

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
COMPANY APPEAL (AT) NO.31 OF 2026

(Arising out of judgement and order dated 28.11.2025 passed by National Company Law Tribunal, Mumbai Bench in CP(CAA)/104(MB)2025 in CA(CAA)/65(MB) 2025)

In the matter of

Nirtex Exports & Investment Pvt Ltd & Ors

Appellant

Vs

National Spot Exchange Limited

Respondent

For Appellant: Mr Vikas Mehta, Mr Vaishnav Kumar, Mr Kartik Pandey, Advocates.

For Respondent: Mr. Arun Kathpalia, Sr Advocate, Mr Ranjan Pandey, Mr Siddharth Dave, Sr Advocate, Mr. Jayant Mohan, Ms Meenakshi Chatterjee, Mr. Sandeep Bisht, Mr Mantul Bajpai, Ms Manik Joshi, Mr Vrushabh Vig, Mr Prarabdh Tiwari, Mr Sahil Nindawat, Advocates.
 Mr. Krishnendu Datta, Sr Advocate.

JUDGEMENT

JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)

This appeal is filed against an impugned order dated 28.11.2025 of the Ld. NCLT, Mumbai in CA No.7/2025 in CP No.104(MB)of 2025 *vide* which the Ld. NCLT had allowed the Company Petition No.104/2025 and discarded the objections raised by the appellant in their CA.

2. The CA No.7/2025 was filed by the appellant before the Ld. NCLT, inter alia, objecting to certain clauses as contained in the scheme, proposed by the Respondent, which clauses *per force* require the appellant to withdraw civil suits/proceedings instituted by the appellants against third parties, hence it was argued the scheme is illegal, contrary to law and is void.

3. It is argued the impugned scheme is *ex officio* illegal as it proposes to mandate a withdrawal/disposal of pending civil proceedings through private arrangement and it compels the creditors to accept an amount substantially lower than the value of the assets already attached and judicially secured; deprives them for future recovery from defaulters and seeks to reclassify protected (deposit) under the MPID Act as ordinary creditors to dilute statutory safeguard and the scheme is incapable of implementation.

4. The clauses which seems to be challenged by the appellant herein are Clauses no. 20.1, 20.2 and 21.1 of the scheme, as follows: -

20. Release and Discharge of Liabilities - Consenting Brokers

*20.1. On the Consenting Brokers **contributing the amount** as contemplated under the Scheme and after the Settlement Trigger Event, the Consenting Brokers and Consenting Brokers' Associates shall automatically stand released and discharged from the Specified Creditors' Claims and also from any claims of 63 moons and NSEL arising from the Payment Default, or of any nature whatsoever arising directly or indirectly from transactions executed on the exchange platform of NSEL without any further act, deed or thing.*

*20.2. On the Consenting Brokers **contributing the amount** as contemplated under the Scheme and after the Settlement Trigger Event, the Consenting Brokers shall be entitled to claim release/restitution of monies/ fixed deposits frozen/ attached by EOW/ Competent Authority.*

21. Assignment of all Specified Creditors Claims

"21.1. On and with effect from the settlement trigger event, all specified creditors claims shall automatically, unconditionally and unequivocally stand assign to invested in 63 moons without doing any further act, deed or thing. "

5. It is pertinent to mention the Ld. NCLT in CP(CAA)/104/MB/2025 had approved the scheme of arrangement with creditors by proposing a capped

settlement of Rs.1950 crores. The scheme is challenged on the ground it is prejudicial to the public interest and is opposed to public policy.

6. It is however pertinent to point out this Tribunal *vide* its judgement dated 15.01.2026 in Company Appeal (AT) No.3/2026 had sustained the order of the Ld. NCLT which had approved this scheme and have rejected the objections raised by the LG Tanna Enterprises Pvt. Ltd. and others. The order dated 15.01.2026 passed by this Tribunal has since been affirmed by Hon'ble Supreme Court in Civil Appeal No. 1485/2026 decided on 09.03.2026 on merits.

7. Later yet another Company Appeal (AT) No.34/2026 was filed by MMTC Ltd. and it was also dismissed *vide* judgement dated 30th March, 2026. A bare perusal of the judgement dated 30.03.2026 passed in MMTC (Supra) is as under:

12. A bare perusal of the order dated 09.03.2026 of the Hon'ble Supreme Court would show the Civil Appeal was also dismissed on merits. Now if the Civil Appeal is dismissed on merits, the order dated 15.01.2026 passed by this Tribunal merges with the order dated 09.03.2026 of the Hon'ble Supreme Court and hence on merit it cannot be assailed before us. Lastly if one peruse the Civil Appeal No.1485/2026 filed by the L.J. Tanna Enterprises Pvt Ltd, one may find the questions of law as raised in the said Civil Appeal No.1485/2026 were as noted below and considered: -

“III. Whether the impugned scheme is ultra vires Section 230(1) of the Companies Act as it contains contingent conditions for the benefit of 63 Moons and Consenting Brokers which are extraneous entities and not the Applicant Company under Section 230(1) of the said Act?

VIII. Whether a Scheme that divests dissenting creditors the right to object to withdrawal/abatment of legal proceedings is illegal being violative of the CPC and BNSS and is

*unconstitutional being violative of Article 14 of the Constitution and is therefore liable to be rejected?
XI) Whether, in view of the fact that there are legal proceedings initiated prior to the institution of the Compromise Scheme, Section 230(6) accords jurisdiction to the Hon'ble NCLT/NCLAT to divest dissenting creditors of their legal and constitutional right to continue to seek judicial redress in such subsisting proceedings in which they are plaintiffs/beneficiaries, the consequence of which is extinguishment of such proceedings?*

13. *These aspects have been considered by the Hon'ble Supreme Court before dismissing Civil Appeal No.1485/2026 vide above cited judgement dated 09.03.2026.*

14. *Thus in view of the above, we are not inclined to entertain this appeal in view of the facts noted above and accordingly it is dismissed.*

8. We have also been told by the learned counsel appearing on behalf of Respondent in IA No.316131/2025 in Civil Appeal No.2538-2540 of 2020 the Hon'ble Supreme Court has once again looked into the scheme and *vide* order dated 13.04.2026 has held as follows: -

Learned counsel for the respondent(s)/ Union of India submitted that any order to be made by this Court ought not to result in the appellant(s) seeking a complete stay of the directions passed in the impugned order(s) and therefore, all endeavour must be made by the appellant(s) herein to implement the Scheme at the earliest. He therefore, submitted that a time frame may be stipulated for the implementation of the Scheme and appropriate orders may be made in this regard.

We have considered the submissions advanced at the Bar and noted the gist of the Scheme in the aforesaid terms.

One of the difficulties which may arise for the appellant(s) in giving effect to the Scheme expressed is the operation of the impugned order(s) although there is stay of the same granted by this Court. Secondly, orders that have to be passed by the designated Court and other Courts and approval to be sought as per the Scheme.

We find, at this stage, that the appellant(s) herein are keen and interested to give a quietus to all controversies and therefore they intend in right earnest to give effect to the terms of the Scheme.

In the circumstances, the impugned order(s) is/are kept in abeyance. Secondly, the designated Courts as well as other Courts and Authorities shall pass appropriate orders as expeditiously as possible for the implementation of the Scheme as it is intended to make payment to the entitled investors.

Once there is de-freezing of the account by the aforesaid designated Court, within a period of two weeks thereafter the amount of Rs.1950 crores shall be deposited/transmitted in an Escrow Account/Account to be maintained by the Escrow Agent (Universal Trustee) maintained with Axis Bank, MIDC Andheri East branch, Mumbai 400093. Parties are also at liberty to mention in case of any difficulty in the implementation of the Scheme.

9. At this stage it was argued by the learned counsel for the appellant they are *not against the implementation of the scheme per se* but are only concerned their civil suits filed against third parties i.e. consenting brokers, be allowed to be continued. This proposition cannot be allowed in view of paras 20 and 21 of the scheme as aforesaid. Admittedly, the Appellants, by way of the present Scheme are going to get approximately 42% of their claims. Despite the same, the Appellants want to pursue claims *qua* the brokers which is arising out of the same cause of action, which emanates from the same NSEL Payment Default which is with respect to same set of unsettled traders. The underlying claim of the Appellants is same as claim against the brokers. The definition of Specified Creditor's Claim not only includes the claim against NSEL and Persons in 63 Moons Group but also includes the claims against the brokers.

10. Admittedly the matter pertains to a payment default that occurred on the exchange platform of the Respondent (NSEL) in 2013. Proceedings for the recovery of the losses by traders were initiated against Persons in the 63 Moons Group, Defaulters, Defaulter's Associates, Brokers, and their Associates. These included civil suits, and proceedings under the MPID Act and the PMLA. The money trail has been traced directly to the Defaulters and their Associates. Suits filed by the appellants against the Brokers are also for recoveries of losses suffered while trading on NSEL's exchange. The present Scheme seeks to bring a quietus to the matter. It contemplates paying a Settlement Amount to the remaining unpaid traders (Specified Creditor) for claims arising from the payment default or trades on NSEL. In return, they will release and discharge the Persons in the 63 Moons Group, Consenting Brokers because the Settlement Amount is substantially generated from NSEL's parent company, 63 Moons Technologies Ltd, the Specified Creditors' Claims are assigned to 63 Moons. Consequently, future recoveries- whether from non-consenting Brokers, Defaulters or Defaulter's Associates- shall ensure to the benefit of 63 moons. No extraneous claims are being closed through the Scheme.

11. The Scheme was approved by overwhelming majority and hence, the same is binding on all the Specified Creditors, including the Appellants. The Specified Creditors in their commercial wisdom have agreed to settle their claims against NSEL, Persons in 63 Moons Group and Consenting Brokers and Consenting Broker's Associates. Thus, the Appellants who are miniscule disgruntled Specified Creditors cannot oppose the implementation of the Scheme. Further,

the Scheme contemplates any contribution made by the Consenting Brokers will be deposited in the Settlement Account, which in turn, will be used to settle the claims of the Specified Creditors. Any contribution made by the Consenting Broker subsequent to Settlement Trigger Event, the said contribution shall ensure to the benefit of 63 Moons.

12. Since the Specified Creditors' Claim (which includes the claims against the brokers) will be assigned to 63 Moons on Settlement Trigger Event, the Appellants cannot pursue their claims against the brokers as the Appellant is already getting 42% of its claim under this Scheme. It will be 63 Moons who, in the capacity of an assignee, will pursue the claims against brokers. The Appellants in Commercial Suit No. 48 of 2017 pending before the Bombay High Court have themselves admitted the Appellants have received amount from NSEL and the said amount was adjusted towards the claims against the brokers. Further, the Appellants have stated they have taken steps to mitigate the loss by way of Representative Suit being No. 173 of 2014 pending before the Hon'ble Bombay High Court. The relevant paragraph from the Commercial Suit No. 48 of 2017 is reproduced herein under:

"84. The Plaintiffs have received an amount of Rs. 42,43,970.02/- from the Defendant No. 4 through NSEL upto January 2014 on a pro-rata basis towards the outstanding due to the several investors. In these circumstances, now an aggregate sum of Rs. 9,57,27,765.40/- (including interest upto the date of filing of the Suit) is required to be repaid to all Plaintiffs. NSEL has failed to disburse payments in accordance with the representation made in the aforesaid schedules for payment. The Plaintiffs have taken steps to mitigate the losses caused to them, including inter alia by the means of the

aforesaid representative Suit No. 173 of 2014 pending before this Hon'ble Court as well as by following up on various regulatory measures being taken by various authorities who are seeking to recover the said amounts from NSEL, FTIL, their group companies and delinquent directors and officers of these companies."

13. Moreso, as we have already considered the scheme on merit in our earlier judgement *viz* dated 15.01.2026 in Company Appeal (AT) No.3/2026 and also in our judgement dated 30.03.2026 in Company Appeal (AT) No.34/2026, hence any diversion therefrom would obviously amount to modification/review of our earlier orders which we are not inclined to do. Admittedly the order passed by us in CA(AT) No. 3/2026 has since been upheld by the Hon'ble Supreme Court, thus we are not inclined to re-visit the scheme yet again as has been found to be legally valid in our earlier judgements. The objections, thus, have no force.

14. The appeal is, accordingly, dismissed. All pending applications, if any, are also disposed of.

(Justice Yogesh Khanna)
Member (Judicial)

(Mr. Ajai Das Mehrotra)
Member (Technical)

Dated:12-05-2026

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