# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## ORDINARY ORIGINAL CIVIL JURISDICTION
## INTERIM APPLICATION NO. 1694 OF 2021
## IN
## COMMERCIAL SUIT NO. 74 OF 2021

National Stock Exchange of India Ltd ] … Applicant (Original Plaintiff)

**IN THE MATTER BETWEEN:**

National Stock Exchange of India Ltd ]
a Company incorporated under the provisions ]
of the Companies Act, 1956 and having its ]
corporate office at Exchange Plaza, C/1 ]
G-Plock, Bandra Kurla Complex, Bandra(E), ]
Mumbai – 400 051. ] … Plaintiff

Vs.

1. Fairwealth Securities Limited ]
651-652, Udyog Vihar Phase – V ]
Gurugram, Haryana – 122 001. ]
Email id: compliance@fairwealth.in ]

AND

1st Floor, Oriental Bank of Commerce ]
Building, Dalal Street, Opp. Bombay Stock ]
Exchange, Fort, Mumbai – 400 001. ]

2. Katashraj Securities Pvt. Ltd. ]
651-652, Udyog Vihar Phase-V, ]
Gurugram, Haryana – 122 002 ]
Email id: info@fairwealth.in and ]
katashraj.securities@gmail.com ]

3. Fairwealth Tours & Travels Pvt. Ltd ]
UG-3, Som Dutt Chamber-II, ]
Bhikaji Cama Place, New Delhi – 11 066, ]
Email id: info@ fairwealth.in ]

4. Chahek Housing Pvt. Ltd. ]
B-16-II-9, Som Dutt Chamber, ]
Bhikaji Cama Place, ]
New Delhi – 110 066. ]
Email id: info@fairwealth.in and ]
chahekhousing@gmail.com ]

5. Reets Plastic Pvt Ltd. ]
UG-37, Som Dutt Chambers ]
Bhikaji Cama Place, New Delhi – 110 066. ]
Email id: info@fairwelath.in and ]
ffr794@rediffmail.com ]

6. Aagas Software Solutions Pvt Ltd. ]
UG – 3, Som Dutt Chambers – II, ]
Bhikaji Cama Place, New Delhi- 110 066 ]
Email id: info@fairwealth.in and ]
aagassoftware2010@yahoo.com ]

7. Fairwealth Financial Services Limited, ]
UG/3-4, Som Dutt Chambers – II, ]
Bhikaji Cama Place, New Delhi – 110 066 ]
Email id: info@fairwealth.in ] .. Defendant/ Respondents

Mr. Ranjeev Carvalho a/w. Mr. Amol Rasal i/b. Manilal Kher, Ambalal and Co. for the Plaintiff

Ms. Akansha Agrawal a/w. Manish Bohra, Vikas Bengaul a/w. Neloger Khan for Defendant No.7.

**CORAM : GAURI GODSE, J.**
**RESERVED ON : 28th APRIL 2026**
**PRONOUNCED ON : 29th JULY 2026**

**<u>JUDGMENT</u> :-**

1) The plaintiff is the Stock Exchange of India and offers trading services to its members. Defendant no.1 is the defaulter trading member of the plaintiff. The suit is filed to recover Rs. 100,06,45,677/- arising out of 2418 claims submitted by the Investors/clients of defendant no. 1. The Interim Application is against defendant no. 7 for seeking reliefs to secure the suit amount.

2) According to the plaintiff, defendants nos. 2 to 7 are connected with each other and have benefited from the alleged illegal acts, means, and violations committed by defendant no.1. The Directors of defendant no.2 are dominant shareholders in defendant

no.1. There are common directors of defendant nos. 1 and 2. Defendant no.3, i.e. Fairwealth Tours & Travels Pvt. Ltd is the group company of defendant no.1, which is controlled by M/s. Fairwealth Financial Services Limited and holds a 99.99% shareholding in defendant no.3. The director of defendant no.4 is also a director of Fairwealth Tours & Travels Pvt. Ltd (defendant no. 3) and Fairwealth Financial Services Ltd, (defendant no. 7) and is the promoter of Fairwealth Tours & Travels Pvt. Ltd. (defendant no. 3).

3) In the suit, it is alleged that all the defendants are part of a group of companies with common directors. In view of the defaults committed by defendant no. 1, who is the trading member, the plaintiff received complaints from the investors. In view of the claims received by the plaintiff, necessary action has been undertaken through the defaulters committee and the Member Settlement Guarantee Fund Committee. In view of the circular issued by SEBI, the plaintiff has taken immediate action to file this suit. To secure the amount claimed in the suit, the plaintiff has filed this application seeking interim reliefs directing the defendants to disclose their movable and immovable assets and for an injunction restraining them from creating any encumbrance on the movable and immovable assets, and the plaintiff has also prayed for the appointment of a

Court Receiver. However, at this stage, the plaintiff has pressed only the prayer for disclosure and injunction.

4) By order dated 17th February 2021, this Court granted ad-interim relief in terms of prayer clause 75(ii)(iii)(vii) of Interim Application (L) No. 930 of 2021. Thus, in view of the ad-interim relief, defendant nos. 1 to 6 were directed to file a disclosure affidavit, and they were restrained from creating any encumbrances on the disclosed assets. Defendant No. 7 was subsequently added as the party defendant. The suit proceeded ex parte against the defendants. By order dated 3rd February 2022, this court granted ad-interim relief in terms of prayer clause (i), (ii), (vi), and (vii) of Interim Application No. 1694 of 2021, against defendant no. 7.

5) Thereafter, defendant no.7 appeared in the suit and filed an application for recalling the ex parte order against defendant no.7. Interim Application No. 77 of 2026, filed by defendant no.7, was allowed on 20th January 2026, by setting aside the ex parte order against defendant no. 7 and permitting defendant no.7 to file a written statement. Defendant no.7 has filed a reply to the interim application and prayed for vacating ad-interim relief. As for the other defendants, none appears for them, and the suit has proceeded ex parte against

them. The Interim Application No. 1694 of 2021 against defendant no. 7 was therefore taken up for final disposal.

**Case of the plaintiff**:

6) Defendant no.1 is the defaulter member of the plaintiff. The directors of defendant nos. 1 to 7 are common. The directors of defendant no. 2 are dominant shareholders in defendant no. 1. Mr Navin Gaba and Mr Dhirendra Gaba ("Gabas"), the directors of defendant no. 2, were the directors and dominant shareholders in defendant no. 1. Defendant no. 2 is part of defendant no. 1 and is involved in the misuse of the client's securities. The registered address of defendant nos. 1 and 2 is the same. Thus, defendant no.2 is a facade used by defendant no.1 to misuse clients' securities. Defendant no. 3, Fairwealth Tours & Travels Pvt. Ltd is controlled by M/s. Fairwealth Financial Services Limited (defendant no. 7), which holds 99.99% shareholding of defendant no.3. The Gabas are the common directors of defendant no.1 and M/s. Fairwealth Financial Services Limited, i.e. defendant no.7. The director of defendant no.4 is also the director of Fairwealth Tours & Travels Pvt. Ltd, i.e. defendant no. 3 and M/s. Fairwealth Financial Services Limited, i.e. defendant no.7, is the promoter of defendant no.3. Defendant no. 4 is also a group company used by defendant no.1 for misusing the

client's securities. One Mr. Vikram kumar, who is the director of defendant no.4 is also the director of defendant no.5. Mr. Vikram kumar, who is the director of defendant no.3 is also the director of defendant no. 6. Defendant no. 7, i.e. M/s. Fairwealth Financial Services Limited is the promoter of defendant no.3. The directors of defendant nos. 3 and 7 are common. Hence, defendant no.7 is involved in misusing defendant nos. 1's client securities.

7) One of the objects of the plaintiff is to ensure the protection of the investors' interest. On 27th November 2020, the plaintiff received 2537 claims against defendant no.1 above Rs. 111 Crores, which were placed before the defaulters' committee of the plaintiff for adjudication, out of which 667 claims are admitted. The process of adjudication of the claims was ongoing on the date of filing of the suit. In pursuance of defendant no.1 being declared as a defaulter under Chapter XII of the bye-laws, the proceedings expelling defendant no.1 was initiated. From the inspection of the record and the inquiry conducted by the plaintiff, defendant nos. 2 to 7 have been found systematically misappropriating defendant nos. 1's client securities.

8) By order dated 2nd August 2018, the disciplinary action committee passed an order suspending trading membership of defendant no.1. By order dated 14th January 2020, based on the

inspection report of the National Stock Exchange, there was an order passed for expulsion against defendant no.1. By an order dated 24th January 2020, the SEBI confirmed the order against defendant no.1 and its directors for disciplinary action. The order dated 24th January 2020 was also applicable to defendant no.7 as the Gabas were promoters and directors of defendant no.1 and defendant no.7.

9) The Bombay Stock Exchange has submitted a forensic audit report dated 14th April 2020. The inspection report of the plaintiff is referred to in the Bombay Stock Exchange's forensic audit report. The inspection report of the plaintiff and the forensic audit report of the Bombay Stock Exchange reveal that the defendants have misused defendant no.1's client securities and transferred them to the account of defendant no. 3. Defendant no. 7 is the promoter of defendant no. 3, having 99.99% shareholding and thus, a noticee before the SEBI in the disciplinary proceedings initiated against defendant no.1. There are allegations against defendant no. 7 of misappropriation of funds of defendant no.1's clients' securities.

10) The confirmation order issued by SEBI in the disciplinary action shows the commonalities of two directors of defendant nos. 1 and 7. The plaintiff, therefore, has specifically pleaded, in paragraph nos. 21, 27, and 41, misappropriation of funds of defendant no.1's

client securities and transfer to defendant no. 7’s securities. Learned counsel for the plaintiff therefore relies upon all the averments in the plaint to show commonalities of the directors of the defendant inter se and transfer of funds to the account of defendant no.7 by misappropriating defendant no.1’s client securities.

11) Learned counsel for the plaintiff therefore submitted that with an intent to deceive and conceive the wrongdoing, defendant no.1, the common director controlling the group of companies, i.e. defendant nos. 2 to 7, are acting in collusion with each other. Hence, the facts and circumstances of the case warrant an order for lifting the corporate veil of defendant nos. 2 to 7 and restraining them from misappropriating the investors' funds.

12) Learned counsel for the plaintiff referred to the pleadings in paragraph nos. 22 to 41 of the plaint. He referred to the letter dated 7th June 2021 issued by ECL Finance Limited, which had provided financial services to defendant no.1. ECL Finance Limited intimated the plaintiff while acting in the capacity of an NBFC. ECL had granted a loan facility to defendant no.7, which is a group entity of defendant no.1 having common directors. ECL intimated the plaintiff that funds/collaterals securities were available with ECL as per their books of accounts to the tune of Rs. 8.95 Crores. Hence, by the said letter

dated 7th January 2021, they requested the plaintiff to advice as defendant no.7 had approached Reserve Bank of India ("RBI") by giving reference that defendant no.7 is not governed by SEBI; therefore, ECL should release the fund/securities to defendant no.7. Learned counsel for the plaintiff therefore submits that defendant nos. 1 and 7 is the group entity and is involved in misappropriation of the funds of the investors. Hence, defendant no.7 would also be liable to secure the amount of the investors.

13) Though defendant no.7 denied that there are common directors, on the ground that the director, Gabas, had resigned as the Director of defendant no.7, there is no evidence produced on record to indicate the date of resignation. The plaintiff has placed on record undertakings given by two common directors to the plaintiff for compliance with the terms and conditions of the trading membership. Hence, the subsequent resignation of the company directors would not absolve defendant no.7 of the liability to pay the amount misappropriated by defendant nos. 1 and 7. To support his submissions, learned counsel for the plaintiff relied upon the decisions of ***Singer India Ltd Vs. Chander Mohan Chadha and Ors***[1]

1 (2004) 7 SCC 1

and ***Delhi Development Authority Vs. Skipper Construction Co. (P) Ltd and Anr***[2]

14) To support his submissions that in the facts and circumstances of the case, this court should lift the corporate veil, learned counsel for the plaintiff relied upon the decision of the Delhi High Court in the case of ***PNB Finance Ltd Vs. Shri Shital Prasad Jain and Ors*** [3] and the decision of the Hon'ble Apex Court in the case of ***Life Insurance Corporation of India Vs. Escorts Ltd and Others***[4]. Learned counsel for the plaintiff, therefore, submits that, from the facts and circumstances of the case, as revealed from the inquiry report of the plaintiff and the forensic audit report of the Bombay Stock Exchange, there is sufficient material on record to show prima facie involvement of defendant no.7 in transferring the investors' funds by misappropriating the clients' securities. Hence, the ad-interim relief granted against defendant no.7 be confirmed.

15) Learned counsel for the plaintiff submits that despite the ex-parte ad-interim ordere served upon defendant no.7, for disclosure of assets, no steps have been taken by defendant no.7 to file a disclosure affidavit. Hence, it is necessary to direct defendant no.7 to secure the amount involved in the misappropriation of the investors'

2 (1996) 4 SCC 622
3 981 SCC Online Del 55
4 (1986) 1 SCC 256

fund and thus, secure the claim amount of the investors as per the claim submitted before the plaintiff. He therefore submits that necessary interim orders be passed in terms of prayer clause (i), (ii) and (vi).

**Case of defendant no. 7**:

16) Learned counsel for defendant no.7 submitted that the allegations of commonalities of directors of defendant nos. 1 and 7 and that the defendants are group companies are denied by defendant no. 7. She submitted that defendant no. 7 is not concerned with the investors/clients of defendant no. 1 and cannot be held liable for the defaults alleged against defendant no. 1. She denied that Vikram Kumar is a director of defendant nos. 1 and 7. Though the plaintiff has pleaded that out of the total 2418 claims received from the investors, only 786 claims were placed before the defaulters committee, out of which 667 claims are admitted, the plaintiff claimed recovery of the entire amount as per the total 2537 claims of the investors. Thus, the prayer for recovery is without any adjudication of the claims received by the investors. Even according to the plaintiff, only 667 claims are admitted; however, the suit for recovery is for the entire amount. Hence, the substantial prayer in the suit is

disproportionate to the investor's claim admitted by the plaintiff's defaulters committee.

17) The allegations of fraud are vague and baseless. The allegations are not supported by pleading substantial particulars. Hence, based on vague allegations of fraud, the plaintiff would not be entitled to recover any amount from defendant no.7. To support her submissions, learned counsel for defendant no.7 relied upon the decisions of the Hon'ble Apex Court in ***Balwant Rai Saluja Vs. Air India Ltd and Ors***[5]***, Bishundeo Narain and another Vs. Seogeni Rai and Another***[6]***.*** She submitted that defendant no. 7 has denied the allegations of commonality of directors. There are no pleadings to support the allegations that there was any collusion amongst the defendants on the ground that they are a group of companies and therefore involved in misappropriation of clients' funds. Therefore, in the absence of any specific allegations, the plaintiff would not be entitled to seek any interim relief as prayed in the interim application.

18) Learned counsel for defendant no. 7 submitted that the basic principles for the grant of an order of injunction during the pendency of the suit are not satisfied by the plaintiff. Hence, the injunction as prayed cannot be granted against defendant no.7. To support her

5 (2014) 9 SCC 407
6 1951 SCC 447

submissions, learned counsel for defendant no.7 relied upon the decision of the Hon'ble Apex Court in the case of ***Dalpat Kumar and Another Vs. Prahlad Singh and Others[7].*** She therefore submitted that in the absence of any satisfactory pleading and prima facie evidence against defendant no.7, no relief as claimed in the suit would be maintainable against defendant no. 7. Hence, no interim relief can be granted against defendant no.7.

**Consideration of submissions and analysis:**

19) The order passed for suspension and expulsion against defendant no.1 refers to the forensic audit report of the Bombay Stock Exchange, which relied upon the inquiry report of the plaintiff. Both reports explain in detail the misappropriation of investors' funds by defendant nos. 1 to 7. Defendant no. 7 is the promoter of defendant no. 3, having a 99.99% shareholding. The inquiry report clearly shows transfer of funds through the account of defendant no.1 to defendant no.3. The SEBI order confirming disciplinary action against the noticees involves defendant no.1, its two directors, the Gabas, and Vikram Kumar, who is the company director of defendant nos.1, 3, and 7. The confirmation order of SEBI refers to activities carried out through defendant no.7, the Gabas as promoters and

7 (1992) 1 SCC 719

directors of defendant nos. 1 and 7. The order further records that the total value of the clients' securities sold from the five clients' accounts is approximately Rs. 82.15 crores. However, the total value of securities sold from the account of the five clients is Rs. 73.30 crores. Thus, subsequently, the account of defendant no.1 client's securities have been shown as transferred to defendant no. 3 and 7 by misappropriating defendant no.1 client's securities.

20) Though defendant no.7 has denied the commonalities of the directors, there appears to be no dispute that defendant no.7 is the promoter of defendant no.3, having 99.99% shareholding, and the forensic audit report and confirmation order of SEBI show transfer of funds through defendant no.1 to the account of defendant no.3. Hence, involvement of defendant no.7 in misappropriation of funds from defendant no. 1's client securities cannot be ruled out at this stage. The observations in the forensic audit report of the Bombay Stock Exchange, referring to the inquiry report of the plaintiff, read with the confirmatory order of SEBI, show involvement of defendant no.7 in the misappropriation alleged by the plaintiff.

21) The particulars of the investors' claim received by the plaintiff are evident from the record produced along with the plaint. Thus, on perusal of the forensic audit report, the inquiry report of the plaintiff,

and the orders passed by SEBI, it prima facie shows the modus operandi of defendant nos. 1 and 7 and the irregularity committed by defendant no.1 in the clients' securities holding. Based on the observations in the forensic audit report and the inquiry report, there is an order of expulsion against defendant no.1 by the defaulters committee of the plaintiff. The order expelling defendant no.1 is not challenged. The confirmatory order passed by the SEBI under Section 11(1) (iv)(b)(d) of the Securities and Exchange Board of India Act, 1992 read with the Regulations reveals that disciplinary action has been directed against defendant no.1, its directors the Gabas and Vikram Kumar, who are seen as the company directors of defendant nos. 1, 3 and 7. There is nothing shown that the confirmatory order of SEBI directing disciplinary action is challenged. Hence, the observations in the confirmatory order of SEBI and the findings in the forensic audit report and the inquiry report reveal a prima facie case against defendant no. 7 and its involvement in misappropriation of funds.

22) In ***Delhi Development Authority,*** the Apex Court held that the concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. It is held that if the corporate character is employed for the

purpose of committing illegality or for defrauding others, the court would ignore the corporate character and would look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned.

23) The legal principles settled in ***Delhi Development Authority*** are referred to in ***Singer India Ltd.*** The three-judge bench of the Hon'ble Apex Court held that in the cases where the veil is lifted, the law either goes behind the corporate personality to the individual members, or ignores the separate personality of each company in favour of the economic entity or ignores the separate personality in favour of the economic entity constituted by a group of associated companies. It is further held that the principal grounds where such a course of action can be adopted are to protect the interest of the revenue and also where the corporate personality is being blatantly used as a cloak for fraud or improper conduct.

24) In ***Pnb Finance Ltd.***, the Delhi High Court held that the doctrine of lifting the corporate veil or cracking open the corporate shell, as it is very often said, is not confined only to cases of tax evasion and the court would be well within its right and indeed be justified in lifting even the curtain rather than the veil and see what goes on behind it, concealed from the public gaze. In ***LIC v. Escorts***

***Ltd.*,** the Apex Court held that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern.

25) In ***Balwant Rai Saluja***, the Apex Court was dealing with the reference in view of the difference of opinion on whether the workmen engaged in statutory canteens through a contractor could be treated as employees of the principal establishment. After discussing the settled principles, the Apex Court held that the doctrine of piercing the veil allows the court to disregard the separate legal personality of a company and impose liability upon the persons exercising real control over the said company. It is held that the intent of piercing the veil must be such that would seek to remedy a wrong done by the persons controlling the company.

26) Learned counsel for defendant no. 7 relied upon the Apex Court's decision in ***Bishundeo Narain*** to support her submissions that allegations of influence and coercion must be supported by pleading the particulars and, in the absence of material particulars, such allegations cannot be accepted. The Apex Court held that undue influence and coercion are separate and separable categories in law

and must be pleaded separately; and in cases of fraud, undue influence and coercion, the parties pleading them must set forth full particulars, and the case can only be decided on the particulars as laid. It is held that general allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice, however strong the language in which they are couched may be, and the same applies to undue influence and coercion.

27) In ***Dalpat Kumar***, the Apex Court held that the burden is on the plaintiff to prove, by evidence aliunde by affidavit or otherwise, that there is a prima facie case in his favour which needs adjudication at the trial. It is held that prima facie case is a substantial question raised bona fide, which needs investigation and a decision on the merits; however, satisfaction that there is a prima facie case by itself is not sufficient to grant an injunction. It is held that the Court further has to be satisfied that non-interference by the Court would result in irreparable injury to the party seeking relief and that there is no other remedy available to the party except one to grant an injunction and that the balance of convenience must be in favour of granting an injunction. Therefore, the Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the

parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. It is further held that, on weighing the competing possibilities or probabilities of injury, the Court must consider the prayers.

28) In the present case, it is specifically pleaded in the plaint that the plaintiff has received substantial claims from the investors in view of the misappropriation of clients' securities by defendant no.1 in collusion with the remaining defendants, including defendant no.7. The plaintiff has filed this suit based on the advisory issued by SEBI requiring immediate action when the member is declared a defaulter. The object of issuing such an advisory and filing of the present suit in terms of such advisory is to secure the claims of defendant no.1's investors/clients. Immediately after receiving claims from the investors, the plaintiff made a reference to the defaulters committee. Accordingly, some of the claims were already admitted on the date of filing of the suit, and the balance were under consideration as specifically pleaded in the plaint. Thus, the suit claim is based on the complaints and the claims submitted by defendant no. 1's client. The particulars of the claims received are pleaded in the plaint with the supporting documents. Thus, the plaintiff is required to settle the claims received from defendant no. 1's clients. The settlement of the

claim is undertaken by the plaintiff in view of the investors' protection funds as per the SEBI circular dated 26th September 2016.

29) The material produced on record prima facie shows the involvement of defendant no. 7. The Order dated 14th January 2020 issued by the Member and Core Settlement Guarantee Fund Committee of the plaintiff has noted the violations and non-compliances observed during the inspection. It is observed that Fairwealth Financial Services Ltd. (defendant no. 7) is promoted by the Gabas, who are common promoters and Directors in Fairwealth Securities Ltd. (defendant no.1). It is further noted that Vikram Kumar is the Director in Fairwealth Tours and Travels (defendant no. 3), Reets Plastics Pvt. Ltd. (defendant no. 5), Chahek Housing Pvt. Ltd. (defendant no. 4) and Aagas Software Solutions Pvt. Ltd. (defendant no. 6). It is also noted that the Gabas are common Directors in Katashraj Securities Pvt. Ltd. (defendant no. 2) and that all these five entities are client with defendant no. 1. The said Order further records the total securities available that are pledged with ECL Finance Ltd. It is observed in paragraph 12.1.1 of the said Order that there are violations of Regulation 5.5.3(e) of the NSEIL F&O and CM Regulations, which prohibits improper use of constituents’ securities or funds. Misappropriation of clients’ securities is also noted with

reference to directors and shareholding pattern of defendant nos. 2, 4, 5 and 6.

30) The email sent by ECL to the plaintiff records that it had granted a loan facility to Fairwealth Securities Ltd. (defendant no. 1), a group entity, i.e., Fairwealth Financial Services Limited (defendant no. 7), which had common directors. The said email further reveals that defendant no. 7 had approached the RBI and requested for release of funds by giving references that they are not governed by SEBI/Exchanges. Hence, defendant no. 7 is added as a party defendant to this suit. The interim Order by SEBI records commonality of directors of the defendants as the Gabas and Vikram Kumar. The SEBI Confirmatory Order dated 24th January 2020 also records that NBFC activity is carried out through defendant no. 7 as the Gabas are the promoters and directors of defendant no. 7. The said Order also records that from the accounts of the aforesaid five entities recorded in the interim order, the total value of securities sold is Rs. 73.30 crores. The interim order is accordingly confirmed against defendants nos. 1, 2, 4, 5, 6, Gabas and Vikram Kumar. The Inspection Report of the plaintiff annexed as Exhibit ‘F’ to the plaint records that defendant no. 7 is a 99.9% shareholder of defendant no. 3 and that securities amounting to Rs. 17.07 crores have been

misappropriated through defendant no. 2. The said report also reveals the commonality of the directors and promoters amongst the defendants.

31) The legal principles discussed in the above paragraphs regarding the doctrine of lifting the corporate veil squarely apply to the facts of this case. In the present case, if the test of control is adopted, it is evident that the entities were incorporated for an illegal or improper purpose. Prima facie, it is seen that the corporate personality is being used as a cloak for misappropriation of funds. Therefore, to protect the interests of the investors, the corporate character has to be ignored, and the reality behind the corporate veil needs to be noted.

32) In view of the claims received pursuant to defendant no. 1 being declared a defaulter and thereafter the order of expulsion, the plaintiff is required to settle the claim in view of the Investor Protection Fund as per SEBI circular dated 26th September 2016. The suit claim is purely based on the claims received from defendant no. 1's clients. The particulars of the same are disclosed in the plaint. It is a well-established legal principle that the discretion of the court must be exercised to grant a temporary protection when the requirements of the existence of a *prima facie* case are made out. The need for the

protective orders in the present case, when compared with or weighed against defendant no. 7's rights and contentions, the balance of convenience tilts in favour of the plaintiff and there is a clear possibility of irreparable injury to the plaintiff. Hence, equitable relief must be granted by exercising the discretion.

33) There are satisfactory pleadings and supporting documents in the plaint to support the allegations. The involvement of defendant no. 7 is seen in the misappropriation of clients' securities, and it is also seen as the beneficiary of the amounts that are misappropriated. The plaintiff has therefore made out the prima facie case for securing the investors' claim received in view of the defaults committed by defendant no.1. As referred to in the above paragraphs, defendant no. 7's involvement in transferring the funds to the account of defendant no.3 by misappropriating defendant no.1's client's securities is seen from the record. In the event that defendant no.7 creates any encumbrance in the available assets and securities, the claims of defendant no. 1's clients that are pending before the plaintiff are likely to be defeated.

34) Despite the ex parte ad-interim order served upon defendant no. 7, no affidavit of disclosure has been filed till date. Hence, to secure the claim, it would be necessary that defendant no.7 discloses

the assets by filing an affidavit on oath of the movable and immovable assets in terms of prayer clauses (i) and (ii) of the interim application. It is therefore also necessary to restrain defendant no.7 from transferring or alienating any of the movable or immovable assets. In the event that defendant no.7 fails to disclose the movable and immovable assets with an undertaking that the same shall not be encumbered, the plaintiff would be entitled to press for the other prayers in the interim application, including the prayer clause (v)(a).

35) At this stage, the interim application is therefore allowed in terms of prayer clause 18(i)(ii) and (vi) which reads as under:

*"18 (i) this Hon'ble Court be pleased to direct Respondent No.7 to disclose on oath by filing an Affidavit (A) all its assets/ properties, both movable and immovable, including securities, investments, shareholdings in its related entities, all the receivables from its clients/debtors, together with details of all encumbrances and valuation in respect thereof; (B) all income-tax returns, audited or otherwise, for the period of last three years till date; © nature of transactions entered into by Respondent No.7 with Reets Plastic Pvt Ltd, and Defendant No.1 respectively and the shares, securities, and investments and which have been diverted and all the receivables from its clients'/debtors', with all supporting information/documents;*

*(ii) this Hon'ble Court be pleased to direct Respondent No.7 to disclose on oath by filing an Affidavit with supporting documents for the following(A) all its assets/properties, both movable and*

*immovable, including securities, investments, shareholdings in its related entities, together with details of all encumbrances and valuation in respect thereof; (B) all income-tax returns, audited or otherwise, for the period of last three years till date; © shares, securities, and investments which have been diverted and valuation with all supporting information/documents in its favor by the Defendant No.1 and Reets Plastic Pvt Ltd; and (D) details of the used/utilization/application of the amounts diverted/transferred by Defendant No.1 and Reets Plastic Pvt Ltd to Respondent No.7.*

*(vi) this Hon'ble Court be pleased to restrain Respondent No.7 its servants, agents, assigns, directors, officials or any person/s acting or claiming through or under it, by temporary Order and injunction of this Hon'ble Court from in any manner transferring, alienating, selling disposing of and/or dealing with and/or parting with possession and/or encumbering or creating any third party, right, title and interest in all asset, movable and immovable, tangible and intangible, securities, shares, debentures, investments owned by Respondent No.7 and/or kept or diverted to any other connected entity, including the assets disclosed on oath by Respondent No.7.*

36) The disclosure affidavit as directed above shall be filed within four weeks from today.

37) The interim application is allowed in the aforesaid terms by reserving the liberty as recorded above.

**(GAURI GODSE, J.)**