MHCC020017942023

IN THE COURT OF SPECIAL JUDGE, MPID FOR GR.BOMBAY AT BOMBAY

Misc Application No. 212 of 2023
(CNR NO.MHCC02-001794-2023)
In
MPID Case No. 1 of 2014

In the matter of:

National Spot Exchange Ltd. **… Applicant**
Having office at Malkani Chambers,
1st Floor, Off. Nehru Road,
Near Hotel Orchid,
Vile Parle (East),
Mumbai – 400 099.
Mr. Rushikesh Sutawane
(Authorised Representative of NSEL)

Versus

State of Maharashtra **… Respondent**
Through the Chief Investigating Officer
SIT (NSEL), Economic Offences Wing,
Unit - V, CB-CID, Mumbai.

Appearances:
Ld. Adv. Shri. Arvind Lakhawat alongwith Adv. Ms. Jalpa Shah i/b MZM Legal LLP for applicant.
Ld. S.P.P. Shri. Sunil Gonsalves for the State/EOW.

CORAM : HIS HONOUR SPECIAL JUDGE
SHRI A.S. SAYYAD
SPECIAL COURT (C.R.No.52)
DATE : MAY 12, 2023.

(DICTATED AND PRONOUNCED IN OPEN COURT)
:ORAL ORDER:

This is an application filed by the applicant under section 173(8) of Code of Criminal Procedure (in short "Cr.P.C.") for further investigation on the various grounds.

Factual Matrix:

2. According to applicant, it is a company registered under the Companies Act, 1956 having its office at the address mentioned in the cause title. The applicant was charge-sheeted vide supplementary charge-sheet dated 25.12.2018 filed by the respondent before this court and consequently has been arrayed as an accused in the present MPID Special Case No. 1 of 2014.

3. The respondent is the investigating agency which has conducted detailed investigation for the last 9 years in C.R. No.89 of 2013 and charge-sheeted various persons and entities for their acts and omissions that ultimately led to the payment defaults on the applicant's exchange platform. The applicant provided an electronic exchange platform for trading of 'forward contracts on one day duration' in commodities between willing buyers and sellers acting through their respective brokers who were registered members of the applicant's exchange platform.

4. By way of this application, the applicant sought further investigation into the role of Mr. Ramesh Abhishek who was the Chairman of Forward Markets Commission (in short 'FMC') was

appointed full time Chairman of the FMC in September 2012 and continued to hold the said position till September 2015. From 2010 to 2015, Mr. Ramesh Abhishek was actively involved directly and indirectly in all decisions taken by FMC relating to NSEL. On 23.11.2011, the FMC wrote to the applicant that the FMC has been nominated as the Designated Agency under the exemption notification dated 05.06.2007 and directed the applicant to report trade data to the FMC on weekly, fortnightly and quarterly basis including to submit data to the FMC since start of the operations of the applicant's exchange.

5. According to applicant, on 18.08.2014, under the Chairmanship and control of Mr. Ramesh Abhishek, the FMC exceeded its jurisdiction which was limited to the FCRA and sent malafide proposal to the Ministry of Corporate Affairs, Government of India to forcibly merge NSEL with its parent FTIL by invoking its power u/s. 396 of the Companies Act, 1956. This proposal was sent by the FMC with malafide intention to cause wrongly loss to applicant and its parent company and wrongful gain to the brokers and the defaulters as the forced amalgamation would result in the entire outstanding claims of about Rs.5000 crores against NSEL being mulcted on to the amalgamated entity. Based on the FMC's malafide proposal, the Ministry of Corporate Affairs passed an order of amalgamation dated 12.02.2016 compulsorily and forcibly merging NSEL into its parent company FTIL. This decision was ultimately quashed and set aside by Hon'ble Supreme Court vide its judgment dated 30.04.2019 reported in (2019) 18 SCC 401.

6. According to applicant, Mr. Ramesh Abhishek acting as a Chairman of FMC only initiated action against NSEL and its parent FTIL and its non-executive directions and absolutely no action was taken

against the defaulters and the brokers. Mr. Ramesh Abhishek, biased behavior with EOW Mumbai sent the interim report to Mr. Ramesh Abhishek on 04.04.2015 enclosing criminalities and violations committed by the brokers which were observed by the EOW in its investigation for necessary action of the FMC. However, Mr. Ramesh Abhishek chose not to take any action against brokers for reasons best known to him and the EOW Mumbai also failed to enquire and investigate Mr. Ramesh Abhishek for his deliberate inaction on the brokers.

7. That the FMC called a meeting on 04.08.2013 and in the said meeting, the defaulters promised that they would settle the defaulted amounts. However, the FMC took no steps against these defaulters despite being empowered to do so. In effect, the FMC refused to act in pursuance of its regulatory authority to solve the crisis thereby abdicating its powers and functions.

8. Vide notification dated September 19, 2014 without adjudicating the SCN dated April 27, 2012, the Central Government withdrew the exemption granted under the FCRA to the applicant and other exchanges as a policy decision. This resulted in withdrawal of all the earlier notifications also, even though settlement of all outstanding one day forward contracts at the applicant exchange was pending and the FMC had not taken any action as contemplated in notification dated 06.08.2013.

9. According to applicant, investigation into the payment defaults of Rs.5600 crores that occurred on the applicant's exchange platform commenced with the registration of FIR No. 216 of 2013 dated

30.09.2013 with MRA Marg police station based on the complaint lodged by one of the trader. In the supplementary charge-sheet dated 27.12.2018 filed by EOW had charge-sheeted the applicant exchange, its parent company, brokers and others, there was not even a whisper made in the charge-sheet about the role of Mr. Ramesh Abhishek who was the Chairman of the FMC at the relevant time.

10. The applicant therefore submitted letter dated 18.05.2020 to the chief investigating officer. In Chapter III of the said letter, the applicant submitted detailed representation alongwith supporting documentary evidence to investigating officer about the acts and omissions of Mr. Ramesh Abhishek acting as the Chairman of FMC, all of which clearly point out to his active involvement in the commission of offences under the Indian penal code in relation to the payment defaults that occurred on the applicant's exchange platform which forms the subject matter of the investigation in the present C.R. No. 89 of 2013.

11. Sum and substance of this application filed by the applicant is that there is sufficient incriminating evidence against Mr. Ramesh Abhishek which shows his involvement by way of his acts and omissions in the alleged offence. Instead of having sufficient material, the investigating officer did not state the same and submitted the supplementary charge-sheet dated 27.12.2018. This is an economic offence in respect of huge amount i.e. 5600 crores. Investors/depositors who had deposited their amounts with their brokers and the said brokers defaulted the amount of their investors. Instead of the said fact, Mr. Ramesh Abhishke even though given clean-chit by not taking action against him. **There are many acts and omissions on the part of Mr. Ramesh Abhishek while discharging his duty which needs to**

investigated into his role in the alleged offence by way of further investigation. On the grounds as above and others, the applicant prayed for allow the application.

12. This application was strongly opposed by way the prosecution vide Exh.2 stating that the applicant is himself one of the prime accused in the case. Therefore, the applicant being an accused does not have locus-standi to file as such application. According to prosecution, everything have been done by the present applicant only, therefore nobody other can be held responsible for the act of applicant. The concerned investigating officer at the relevant time has conducted detailed investigation and submitted supplementary charge-sheet dated 27.12.2018.

13. During investigation, no any role of Mr. Ramesh Abhishek as stated by the applicant is revealed. There is no any substantial incriminating evidence against Mr. Ramesh Abhishek. Therefore, he is not charge-sheeted in the case. The then Chairman Mr. Ramesh Abhishek has not committed any act which are in criminal nature. On the contrary, Mr. Ramesh Abhishek has done strong action in accordance with law against the applicant. Due to the said strong action, the present applicant is upset. In order to take revenge of the said action which taken by Mr. Ramesh Abhishek, the present application nothing but to give counter-blast, filed by the applicant. This application is not at all maintainable. Hence, the prosecution prayed for rejection of the application.

14. Heard Ld. Adv. Arvind Lakhawat for the applicant and Ld. SPP Shri. Sunil Gonsalves for the respondent at the length of considerable

time. I have bestowed my best consideration to their respectful submission.

15. The following points arise for consideration:

SR. NOS.	POINTS	FINDINGS
1.	Whether the applicant made out this case for further investigation as sought for ?	Yes
2.	What order	As per final order.

REASONS

As to point no.1

16. It is a matter of fact that the present applicant is an accused in MPID Special Case No.1 of 2014. It is also matter of fact that in this matter, after registration of crime no. 89 of 2013, the investigating officer conducted long drawn investigation till 9 years. It further not in dispute that the investigation of this case is conducted by various officers during their period. There are total 11 supplementary charge-sheets have been field till date. That a MPID Special Case No.1 of 2014 is now at the initial stage for taking cognizance of the said supplementary charge-sheets. It is not disputed that one supplementary charge-sheet has been filed by the concerned investigating officer on 27.12.2018 whereby no whisper regarding role of Mr. Ramesh Abhishek the then Chairman of FMC.

17. So far as regards the first and foremost objection raised by the prosecution that the present applicant is one of the accused and in the

capacity of the accused he does not have locus-standi to file as such application. This objection have substance and required to be decided first before going to consider the main application.

18. The prosecution though raised above objection about the locus-standi of the applicant, but throughout in hearing of this application failed to show as to how and why the present application is not at all maintainable. The plea of the prosecution as such found to be random and vague merely on the fact that the applicant is one of the accused. It was strongly expected from the prosecution that it has to show the above fact with support of some legal provision. This court on raising a query to the prosecution that whether there is any bar to consider this application field by the accused. On this, prosecution appears to be miserably failed to satisfy the said query of the court.

19. On the contrary, the applicant while showing the maintainability of this application, placed his reliance on the decision of Hon'ble Apex Court in the matter **R.N. Agarawal vs. R.C. Bansal (2015) 1 SCC 48** wherein the Hon'ble Apex Court held that the application filed by the co-accused under section 190 r/w 193 praying to summon the persons as of accused who were cited as the witness is maintainable. This mean that in the cited supra, an application was filed by the accused against the proposed accused who were cited in witness list and the said application is maintainable. The aforesaid precedent of law recognized the right of the accused for filing application as such. Similar view taken in the matter of **Jashvant Rathore vs. State of M.P. ILR 2015 MP 257** wherein the Hon'ble Allahabad High Court held that Session Court had issued summons on the basis of records transmitted to him as a result of the committal order passed by Magistrate. In the said matter also the

accused had filed an application under section 319(1) and 190 of the Code of Criminal Procedure, before the Ld. Additional Sessions Judge praying thereby to summon the specific person as accused in the case.

20. Form the law of precedent of Hon,ble Apex Court cited supra,it is clear that the accused can also file application for cognizance against the proposed accused. Thus, whatever objections raised by the prosecution so far as regard the maintainability of the present application devoid of substance. The present application is therefore maintainable.

21. It is seen that the applicant has made serious allegation against the then Chairman of FMC Mr. Ramesh Abhishek regarding his deliberate act and omission while discharging his duty during relevant time and to take action against the brokers and defaulters. It is matter of fact that the MPID Special Case No.1 of 2014 is a bulky case in respect of huge economic offence of Rs.5600 crores. In such economic offences, it is the duty of the concerned investigating officer to carry out investigation very carefully and cautiously on each and every aspect.

22. The reply of the prosecution randomly reflects that during investigation like criminal in nature material no found against Mr. Ramesh Abhishek and for that reason he was not charge-sheeted. However, surprisingly this above fact appear for the first time in reply only. Having regard that the supplementary charge-sheet of 27.12.2018 and other supplementary charge-sheets, are silent mentioning therein the above fact regarding the said person. Normally what is expected from the investigating officer, that he should mention clear every fact regarding involvement of any person whether it found or not during

investigation in charge-sheet. For that purpose there is a separate table provided in prescribed format in charge-sheet. The investigating officer clearly mention that because of the any specific ground the person is charge-sheeted or not charge-sheeted. However, the charge-sheets available before court are silent to that effect. By doing as so, the concerned I.O. himself created doubt and confusion in the charge-sheets forwarded by him. Because of as such negligent duty on the part of the concerned investigating officers, unnecessary burden shifted on the court to decide as such applications despite having other heavy work to decide main and important cases. The charge-sheets as above are totally silent to show that the investigating officers had investigated into the alleged the role of the present person. There is no any justification or clarification appears in the charge-sheets about the person Mr. Ramesh Abhishek.

23. It is seen that there are some various allegations about the acts and omissions of Mr. Ramesh Abhishek highlighted in the application letter dated 18.05.2020 the investigating officer which are re-produced as under:

A. Paragraph 3(f) of the applicant's letter dated 18.5.2020 to the I.O. clearly alleges that Mr. Ramesh Abhishek created, fuelled and aggravated the NSEL crisis and did not solve it when it was solvable, thereby abdicating his regulatory dharma leading to omissions of criminal nature on his part that caused wrongful loss to the investors and the applicant and wrongful gains to the 25 defaulters.

B. Paragraph 3(g) of the applicant's letter dated 18.5.2020 to the I.O. clearly alleges that NSEL was forced to abruptly suspend its operations on 31st July 2013 due to the directive from the DCA which was based on the fraudulent advice of Mr. Ramesh Abhishek acting through the FMC which was under his complete control as its Charmian. This step was taken despite being fully aware about the repercussions of abrupt stoppage of a running Exchange. Thus, the abrupt closure of business the Exchange engineered by the Mr. Ramesh Abhishek was fraudulent, malafide and motivated. Further, the Mr. Ramesh Abhishek aggravated the payment crisis by taking harsh adversarial actions against the NSEL, its directors and promoter, but at the same time, deliberately omitted to take action against the defaulters who admitted their liability in front of him and the erring brokers who flouted various norms and regulations. Besides, Mr. Ramesh Abhishek didn't solve the crisis when solvable by crystalizing the liability and passing orers against the defaulters and instead allowed them to diver their assets, withdraw the stocks in the warehouses and destroy the evidence of their culpability.

C. Paragraph 3.1.12 of the applicant's letter dated 18.5.2020 to the I.O. specifically alleges that Mr. Ramesh Abhishek deliberately suppressed the fact that the NCDEX Spot Exchange (N-Spot) also had long term contracts beyond 11 days settlement. As per the DCA's affidavit dated January 01, 2014 filed before Hon'ble Bombay High Court, the FMC had sent a letter for clarification/show cause notice to N-Spot on 18 July 2012. Despite such admitted definance, Mr. Ramesh Abhishek made no adverse recommendation to the DCA about the business of the N-Spot like it did in case of the applicant and allowed long term contracts traded on its platform to be ignored. This clearly shows that Mr. Ramesh Abhishek, while acting in the capacity of the Chairman of the FMC, unduly favoured the applicant's competitor N-Spot and deliberately omitted to act against N-Spot.

D. Paragraph 3.3.3. of the applicant's letter dated 18.5.2020 to the I.O. specifically alleges that on 4th August 2013, the full commission of FMC- the Chairman Mr. Ramesh Abhishk along with two Members of the FMC had an open meeting at Trident Hotel, Mumbai with all the defaulters, in the presence of brokers, traders and the Board of Directors and management team of NSEL, in which all the defaulters admitted that they owe the complete liability as pay-in to the exchange and they need time to pay. They committed that they would settle the dues as per a settlement plan which was to the satisfaction of the top non-defaulting brokers. Mr. Ramesh Abhishek along with 2 FMC officials also met the defaulters one to one in closed door meetings, the outcome of which is not known. Despite this confession to the regulator FMC, Mr. Ramesh Abhishek, FMC shut his eyes and didn't do anything to solve the crisis while it was 100% solvable.

E. Paragraph 3.3.3. of the applicant's letter dated 18.5.2020 to the I.O. further specifically alleges that Mr. Ramesh Abhishek, had stolven the minutes of the said 4th August 2013 meeting to shield the defaulters from their liability to pay.

F. Paragraph 3.5.4. of the applicant's letter dated 18.5.2020 to the I.O. further specifically alleges that Mr. Ramesh Abhishek protected the brokers by not taking punitive action against them u/s 12B of the FCRA even after 2 years of the payment crisis till filing of charge-sheet against them. Instead the FMC took the National Commodity Exchanges into confidence to take their view in the matter. This is diabolically opposite to the actions taken by Mr. Ramesh Abhishek against the promoter and directors of the applicant exchange by delcaring them not fit and proper within 5 months of the payment crisis, supposedly to protect the market integrity and market participants in the commodity derivatives market. Mr. Ramesh Abhishek deliberately not taking any action on the brokers despite the EOW-Mumbai giving a detailed report to the FMC to investigate the brokers shows his mala fide intent to protect the accused brokers. Therefore, what motivations or quid-pro-quo compelled Mr. Ramesh Abhishek to refrain from taking any action against the accused brokers and to sit idle on recommendations of EOW-Mumbai to at against the brokers, for a long period of 2 years needs to be investigated.

24. The Ld. Advocate for the applicant relied upon the decision of the Hon'ble Apex Court in the matter of **Vinubhai Haribhai Malaviya and Others vs. State of Gujarat and Others, Narendra & Anr. vs. State of Rajasthan 2003 SCC Online Raj 283 and Benoy Chandra Dey vs. State and Another 1983 SCC Online Cal 177.** In the first citation **Vinubhai Haribhai Malaviya and Others vs. State of Gujarat and Others,** the Hon'ble Apex Court held that the power of Magistrate to make order for further investigation is available to Magistrate under section 156(3) of Cr.P.C. even at post-cognizance stage until trial commences i.e. charges are framed. This power can also be exercised suo-motu by the Magistrate himself depending on the facts of each case. In the said decision, the Hon'ble Apex Court held that is clear that

Magistrate's power under section 156(3) Cr.P.C. is very wide, for it is this judicial authority that must be satisfied that a proper investigation by the police takes place. To ensure that a “proper investigation” takes place in the sense of a fair and just investigation by the police which such Magistrate is to supervise Article 21 of the Constitution mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under section 173(2) Cr.P.C. and which power would continue to ensure in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Even textually, the “investigation” referred to in section 156(1) Cr.P.C would, as per the definition of “investigation” under section 2(h) Cr.P.C., include all proceedings for collection of evidence conducted by a police officer, which would undoubtedly include proceedings by way of further investigation under section 173(8) Cr.P.C.

25. Keeping in mind the above legal principle of law laid down in cited supra, if the application filed by the applicant taken into consideration in its entirety, it would reflect that there are some suspicious acts and omissions appears on the part of Mr. Ramesh Abhishek, the then Chairman of FMC at the relevant time. Whatever the suspicious acts and omissions highlighted by the applicant, by way of this application, in my considered opinion required to be investigated by way of further investigation. No prejudice or harm will cause to prosecution if the matter is investigated into the above facts. On the contrary, actual truth will come out which will helpful to decide criminal liability of the actual culprits. It is well settled law that the option for further investigation is always available with the investigating

officer. There is no need to take even permission from the court for further investigation, if the investigating officer deem fit so. He just to inform regard that to court.

26. It is required to mention here that now this matter is at the initial stage for taking cognizance of the charge-sheets. Considering the facts and circumstance of the case as above, though this court is inclined to consider the application, it does not mean that the court is going to form any adverse opinion against the Mr. Ramesh Abhishek. The observations as above are recorded in the given facts and circumstances for further investigation only. Therefore, the concerned investigating officer shall conduct fair and impartial further investigation into the mentioned above fact without any influence of observation recorded by the court as above.

27. For the forgoing reasons and discussion, this application deserve for consideration. Hence, point no.1 answer in affirmative and in answer to point no. 2, the following order would meet the end of justice:

ORDER

1. Misc Application No. 212 of 2023 in MPID Special Case No. 1 of 2014 is allowed.
2. Investigating officer of this case, is directed to carry out fair and impartial further investigation into the role of Mr. Ramesh Abhishek, the then Chairman of FMC during the period of offence as alleged by the applicant in application .
3. The investigating officer is further directed that after concluding the investigation into the role of Mr. Ramesh Abhishk filed its

report before this court as early as possible preferably within 40 days from today without fail .

4. Misc Application is disposed of accordingly.

AKBARALI SHABBIR SAYYAD

Digitally signed by AKBARALI SHABBIR SAYYAD
Date: 2023.05.12 12:22:55 +0530

(A.S. Sayyad)
Special Judge (MPID)
MPID, Special Court,
City Civil & Sessions Court,
Gr. Bombay.

Date: 12.05.2023

Dictated on : 12.05.2023
Transcribed on : 12.05.2023
Signed by HHJ on : 12.05.2023

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER"

UPLOAD DATE AND TIME	NAME OF STENOGRAPHER
12.05.2023 (12.22 p.m.)	MRS. K.Y. INAMDAR

Name of the Judge (with Court Room No.)	Shri A.S. Sayyad C.R. No.52
Date of Pronouncement of JUDGMENT/ ORDER	12.05.2023
JUDGMENT/ORDER signed by P. O. on	12.05.2023
JUDGMENT/ORDER uploaded on	12.05.2023