically issued by the SEBI to regulate *'Handling of Clients' Securities by TMs/CMs'*. The appellants are also in violation of NSE Clearing Circular dated 20.05.2019 and the NCL Regulations, specifically Regulation 1.7, 10.2.4 and 4.5.4.

17. According to the investors, the CM-TM agreements expressly empower a CM to obtain client-wise margin details and constituent information, as also inspect the records and verify the TM's accounts. On the persistent defaults of the TM, which was also brought to its notice by the NSE by a communication dated 02.04.2020, the PCM failed to exercise their contractual obligations and regulatory powers. The TM was given a long rope, which raises a presumption of collusion and illegal enrichment, especially in the context of liquidation of client securities indiscriminately and without following due diligence practices.

18. The NCL circular dated 10.09.2019 specifically requires the provision of daily client-wise margin information including client-wise and security-wise margin obligations and market to market details of constituents of TM. The contention of absence of privity of contract and lack of client-wise information, hence, is wholly untenable and deserves to be rejected. The various legal proceedings undertaken by the investors are specifically emphasized to sustain the restitution of securities liquidated by the appellants in violation of statutory byelaws and circulars, flouting the regulatory mechanism in place. The concept of restitution in the face of unjust enrichment, is sought to be supported with reference to the decision of this Court in ***Indian Council for Enviro-Legal Action v. Union of India and Others***[8]. The PCMs having violated its core regulatory obligations, as enjoined upon by the SEBI, the NSE and the NCL, cannot escape from its liability to restore the securities sold away without looking at the credit/debit positions of the individual clients. The contention of the appellant that they liquidated the securities so that the entire trading activity of the NSE does not collapse, cannot stand in the face of the protection granted by the Settlement Guarantee Fund, which would have honoured the claims of the individual investors in the context of such collapse, ensuring the

[8] (2011) 8 SCC 161

innocent investors without any debit positions from losing their valuable securities, procured with their life savings.

V) The MCSGF Committee:

19. The MCSGF Committee constituted by the NCL had ordered restitution as per Annexure 22; similar orders having been passed against the others too. The Committee's order, in Civil Appeal No.31 of 2024, first noticed the findings in the Limited Purpose Inspection (LPI) with respect to the execution of the CM-TM Agreement and the PCM being enjoined to upload trading member-wise, client-wise, security details to NCL in accordance with NCL Circular dated 20.05.2019. The books of the PCM showed large debit balances on multiple dates on account of losses made by the TM to settle the outstanding dues and the PCM having sold the securities between January 2020 to July 2020. The information sought for from the PCM revealed no due diligence carried out making it clear that the regulatory regime was violated by the PCM. The email addressed by the NSE to the PCM dated 02.04.2020, cautioned the PCM about its constituent, the TM; Anugrah Stock & Broking Private Limited (herein after Anugrah), having significant settlement obligations/losses and the liquidation carried out to meet the unpaid obligations with a reminder to carry out periodic due diligence. The reply of the PCM distancing itself from the clients of the TM insofar as the mandatory weekly reporting in place, not enabling timely verification of the collaterals with the debit/credit positions of individual clients were brushed aside. The violations observed were of the SEBI's Circulars and the NCL Regulations as pointed out by the investors and specifically of non-adherence to the NCL and NSE directives i.e., Clauses 1 and 2 read with Clause 3 (1)(d) of Chapter V of the Rules of NCL.

20. From the findings of the Committee, it was specifically pointed out by the respondents that the attempt of the PCM to distance itself from the clients of the TM is untenable since the PCM had been uploading on a weekly basis, the client-wise and ISIN-wise details of the non-cash securities placed by the TM with it. The CM is not permitted to sell huge quantities of investors/clients securities without even ascertaining the balances of the respective clients. The undertaking given by the TM dated 30.07.2019 specifically spoke of the collaterals furnished by it being the securities belonging to its clients, in addition to the undertaking that they are free from any encumbrances. Violations with respect to the SEBI Circulars were separately noticed and so was the violation of Regulation 10.2.4 of the NCL. The Committee found the sale of the securities worth Rs.460.32 crores to be in utter disregard of the SEBI Circulars and the NCL Regulations and without any proper due diligence carried out, to ensure sale only of those securities which belonged to clients having debit positions/defaulted obligations.

21. Quoting, interest of justice, equity and good conscience, the PCM was directed to reinstate the securities which were liquidated in contravention of the SEBI's circulars and NCL Regulations within a period of 15 days, failing which an amount equivalent to the value of the securities as on the 16th day plus the market value of 5 % was directed to be blocked from the available collateral of the PCM with NCL, from the date of the expiry of the aforesaid period of 15 days in Civil Appeal No.31 of 2024; concerned with the TM, Anugrah. The appellant was further directed to pay a penalty of Rs.1 lakh by the Committee. Insofar as Civil Appeal No.3179 of 2024, the very same PCM, with reference to the sale of collaterals offered by another TM; viz: VRISE Securities (Pvt.) Ltd. was directed to restitute 22 crores worth securities liquidated between 15.11.2019 to 04.12.2019. In Civil Appeal No.2187 of 2024, another PCM with reference to their

TM; Action Financial Services (India) Ltd. was directed to restitute Rs.1.95 crores worth of securities liquidated between 12.03.2020 to 25.03.2020 and a penalty of Rs. 1.95 lakhs was imposed. Civil Appeal No.7313 of 2024 is concerned with yet another PCM for the period August'2019 to July'2021 in which the collaterals of their TM; Yuvraj Securities liquidated to the tune of Rs. 75,74,712.08 was directed to be restituted and a penalty of Rs. One lakh was imposed. The further directions as contained in the impugned order in Civil Appeal No.31 of 2024, on failure to restitute, to block the securities in the collaterals available with the NCL, to the extent of the value of the liquidated securities as on the 16th day with an addition of 5% was reiterated in all the orders. Civil Appeal No. 4238 of 2026 is by a client-investor seeking refund/ restitution of the cash margin he maintained with the TM, Anugrah.

VI) The Securities Appellate Tribunal:

22. The SAT confirmed the Committee's order and the specific argument with respect to the absence of power to direct restitution was repelled, relying on decisions of this Court, affirming reparations to be a just and equitable remedy; by which the damage caused is repaired, thus imposing a punishment far lesser to that of complete suspension of trading rights. The SAT also referred to the powers vested with it under Rule 21 of the SAT (Procedure) Rules, 2000 to hold that even if the Committee does not have the power, the Tribunal, *suo motu* could direct restitution of shares. Immediately we have to raise a caution, in so far as a provision in the procedural rules being interpreted and relied on as a substantive power conferred. The rule only enables the Tribunal to regulate its procedure and may not be mistaken as a *carte blanche* to do anything and everything. The Tribunal in considering an appeal from a Statutory Authority, on the well-heeled principle of an appeal being a continuation of the original proceeding, has all the powers of the original authority but cannot assume for itself a greater power, than the statute permits.

23. Apposite would be reference to ***Civil Appeal No. 2049 of 2010, SEBI vs. S. Kumars Nationwide Ltd.*** disposed of on 26.11.2010 by a three Judge Bench of this Court. Before the SAT, the SEBI was not a party, and the decision assailed was of the Bombay Stock Exchange (BSE) declining approval for listing and allotment of shares. The SAT found that the technical default on the part of the appellant company was for reasons beyond its control. While observing that they could have remitted the case back to the Board to consider the request of the appellant, in the background of the factual situation, the SAT thought it fit to issue directions in exercise of the powers, the Board was conferred with. The SEBI was before this Court contending that these powers cannot be directly exercised by the SAT. The SAT had exercised powers available to the SEBI in an order, on an issue not agitated before the SEBI. This Court found that the contention of SEBI was correct, though the directions were not interfered with since it was already complied with the by the BSE. The SAT hence, cannot have omnibus powers to pass directions as it may deem fit and proper and is regulated by the Statute constituting it.

VII) Questions of Law:

24. From a conspectus of the arguments placed before us, we frame the following substantial questions of law for consideration:-

i. *Whether the PCM had a statutory obligation to verify the credit/debit positions of the individual clients of the TM before the collaterals proffered by the TM were liquidated, and whether the regulatory mechanism provided visibility of such credit/debit positions of the individual clients of the TM to the PCM?*

ii. Whether MCSGF Committee, constituted by the NCL, has the power to order restitution of the securities and even if it was conferred with such powers, whether it should have notified the invocation of such powers, failing which the order would be vitiated on the ground of violation of principles of nature justice?

iii. Whether the individual clients can lay a claim against the PCM for the default committed by the TM, especially in the context of the TM having been found to have indulged in illegal schemes, in which the individual clients had voluntarily participated?

VIII) *Our Analysis:*

25. We have in the opening paragraphs listed out the hierarchy of operations in the NSE and the staggered responsibilities of the NCL, the CMs and the TMs. First, we have to deal with the contentions raised under the Futures and Options Regulations issued by the NCL, specifically on the strength of Regulation 1.7 and Regulation 4.5.4 which are extracted hereinbelow: -

> ***1.7 Client/Constituent***
>
> *A client/Constituent means a person, on whose instructions and on whose account the Clearing Member clears and settles deals. For this purpose, the term "Client" shall include all registered constituents of trading members of Specified Exchange.*

> ***4.5 Margin from the Constituents***
>
> *4.5.4 The Clearing Member shall not allow the utilisation of margin monies paid by one client to the margin money dues of his own account or of other clients'.*

26. The definition clause defines a client/constituent as a person on whose instructions and on whose account the CM clears and settles deals. Obviously, the instructions given to the PCM herein, is by the TM who is entitled to have propriety trades or trades on behalf of individual clients, for both of which securities and collaterals are offered to the PCM. The second limb of the definition brings in the individual clients of the TM and includes them within the meaning of clients/constituents. Explanation 1 is with respect to the term '*constituent and clients*' being used interchangeably. Explanation 2 specifically speaks of the byelaws at Chapter IX, X and XI where the term *'constituent'*, in relation to trades, including a Trading Member, when the trades done on the specified exchange are cleared and settled on its behalf by a CM. Explanation 1 & 2 being not relevant for our purposes, what comes out from the definition clause is that insofar as a PCM is concerned, which is a category of CM, the client or constituent is the TM and insofar as the TM is concerned, the client/constituent is the individual investor registered with it.

27. Clause 4.5, first (4.5.1) requires the CM to demand margin monies from its constituents and the CM has a corresponding duty then (4.5.2), to clear and settle deals in the derivative contracts on behalf of the constituents, only on receipt of minimum margin as the relevant authority decides, leaving the CM with discretion to collect higher margin from its constituents. Thirdly (4.5.3), the CM is obliged to inform the NCL as to the margins deposited on behalf of its constituents, on such information being required by the NCL. Much emphasis has been placed on Regulation 4.5.4 which prohibits utilisation of margin monies paid by one client in satisfaction of the margin money dues of another or on the PCM's own account. The restriction so provided under the Chapter dealing with "*Margins and Clearing/Exposures limits*"; is applicable to both the CM and TM. The prohibition insofar as the CM is concerned is with respect to the collaterals offered by one TM being settled or satisfied against that of another TM's dues. In other words, the collaterals furnished by Anugrah (the defaulting TM, herein) cannot be used by the PCM for the purpose of clearing or settling dues of another TM who is registered with the

NSE and NCL and is a constituent/client of the appellant-PCM. Insofar as the PCM is concerned, there are no propriety trades and hence there is no question of the margin money being used on its own account. However the rigour applies to the TM in relation to his clients, whose margins or collaterals cannot be mixed up with those of any other client. Clause 10.2.4 of NCL, F&O Regulations, speaks of no improper use of constituents' securities or funds by a CM or a person associated with such CM. In the present case, there is no such allegation of either the PCM or any person associated with the PCM having made any such improper use of the constituents' securities; which as regards the PCM, the constituent is the TM.

28. The *'Margins And Clearing/Exposure Limits'* applies equally to the TM and it's the TM's obligation to ensure that its clients/constituents; that is to say, the individual investors are protected insofar as the individual securities of one person are not used to settle or satisfy the dues of another, nor the monies or securities proffered as margin money by one client used for another client. Here we have to specifically notice that margin money, as provided in Regulation 4.2 can be in the form of either, cash, deposit receipts, guarantees of banks and securities approved by the relevant authorities. The margin proffered by one client of TM cannot be used for another client, nor can the collaterals of one be used in satisfaction of debts of another by the TM. Likewise, the PCM cannot use the collaterals offered by one TM as margin or in satisfaction of the dues of another TM.

29. The above regulations have to be understood, especially in the context of the present case, where Anugrah is said to have indulged in illegal trading and having offered Ponzi Schemes to its clients. It is admitted at the time of argument that Anugrah was wearing two hats, one of the TM and another of a Depository Participant (DP). But it has come out by way of the Application dated 13.07.2026 that Anugrah, the TM was wearing three hats, the third of a Derivatives Advisory Services (DAS) assuring fixed returns to its clients, in the nature of a Portfolio Management Services (PMS) (erroneously termed as Professional Monitoring Services in the application); which requires a Certificate issued under SEBI (Portfolio Managers) Regulations, 2020, which Anugrah did not possess. Using its DP status & in the role of DAS Anugrah entered into agreements with their individual clients who deposited the securities, for a fixed return, which is prohibited by the NSE. The collaterals offered thus by the individual investors on the strength of affidavits and undertakings of the individual clients, were in turn proffered by the TM to the PCM.

30. Obviously, the TM was carrying on trading on its own account using the securities of its individual clients/constituents and on losses being incurred, the default occurred and the PCM in turn was constrained to liquidate the securities so offered. Neither can the TM absolve itself from its liabilities nor can the investors cry foul, since they entered into the scheme with full knowledge of their securities being offered as collaterals for a fixed return. The responsibility of the assured return is only on the TM and not even indemnified by the NSE; being an outright illegal activity.

31. We also find that the SEBI had taken proceedings against Anugrah, its Directors and associated entities. An Adjudicating Officer by Order No. PM/SM/2020-20/10794 dated 09.03.2021 considered the period from April 2017 to September 2018, long prior to the period under scrutiny in this case. It was found that the stock broker had not uploaded the correct and complete details of the clients in the UCC database of the Exchange, a clear violation of the SEBI Circular of 2016. Anugrah had misused the credit balance clients' funds to meet obligations of debit balance clients and had failed to segregate clients' funds *interse,* and/or between clients' funds and its own funds, and has mis-utilized the funds of the clients. As early as from 2017-2018, Anugrah had mis-utilized the client securities by pledging of the securities over and above the respective client obligations in all the 18 sample days taken. The shares of the clients, which were pledged by Anugrah pertained to the clients having i) credit balance, ii) no obligations, iii) zero balance and iv) credit balance clients having obligations and v) debit balance clients. There was also an allegation of incorrect reporting on aggregate value of collateral deposited with clearing corporations and/or clearing member, under enhanced supervision of the stock exchanges (SEBI Circular of 2016), violating the Stock Brokers Regulations and NSE Circulars.

32. Relevant also would be reference to the order of the Whole Time Member of SEBI, Order No.WTM/SM/MIRSD/MIRSD-DPIEA/25089/2022-23 dated 28.03.2023 based on the recommendation of an Adjudicating Officer specifically on offering DAS directly and through its associate entity, Om Sri Sai Investments (OSSI) in the nature of PMS; which was also with respect to the subject period. There was found huge shortfall of availability of securities, from that reflected in the Register of Securities to the tune of Rs.683.87 crores, which led to the inference that the securities were not delivered to the clients and were misappropriated and misused by the stock broker for purposes other than, what they were meant for. Meaning thereby, that Anugrah was using such securities for its own purposes thereby depriving the clients of their assets. The illegal and unauthorized use of clients' security by Anugrah was specifically noticed as not confined to one or two stray instances, but having continued unabatedly for a long time. It was concluded that Anugrah was mis-stating the balance in the books of accounts and at the same time, was not reporting the adjustment entries to the clients, in the clients' ledgers. We merely cite the findings on facts in the above two orders, without making any comment on the order itself, lest we pre-empt a challenge to the same. But we have to emphasize that this is not an open and shut case where on mere failure to carry out due diligence, a restitution can be ordered; even if it is statutorily permissible.

33. The working of the F&O segment in the NSE is discernible from the various rules, regulations and byelaws of the NCL, as also the Circulars of the SEBI; which are said to have been violated.

SEBI's circular dated 17.04.2008 has the subject of *'Collaterals deposited by clients with brokers'*; specifically applicable to the brokers; the TM. The circular specifies the norms regulating transactions between clients and brokers and requires the broker to have adequate systems and procedures in place to ensure that client collateral is not used for any other purposes, other than meeting the respective client's margin requirements/plans. The brokers are also required to maintain records which have to be produced during inspection.

34. The Circular of SEBI dated 26.09.2016 was brought in to enhance supervision of Stock Brokers/Depository Participants. It specifically regulated the naming/tagging of banks and demat accounts of stock brokers, monitoring of client funds lying with the stock brokers by the stock exchanges, internal audit of stock brokers, monitoring of financial strength of stock brokers, standard operating procedures for both stock brokers and depository participants in event based discrepancies, running account settlement, providing PAN number and methods of reconciliation as also uploading clients fund balance and security balance by the stock brokers on stock exchange system. It has to be specifically noticed that the Circular applies to stock brokers and stock exchanges and even if it applies to CMs, it is to be emphasized that uploading of clients fund balance and security balance by the stock brokers as prescribed therein is to be done on a monthly basis for every client, on to the Stock Exchange System where the broker is a member. This would not facilitate real-time visibility that is required when a TM fails to meet its obligations or the obligations on behalf of their clients, which has to be met by the PCM by liquidation of the collaterals proffered by the TM. But violations of even this monthly uploading by Anugrah was found by the SEBI as noticed hereinabove.

35. As far as the circular of the NCL dated 20.05.2019, applicable to all members including custodians and PCM, there was a mechanism brought in of reporting of trading, member-wise client-wise collateral details by CMs. A standardized report on details of collaterals placed by the TMs and clients with them, was to be uploaded on a weekly basis, specifically made applicable for CMs who are also clearing for other TMs. The CMs were obliged to make two submissions giving details of the TM and client wise collaterals, which are as under: -

"(i) DP account wise, Trading Member and client-wise and ISIN-wise details of securities (non-cash collateral) held. The format of reporting is enclosed as Annexure 1.
(ii) Trading Member-wise details of cash and cash equivalent collateral. The format of reporting is enclosed as Annexure 2"

36. A reading of Annexures 1 and 2 makes it very clear that positions of the individual clients were not required to be disclosed by the TM or included in the Annexures before uploading, by the CM. The holding statement had to be maintained and submitted scrip-wise for all the demat accounts where CM is holding TM's securities in separate collateral accounts, separately for each TM, and not their constituents. From the monthly uploading in 2016, SEBI brought in weekly reports in 2019, moving on to daily reporting in 2021, a progression informed by experience and conditioned through pit-falls.

37. SEBI's Circular dated 20.06.2019 is with respect to handling of '*Client's securities by Trading Member/Clearing Member*' which lays emphasis on the Securities Act and the SEBI (Stock Brokers) Regulations, 1992, both of which specifies that the stock broker shall segregate, securities or monies of the client or clients and shall not use the securities or monies of a client or clients for self or for any other client. True, the said circular is applicable to CMs also but insofar the PCM's, who are the appellants herein are concerned, they neither have individual clients, nor do they have any transactions on their own account. The TMs are their constituents and there is no allegation of the securities or monies of one TM having been used as against the dues of another TM. In fact, in the aforesaid circular, the emphasis is on the pledging of collaterals/securities of the clients by the TM/CM with the Banks/NBFCs to borrow funds to meet the margin requirements, which it was cautioned was not contemplated in the Circulars issued by the SEBI. A rigour has also been brought in by Clause 4.7, by which w.e.f. 01.09.2019, client's securities lying with the TM/CM in *'client collateral account' 'client margin trading securities account'* and *'client unpaid securities account'* cannot be pledged to the Banks/NBFCs for raising funds even with authorisation by the client, as the same would amount to fund based activities by TM/CM in contravention of the Securities Contracts (Regulation) Rules, 1957. This again is a pointer to the fact that the securities were maintained in consolidated accounts of a client, which insofar as a TM is concerned, would be the constituent individual client while insofar as a PCM is concerned, it would be the constituent TM.

38. The CM-TM agreement is produced as Annexure P2 from which the relevant clauses with respect to margin, collaterals, maintenance of accounts and the liquidation alone have to be looked into. Under the *'Rights of the Clearing Member'* at Clause 2.7, the CM is entitled to receive from the TM a statement containing the details in respect of margin account, due and paid by the TM to the CM, on his own account and a list of client codes, names, client-wise margin amount collected by the TM from its clients for the purpose of meeting margin requirements. The CM has the authority to close out or liquidate the open positions of the TM in accordance with the NCL regulations in case of non-payment of dues by the TM towards margins, daily mark to market settlement, final settled or such other settlement, its brokerage, commission and/or charges. The CM also has the right to require the TM to undertake registration of its constituents and to comply with the requirements of '*constituent registration form*' and '*risk disclosure documents*' for which the CM is entitled to collect information from the TM about its constituents and the information pertaining to the constituents' positions. However, though the entitlement is specified, there is no statutory obligation cast on the CM to carry out liquidation of the collaterals after ascertaining the constituents' position.

39. Under Clause 3 of '*Obligations of the Clearing Member*, sub-clause (2) requires the money deposited by each TM to be kept in a separate account by the CM distinct from its own account, the details of which are to be provided to the NCL. As against this provision of obligation of the CM, to maintain separate accounts of the TMs, under Clause 5, *'Obligations of the Trading Member'* at sub-clause (14), the TM has to maintain separate bank accounts to distinguish monies received from or on account, or monies paid or on account, of each of his constituents and the money received and paid on the TM's own account. It is the TM's responsibility by the aforesaid sub-clause that the monies belonging to one constituent shall not be utilised for meeting the obligations of the TM or some other constituent. It is also specified by Clause 5(v) that the Trading Member shall collect the margins from its constituents on a gross basis. The liability of the CM and that of the TM, on a default committed by either of them is also clearly specified in the agreement but not obliging the CM to protect the constituent of the TM on any default being committed by the TM.

40. On a reading of the SEBI's Circular dated 21.04.2008, 26.09.2016 & 20.06.2019 and the NCL's Circular dated 20.05.2019 or the Regulations of the NCL for the F&O Segment, specifically 1.7, 4.5.4 and 10.24 as also the CM-TM Agreement we do not find any violation having been committed by the PCM, insofar as the requirements in the said circulars and agreement are concerned.

41. Insofar as the *'Margin obligations by way of pledge/ repledge*', Circular of the SEBI dated 25.02.2020 at Annexure A-12, applies both to the CM and the TM. The circular has been issued by the SEBI after extensive consultation with the stock exchanges, clearing corporations, depositories and industry representatives of TMs, CMs and DPs. With effect from 01.06.2020, acceptance of collaterals from clients in the form of securities is only by way of a margin pledge created in the depository system in accordance with Section 12 of the Depositories Act, 1996, read with Regulation 79 of the SEBI (Depositories and Participants) Regulations, 2018 and the relevant byelaws of the depositories. Clause (vi) of the circular provides that for the purpose of providing collateral in form of securities as margin, a client shall pledge securities with the TM and the TM shall repledge the same with the CM and the CM, in turn, shall repledge the same to the Clearing Corporation (NCL); the complete trail of such repledge being reflected in the demat account of the pledger. By Clause (xii), the TM/CM were required to close all existing demat accounts tagged as '*client margin or collateral*' by 30.06.2020, after which all client securities lying in such accounts were to be transferred to the respective clients' demat accounts and the TM/CM were prohibited from holding any client securities in any beneficial accounts of TM/CM. Hence, the procedure by which the complete trail of pledge and repledge being reflected in the demat account of the pledger; the individual investor, was made effective only from 30.06.2020, before which the subject liquidation of collateral securities occurred. Prior to 30.06.2020, the TM collects collaterals on a 'gross basis', as is seen from the CM-TM agreement, from its constituents and the CM maintains such collaterals proffered by each TM in a consolidated demat account tagged as '*client margin or collateral*'.

IX) The Penalty of Restitution:

42. A question was also raised on the NCL or the Committee it constituted, having not been empowered with the power of restitution of liquidated securities, as coming out from the statute, to make byelaws, which is also absent in the byelaws drawn up in accordance with the statute. Section 9 (3)(b) of the Securities Act empowers the Stock Exchanges to make byelaws. It provides as under: -

> *9. (3) (b) provide that the contravention of any of the bye-laws shall render the member concerned liable to one or more of the following punishments, namely: —*
>
> *(i) fine,*
>
> *(ii) expulsion from membership,*
>
> *(iii) suspension from membership for a specified period,*
>
> *(iv) any other penalty of a like nature not involving the payment of money.*

43. In contrast, it has also been pointed out that the SEBI Act, 1992 by Section 11B empowers the SEBI to issue directions and levy penalty, as per sub-section (1) and sub-section (2) and for our purposes, the explanation which is relevant is extracted hereunder: -

> *Explanation. — For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder,*

to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

44. Likewise, Section 12 A of the Securities Act dealing with the powers of the SEBI to issue directions, adds a similar explanation to the provision. The power of disgorgement, hence, was specifically conferred on the SEBI and intentionally not permitted to be conferred, in the byelaws made under Section 9 of the Securities Act. More importantly, it prohibits by Clause 3(b)(iv) any *penalty involving the payment of money* (sic). In this context, it has to be specifically emphasized that the Committee not only directed restitution of the liquidated shares which is in the form of payment of money, and as an alternative, on failure of restitution directed an amount equivalent to the value of the securities as on the 16th day plus 5% market value to be blocked from the available collateral of the PCM with NCL. Clearly a prescription made for payment of money by liquidation of the securities. This is in stark violation of the power conferred by the statute and the byelaws also do not speak of any such power being conferred of disgorgement or payment of money in the nature of restitution of securities on the NCL, which alone could empower the Committee constituted by the NCL to impose such penalty. The Legislature while conferring the power of disgorgement on the SEBI, in two related statutes, consciously omitted it from being conferred under the byelaws of a stock exchange; which cannot be brought in, that too against the specific statutory bar, on grounds of equity, justice and good conscience.

45. In the wake of the above findings, we are of the definite opinion that there was no statutory violation committed by the PCM and their plea of having no privity of contract with the constituents of the TM as also no statutory obligation to verify the debit/credit positions of the individual clients of the TM is perfectly in order. More onerous is the fact that the TM was indulging in a Ponzi scheme wherein the investors willingly enrolled themselves, executing affidavits of undertakings and furnishing securities to the TM in his status as a DP & DAS, which was out right illegal, the illegality being known, both to the TM and its constituents.

X) Restitution Ensconced Within Expulsion:

46. The question of whether the penalty of restitution is one encompassed within the greater penalty of removal is no more relevant and is inconsequential on our reasoning, but still we answer the same. ***Indian Council for Enviro-Legal Action***[8] is not at all applicable since it is based on the principle: *'polluter pays',* bringing in such liability on those who unjustly enrich themselves by resorting to delaying tactics and abusing the process of law, calling for the relief of restitution by way of disgorgement of illegal gains accrued on the polluter. There can be no parallel drawn in the present case to environmental remediation costs, especially in the context of no illegality having been found in the liquidation carried out by the appellants, nor an unjust or illegal enrichment. On the other hand, desisting from liquidating the collaterals proffered by the TM, in the instant case, would have led to huge losses for the PCMs, by way of their collaterals being liquidated by the NCL. In fact, the SAT in its concluding paragraph admits as much when it confirms as valid the restitution since the appellant, according to the SAT was evading losses through liquidation. Losses recouped by the PCM in our view was permissible in the manner it was done as per the regulatory measures in place at that time; to which end the collaterals were stipulated.

47. ***Shiv Dutt Rai Fateh Chand*[4]** was in the context of a retrospective amendment levying penalty under the Central Sales Tax Act, and the validation made of the penalty orders passed prior to the amendment; not at all applicable to the facts of this case. The challenge was on the ground of violation of Article 20(1) of the Constitution. ***Maqbool Hussain v. State of Bombay***[9] wherein the confiscation of goods under the Sea Customs Act was held to be not precluding a criminal proceeding for the very same transaction was relied on. Looking at the definition of *'offence'* under the General Clauses Act and the words employed of *'convicted' 'commission of the act charged as an offence' 'be subjected to penalty' 'commission of the offence'* in Article 20(1), *'prosecuted and punished'* in Article 20(2) and *'accused of any offence' in Article 20(3)* it was held that for application of Article 20, the prosecution and the punishment of a person must be in the nature of criminal proceeding, before a Court of law or Judicial Tribunal. There arises no equation to the present case.

48. In ***South Eastern Coalfields Limited***[5]**,** based on an interim order, royalty as enhanced by a Central Government notification were not paid. When the matter was finally decided against the petitioner, the principle of restitution as applicable in Section 144 of Code of Civil Procedure, 1908 was held applicable even in the

[9] (1953) 1 SCC 736

absence of any legal or contractual provision for interest. Section 144 of the CPC applies when a decree or an order is varied or reversed or modified in an appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose. Then, the party who was prejudiced by the decree or order would be enabled restitution to the position occupied *dehors* or prior to the decree or order, to the extent it stood varied, reversed or modified. The vacation of an interim order by the final disposal of the *lis* brings the liability of not only satisfaction of the dues but also the interest accrued. There is no such circumstance of a decree/order and its reversal or modification in an appeal or in the final disposal of the matter as coming out in the present case. Section 144 of the CPC hence has no application insofar as the restitution ordered by the Committee in the present case.

49. ***Kavita Trehan***[6] was also a case in which, under cover of an ex-parte injunction, the party who was given the custody of goods sold it and converted it to money. The High Court having found the interim injunction to be unjustified and improper directed restoration of *status quo ante* which was upheld by this Court; holding that even if Section 144 is not attracted, the exercise of jurisdiction can be justified under Section 151 of the CPC. ***Dr.***

Poornima Advani[7] too applied the doctrine of restitution to grant interest on the principal, when it was retained by the authorities unjustly. It was held that restitution is applied in three senses i) to restore a specific thing to its rightful owner or status ii) compensate for the benefits derived from a wrongdoing and iii) compensation of restoration for the loss caused to another. What is relevant in directing restitution and also grant of interest, is that the retention of the thing or money; by the person from whom it is sought to be restituted, should be unjust/illegal; which we have found does not emanate from the facts and circumstances of this case and no violation *perse* of the statutory regulatory mechanism arise. We are neither able to find a remedy of restitution, flowing naturally in the facts of this case nor are we persuaded to permit it, in view of the specific statutory prohibition with respect to the penalties permitted under Section 9(3)(b) of the Securities Act.

XI) The Daily Reporting:

50. Now we come to the circular of the SEBI of 20.07.2021, produced as Annexure A15, which is relied on by the PCM to contend that the measures implemented therein, giving clear visibility to the individual client collaterals and the debit/credit positions of the investors under a TM being allowed to the CM and even the NCL. The circular deals with '*Segregation and Monitoring of Collateral at Client Level'.* We extract Clauses 4, 5, 44 and 46 as under: -

> '4. *With a view to providing visibility of client-wise collateral (for each client) at all levels, viz., TM, CM and Clearing Corporation (CC), a reporting mechanism, covering both cash and non-cash collateral, shall be specified by the CCs. Details in respect of the same are as under:*

a. *The reporting structure shall entail disaggregated information (segment-wise and asset type wise break-up) of each client collateral in the following manner:*

- *TM shall report disaggregated information on collaterals up to the level of its clients to the CM.*
- *CM shall report disaggregated information on collaterals up to the level of clients of TM and proprietary collaterals of the TMs to the Stock Exchanges (SEs) and CCs in respect of each segment.*

b. *The details to be submitted in the report shall essentially cover the following information, in order to provide a holistic view of the entire client collateral at various levels up to the level of CC:*

TM → CM	***CM → SE & CC***
Client collateral received by TM	*Client collateral received by TM*
Client collateral retained by TM	*Client collateral retained by TM*
Client collateral placed with CM	*Client collateral placed with CM*
Not legible	*Client collateral retained by CM*
Not legible	*Client collateral placed with CC*

c. *The aforementioned information shall be required to be reported on a daily basis.*

5. *A web portal facility shall be provided by the CCs/ SEs to allow clients to view aforesaid disaggregated collateral reporting by TM/CM.*

… … … … …

44. *The procedure for verification and settlement of claims of constituents of defaulting CM shall be as follows:*

a. *The process for identification of defaulting TM/CP/clients and the return of collateral of non-defaulting TM/CP/clients shall be administered by the appropriate committee viz., Member and Core Settlement Guarantee Fund Committee (MCSGFC) of the Exchange or the CC.*
b. *The amount that can be claimed by the non-defaulting TM/CP/clients from the CC shall be limited to the allocated collateral (including deemed allocated) and the value of securities collateral provided through margin pledge/re-pledge to the level of CC, plus the pay-out (including profit if any during close-out) due to the constituent, less the losses in close-out of positions of the constituent.*
c. *The MCSGFC of the CC/Exchange shall implement the relevant procedures for verification and settlement of claims of the non-defaulting TM/CP/clients of the defaulting CM.*
d. *The constituents actually in default shall be identified and the pro-rata attribution of shortages performed in Stage-3 shall be replaced by the actual attribution of shortages. If there has been any excess collateral appropriated at Stage-3 due to pro-rata attribution, such excess appropriation shall be corrected, and the*

constituents shall be returned the collateral in full along with the pay-out due to such entities. This amount shall be recovered from the constituents who have higher shortage (pursuant to actual attribution) than the one attributed on pro-rata basis. If such clients do not have sufficient collateral, then the default waterfall of the CC (including its Core Settlement Guarantee Fund (Core SGF), as per the specified order of waterfall) shall be applied.

e. *For any collateral of a client retained by TM/CM, and not allocated to that client's account, the Exchange or the CC shall initiate suitable actions before appropriate court of law for liquidating the assets (movable and immovable) of the defaulter member as per the existing provisions. Further, eligible clients will also have the access to compensation from the Investor Protection Fund, as per the existing provisions.*

*** *** *** ***

46. *The following procedure shall be adopted in case of default of TM to CM:*

a. *The CM shall continue to meet its obligations towards its other constituents, as well as the CC.*
b. *The CM shall close-out all open positions of the defaulting TM (including clients under the TM).*
c. *Under the supervision of the CC, the CM shall appropriate the collateral towards losses. The losses in closing-out open positions and the settlement obligations due from clients of the TM shall be appropriated first from the allocated collateral (as per allocation provided by TM to CM, including deemed allocated) and securities collateral provided through margin pledge/ re-pledge to the level of CM/CC of respective clients. Any residual losses as well as the*

losses in closing-out open positions and the settlement obligations of the TM proprietary account shall be appropriated from the TM proprietary collateral. In case of TM proprietary collateral being insufficient, the losses shall not be appropriated from any other constituent of the CM or any constituent of the defaulting TM.

d. *After the above utilization towards losses in closing-out open positions of the defaulting TM (and clients under the TM) and net settlement shortfall, all remaining collateral/funds received from the defaulting TM (lying with CM/CC) shall be provided by the CM to the Stock Exchanges.*

e. *Since the TM will be leading to default, the Stock Exchanges shall institute relevant applicable procedures against the TM as per existing regulatory provisions, byelaws, rules and regulations of the Stock Exchanges.*'

51. We extracted the above only to emphasize that the explicit measures implemented as coming out from the Circular addresses the concern of individual investors in the F&O Segment, raised herein. More particularly it highlights the absence of such a measure before its implementation, fortifying the grounds taken by the PCMs/Appellants, of lack of visibility and absence of privity of contract with the constituents of the TM. With the above measures visibility of client-based collateral is available at all levels and the reporting mechanism has to be complied with on a daily basis. The identification of defaulting clients and final appropriation of collaterals have been delineated in Clause 44 and the procedure to be followed, when there is default of TMs to CMs, in Clause 46. Obviously, these measures were not available earlier, and in that circumstance, we have to accept the contention of the PCM/Appellants that they had no visibility of the debit/credit positions of individual clients whose securities were furnished as collaterals by the TM to the CM. The absence of privity of contract, with the constituents of the TM, has also to be reckoned in favour of the PCMs; which even if not available as of now, by the Circular of 2021 of the SEBI, there is an obligation cast on the PCM to segregate client collaterals, the debit/credit positions being visible in the daily reports and liquidate only those with debit positions.

XII) The Liquidation Proper:

52. Having said that, we also have to dwell upon the procedure of liquidation as arising in Civil Appeal No. 31 of 2024. The losses incurred and the liquidation it led to happened in a small window from 13th January to 2nd June 2020 in Civil Appeal No.31 of 2024. The shortfall was duly intimated to the TM and the liquidation occurred over the entire period at 29 instances. We cannot but observe that in the short period there were 20 weeks and the contention that the weekly reporting fell short, for the purpose of ascertaining debit/credit positions of the individual clients is also a compelling and justifiable ground in favour of the appellant. Anugrah was also placed in Risk Reduction Mode (RRM) for 23 days in March 2020, 19 days in April 2020 and 15 days in May 2020 and 21 days in June 2020 out of the total trading days respectively of: 23, 22, 21 and 22. RRM mode is a risk control mechanism where TM is allowed only to reduce/square off their existing positions and cannot build any fresh positions. The other appeals relate to similar facts with the period and quantum of liquidation much lesser than that in the leading case.

XIII) Against Anugrah:

53. Insofar as Civil Appeal No.31 of 2024 by way of an application seeking directions, the appellant has brought to our notice the steps taken against the TM. A suit is filed by the NSE as Commercial Suit No.202/2022 before the High Court of Judicature at Bombay, having Ordinary Original Civil Jurisdiction in its Commercial Division. An interim order is passed on 18.09.2020 appointing a Court Receiver to take symbolic possession of all the assets of Anugrah including moveables and while continuing the same, an arrangement was made on consent by order dated 15.07.2025 injuncting Anugrah from opening any new bank accounts, other than the 65 accounts which were kept frozen by the Economic Offence Wing, with specific direction to inform the Court if the accounts are defreezed. The individual investors had also moved the SAT against the NSE seeking compensation from the Investor Protection Funds, which was declined specifically based on the findings of the Forensic Audit conducted, which revealed that Anugrah was offering DAS to its clients assuring fixed returns and was potentially carrying out the same in the nature of Portfolio Management Services (PMS); offering two schemes, termed 'Gold' and 'Platinum' having minimum investment of Rs.10 Lakhs and One crore, respectively, with assured return of 12% per annum. The claim of compensation was declined by the SAT in two separate batches; one by order dated 14.02.2023 and the order dated 15.05.2023 produced as Annexure A4 and A3 in the application. We make it clear that the constituents of the subject TMs, parties to these appeals, will be left liberty to avail their remedies against their respective TMs, subject only to just exceptions.

XIV) Questions of Law: Answered:

54. On the above reasoning, we answer the questions of law as follows:

(i) The first question of law framed as to the existence of a statutory obligation on the PCM to verify the debit/credit positions of the constituents of the TM, before the collaterals proffered by the TM are liquidated, in the negative and in favour of the PCMs. The question regarding visibility provided by the regulatory mechanism of the debit/credit positions of the individual clients of the TM to the PCM, is also answered in the negative and in favour of the PCM.

(ii) The second question of law with respect of the NCL or the Committee constituted by it having the power to order restitution of securities, is also answered in the negative and against the NCL. The imposition of penalty of restitution having come forth only in the discussion and not specifically notified to the appellant, the violation of principles of natural justice also assumes significance, but the same is inconsequential insofar as the penalty of restitution itself being found to be not statutorily permitted.

(iii) The third question of law is also answered against the investors/speculators finding that there can be no claim laid against the PCM for the default committed by the TM, especially in the context of the TM having indulged in illegal schemes and the investors having participated with open eyes in such schemes on the assurance of an assured return, which, in the F&O Segment, is downright impossible.

55. The respondents repeatedly, in a chorus, argued about the life savings of *'innocent investors'* having been frittered away. We are unable to countenance the assertion, since innocence, can neither be attributed on the investor nor on the activity they indulged in, which inherently is highly speculative and hence volatile and fragile. Here we should reckon a report on the F&O Segment that was published in the Times of India[10], wherein the authors spoke of retail traders losing out because they bring *'knives to a gun fight'*. SEBI's research, according to the authors, reveals that 97% of the institutional profits and 96% of the proprietary trading profits in the Indian F&O market are generated by algorithmic trading. The retail traders in the financial year 2024 have incurred a total net loss of Rs.74,800 crores of which Rs.22,450 crores are the transaction costs. Individual traders suffered a gross trading loss of Rs.52,400 crores while the proprietary traders booked Rs.33,000 crores in gross profits and the Foreign Portfolio Investors (FPIs) took home Rs.28,000 crores. According to the authors this is because the institutional desks, utilise lightning-fast codes, co-located directly inside exchange servers, and the retail investors compete against

[10] By Sweta Shekhar and Anand Srinivasan

highly sophisticated millisecond fast automated strategies, they cannot access; hence the metaphor, *'bringing knives to a gun fight'*.

56. Exponential profits hence is a chimera and debilitating losses is the stark reality. This is the inherent trap hidden between the multilayered transactions in the F&O Segment, even when carried on normally, without it being hedged in with illegal schemes, as is the case in the present cases. The investor with open eyes dives into the vortex, hoping for easy money, but without anticipating the undercurrents, which could take them into the abyssal depths of penury and debt, where they would be buried forever. The multiple roles of TM, DP & DAS, the last without permission, facilitated the process, which culminated in loss of valuable securities to the individual clients; some of whom at least were willing participants. The affidavits of undertaking, handing over the shares to the TM for an assured return far higher than that would be obtained from normal investments sounded the death knell for their securities in a highly volatile and inherently fragile, market conditions in the extremely speculative segment of the Futures & Options.

57. The four appeals, Civil Appeal Nos. 31 of 2024, 2187 of 2024, 3179 of 2024 & 7313 of 2024 stand allowed setting aside the impugned orders of the MCSGF Committee and that of the SAT. The other appeal, Civil Appeal No. 4238 of 2026 stands rejected as not maintainable, since the orders impugned therein have already been set aside by us and the prayer is to grant the benefit of the orders set-aside, in restoring the cash margin of that individual appellant.

58. Pending application(s), if any, shall stand disposed of.

.... J.
(J. B. PARDIWALA)

.... J.
(K. VINOD CHANDRAN)

NEW DELHI;
SEPTEMBER 02, 2026.