

**IN THE COURT OF SPECIAL JUDGE FOR MPID****AT BOMBAY****COMMON ORDER IN****MISC. APPLICATION NO. 339 OF 2023****(CNR NO.MHCC02-002789-2023)****IN****MPID SPECIAL CASE NO.1 of 2014****AND****EXH. 619****IN****MPID SPECIAL CASE NO.1 of 2014****(CNR NO.MHCC02-000875-2014)****Misc Application No.339 of 2023 :****In the matter between:****Arvind Kumar Bahl**

Age 76

RIO A – 105, Sushant Lok-1,  
Gurugram, Haryana – 122002.... **Applicant**

Versus

**The State of Maharashtra**Through Chief Investigation Officer,  
Economic Offences Wing, NSEL – SIT,  
3<sup>rd</sup> Floor, New Police Commissioner  
Office Building, Near Crawford Market,  
Mumbai – 400 001.... **Respondent****Exh.619 in MPID Case 1/2014 :****In the matter between:****National Spot Exchange Limited**... **Applicant**

Versus

**State of Maharashtra**

Through Chief Investigating Officer,  
SIT (NSEL), Economic Offences Wing,  
Unit- V, CB-CID, Mumbai.

... **Respondent**

**Appearances:**

Ld. Adv. Shri. Rahul Arote for applicant in MA No. 339/2023.

Ld. Adv. Shri. Arvind Lakhawat, Adv. Nimeet Sharma and Adv. Ms. Jalpa Shah i/b MZM Legal LLP for applicant in Exh.619.

Ld. S.P.P. Shri. Sunil Gonsalves for the State/EOW.

Ld. Adv. Shri. Mihir Gheewala alongwith Adv. Shri. Santosh Pawar for accused no.65.

**CORAM : HIS HONOUR SPECIAL JUDGE  
SHRI A.S. SAYYAD  
SPECIAL COURT (C.R.No.52)**

**DATE : MAY 18, 2023.**

**(DICTATED AND PRONOUNCED IN OPEN COURT)**

**:ORAL ORDER:**

By this common order the above numbered proceedings are disposed of together as it involves common and overlapping questions.

Factual matrix:

2. The applicant in **M.A. No.339/2023** is an **investor** who had invested huge amount **Rs.22,24,604** through his broker namely, India Infoline Commodities Limited (IICL) which was acting as Trading Cum Clearing Member of National Spot Exchange Limited (NSEL). He was having unique client code (UCC) (IIFL ID PAMAABHL). According to him, during the period of 2012-2013 he had invested the above amount with the above broker. Initially, smart assurance and promises had given by said broker to return the handsome amount on the investment above. However, his broker exactly acted contrary against his interest. It so happened that broker of the applicant caused him huge loss due to

NSEL payment default crises. The broker as above, misrepresented the applicant that NSEL is extremely safe risk free and it could fetch good return about 15% to 18% per annum Guaranteed Return. Applicant claiming himself as a Victim of his broker who cheated him for huge amount. Pursuant to the default at NSEL platform in July 2013, at the behest of like him, one investor Shri. Pankaj Saraf, filed a complaint and based on it an **FIR No.89/2013** was registered for the various offences of IPC and MPID Act.

3. An investigation assigned to EOW, after detailed investigation of 9 years, total 11 charge-sheets filed by it. In a supplementary charge-sheet 27.12.2018, India Infoline Commodities Pvt. Ltd. (In short “**IICL**”) and its director Mr. Chintan Modi arrayed as an accused on the ground that the said company lured and taken deposits from unsuspecting clients like the applicant. Similarly, Anand Rathi Commodities Ltd. (In Short “**ARCL**”) and Geojit Commodities Ltd. (In short “**GCL**”) and its director arrayed as an accused on the ground that the said companies lured and taken deposits from unsuspecting clients like the applicant by promising guaranteed rate of the returns and therefore, they being financial establishment which defaulted in repayment of such deposits. The paras 54 and 59 of charge-sheet dated 27-12-2018 categorically concludes that the above three broker companies are **financial establishments** under the provision of the MPID Act.

4. The actual grievance raised by the applicant that the charge-sheet dated 27.12.2018 is based on **picked and choose policy** and in contravention of section 3 of MPID Act. Several directors, promoters, and brokers despite of having their active involvement in the matter and sufficient documentary evidence against them, they had deliberately not

charge-sheeted by the Investigating Officer (In short “**IO**”). There is sheer negligence on the part of investigating agency in non charge-sheeting them. **The present matter pertains to economic offence of huge magnitude of Rs 5,600 Crores and several gullible investors like applicant are still awaiting the justice. However, such selected bias investigation and final report raises serious question on integrity of EOW, betrays the faith of victims.** The neat question raised by the applicant that real culprits should not be allowed to escape the process of law. **The applicant mentioned 8 persons name along with their designation and company in para 8 of his application.**

5. While concluding application, the applicant claimed that in the interest of justice and law of parity the promoters and directors of the financial establishments IICL, ARCL and GCL be summoned by taking cognizance under section 3 of MPID Act. It is further **expressed anxiety that grave prejudice and failure of justice will be caused to the aggrieved depositors as well as to the applicant if present application is not allowed.**

6. In another application **EXH.619** the applicant himself is one of the accused namely National Spot Exchange Limited (in short “**NSEL**”) which seeks relief to take cognizance against the various directors and promoters of financial establishment which allegedly not charge-sheeted by the I.O., Economic Offence Wing (in short "EOW"). According to applicant, circumstances leading to filing of the present application are that he has been given to understand that the loss caused to the de-facto complainant in the present case has been settled by the accused defaulters. Hence, the first informant does not seem to be interested in agitating the cause of the justice any longer. Therefore, the applicant is

constrained to move the present application in the interest of Justice. This applicant also raised his grievance lesser or more on the same line as like the first applicant investor in MA.No.339/2023. Instead, the applicant is one of the accused, he raised objections about the bias and partiality investigation conducted by investigating agency. According to this applicant, the IO instead having more than sufficient incriminate evidence against the three companies' directors, promoters and brokers selectively dropped them by non charge-sheeting. It is clear discrimination against the applicant which is contrary to the constitutional guarantee of equality before law under Article 14 of constitution of India. Prayer of the application reflects the names of the person who were dropped by investigating agency despite having sufficient evidence. Therefore, it is prayed that this Court to take judicial notice and take cognizance of offence under Section 3 of the MPID Act against the promoters and directors of the said 3 broker companies who are accused as financial establishments, whose role is in consonance with their companies and colleague directors and issue process to them.

7. The prosecution has strongly opposed the application filed by the applicant/accused in Exh.619 vide reply Exh.2. According to prosecution, the investigating agency has carried out very detailed and depth investigation and not charge-sheeted the person as stated by applicants. According to IO, during his investigation as there is no substantial ground found against the persons as mentioned by the applicants. Therefore, these persons are not charge-sheeted. However, the prosecution admitted the fact that the proposed accused companies are financial establishment. Total supplementary eleven (11) charge-sheets have been filed by the IO after due investigation. Hence, the present application is not at all maintainable. The applicant is prime

accused in the alleged crime who is the financial establishment declared by the Hon'ble Apex Court. One accused cannot ask for as such relief against the other accused by way of this application.

8. The present application under Section 190 of Cr.P.C. is not at all maintainable at the instance of one accused. The applicant has no locus-standi to file this application. There are no grounds emerges from the charge-sheets and the material collected on record. This Court has still not taken cognizance of a supplementary charge-sheets nos.10 and 11. Therefore, the present application cannot be entertained at this stage. On the grounds as above and others the prosecution prayed for rejection of the application Exh. 619.

9. It is pertinent to note that the IO has filed reply vide Exh.2 to MA No.339 of 2023 which filed by the investor Mr. Arvind Bahl. However, surprisingly, the IO did not oppose his application even on facts and law. On perusal of the said reply it appears that in-fact the said reply and the contents therein are not regarding the application and sought relief by the investor Mr. Arvind Bahl. The applicant by his application sought cognizance against the aforesaid three (3) broker companies. However, the reply of the IO reflect regarding the attachment of properties and not for opposing to cognizance application. The said reply appears to be singed by the Ld. SPP after its verification. In the said reply, the IO has not disagreed with any contents made by the applicant Mr. Arvind Bahl regarding cognizance as sought for. For the sole and simple reason, the MA No.339 of 2023 which field by the applicant Mr. Arvind Bahl for taking cognizance remains unopposed at the instance of IO.

10. The Ld. Adv. Mr. Gheewala submitted that he is representing the Accused No. 65 i.e IICL, in main MPID Case no.01/2014 and by way of these applications the documents of his clients company have been challenged by the applicants, hence he may be allowed to make submission on law points in these applications. This court found therein substance and in the interest of the justice, allowed him for limited purpose to make submission on law points and regarding documents only.

11. According to the Ld. Advocate for Accused No. 65 i.e IICL, any material not forming part of the Chargesheet should not be relied upon while hearing Application u/s 190 of Cr.P.C. Documents produced by the Accused do not become documents produced by the Prosecutor. Documents should be examined with credibility when the documents were produced by the Accused. There is nothing to show that IIFL is the promoter of Accused No. 65. There is no reference of IIFL/promoter in the Chargesheet. There are no deeming provisions in the MPID Act unlike Negotiable Instrument Act.

12. Heard both sides at the length of considerable time. I have bestowed my best consideration to their respectful submissions. Besides, the oral arguments, the Ld. Advocate for the applicant (investor) filed his written notes of argument vide Exh.7 whereas the Ld. Advocate for the accused No.65 filed written notes of argument in Exh.619 vide Exh.7 and in MA No.339 of 2023 vide Exh.8 respectively. The Ld. Advocate for accused No.65 relied on decision in the matter of **State of Orissa VS Debendra Nath Padhi MANU/SC/1010/2014**. Whereas the Ld. Advocates for the applicants and prosecution relied on the various

citations. I will place the relevant citations in respect of the subject matter at the appropriate place in order.

13. The points for consideration :-

Sr. No.	Points	Findings
1	Whether there are prima-facia sufficient and good grounds available on record to summon the person as alleged by the applicants?	Yes
2	What order?	As per final order

**As to Point No.1 :-**

14. At the very outset, it is required to mention that there are two different applications under different capacity filed by the applicants. one MA 339 of 2023 is filed by the applicant under the capacity of investor on 20.02.2023 and another Exh.619 filed by the applicant under the capacity of one of the accused on 03.02.2023. Though these are two applications filed by two different persons, however, they claimed the same and identical prayer for taking cognizance of the alleged offences. Both these applicants strongly relied on charge-sheet dated 27.12.2018. wherein, my Ld. predecessor has already taken cognizance of the offences and issued process against the accused concerned. The investor Mr. Arvind Bahl by his application raised strong doubt about IO and his pick and choose policy while charge-sheeting the accused. The prosecution at the outset, raised objection about the maintainability of application and the locus-standi of the accused to file the application Exh,619. However, the prosecution did not challenge the locus-standi of the investor and the maintainability of his application. Instead, to focus on the merit of the case, the prosecution



unnecessarily made hue and cry only against the application of the applicant/accused. At the same time, the prosecution forgot to contest seriously the application of the Mr. Arvind Bahl, instead it was filed under different capacity of an investor for same relief. Thus, the application filed by the investor remain unchallenged by the IO on the various facts and law set out in his application.

15. The prosecution has filed separate application Exh.3 in Exh.619 and challenged the locus-standi of the applicant NSEL. The said application has heard at length and the decided on merit on 31.03.2023 with detail finding holding the accused have locus-standi to file application as such. The said order is a part and partial of the present proceeding. Therefore, to avoid repetition, the said issue is not required to discuss again in the present application.

16. Now turning toward the main question involved in the application that whether there is any prima-facia material available on record to take cognizance and to issue process against the proposed accused person as sought for. Before proceeding further to examine the material available on record. first of all, it would relevant to consider what is legal position laid down u/s 190 of Cr.P.C, what material required to be considered while complying the above section, When and under what circumstances the court is empowered to take cognizance. All these contingencies can be resolved with the help of various judicial pronouncements of the Hon'ble Apex Court and the Hon'ble High Courts, which cited by the Ld. Advocates for their respective parties during hearing of these applications.

17. The Hon'ble Apex Court in the matter of **Dharam Pal & Others V/s. State of Haryana & Another (2014) 3 SCC 306.** in the said decision, the Hon'ble Apex Court held that in the event of Magistrate disagrees with the police report, he may act on the basis of protest petition that may be filed and commit the case to the court of Session. This power of the Magistrate is not exercisable only in respect of persons whose names appear in column (2) of the charge-sheet, apart from those who are arraigned as accused in the police report. If there are material before the Magistrate showing complicity of the person other than those arraigned as accused or named in column (2) of the police report in commission of an offence, the Magistrate at this stage could summon such persons as well upon taking cognizance of the offence.

18. In the latest judgment dated 16.03.2022 the Hon'ble Apex Court in Criminal Appeal No.443 of 2022 **Nahar Singh V/s. The State of Uttar Pradesh & Anr.** has referred its landmark judgment **Dharam Pal & Others V/s. State of Haryana & Another** and many other cases which are on the point of section 190 of Cr.P.C. As per recent judgment of the Hon'ble Supreme Court as above, it has held that for summoning persons upon taking cognizance of the offence, the Magistrate has to examine the materials available before him for coming to the conclusion that apart from those sent up by the police some other persons are involved in the offence. These materials need not remain confined to the police report, the charge-sheet or the FIR.

19. In the mater of **M/s India Carat Pvt. Ltd vs. State of Karnataka and Anr., (1989) 2 Supreme Court Cases 132** that the Hon'ble Apex Court held that Sections 190(1) (b), 200, 202 and 204 – Despite police

report that no case made out against accused, magistrate can take cognizance of offence under Section 190 (1) (b) taking into account the statement of witnesses made under police investigation and issue process. Whether investigation commenced pursuant to a complaint made before the Magistrate or a report made to the police would not make any difference in this context.

20. It is further held in **Para 16** that “The position is, therefore, now well-settled that upon receipt of a police report under S. 173(2) a Magistrate is entitled to take cognizance of an offence u/s. 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190 (1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the Investigating Officer gives an opinion that the investigation has made a case against the accused. The Magistrate can ignore the conclusion arrived at by the Investigating Officer and independently apply his mind to the facts emerging from the investigation and taken cognizance of the case, if he thinks fit in exercise of his powers under S. 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Ss. 200 and 202 of the Code for taking cognizance of a case under S. 190(1)(a) though it is open to him to act under S. 200 or S. 202 also.”

21. In the matter of **S.P. Mani and Mohan Dairy vs Dr. Snehalatha Elangovan, 2022 SCC OnLine SC 1238** that the Hon'ble Apex Court held in **Paras 24, 25, 26, 27 and 46** that,, By virtue of the provisions of

sub-section (1) of Section 141, the guilt for the offence and the liability to be prosecuted and punished shall be extended to every person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of its business; irrespective of whether such person is a director, manager, secretary or other officer of the company. It would be for such responsible person, in order to be exonerated in terms of the first proviso, to prove that the offence was committed without his knowledge or despite his due diligence.

**Para 25** Under the separate provision of sub-section (2), if it is proved that the offence was committed with the consent or connivance of or was attributable to the neglect on the part of any director, manager, secretary or other officer of the company, such person would also be deemed to be guilty for that offence.

**Para 26** While the essential element for implicating a person under sub-section (1) is his or her being in charge of and responsible to the company in the conduct of its business at the time of commission of the offence, the emphasis in sub-section (2) is upon the holding of an office and consent, connivance or negligence of such officer irrespective of his or her being or not being actually in charge of and responsible to the company in the conduct of its business. Thus, the important and distinguishing feature in sub-section (1) is the control of a responsible person over the affairs of the company rather than his holding of an office or his designation, while the liability under sub-section (2) arises out of holding an office and consent, connivance or neglect. While all the persons covered by sub-section (1) and subsection (2) are liable to be proceeded against and also punished upon the proof of their being either in charge of and responsible to the company in the conduct of its

business or of their holding of the office and having been guilty of consent, connivance or neglect in the matter of commission of the offence by the company, the person covered by subsection (1) may, by virtue of the first proviso, escape only punishment if he proves that the offence was committed without his knowledge or despite his due diligence.

**Para 27** As for the requisite evidence, the burden upon the prosecution would be discharged under sub-section (1) when a person is proved to be in charge of and responsible to the company in the conduct of its business and would shift upon the accused to prove that he was ignorant or diligent, if that be his defence; whereas under sub-section (2) the prosecution would be required to allege and prove the consent, connivance or neglect and holding of the office by the accused. There is nothing to suggest that the same person cannot be made to face the prosecution either under sub-section (1) or sub-section (2) or both. A director or manager can be arraigned and proved to be guilty as the person in charge of and responsible to the company as well as the director of the company who, as such, might have consented to, connived at or been negligent in respect of the offence of dishonour of cheque, be logically deduced that a person can be arraigned in a complaint as the accused along with the company if it prima facie appears that he was in charge of and responsible to the company for the conduct of its business, although he may or may not be or may not have continued to be a director or other officer of the company, as mentioned in subsection (2). It would be sufficient if the complaint indicates that such person has been arraigned on the basis of averments which disclose him or her to be the person in charge of and responsible to the company in the conduct of its business at the time the offence was

committed. Evidently, a person who signs the cheque or who has the authority to sign the cheque for and on behalf of the company, regardless of his office or capacity, can, prima facie, be assumed to be in charge of and responsible to the company in the conduct of its business. And, where such person is prosecuted, then, if it be his defence that the offence was committed without his or her knowledge or that he or she has exercised all due diligence to prevent the commission of such offence, the burden to prove that would be on him or her and can only be discharged at the stage of evidence.

**Para 46** When in view of the basic averment process is issued the complaint must proceed against the Directors or partners as the case may be. But, if any Director or Partner wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be an abuse of process of court. He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint, it must be shown that no offence is made out at all against the Director or Partner.

**Para 47** Our final conclusions may be summarised as under :- **a)** The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to sub-section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment, **b)** The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the court that at the relevant point of time they were not in charge of the affairs of the company. Advertence to Sections 138 and Section 141 respectively of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or

the firm, **c)** Needless to say, the final judgment and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners 'qua' the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal, **d)** If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court.

22. It would profitable to make reference to decision of Hon'ble Jharkhand High Court in the mater of **Pramod Behl vs The State of Jharkhand, 2004 SCC OnLine Jhar 481** that the Hon'ble High Court held in **Paras 6, 8 and 10** that the cognizance of the offence can be taken on the basis of police papers as envisaged in Clause (b) of Sec. 190(i) of the Code, irrespective of the opinion of the Investigating Officer that prima facie no case is made out, if the materials collected and the statements of the witnesses recorded under Sec. 161 of the Code, in the opinion of the Magistrate, are sufficient to make out a



prima facie case against the accused persons. It can be also brought to the notice of the Magistrate by the informant by filing a protest petition.

**Para 8** In view of the discussions, made above, the only conclusion, which can be arrived at is that :- **(a)** The informant being vitally interested in the result of the investigation, the law requires that the action taken by the Officer-in-Charge of a Police Station on the First Information Report should be communicated to him and the report forwarded by such officer to the Magistrate under sub-sec. (2)(i) of Sec. 173 of the Code should also be supplied to him and **(b)** An accused does not at all come into picture till the cognizance is taken and process is issued. Neither under the Code of Criminal procedure nor under any principle of natural justice, the Magistrate is required to issue notice or afford an opportunity of hearing to the accused in a case where the police has submitted final report but on consideration of materials on record, the learned Magistrate takes cognizance of the offence in exercise of his power under Sec. 190(1)(b) of the Code and directs for issuance of process to the accused.

**Para 10** The accused person having no right of hearing at the time of taking cognizance, no notice is required to be given to him in the present case. If there is no right of hearing of the accused at the time of taking cognizance, no such right can be created by an illegal order of the Court.

23. In the matter of **Sunil Bharti Mittal vs. CBI, (2015) 4 Supreme Court Cases 609** that the Hon'ble Apex Court held in **Paras 42, 43, 44, 49, 50, 51 and 55** No doubt, a corporate entity is an artificial person which acts through its officers, directors, managing director,

chairman etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

**Para 43** Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

**Para 44** When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In *Aneeta Hada (supra)*, the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction namely where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that

such a person was responsible for the acts committed by or on behalf of the company.

**Para 49** Cognizance of an offence and prosecution of an offender are two different things. Section 190 of the Code empowered taking cognizance of an offence and not to deal with offenders. Therefore, cognizance can be taken even if offender is not known or named when the complaint is filed or FIR registered. Their names may transpire during investigation or afterwards.

**Para 50** Person who has not joined as accused in the charge-sheet can be summoned at the stage of taking cognizance Under Section 190 of the Code. There is no question of applicability of Section 319 of the Code at this stage. It is also trite that even if a person is not named as an accused by the police in the final report submitted, the Court would be justified in taking cognizance of the offence and to summon the accused if it feels that the evidence and material collected during investigation justifies prosecution of the accused. Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case. At the same time, it is not permissible at this stage to consider any material other than that collected by the investigating officer.

**Para 51** On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking

cognizance of an offence, there is sufficient ground for proceeding. This Section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred Under Section 192), upon a consideration of the materials before him (i.e., the complaint, examination of the complainant and his witnesses if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

**Para 55** While parting, we make it clear that since on an erroneous presumption in law, the Special Magistrate has issued the summons to the Appellants, it will always be open to the Special Magistrate to undertake the exercise of going through the material on record and on that basis, if he is satisfied that there is enough incriminating material on record to proceed against the Appellants as well, he may pass appropriate orders in this behalf. We also make it clear that even if at this stage, no such prima facie material is found, but during the trial, sufficient incriminating material against these Appellants surfaces in the form of evidence, the Special Judge shall be at liberty to exercise his powers Under Section 319 of the Code to rope in the Appellants by passing appropriate orders in accordance with law at that stage.

24. It would profitable to make reference to decision of Hon'ble Apex Court in the mater of **SWIL Ltd. vs. State of Delhi and Ors., (2001) 6 Supreme Court Cases 670 that the Hon'ble Apex Court held in Paras 6 and 7** that in our view, from the facts stated above it is clear that at the stage of taking cognizance of the offence, provisions of Section 190

Cr.P.C. would be applicable. Section 190 inter alia provides that 'the Magistrate may take cognizance of any offence upon a police report of such facts which constitute an offence.' As per this provision, Magistrate takes cognizance of an offence and not the offender. After taking cognizance of the offence, the Magistrate under Section 204 Cr.P.C. is empowered to issue process to the accused. At the stage of issuing process, it is for the Magistrate to decide whether process should be issued against particular person/persons named in the charged sheet and also not named therein. For that purpose, he is required to consider the FIR and the statements recorded by the police officer and other documents tendered along with charge sheet. Further, upon receipt of police report under Section 173(2) Cr.P.C., the magistrate is entitled to take cognizance of an offence under Section 190(1)(b) even if the police report is to the effect that no case is made out against the accused by ignoring the conclusion arrived at by the investigating office and independently applying his mind to the facts emerging from the investigation by taking into account the statement of the witnesses examined by the police. At this stage, there is no question of application of Section 319 Cr.P.C.

**Para 7** Further, in the present case there is no question of referring to the provisions of section 319 Cr.P.C. That provision would come into operation in the course of any inquiry into or trial of an offence. In the present case, neither the Magistrate was holding inquiry as contemplated under section 2(g) Cr.P.C. nor the trial had started. He was exercising his jurisdiction under section 190 of taking cognizance of an offence and issuing process. There is no bar under section 190 Cr.P.C. that once the process is issued against some accused, on the next date, the Magistrate cannot issue process to some other person against

whom there is some material on record, but his name is not included as accused in the charge-sheet.

25. In the matter of **Bholu Ram vs. State of Punjab and Anr., (2008) 0 Supreme Court Cases 140 that the Hon'ble Apex Court** held in **Paras 35, 47 and 48** that In our opinion, therefore, the learned Magistrate had power and jurisdiction to entertain applications filed by the appellant- accused under Section 319 of the Code and to issue summons to respondent No. 2 by adding him as accused. The said order could not be said to be illegal, unlawful or otherwise objectionable

**Para 47** It was, however, contended on behalf of respondent No. 2 that even if this Court holds that the Judicial Magistrate had no power to recall its earlier order and dismissal of the application by the learned Magistrate was legal and proper, and that a revision petition filed by the State against the said order was dismissed by the Additional Sessions Judge, the Court may consider an important fact that the respondent No. 2, who was really an 'aggrieved party' had preferred two revisions in the Court of Sessions. Hence, even if it is assumed that the trial Court did not possess the power of recalling its order, it would not preclude the revisional Court from exercising revisional jurisdiction and quashing and setting aside an order passed by a subordinate Court if it was not in accordance with law.

**Para 48** Even that ground does not impress us. It is quite possible that in a given case, a Magistrate may take cognizance of an offence illegally or arbitrarily without there being any material whatsoever. Such illegal order should not deprive the accused from contending that the learned Magistrate was wrong and wholly unjustified in entertaining

the complaint or taking cognizance of an offence. In such cases, however, the accused is not without legal remedy. If the act of taking cognizance, issuance of process or joining of an innocent person as an accused is totally uncalled for or ex facie bad in law, it is open to the aggrieved party to invoke inherent jurisdiction of the High Court under Section 482 of the Code. If the High Court is satisfied that the order passed by the Magistrate was illegal, improper or arbitrary, it can exercise inherent powers and quash criminal proceedings initiated against the party. But that power is independent and has nothing to do with recalling of an earlier order by the Court which passed it.

26. In the light of law laid down in cited supra, now let us examine what prima-facia material is available on record. It is seen that the applicant in MA 339 of 2023 is relied on the material on the chargesheet dated 27.12.2018. whereas, the applicant in Exh. 619 is also relied on the charge-sheet dated 27.12.2018 and in addition to that the said applicant relied on the following material which are annexed to its application.

- a) Copy of Board Resolution dated 7.04. 2010 at Exhibit –C showing that inter-alia Mr Nirmal Bhanwarlal Jain was authorized signatories of IICL.
- b) Copy Undertaking dated 26.6.2008 signed by Mr Nirmal Jain on behalf of IICL at Exhibit –D reflecting that Mr Nirmal Jain actively participated on behalf of IICL with NSEL is showing IICL and Mr. Nirmal Jain and Mr. Venkatramani Rajmani were eligible to for applying for membership of NSEL.
- c) Copy of the statement of Mr. Chintan Rajesh Modi, Director of IICL dated 18.7.2017 recorded by the Serious Frauds Investigation Office at Exhibit –E stating that IICL started operations on NSEL in the

year 2010 after NSEL's MD & CEO Mr. Anjani Sinha (prime accused in the present case) met Mr. Nirmal Jain at IIFL's office.

- d) Copy of the shareholding pattern of IICL at Exhibit 'F' evidencing that the IIFL is the promoter and holding company of the accused IICL.
- e) Copy of the Brochure of IIFL Premia and of presentation at Exhibit-G evidencing that IIFL and IICL had made active representations through its brochures luring and enticing the investors to generate risk-free fixed returns by buying and selling same commodity on NSEL's exchange platform by depositing their hard-earned money with IICL.
- f) Copies of the statement of Mr. Harish Thawani dated 29.12.2016 at Exhibit- H, Exhibit-I and Exhibit-J stating he has filed complaints with government agencies against IIFL and Mr. Nirmal Jain for defrauding him of Rs. 9.95 Crore.
- g) Copy of the relevant pages of the SFIO Report dated 31.08. 2018 pertaining to the role of IICL at Exhibit K stating that that brand name of its promoter IIFL was used by IICL to attract clients for commodity trading.
- h) Copy of Remand Note dated 4.3.2018 at Exhibit -L showing that IICL had done Transaction of funding through NBFC namely India Infoline Finance Limited, and transactions with relatives of IIFL group promoters directors.
- i) Copy of Memorandum of Association of ARC and Copies of the Annual Report/Annual Return of ARCL for the year 2012-13 are annexed herewith at Exhibit-M and N evidencing that Ms Preeti Gupta was the promoter-director of the accused financial establishment ARCL right from the date of incorporation of ARCL in



the year 1991. Similarly, Mr Roop Kishor Bhootra also became director of ARCL w.e.f. 18.11.2009.

- j) Copy of ARCL's Board Resolution dated 19.8.2008 as Exhibit-O and Copy of ARCL's Board Resolution dated 19.8.2008 as Exhibit-P, Copy of NSEL's letter dated 11.9.2008, as Exhibit-"Q". Copy of shareholding pattern of ARCL and ARFL is annexed herewith as Exhibit-R evidencing that Ms Preeti Gupta was authorized to act as designated director on behalf of ARCL for all matters related to NSEL and Ms Preeti Gupta actively participated on behalf of ARCL with NSEL.
- k) Copies of the email dated 28.8.2012 of Anand Rathi Financial Ltd along with the power point presentation of ARFL attached with it and copy of email dated 2.11.2012, as Exhibit-S showing that ARFL had in fact made active representations through emails and power point presentations luring and enticing its clients and other investors to generate risk-free fixed returns by buying and selling same commodity on NSEL's exchange platform by depositing their hard-earned money with ARCL.
- l) Copy of the statement of Mr Anand Mahendra Sultania dated 30.6.2017 at Exhibit-T stating that, ARFL was acting as the Wealth Advisor to Borosil, and in that capacity, Borosil was introduced to the arbitrage in commodity trading on NSEL's platform by representatives of ARFL through its sister company ARCL. He also states that representatives of ARFL promised Borosil that such investment was risk-free. He states that Borosil has been defrauded for about Rs. 85.69 Crore that they invested with ARCL through ARFL in the name of generating high fixed returns by trading on NSEL's exchange platform.

- m) Copy of the statement of Mr Amit Rathi dated 23.2.2017 at Exhibit-U stating that the entire Anand Rathi group which included ARFL and ARCL, had a common RM (Relationship Management) team that used to reach out to prospective clients and share all the products available with the group such as equities, commodities, mutual funds, insurance etc. There was no separate marketing team for ARCL.
- n) Copy of the Membership Application Form dated 25.03.2010 and Undertaking dated 25.03.2010 of Geojit Comtrade Ltd at Exhibit-V, Copy of Geojit Comtrade Board Resolution dated 23.03.2010 at Exhibit-W. Copy of letter dated 25.03.2010 at Exhibit X. Copy of shareholding pattern of Geojit Comtrade as Exhibit-Y evidencing that Shiny George was also authorized to sign jointly or severally with Mr. C. P Krishnan on behalf of Geojit Comtrade.
- o) Copy of Auditor report is at Exhibit-Z showing that Ms. Shiny George was a dominant shareholder with 51% shareholding which was signed by Ms. Shiny George herself and Mr. C.P Krishnan.
- p) Copy of the Auditors Report at Exhibit AA showing that Ms. Shiny George was the dominant promoter of Geojit Comtrade holding 51% shares as per Auditors Report as on 31.03.2012.
- q) Copy of letters dated 25.03.2010 and 1.10.2012 annexed at Exhibit-BB (colly) issued by GCL to NSEL providing warranties on behalf of GCL, were signed by Ms. Shiny George along with Mr. C.P Krishnan.

27. A careful perusal of the material placed as above, by the applicant NSEL and the applicant Mr. Arvind Bahl in their application, it would reflect that some of the documents placed on record are not forming the part of charge-sheets. Though these documents appear to be very important for the main case, the concerned investigating officer appears

to be not collected the same during investigation, why not collected, for the reasons best known to him only. Be that as it may, while exercising the power u/s 190 of Cr.P.C. it is duty of the court to see as to what prima-facia material available on record. There are total 11 charge-sheets along with multiple documents on record. The applicant NSEL also mainly relied on the chargesheet dated 27.12.2018. upon carefully perusal of the present applications and the chargesheet dated 27.12.2018 along with documents, it would indicate that genesis of present controversy starts from reading of subject FIR.

28. On careful perusal of FIR dated 30.09.2013 filed by investor Mr. Pankaj Saraf with MRA Marg police station Mumbai which was transferred to Respondent EOW on the same day under sections 120-B r/w 409, 465, 467, 468, 471, 474, 477 (A) of Indian Penal Code, 1860. The MPID Act was also invoked and section 3, 4 of MPID Act was applied to present FIR. It is pertinent to note that in "Column 7 – Details of the Name & Address of known Accused" mentioned that "*Directors and key management persons of National Spot exchange Ltd, Financial technologies India Ltd, 25 Borrowers/Trading members of NSEL, some of the brokers of NSEL & others*". The facts mentioned as above, would show that the brokers of NSEL were named as an accused by first informant in FIR and which resulted in arrest of the directors of 3 brokers by EOW in the year 2015 and subsequently a charge sheet has been filed against the 3 broker companies and 3 directors in 2018.

29. Further, culpability of 3 brokers appear to be unearthed when EOW arrested directors of broker companies in year 2015 and produced before court for custody. The second document which connects the broker and their directors with controversy is remand note prepared by

IO. On perusal of remand note dated 04.03.2015, it was prima-facie finding of IO, against brokers as under:

1. Amit Anandkishor Rathi, Director of Anand Rathi Commodities Ltd.

*“A) False assurance to investors as regards NSEL with wrongful and misleading statements, leading to enticement for investments in NSEL Products.*

*B) Deliberate deviation while acting as Clearing and Forwarding Agent.*

*C) Possible nexus between NK Proteins (defaulter accused) and ARCL.*

*D) It is suspected that there was a possible tie up between NSEL and ARCL indicating conflict of interests and absence of transparency and impartiality*

*E) Market Capturing practices by large scale UCC manipulations*

*F) Short selling on the exchange*

*G) Suspicious transactions of funding through multiple accounts”*

2. Cherassary Parmeshwaran Krishnan, Director of Geojit Comtrade Ltd

(i) *False assurance and inducement to investors as regards NSEL with wrongful and misleading statements and assurances.*

(ii) *Possible tie up between NSEL.*

(iii) *Market capturing practices by large scale UCC manipulation.*

(iv) *Short selling on the exchange.*

(v) *Inducement of investors by suspicious transaction of funding through multiple accounts.*

(vi) *False Stock lying certificate to Auditor 23/03/2012*

3. Chintan Rajeshkumar Modi, Director of India Infoline Commodity Ltd

(i) *False assurances to investors as regards NSEL with wrongful and misleading statements and assurances.*

(ii) *Possible tie up between NSEL*

(iii) *Market capturing practices by large scale UCC manipulation.*

(iv) *Transaction of funding through NBFC namely India Infoline Finance Limited*

(v) *Stock Confirmation*

(vi) *Transactions with relatives*

30. During the investigation, above wrongdoings were detected by IO, which was genuinely expected to come with explanation in chargesheet against broker companies and their 3 directors. However, this court unable to understand and find out answers from the chargesheet to many questions raised by IO in remand note. For example, what happened to suspect trades of Madhu Jain who happens to wife of accused Nirmal Jain, no conclusion on financing of India Infoline Finance Ltd., No explanation on source of total funding of Rs.1600Cr. done by Geojit Credit, explanation of Anand Rathi with NK Protein etc. The court is unable to understand IO's silence on issues which were raised in remand note that remained unanswered in chargesheet. This conduct of the concerned IO appears to be doubtful and the same corroborates the investor Mr. Arvind Bahl and NSEL apprehension that, the concerned IO has applied method of picked and chose while making the person accused.

31. In addition to above, to find out what was the material collected by IO during investigation against accused persons in application, I have carefully gone through the charge-sheets filed by EOW. In the said chargesheet there are 4 panchanama dated 27.12.2018 as under:

<b>Sr. No.</b>	<b>File and Page No</b>	<b>Broker</b>
1	File No. 2- Pg. No.65-66	India Infoline Commodities Pvt. Ltd.
2	File No. 2- Pg. No.67-69	Anand Rathi Financial Services Ltd
3	File No. 2- Pg. No.71- 72	Anand Rathi Commodities Ltd
4	File No. 2- Pg. No.31-33	Anand Rathi Commodities Ltd

32. During the hearing, the NSEL heavily relied on the aforesaid panchanma. It is noteworthy that in 4<sup>th</sup> Panchanama, IO appears to be

seized crucial documents like minutes book, return filed with registrar of companies etc. However, this court did not find the minutes book on record which would have clarified who all were in control of broker Anand Rathi. Similarly, this court did not understand as to why IO has not seized minutes books of other accused broker companies. During the hearing, NSEL and the investor Mr. Bahl relied on certain documents showing involvement of accused persons. I have carefully perused the following documents relied by IO in chargesheet dated 27.12.2018.

<b>Sr. No.</b>	<b>Documents Relied by NSEL</b>	<b>Document Relied by IO in chargesheet dated 27.12.2018</b>	<b>Reference</b>
1	Memorandum of Association of Anand Rathi Commodities Pvt. Ltd	Page No. 327 of File No.44	Showing that Preeti Gupta was Promoter / Director of Anand Rathi Commodity from 1991 and Rup kishore Bhootra became director of Anand Rathi Commodity.
2	Undertaking dated 26.06.2008 of IICL	Page No. 669 of File No.44	Showing that Nirmal Jain, director of IICL from in year 2004 and he signed the Undertaking dated 26.6.2008 for NSEL membership Board Resolution dt. 26.4.2008 authorised Nirmal Jain on behalf of IICL.
3	Certified True Copy of the Board Resolution dated 23.03.10 by Geojit Comtrade	Page No. 537 of File No. 44	Showing that Shiney George was appointed as director of GCL for all matters to NSEL.

4	Membership Application form & Undertaking dated 25.3.2010- of Geojit Comtrade	Page No. 467 of File No. 44	Showing that Shiney George signed Membership and Undertaking of NSEL
5	Articles of Association of Anand Rathi Commodities Ltd.	Page No. 21 of File No. 44	Showing that Preeti Gupta was promoter of Anant Rathi Commodities
6	Annual Return for Anand Rathi Commodities Ltd.	Page No. 57 of File No. 44	Showing that role of Preeti Gupta and Rupkishore Bhootra in Anand Rathi Commodities
7	Undertaking dated 31.03. 2010 signed by CP Krishnan & Shiney George.	Page No. 475 of File No. 44	Showing that C.P. Krishnan and Shiny George directors of Geojit signed Membership and Undertaking of NSEL.
8	Sharing Holding Pattern of Anand Rathi & Anand Rathi Financial Ltd.	Page No. 77 of File No. 44	Showing that Preeti Gupta holds 12% shares in Anand Rathi Financial Services Promoter of Anand Rathi Commodities.
9	Complaint by Investor Harish Thawani to EoW	Chargesheet dated 02.12.2022	Complaint against IICL, Nirmal Jain

33. If the documents referred as above, taken in to consideration in its entirety, it would prima-facia indicate that main promoter and director of broker companies are kept out of chargesheet by concern IO, despite the statutory mandate of Section 3 of MPID Act without providing cogent reasons while similarly placed persons have been arrayed as an accused. Added to above, to ascertain the truth, I have carefully gone through various investors' statements recorded during

the investigation and placed on record by IO in chargesheets. The gist of the said important witnesses as under :-

Sr. No.	Name of Witness	Statement In Brief	Source of Statement
1	Shardul Navnit Shah,	I was attracted towards NSEL for investment due to broker namely M/s India Infoline Commodities LTD, IIFL Tower, Lower Parel in the year of 2013 Mr. Manoj a representative had advised me to invest in NSEL as NSEL was giving 12 to 15% on deposits with 100% security since counter party risk was with NSEL.	CS No.3/ File No.2, Page No. 100-101
2	Yusuf Yakoob Shaikh	I was attracted towards NSEL for investment due to broker namely M/s India Infoline Commodities LTD, IIFL Tower, Lower Parel in the year of 2013 Mr. Manoj a representative had advised me to invest in NSEL as NSEL was giving 12 to 15% on deposits with 100% security since counter party risk was with NSEL.	CS No.3/ File No.2, Page No. 112-113
3	Porus Saranjit Singh	I was attracted towards NSEL for investment due to broker namely M/s Anand Rathi Commodities LTD, Sahkar Nagar, Pune in the year of 2011, Mr. Vikram Shah, (9850373890) a representative had advised me to invest in NSEL as NSEL was giving 12 to 15% on deposits with 100% security since counter party risk was with NSEL.	CS No. 3, File No.3. Page No.376-377
4	Atul Kantilal Desai,	Based on the representations made by NSEL on its website and through circulars and the assurances made by it, both documented and oral and also on	CS No.3, File No.3. Page No. 424-427



		the assurance of my broker M/ s Anand Rathi Commodities Ltd, Kalbadevi, Mumbai	
5	Ketan Anil Shah	Explained brokers role in NSEL scam	CS No. 3, File No. 20, Page No.35-50
6	Anand Mahendra Sultania	On being asked about transactions of Borosil Glass Works Ltd. in NSEL matters, I state that, in Oct. 2010, Anand Rathi Financial Services Limited as a Wealth Advisor to our Company, in their professional capacity through their representatives had presented an opportunity to our investment committee team to engage in arbitrage in commodity trading on NSEL. They proposed to trade in commodities on NSEL through their sister company namely Anand Rathi Commodities Limited (ARCL). Based on such advice and in good faith, our Company had entered into a Member Constituent Agreement dated 15 <sup>th</sup> November 2010, inter alia with ARCL for executing trades on our behalf on NSEL platform.	CS. No. 4, File No. 2, Page no 463-465

34. The statements of witnesses referred as above, would prima-facia indicate that brokers had mis-represented investors about high returns and induced them to trade on NSEL platform. This court while examining the documents on record noticed in chargesheet dated 27.12.2018 various brochures issued by 3 brokers to their investors inducing investors to trade, promising fixed returns etc. details as under:-

<b>Sr. No.</b>	<b>Name of Broker</b>	<b>References</b>
1	Presentation of Anand Rathi Commodities Ltd	File No. 44 Page No. 379- 396
2	Presentation of Geojit Commtrade	File No. 44 Page No. 495-517
3	Presentation of India Infoline Commodities Ltd	File No. 44 Page No. 701-727

The aforesaid brochures appear to be sufficient material to hold that brokers companies were inducing and luring investors to trade under the pretext of assured risk-free returns.

35. On carefully noticed the findings of IO in 10<sup>th</sup> chargesheet dated 18.05.2022 at page no. 53 & 54 as under, interest, which they had promised, falls within the understanding of deposit as defined in section 2(c) of the MPID Act, As per section 2(d) of the MPID Act, the person who accepts deposit comes within the definition of “Financial Establishment”. Similarly, all the above mentioned auditor accused have made criminal conspiracy with other accused and prepared forged / bogus audit report and given misleading and unqualified report to the stockholder of the company.

36. Further, similar findings of IO in 11<sup>th</sup> chargesheet dated 02.12.2022 as under :-

Brokers and NSEL have taken money by selling commodities on the Exchange Platform in T+2 (shorter duration contract) and defaulted in payment of their obligation towards purchase of commodities in T+25 (longer duration contract) with promised of 12% to 16% return. The defaulters with the help of NSEL and broker have issued VAT invoices towards their sale transaction to the investors. All defaulter accused

company and its directors accused in criminal conspiracy with NSEL officials and brokers with intention of getting finance (investors' money) participated in financial scheme of illegal pair trade contracts launched by NSEL and its directors and offered forged offer letters to NSEL without having sufficient stocks. NSEL, in turn, generated forged warehouse receipts and issued them to brokers and investors. The money trail, by the forensic auditor of EOW has confirmed that the money trail is from brokers to the NSEL and thereafter from NSEL to defaulters. All accused defaulter Group Company, Brokers and NSEL had sold the commodities to the investors and received money in the form of deposit. The much said set of NSEL, Brokers and defaulters had entered into a purchase transaction with the investors wherein they failed to pay money i.e. return the deposit. The accused brokers, defaulters and NSEL with the help of NSEL, FTIL, IBMA Company and its directors had received monies in the form of deposits and failed to return the money alongwith benefit of 12% to 16% interest, which they had promised.

37. From above findings on investigation, it can be prima-facie said that, first point of contact in the entire scheme is broker and who induced investor and entered into agreement with investor / depositor. The brokers along with NSEL, defaulter have accepted deposit by selling commodities on the Exchange Platform in T+2 and defaulted in T+25 with promised of 12% to 16% return. All accused defaulter Group Company, Brokers and NSEL had sold the commodities to the investors and received money in the form of deposit. The accused brokers, defaulters and NSEL with the help of NSEL, FTIL, IBMA Company & its directors had received monies in the form of deposits and failed to return the money along with benefit of 12% to 16% interest, which they

had promised. Brokers further instigated investors by arranging loans to investors.

38. The statements of Manish Virendra Gupta, Roopkishore Bhootra and Mamata Digvijay Singh appears that India Infoline Limited is holding 95% of IICL, which means India Infoline Ltd is promoter of IICL. These statements along with documents i.e undertakings, shareholding pattern submitted by IICL resolved controversies that who was the promoter of India Infoline Commodities Ltd. i.e India Infoline Ltd.

39. This court find out further material collected by the IO in chargesheets as under :-

Sr. No	Date of Document	Document & Page Nos.	Particulars	Charge-sheet
<b>India Infoline Commodities Ltd</b>				
1.	07.04.2010	Resolution passed at the Board meeting dated 07.04.2010.  File No. 42 @ Page No. 631	Mr. Nirmal Jain alongwith Mr R Venkataraman, Mr Ajit Menon, Mr Chintan Modi and Mr Sunil Loke, Mr Binoy Parikh and Mr. Jayas Upadhyay were authorized severally to file and /or make affidavit and/or sign any other document or paper as may be required for filing petition under Section 17 of the Companies Act, 1956 to the Company.	27.12.2018

Sr. No	Date of Document	Document & Page Nos.	Particulars	Charge-sheet
2.	30.10.2012	Undertaking dated 30.10.2012 by IICL to NSEL membership Department. File No. 42 @ Page No. 603 and Shareholding pattern of IICL as on 31.03.2012 File No. 42 @ Page No.595	The Undertaking was signed by Mr. Nirmal Jain and Mr. R Venkataraman as Designated Directors  Shareholding pattern was signed by Nirmal Jain disclosing India Infoline Limited was holding 95.22% in IICL.	27.12.2018
3.	11.05.2012	Auditors Report (Sharp & Tannan Associates) on Related party disclosure and Out-standings for year ending 31.03.2012. File No. 42 @ Page No. 493	The document was signed by Mr. Nirmal Jain and Mr. R Venkataraman	27.12.2018

Sr. No	Date of Document	Document & Page Nos.	Particulars	Charge-sheet
4.	30.10.2022	Detail of Exchange member  File No. 42 @ Page No. 597	Document shows India Infoline Ltd. Was holding company of IICL	27.12.2018
<b>Geojit Comtrade Limited</b>				
1.	08.04.2010	Undertaking for Internet Based Trading File No.42 @ Page No. 97	The said Undertaking was signed by Ms. Shiny George along-with Mr. C.P Krishnan	27.12.2018
2.	31.03.2010	Undertaking for Trading-cum-clearing membership File No.42 @ Page No.121	The said Undertaking was signed by Ms. Shiny George along-with Mr. C.P Krishnan	27.12.2018
3.	03.04.2010	Undertaking for User ID File No. 42 @ Page No. 91	The said Undertaking was signed by Ms. Shiny George along-with Mr. C.P Krishnan	27.12.2018
4.	19.06.2012	Fourth Director's Report with Audited Annual Accounts for year ended 31.03.2012 File No. 42 @ Page No. 347	The said report was signed by Ms. Shiny George (Director) along-with Mr. C.P Krishnan (Whole Time Director)	27.12.2018

Sr. No	Date of Document	Document & Page Nos.	Particulars	Charge-sheet
5.	05.04.2010	Application for approval as Approved User to the Clearing and Settlement Department (NSEL) File No.42 @ Page No. 87	The said Application was signed by Ms. Shiny George along-with Mr. C.P Krishnan	27.12.2018
6.	08.07.2014	Board Resolution at Board Meeting held on 14.11.2008. File No.44 @ Page No.453	It was resolved that Ms. Shiny George along-with Mr. C.P Krishnan and Mr. Manish Gupta were appointed as Additional Directors of the Company.	27.12.2018
<b>Anand Rathi Commodities Limited</b>				
1.	30.03.2011	Minutes of the Management Committee of the Board of Directors  File No.43 @ Page No. 695	It was resolved that unconditional and irrevocable support be given in favour of Ms. Priti Gupta & Mr. Pardeep Gupta for the purpose of determining the dominant promoter group in M/s Anand Rathi Financila Services Ltd (ARCL) and execute necessary documents including an irrevocable undertaking to give effect to the same and	27.12.2018

Sr. No	Date of Document	Document & Page Nos.	Particulars	Charge-sheet
			submit it to NSEL.	
2.	08.11.2012	The details on the Dominant Promoter Group (Before Change & After Change)  File No.43 @ Page No. 717	Mr. Priti Gupta was included in the Dominant Promoter Group	27.12.2018
3.	08.11.2012	Undertaking dated 08.11.2012 to NSEL Membership Department  File No.43 @ Page No. 741	The said Undertaking was signed by Ms. Preeti Gupta along-with Mr. Pradeep Gupta	27.12.2018
4.	08.11.2012	Auditor's certificate on shareholding pattern of ARFL  File No.43 @ Page No. 719	Ms. Priti Gupta was shown as holding 11.98% shares and shown as Direct Dominant Promoter Group.	



<b>Sr. No</b>	<b>Date of Document</b>	<b>Document &amp; Page Nos.</b>	<b>Particulars</b>	<b>Charge-sheet</b>
5.	28.06.2011	Undertaking dated 28.06.2011 to NSEL Membership Department File No.43 @ Page No.877	The said Undertaking was signed by Ms. Preeti Gupta along-with Mr. Pradeep Gupta	27.12.2018
6.	12.10.2012	Undertaking dated 12.10.2011 to NSEL Membership Department File No.43 @ Page No. 641	The said Undertaking was signed by Ms. Preeti Gupta along-with Mr. Pradeep Gupta	27.12.2018
7.	31.07.2012	Undertaking dated 31.07.2012 to NSEL Membership Department File No.43 @ Page No. 703	The said Undertaking was signed by Ms. Preeti Gupta along-with Mr. Pradeep Gupta	27.12.2018
8.	07.03.2011	Letter to Membership Department (NSEL) File No.43 @ Page No. 881	Documents were provided with respect to shareholding pattern of holding company – Anand Rathi Financial Services Limited. The document was signed Roop Kishor Bhootra.	27.12.2018

Sr. No	Date of Document	Document & Page Nos.	Particulars	Charge-sheet
9.	27.08.2008	Certificate stating Ms. Preeti Gupta was working as Director from 22.11.1991 File No. 43 @ Page No. 391	The certificate was signed by Mr. Pradeep Gupta.	27.12.2018
10	12.10.2012	Undertaking from Corporate Supporting Dominant Promoter Group (Anand Rathi Financial Services Limited (ARFL).  File No. 43 @ Page 623	The Undertaking specified that as per the existing norms of NSEL the shareholding of Ms. Preeti Gupta along-with others in ARFL was in direct proportion to ARCL shareholding in TCM company. That Ms Priti Gupta & Pradeep Gupta along-with others were the dominant promoters of the trading Member Company. That Ms Priti Gupta & Pradeep Gupta a/w others were given ARCL's unconditional & irrevocable support for determining dominant group in the TCM company.	27.12.2018
11	12.10.2012	Details of	Ms. Preeti Gupta was	27.12.2018

Sr. No	Date of Document	Document & Page Nos.	Particulars	Charge-sheet
		Directors of ARCL as on 31.03.2012 File No. 43 @ Page 631	shown as a Director of ARCL since 29.11.1992	
12	12.10.2012	Auditor's Certificate of ARFL File No. 43 @ Page 627	The Certificate showed that Ms. Preeti Gupta was holding 12.01 % shares in ARFL.	27.12.2018
13	12.10.2012	Auditor's Certificate of ARCL File No. 43 @ Page 625	Anand Rathi Financial Services Ltd was shown as holding 100% shares in Anand Rathi Commodity Ltd.	27.12.2018
14	12.10.2012	Annexure to Details of Directors of ARCL as on 31.3.2012 – Directorship in other companies File No. 43 @ Page 633	Ms Preeti Gupta was shown as a Director  Mr. RoopKishor Bhootra was also shown as a Director	27.12.2018
15	19.08.2008	Board Resolution dated 19.08.2008 of ARFL  File No. 43 @ Page 277	It was resolved that ARFL shall extend its unconditional & irrevocable support in favour of Mr. Pradeep Gupta and Ms. Preeti Gupta for the purpose of determining the dominant promoter group in ARCL and accordingly execute	27.12.2018

Sr. No	Date of Document	Document & Page Nos.	Particulars	Charge-sheet
			necessary documents including an irrevocable undertaking to give effect to the same and submit it to MCX.	
16	08.11.2012	Auditors Certificate on Shareholding Pattern and Dominant Promoter Group of ARFL as on 08.11.2012 File No. 43 @ Page 713	Ms. Preeti Gupta was shown as a dominant promoter.	27.12.2018
17	31.07.2012	Details of Foreign Holding of ARCL to Membership Department (NSEL). File No. 43 @ page No. 697	The document was signed by Ms. Preeti Gupta with Mr. Pradeep Gupta.	27.12.2018
18	31.07.2012	Dominant Promoter Group of ARCL (Before Change &	Ms. Preeti Gupta was shown as a dominant promoter	27.12.2018

Sr. No	Date of Document	Document & Page Nos.	Particulars	Charge-sheet
		After Change) File No. 43 @ page No. 679		
19	28.06.2011	Dominant Promoter Group of ARCL (Before Change and after change) File No. 43 @ Page No. 853 and 855	Ms. Preeti Gupta was shown as a dominant promoter	27.12.2018
20	28.06.2011	Undertaking by Anand Rathi (On Dominant Promoter Group after change) File No.43 @ Page No.861	He acknowledged that he had no objection on clubbing his shareholding with Ms. Preeti Gupta (his daughter) for determining the dominant promoter /partner group.	27.12.2018
21	28.06.2011	Undertaking by Amit Rathi (On Dominant Promoter Group after change) File No. 43 @ Page No. 863	He acknowledged that he had no objection on clubbing his shareholding with Ms. Preeti Gupta(his sister) for determining the dominant promoter / partner group.	27.12.2018
22	17.11.2008	Board	It was resolved that	27.12.2018

Sr. No	Date of Document	Document & Page Nos.	Particulars	Charge-sheet
		Resolution of ARFL  File No. 43 @ Page No. 221	Ms Preeti Gupta shall be extended with unconditional & irrevocable support for determining dominant promoter group in ARCL and accordingly execute necessary documents including giving irrevocable undertaking to give effect to the same and submit to NSEL.	
23	03.02.2009	Details of Dominant Promoter Group as on 27.01.2009 File No. 43 @ Page No. 207	Ms. Preeti Gupta was shown as dominant promoter	27.12.2018
24	01.01.2010	Information on change in registered office address of ARCL to NSEL Membership Department File No. 43 @ Page No. 23	The letter was signed by Ms. Preeti Gupta as a Designated Director	27.12.2018
25	23.12.2009	Abstract of	Change in registered	27.12.2018

<b>Sr. No</b>	<b>Date of Document</b>	<b>Document &amp; Page Nos.</b>	<b>Particulars</b>	<b>Charge-sheet</b>
		the minutes of the Board Meeting dated 23.12.2009 File No. 43 @ Page No. 25	office was recorded which was signed by Ms. Preeti Gupta.	
26	2007-2008	Annual Report 2007-08 File No. 43 @ Page No. 229	Ms. Preeti Gupta was included in the KMP list in the said Annual Report.	27.12.2018
27	28.08.2008	Auditor's certificate on shareholding pattern of ARCL as on 19.08.2008 File No. 43 @ Page No. 343	Ms. Preeti Gupta was the signatory.	27.12.2018
28	03.02.2009	Details of Dominant Promoter Group of ARFL as on 27.01.2009 File No. 43 @ Page No.209	Ms. Preeti Gupta was shown as a Dominant Promoter	27.12.2018
29	03.10.2008	Details of Dominant Promoter Group of	Ms. Preeti Gupta was shown as a Dominant Promoter	27.12.2018

Sr. No	Date of Document	Document & Page Nos.	Particulars	Charge-sheet
		ARFL as on 31.03.2008 File No. 43 @ Page No.265		
30	04.12.2008	Undertaking on Trading-cum-clearing membership of ARCL File No. 43 @ Page No.279	The Undertaking was signed by Ms. Preeti Gupta	27.12.2018
31	03.02.2009	Underataking by: Ms Pushpalata Rathi and Mr. Anand Rathi File No. 43 @ Page No.211 and 217	They acknowledged that he had no objection on clubbing his shareholding with Ms. Preeti Gupta(daughter) for determining the dominant promoter/partner group.	27.12.2018
32	03.02.2009	ARFL Undertaking from Corporate Supporting Dominant Promoter Group File No. 43 @ Page No.219	The Undertaking specified that as per the existing norms of NSEL the shareholding of Ms. Preeti Gupta along-with others in ARFL was in direct proportion to ARCL shareholding in TCM company.  That Ms Preeti Gupta	27.12.2018



Sr. No	Date of Document	Document & Page Nos.	Particulars	Charge-sheet
			<p>and Pradeep Gupta along-with others were the dominant promoters of the trading Member Company.</p> <p>That Ms Preeti Gupta and Pradeep Gupta along-with others were given ARCL's unconditional and irrevocable support for determining dominant group in the TCM company.</p>	
33	28.06.2011	<p>ARFL Undertaking from Corporate Supporting Dominant Promoter Group</p> <p>File No. 43 @ Page No.865</p>	<p>The Undertaking specified that as per the existing norms of NSEL the shareholding of Ms. Preeti Gupta along-with others in ARFL was in direct proportion to ARCL shareholding in TCM company.</p> <p>That Ms Preeti Gupta and Pradeep Gupta along-with others were the dominant promoters of the trading Member</p>	27.12.2018

Sr. No	Date of Document	Document & Page Nos.	Particulars	Charge-sheet
			<p>Company.</p> <p>That Ms Preeti Gupta and Pradeep Gupta along-with others were given ARCL's unconditional and irrevocable support for determining dominant group in the TCM company.</p>	

40. If the referred documents alongwith exhaustive list as above taken into consideration, it would prima-facia indicate that how each accused person in the present application was prima-facia appears to be involved in their respective company's control & management, having knowledge of illegal pair trading. Considering the prima-facia material referred as above, It is highly difficult to consider Accused No.65 - IICLs' submission that there is no material to connect the Nirmal Jain in the alleged crime.

41. In addition to above, it is seen that the I.O vide chargesheet date 02.12.2022 mentioned therein at page no.124 criminality revealed against brokers during the investigation as under :-

**“Investigation pertaining to brokers and their directors/partners.**

1) NSEL was a platform for registered buyers and sellers to trade in commodities. These buyers and sellers, better known as clients, were registered with a member/broker, who were, in turn registered on NSEL and formed a link between the Exchange and

clients. There were, approximately 237 brokers who represented 12,735 investors.

2) It appears that during the course of investigation, it was found that the accused brokers, in criminal conspiracy with NSEL officials / directors, were advertising the investment / arbitrage opportunities by way of pair trade contracts. These accused brokers appears to give assurances of fixed and assured returns and deliberately avoided informing the investors about the risk factors in the trading. They assured investors that their investment were secured by stocks of commodities at NSEL warehouses and also their investments were secured by settlement guarantee fund.

3) They induced their clients by showing presentation and brochures claiming that NSEL trading is the best way to earn risk-free fixed returns, which were much more in comparison to available financial products in the market Thus, they were involved in misrepresentation and mis-selling of the product. The inducement was so high that the clients were informed that if the clients opted for funding, the returns would be in the range of 20-22% as against 14-16% if they trade with their own funds.

**IO during investigation reveals the role and involvement of brokers Gist of allegations – at Page No.125 in charge-sheet date 02.12.2022.**

- 1) Violation of FCRA guidelines and Pair Trade
- 2) Code Modification

- 3) Brokers mis-represented their clients with wrongful, misleading statements, leading to enticement for investments in NSEL products.
  - 4) Brokers mislead their investors/clients by assuring risk free returns.
  - 5) Brokers didn't ensure existence of commodities in warehouses.
  - 6) Brokers are guilty of breaching trust of their investors/client
  - 7) Brokers knew the risk but failed to take precautions to protect the interest of their investors/clients.
  - 8) Brokers without authority used the names of investors/clients and traded in their account
  - 9) Brokers have funded their investors/clients beyond their repayment capacity.
  - 10) Brokers have funded their investors/clients to the extent of 90% as against the industry practice of 40-50%
  - 11) Brokers, apart from brokerage also earned in interest arbitrage.
  - 12) Brokers issued contract note to their investors/clients.
  - 13) Brokers through presentations, marketing materials, brochures or word of mouth induced the investors/clients to trade on NSEL by offering assured & risk free returns.
  - 14) Most of the Brokers were aware that Wealth Management Service (WMS) and Portfolio Management Service (PMS) in commodities market is prohibited. Still they flouted the norms and sold NSEL products through WMS and PMS.
  - 15) Brokers were running offline exchange by generating contract notes for those trades that were never executed on the exchange.
- In short, the Brokers manipulated the client codes e.g. Borosil in

Anand Rathi Commodities Ltd. The material referred as above, found to be corroborate with allegations made in applications.

42. Now, in the light of material referred as above, it is the solemn duty of this court to examine the above material and to see whether the above material is sufficient to fit the case under the provisions of MPID Act and issue process accordingly. The relevant sections of MPID Act as under :-

Section 2 (c) “**deposit**” includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity by any Financial Establishment to be returned after a specified period or otherwise, either in cash or in kind or in the form of a specified service with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include ...

Section 2 (d) “**Financial Establishment**” means any person accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined under clause (c) of section 5 of the Banking Regulation Act, 1949.

43. On plain reading of above sections and perusal of statements and material available on record, it would prima-facia reflects that broker companies appears to be have enrolled investors / depositors by misrepresentation, circulated brochures, accepted monies from investors / depositors on promise of assured and guaranteed returns, and

consequently failed to return said money back to investors / depositors. Therefore, prima-facia all ingredients of “deposit” as defined under section 2(c) and section 2(d) are appeared to be fulfilled.

44. Thus, this court is of considered opinion that the mandate of section 3 has to be applied on every person including promoter, director, manager who are responsible for the management of or conducting the business or affairs of Financial Establishment. Section 3 reads as under :-

**Sec. 3. Fraudulent Default by Financial Establishment.**

Any Financial Establishment, which fraudulently defaults any repayment of deposit on maturity along with any benefit in the form of interest, bonus, profit or in any other form as promised or fraudulently fails to render service as assured against the deposit, every person including the promoter partner, director, manager or any other person or an employee responsible for the management of or conducting of the business or affairs of such Financial Establishment shall, on conviction, be punished with imprisonment for a term which may extend to six years and with fine which may extend to one lac of rupees and such Financial Establishment also shall be liable for a fine which may extend to one lac of rupees.

45. In the light of law laid down as above, Now, the next test for issuance of process against accused persons in application is to see whether accused persons in application are **responsible for the management of or conducting of the business or affairs of such Financial Establishment or not.** In order to pass the said test, I have

carefully perused various documents, materials collected by IO. It is seen that various documents were signed by accused persons, accused persons appears to be authorized by respective broker companies vide resolutions passed by board of directors by respective broker companies, correspondence shows accused persons in application were interacting with NSEL, some accused persons appears to be in application were holding shares in broker companies as well as promoter companies of respective brokers, by virtue of directorship and shareholding accused were direct beneficiaries of growth of broker companies.

46. At the cost of repetition, it would relevant to reproduce reference of selective important documents as under :-

### **1) Nirmal Jain**

- i. IICL undertaking dated 26.08.2008 to NSEL membership department at Page No.669 in File No. 44 in chargesheet dated 27.12.2018. Along with undertaking Nirmal Jain provided his biodata to NSEL.
- ii. IICL board resolution dated 26.04.2008 authorizing Nirmal Jain to act on behalf of company at Page No.699 in File No. 44 in chargesheet dated 27.12.2018 and shareholding pattern dated 30.10.2012 signed by Nirmal Jain.
- iii. IICL used to issue Contract Notes to investors wherein Nirmal Jain has been mentioned as authorized signatory of IICL.

### **2) Preeti Gupta**

- i. Memorandum of Association of Anand Rathi Commodities Pvt. Ltd Evidencing that Preeti Gupta was Promoter/Director of Anand

Rathi Commodity from 1991 at Page No.327 in File No. 44 in chargesheet dated 27.12.2018.

- ii. Statement of Roopkishore Bhootra explaining his role and Preeti Gupta in Anand Rathi Commodities.
- iii. Preet Gupta signed NSEL membership form at Page No.279 in File No.43; undertaking dated 8.11.2012 at Page 741; 28.06.2011 at Page 877; 31.07.2012 at Page 703 to NSEL in File 43. Board Resolution dated 19.08.2008 at Page 277 in File 43 in chargesheet dated 27.12.2018.

### **3) Roopkishor Bhootra**

- i. Roopkishore is shown as witness by EOW in its chargesheet dated 2.12.2022, there is nothing in his statement which incriminates any of chargesheeted accused to crime or spill the beans of scam. On the contrary Roopkishore appear to be admitted that Preeti Gupta and he were directors of Anand Rathi Commodities at relevant time.
- ii. Form No. 32 showing Roopkishore Bhootra has been appointed as additional director of Anand Rathi Commodities on 18.11.2009 at Page No. 357 in File No. 44 in chargesheet dated 27.12.2018.

### **4) Shiny George**

- i. NSEL membership form signed by Shiny George along with her photograph pasted on form at Page No.471 in File No. 44 in chargesheet dated 27.12.2018.
- ii. Undertaking given by Geojit Comtrade to NSEL signed by Shiny George with other accused CP Krishnan at Page No.475 to 489 in File No. 44 in chargesheet dated 27.12.2018.



- iii. Board Resolution dated 23.03.2010 of Geojit Comtrade authorizing Shiny George and others to act on behalf of Geojit Comtrade at Page No.491 in File No. 44 in chargesheet dated 27.12.2018.

#### **5) Manish Gupta**

- i. Board Resolution dated 14.11.2008 of Geojit Comtrade appointing Manish Gupta, C.P. Krishnan & Shiny George as Additional Directors of Geojit Comtrade at Page No.453 in File No. 44 in chargesheet dated 27.12.2018.
- ii. Statement of Manish Gupta explaining his role in Geojit Comtrade in chargesheet.

47. The above referred material prima-facia shows that the above persons at the relevant time, appear to be in charge & control of business of accused broker companies and therefore at least against the said persons and their personal wrongdoings on behalf of the companies' in my considered opinion cognizance required to be taken. The aforesaid person appear to be present in the respective board as directors of companies wherein the decision was taken to become members of NSEL.

48. Since, the alleged fraud is complex and appears to be perpetrated by number of companies, to draw inference of director knowledge and its liability and how companies function it is necessary to refer section 114 of Evidence Act, which reads as under :-

**Section 114 :- Court may presume existence of certain facts.**

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume -

**(f) that the common course of business has been followed in particular cases;**

49. Further, it would be relevant to refer to the relevant provision of the Companies Act to check who can be held responsible for the default of the company. For that purpose, let us visit the Companies Act 1956, which was applicable when the default took place as under :-

**Sec. 5. Meaning of "officer who is in default"**

For the purpose of any provision in this Act which enacts that an officer of the company **who is in default shall be liable to any punishment** or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely:

- (a) the managing director or managing directors;
- (b) the whole-time director or whole-time directors;
- (c) the manager;
- (d) the secretary;
- (e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;

(f) any person charged by the Board with the responsibility of complying with that provision : Provided that the person so charged has given his consent in this behalf to the Board;

(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors : Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

50. Plain reading of above sections gives clarity that all accused persons in present application appears to be directors of accused company at the relevant time. They appear to be authorized to act on behalf of the company by board resolution. They further appear to be their signatures are available on documents which is prima-facia sufficient to show their involvement in the company and knowledge of wrongdoing.

51. All allegations against the broker companies like trading in illegal paired contracts, inducing investors through marketing material showing risk free assured returns, misleading statements leading to investment in NSEL product, code modification, falsely confirmation of existence of stocks to NSEL auditors etc. more particularly mentioned at page 179 to 182 in chargesheet dated 27.12.2018 and allegations mentioned in chargesheet dated 02.12.2022 as reproduced herein above will be applicable to accused in present application.

52. It is required to mention here that My Ld. predecessor has taken a cognizance of chargesheet dated 27.12.2018 and issued process on 04.03.2019 against accused no 1 to 63 mentions therein including Anand Rathi commodities and its director Amit Rathi as accused no.54 & 55, Geojit Comtrade Ltd and its director CP Krishnan as accused no 56 & 57, India Infoline Commodity Ltd and its director Chintan Modi as accused no.58 & 59 under Sections 409, 465, 467, 468, 471, 474, 477-A, 120-B of IPC and r/w 3 of MPID Act 1999 and 21(a), 21(b), 21(c) and 21(g) of the FCR Act, 1952. Therefore, similarly placed accused in present applications, who are directors of respective brokers whose role is in consonance with respective broker companies are liable to face trial along with their colleague directors.

53. It is required to mention here that the scope and object of the MPID Act is only to protect the welfare and interest of the investors / depositors. The present matter pertains to economic offence of huge magnitude of Rs 5,600 Crores and several gullible investors like applicant Mr. Arvind Bahl are still awaiting the justice. However, such selected investigation and final report raises serious question about the impartial investigation of EOW, betrays the faith of victims. In view of the facts and circumstances as discussed above, the responsible persons for the wrongdoings should not be allowed to escape the process of law. It is further required to mention here that when my Ld. Predecessor took cognizance of the offences of the said charge-sheets, this all facts were not placed before it. Hence, it appears to be left out some person from taking cognizance. Upon placing the facts before the court as such and on examining the same, if the court find substance therein, the court cannot shut its eyes over it, as the amount involved in alleged scam is of several investors and the depositors. In order to protect the

interest and welfare of the investors/depositors the appropriate action is warranted against the responsible persons in accordance with law. The over all material discussed as above, is more than sufficient at least to take cognizance of the alleged offences appear to committed by the persons as alleged by the applicants.

54. For the forgoing reasons and discussion, this court is prima-facia satisfied that cognizance is required to be taken as sought for by applicants and process against accused in present applications is required to be issued under Sections 409, 465, 467, 468, 471, 474, 477-A, 120-B of IPC and r/w 3 of MPID Act 1999 and 21(a), 21(b), 21(c) and 21(g) of the FCR Act, 1952 against the accused persons. Hence, I answered the points accordingly, and the following order would meet the end of justice.

#### **ORDER**

1. Misc. Application No.339 of 2023 in MPID Special Case No.1 of 2014 and Exh.619 in MPID Special Case No.1 of 2014 are allowed as sought for.
2. This Court by taking cognizance of the offences punishable under Sections 409, 465, 467, 468, 471, 474, 477-A, 120-B of IPC and r/w 3 of MPID Act 1999 and 21(a), 21(b), 21(c) and 21(g) of the FCR Act, 1952 issuing process for the aforesaid offences against the following persons and companies :-
  - a) Nirmal Jain, Director of Financial Establishment India Infoline Commodities Ltd; (A-221)
  - b) India Infoline Finance Ltd, Promoter of the Financial Establishment India Infoline Commodities Ltd; (A-222)
  - c) Preeti Gupta, Director of the Financial Establishment Anand Rathi Commodities Ltd; (A-223)

- d) Rupkishore Bhutada, Director of the Financial Establishment Anand Rathi commodities Ltd; (A-224)
- e) Anand Rathi Financial Services Ltd, Promoter of the Financial Establishment Anand Rathi Commodities Ltd; (A-225)
- f) Shiney Geoge, Director and promoter of the Financial Establishment Geojit Comtrade Ltd; (A-226) and
- g) Manish Gupta Director of the Financial Establishment Geojit Comtrade Ltd. (A-227)

3. Matter is returnable on 20.06.2023.
4. The accused persons as above be numbered in MPID Special Case No.1 of 2014 as accused nos. 221 to 227.
5. Misc. Application No.339 of 2023 in MPID Special Case No.1 of 2014 and Exh.619 in MPID Special Case No.1 of 2014 are disposed of accordingly.



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

Date: 18.05.2023

Dictated on : 16.05.2023 & 17.05.2023  
Transcribed on : 16.05.2023 & 17.05.2023  
Signed by HHJ on : 18.05.2023

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

UPLOAD DATE AND TIME

NAME OF TYPIST

18.05.2023 (04.30 p.m.)

MR. L.H. DESHMUKH

Name of the Judge (with Court Room No.)	Shri A.S. Sayyad C.R. No.52
Date of Pronouncement of JUDGMENT/ ORDER	18.05.2023
JUDGMENT/ORDER signed by P. O. on	18.05.2023
JUDGMENT/ORDER uploaded on	S18.05.2023