

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**NOTICE OF MOTION NO. 721 OF 2016**  
**WITH**  
**NOTICE OF MOTION NO. 718 OF 2016**  
**WITH**  
**NOTICE OF MOTION NO. 703 OF 2016**  
**WITH**  
**NOTICE OF MOTION NO. 728 OF 2016**  
**WITH**  
**NOTICE OF MOTION NO. 682 OF 2016**  
**WITH**  
**NOTICE OF MOTION NO. 680 OF 2016**  
**IN**  
**COMMERCIAL SUIT NO. 31 OF 2015**

Multi Commodity Exchange of India Ltd. ...Plaintiff

Versus

MPPL Enterprises Pvt Ltd & Ors. ...Defendants

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Mr. Om Prakash Jha a/w Mr.Sumit Yadav i/by Law Point for Plaintiff.

Mr. Chaitanya Nikte a/w Ms. Esha Malik a/w Mr. Shubhankar Kulkarni i/by Mr. Prajit Sahane for Defendant Nos. 1 and 2.

Mr. Mohammed Junaid Qureshi i/b Mr. Rahul G. Talreja for Defendant No.3. Mr. Suraj Iyer with Ms. Gauri Joshi i/b Ganesh & Co. for Defendant No.4 and for the Applicant in NM/718/2016.

Mr. Kunal Mehta a/w Farheen Mustafa i/b Jayesh Mistry for Defendant No.5. Mr. Rajiv Naik with Mr. Anup Jain i/b M/s. Expletus Legal for Defendant No.6. Adv. Farheen Mustafa i/b Jayesh Mistry for Defendant No.7.

Mr. Vinay J. Bhanushali, with Mr. Abhiraj Rao, Mr. Sanmit Vaze for Defendant No.8 and Applicant in NMS/680/2016.

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**CORAM : ARIF S. DOCTOR, J.**  
**RESERVED ON : 29<sup>th</sup> JANUARY 2026**  
**PRONOUNCED ON : 5<sup>th</sup> FEBRUARY 2026**

**P.C.**

1. The captioned Notices of Motion have been filed by Defendant Nos. 3 to 8 for rejection of the Plaint under the provisions of Order VII Rule 11 and Order I Rule 10, read with Section 115 of the Civil Procedure Code, 1908 (“CPC”), on the basis that the Plaint fails to disclose any cause of action against each of the said Defendants.
2. Since the issue which arises for consideration in all the captioned Notices of Motion is identical, by consent of counsel, submissions were advanced

in Notice of Motion No. 703 of 2016 and adopted by the Learned Counsel in all the other Notices of Motion.

3. Mr. Mehta, Learned Counsel appearing on behalf of the Applicant, i.e., Defendant No. 5 to the captioned Suit, at the outset submitted that the present Notice of Motion has been filed by Defendant No. 5 since, on a plain and meaningful reading of the Complaint, the same plainly failed to disclose any cause of action whatsoever against Defendant No. 5.
4. He then invited my attention to the cause title of the Complaint and pointed out that both Defendant Nos. 1 and 2 were corporate entities, Defendant Nos. 3 to 8 were described as directors of Defendant No. 2 and that Defendant No. 5 was merely described as a “Nominee Director”. Mr. Mehta submitted that Defendant No. 5 was nominated on the Board of Defendant No. 2 by Infrastructure Leasing & Financial Services Limited (“IL&FS”) and had resigned from IL&FS in or about February 2015, much prior to the filing of the Suit.

5. Mr. Mehta then submitted that, apart from the bare description of Defendant No. 5 as a “nominee director” in the cause title of the Plaintiff, there was not a single averment anywhere in the Plaintiff disclosing any cause of action against Defendant No. 5 or explaining the basis for his impleadment. He pointed out that all allegations in the Plaintiff were directed solely against Defendant Nos. 1 and 2, and that the Plaintiff was completely silent as to any role, involvement, or participation of Defendant No. 5 in the alleged transaction or the alleged wrongdoing.
6. Mr. Mehta then took me through the Plaintiff and pointed out that paragraph 4 merely sets out the corporate relationship between Defendant Nos 1 and 2 and IL&FS. Paragraphs 5(D) to 5(I) of the Plaintiff set out the Plaintiff’s grievance, which, at its highest, is that the erstwhile Board of the Plaintiff engaged Defendant Nos. 1 and 2 to advise on the sale of the Plaintiff’s stake in MCX-SX, that such engagement was allegedly unauthorised, and that it resulted in the payment of fees aggregating to approximately ₹19.50

crores. He reiterated that even within these averments, there is not a single allegation attributing any act, role, or wrongdoing to Defendant No. 5.

7. He submitted that the letters dated 10<sup>th</sup> August 2009 relied upon by the Plaintiff clearly demonstrate that contractual privity existed only between the Plaintiff and Defendant Nos. 1 and 2, both of whom are corporate entities, and that Defendant No. 5 was not a signatory to these letters.
8. Mr. Mehta further submitted that the emails relied upon in paragraph 5(E) of the Plaintiff also do not support the allegation of a “predetermined understanding”, and, in any event, the said Defendants are neither referred to nor a party to any of those emails. Similarly, the Tripartite Share Purchase Agreement referred to in paragraph 5(F) was entered into between the Plaintiff, MCX-SX, and IL&FS, and the said Defendants are not party to that agreement.
9. He then reiterated that the gravamen of the Plaintiff’s case, as gathered from paragraphs 5(G) to 5(I), is that the Plaintiff’s erstwhile management, allegedly in connivance with Defendant Nos. 1 and 2, caused loss to the

Plaintiff by engaging them unnecessarily and paying fees. Mr. Mehta submitted that even if these allegations are assumed to be correct, they do not disclose any cause of action against Defendant No. 5.

10. Mr. Mehta emphasised that the Plaintiff proceeds against Defendant No. 5 only by using the generic expression “the Defendants”, without specifying the averments attributing any act, role, or benefit to the said Defendants independently. He pointed out that allegations of fraud, collusion, and conspiracy are made in a sweeping manner, without particulars, and without disclosing how Defendant No. 5 or for that matter, Defendant Nos. 3 to 8 were in any manner involved in the alleged wrongdoing. He submitted that such pleadings clearly fell short of the requirements of Order VI Rule 4 CPC, as held by the Supreme Court in *Electrosteel Castings Ltd. v. UV Asset Reconstruction Co. Ltd.*<sup>1</sup>.

11. Mr. Mehta submitted that the Plaintiff completely ignores the fundamental principle of separate corporate personality. He submitted that a civil claim

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<sup>1</sup> (2022) 2 SCC 573

against a company does not, in law, translate into a cause of action against its directors. There is no pleading that the said Defendants personally benefited from the alleged transaction, nor any case pleaded for piercing the corporate veil.

12. He submitted that it is now settled law that mere designation as a director, or even participation in board decisions, does not render a director personally liable for contractual obligations of the company. In support, he relied upon a judgment of this Court in *ACG PAM Pharma Technologies Pvt. Ltd. v. Dr. Datsons Labs Ltd. & Ors.*<sup>2</sup>, where the Plaintiff was rejected against a director impleaded solely in that capacity. Mr. Mehta also placed reliance upon the judgment of the Delhi High Court in *Space Enterprises v. Srinivas Enterprises Ltd.*<sup>3</sup>, which he submitted authoritatively holds that in the absence of contractual privity or statutory liability, no cause of action lies against a director.

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<sup>2</sup> [Bombay High Court] Order dated 8<sup>th</sup> January 2018 in NM No. 244 of 2016 in Com. Sum. Suit No. 256 of 2014

<sup>3</sup> (1998) 45 DRJ

13. Mr. Mehta further submitted that the Plaintiff's attempt to improve its case in the Affidavit in Reply to the present Notice of Motion was also impermissible and that it was well settled that when considering an application under Order VII Rule 11, only the Plaintiff can be looked at. In any event, he submitted that even the Reply does not contain any specific averment or particulars qua Defendant No. 5.

14. Mr. Mehta then also placed reliance upon the decision of a Division Bench of this Court in *Sheela Ram Vidhani & Anr. v. M/s. SK Trading Company & Ors.*<sup>4</sup> to point out that a Plaintiff can be rejected as against some Defendants while surviving against others, and there is no legal impediment to such partial rejection.

15. In these circumstances, Mr. Mehta submitted that the Plaintiff, on a plain reading, discloses no cause of action whatsoever against the said Defendants, and this Hon'ble Court ought to exercise jurisdiction under Order VII Rule 11 CPC and reject the Plaintiff as against the said Defendants.

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<sup>4</sup> 2021 SCC OnLine Bom 864

16. Mr. Jha, learned counsel appearing on behalf of the Plaintiff fairly submitted that the Complaint did not contain any specific averments against the Defendant Nos. 3 to 8.

17. He however, to justify the impleadment of Defendant Nos. 3 to 8 he invited my attention to paragraph 9 of the Affidavit in Reply filed in Notice of Motion No. 721 of 2016, which he submitted had been adopted as common in all the captioned Notices of Motion and submitted that the same contained the justification for impleading Defendant Nos. 3 to 8 as party Defendants to the present Suit. It is thus useful to extract paragraph 9 of the Affidavit in Reply, which reads thus:

*“9. Further, as averred in the complaint, IL&FS filed Suit No. 295 of 2014 against MCX-SX and Multi Commodity Exchange of India Ltd. (Plaintiff herein) before the Hon’ble Bombay High Court wherein IL&FS stated that:*

*‘5. Prior to 20th August 2009, the Plaintiff held approximately 5% of the equity share capital of Defendant No.2. Pursuant to negotiations by and between the Plaintiff and the MCX Group, it was agreed that: (i) the Plaintiff would exit Defendant No.2, and its investment would be sold*

*and transferred to another financial institution viz. IFCI Ltd.; (ii) a part of the proceeds realised by the Plaintiff from the foregoing transaction would be used by it to acquire 4,42,00,000 equity shares held by Defendant No.2 in Defendant No.1 (representing 2.46% of its then equity share capital) at the price of Rs.36/- per share; ...”*

**REASONS AND CONCLUSIONS:**

18.I have heard learned counsel for the parties, perused the Plaint along with the documents annexed thereto, and considered the case law relied upon.

Upon a careful consideration of the same, I am satisfied that the Applicants have made out a case for rejection of the Plaint as against Defendant Nos.

3 to 8. My reasons are as follows:

A. It is well settled that while considering an application under Order VII Rule 11 of the CPC, the Court must confine itself strictly to the averments contained in the Plaint and the documents relied upon therein. The test is whether, on a plain and meaningful reading of the

Plaint as a whole, a cause of action is disclosed against the Defendant seeking rejection.

B. In the present case, the only description of Defendant Nos. 3 to 8 is in the cause title where they are merely described as “Nominee Directors” of Defendant No. 2. The Plaintiff is otherwise bereft of a specific averment with regards to any of the said Defendants i.e. Defendant Nos. 3 to 8 and does not set out or attribute to any of these Defendants any specific act, omission, role, or alleged wrongdoing. On the contrary, throughout the Plaintiff they are referred to only by the generic expression “the Defendants”, without any individualised pleadings. Such vague and omnibus averments are wholly insufficient to disclose or sustain a cause of action against Defendant Nos. 3 to 8.

C. In fact, a plain reading of the Plaintiff makes it abundantly clear that the Plaintiff’s grievance is directed entirely against Defendant Nos. 1 and 2 (both corporate entities) and against the Plaintiff’s erstwhile

management. At its highest, the case of the Plaintiff is that Defendant Nos. 1 and 2 were allegedly engaged without authority to advise on the sale of the Plaintiff's stake in MCX-SX and were paid substantial fees for such engagement. It is this allegation which is the gravamen of the Plaintiffs case.

D. It is equally well settled that a company is a separate and distinct legal entity. A civil claim against a company does not, in law, *ipso facto* translate into a cause of action against its directors, unless such liability is specifically pleaded with adequate particulars. As noted above, the Plaintiff is entirely bereft of any such pleadings.

E. It is also settled law that merely being a director of a company, or even participating in board decisions, does not *ipso facto* render a director personally liable for the contractual obligations of the company. In this regard, the reliance placed by the Defendants on the decision of this Court in *ACG PAM Pharma Technologies Pvt. Ltd. v. Dr. Datsons Laboratory & Anr.*, as well as the decision of

the Delhi High Court in *Space Enterprises v. M/s. Srivivasa Enterprises Ltd.*, is well founded. Equally well founded is the Defendants reliance upon the decision of the Hon'ble Supreme Court in *Electrosteel Castings Ltd. v. UV Asset Reconstruction Co. Ltd. & Ors.* which holds that allegations of fraud or collusion must be specifically pleaded with material particulars, which are plainly lacking in the present case.

- F. The sole attempt made by the Plaintiff to justify the impleadment of Defendant Nos. 3 to 8 was by relying upon averments contained in the Affidavit-in-Reply. This is impermissible. It is trite law that a cause of action must be disclosed in the Plaint itself, and a Plaintiff cannot rely upon material outside the Plaint to cure fundamental defects therein.
- G. It is also now well settled, as held by the Division Bench of this Court in *Sheela Ram Vidhani & Anr. v. M/s. S.K. Trading*

***Company & Ors.***, that a Plaint may be rejected as against some Defendants while being maintainable against others.

19. In view of the aforesaid discussion, the captioned Notices of Motion are allowed in terms of prayer clauses '(a)'.

20. In light of the above, Notice of Motion No. 391 of 2017 will not survive as the same has become infructuous. Hence, the said Notice of Motion is disposed of.

**[ARIF S. DOCTOR, J.]**