Kavita S.J.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.4930 OF 2024

Dhanera Diamonds ...Petitioner

Versus

1. Securities and Exchange Board of India (SEBI)
2. Multi Commodity Exchange of India Limited
3. Multi Commodity Exchange Clearing Corporation Limited ...Respondents

WITH

WRIT PETITION NO. 2160 OF 2022

Kohinoor Feeds And Fats Pvt Ltd Formerly Known As Kohinoor Feeds And Fats Ltd. ...Petitioner

Versus

Union Of India Through Chairman SEBI And Ors. ...Respondents

WITH

WRIT PETITION NO. 1380 OF 2026

Rajeshwari w/o Sh. Madan Lal ...Petitioner

Versus

Securities and Exchange Board of India ...Respondent

WITH

INTERIM APPLICATION NO.1428 OF 2026

WITH

WRIT PETITION NO. 1288 OF 2025

Suresh Chand Aggarwal ...Petitioner

Versus

Union Of India Through Ministry Of Finance ...Respondent

WITH

WRIT PETITION NO. 922 OF 2023

Jmc Metals Pvt Ltd And Anr., ...Petitioners

Versus

Securities And Exchange Board Of India And Ors., ...Respondents

WITH

WRIT PETITION NO. 4326 OF 2022

Kunvarji Commodities Brokers Private Limited ...Petitioner

Versus

Securities And Exchange Board Of India And Ors., ...Respondents

WITH

WRIT PETITION NO. 4327 OF 2022

Rajiv Garg ...Petitioner

Versus

Securities And Exchange Board Of India And Ors., ...Respondents

WITH

WRIT PETITION NO. 4798 OF 2022

Akshay Aluminium Alloys LLP ...Petitioner

Versus

Securities Exchange Board Of India And Ors., ...Respondents

WITH

WRIT PETITION NO. 4797 OF 2022

Ankit S/o Dinesh Kuswah ...Petitioner

Versus

Ministry Of Finance ...Respondent

WITH

WRIT PETITION NO. 4799 OF 2022

Gopal S/o Manushankar Sahu ...Petitioner

Versus

Ministry Of Finance Union Of India Through Chairman ...Respondent

WITH

WRIT PETITION NO. 4800 OF 2022

Sanjeev Jain ...Petitioner

Versus

Union Of India ...Respondent

WITH

INTERIM APPLICATION (L) NO. 4965 OF 2025

WITH

INTERIM APPLICATION (L) NO. 12586 OF 2025

WITH

WRIT PETITION NO. 4801 OF 2022

R. K. Commodities Services Pvt. Ltd. ...Petitioner

Versus

Securities And Exchange Board Of India ...Respondent

WITH

WRIT PETITION NO. 4802 OF 2022

Shailendra Kumar Srivastava ...Petitioner

Versus

Union Of India ...Respondent

WITH

WRIT PETITION NO. 4835 OF 2022

P. Natarajan Huf. ...Petitioner

Versus

Securities And Exchange Board Of India And Ors. ...Respondents

WITH

WRIT PETITION NO. 5028 OF 2022

Nine Star Broking Private Limited ...Petitioner

Versus

Securities And Exchange Board ...Respondent

WITH

WRIT PETITION NO. 5027 OF 2022

Rahul Jain ...Petitioner

Versus

Securities And Exchange Board Of India ...Respondent

WITH

WRIT PETITION NO. 5029 OF 2022

Balaji Trading Company ...Petitioner

Versus

Securities Exchange Board Of India ...Respondent

WITH

WRIT PETITION NO. 5033 OF 2022

Tradeswift Derivatives Pvt Ltd ...Petitioner

Versus

Ministry Of Finance, Union Of India
Through Chairman ...Respondent

WITH

WRIT PETITION NO. 5030 OF 2022

Nokha Commodity Services ...Petitioner

Versus

Securities And Exchange Board Of India And Ors ...Respondents

WITH

WRIT PETITION NO. 5032 OF 2022

Gordhan Shyam Gupta S/o Shri Mishri Lal Gupta ...Petitioner

Versus

Securities And Exchange Borad Of India (SEBI) ...Respondent

WITH

WRIT PETITION NO. 5031 OF 2022

Bhagwan Sharda ...Petitioner

Versus

Union Of India Through Secretary ...Respondent

WITH

WRIT PETITION NO. 5034 OF 2022

Hindustan Technosol Pvt Ltd ...Petitioner

Versus

Ministry Of Finance Union Of India Through Chairman ...Respondents

WITH

WRIT PETITION NO. 5035 OF 2022

Narender Surana ...Petitioner

Versus

Securities And Exchange Board Of India ...Respondent

Mr. Darius Khambata, Senior Counsel a/w Dr. Abhinav Chandrachud, Mr. Shreyash Shah, Mr. Darshan Patankar and Mr. Pratik Dixit for Petitioner in WP/4930/2024.

Mr. P.N. Modi, Senior Counsel a/w Ms. Kalpana Desai, Mr. Rihal Kazi, Mr. Guru Shanmugam and Ms. Zainab Tinwala i/b M & M Legal Ventures for Petitioner in WP/2160/2022.

Dr. Anurag Agarwal a/w Ms. Kokila Kalra a/w Ms. Beerta Bajwa, Ms. Alifiya Manasawala, Mr. Prateek Agarwal and Ms. Surabhi Mittal for Petitioner in WP/4327/2022.

Mr. Rahul Malik a/w Mr. Nisha Kaba, Mr. Abhijit Singh and Ms. Areen Shaikh for Petitioner in WP/4800/2022 and WP/4798/2022.

Mr. Shyam Dewani a/w Mr. Sumit Khanna, Mr. Chirag Chanani, Mr. Sachet Makhija, Mr. Dashang Doshi, Ms. Mihika Joshi, Mr. Kartik Pandey, Mr. Rohan Sawant, Ms. Asmita Maurya and Mr. Tanveer Singh Narula i/b Dewani Associates for Petitioner in WP/5035/2022.

Mr. Mustafa Doctor, Senior Counsel a/w Mr. Vishal Kanade, Mr. Manish Chhangani, Mr. Sumit Yadav, Mr Abhay Chauhan and Mr. Atul Agarwal i/b The Law Point for Respondent No 1-SEBI.

Mr. Zal Andhyarujina, Senior Counsel a/w Mr. Sameer Pandit, Ms. Sarrah Khambati and Mr. Aastik Agarwal i/b Wadia Ghandy & Co. for Respondent Nos. 2 & 3 in WP/4930/2024.

Mr. Janak Dwarkadas, Senior Counsel a/w Mr. Sameer Pandit a/w Ms. Sarrah Khambati and Mr. Aastik Agarwal i/b Wadia Ghandy & Co. for Respondent Nos. 2 & 3 in WP/2160/2022.

Mr. Sameer Pandit a/w Ms. Sarrah Khambati and Mr. Aastik Agarwal i/b Wadia Ghandy & Co. for Respondent Nos. 2 & 3 (MCX and MCX-CCL) in reset of the Petitions.

Mr Ashutosh Misra for Respondent No .1 (UOI) in WP/4800/2022.

Mr Deepak Dhane i/b Corporate Pleaders for Respondent No.8 in WP/4800/2022.

CORAM : R.I. CHAGLA AND
ADVAIT M. SETHNA, JJ.

RESERVED ON : 6th MAY, 2026.

PRONOUNCED ON : 24th JUNE, 2026.

JUDGMENT: (Per R.I. Chagla, J.)

1. These Writ Petitions have been heard together (Writ Petition No.4930 of 2024 and Writ Petition No.2160 of 2022 being

the lead Petitions) as common issues arise and the very same Circular No.MCX/MCX-CCL/282/2020 dated 21st April, 2020 issued by Respondent No.2, Multi Commodity Exchange of India Limited (for short "**MCX**") and Respondent No.3, Multi Commodity Exchange Clearing Corporation Limited (for short "**MCX-CCL**") has been impugned. By an Order dated 1st September 2022, the Supreme Court directed these Writ Petitions to be decided by this Court expeditiously as expressly mentioned therein.

2. For sake of convenience the facts in Writ Petition No.4930 of 2024 are being adverted to and which are as under:

(i) The Petitioner is a registered Partnership Firm which *inter alia* trades in commodities.

(ii) In November 2014, the Petitioner became a client of the Broker - Motilal Oswal Financial Services Limited by executing a contract with the said Broker.

(iii) Respondent No.1 - Securities and Exchange Board of India ("**SEBI**") issued a Circular on 16th December, 2016 addressed to all commodity derivatives

exchanges. In Clause 6 of the Circular, Respondent No. 1 – SEBI directed Respondent No.2 – Multi Commodity Exchange of India Limited ("**MCX**") to comply with the "Principles for Financial Market Infrastructures" ("**PFMI**") issued by the International Organization of Securities Commissions ("**IOSCO**"), until its clearing and settlement functions are transferred to a recognized clearing corporation. The PFMI provides that a Financial Market Infrastructure ("**FMI**") should provide sufficient information to participants to enable them to identify clearly and understand fully the risks and responsibilities for participating in the system.

(iv) The Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 were issued by Respondent No. 1 – SEBI on 3rd October, 2018.

It is pertinent to note that under Regulation 43(1), it is provided that the "*payment and settlement*" in respect of a transaction shall be determined in accordance with the "*netting or gross procedure*"

specified in the Bye-law of a recognized stock exchange, "*with the prior approval of the Board.*"

(v) On 19th July 2019, Respondent No. 2 - MCX issued Circular No. 377 commencing futures trading in Crude Oil January 2020 from 22nd July, 2019. The "trading session" was from Monday to Friday, between 9am and 11.30/11.55pm. The "due date rate" was stated as the "*settlement price, in Indian rupees, of the New York Mercantile Exchange's ("**NYMEX**") Crude Oil (CL) front month contract on the last trading day of the MCX Oil contract.*" "Daily price limits" were prescribed as circuit breakers for trades.

It is pertinent to note that as the contract originally stood, the trading session would last until 11.30pm (IST), while the settlement price would be determined between 11.58 pm and 12 am (IST).

(vi) Respondent No.2 - MCX issued Circular No. 595 on 18th October, 2019 commencing futures trading in Crude Oil April 2020 Contracts with effect from 22nd

October, 2019.

(vii) Circular was issued by Respondent No. 1 – SEBI on 14th November, 2019 to recognized stock exchanges having commodity derivatives segment.

It is pertinent to note that in Clause 2(b)-(c) it was specified that some "*material modifications*" to contracts require prior approval from Respondent No. 1 – SEBI. Further, Clause 3 read with Annexure I provides that for any changes in the trading session, daily price limit, settlement of contract/settlement of logic/final settlement method exercise of options, or in the due date rate (final settlement price), thirty days' advance intimation is necessary to be given to Respondent No. 1 - SEBI and market participants. Clause 4 provides that the aforesaid advance intimation "*shall not apply to certain modifications which are required to be effected immediately considering the exigencies of the situation as per surveillance measure.*"

(viii) From 12th March, 2020 to 20th April, 2020

the Petitioner entered into trades of long and short positions in the April 2020 Crude Oil Futures Contracts. On the expiration date, the Petitioner held 2,965 barrels of notional crude oil for which it was required to pay the counter party sellers a sum of Rs.60,75,22,575/-.

It is pertinent to note that the Petitioner's Broker had already appropriated Rs.56.11 Crores deposited by the Petitioner as margin security.

(ix) A representation was made by an association of commodity Brokers viz. Commodity Participants Association of India ("**CPAI**") to Respondent No. 2 – MCX on 25th March, 2020 requesting shorter trading times on account of the Covid-19 pandemic.

(x) The Respondent No. 2 - MCX issued a Circular on 26th March, 2020 restricting the trade timings between 30th March, 2020 and 14th April, 2020 in view of the Covid-19 lockdown from 9 am to 5 pm, after consulting Respondent No. 1 - SEBI. It was clarified that any changes in market timings beyond 14th April, 2020

would be informed through a separate Circular.

(xi) The CPAI sent a representation to Respondent No. 1 – SEBI and Respondent No.2 - MCX on 1st April, 2020 informing Respondent No.2 - MCX that more than 2/3rd of its survey Respondents wanted the trading hours to be restored to 11.30 pm. The representation said that many members felt the "*reduced trading hours may deprive…various market participants for accessing the market when the trading and volatility peaks international commodity exchanges and this could pose a greater risk of adverse gap up or gap down in our market…*"

(xii) The Chicago Mercantile Exchange ("**CME**") (which owns NYMEX) issued an advisory to its members on 8th April, 2020 intimating them about the possibility of energy futures contracts trading in the negative.

(xiii) Respondent No. 2 – MCX issued Circular No. 258 on 14th April, 2020 continuing the restricted trade

timings (9am to 5pm) beyond 14th April, 2020 until further notice.

(xiv) CME issued an advisory on 15th April, 2020 intimating the participants that it is ready to handle a situation of negative pricing.

(xv) A Circular was issued by Respondent No. 2 – MCX on 15th April, 2020 stating that since the settlement price of NYMEX will be available in the late evening, the final obligation will be provided to members by 1.30am the next calendar day.

(xvi) On 20th April 2020, the Petitioner's contracts traded on the exchange/platform of Respondent No. 2 – MCX matured. The Petitioner held 2,965 lots of Crude Oil April 2020 Contracts.

(xvii) Respondent No. 2 – MCX issued Circular No. 280 on 20th April, 2020 fixing a provisional settlement price of Rs. 1/- per barrel for the subject crude oil contracts, as the "due date rate" was "under finalisation".

(xviii) The "Bhav Copy" for the period 12th March 2020 to 20th April, 2020 shows that the settlement price for Crude Oil Futures for 20.04.2020 is Rs.1 per barrel.

(xix) A Chart was prepared by Respondent No. 2 – MCX showing the NYMEX front month price on 20th April, 2020.

(xx) The Petitioner's Broker submitted a contract note to the Petitioner on 21st April, 2020 on the basis of the settlement price of Rs.1 in accordance with the above Circular.

(xxi) Petitioner sent an email to Respondent No. 2 – MCX on 21st April, 2020 expressing its concerns about the settlement price.

(xxii) A Representation was made by the Petitioner's Broker to Respondents No. 1 – SEBI and Respondent No. 2 - MCX on 21st April, 2020.

(xxiii) Respondent No. 2 – MCX issued Circular No. 281 on 21st April, 2020 restoring the regular trade

timings of 9am to 11.30/11.55pm. This was done "*in view of the representation received from the market participants.*"

(xxiv) Impugned Circular was issued by Respondent No. 2 – MCX on 21st April, 2020 fixing the due date rate (settlement price) of negative (-) Rs.2,884 per barrel (the INR equivalent of USD (-) 37.63 per barrel).

(xxv) U.S. Investors in crude oil futures did not experience negative pricing on 22nd April 2020, because negative pricing only occurred on 20th April, 2020.

(xxvi) The advocates of the Petitioner's Broker wrote to the Respondents on 22nd April, 2020 intimating them that they are filing a Writ Petition.

(xxvii) The Petitioner's broker filed Writ Petition No. L.D. V.C. 12 of 2020 (renumbered Writ Petition No. 3658 of 2022) before this Court challenging the impugned Circular on 22nd April, 2020.

(xxviii) Respondent No. 3 – Multi Commodity Exchange Clearing Corporation Limited ("**MCX-CCL**") issued a press release on 22nd April, 2020 informing the public at large that it had made payouts based on the negative price contained in the impugned Circular.

(xxix) Bombay Stock Exchange permitted contracts to be settled on negative pricing from 28th April, 2020.

(xxx) Respondent No. 2 – MCX issued Circular No. 303 on 30th April, 2020 providing additional facility/auction window to market participants to square off their open positions if international benchmark prices were negative.

(xxxi) A copy of the Chart of May 2020 Crude Oil Futures shows that the price of crude oil regained earlier levels.

(xxxii) The Petitioner filed Commercial Suit No. 16 of 2020 on 6th May, 2020 before this Court challenging the impugned Circular.

(xxxiii) The Petitioner's Broker filed a claim against the Petitioner in arbitration under the Bye-laws of Respondent No. 2 – MCX on 13th May, 2020.

(xxxiv) Respondent No. 2 – MCX issued a Circular on 23rd May, 2020 updating its software/platform to permit negative pricing.

(xxxv) This Court allowed the Petitioner to intervene in the Writ Petition filed by the Petitioner's Broker before this Court challenging the impugned Circular vide Order dated 23rd June, 2020.

(xxxvi) Respondent No. 2 – MCX issued a Circular on 23rd July, 2020 updating its software/platform to permit negative pricing.

(xxxvii) An Arbitral Award was passed on 12th June, 2021 allowing the claim of the Petitioner's Broker.

(xxxviii) The Petitioner filed a complaint with Respondent No. 1 – SEBI against Respondents No. 2 –

MCX and Respondent No.3 – MCX-CCL on 12th June, 2021.

(xxxix) Order of the US District Court for the Northern District of Illinois dated 30th March, 2022 passed in a Suit filed against Vega Capital London Ltd., alleging that the negative pricing was the result of market manipulation.

(xl) Order of the Supreme Court of India dated 1st September, 2022 transferring all Writ Petitions challenging the impugned Circular across various High Courts to this Court.

(xli) Order of this Court dated 18th October, 2023 transposing the Petitioner herein as Petitioner No. 3 in the Writ Petition filed by the Petitioner's broker in this Court challenging the impugned Circular.

(xlii) Order of this Court dated 9th February, 2024 deleting the Petitioner's name as Petitioner No. 3 in the Writ Petition filed by the Petitioner's Broker in this Court,

with liberty to the Petitioner to file its own independent Petition.

It is pertinent to note that the Petitioner's Broker subsequently withdrew its Writ Petition.

(xliii) The Writ Petition No.4930 of 2024 was accordingly filed on 16th February, 2024. It was thereafter amended and re-verified on 17th December, 2024.

3. Mr. Darius Khambata, learned Senior Counsel appearing for the Petitioner – Dhanera Diamonds in Writ Petition No.4930 of 2024 (lead Petition) has submitted that this case turns on an interpretation of the contract specifications contained in the Circular issued by Respondent No. 2 – MCX on 19th July 2019. It is not the case of the Petitioner that the said Circular should be modified/not applied in its full rigor. In fact, it is the case of Respondent No. 2 - MCX that the plain language of the said circular should not be applied.

4. Mr. Khambata has submitted that the original contract specifications contained in the impugned Circular contained three

crucial details.

(i) In the definition of "due date rate" ("**DDR**"), the Circular informed market participants that contracts would be settled at a "price". The DDR was thus consciously predicated on the settlement amount, i.e. the DDR being a price. He has submitted that by stating that commodity futures contracts in crude oil would be settled at a "price", the impugned Circular issued by Respondent No. 2 – MCX informed market participants that the buyer would have to pay the Seller to notionally purchase crude oil barrels. The reverse was not part of the contract. Respondent No. 2 – MCX having chosen to use the term "price" rather than "settlement amount" or "settlement payout"; thus specified a specific choice made by the Respondent No. 2 - MCX that the DDR would always be a payment that moved from Buyer to Seller.

(ii) The Circular informed market participants that there would be a gap of only thirty minutes between the

close of the trading session on the date of expiry of the contract and the fixation of the final settlement price. Thus, Sellers of crude oil commodity futures were aware that after they placed their last trade at 11.30pm, they would only face market volatility for thirty minutes during which they would not be able to square off their positions.

(iii) The original contract specifications provided for a "daily price limit" or a circuit breaker of 9%. Thus, market participants were assured that in a single trading day, during trading hours, the price would not fluctuate beyond 9% unless Respondent No. 2 - MCX permitted it to do so upon application of mind, after informing Respondent No. 1 - SEBI. This daily price limit was in accordance with Clause 2.7.2 of the SEBI Master Circular on Commodity Derivatives Trading.

5. Mr. Khambata has submitted that it is well settled that the word "price" must be understood in common parlance or the ordinary/normal sense, and usually means "*the money consideration*

for a sale of goods". He has placed reliance upon the Judgment of the Supreme Court in ***Dharmarth Trust v. Dinesh Chander Nanda***,[1] at Paragraphs 11-15. He has also placed reliance upon the Judgment of the Supreme Court in ***Moriroku India Pvt. Ltd. v. State of Uttar Pradesh***[2] at Paragraph 19 in which it has held that the word "price" is "*the amount of consideration which a seller charges the buyer for parting with the title to the goods.*"

6. Mr. Khambata has submitted that since Respondent No. 2 – MCX consciously chose the term "price" to describe the DDR it meant and must be taken to have meant "price" as used in common parlance, i.e. a money consideration payable by Buyer to Seller and not vice versa. A reverse payment does not qualify as 'price' in law.

7. Mr. Khambata has submitted that it is not the submission of the Petitioner that the Sale of Goods Act applies to the contract in question. The submission is that by using the term "price", a term well known to law, Respondent No. 2 – MCX consciously determined that the DDR would be limited to price, i.e. it could not extend to a reverse payment by Seller to Buyer.

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1 *(2010) 10 SCC 331*

2 *(2008) 4 SCC 548*

8. Mr. Khambata has submitted that the fact that the DDR was marked to the NYMEX settlement price does not make any difference to the above submission on price. He has referred to the description of DDR in the contract specification. He has submitted that the last sentence therein makes it clear that the DDR itself i.e. the settlement amount payable on the Respondent No. 2 – MCX Exchange is also a "price".

9. Mr. Khambata has submitted that in view of the contract specifications being fixed by Respondent No. 2 – MCX, it is not open to Respondent No. 2 – MCX to now contend that although it used the term "price" it did not mean price in law but actually meant a settlement amount, whether positive or negative.

10. Mr. Khambata has submitted that by the impugned Circular dated 21st April 2020, Respondent No. 2 - MCX retrospectively altered the above contract specifications by fixing the DDR (settlement price) at negative (-) Rs. 2,884 per barrel (the INR equivalent of USD (-) 37.63 per barrel). Thus, though the Petitioner expended capital of Rs. 60.75 crores to buy crude oil futures, it had to pay a further sum of Rs.85.51 crores to sell the said crude oil

futures to the counter party buyers.

11. Mr. Khambata has submitted that what the impugned Circular did was to make Sellers pay Buyers Rs.2,884 per unit in order to sell the commodity. This would be considered as no consideration. He has submitted that the Circular is thus, ultra vires Section 25 of the Indian Contract Act, 1872, under which an agreement without consideration is void.

12. Mr. Khambata has submitted that it is well settled that a piece of subordinate legislation may be questioned on the ground that it is contrary to a statute apart from the one under which it was issued. He has placed reliance upon the Judgments of the Supreme Court in ***Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*** [3] at Paragraph 75 and ***Dai-ichi Karkaria Ltd. v. Union of India*** [4], at Paragraph 8.

13. Mr. Khambata has submitted that under the Contract Specifications, the Notional Seller can never be expected to pay money to a Notional Buyer. He has submitted that Respondent No.2 –

3 *(1985) 1 SCC 641*

4 *(2000) 4 SCC 57*

MCX recognized this legal position by issuing Circular No. 280 on 20th April, 2020 fixing a provisional settlement price of Rs.1/- per barrel. Thus, even at that point of time, Respondent No. 2 – MCX was conscious of the fact that the least that a seller could expect to get from a buyer was Rs.1/- and that the price could never be negative.

14. Mr. Khambata has also relied upon Contract Note dated 21st April, 2020 submitted by the Petitioner's Broker to the Petitioner wherein it was specified that only a Buyer would be responsible for paying money to the Seller, and not the other way round. He has relied upon the "Bhav Copy" on the website of Respondent No. 2 – MCX which still reflects the price of Rs.1 for crude oil futures on 20th April, 2020. He has also relied upon Circular No. 303 issued by Respondent No.2 – MCX on 30th April, 2020 providing an additional facility/auction window to market participants to square off their open positions at Rs. 1/- if international benchmark prices were negative.

15. Mr. Khambata has submitted that Respondent No. 2's electronic system did not contemplate negative pricing and no negative prices could be entered in the system at all. It was only on

23rd May, 2020 that Respondent No. 2 - MCX issued a Circular updating its software/platform to introduce changes to allow its system to accept negative pricing. A new version of Trading Software (incorporating such negative payment) was to be launched from 27th July, 2020 by the Respondent No.2 – MCX.

16. Mr. Khambata has referred to the Circular dated 20th April, 2020 issued by Respondent No.2 - MCX which says that an "*unprecedented price fluctuation*" had occurred "*in the international markets in Crude Oil*". He has submitted that the word "unprecedented" means "*never having happened or existed in the past*" [Cambridge Dictionary], "*having no precedent*" [Merriam Webster's Dictionary], or something "*that has never happened, been done or been known before*" [Oxford Dictionary]. He has submitted that it was thus Respondent No. 2 - MCX's own understanding that the price fluctuation that had occurred on 20th April, 2020 had happened for the first time. In fact, Respondent No. 1 - SEBI has revealed that crude oil futures contracts have traded at MCX for the past fifteen years and not a single instance has been shown of negative pricing on the MCX Exchange in the past fifteen years.

17. Mr. Khambata has submitted that the impugned Circular is contrary to Clause 43(1) of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporation) Regulations, 2018 which requires that payment/settlement has to be determined with the prior approval of Respondent No. 1 - SEBI. Admittedly, Respondent No. 2 - MCX did not consult Respondent No. 1 – SEBI prior to altering the contract specifications which provided that contracts would be settled at a "price". By failing to do so, Respondent No. 2 - MCX also violated Clause 4.1 of its own Bye-laws which provides that contract specifications can only be altered with the prior permission of Respondent No. 1 – SEBI. He has submitted that by altering contract specifications without advance prior notice to market participants and without the approval of Respondent No. 1 - SEBI, the issuance of impugned Circular also violated Clauses 5.1.2(III) and 5.1.3 of the SEBI Master Circular on Commodity Derivatives Trading, 2018.

18. Mr. Khambata has submitted that under Section 9(2) of the Securities Contracts (Regulation) Act, 1956, a recognized stock exchange can frame Bye-laws that provide *inter alia* for the "*regulation of the hours of trade*". Under Clause 2.1.1 of the SEBI

Master Circular on Commodity Derivatives Trading, Respondent No. 2 - MCX has to fix trading hours within the time limits of 10am (later modified to 9am, on 30.11.2018) and 11.30pm. Under Regulation 3.1.1.1 of its bye laws, Respondent No. 2 - MCX has the power to determine trading sessions. He has referred to the Representation made by Commodity Participants Association of India ("**CPAI**") to Respondents No. 2 - MCX requesting a shortening of trading hours of commodities on account of the Covid-19 lockdown. This led to the reduced trading hours based on the representation. He has referred to Circular issued by Respondent No.2 – MCX on 26th March, 2020 reducing / restricting the trade hours between 30th March, 2020 and 14th April, 2020 in view of the Covid-19 lockdown from 9am to 5pm, after consulting Respondent No. 1 - SEBI. However, on 01.04.2020, when CPAI sent a representation to Respondents No. 1-2 / SEBI - MCX informing them that more than 2/3rd of its survey Respondents wanted the trading hours to be restored to 11.30pm, Respondent Nos. 1-2 / SEBI - MCX chose to do nothing until the April 2020 contracts had expired, i.e., on 21st April, 2020. He has submitted that no explanation had been offered by them as to why they chose to ignore CPAI's Representation dated 1st April, 2020.

19. Mr. Khambata has submitted that the Circular No. 258 issued by Respondent No.2 – MCX on 14th April, 2020 continuing the aforementioned restricted trade timings beyond 14th April, 2020 until further notice was bereft of reason / explanation as to why CPAI's representation was being ignored/disregarded. He has referred to Bye-laws 5.5.1 and 5.5.2 of the Bye-laws of Respondent No. 2 - MCX which provides that any reduction of trade timings of the exchange can be done only if reasons are provided for the same in writing. He has submitted that in the Circular dated 14th April, 2020, no reasons were given by Respondent No. 2 - MCX for continuing with the modified timings, which is in violation of the Bye-laws of Respondent No. 2 – MCX and hence, ultra vires.

20. Mr. Khambata has submitted that although a contention had been raised by the Respondents that there is no prayer in the Writ Petition challenging the Circular altering the trading hours, there is a specific ground in Ground KK of the Writ Petition taken viz. that the Circular altering the trade timing from 11.30pm to 5pm was without reason and put market participants at a disadvantage. He has submitted that a Court must consider the validity of a Circular even if there is no specific prayer challenging the Circular, so long as there

are grounds taken in the Petition challenging the Circular. He has in this context placed reliance upon the Judgment of the Supreme Court in ***Godrej Sara Lee v. Assistant Commissioner*** [5] at Paragraphs 11-14.

21. Mr. Khambata has submitted that although the CPAI representation was made on 1st April 2020, it was only after the expiry of the April 2020 contracts i.e. on 21st April 2020, that Respondent No. 2 - MCX issued Circular No. 281 restoring the regular trade timings of 9am to 11.30/11.55pm. This was stated to be done "*in view of the representation received from the market participants.*" However, there is no explanation offered by the Respondents as to why they decided to wait until the April 2020 contracts had expired in order to restore the trade timings, and why this was not done from 14th April, 2020.

22. Mr. Khambata has submitted that from the chart prepared by Respondent No.2 – MCX showing the NYMEX front month price on 20th April, 2020, it is apparent that the close of the trading session on the said date, at 5pm (India time), the NYMEX front month price of crude oil futures was USD 12.55 per barrel (i.e.

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5 *(2009) 14 SCC 338*

Rs.962/- per barrel). At that point in time, the market expectation reflected a higher price (i.e. Rs.965/- per barrel) which suggests that market sentiment even then was that the market would bounce back. However, at 11.30pm (India time), which would ordinarily have been the close of the trading session, the price had fallen to USD 0.54 per barrel. He has submitted that if the Petitioner had been given the opportunity of trading upto 11.30pm on the said date, the Petitioner could have decided to square off its position, seeing that the prices were drastically falling, or to have rolled over the contract to the next month. He has submitted that by 12am (India time), the NYMEX front month price had fallen to USD negative (–) 36.37 per barrel.

23. Mr. Khambata has submitted that Respondent No. 2 - MCX failed to exercise its power to annul these abnormal trades on account of the admittedly unprecedented situation which occurred on 20th April 2020, under Clause 5.25, 5.25.1, or to take Emergency Measures under Clause 16.1 and 16.5 of its Bye-laws. Respondent No. 3 - MCX-CCL failed to exercise its Emergency Powers under Clause 14.1.1.3 of its Bye-laws.

24. Mr. Khambata has referred to Clause 5.25.1 of the MCX

Bye-law which gave Respondent No. 2 - MCX the power to annul trades to protect the interests of the public and for the "*proper regulation of the market*", for "*sufficient cause*", due to "*system failures & errors and the like*". He has submitted that the principle of *noscitur a sociis* is a mere rule of construction and cannot be applied where it is clear that wider words have been deliberately used by the legislature. In this context he has placed reliance upon ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India***[6] at Paragraphs 85-86 and ***Corporation of the City of Nagpur v. Employees*** [7] at Paragraph 10. He has submitted that the wide words used in Clause 5.25.1 are "sufficient cause", "protect the interest of clients and public", and "proper regulation of the market". It is clear that broad powers of annulment have been given to the regulator to meet any contingency that may arise, and the principle of *noscitur a sociis* therefore has no application in interpreting the said provision.

25. Mr. Khambata has submitted that alternatively the provisions of Clause 16.5 also gave Respondent No. 2 - MCX the power to close out transactions at appropriate rates if those trades

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6 *(2019) 8 SCC 416*

7 *(1960) SCC Online SC 45*

were "*detrimental to the interest of the trade or to the public interest or to the larger interest of the economy of India*".

26. Mr. Khambata has submitted that Clause 14.1.1.3 of the Bye-laws of Respondent No. 3 – MCX-CCL gave Respondent No. 1 - SEBI the power to exercise emergency powers. This would be in the case of any unusual or unforeseeable events or adverse circumstances and which included close-out a Security at a price determined by the Relevant Authority. He has submitted that the events that transpired on 20th April, 2020 were certainly "*unusual*", "*unforeseeable*", and "*adverse*", in terms of the above byelaw, and Respondent No. 1 - SEBI therefore ought to have fixed a price of Rs.1/- to settle trades under the contracts that expired on the said date.

27. Mr. Khambata has submitted that it is well settled that when an authority is vested with a discretion, it has to exercise that discretion in an appropriate manner when circumstances so demand, it is a duty which cannot be shirked, shelved or evaded. In this context he has placed reliance upon the Judgments of the Supreme Court in ***Commissioner of Police v. Gordhandas Bhanji*** [8] at Paragraphs

8 *AIR 1952 SC 16*

45-46 and ***Hirday Narain v. Income Tax Officer*** [9] at Paragraphs 14-15.

28. Mr. Khambata has submitted that though Respondent No. 1 - SEBI has contended that various international exchanges in Singapore, Dubai and Moscow settled their crude oil futures contracts at USD (–) 37.63, the trade timings of these exchanges were not restricted as was done in India by the Respondents. Hence, the Indian traders were barred from trading for 6½ hours of the trading session prescribed in the original contract specifications. Further, the U.S. investors in crude oil futures did not experience reverse payments, because this only occurred on 20th April, 2020 which was not the settlement date for those contracts.

29. Mr. Khambata has submitted that the Respondents in their submissions have mischaracterised the role of a regulator by contending that a regulator is not a "*nanny*" to investors. Quite to the contrary, it is the duty of Respondent No.1 - SEBI to maintain "*an orderly and stable securities market so as to protect the interests of investors.*" He has placed reliance upon the Judgment of the

9 *(1970) 2 SCC 355*

Supreme Court in ***IFB Agro Industries Ltd. v. SICGIL India Ltd.***,[10] at Paragraph 32 in this context. He has submitted that SEBI exists "*to achieve the twin purposes of promoting orderly and healthy growth of securities market and for protecting the interest of the investors.*" He has in this context placed reliance on ***SEBI v. Ajay Agarwal***,[11] at Paragraphs 33-34.

30. Mr. Khambata has submitted that the Respondents have also erroneously contended that no party filed an application for annulment with SEBI, ignoring the fact that the power of annulment of trades can be exercised *suo motu*, "at any time" and must be exercised when the power is coupled with a duty to do so.

31. Mr. Khambata has submitted that the contract specifications provided for a circuit-breaker/cooling off period for a price change of 6% and 9% to the basic rate. Further, once there was volatility of 9%, it was for Respondent No. 2 to decide whether to further relax the circuit-breaker (after informing Respondent No. 1) or suspend trading. He has submitted that during trading hours on a single day, the maximum volatility that the regulator would tolerate

10 *(2023) 4 SCC 209*

11 *(2010) 3 SCC 765*

was 9%. However, the regulators now claim that it was not their duty to step in and annul trades when there was a 400% fluctuation in prices during non-market hour which is a remarkable submission.

32. Mr. Khambata has submitted that despite this stunning volatility in the market on 20th April 2020, the Respondent No. 2 – MCX has contended that it owes no duty to annul the trade because volatility is "*a key feature of derivate market*" which is an unstateable proposition.

33. Mr. Khambata has submitted that Respondent No.1 - SEBI has contended that it has introduced market-wide circuit breakers to prevent "*sudden and unusual price movements*" and "*excessive volatility*". He has in this context relied upon the Judgment of the Supreme Court in ***Vishal Tiwari v. Union of India*** [12] at Paragraph 55.

34. Mr. Khambata has submitted that the impugned Circular dated 20th April, 2020 was contrary to the principle underlying the circuit breaker (daily price limit) contained in the original Circular dated 19th July 2019, and prescribed in Clause 2.7.2 of the SEBI

12 *(2024) 4 SCC 115*

Master Circular on Commodity Derivatives Trading. He has submitted that a regulator introduces a circuit breaker to protect investors from excessive volatility. He has submitted that a regulator must annul trades that experience unprecedented volatility.

35. Mr. Khambata has submitted that the impugned Circular accordingly by not annuling the trades violated Clauses 5.1.2(III) and 5.1.3 of the SEBI Master Circular on Commodity Derivatives Trading, 2018, and Clause 2(c), 3, and Annexure I(B) of the SEBI Circular on Commodity Derivatives dated 14th November, 2019. Further, by ignoring its own price limits set in the original contract specifications, Respondent No. 2 - MCX has violated Clause 4.1.6 of its own Bye-law, which provides for such price limits.

36. Mr. Khambata has referred to the advisory issued by the CME on 8th April, 2020 to its members informing them about the possibility of energy futures contracts trading in the negative. He has submitted that in spite of the advisory, no such similar circular was issued by Respondent No. 2 - MCX to market participants, though it was aware of the advisory. This was also the case on 15th April, 2020 when CME issued another advisory intimating participants that it was

ready to handle a situation of negative pricing. No comparable notification was issued by Respondent No. 2 - MCX informing its market participants that its systems were capable of handling negative pricing, despite being aware of these advisories.

37. Mr. Khambata has submitted that Respondent No. 2 – MCX has thus violated its obligation to provide "*sufficient information*" to market participants in order to enable them to have "*an accurate understanding of the risks*" of such trades, under Principal 23, Clause 3.23.1 of the Principles for Financial Market Infrastructures issued by the Committee on Payment and Settlement Systems, read with Clause 6 of the SEBI Circular dated 16th December, 2016.

38. Mr. Khambata has submitted that the impugned Circular retrospectively affects vested rights accrued under the original contract specifications in a manner that is excessive, harsh, disproportionate and absurd. As a result of the impugned Circular and the retrospective alterations made to the original contract specifications by Respondent No.1 – SEBI, the Petitioner having purchased 2,965 notional barrels of crude oil for which it was

required to pay the counterparty Sellers a sum of Rs.60,75,22,575/-, now has to pay a further sum of Rs.85.51 crores to the counterparty Buyers in order to sell the said crude oil futures to them, which is patently absurd. The retrospective allegations made by Respondent No.1 – SEBI to the vested rights under the Petitioner's contract (i.e. making the Seller pay the Buyer to sell his goods, enlarging the gap between the trading session and settlement time from thirty minutes to 6 ½ hours, removing the daily price limit/circuit breaker during the original market hours between 5pm and 11.30pm), are unreasonable and vulnerable to invalidation. He has placed reliance upon the Judgments of the Supreme Court to the effect that if a statutory authority decides to retrospectively alter vested rights under pre-existing contracts in a manner that is unreasonable, excessive or harsh, this can be struck down as unconstitutional. These Judgments include ***National Agricultural Cooperative Marketing Federation of India v. Union of India***,[13] at Paragraph 15; ***Virendra Singh Hooda v. State of Haryana***,[14] at Paragraphs 52, 61, 65, 68, 69); ***Indore Development Authority v. Manoharlal***,[15] at Paragraph 159 and ***Ajmer***

13 *(2003) 5 SCC 23*

14 *(2004) 12 SCC 588*

15 *(2020) 8 SCC 129*

Vidyut Vitran Nigam Ltd. v. Hindustan Zinc Ltd.,[16] at Paragraphs 13, 24-25.

39. Mr. Khambata has submitted that it is well settled that a stock exchange exercises public functions and is therefore amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India as laid down by the Supreme Court in ***Sejal Rikeeh Dalal v. Stock Exchange***,[17] at Paragraphs 3-4; ***Trilochana K. Doshi v. Stock Exchange of India***,[18] at Paragraphs 7-8; ***Satya Prakash Aggarwal v. National Stock Exchange***,[19] at Paragraph 54. He has accordingly submitted that the Respondents' objections on the maintainability of this Writ Petition cannot be sustained.

40. Mr. Khambata has submitted that a futures contract must abide by the fundamental principles of the law of contracts. It is settled law that a "futures contract is an agreement between two parties to buy or sell an asset at a certain time in the future at a certain price." He has placed reliance upon the Judgment of this

16 *(2022) 6 SCC 282*
17 *(1990) SCC Online Bom 103*
18 *(1999) SCC Online Bom 662*
19 *(2005) SCC Online Bom 1508*

Court in ***Commissioner of Income Tax v. Bharat R. Ruia (HUF)***,[20] at Paragraphs 30-32 and the Judgment of the Madras High Court in ***Rajshree Sugars and Chemicals v. Axis Bank Ltd.***,[21] at Paragraphs 7(i)-(ii). He has submitted that there is no non-obstante clause in the Securities Contracts (Regulation) Act, 1956 which makes the provisions of the Indian Contract Act, 1872 inapplicable to derivatives contracts. If this were not so, then derivatives contracts executed on the basis of fraud, coercion, undue influence, mistake would not be voidable, or derivatives contracts that are immoral or contrary to public policy would not be void under the Indian Contract Act, 1872.

41. Mr. Khambata has submitted that the Respondent No.2 – MCX has erroneously contended in its arguments before this Court that the Petitioner was not a Seller but a Buyer of notional barrels of crude oil on the contract expiration date. He has referred to the pleaded case of Respondent No. 2 – MCX as well as Paragraphs 6B and 25 of the Writ Petition, where the Petitioner has contended that it was called upon to pay consideration to the Buyer despite the fact that it was a Seller.

20 *(2011) SCC Online Bom 507 (DB)*

21 *(2008) SCC Online Mad 746*

42. Mr. Khambata has submitted that Respondent No. 2 - MCX has erroneously contended during its arguments before this Court that the Petitioner has suppressed the fact that it bought and sold notional barrels of crude oil during the contract period. He has submitted that this is patently erroneous. He has referred to Paragraph 25-O and Ex. N10 of the Writ Petition, where the Petitioner provided details of the buy/sell transactions entered into by the Petitioner during the contract period. Further, the Petitioner has produced the entire contract note issued by its Broker for all the buy/sell trades executed by the Petitioner during the contract period. This has been admitted by Respondent No. 2 – MCX in its pleadings. He has accordingly submitted that there has been no suppression on the part of the Petitioner.

43. Mr. Khambata has submitted that Respondent No. 2 – MCX has during its arguments erroneously contended that the Petitioner took advantage of the negative reverse payments by placing sell orders on 20th April, 2020. He has submitted that this is incorrect. The Petitioner could only trade on the Respondent No. 2 – MCX's Exchange until 5pm on 20th April, 2020 and at which point the price was positive (US$ 12.55 per barrel). It only became negative by

11.45pm by which time trading was no longer permissible on the Respondent No. 2 – MCX's Exhange. Thus, the Petitioner did not place even a single trade (whether as Buyer or Seller) after the price had entered the negative territory.

44. Mr. Khambata has submitted that the Respondents No. 1-2 / SEBI - MCX has contended during their arguments that this Court should not intervene in this Writ Petition because counterparty buyers, who have benefited from the unprecedented situation that occurred on 20th April 2020, will be affected. However, this argument is no longer available to them. He has referred to Ground (FF) and prayer clause (d) of the Writ Petition, where the Petitioners have asked this Court to direct the Respondents to disclose to the Petitioners the names of the counterparties. He has submitted that the Respondents have resisted this request and refused to disclose of the names of the counterparties. Thus, the Respondents now cannot take advantage of their own wrong by refusing to disclose the names of the counterparties to the Petitioner on the one hand, and contending on the other hand that this Court should not intervene since counterparties will be affected. He has referred to the

Judgments of the Supreme Court in ***Ashok Kapil v. Sana Ullah***, [22] at Paragraph 7 and ***Union of India v. Major General***,[23] at Paragraph 28, wherein it is laid down that a party cannot take advantage of its own wrong.

45. Mr. Khambata has submitted that the Respondents have erroneously contended that no effective relief can be granted to the Petitioners. He has referred to the fact that the Respondent No. 2 – MCX maintains a "core settlement guarantee fund" which had a value of over Rs.780 crores in 2024. The purpose of the "core settlement guarantee fund" is to "*guarantee the settlement of trades executed in the respective segments*" of the market.

46. Mr. Khambata has submitted that the Respondents have erroneously contended that the Petitioners lack locus standi to challenge the impugned Circular. He has submitted that the Petitioners have suffered losses on account of the impugned Circular and are directly injured/aggrieved by it. Even otherwise, a Writ Court will not permit an illegality to take place even when the Petitioner lacks locus standi. He has in this context placed reliance upon the

22 *(1996) 6 SCC 342*

23 *(1996) 4 SCC 127*

Judgment of the Supreme Court in ***M.S. Jayaraj v. Commissioner of Excise***, [24] at Paragraphs 2, 11, 12-14.

47. Mr. Khambata has submitted that the Respondents have contended that the Petitioners traded on Respondent No. 2 - MCX with their eyes open. He has submitted that this fails to account for the fact that there can be "*no question of any acquiescence in matters affecting constitutional rights or limitations.*" He has in this context placed reliance upon ***Shree Mahavir Oil Mills v. State of J&K***, [25] at Paragraph 26.

48. Mr. Khambata has submitted that insofar as the Suit filed by the Petitioner before this Court is concerned, in Paragraph 30 of the Writ Petition, the Petitioner has undertaken not to press the prayers that overlap with the prayers in this Petition. He has submitted that the constitutional / ultra vires arguments that have been made against the impugned Circular by the Petitioner in this Writ Petition cannot ordinarily be made in a Civil Suit. The Civil Suit is really for recovery of money, which will be consequential to any relief that may be granted by this Court in this Writ Petition. He has

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24 *(2000) 7 SCC 552*

25 *(1996) 11 SCC 39*

accordingly submitted that the Petition be made absolute.

49. Mr. Pesi Modi, learned Senior Counsel appearing for the Petitioner - Kohinoor Feeds and Fats Limited in Writ Petition No.2160 of 2022 has supported submissions of Mr. Khambata. He has submitted that in this Petition also the Circular dated 21st April, 2020 issued by Respondent Nos. 2 & 3 / MCX & MCX-CCL by which the DDR of Crude Oil Futures Contracts which expired on 20th April, 2020 had been fixed at an unprecedented negative value of Rs. (-)2,884/- per barrel has been impugned.

50. Mr. Modi has submitted that it is for the first time in history that a negative price has been fixed for crude oil vide the impugned Circular. He has referred to the contract specifications which have also been relied upon by Mr. Khambata as above. He has submitted that the Crude Oil derivatives are the highest traded product in the commodities markets in the world and had been traded on Respondent No.2 - MCX for 15 years. The price has never been negative prior to 20th April, 2020 and negative price was never conceived of prior thereto.

51. Mr. Modi has referred to the facts in the Petition which

are similar to the facts in the Writ Petition filed by Dhanera Diamonds and which have been adverted to above.

52. Mr. Modi has further referred to the Emergency Powers under Bye-law 14.1, 14.1.1 and 14.1.1.3 of the Respondent No.3 - MCX-CCL. He has submitted that the Covid-19 pandemic, the lockdown, the sudden overnight crash in the crude oil prices in the night of 20th April, 2020 – 21st April, 2020, were obviously an emergency/ unusual / unforeseeable/ adverse circumstance. Never in history had the crude oil prices been ***negative*** – i.e. – the Buyer had to be paid to take the crude oil. He has submitted that it is pertinent to note that it is the case of Respondent No.2 - MCX itself that as a result of the said extraordinary anomaly, 10 brokers made overnight profits of Rs.215 crores, which is the loss suffered by the Petitioner and other such parties / clients, which is clearly unconscionable. This abnormality occurred only for one night and the prices revived the next day. Respondent Nos. 2 – 3 / MCX - MCX-CCL have also not disclosed the identity of the counterparties to whom the said gigantic profits are given.

53. Mr. Modi has submitted that admittedly the trading

system of Respondent No.2 - MCX did not even have any facility to trade at negative prices and even the margining system had no such concept at all as on 20th April, 2020. The minimum permitted price was one rupee. It is only after the said historic event, that Respondent Nos. 2 – 3 / MCX - MCX-CCL changed their systems to deal with 'near zero' and 'negative' prices.

54. Mr, Modi has submitted that Respondent No.3 – MCX-CCL failed to exercise its vested powers under Byelaw 5.8.6.3 and 8.8.6.3 to deal with 'force majeure' and other adverse events. He has submitted that the Rules and Bye-laws of stock exchanges have statutory force since they are made pursuant to powers under the Securities Contracts Regulation Act ("**SCRA**"). The Respondents therefore had ample powers to correctly deal with the situation so as to protect investors from totally unjustified losses, but chose to remain mute spectators and permit the said totally unjust settlement price / DDR. The Respondents ought to have exercised their vested powers to protect investor interests and declare an alternative just and fair settlement price, given that this was the first time Crude Oil prices have ever been 'negative' and the concept was totally alien to the markets. The fact that the said situation was totally

unprecedented which is admitted by Respondent Nos.2 – 3 / MCX - MCX-CCL even in their said subsequent Circulars dated 30th April, 2020 and 21st September, 2020.

55. Mr. Modi has submitted that the Risk Disclosure Document ("**RDD**") is prescribed by Respondent No.1 – 2 / SEBI – MCX. Admittedly, each client has to be provided with the RDD so as to explain the risks of trading. The same never disclosed that there could be any "negative" price. He has submitted that the RDD disclosed "unfair terms" in contracts would be "void", and that an unfair term would include a significant imbalance in the rights and obligations of the parties under the financial contract to the detriment of the client. Clearly the same would apply to the facts of the present case. Further, the RDD also stated that the Exchange may *suo moto* cancel trades. Yet Respondent No.2 - MCX never exercised any such powers, eventhough the situation clearly merited and justified the same.

56. Mr. Modi has also supported the submissions of Mr. Khambata regarding Respondent No.2 – MCX never exercising its power to annul trades. Further, Respondent Nos.2–3/ MCX - MCX-

CCL unilaterally changing the contract terms. He has also supported the submissions of Mr. Khambata that Respondent No.1 – SEBI failed to exercise its powers to protect the Investors. He has accordingly submitted that the present Petition be allowed and the impugned Circular be quashed and set aside.

57. Mr. Rahul Malik, learned Counsel appearing for the Petitioners in Writ Petition No.4800 of 2022 – Sanjeev Jain & Ors. Vs. Union of India & Ors., has also supported the submissions of Mr. Khambata and Mr. Modi. He has submitted that MCS which is a recognized Exchange under the Security Contract Regulations Act, 1956 ("**SCRA**") exercising delegated legislative power, affecting rights of thousands of market participants, performs a public function amenable to Article 226.

58. Mr. Malik has submitted that under Section 12A(b) of the SCRA, SEBI is empowered and obligated to intervene, where the Exchange affairs are conducted in a manner detrimental to Investors or the securities market. He has submitted that the present case concerns trading hours approval, settlement methodology approval, non-intervention in an admitted structural mismatch and failure to

ensure fair price discovery. He has submitted that these are quintessetial public law issues. The Supreme Court in ***Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot*** [26] and ***Shankara Co-operative Housing Society Limited Vs. M. Prabhakar & Ors.***,[27] has held therein that writ jurisdiction extends even when the disputed facts arise, if statutory compliance and legality are in issue. Further, in ***SEBI Vs. Rakhi Trading Pvt. Ltd.***, [28] where the Supreme Court re-affirmed that the fairness, integrity and transparency are the hallmarks of securities markets and the SEBI is the statutory watchdog. Where the statutory authorities failed in their duty, judicial review is not merely permissible, it is necessary.

59. Mr. Malik has referred to the Circulars fixing trading hours which are statutory in character. He has placed reliance upon Section 9(2)(a) of the SCRA which mandates prior SEBI approval for determining opening and closing hours. He has submitted that the statutory circular affecting public rights is unquestionably amenable to writ review.

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26 *(1974) 2 SCC 706*
27 *(2011) 5 SCC 607*
28 *(2018) 13 SCC 75*

60. Mr. Malik has submitted that in the present case, the traders were denied the ability to trade, hedge, or exit for seven hours while price formulation continued externally. This created an artificial regulatory gap, leaving the traders in a vegetative state.

61. Mr. Malik has submitted that price discovery in derivative markets is premised on equal access to information and real-time adjustment ability. He has submitted that by closing the trading window at 5pm, whereas settlement was determined based on NYMEX price at approximately 1.30pm EST (12am IST), the integrity of price formation was compromised, necessitating regulatory scrutiny. By closing the trading window and later imposing an externally discovered price, the traders were placed in a "vegetative state" unable to mitigate exposure; hedging functions of futures contracts were nullified and settlement was divorced from participation.

62. Mr. Malik has submitted that the impugned action of SEBI and MCX, whereby trading was effectively curtailed prior to the contractually defined "last trading day", strikes at the very foundation of exchanged-based derivative markets and is *ex facie*

arbitrary, ultra vires, and violative of statutory mandate. He has submitted that the actions of the Respondents, being un-supported by any disclosed statutory authority, disproportionate in effect, and destructive of contractual certainty are arbitrary, violative of Article 14 of the Constitution of India and contrary to the fundamental principles of legal and regulative fairness, needless to state also market integrity.

63. Mr. Malik has submitted that if "last trading day" is when the contract is no longer for trading, then logically and legally, the settlement reference must be confined to the price at the time of the closing of the trading window. Waiting until midnight to peg the rates from NYMEX effectively re-wrote the contract mid-stream.

64. Mr. Malik has also submitted that there was a failure of the safeguards viz. no market margins stabilization, no circuit breakers & extraordinary settlement delay.

65. Mr. Malik has also supported the submissions of Mr. Khambata and Mr. Modi on negative pricing particularly, in the context where the futures contract traded on MCX was settled at negative price discovered after trading was disabled. He has

submitted that a futures contract where trading is prohibited yet settlement is externally imposed risks de-generating into a wager under Section 30 of the Contract Act when stripped of its hedging character.

66. Mr. Malik has submitted that the present matter is squarely within writ jurisdiction. He has submitted that the curtailment of trading hours combined with post-closure settlement was arbitrary, unreasonable and contrary to statutory design. He has submitted that the settlement of contract ought to have been at the price INR 962 (Approx.) which was the preveailing rate at 5pm on 20th April, 2020. He has submitted that the impugned Circular be accordingly set aside.

67. Mr. Mustafa Doctor, learned Senior Counsel appearing for Respondent No.1 – SEBI has submitted that the subject matter of the present group of Petitions are admittedly all Crude Oil Futures contracts deriving their value from the price of crude oil as quoted on the NYMEX. These Crude Oil Futures contracts are derivative contracts and are not ordinary buying and selling transactions in the conventional sense but are extremely sophisticated financial

instruments. He has submitted that these contracts do not result in the physical delivery of the underlying commodity and are entirely cash settled. In other words, the contract does not result in any commodity changing hands.

68. Mr. Doctor has submitted that the Future contracts and Derivative transaction have been explained in a Judgment of the Income Tax Appellate Tribunal in ***DCIT CC 1(1) v. ECAP Securities and Investment Limited*** 2024 SCC OnLine ITAT 3081 at Paragraphs 5.6 - 5.8. He has submitted that the Futures contracts have been explained to be market-to-market daily and generally not meant for delivery. A futures contract specifies the price at which a specified asset can be bought or sold at a future date and are standardized and traded on organized exchanges. There is an obligation to complete the contract on the specified date. He has submitted that the Petitioners have also in the Writ Petition No.4930 of 2024 viz. Dhanera Diamonds v. SEBI & Ors., sought to explain the nature of such transactions. He has referred to Paragraph 6B to 6C in this context. He has submitted that in Paragraph 6B at Page 16A of the Petition, the Petitioners have stated that "*Commodities Futures Contracts can be used by market participants to make directional*

price bets on the underlying assets' price". The Petitioners have, at Page 16D of the Petition, described commodities futures as "*highly leveraged instruments*" (emphasis supplied).

69. Mr. Doctor has submitted that it is clear from the averments in the Petition that the Petitioner was at all relevant times fully cognizant of the volatility of derivative trading and the risk involved in undertaking the same. The Petitioner has itself described its participation in such contracts as a "directional price bet" on the movement of the prices of the underlying commodity, based on which the contract is entered into. He has submitted that it is an admitted position that the "price" that the Petitioner was making a "bet" on was the price of crude oil as traded on the NYMEX.

70. Mr. Doctor has referred to the subject contract and in particular the definition of "Due Date Rate" therein. He has submitted that the parties to the contract had agreed when they entered into the contract that the contract would be settled at the "Due Date Rate," which would be the settlement price in Indian Rupees of the New York Mercantile Exchange Crude Front Month Contract on the last trading day of the MCX crude oil contract. The

"Due Date Rate" further provides for the method of conversion of the US Dollar Rate to an INR Rate.

71. Mr. Doctor has submitted that there is no dispute between the parties with respect to the applicable Due Date Rate and the settlement price on the NYMEX, or as regards the currency conversion rate applied for this purpose. He has submitted that the only dispute that is sought to be raised by the Petitioner is with regard to the fact that the settlement price which was prevailing on the NYMEX on the last trading day of the subject contract was a negative price. He has submitted that it has been contended by the Petitioner that the contract did not envisage a negative price on the NYMEX, and that the law does not contemplate a Seller having to pay a price for goods sold. On this ground alone, the Petitioner contends that the subject contract was illegal and has challenged the Circular dated 21st April 2020, issued by MCX informing the parties of the Due Date Rate applicable to the contract. Thus, according to the Petitioners' own words, the challenge is "extremely narrow".

72. Mr. Doctor has submitted that the arguments of the Petitioner viz. price cannot become negative and that Due Date Rate

is the same as price are fallacious assumptions. They are based on a misinterpretation of the contractual terms between the parties and the incorrect notion that price cannot turn negative and/or that it was unprecedented for the price to turn negative.

73. Mr. Doctor has referred to number of news articles referring to instances where, in the past, prior to 2020, prices of West Texas oil, electricity, and even interest rates had previously turned negative [These Articles have been annexed as **Annexure B1 to B4** to this Submission of SEBI]. He has submitted that all of these situations arose in cases where the supply outstripped the demand and where it becomes onerous for a party to continue to hold on to the commodity in question.

74. Mr. Doctor has submitted that in the present case on account of COVID-19 and the resultant lack of demand for crude oil it became onerous for a supplier of crude oil to hold and stock crude oil. This resulted in the price of crude becoming negative on the NYMEX coincidentally falling on the settlement date. He has submitted that the Petitioners had full knowledge of this fact and agreed to be bound by the prices on the NYMEX and continued to

hold the contract till the settlement date of April 20, 2020.

75. Mr. Doctor has submitted that the Petitioner's attempt to conflate Due Date Rate with Price, is contrary to the terms of the contract. The contract defines 'Daily Price Limits', which are the prices at which the contract can be traded at during the trading session. This is distinct and different from the definition of the Due Date Rate, which is already reproduced above. The Due Date Rate is the rate to be taken for settlement of the contract. He has submitted that the impugned Circular dated 21st April 2020, merely communicated this Due Date Rate to all concerned parties by providing for the conversion rate to the crude oil front month settlement price on the NYMEX, which was USD -37.63.

76. Mr. Doctor has submitted that while settling the contract on the settlement date, there is no transaction of sale or purchase taking place; all that is happening is that the differences between the original purchase price and the prevailing price of Crude Oil on the NYMEX converted from USD to INR are being paid.

77. Mr. Doctor has submitted that the Petitioner's contention that price in India cannot be negative and their reliance on the

provisions of the Sale of Goods Act is completely misconceived. He has referred to the definition of "price" in Section 2(10) of the Sale of Goods Act. The "price" has been defined as the money consideration for the sale of goods. He has referred to Section 2(d) of the Contract Act which defines consideration for the sale of goods. He has in this context relied upon the findings of the Supreme Court in ***Chidambara Iyer and Others***[29] in which definition of "valuable consideration" as well as consideration in Section 2(d) of the Contract Act was referred to. The Supreme Court held that from the definitions it is apparent that consideration may be negative or positive.

78. Mr. Doctor has also relied upon the Judgment of the Supreme Court in ***Securities and Exchange Board of India vs. Opee Stock-Link Limited and Anr.*** [30] which has held that the SCRA is a special law to regulate the sale and purchase of shares and securities, and hence it prevails over the provisions of the Contract Act, 1872, and the Sale of Goods Act, 1930, insofar as the matters which are specifically dealt with by SCRA. He has submitted that it is undisputed that trading in derivatives is governed by the provisions of Section 18A of the SCRA.

29 *AIR 1966 SC 193*

30 *(2016) 14 SCC 134*

79. Mr. Doctor has submitted that the arguments of the Petitioners that SEBI and MCX ought to have intervened in the settlement of the contracts in question by either fixing the Due Date Rate at Re.1/- or by annulling the contract in question is misconceived. The Petitioners are seasoned investors who had invested in a sophisticated type of investment and, in its own words, had made a '*bet*' on the price of crude oil. The Petitioners had entered into a contractual relationship and the settlement of the contract was carried out exactly in terms of the provisions of the contract.

80. Mr. Doctor has submitted that no application for annulment was ever made by any party either contemporaneously or at any time before the filing of the Petitions before this Court. He has referred to the provisions relating to annulment of the contract as provided in MCX Bye-Laws viz. Bye-laws No.5.25, 5.25.1, 5.25.2, 5.25.3 and has submitted that these Bye-laws do not apply in the facts of the present case. He has submitted that from these Bye-laws, it is clear that in order to make an annulment, there must be an application by the Exchange member or his clearing member; a conclusion that fraud, material mistake, misrepresentation, or market

or price manipulation, or designing artificial or false market, trades with a design to recover monies or dues, or to defraud or misuse the system, system failures & errors, and the like have taken place. He has submitted that annulment results in the cancellation of the contract in question, and it therefore goes without saying that an order for annulment would also affect the counterparty to the contract who is not present before the Court.

81. Mr. Doctor has submitted that had SEBI intervened in any manner in the contract, the counterparty would have objected to the same, as it would have amounted to an interference by SEBI and/or MCX to the terms of the contract agreed upon by the parties and would have resulted in consequent monetary losses to the counterparty.

82. Mr. Doctor has submitted that the Petitioners' contention that SEBI and/or MCX should have used their discretion as regulators to intervene in the contracts in view of the unusual circumstances is entirely misconceived, both for the reasons stated above as also on account of the natural progression of the contract, and in any event not a matter which falls within the ambit of Article 226.

83. Mr. Doctor has submitted that the question with respect to matters relating to the exercise of discretion by the State being the subject matter of challenge under Article 226 had came up for consideration in the following Judgements: (i) ***Jai Prakash Industries Ltd. vs. State Of Maharashtra,*** Writ Petition No. 3663 of 2001 alongwith the companion Writ Petitions, Order dated 28th September 2001 passed by the Division Bench of this Court (unreported Judgment) at Paragraph 23; (ii) ***Sunil S/o. Ramrao Paraskar vs. State of Maharashtra***, 2006 (6) MhLJ 690 at Paragraph 21; (iii) ***Mansukhlal Vithaldas Chauhan vs. State of Gujarat,*** (1997) 7 SCC 622 at Paragraphs 25, 26; (iv) ***D. N. Jeevaraj vs. Chief Secretary, Govt. of Karnataka & Ors.,***(2016) 2 SCC 653 at Paragraph 41.

84. Mr. Doctor has submitted that it is the consistent view taken by the Supreme Court that the Writ Court exercising discretionary remedy under Article 226 of the Constitution cannot take over the discretion available to a statutory authority and render a decision and the authority has to exercise its own discretion vested in it under the Statute.

85. Mr. Doctor has submitted that the question with respect

to annulment of trade came up for consideration before the Securities Appellate Tribunal in ***Anand Rathi Share and Stock Brokers Limited vs. National Stock Exchange Of India Limited & Ors.***, 2019 SCC OnLine SAT 95. It has been held that reading of the Bye-laws pertaining to annulment makes it clear that annulment of trade is resorted to only in rare cases particularly when fraud, willful misrepresentation or material mistake in the trade happens. Bye-law 5 of the Exchange NSE is essentially about upholding the sanctity of a trade since it is on "inviolability of trade".

86. Mr. Doctor has submitted that the discretion to fix trading hours is admittedly vested in the Exchanges in consultation with SEBI. He has submitted that in the present case the trading hours of the exchange were never in sync with the trading hours of NYMEX. The NYMEX closed at 2:30 IST whereas the MCX trading hours even prior to the lockdown closed at 11:30 p.m/ 11:55 p.m. (based on US daylight saving time period). He has submitted that the prices of crude oil turned negative at NYMEX after 11:30 p.m. IST, and therefore even if there had been no change in timings it would have made no difference whatsoever.

87. Mr. Doctor has submitted that the argument of the Petitioner that payments ought to be made to the Petitioner for the losses incurred by them from the SEBI Investor Protection and Education Fund, is an argument which only needs to be stated to be rejected in limine, not being supported by any law. He has submitted that SEBI's Investor Protection and Education Fund is governed by the Securities and Exchange Board of India (SEBI's Investor Protection and Education Fund), Regulation, 2009. Regulation 5 thereof provides for the utilization of the fund. Regulation 5(2) sets out the purposes with respect to which the fund might be used. It is clear from the provisions of Regulation 5 that the fund is not intended to be utilized for compensating or making good the personal losses of traders while speculating and admittedly making bets in the market, and particularly sophisticated traders such as the Petitioner in question.

88. Mr. Doctor has submitted that the present Petitions deserve to be dismissed as they have been filed by the Petitioners who are seasoned investors and at all relevant times fully conversant with the risk of dealing in such contracts as also the contractual terms governing such contracts. Having incurred losses on the "bets"

taken by them with respect to the price of crude oil, the Petitioners have now sought to approach this Court under the provisions of Article 226 based on the misconceived contention that price cannot be negative and or that they did not envisage the price to ever turn negative and that for this reason this Court must judicially interfere in such contracts.

89. Mr. Doctor has submitted that the Petitioners' contention that they should have been warned of this fact that the price of crude oil might turn negative as there were Circulars issued by Chicago Exchange forewarning of the possibility that the price might turn negative is completely misconceived. He has submitted that while it is SEBI's role to protect investors as a whole and regulate markets, SEBI is not expected to act as a nursemaid to traders in respect of their individual trading decisions and, more particularly traders in sophisticated trading products who are duly informed of the risks involved. SEBI's role cannot be said to extend to advising the investors on investment decisions to be taken by them. He has submitted that the Petitioners have not even attempted to give an explanation as to why they did not themselves act on the basis of information available in the public domain.

90. Mr. Doctor has accordingly submitted that the Petitions are completely misconceived and deserve to be dismissed with costs.

91. Mr. Janak Dwarkadas, learned Senior Counsel appearing for the Respondent Nos. 2 & 3 in Writ Petition No.2160 of 2022 supported by Mr. Zal Andhyarujina, learned Senior Counsel appearing for the Respondent Nos. 2 & 3 in Writ Petition No.4930 of 2024 have made submissions opposing the Petitions.

92. Mr. Dwarkadas has submitted that the Petitioner's prayer to quash the impugned Circular effectively seeks to undo the settlement of Crude Oil Futures contracts. Such a prayer is in the teeth of the Securities Contracts (Regulation) (Stock Exchanges And Clearing Corporations) Regulations, 2018 and MCX's Bye-laws. He has in particular referred to Regulation 43(2) of the said Regulations which provides for irrevocability of settlement and states that the settlement shall be final, irrevocable and binding on such parties.

93. Mr. Dwarkadas has submitted that Regulation 43A of these Regulations also provides that settlement of every trade shall be guaranteed by the Clearing Corporation. Irrevocability of settlement is also reiterated in Bye-law 9.17.2 of the MCX's Bye-laws. Neither

these Regulations nor Bye-laws have been challenged by the Petitioners.

94. Mr. Dwarkadas has submitted that any attempt to undo the settlement would run contrary to the statutory mandate of irrevocability of trades and settlement. He has submitted that it is also relevant to note that finality of settlement is an integral feature of the securities market. This has been emphasized in Paragraph 13.5.1 and 13.5.2 of the March 2013 Report of the Financial Sector Legislative Reforms Commission that was tasked with reviewing financial sector legislations.

95. Mr. Dwarkadas has submitted that the Petitioner has no locus to challenge the impugned Circular. He has referred to Section 15 of the SCRA and Rule 9 of the Securities Contracts (Regulation) Rules, 1957 ("**SCRA Rules**"), which provides that trades on an exchange take place only between members (i.e. Brokers) of the exchange. He has submitted that no end-client of a Broker/member trades directly on the exchange. The Broker enters into a separate agreement with the end-client and all rights and obligations of the client are viz-a-viz the broker and are governed by such agreement.

Thus, the exchange only has privity with its own members and has no privity with the end-client.

96. Mr. Dwarkadas has submitted that the impugned Circular was issued to "Members" of MCX and not to end-clients such as the Petitioners. He has submitted that the Brokers/members of the Petitioners not only accepted the negative Due Date Rate/DDR in the impugned Circular, but also acted pursuant to it. This has been admitted by the Petitioner at Paragraphs (p) and (q) of the Petition.

97. Mr. Dwarkadas has submitted that the Brokers completed settlement of trades on behalf of the Petitioners as per the DDR in impugned Circular and also initiated arbitration to recover dues from the Petitioners on the basis of the impugned Circular. He has referred to the Award which has been passed in the arbitration, where the Petitioner specifically challenged settlement of Crude Oil futures at a negative rate. He has in particular relied upon the key findings in the Award at Paragraphs 10, 15 and 16. He has submitted that the settlement at negative rate was allowed by the Award and Petitioner was directed to make payment to the Broker at the DDR. He has submitted that once the broker accepts the DDR, the end-client of the

Broker cannot take a contrary position and independently challenge the DDR in the impugned Circular. He has submitted that the Petitioners cannot have a second bite at the cherry and challenge the impugned Circular after suffering a ruling on the same issue in the arbitration.

98. Mr. Dwarkadas has submitted that the Sale of Goods Act, 1930 which has been relied upon by the Petitioners in contending that it does not recognise a negative price and that negative Due Date Rate/DDR is contrary to law is wholly inapplicable as Crude Oil Futures contracts do not involve sale or delivery of goods. Irrespective of applicability of Sale of Goods Act, DDR and "price" are entirely different concepts. The record shows that the Petitioners have in fact paid a positive "price" for Crude Oil Futures contracts. There is no legal prohibition on a negative DDR. Imposing such a prohibition would result in a huge disparity between the two parties to a futures contract.

99. Mr. Dwarkadas has submitted that the Sale of Goods Act and the definition of price therein have no application to commodity derivatives such as Crude Oil Futures contracts. Sections 4, 5 and 31

of the Sale of Goods Act make it clear that the Act applies only to a transfer of goods by way of delivery from the Seller to Buyer. He has placed reliance upon the Judgment of the Supreme Court in ***State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.*** [31], wherein it has been held that sale of goods requires transfer of title to buyer in specified/identified goods. He has submitted that a Crude Oil Futures contract is a type of commodity derivative. A "Commodity derivative" is defined under Section 2(bc) of the SCRA to *inter alia* mean a contract for differences, which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified by the Central Government. This makes it clear that commodity derivatives can be pure contracts for differences without any delivery of goods. It is an admitted position that Crude Oil Futures contracts traded on MCX are indeed pure contracts for differences. They do not involve any sale or physical delivery of crude oil. These contracts are settled only in cash. Traders only receive/pay their profit/loss. This has also been reflected in the contract specifications for Crude Oil Futures in the present case.

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31 *[1958 SCC OnLine SC 100]*

100. Mr. Dwarkakas has submitted that by an amendment to the SCRA in 2015 the definition of "commodity derivative" as well as "goods" have been added thereby clarifying that "securities" would not be treated as "goods". Section 18A of the SCRA is a non-obstante provision and provides that contracts in derivatives are legal and valid if they are traded on a recognised stock exchange; settled on the clearing house of the recognised stock exchange or in accordance with the Rules & Bye-laws of such Stock Exchange. He has submitted that Section 18A gives overriding effect to the SCRA over other legislations specifically in relation to derivatives. Thus, settlement of commodity derivatives such as Crude Oil Futures that are traded and settled on an exchange is legal and valid notwithstanding any provision of the Sale of Goods Act or Indian Contract Act.

101. Mr. Dwarkadas has submitted that the overriding feature of the SCRA has been recognised by the Supreme Court in ***SEBI vs. M/s. Opee Stock-Link Ltd. & Anr.*** [32] at Paragraph 22.

102. Mr. Dwarkadas has submitted that the Petitioners in the present case were not Sellers of Crude Oil Futures contracts. The

32 *(2016) 14 SCC 134*

Petitioners were Buyers in Crude Oil Futures contracts. It is an admitted position that the Petitioners had taken net Long positions in Crude Oil futures in the anticipation of prices rising. This has also been specifically pleaded by Dhanera Diamonds at Paragraph 6B of the Petition.

103. Mr. Dwarkadas has submitted that the Bye-laws of MCX define Buyer and Seller in Byelaw 2.3.14 and 2.3.89. He has submitted that the Petitioners were admittedly **Buyers** of Crude Oil Futures contracts and not sellers. Accordingly, the entire argument that a Seller cannot be expected to pay to sell goods is totally baseless.

104. Mr. Dwarkadas has submitted that the Petitioner's submission that the Due Date Rate is the "price" paid for Crude Oil Futures contracts is completely incorrect. It ignores the basics of how a trade in the futures segment takes place and the definitions in MCX's Bye-laws. The traders in Crude Oil Futures in India do not buy or sell any Crude Oil. They merely take either a Long position/Buy a contract: bet on price of crude oil rising or Short position/Sell a contract: bet on price of crude oil falling. He has submitted that if

the value of the underlying commodity i.e. Crude Oil rise, traders with long positions make a profit. If the value falls, they make a loss. Similarly, traders with short positions make a profit if Crude Oil prices fall and make a loss if prices rise.

105. Mr. Dwarkadas has also referred to the definition of "Quote" under Byelaw 2.3.78 of the MCX as well as definition of "Trade" under Byelaw 2.3.101 of MCX. He has submitted that traders enter their "Quote" or bid price on the exchange. When prices quoted by a Buyer and Seller match, a "Trade" takes place at that price. Thus, the price at which two bids match is the "price" paid for the futures contract.

106. Mr. Dwarkadas has also referred to MCX's Byelaw 5.12 which deals with "Prices". He has submitted that "price" refers to the prices at which trading (i.e. buying and selling) takes place on the platform of MCX. These "prices" are not the same as the rate at which eventual settlement takes place.

107. Mr. Dwarkadas has submitted that every single person who traded in Crude Oil Futures for April 2020, including the Petitioners, paid a positive price which is reflected from the contract

notes on record. No negative "price" was paid by any Petitioner. Since all the Petitioners paid a positive price, it certainly qualifies as lawful "consideration" for the contract. Thus, the contention that Section 25 of the Indian Contract Act has rendered the contract void is completely misplaced.

108. Mr. Dwarkadas has submitted that the Due Date Rate is not the "price" paid for the contract. It has no relevance when traders buy or sell contracts on the exchange. It becomes relevant only after expiry of the contract for determining the eventual profit or loss of the trader. He has in this context referred to MCX's Byelaw 7.2 which provides that all contracts transacted in the Exchange shall be cleared and settled by the Clearing House or Clearing Corporation of the Exchange and whenever required closed out in accordance with the Bye-Laws or as ordered by the SEBI under the SCRA. Bye-law 2.3.42 defines "Due Date/Contract Expiry Day/Contract Maturity Day" as the "maturity date (last day) on which a specific contract in a specific commodity expires and is not available for trading thereafter". Further, Bye-law 2.3.43 defines "Due Date Rate" as "*the settlement price fixed for squaring up (closing out) of all the outstanding contracts in a contract month on the due date, which are not fulfilled*

by giving or taking delivery". Thus, Due Date Rate is applicable only after the contract expires and trading closes; a reference rate and not a price; and used by the clearing corporation for determining the profit or loss of trader for purposes of cash settlement.

109. Mr. Dwarkadas has referred to the definition of Due Date Rate in the contract specification. He has submitted that the settlement price on NYMEX/DDR is not the price paid by any trader to buy or sell Crude Oil futures on MCX. The NYMEX settlement rate is used by the clearing corporation for settlement of Crude Oil futures after the contracts expire.

110. Mr. Dwarkadas has submitted that DDR is not the "price" for Crude Oil Futures contract. No one pays the DDR at the time of entering into the contract. It is only a reference rate to determine the ultimate profit or loss of a trader at the time of settlement. Irrespective of whether the DDR is positive or negative, only the extent of the profit or loss of a trader changes.

111. Mr. Dwarkadas has submitted that all traders including Petitioners' were at liberty to exit the Crude Oil futures contracts prior to expiry by squaring-off/rolling over their positions. He has

submitted that the Petitioners had collected/paid all their profits and losses in relation to the April 2020 contracts till April 20, 2020 and losses, if any, related only to the last day of trading.

112. Mr. Dwarkadas has submitted that every futures trade has a party and a counterparty who takes opposite positions for the same contract i.e. one takes Long position and the other takes a corresponding Short position. Thus, for every contract, one party makes a profit and the other makes a loss. He has submitted that if the Petitioner's argument that the downward movement of the DDR should be capped at Re.1, is accepted, it would be unfair and lead to grave injustice to the Seller/counterparty of a futures contract. Such an interpretation would be completely un-businesslike and run against commercial common sense. It would go against the very grain of the futures market where both profits and losses for both sides are potentially unlimited.

113. Mr. Dwarkadas has submitted that though the Petitioners have pleaded that prices on NYMEX could not have been negative as per applicable law, they have not shown any provision of the SCRA, SCRA Rules, MCX Bye-laws or any circular by SEBI or MCX that

suggests that NYMEX prices or DDR must remain positive.

114. Mr. Dwarkadas has submitted that prior to expiry of the Crude Oil Futures contracts on April 20, 2020, CME-NYMEX issued two advisories on April 8, 2020 and April 15, 2020 putting all traders to notice that Crude Oil prices may turn negative. When CME-NYMEX itself clarified in advance that prices are likely to turn negative, it cannot possibly be contended that prices on CME-NYMEX could not have been negative.

115. Mr. Dwarkadas has submitted that NYMEX rates are used as a reference rate by a number of exchanges around the world for settlement of Crude Oil Futures contracts. These include Interncontinental Exchange (ICE) Futures US, ICE Futures Singapore, Dubai Gold and Commodities Exchange and Moscow Exchange. These exchanges also settled their Crude Oil Futures contracts at a negative rate when NYMEX prices turned negative. This has been specifically pleaded in Paragraph 4.3(d) of MCX's Reply. However, there is no rejoinder to this averment from the Petitioner.

116. Mr. Dwarkadas has submitted that MCX-CCL has only followed the contract specifications. Use of any reference rate/DDR

other than what was available on NYMEX would amount to violation of the specifications. He has submitted that the Petitioner's prayer for quashing of the impugned Circular, effectively seeks an illegal interference in the contractual terms of a concluded contract.

117. Mr. Dwarkadas has submitted that reliance placed by the Petitioners on the Bhav Copy which shows a provisional settlement rate of Re.1 is nothing but an attempt to cause unnecessary confusion when the facts are clear. The Bhav copy was issued when the trading on NYMEX was yet to close and the DDR had not yet become available. It was also made clear that Re.1 was only a provisional rate and the differential settlement if any would be carried based on the final settlement price. The NYMEX settlement price became available at around 2:00am IST on April 21, 2020 and accordingly, MCX issued the impugned Circular in the early morning of April 21, 2020 (IST) and communicated the final DDR of (-)2884 to members.

118. Mr. Dwarkadas has submitted that the Petitioners have repeatedly argued that fall in Crude Oil prices was an "unprecedented" and "unexpected" event. He has submitted that these are simply emotive arguments that have no relevance to the

derivatives market which functions on volatility. He has submitted that every client, including the Petitioners, signs a Risk Disclosure Document in a form prescribed by SEBI. This document is also prominently displayed on the website of MCX and the brokers. The Petitioners had expressly undertaken the risk of losses in commodity derivatives and this is borne out from the Risk Discloure Document. Similarly, MCX had published a leaflet on Crude Oil Futures which specifically put traders to notice that in Futures Contracts "*Both buyer and seller have unlimited risk*". This demonstrates that the Petitioners were fully aware of all risks involved in trading in Crude Oil Futures and have undertaken to bear their losses.

119. Mr. Dwarkadas has submitted that the Petitioners continued to trade after revision in timings. What is more significant is that even after curtailment of the trade timings on MCX to 5:00pm and after being warned by CME-NYMEX about the likelihood of prices turning negative, the Petitioners continued to execute fresh trades in Crude Oil futures right up to the last date i.e. April 20, 2020. The Petitioner's trade details show that between March 27 to April 20, 2020, the Petitioner executed 21 trades in Crude Oil Futures. Thus, the Petitioner was clearly keeping a track on price

movement and was buying Crude Oil Futures even as the price fell, in the hope of making a profit. The Petitioner's last trade in Crude Oil Futures was on the day of expiry, i.e. April 20, 2020.

120. Mr. Dwarkadas has submitted that there is no prayer in the Petition challenging any of the Circulars by which trade timings were curtailed during COVID-19. The Petitioners did not even object or raise any complaint with MCX or SEBI at the relevant time when the trading hours were curtailed. Instead it continued to trade under the revised timings and raised a grievance only after it suffered a loss.

121. Mr. Dwarkadas has submitted that the Petitioner's argument on change in timings is a complete red herring. The trading hours of MCX and NYMEX have always been very different. All traders in India who choose to trade in Crude Oil futures do so knowing well that there is a gap in the trade timings. He has referred to the fact that, at all material times the timings of MCX and NYMEX were not in sync with each other. This is borne out from the chart prepared by the Respondents showing the trade timings followed by MCX viz-a-viz NYMEX. He has submitted that at all

material times, there was a gap between the close of trading on MCX and close of trading on NYMEX. This gap extended to more than 24 hours on the weekend. Moreover, the settlement price on NYMEX always became available only after trading closed on MCX as MCX functioned till 11:30pm.

122. Mr. Dwarkadas has submitted that the Petitioners have suppressed the fact that Crude Oil prices on NYMEX turned negative only around 11.45pm. Thus, even if trading hours on MCX had continued till 11.30pm, it would have made no difference to the present matter in view of the prices having turned negative only after 11.30pm.

123. Mr. Dwarkadas has submitted that the Petitioners have alleged that change in timings should be backed with reasons. He has submitted that MCX in their Circular dated 26th March, 2020 have in fact been provided reasons for change in timings viz. in view of Novel Covid - 19 virus pandemic outbreak and the nation-wide lockdown of 21 days in the country and pursuant to discussions with SEBI, it has been decided to revise the trading timings. MCX has once again vide Circular dated 14th April, 2020 informed market

participants that after discussions with SEBI, the revised market timings would continue "*until further notice*". The change in timings was not unique to MCX. All major exchanges in India uniformly changed their trading hours to 9:00am to 5:00pm during COVID-19 after discussion with SEBI. Similarly, other exchanges also restored the original trade timings with effect from April 23, 2020 under SEBI's guidance. Thus, this was a market-wide change not limited to MCX. This has been specifically pleaded by MCX in Paragraph 4.2(e) of its Reply for which there is no rejoinder.

124. Mr. Dwarkadas has submitted that Bye-law 5.5 of MCX's Bye-laws gives the Exchange the power to modify the trade timings. The only requirement is that the reasons should be recorded in writing and the change should be communicated to members. Since MCX issued a written Circular giving the reasons for the change in timings, the requirement of this Bye-laws is also met.

125. Mr. Dwarkadas has submitted that the reliance placed by the Petitioners on representations by the Commodities Participants Association of India ("**CPAI**") for change in timings and on which basis, it was argued that MCX curtailed the timings based on CPAI's

representations and that MCX should have also restored the original trading times on CPAI's representation is wholly without merit. This can be seen from the Circular dated 26th March, 2020 which clearly indicates that the decision was taken based on discussions with SEBI and not solely on the basis of representations from the Brokers. The CPAI's representation dated April 1, 2020 was a request to SEBI to consider restoring the trade timings of all exchanges in India to 11.30pm "*preferably as soon as it deems fit*". Thus, MCX by itself could not have acted on it. Further, the Petitioners are not even members of CPAI, they cannot possibly claim that representations were made on their behalf.

126. Mr. Dwarkadas has submitted that the contention of the Petitioner that MCX should have triggered the Daily Price Limits or "circuit breakers" when the price on NYMEX fell by over 400% is misconceived and wholly misplaced. He has referred to the contract specifications with regard to Daily Price Limits for Crude Oil Futures. The Daily Price Limits can only be applied by MCX during the trading session followed by MCX i.e. 9:00 am to 5:00pm (IST) as on April 20, 2020. They have no relevance after close of trading on MCX. The Daily Price Limits are automatically triggered by the trading platform

software when prices on MCX fluctuate. The triggering of the price limits is also automatically notified to all members (i.e. Brokers) real time. He has submitted that there has been no complaint from any Broker that during the trading hours of MCX, price limits were not applied by MCX.

127. Mr. Dwarkadas has submitted that NYMEX has its own set of Daily Price Limits/Circuit Breakers. The NYMEX Circuit Breakers are applicable to price fluctuations on NYMEX during NYMEX's trading hours. So the Petitioners were protected against fluctuations in NYMEX prices by NYMEX's own daily price limits. There is no allegation in the Petition that NYMEX did not apply its relevant price limits when prices fluctuated on NYMEX. Thus, a change in NYMEX prices will not trigger daily price limits on MCX, or vice-versa, since MCX has no control over NYMEX prices.

128. Mr. Dwarkadas has submitted that though the Petitioners have made oral submissions for annulment of trades, the Petitions do not contain any prayer for annulment. Hence, there is no question of seeking a direction for annulment across the bar. He has submitted that the law recognises only annulment of "trades". There is no

concept of annulment of "settlement". Further, from SEBI Circular dated July 16, 2015 and MCX's Byelaw 5.25 which has been relied upon by the Petitioners, two things are clear: Only annulment of "trades" is permitted; and the Focus must always be on finality of trades and annulment should be avoided.

129. Mr. Dwarkadas has submitted that even otherwise, the legally prescribed pre-conditions for annulment in SEBI Circular dated July 16, 2015 has not been met. The Circular only permits annulment of trades "*resulting from material mistake or erroneous orders*". Unprecedented price fluctuations is not a ground for annulment. He has further referred to Paragraph 2.3 of the Circular which requires that an application for annulment has to be filed by the Broker within 30 minutes of execution of the trade, which can be extended to a maximum of 60 minutes. In the present case, no such annulment application was filed by the Petitioners within the prescribed time. Paragraph 2.5 of the Circular requires an exchange to take into account "*the potential effect of such annulment on trades of other stock brokers/investors across all segments, including trades that resulted as an outcome of trade(s) under consideration*". He has submitted that the annulment in the present case would clearly have

a drastic and prejudicial impact on other brokers and clients who accepted the impugned Circular and completed settlements based thereon. By annulment, their trades and settlements would be set aside and the profit made by them would have to be disgorged for no fault of theirs. Hence, the present case is not a fit one for annulment.

130. Mr. Dwarkadas has submitted that similarly, the conditions for annulment under Byelaw 5.25 of the MCX Bye-laws have not been satisfied in the present case. The said Byelaw provides for annulment of trades at the request of a member only "*on account of* ***fraud*** *or* ***willful misrepresentation*** *or* ***material mistake*** *in the trade*". He has submitted that there is no pleading or explanation as to how these conditions are met in the present case.

131. Mr. Dwarkadas has submitted that the argument of the Petitioners that the exchange should have exercised its *suo motu* power of annulment is wholly specious and misplaced. He has submitted that once an authority is vested with a discretion, the Supreme Court has repeatedly pointed out that Courts will not issue a *mandamus* against the authority to exercise its discretion in a particular manner. He has in this context placed reliance upon the

Judgment of the Supreme Court in ***U.P. State Road Transport Corporation & Anr. Vs. Mohd. Ismail and Ors***.[33] at Paragraph 12 and Judgment of this Court in ***Minhas Steels Ltd. & Anr. Vs. Punjab and Sind Bank & Ors.*** [34] at Paragraphs 8 & 9.

132. Mr. Dwarkadas has submitted that the present case is not covered by the *suo motu* powers of annulment under Byelaw 5.25.1. As per the Bye-law, the *suo motu* power can only be exercised "*to protect the interest of clients and public and for proper regulation of the market*". Thus, the power can only be used for the interest of the market as a whole. It cannot be used to protect a select group of traders and cause detriment to others. Further, Byelaw 5.25.1 requires the existence of "*sufficient cause which includes fraud, material mistake, misrepresentation or market or price manipulation, or desiging artificial or false market, trades with a design to recover monies or dues or to defraud or misuse the system or system failures & errors and the like*". He has submitted that the words "*and the like*" will necessarily have to be read keeping in mind the principle of *noscitur a sociis* as held by the Supreme Court in ***Godfrey Phillips***

33 *(1991) 3 SCC 239*

34 *1996 SCC OnLine Bom 420*

India Limited Vs. State of U.P. & Ors.[35] at Paragraph 73, 74 and 81.

133. Mr. Dwarkadas has submitted that the only reason for seeking annulment is avoidance of monetary losses in the present case which certainly is not one of the legally permitted reasons for annulment. Further, annulment for the financial benefit of a handful of traders will affect market integrity and the reputation of the Exchange as a custodian that guarantees all trades.

134. Mr. Dwarkadas has submitted that the Petitioners have referred to emergency powers of the Exchange under Byelaw 16 to contend that the DDR should have been changed by MCX. He has submitted that this argument also deserves to be rejected for the reason that emergency powers are a matter of discretion and subjective satisfaction of the relevant authority. No mandamus can lie to direct the authority to exercise its discretion in a particular manner as laid down by the Supreme Court in ***U.P. State Road Transport Corporation (supra)***. Further, none of the conditions for exercising emergency powers in Byelaw 16.1 have been triggered. In the derivatives market, fluctuation of prices due to global events is a

35 *(2005) 2 SCC 515*

known risk. It cannot and does not qualify as an emergency situation. Further, Byelaw 16.1 does not give the exchange the power to change the contract specifications or the manner of calculating the DDR to benefit a select group of traders. These are measures that apply uniformly to the entire market and do not benefit parties with only a particular kind of trading position in the market.

135. Mr. Dwarkadas has submitted that MCX had no legal obligation to inform the Petitioner of global news relating to commodities or possible movements in global commodity prices. Dissemination of speculative information such as likely direction of prices of a particular commodity could make the exchange liable for price manipulation. A trader is expected to carry out his own research and assessment before making a trade. He has submitted that this is amply clear from the risk disclosure documents.

136. Mr. Dwarkadas has submitted that the foundation of a derivatives market is volatility and unpredictability. SEBI's FAQs on Commodity Derivatives make it clear that derivatives are introduced only in those commodities whose prices are volatile. Hence, a trader in derivatives cannot possibly complain about an "unexpected",

"unusual" or "unprecedented" situation. The Petitioner in the present case have tried to portray a 400% fall in futures prices on NYMEX as an extraordinary event which argument has no place in the derivatives market.

137. Mr. Dwarkadas has submitted that no case has been made out for interference by a Writ Court. It is well settled that while exercising discretionary and equitable powers under Article 226, the High Court will not act merely to correct a wrong. He has in this context placed reliance upon Judgment of the Supreme Court in ***State of Maharashtra Vs. Prabhu*** [36] at Paragraph 4. The Supreme Court has held that the discretionary writs are not issued merely because a decision is wrong, but issued for the sake of larger justice.

138. Mr. Dwarkadas has submitted that the contention of the Petitioner that the contract should have been declared as void under Section 56 of Indian Contract Act is misconceived and particularly in view of it being well settled that the Writ Court cannot declare a contract as void and the only remedy is to file a Suit. Further, the contract had not become impossible to perform as required by

36 *(1994) 2 SCC 481*

Section 56. It was capable of being performed and was actually performed when the settlement was completed. The Supreme Court has held in ***Alopi Parshad & Sons Vs. Union of India*** [37] at Paragraph 22 that the Courts have no power to absolve a party of its contractual obligation merely because of uncontemplated events that make the contract more onerous to perform. It has also been held by the Supreme Court in ***Energy Watchdog Vs. Central Electricity Regulatory Commission & Ors.*** [38] at Paragraphs 38 - 40 that the contract is not frustrated merely because circumstances in which it was made were altered or more expensive to perform.

139. Mr. Dwarkadas has submitted that it is also well settled that a Court will not interfere with commercial bargains struck by contracting parties. The terms of a contract are not open to judicial scrutiny. A commercial contract will generally be upheld by Courts and cannot be struck down under the garb of public policy, unconscionability etc.. In this context he has placed reliance upon the Judgment of the Supreme Court in ***BPL Limited Vs. Morgan Securities and Credits Pvt. Ltd.***[39] at Paragraph 107.

37 *1960 SCC OnLine SC 13*
38 *(2017) 14 SCC 80*
39 *2025 SCC OnLine SC 2640*

140. Mr. Dwarkadas has submitted that it will be impossible for the Court to formulate any effective relief in the present Writ Petition in the given facts of the present case. He has submitted that in order to grant and implement the relief sought by the Petitioners, the Court would have to pass directions to: (i) reverse settlements for thousands of traders, including those who had no objection to the DDR; (ii) recover dues from all brokers whose trades made a profit; (iii) brokers in turn would have to recover dues from all end-clients, including those who may have ceased trading with their brokers; (iv) determine a new DDR; (v) carry out a fresh settlement process at the new DDR for thousands of traders, including those who had no objection to the original DDR. It would be impossible for the Court to pass an effective order to carry out such a process in a Writ Petition.

141. Mr. Dwarkadas has submitted that the reliance placed by the Petitioners on the subsequent SEBI's Circular dated September 21, 2020 to argue that SEBI enabled negative pricing only after September 21, 2020 as an afterthought, is completely specious. He has submitted that this Circular in fact recognises and accepts that negative pricing is not unlawful under Indian law. This circular does not in any way imply that negative pricing was previously

impermissible. The circular recognises that negative pricing is a reality and puts in place a revised margin framework for such commodities.

142. Mr. Dwarkadas has submitted that the Petitioners' reliance on MCX Circular dated July 14, 2020 and July 20, 2020 is also misplaced as the validity of a contract will not change based on any subsequent Circular issued by the Exchange that gives traders the option to trade in a wider range of prices. Further, reliance on these Circulars without challenging them demonstrates that negative pricing is legally permissible. The Circular has no bearing on the Due Date Rate to be used for settlement of contracts on their expiry. It only refers to changes in MCX's software to enable entering of bids at a negative price on MCX's trading system.

143. Mr. Dwarkadas has submitted that the reference made by the Petitioners to SEBI's Circular dated September 1, 2016 on "Additional Risk Management Norms" and MCX's Circular dated September 29, 2016 on "Collateral and Risk Management", both of which set out risk mitigation mechanisms to contend that MCX should have triggered the Risk Reduction Mode contemplated in

these Circulars to minimise the Petitioners' losses, is totally baseless. Both of these Circulars govern the relationship between the Exchange and its members i.e. Brokers. It does not govern the relationship between an Exchange and end-clients such as the Petitioners.

144. Mr. Dwarkadas has submitted that the Petitioners reliance on MCX-CCL Byelaw 8.8.6 to contend that MCX-CCL had the power to change the DDR is totally misplaced. Bye-law 8.8.6 refers to Daily Settlement Price and this is different from the final settlement price or DDR. Daily Settlement Price is only used for the purposes of deciding the Mark to Market profit/loss of a trader at the end of each trading day. It is not used for settlement at the expiry of a contract.

145. Mr. Dwarkadas has referred to the details of trades carried out by Dhanera Diamonds and Kohinoor Feeds and Fats in Crude Oil April 2020 futures contract. He has submitted that it is apparent therefrom that they were taking "Buy"/Long positions as well as "Sell"/Short positions in the contracts. He has in this context referred to Byelaw 9.17.1 of the MCX's Bye-laws which provides for netting. He has submitted that all Buy transactions and Sell transactions are netted off against each other so that only the net

payment obligation for all transactions is payable / receivable at the time of settlement. Dhanera Diamonds and Kohinoor Feeds & Fats Private Limited were hedging their Long positions by taking contra Short i.e. “Sell” positions. The volume of trading also demonstrates that they were executing multiple trades on a near daily basis and taking Buy or Sell positions depending on the price movement

146. Mr. Dwarkadas has submitted that from the Dhanera Diamonds’ trades on the day of expiry i.e. April 20, 2020, it is apparent that Dhanera Diamonds was a net Seller i.e. betting on price falling. It bought 15 lots and sold 400 lots. Thus, Dhanera was clearly squaring off its Long positions in anticipation of prices falling by entering into Sell transactions. It could have easily squared off all its positions and avoided losses. Instead, it consciously chose to retain a net Long position of 2965 lots at the time of expiry in the hope that there would be a sudden recovery in prices.

147. Mr. Dwarkadas has submitted that similarly the Kohinoor Feeds on the settlement day i.e. April 20, 2020 too could have easily squared off its Long positions and avoided the losses. It had placed “Buy” orders on 8 trading days and “Sell” orders on 3 trading days

and the trading pattern shows that it was buying when prices fell and selling when prices rose. Instead of squaring off its positions, it consciously chose to retain a net Long position of 70 lots at the time of expiry.

148. Mr. Dwarkadas has submitted that the Petitioners have sought quashing of the impugned Circular dated April 21, 2020 which communicated the DDR as per the NYMEX settlement rate after having derived benefit from the negative DDR for its "Sell" transactions that were netted off on the settlement date. MCX and MCX-CCL submit that having derived benefit from the negative DDR, it does not lie in the mouth of the Petitioners that they are aggrieved by the negative DDR.

149. Mr. Dwarkadas alongwith Mr. Andhyarujina have distinguished the Judgments which have been relied upon by the Petitioners and have submitted that these Judgments are not relevant to the facts of the present case. They have submitted that the Petitions being devoid of merits, require to be set aside with costs.

150. Mr. Sameer Pandit, learned Counsel appearing for MCX and MCX-CCL in Writ Petition No.4800 of 2022 - Sanjeev Jain & Ors.

Vs. Union of India & Ors., has submitted a note, wherein the trades executed by the Petitioners in 2020 Crude Oil futures have been provided. He has submitted that as per the actual trading pattern of the Petitioner it is apparent that between February and April 2020, the Petitioners executed 549 transaction in April 2020 Crude Oil Futures; 306 Buy transactions and 243 Sell transactions. Further, on the expiry day i.e. April 2020, they executed 127 separate Sell transactions for 169 Lots and the lead Petitioner (Sanjeev Jain) was a net Seller on the expiry day having bought 17 Lots and sold 55 Lots. The last trade on April 20, 2020 was a Sell transaction at 4.47pm for 5 Lots. He has submitted that this demonstrates that the Petitioners' argument that they were unable to mitigate their exposure is completely false. They took a calculated risk and suffered a loss. He has supported the submissions of Mr. Dwarkadas and submitted that this Petition is also devoid of merits and deserves to be set aside.

151. Having considered the above submissions, the Petitioners have proceeded on the premise that the Due Date Rate ("**DDR**") being the settlement price prevailing in the NYMEX on the last trading day of the contract could never have been in the negative as the contract specifications did not envisage a negative settlement

price as this would mean a seller having to pay a price for goods sold which is not contemplated under the law prevalent here. In this context it would be necessary to extract the definition of DDR in the Circular dated 19th July, 2019 / contract specifications which reads as under:-

> *"Due Date Rate shall be the settlement price, in Indian rupees, of the New York Mercantile Exchange's (NYMEX)# Crude Oil (CL) front month contract on the last trading day of the MCX Crude Oil contract. The last available RBI USDINR reference rate will be used for the conversion. The price so arrived will be rounded off to the nearest tick."*

152. It is apparent from the contract specifications that the parties to the contract agreed when they entered into the contract that the contract would be settled at the "DDR", which would be the settlement price in Indian Rupees of NYMEX Crude Oil Front month contract on the last trading day of the MCX Crude Oil Contract. Further, the "DDR" provided for the method of conversion of the US Dollar rate to an INR Rate. The Petitioners have not disputed the applicable DDR and the settlement price on NYMEX or the currency conversion rate applied for this purpose. The only dispute appears to be that the price cannot be negative and that the DDR is the same as price.

153. It is pertinent to note that the Respondent No.1 – SEBI has relied on a number of news articles referring to instances, where, in the past, prior to 2020, prices of West Texas oil, electricity, and even interest rates had previously turned negative. These were situations where the supply outstripped the demand and when it become onerous for a party to continue to hold on to the commodity in question. Likewise in the present case, on account of Covid-19 and the resultant lack of demand for crude oil, it became onerous for a supplier of crude oil to hold and stock crude oil. This resulted in the price of crude oil becoming negative on NYMEX and which coincidentally fell on the settlement date. The contention of the Petitioners that fall in crude oil prices to negative being an 'unprecedented' and 'unexpected' event is to be looked at from the purview of the contract specifications, where the Petitioners had consciously agreed to be bound by the prices on the NYMEX and the fact that the Petitioners consciously chose to hold the contract till the settlement date of 20th April 2020.

154. There is much merit in the submissions on behalf of Respondent No.1 – SEBI and Respondent Nos.2 & 3 – MCX and MCX-CCL that DDR is distinct from the Daily Price Limits viz. prices at

which the contract can be traded at during the trading session. DDR is the rate to be taken for settlement of the contract. While settling the contract on the settlement date, there is no transaction of sale or purchase taking place; and all that is happening is that the differences between the original purchase price and the prevailing price of crude oil on the NYMEX converted from USD to INR are being paid.

155. Regulation 43(2) of the Securities Contract (Regulation) (Stock Exchanges and Clearing Corporation) Regulations 2018 ("the Regulations") provides for irrevocability of settlement and reads as under:-

> *(2) Payment and settlement in respect of a transaction between parties referred to in sub- regulation (1), effected under the bye-laws of a recognized stock exchange or recognized clearing corporation,* ***shall be final, irrevocable and binding on such parties****.*

156. Further, Regulation 43A of the Regulations provides that the settlement of every trade shall be guaranteed by the Clearing Corporation. Irrevocability of settlement is reiterated in Bye-law 9.17.2 of the MCX's Bye-laws. The Respondent Nos.2 and 3 / MCX and MCX-CCL are correct when they submit that neither these regulations nor the Bye-laws have been challenged by the Petitioners.

Thus, it is not open for the Petitioners now to contend that they are not bound by the settlement of the trades at the DDR as per the contract specifications.

157. The Petitioners reliance on the definition of 'price' under the Sale of Goods Act is entirely misconceived. This definition of 'price' has no application to commodity derivatives such as Crude Oil Futures contracts. In Crude Oil Futures contracts, there is no involvement of sale or delivery of any goods. In fact, the Crude Oil Futures is a type of commodity derivative. 'Commodity derivative' as per its definition under Section 2(bc) of the SCRA means a contract *inter alia* for differences which derives it value from prices or indices of prices of such underlying goods or activities, services, rights, interest and events as may be notified by the Central Government. It is clear that the commodity derivatives are pure contracts for differences without any delivery of goods. The contracts are only settled in cash and traders only receive/pay their profits/loss.

158. The SCRA also provides for definition of commodity derivative as well as goods inserted by way of amendment to SCRA in 2015. This clarifies that 'goods' are not to be treated as 'commodity

derivatives'. It is settled law as has been laid down in ***SEBI vs. M/s. Opee Stock-Link Ltd. & Anr.*** **(Supra)** that the SCRA being a special law to regulate the sale and purchase of shares and securities, prevails over, the provisions of Contract Act, 1872 and Sale of Goods Act, 1930, in so far as matters which are specifically dealt with by SCRA. The settlement of commodity derivatives (such as Crude Oil & Futures) that are traded on an Exchange as provided under Section 18A of SCRA is legal and valid and would prevail over the aforementioned Acts.

159. We also find much merit in the submissions of Respondent Nos.2 and 3 / MCX and MCX-CCL that the Petitioners had taken net Long positions in Crude Oil Futures in the anticipation of prices rising. Long position is defined as buying of a commodity futures contract with the expectation that its value will rise in future or to hedge against a possible rise in price of the underlying commodity. The Petitioners argument that they were 'sellers' and not 'buyers' and hence could not be expected to pay to sell their goods is misconceived. The Petitioners had paid a positive price when they were the buyers in the Crude Oil Futures and it was only the at the time of settlement of their trades, the DDR, was at a negative rate.

The DDR becomes relevant only after the expiry of contract for determining the eventual profit and loss of the trader.

160. Bye law 2.3.42 defines 'Due Date/Contract Expiry Date/Contract Maturity Date' as the 'maturity date (last day) on which a specific contract in a specific commodity expires and is not available for trading thereafter'. Further, Bye-law 2.3.43 defines 'DDR' as 'the settlement price fixed for squaring up (closing out) all the outstanding contracts in a contract month on the due date, which are not fulfilled by giving or taking delivery'. Thus, the DDR cannot be equated with price but is a reference rate and is applicable only after the contract expires and trading closes and is used by the clearing corporation for determining the profit or loss of traders for purposes of cash settlement. In the present case, the NYMEX settlement price became available at around 2 am (IST) when trading closed on NYMEX. This was used as the DDR as per the contract specifications. The NYMEX was at the closing in the negative and as a result the DDR was in the negative. It cannot be said that the Petitioners were sellers at this negative rate but infact the trades have been settled at the negative rate in view of crude oil price on NYMEX being in the negative.

161. The Petitioners being seasoned investors had invested in a sophisticated type of investment and, in its own words, had made a 'bet' on the price of crude oil. The settlement of the contract was carried out exactly in terms of the contract specifications. The Petitioners being traders always were at the liberty to exit the Crude Oil Futures contracts prior to the expiry by squaring of or rolling over their positions. The Petitioners had infact collected/paid all their profits and losses in relation to the April, 2020 contracts till the due date i.e. 20th April 2020 and losses, if any, related only to the last date of trading. The Petitioners having themselves chosen to hold on to their Net Long Position at the time of expiry of the contract, cannot now contend that the remaining trades which they consciously took a chance of not squaring off, cannot be settled at a negative rate.

162. Further, in every contract, one party makes a profit and the other makes a loss. If the Petitioners argument was to be accepted namely that the downward movement of DDR should be kept at Re.1, this would be unfair and lead to grave injustice to the counterparty of the futures contract. Such an interpretation would run against commercial commonsense and would go against the very grain of

futures market where both profits and losses for both sides are potentially unlimited.

163. The Petitioners have contended that SEBI and MCX ought to have taken steps to protect the Petitioners from incurring huge losses in such an unprecedented situation where settlement of the trades were in the negative, Further, there should have been either an annulment of trades or other measures taken to prevent the settlement price turning negative. It is well settled that where SEBI and/or MCX have a right to exercise their discretion as regulators to intervene in the contracts in view of what the Petitioners termed as 'unusual circumstances/unprecedented circumstances', the Court will not exercise its discretionary remedy under Article 226 of the Constitution by issuing a mandamus directing the Authority such as SEBI and/or MCX to exercise its discretion in a particular manner. This has been held in the Judgments relied upon by the Respondent No.1 – SEBI namely the Judgments of this Court in ***Jai Prakash Industries Ltd. (Supra)*** and ***Sunil S/o. Ramrao Paraskar (Supra)*** and the Judgments of the Supreme Court in ***Mansukhlal Vithaldas Chauhan (Supra)*** and ***D.N. Jeevaraj (Supra)***.

164. It is pertinent to note that in the present case the trading closed on MCX on 20th April, 2020 at 5.00 p.m. IST and it is on this date that MCX issued a Circular informing members that the final DDR was under finalization. The trading on NYMEX was yet to close and DDR had not yet become available. It was made clear by the said Circular that Rupee 1/- was only a provisional rate and differential settlement if any would be carried based on the final settlement price. The NYMEX settlement price became available at around 2.00 am IST on 21st April, 2020. Accordingly, MCX issued the impugned Circular in the early morning of 21st April, 2020 (IST) and communicated the final DDR of (-) 2884 to its members.

165. The Petitioners had signed a Risk Disclosure Document and had undertaken the risks of losses in commodity derivatives. They were fully aware of all the risks involved in Crude Oil Futures and had undertaken to bear the losses. The Petitioners even after the curtailment of the trade timing of MCX to 5.00 p.m. from 11.30 p.m. and after being warned by CME – NYMEX about the likelihood of prices turning negative, continued to execute fresh trades in Crude Oil Futures right up to the last date i.e. 20th April, 2020. It is apparent from the Petitioners' trade details that they had executed

several trades right up to the last date i.e. 20th April, 2020 and that they were consciously keeping a track on price movement and were buying Crude Oil Futures even as the price fell in the hope of making profit.

166. The Petitioners' contention on change in trade timings have been belatedly made, apart from there being no prayer in the Petition challenging any of the Circulars by which trade timings were curtailed during Covid-19. The Petitioners had not made any complaint with MCX or SEBI at the relevant time when the trade timings were curtailed and instead continued to trade under the revised timings and raised a grievance only after they had suffered a loss by virtue of the settlement of their trades in the negative. The Petitioners were also aware that the trading timings on MCX or NYMEX had always been very different and that there was a gap between the trade timings. It does not lie for the Petitioners now to contend that by virtue of the change in the trading hours the settlement of the Petitioners trades had been in the negative. Infact, from the record, it appears that the crude oil prices on NYMEX turned negative only around 11.45 p.m. and thus even if the trading hours on NYMEX had continued till 11.30 pm, it would have made

no difference to the present matter as prices turned negative only after 11.30 pm.

167. The Petitioners have further contended that the change in trade timings were required to be backed with reasons and that the representation made by the Commodity Participants Association of India (CPAI) for change in trade timings were required to be considered. This contention is without any merit, particularly in view of the Circular dated 26th March, 2020 issued by MCX by which the members were informed of the change in timings gave the reason of Novel Covid-19 virus pandemic outbreak and nationwide lockdown of 21 days in the country and pursuant to discussions with SEBI, MCX decided to revise the trade timings. Further, the subsequent representation of CPAI for reverting back to the trade timings as existed prior to 26th March, 2020 were also considered and CPAI's representation dated 1st April 2020 for restoring the trade timings of all exchanges in India to 11.30 p.m. was a request for SEBI to do so – 'preferably as soon as it deems fit'. MCX by itself could not have acted on it. This apart from the Petitioners not being members of CPAI, could not possibly claim that the representations were made on their behalf.

168. The Petitioners contention that MCX should have triggered the Daily Price Limits or 'Circuit Breakers' when the price on NYMEX fell by over 400% is misconceived, particularly in view of MCX trading hours being till 5.00 p.m. (IST) and the price on NYMEX, which fell during the trading hours was not extraordinary. It was only after the trading hours i.e. from 9 pm (IST) that the price began to fall drastically and turned negative around 11.45 p.m. (IST). Thus, MCX could not have applied its Daily Price Limits after closing of trading hours. The Daily Price Limits set out in the contract specifications could not have been triggered and the Circuit Breakers therein could not be applied after the trading on MCX closed. Further, the Daily Price Limits are automatically triggered by the trading platform software when prices on MCX fluctuates. This is also notified to all members (i.e. Brokers) in real time. There has been no complaint from any Broker that during the trading hours of MCX, price limits were not applied by MCX. NYMEX also has its own set of Daily Price Limits / Circuit Breakers and which are applicable to price fluctuations on NYMEX during NYMEX's trading hours. The Petitioners were accordingly protected against fluctuations in NYMEX prices, by NYMEX's own Daily Price Limits. There is no allegations in the Petitions that NYMEX did not apply its relevant price limits, when

prices fluctuated on NYMEX.

169. The Petitioners have not made out any case for annulment of trades. There is an application for annulment which is required to be made as per Paragraph 2.3 of the SEBI Circular dated 16th July 2015. Further, paragraph 2 of the said Circular only permits annulment of trades, 'resulting from material mistake or erroneous orders'. Unprecedented fluctuations is not a ground for annulment. Paragraph 2.5 of the Circular requires an exchange to take into account 'the potential effect of such annulment on trades of other stock brokers / investors across all segments including trades that resulted as an outcome of trade(s) under consideration'. In the present case, annulment would have clearly had a drastic and prejudicial impact on the other Brokers and the clients who have accepted the impugned Circular and completed settlement based thereon. Their trades and settlement would have been set aside and the profit made by them would have been disgorged for no fault of theirs. Hence, I find much merit in the submissions on behalf of the Respondents that the present case is not a fit one for annulment.

170. The Bye-laws relied upon for annulment viz. Bye-law

5.25 of MCX Bye-Laws are not applicable in the present case, particularly as this Bye-law provides for annulment of trades at the request of a member and is permissible, only 'on account of fraud or wilful misrepresentation or material mistake in the trade'. Apart from there being no such request, there is no case made out of there being fraud or wilful misrepresentation or material mistake in the trade. Further, Bye-law 5.2.1 which provides for *Suo Motu* power of annulment is also inapplicable as this Bye-law provides that the *Suo Motu* power can only be exercised 'to protect the interest of clients and public and for proper regulation of market'. Thus, the power can only be exercised in the interest of the market as a whole.

171. The submission made by the Respondents on Bye-law 5.25.1 of the MCX Bye-laws viz. that the words used 'and the like' having been preceded by the words 'sufficient cause which includes fraud, material mistake, misrepresentation or market of price manipulation, or designing artificial or false market, trades with a design to recover monies or dues or to defraud or misuse the system or system failures and errors', are required to be read keeping in mind the principle of *noscitur a sociis* merits acceptance. The Supreme Court in ***Godfrey Phillips India Ltd. (Supra)*** has held that

the use of the word 'including' suggest the application of the principle of *noscitur a sociis* viz. words clubbed together take their colour and are qualified by each other. Thus words 'and the like' as has been contended by the Petitioners cannot be read in a manner differently from the preceding words. In the present case none of the causes set out in Bye-law 5.25 have either been pleaded or proved by the Petitioners and the only reason for seeking annulment is avoidance of monetary losses which is not a legally permitted reason for annulment.

172. The reliance placed by the Petitioners on Emergency powers of Exchange under Bye-law 16 to contend that the DDR should have been changed by MCX, is misplaced. Emergency powers are matter of discretion and subjective satisfaction of relevant authority. As has been held in ***U.P. State Road Transport Corporation (Supra)*** no mandamus can lie to direct the authority to exercise its discretion in a particular manner. The Emergency powers which fall under Bye-law 16.1 of the MCX Bye-laws provides conditions for its exercise, namely, where there is an emergency, corner or crisis in the nature of manipulation, squeeze, bear raid or wherever it appears to such Committee and/or Relevant Authority that the contracts are

transacted for the purpose of inducing a false or artificial appearance of activity or upsetting the price equilibrium or that the business has been conducted in a manner prejudicial to the interest of the trade or the interest and welfare of the Exchange. In the present case none of these conditions have been triggered for invocation of Emergency powers. The Respondents have rightly referred to the derivatives market where fluctuation of prices due to global events is a known risk. It cannot and does not qualify as an emergency situation.

173. The Petitioners contention that MCX ought to have provided commodity related market information to the Petitioners and traders, particularly when CME had provided information of the possibility of the crude oil prices being in the negative, is misconceived. The Petitioners being seasoned investors who have participated in sophisticated form of trading, namely trading in Crude Oil Futures Derivative were are at all relevant time fully conversant with the risk of dealing in such contracts as also the conractual terms governing the contracts. They cannot turn a blind eye to the Circulars issued by CME forewarning of the possibility that price might turn negative. Although, it is SEBI's role to protect

investors as a whole and regulate markets, SEBI is not expected to act as a nursemaid to traders in respect of individual trading decisions. The Petitioners have not even attempted to give an explanation as to why they did not themselves act on the basis of information available in the public domain.

174. This Court exercising writ jurisdiction cannot act merely to correct a wrong. The relief sought must advance the overall justice of the case, and not merely benefit the Petitioners. It is pertinent to note that for every derivative transaction on the exchange there is a counterparty. The counterparties in the present case had made a correct call on the movement of crude oil prices. These counterparties made a profit since their assessment turned out to be correct. They had made a written representation to MCX demanding that the DDR fixed as per NYMEX rate should be retained. In the event relief is granted to the Petitioners, this would impeach upon the rights of the counterparties and require them to give up their lawfully earned profits only so that the Petitioners can avoid their losses. This is certainly impermissible, particularly where the Petitioners have failed to make out a case that the contract should have been declared as void and/or impossible to perform as under

Section 56 of the Indian Contract Act. The contract was certainly capable of being performed and was actually performed when the settlement was completed. The Supreme Court in ***Alopi Parshad & Sons Ltd. (Surpa)*** has held that the Courts have no power to absolve a party of its contractual obligation merely because of uncontemplated events that make the contract more onerous to perform. Further, in ***Energy Watchdog (Supra),*** the Supreme Court has held that a contract is not frustrated merely because circumstances in which it was made were altered or more expensive to perform. It is well settled that the Court will not interfere with commercial bargains struck by contracting parties. The contract being a commercial document cannot be invalidated in the name of public policy as held by the Supreme Court in ***BPL Limited Vs. Morgan Securities and Credits Pvt. Ltd. (Supra)*** .

175. In the present case, it would be impossible for the Court to formulate any effective relief in the Writ Petitions as submitted by the Respondent Nos.2 and 3 / MCX and MCX-CCL as by granting such relief, the Court would have to pass directions to reverse settlement for thousands of traders, including those who had no objection to the DDR. Further, the Court would have to pass

directions to recover dues from all brokers whose trades made a profit, and the Brokers in turn would have to recover the dues from all end-clients, including those who may have ceased trading with their Brokers. The Court would also be required to be called upon to determine a new DDR and to carry out fresh settlement process as per the new DDR for thousands of traders, including those who have no objection to the original DDR. Thus, it would be impossible for this Court in the present Petitions to pass an effective order to carry out such a process. This apart from it being well settled that the Court will not exercise its extraordinary discretion under Article 226 unless the relief granted does substantial justice to the entire case.

176. The subsequent Circular dated 21st September, 2020 issued by SEBI after the impugned Circular enabled negative pricing. This Circular has been relied upon by the Petitioners to contend that SEBI enabled negative pricing only after 21st September, 2020 as an after thought. The reliance is misplaced as the Circular only would go to show that negative pricing was always a reality and that SEBI had only put in place a revised margin framework for such commodities. The MCX had also by its Circulars dated 14th July 2020 and 28th July 2020 referred to changes in its software to enable

entering of bids at negative price on MCX's trading system. These Circulars have no bearing on the DDR to be used on settlement of contracts on their expiry. The MCX's Circular only applies to prices quoted on MCX and does not apply to DDR that is derived from NYMEX. MCX had vide Circular dated 30th April 2020 clarified that the DDR would continue to remain at NYMEX's prices.

177. The Petitioners' reference to collateral and risk management Circulars viz. SEBIs Circular dated 1st September 2016 and MCX's Circular dated 29th September 2016 in order to contend that MCX should have triggered the risk reduction mode contemplated in these Circulars and minimize the Petitioners' losses is misplaced. These Circulars govern relationship between the Exchange and its members i.e. Brokers and does not govern the relationship between an Exchange and end clients such as the Petitioners.

178. It is pertinent to note that the Brokers had acted upon the impugned Circular and completed settlement of trades on behalf of the Petitioners as per the DDR as well as initiated arbitration to recover dues from the Petitioners on the basis of the impugned

Circulars. Thus, the Brokers/members not only accepted the negative DDR in the impugned Circular, but also acted pursuant to it. It is further pertinent to note that in the award passed against the Petitioners in the arbitration initiated by the Brokers, there is a finding at paragraph 16 viz. that the Petitioner 'took a chance and speculated. If there was a profit, it would have been beneficiary of such profit. Therefore, the same has to be with respect to loss also. It is beneficiary of the loss as well as profits. It cannot blame anyone else. The Brokers having accepted the DDR, it would now not be open for the Petitioners to take a contrary stand and independently challenge the DDR in the impugned Circular. The Petitioners by doing so are seeking to take a second bite at the cherry and challenge the impugned Circular after suffering a ruling on the same issue in the arbitration.

179. It is also pertinent to note that the Petitioner – Dhanera Diamonds (Writ Petition No.4930 of 2024) had filed a Suit shortly after the issuance of the impugned Circular and wherein the same challenge to the impugned Circular had been made. The said Petitioner has not chosen to withdraw the Suit filed in this Court and this results in parallel proceedings i.e. the present Petition as well as

the Suit. Although the Petitioner has submitted that it is not pressing the prayer with respect to the impugned Circular, the filing of the Petition appears to be an afterthought, particularly when one considers that the Petitioner was faced with an award passed against it in the arbitration initiated by their Broker.

180. The Judgments relied upon by the Petitioners have no applicability in the present case. In ***Dharmarth Trust (Supra)***, relied upon by the Petitioners, the Supreme Court was examining the meaning of 'price' in Article 56 of the Limitation Act and in that context reference was made to the definition of price in Section 2(10) of the Sale of Goods Act which defines price as the money consideration for the Sale of Goods. This judgment is not relevant to the present case as Crude Oil Futures do not involve any sale or delivery of goods. Further, the judgment relied upon by the Petitioners viz. ***Moriroku India Pvt. Ltd. (Supra)*** is not relevant to the facts of the present case. In that case the Supreme Court had considered price in relation to goods and in that context held that price is the consideration for 'parting with title to the goods'. The Crude Oil Futures do not involve parting with the title to the goods.

181. The Petitioners have relied upon ***Indian Express Newspapers (Bombay) Pvt. Ltd. (Supra).*** In that case the Supreme Court was considering the grounds on which subordinate legislation can be challenged and observed that the discretion of the statutory body should be guided by relevant considerations. The Supreme Court went on to hold that the levy of customs duty and auxiliary duty would have a serious impact on the newspaper industry which in turn would impact the 'freedom of press' which is the 'soul of democracy'. In the present case, the impugned Circular is not a subordinate legislation. It has not been issued by MCX-CCL in exercise of any power of delegated legislation. There is no allegation in the present case that general public interest or fundamental rights of the society as a whole are impacted.

182. The judgment relied upon by the Petitioners viz. ***Dai-ichi Karkaria Ltd. (Supra)*** was a case where the Supreme Court found that factors considered by the Government for granting exemptions were 'wholly irrelevant' and do not 'subserve public interest'. This was in the context of challenge to notifications under the Customs Act withdrawing custom duty exemption. In the present case, the impugned Circular was not required to subserve any public interest.

It only applied to the traders who traded in crude oil future contracts for April, 2020. There is no allegation that 'wholly irrelevant' factors were considered while issuing the impugned Circular.

183. The judgments relied upon by the Petitioners to counter the argument of the Respondents that the principles of *noscitur a sociis* would apply in the context of Bye-law 5.25.1 of the MCX Bye-laws viz. ***Pioneer Urban Land and Infrastructure Ltd. (Supra)*** and ***Corporation of the City of Nagpur (Supra)*** have no application. In those cases the Supreme Court had held that there was no ambiguity in the section and hence the rules of interpretations have no relevance.

184. The Petitioners have relied upon judgments in support of their contention that when discretion is vested in an Authority, the Authority is required to exercise the discretion which is coupled with a duty when the circumstance demand. In ***Commissioner of Police v. Gordhandas Bhanji (Supra)***, the discretion was vested in the Commissioner of Police for public reasons involving convenience, safety, morality and welfare of the public at large. In the present case, the Petitioners never applied for annulment of trades and hence there

was no occasion of MCX considering any such application. Further, the Petitioners are not claiming that the MCX should have exercised its power of annulment or emergency powers for any 'public interest'. Similarly, the judgment in ***Hirday Narain (Supra)*** relied upon by the Petitioners is not relevant to the facts of the present case. In that case, the decision considered whether the Income Tax Officer is bound to exercise its discretion to correct an error apparent from the record. In the present case, the Petitioners have not sought such exercise of discretion by MCX to correct any apparent error.

185. The Petitioners have relied upon the judgment of the Supreme Court in ***IFB Agro Industries Ltd. (Supra)***, where it was held that SEBI's regulatory role includes protection of investors. There is no dispute in so far as this proposition is concerned. In the present case, the Petitioners who are sophisticated traders have chosen to trade in the volatile crude oil derivative contracts and SEBIs regulatory role cannot be extended to help a certain section of traders from avoiding their losses. Similarly in ***SEBI vs. Ajay Agarwal (Supra)***, relied upon by the Petitioners, the Supreme Court recognized that the SEBI's role is to protect 'common men who are small investors'. The Petitioners cannot be considered to be small

investors, but sophisticated traders having chosen to trade in risky trades and suffering trade losses.

186. The Petitioners have in support of their contention that a statutory Authority cannot retrospectively alter vested rights under pre-existing contracts in a manner which is unreasonable, excessive or harsh relied upon the judgments in ***National Agriculture Cooperative Marketing Federation of India (Supra)***; ***Virendra Singh Hooda (Supra)***; ***Indore Development Authority (Supra)***; ***Ajmer Vidyut Vitran Nigam Ltd. (Supra)***. These judgments are not relevant in the present matter as the impugned Circular is neither retrospective nor makes alteration to the pre-existing contractual terms.

187. The Petitioners have also relied upon the judgments in support of their submission that Writ Petition is maintainable against an Exchange viz. ***Sejal Rikeeh Dalal (Supra)*** and ***Trilochana K. Doshi (Supra)***. There is no dispute in so far as this proposition is concerned, however, the present matter involves an attempt by the Petitioners to avoid trading losses by impugning the Circular that was made equally applicable to all traders.

188. The Petitioners have relied upon the judgment of this Court in ***Satya Prakash Aggarwal (Supra)***, where this Court has considered the challenge to the vires of the guidelines issued by NSE and compensation to be paid out of the Investor Protection Fund. There is no pleading or prayer in the present Petition for payment out of MCX's Investors Protection Fund. There is only an oral argument in that context, which only needs to be stated to be rejected in *limine.* The fund is not intended to be utilized for compensation or making good personal losses of traders whilst speculating and admittedly making bets on the Exchange, particularly where there are sophisticated traders such as the Petitioners.

189. The judgments in ***Ashok Kapil (Supra)*** and ***Union of India (Supra)*** relied upon by the Petitioners in support of their contention that no man can take advantage of its own wrong are inapplicable, particularly as in the present case, there is no wrong on the part of the Respondents which has been proven. Further, there is no benefit/advantage which has been received by them.

190. The other judgments relied upon by the Petitioners viz. ***M.S. Jayaraj (Supra)*** and ***Shree Mahavir Oil Mills (Supra)*** are also

not relevant to the facts of the present case. There is no illegal order which has been passed in the present case and which is impugned. The Petitioners are only alleging personal loss to them on account of the impugned Circular. Further, ***Shree Mahavir Oil Mills (Supra)*** relied upon by the Petitioners cannot be treated as a precedent as the Supreme Court exercised powers under Article 142 of the Constitution.

191. We accordingly find no merit in these Petitions which seek to quash the impugned Circular and effectively undo the settlement of crude oil future contracts which is impermissible in law and which would run contrary to the very contract specifications which the Petitioners are bound under. Accordingly, the Writ Petitions are dismissed with no orders as to costs.

192. The Interim Applications filed therein do not survive and are disposed of accordingly.

CONCURRING JUDGMENT (Per Advait M. Sethna, J.):-

193. At the very outset, I am in agreement with the erudite decision authored by my esteemed brother, Justice R. I. Chagla.

Evidently, much of the reasoning has been captured in his detailed judgment. Additionally, from the perspectives that have emerged in the proceedings, I pen down the following in concurrence.

194. The Court is confronted with a situation where experienced, sophisticated traders, after analyzing demand and supply conditions, comparing interest rates and going through expert opinions, expect that their decisions and results would align with the available evidence. However, the truth is, at times, otherwise. We are reminded that it is not logic alone that people exclusively thrive on. It is in fact, very often the narratives that influence minds and decisions and importantly in all of this, hope is the silver lining, the polestar.

195. A bare perusal of the Impugned Circular dated 21 April 2020, issued by Respondent No. 3 - Multi Commodity Exchange Clearing Corporation Limited ('**MCX-CCL**' for short), makes it evident that the same has been issued, *inter alia*, in pursuance of the Rules, Bye-laws and Regulations of MCX-CCL. The said Rules, Bye-laws and Regulations have not been assailed by the Petitioners in the present proceedings, as duly noted in the judgment authored by my learned brother.

196. In the above context, it is pertinent to note that when the usufruct/source of the said circular is itself not challenged by the Petitioners, whether the Impugned Circular is bad in law becomes debatable. The Impugned Circular clarifies that the contract would be settled at the Due Date Rate ('**DDR**' for short) which would be the settlement price as per New York Mercantile Exchange's ('**NYMEX**' for short) Crude oil front month contract, converted into Indian Rupees. The Petitioners being sophisticated traders, regularly trading in crude oil could not be oblivious to the risks of price fluctuations and volatility in that regard.

197. The language deployed in the MCX-CCL Circular dated 20 April 2020, which is referred to in the Impugned Circular dated 21 April 2020, does mention about the unprecedented price fluctuation in the international crude oil market. The Circular of 20 April 2020 clearly envisages that based on NYMEX price, DDR for crude oil futures as on 20 April 2020 was under finalisation. It is in such circumstances that the provisional settlement price was stated to be Re. 1 per barrel for the purpose of computation, as on 20 April 2020. Accepting the contentions of the Petitioners would mean that the price of Re. 1 per barrel is the final price for the purpose of

settlement of trades on 20 April 2020. This is not what the said circular dated 20 April 2020 contemplates and/or envisages. There appears to be no ambiguity in the language, purport or intent of the Circular dated 20 April 2020, read with the Impugned Circular dated 21 April 2020, having its roots in the Rules, Regulations and Bye-laws of the MCX-CCL which are not assailed in these proceedings.

198. The Petitioners, all throughout, have placed much emphasis on the expression "price". The gravamen of the case is that the DDR was based on the NYMEX price. It is such price that went in the negative, and not the price of crude oil traded on MCX in India, that turned negative, dehors the NYMEX price. There is no material adduced by the Petitioners to justify that the price of the commodities traded on NYMEX has to be positive and never negative as a mandate and/or prescription of law, even internationally. Had the issue been exclusively with the price of crude oil traded on MCX, then the submission of the Petitioners including that of Mr. Khambata may have carried weight, but not otherwise. It is in this context, that the contention strenuously urged by Mr. Khambata on the aspect of negative price, though in the first blush may sound attractive, pales into insignificance, in the given facts and circumstances.

199. The transactions or trades in the given case is confined to a particular group of experienced traders. The Petitioners are labeling the price of crude oil on NYMEX going in the negative as *sui generis.* In such scenario, we have no doubt that the SEBI being the market regulator would have stepped in and taken necessary steps as the law would require. It is not for this Court to issue writ of mandamus or otherwise directing SEBI to annul such trades, that to at the sole instance of Petitioners in the given factual complexion. I am reminded of the latin maxim *Quando aliquid prohibetur ex directo, prohibetur et per obliquum,* meaning that what is prohibited directly is also prohibited indirectly. This has been consistently followed and applied in our jurisprudence.

200. Moreover, even today, having regard to the prevailing geopolitical situation across the globe, such price fluctuation in crude oil is not an impossibility and/or something beyond comprehension. As experienced traders, the Petitioners clearly understood the risks of fluctuations in the price of crude oil. The Petitioners being sophisticated traders accepted the kernel of volatility in the price of such commodity. A negative price shift and the consequential loss arising therefrom, ought not to be the *raison d'être* for approaching

this Court under Article 226 of the Constitution of India.

201. We are confronted with a situation where the Petitioners have consciously, knowingly and being fully aware chose to hold on to their net long position at the time of the expiry of the contract i.e. 20 April 2020. Therefore, they are estopped from now contending that the negative price on 20 April 2020 was so unprecedented so as to justify regulatory intervention by SEBI, particularly in the form of annulment of trades. It is the case of the Petitioners that annulment of the said trades is the best possible relief, in the given factual complexion. If this is to be accepted, then the decision of this Court would affect the commercial interest of several other counter-parties, who are not even before us in these proceedings.

202. Further, as observed above, one extremely vital/crucial aspect in such trades is speculation and/or price volatility. Contextually, we have before us a case where the Petitioners seem to be aggrieved by the quantum of the negativity in the price of crude oil i.e. at Re. (-)2884 per barrel on the fateful date of 20 April 2020 which has resulted in an 'unprecedented loss' to them. If this is what the Petitioners justify as a ground of interference by the regulatory

authority, that too under this Court's directions, in the exercise writ jurisdiction, we are afraid whether such directions can at all be passed, moreover in the absence of counter-parties, being equally impacted by such trades.

203. In the aforesaid factual backdrop, accepting the contentions of the Petitioners may lead to an unprecedented result. In the given facts and circumstances, it is not obligatory for the market regulator to annul the trades unilaterally at the behest of the Petitioners, adversely affecting the other traders who are unrepresented. This Court is unable to countenance a situation of granting reliefs/prayers as sought for in the Petition in-absentia of the affected counter-parties, which would be unfair, inequitable and unjust.

204. Before parting, it may be observed that these are instances where sophisticated traders, particularly in the derivatives market, hedge their bets knowingly and consciously. In such situations, they may adopt a particular strategy with the legitimate expectation of making extraordinary commercial gains. In this slugfest, there may be situations where traders end up incurring

unexpected losses. These are purely commercial matters and decisions taken in the interest of maximizing profits. We see no larger public interest in the present case which may have otherwise warranted interference. As a writ Court, we do not find it just, proper, and/or expedient to come to rescue of such traders or groups of traders who have approached this Court, when the market situation turned sour, to their financial detriment.

205. In our considered view, this is case where the Petitioners have failed to satisfy the Court's conscience that justice lies on their side, being a *sine qua non* in the entertainability of a writ petition.

206. For all of the above reasons, I agree with the judgment authored by my learned brother to the effect that the Writ Petition deserves to be rejected.

207. No order as to costs.

[ADVAIT M. SETHNA, J.] [R.I. CHAGLA, J.]