

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**MA 180/2018, 182/2018, 183/2018, 184/2018 217/2018,
218/2018 and 219/2018 C.P. NO.277/241-
242/NCLT/MB/MAH/2018**

**Under Section 221, 222, 241, 242& 246 of the Companies
Act, 2013**

Mr. Suresh Senapathy (R51) (MA 180/2018) .. Applicant
(Represented by Mr. Navroz Seervai)

Mr. Sanjay Rishi (R53) (MA 184/2018) ... Applicant
(Represented by Mr. Navroz Seervai)

Mr. Gautham Mukkavilli (R52) (MA 182/2018) ... Applicant
(Represented by Mr. Iqbal Chaggla)

Mr. Gopal Krissnhan Nair (R44) (MA 183/2018) .. Applicant
(Represented by Mr. Durgaprasad Poojari)

Mr. Sujal Anil Shah (R43) (MA 217/2018) ... Applicant
(Represented by Mr. Abhay Jadeja)

Mrs. Nazura Yash Ajaney (R38) (MA 218/2018) ... Applicant
(Represented by Mr. Dinesh Pednekar)

Mr. Anil Umesh Haldipur (R35) (MA 219/2018) ... Applicant
(Represented by Mr. Dinesh Pednekar)

In the matter of

Union of India,
Ministry of Corporate Affairs ... Petitioner

Vs.

Gitanjali Gems Ltd....	R1
Gili India Ltd.	R2
Nakshatra Brands Ltd.	R3
M/s Solar Exports (Partnership Firm)	R4
M/s Stellar Diamond (Partnership Firm)	R5
M/s Diamond R US (Partnership Firm)	R6
Firestar Diamond International Pvt. Ltd.	R7
Firestar International Ltd.	R8
Firestar Diamond Pvt. Ltd.	R9
Firestar Diamond FZE	R10
Mr. Nirav Deepak Modi (a.k.a. Nirav Modi)-	R11
Mr. Nishal Modi (a.k.a. Neeshal Modi)-	R12
Mrs. Ami Nirav Modi	R13
Mr. MehulChinubhaiChoksi	R14
Mr. Gokulnath Shetty	R15

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Mr. Manoj Hanumant Kharat	-	R16
Mr. Deepak Keshavlal Modi		R17
Ms. Nehal Deepak Modi	-	R18
Mr. Rohin Nirav Modi	-	R19
Ms. Ananya Nirav Modi	-	R20
Ms. Apasha Nirav Modi	-	R21
NDM Enterprises Pvt. Ltd.	-	R22
ANM Enterprises Pvt. Ltd.	-	R23
Mr. Hemant Bhatt	-	R24
Ms. Kavita Mankikar		R25
Mr. Ramesh Madhavdas Assar		R26
Mr. Ketan Chandrakant Solanki		R27
Mr. Amrish Saralal Masalia	-	R28
Mr. Dhanesh Vrajlal Sheth	-	R29
Mr. Manoj Kumar Bavakad	-	R30
Mr. Aniyath Shivraman Nair	-	R31
Ms. Lata Kishor Saraiya	-	R32
Ms. Jyoti Bharat Vora	-	R33
Mr. Dinesh Gopaldas Bhatia	-	R34
Mr. Anil Umesh Haldipur	-	R35
Mr. Sudhirbhai Ambalal Mehta	-	R36
Ms. Priti Mehul Choksi	-	R37
Mrs. Nazura Yash Ajaney	-	R38
Mr. Saurabh Chandrashekhar Deshpande		R39
Mr. Mihir Bhaskar Joshi	-	R40
Mr. Krishnan Sangameshwaran	-	R41
Mr. Vinod Kumar Anand Juneja	-	R42
Mr. Sujal Anil Shah	-	R43
Mr. Gopal Krisshna Karunakaran Nair		R44
Mr. Swaminathan Sundararajan Mittur		R45
Mr. Nitin Ram Potdar	-	R46
Mr. Sunil Varma	-	R47
Mr. Chandrakant Kanu Karkare	-	R48
Ms. Pankhuri Abhijit Warange	-	R49
Mr. Haresh Vrajlal Shah	-	R50
Mr. Suresh Senapaty	-	R51
Mr. Gautham Mukkavilli	-	R52
Mr. Sanjay Rishi	-	R53
Ms. Angelina Nguyen	-	R54
Mr. Ravi Shankar Gupta	-	R55
Mr. Suresh Kumar Jain	-	R56
Mr. Saket Vipin Shah	-	R57
Mr. Bankim Madhu Mehta	-	R58
Ms. Purvi Mayank Mehta	-	R59
Mr. Himanshu Pravinchandra Trivedi		R60
Mr. Youri Donald Hermans	-	R61
Mr. Mihir Bhanshali Rashmikant	-	R62
Mr. Shyamsunder Vashumal Wadhwa		R63
Mr. Suresh Kumar Bhutani	-	R64

Order delivered on 02.04.2018

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

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For the Petitioner : Shri Sanjay Shorey, Shri A. K. Sethi, Shri Meghav Gupta, Shri M. V. Chakranarayan, Shri Vinod Sharma, Shri S. Ramakantha, Shri R. S. Meena, Shri P. Naikwadi, Shri A. Patwegan, Ms. Trupti Sharma, Shri Noor Shergill, Shri Sanjay Rai.

For the Applicants/Respondents: Mr. Iqbal Chaggla, Naval Agarwal, Ashish Prasad, Jehan Mehta, Shailesh Poria, Dinesh Pednekar, Chanakya Keswani, i/e. Economic Laws Practice (For R52)

Mr. Navroz Seervai, Senior Counsel a/w Mr. Dheeraj Nair and Mr. Yohaann Linathwalla, Advocates, i/e J. Sagar Associates (For R51 and R53)

Mr. Atul Rajadhgakrha, Senior Counsel, a/w Mr. Nil Patel, Mr. Anupam Dighe, i/b. India Law Alliance (R46)

Mr. Sandeep Parikh, i/b M/s. Pandya & Co. (R39, R40 and R49)

Mr. Durgaprasad Poojari, (R44)

Mr. Abhay Jadeja i/b Crawford Bayley (R43)

Mr. Dinesh Pednekar, i/e/ Economic Laws Practice (R35 and R38)

Mr. Nikunj Mehta a/w Ms. Kavisha Shah and Mr. Amar Parekh, i/b India Law Alliance (R41)

Ms. Jyoti Singh, a/w Kersi Dastoor i/b Phoenix Legal for ICICI Bank

T. J. Pandian, Advocate (R16)

Mr. Rahul Sarda a/w Pankaj Uttarodhi (R30)

Mr. Vivek Memon a/w Ativ Patel i/b AVP Partners (R45)

Mr. Sanjay Abbol a/w Rahul Agarwal (R29, R31, R33, R36 and R48)

Mr. Vijay Agarwal (R24, R25, R27, R50, R57, R60, R63 and R64)

Jennife Alichael a/w Som Sinha, i/b Son Sinha & Associates (R15)

Per B. S. V. Prakash Kumar, Member (Judicial)

COMMON ORDER

Order Pronounced on 02.04.2018

It is a common order on Miscellaneous Applications filed by various Respondents seeking vacation of restraint order passed by this Bench on 23.02.2018, against *these Respondents not to remove, transfer or dispose funds, assets and properties of the entities and individuals until further orders* on the ground that these respective Respondents, who filed these applications,

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have not indulged in the fraud said to have taken place in respect to Gitanjali Group Companies.

2. Their common grievance is that they have been put to such a hardship that they could not even withdraw money from their Bank Accounts and deal with their assets for the fraud said to have been played by somebody else. Their common submission is that though no allegation has been made against them and no incriminating material being placed before this Bench showing these Respondents indulged or participated in anything that assisted or aided the culprits indulged in the fraud, henceforth sought for vacation of the order dated 23.02.2018 against the Applicants/Respondents.

3. Since the grievance of all these Respondents being more or less common, instead of passing separate orders repeating same discussion in each of the applications, we hereby pass common order dealing with pleadings of each of the Applicants/Respondents separately.

4. For the Counsel appeared in various applications having adopted the arguments made by Sr. Counsel Mr. Iqbal Chhagla in MA 182/2018, we first deal with MA 182/2018, thereafter deal with remaining applications.

5. One Mr. Gautam Mukkavilli, who is shown as R52, filed this **MA 182/2018** stating that he is an erstwhile Non Executive Independent Director of M/s. Firestar International Ltd. (Firestar) (R8), and being appointed as Non-Executive Independent Director on 17.10.2016, he attended the Board meetings and related committee meetings that took place in the capacity of Non-Executive Director, for which remuneration has been paid in terms of his appointment letter, except this, he says he never received any amounts or benefits from any other entities, firms or individuals, associated with Mr. Nirav Modi (R11). He says that he was not aware of day-to-day affairs and management of Firestar, nor was he associated in any manner with any of the concerns, Trusts, LLPs linked with Mr. Nirav Modi, despite being so, this restraint order was passed against him.

6. This applicant submits that the present proceedings against him are grossly misconceived; because this order was taken out without putting it to this Bench that he was a Non-Executive Independent Director and had no role to play in the affairs and management of Firestar. He has learnt that alleged fraudt has primarily been committed by three firms, namely. M/s. Diamond RUS (R6), M/s. Solar Exports (R4) and M/s. Stellar Diamond (R5) in conspiracy

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with Mr. Nirav Modi (R11), Mr. Nishal Modi (R12), Mrs. Ami Nirav Modi (R13) and Mr. Mehul Choksi (R14).

7. He says he has no connection with any of these persons except continuing as an Independent Director in Firestar until before his resignation, even while continuing as Independent Director, he did not come across any suspicious transactions warranting his interference, moreover, his appointment letter categorically stated that his commitment would be limited to 4-5 days a quarter and he had no authority to operate bank accounts. He says, he has come to know of this fraud like any other person only after the news broke on 5.2.2018. It is pertinent to note that no allegation has been leveled against this Applicant (R52) in the present petition.

8. The applicant says that he graduated from St. Stephen College, New Delhi in the year 1979 and thereafter did two years' management course from IIM, Ahmedabad. Ever since, he worked for about 30 years in various multinational companies, inter alia holding senior positions in Pepsico in India and Overseas from the year 1991 up to 2016, he retired from Pepsico as Vice President-Strategy and Business Transformation for Pepsico India, Middle East and North Africa. All through his life, he is free from any blemish. He was in fact informed through a friend in the year 2016 that Nirav Modi scouting for persons to serve as Non-Executive Independent Directors in his companies, that is how he was introduced to Nirav Modi vide an email dated 21.9.2016. An email exchange took place, until such time, he did not have any kind of contact with Mr. Nirav Modi. When this issue came out, Mr. Nirav Modi spoke to him on 3.2.2018, assuring that CBI investigation was not against Firestar, he says however he would resolve the matter with his bankers but finally this issue has come out reporting that Mr. Nirav Modi himself was involved in the fraud. As soon as this information came to him, he tendered his resignation on 7.2.2018. Subsequent to this, i.e. Union of India filed this case including this applicant as R52 on 23.2.2018. Above this, PNB has filed another complaint dated 4.3.2018 leading to the registration of FIR wherein he has not been made as accused nor there is any averment to the effect that he was complicit in the fraud.

9. The Counsel submits that under Section 149 (12) of Companies Act, 2013, Non-Executive Independent Director is not liable in respect of actions,

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omissions or commission by a company unless his involvement exists in such action or omission, it can only be initiated where there is a prima facie proof that such acts occurred by his knowledge, he says, as against this legal proposition, no averment is present in the Company Petition alleging that this applicant is involved in the fraud said to have committed by the Group companies. The Counsel has also referred to a circular dated 29.7.2011 under Companies Act, 1956 to say that before making an allegation against the Independent Directors, it is a mandate to examine as to whether violation has occurred with his knowledge attributable through the process, with his consent or connivance and whether he acted diligently or not. Consistent with the above proposition, RBI through its Circular dated 1.7.2015 (Master Circular on Willful defaulters) has clearly stated that normally a Non-Whole Time Director should not be considered as willful defaulter unless it is conclusively established that fraud has taken place in connivance with the Independent Director. The Counsel says inclusion of the name of the applicant in the proceedings amounts to abuse of process of law and travesty of justice therefore, respectfully submitted that restraint order shall be vacated.

10. The Counsel further says, the applicant is a retired individual meeting his day-to-day expenditure from his investment and hard earned savings earned over his professional career of more than 25 years, because of this order, now this applicant is not in a position to liquidate his investments for his day to day expenses also. He says that he has dependent wife and two children pursuing their professional careers abroad and he needs to pay taxes in view of the contractual commitment entered into, but because of this order, he is unable to meet with the eventualities coming upon him. He wanted to sell his property at Delhi so as to shift his family to Bangalore, that also, could not happen because he is restrained from selling his Delhi asset in view of shifting of his residence from Delhi to Bangalore. Saying so, he has sought for vacation of the order dated 23.2.2018 to the extent it applies to the applicant and also to delete his name from the parties in the present Company petition.

11. When the Applicant Counsel has made his argument, the officer appearing on behalf of Union of India has stated that investigation is in progress therefore they need some time to respond to the submissions of the Applicant Counsel. When this Bench has put it to the said officer as to whether any material has been gathered to say that this applicant is involved in the

fraud taken place, no answer has come from the said officer except arguing on legal propositions such as doctrine of preponderance of evidence against proof beyond reasonable doubt and its application and showing some citations not connected to the present application filed by this applicant. The said officer has not shown any incriminating material against this Applicant save and except saying that he is an Independent Director of Firestar at the time when fraud took place, therefore restraint order should not be vacated unless investigation is complete.

12. One thing is pertinent to note that this ex-parte order was given on 23.2.2018, by now already one month is over, when such an ex-parte restraint order is in force against somebody upon whom no specific allegation has been made, it is the bounden duty of any Court to vacate such order not supported by material.

13. On verification of the Company Petition and the documents thereof, no incriminating material has been found against R52 except stating that he is also one of the Directors/Key Managerial persons of R8 during the period when financial fraud was committed.

14. It need not be reiterated it is an order passed under Section 221 of Companies Act, 2013 as an aid to investigation. Though Companies Act has not said anywhere that it is a penal statute, by closely reading this enactment, it can be perceivable that it is a Code onto itself, because penal provisions have also been included in this enactment supported by an inbuilt procedure which is present under Chapter XIV of this Companies Act. As to investigation in the chapter, under sections 212-220 of the Companies Act, 2013 a procedure has been laid out almost analogous to the procedure to conduct investigation under Criminal Procedure Code, and to file final report u/s 212(15) of the Companies Act, 2013 as investigating officer (police) files charge sheet against the accused u/s 173 of Criminal Procedure Code.

15. This Bench is conscious of the fact that it is not conferred with any magisterial powers as conferred under CrPC, but when Companies Act has conferred jurisdiction upon this Bench to pass such an order which can be passed by Criminal Court while investigation is in progress, this Bench is bound

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to pass an order as directed by the section provided facts constitute elements of the section.

16. It appears that CBI already examined this applicant but so far no proceeding has been initiated against him and not given any further directions to initiate proceedings against this applicant. The idea behind passing restraint order is, the culprits involved in the fraud do not run away with the booty drained off from Punjab National Bank.

17. On hearing submissions on Section 221 of the Companies Act, 2013, it is perceived that this order could be passed when this Bench **has reasonable ground to believe** that removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner prejudicial to the interest of the company or its shareholders or creditors or public interest. In view of the same, this Bench, having felt that there is reasonable ground to commit such acts, ordered restraining such removal or transfer etc.

18. For passing this order under this Section, it need not be looked into as to whether enough material is placed before this Bench at the time of passing this order, because at the time of investigation, the investigating agency will proceed with investigation with the leads come to it, in a position like that, it need not be seen whether it is governed by civil jurisprudence or criminal jurisprudence. I can rather say that elements of the section are akin to the procedure laid under CrPC. For this section is clear to pass an order, if this Bench is of the view that there is a reasonable ground to believe the assets are likely to be dissipated if immediate action is not taken, it can pass such an order.

19. Since it is a web of companies involved in committing fraud against public sector bank causing colossal loss to the public institution, there is every chance to believe that the persons involved in those companies can be at fault in respect to this fraud. One fact we should not forget is, that all the companies referred in the petition, prima facie we are of the view, are handwork of either Nirav Modi or Mehul Choksi. In this complexity, it is highly difficult to sniff out which company involved, which company not involved, who acted to which company. In a factual matrix like this, it is not possible to seek separate relief against each of the companies, therefore common relief has been asked

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against all the companies. One need not be hyper technical in dealing with cases as long as orders do not waive or alter the substantive rights of the parties. This order dated 23.02.2018 is only a temporary preventive relief to complete investigation effectively and expeditiously, if these kinds of orders are not passed, it will be like operation success, patient died.

20. Whenever any action or omission takes place in a company, though company is an independent entity equivalent to any other natural person, it will not get any momentum on its own for short of life in it, impetus will come into it only when it is driven by a natural person, so to the company, driver is a Board constituted with natural persons. Therefore, whenever company is involved in fraud, it will always point at the persons managing the affairs of the company. In this scenario, unless the persons (Directors and other key Managerial Personnel) involved are curtailed from dealing with not only the assets of the company but also the assets lying with the persons involved in committing fraud, it is next to impossible to claw back the proceeds of the fraud from the persons running the affairs of the companies. I need not say that fraud vitiates everything; therefore, to get off the hook, such persons cannot veil the situation with the doctrine of separate entity, because in a situation like this, hands of law are long enough to pierce the corporate veil and catch the culprits. Here money being secreted out by colluding with some Bank officials, Competent Authority is conferred with powers to search and seize them; this section is nothing but to aid the same.

21. In view of this reason, when action against company/companies for getting back the money fraudulently taken out is permissible, if such money is routed to the persons managing through these companies, then it is obvious to construe that such companies have come into existence to be used as conduits to gulp down everything that comes to the company. When this being the ground situation, can it be said that relief under section 221 is extendable only against the companies, not against the culprits hidden under it? That money is not in the books of at least companies in India. Linchpins in this fraud are not in India. Everybody knows it goes without saying that when granting consequential relief is imperative to attain the purpose of main relief, courts can reach out to pass such reliefs as well.

22. This relief u/s 221 cannot be conceived as relief like in civil case asking for filing reply, rejoinder – the reason is, it is not on adjudication of rights of the parties, it is an aid to action under criminal law, because as I said earlier, this procedure is akin to the procedure under CrPC, investigating officer of SFIO on the direction of central government will file its report before special court as police officer files charge sheet (final report) u/s 173 of CrPC to prosecute the accused as mandated u/s 212 of Companies Act 2013, moreover it is a temporary injunction not culminating into a permanent order, therefore even for a moment, this order can't be seen as akin to an order in civil nature, when that being the intendment of the statute, for granting an aid to investigation, I don't believe it is imperative to hear such people who indulged in fraud or suspected to be involved in committing fraud or presumed to be participated in fraud before passing orders. This power being conferred upon this Bench, it can't be fought out that since this Bench has all trappings of civil court, unless all the procedure laid under civil law is complied with, no order could be passed. Law is law howsoever hard it is, which one is civil court, which one is criminal court, what order could be passed, what order could not be passed is in the domain of sovereignty of this country, not with the court dealing with a particular issue. For the reasons mentioned above, it is evident that this relief is an aid to investigation, so whatever principles applicable to conducting investigation under CrPC are equally applicable to the extent mentioned in this Act. For this, we have to read section 221 along with sections 212-220 of the Act.

23. Of course, the Petitioner filed this case under Sections 241-242, but this Bench having noticed that this petitioner is short of information and material for constituting prima facie case under Section 241 and 242, this Bench has passed impugned restraint order u/s 221 of Companies Act, 2013.

24. But at the same time, it is the duty of this Court to see that innocent people are not burdened by this restraint order therefore as and when any innocent comes before this Bench saying that he has no involvement in the fraud spiraling from day to day, this Bench has to diligently respond to the reliefs sought by such people. Of course, it is true that this Bench cannot decide who is innocent and who is culprit, but to the extent order passed by this Bench, it should not become helpless to vacate that order if no material is found against whom this order is in force. In view of the same, for there

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being neither an averment nor any incriminating material placed against this applicant, this applicant deserves vacation of the restraint order in force against him, accordingly this MA is disposed of vacating the restraint order dated 23.02.2018 against this applicant.

25. As to MA 180/2018, one Suresh Senapathy (R51), filed this Miscellaneous Application with the same reliefs mentioned in the above MA, I believe I don't need to repeat the discussion and observations made in the above MA but to the extent of knowing this applicant involvement or no involvement of him in the fraud played out, it is important to examine the facts before applying the reasons given in MA 182/2017.

26. This applicant is also an Independent Director of Firestar (R8) and Firestar Diamond (R9). He was appointed as Independent Director in July, 2015 and resigned on 5.2.2018 from both the companies. He says he has over 37 years of professional experience and has served well reputed multinational companies including Wipro in senior position in India. He is a Chartered Accountant with distinguished track record, Member of Board in Wipro till his superannuation in March, 2015. He is also a Member in SEBI's Committee on Disclosure & Accounting standards and national Advisory Committee on Accounting Standard set up by Government of India, currently this applicant is Chairman of Audit Committee as well as a Director of Wipro Enterprise Pvt Ltd. This gentleman also having come to know fraud happened in PNB, he tendered his resignation to position of Independent Director in R8 and R9 on 5.2.2018. He also submits like other persons the order dated 23.2.2018 has caused tremendous distress to this applicant and he is not permitted to operate his accounts and deal with his properties because of this order therefore this applicant prays this Bench first to vacate the order dated 23.2.2018 and then to delete his name from the array of the Respondents.

27. As to this Respondent also, the Company has not stated anything against him except including him as R-51 mentioning that he is also the Director/key managerial person of R8 during the period when the financial fraud was committed. This simple averment of saying that this applicant working as Director in one of the companies which were made as Respondents in this case will not be good enough to say that this applicant is also involved in the fraud played against Punjab National Bank. For this applicant is also an

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Independent Director like in the case above and there being no averment or incriminating material against this Respondent except continuing as Independent Director until before 5.2.2018. This case being similar to Case in, MA 182/2018, applying the same discussion and observations to this application, the restraint order dated 23.2.2018 is hereby vacated against this Respondent as well.

28. As to MA 183/2018, it is an MA filed by a person called Gopal Krishnan Nair (R44), who is a qualified Chartered Accountant and former Executive Director in R1 and a Director of Respondent during the period 1999 to 2009, thereafter on 13.11.2009/23.12.2009 resigned as Executive Director of Gitanjali Gems Ltd (R1). Ever since, he has never worked as director of any of the Companies which are Respondents before this Bench. He says that he ceased to have any association directly or indirectly with R1 or other group companies with effect from 13.11.2009/23.12.2009 because he tendered his resignation from the board with effect from 13.11.2009. In support of this statement, this applicant filed Form-32 in respect to resigning from Gitanjali Gems Ltd and its Group companies.

29. On verification of this Company Petition, this Bench has noticed that this applicant has been shown as one of the Directors/key managerial person of R2, but fact of the matter is, he resigned from the directorship of all these companies in the year 2009 itself, ever since it appears he is nowhere connected to Gitanjali Group companies, whereby the order against this erstwhile director without any incriminating material against him not sustainable henceforth, applying the discussion in MA 182/2018, the restraint order dated 23.2.2018 against this Respondent is hereby vacated.

30. As to MA 184/2018, it is an MA filed by a person called Sanjay Rishi (R53), represented by Senior Counsel Mr. Seervai, submits that he continued as Independent Director of R8 from 6.12.2016 till 7.2.2018. During this period, he says, he did not come across suspicious transactions warranting his interference. As soon as the news of fraud has come out on 5.2.2018, he immediately tendered his resignation on 7.2.2018. He says that he has no association whatsoever with any of Nirav Modi or Choksy Companies except to the extent worked as Non-Executive Independent Director for the period mentioned above. During the period of his engagement as Non-Executive

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Independent Director of R8, he attended board and committee meetings for which he received remuneration approved by the Board of Directors from time to time in accordance with the provisions of Companies Act, 2013.

31. As to his personal position, it has been said he has over 36 years' professional experience, served in well reputed multinational companies including American Express Banking Corporation at senior position in India and overseas. He completed MBA in the faculty of Management Studies University in 1981. He was recently appointed to the role of Senior Advisor to the group of American Express Global consumer business services based out in New York. He is also member of Board of Directors of Loyalty Solutions and Research Pvt Ltd under American Express Banking Corporation, NY worked as Independent Director on the board of Cutting Edge Software Pvt Ltd, India's Leading Restaurant booking platform. For him being introduced to this Group highlighting the design and quality of Firestar products and the vision of founders Mr. Modi, R-53 made to an introductory call with Mr. Modi on 29.9.2016 followed by face to face meeting on 12.10.2016. This was the first time, the applicant met Mr. Modi. Since he was said that Modi was interested to create India first luxury Jewellery Brand that would compete with the best in the world and interested to strengthen its Board for such expansion, after being shared with the names of Mr. Suresh Senapathy and Mr. Gautham Mukkavilli as Independent Directors, he agreed for joining as Non-Executive Independent Director. In furtherance of it, he was informed that he was appointed as Independent Director on 6.12.2016. He says that during this assignment, he did not come across any suspicious transaction. He says that he also, like everybody heard the news of the alleged fraud played by Mr. Nirav Modi on 5.2.2018, as soon as such news came out, he tendered his resignation as Independent Director in R8 company on 7.2.2018.

32. On filing this application, as to this person when we looked at the Company petition, nothing has been said except that R53, i.e. the applicant herein is one of the Directors of R8, since the Petitioner has not placed any incriminating material against this Respondent to strengthen the order passed by this Bench on 23.2.2018, by adopting the observations made in MA 182 of 2018, this Bench hereby vacates the restraint order passed against this Respondent.

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33. As to MA 217/2018, it is an MA filed by a person called Mr. Sujal Shah (R43) stating that he was approached in the year 2005 inviting him to work as Independent Director of Gitanjali Gems Ltd (R1) and continued as Independent Director up to 2013. He says he was not in-charge and/or responsible for the conduct of the business and/or affairs of the company at point in time. As the applicant had been desirous of not continuing, in the year 2013, the applicant who was due to retire by rotation did not offer for himself for re-appointment and necessary resolution was passed in AGM on 30.9.2013 and also filed form 32 reflecting cessation of directorship from the year 2013, ever since he has no connection with this company. He says inspite of it, in the Company Petition this applicant has been shown as one of the Director/Key Managerial person of R-1 company during which period financial fraud was committed. His name was not mentioned in the PNB letters or the FIR filed by PNB.

34. This applicant submits that the order dated 23.02.2018 is contrary to law as well as to the facts and material available on record, hence it is arbitrary, unreasonable, unwarranted, baseless, and erroneous. He says that section 221 itself says that it is not applicable against individuals, however this Bench still passed blanket order injuncting individuals from dealing with their assets, hence order to be quashed and set aside. Since this order has been communicated to various banks and authorities, applicants credit card has been blocked causing hardship to his life and privacy because he is required to provide food for his family and discharge various liabilities and expenses. He says he is a Chartered Accountant by profession rendering service to the society and various organisations for the last 27 years. He says for no reason his right to deal with his bank transactions and assets has been put to hardship which is repugnant to the constitutional right of the applicant.

35. As against these averments, on verification of the Company Petition, we have noticed that he has been shown as one of the Directors of R1 but by seeing the material papers filed by this Respondent, it is evident that he left the company on 30.9.2013, for there being no material with this Bench negating the statement and the papers filed by this R43, this Bench hereby vacates the restraint order dated 23.2.2018 passed against R43.

Accordingly, this application is hereby disposed of.



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183/2018, 184/2018 217/2018,
218/2018 and 219/2018, in C.P. NO.277/2018

36. As to **MA 218/2018** filed by Mrs. Nazura Yash Ajaney (R38), she submits that she is a Commerce graduate with 20 years' experience in the field of early childhood education and parent child relationship. As she has worked with Non-Government Organisation called Helix Aids Foundation, her husband is a management consultant providing consultation to the company based in Kolhapur, through some known person, she was invited to join on the Board of R1 to focus on its corporate social responsibility programmes. According to her, she was appointed as Independent Director of R1 on 29.9.2014 thereafter she was appointed as Independent Director in two more companies of this Group, i.e. Nakshatra World Ltd on 15.12.2016 and in R2 on 16.12.2016 with the purpose of focusing on the corporate social responsibility programmes. Thereafter, her name was included in an FIR filed by PNB on 15.2.2018 in respect of the fraud committed. She submits that on seeing in the media she noticed that fraud alleged to have been committed by R14 and some of his concerns, as soon as knowing it, she tendered her resignation to these three companies on 18.2.2018.

37. She submits that this Bench, though individuals are not covered under Section 221 of the Companies Act, 2013, restraint order against the Respondents and the individuals connected to these companies has been passed from dealing with assets of the individuals as well. She says that she has no connection with R14 except while discharging her duties as an Independent Director in those companies. She says that other than the customer sitting fees in respect of attending the meeting of R1 and Nakshatra World, the applicant has not received any benefit whatsoever from R1, Nakshatra World, R14 or any of R14 companies, concerns, associated with or belonging to R14.

38. The argument of the advocate on behalf of this Applicant (R38) is investigation against Independent Director in respect of act of omission or commission by a company can only be initiated where there is at least a prima facie proof that such acts occurred with his knowledge. He also argued referring the circular issued by MCA on 25.3.2011 and also a circular issued by RBI on 1.7.2015 under the caption of "Master Circular on Wilful Defaulters" to say that this kind of action should not be taken against Independent Directors unless prima facie some proof is available to say that the Independent Director is involved in the fraud set to have committed by the

persons mentioned in the Company Petition, in view of the same, this Counsel has sought for vacation of restraint order dated 23.2.2018 against this applicant and also delete her name from the parties of the captioned petition.

39. In support of this Application moved by her for vacation of the restraint order, she filed some correspondence disclosing that she knows the people like Mehul Choksi (R14) since beginning and also by seeing growth chart to hold herself of as a person having expertise in child care propelling the management of these companies to take her as Independent Director does not seem to us all is not well. The main business of these companies appears to be business dealing with diamonds and jewellery which is no way connected to child care, but she says so as to supervise the child care activities, she has been taken as Independent Director in these companies. By seeing her track record and the business of these companies, it appears it is not believable that she has been taken as Independent Director by looking at her expertise in child care. Besides this, an FIR has been filed against this R38 along with others on 13.2.2018 u/s 120 r/w Section 420 IPC and also Sections 13(2) r/w 13(1) (d) of Prevention of Corruption Act. She being shown as an accused and she has already been examined by CBI, if the restraint order is totally lifted against her, it would become an impediment if at all CBI found that any money or part of the money swindled from the Bank has gone to this Respondent.

40. By looking at the application filed by her, prima facie we believe that there was no occasion to make her directly as an Independent Director in a listed company without having any expertise either on financial side or in the business which this company is doing. It is a fact that no material has been supplied by the Petitioner except mentioning her as one of the Respondents on the ground that this Respondent continued as Director in R1 as well as R2. But this cannot become a reason to vacate this order when this Bench believes that there is a prima facie case against her by looking at the application filed by her and by looking at her name showing in the FIR filed by the Bank.

41. In a scenario like this, relying on the discussion made in MA 182/2018, we hereby modify the order dated 23.2.2018 permitting this Respondent to the extent of withdrawing ₹1,00,000 per month from her Bank Accounts as to other assets are concerned it need not be reiterated that she is restrained

from removal, transfer or disposal of funds, assets and properties of the entities and individuals until further orders.

Accordingly, this application is hereby disposed of.

42. As to **MA 219/2018** filed by Mr. Anil Haldipur (R35), he says that he joined as an Independent Director of R1 and R3 and ceased to be Non-Executive Independent Director with effect from 14.2.2.2018. He says that he acquired 40 years' experience in the banking and finance sector for he worked as Assistant General Manager of Canara Bank until he retired from the said bank from 31.10.2011. In the month of September, 2016 through somebody, he was being informed about need of an Independent Director in Gitanjali Group companies. For he was asked to become Independent Director of this Gitanjali Group companies, he consented to become an Independent Director of R3. Accordingly, he was appointed as Independent Director on the board of R3 on 16.12.2016, likewise he became an Independent Director in two more companies i.e. Nakshatra World Ltd and Bezal Jewellery Pvt Ltd.

43. He says his wife is diabetic patient and had undergone a spine surgery on 15.11.2017, since his services were acquired to spare to his wife, he tendered his resignation on 20.12.2017, however, that being neglected to be sent to ROC, he once again sent his resignation letter through company on 14.2.2018. Thereafter, intimated to BSE on 20.2.2018 about his resignation from R1. It does not sound well to believe that he already resigned on 20.12.2017 and mistakenly it was not sent to RoC.

44. In the FIR filed by PNB, he has been shown as accused no.13 in the said FIR. He only resigned from this company a couple of days before this case was filed before this Bench. The Counsel representing this Respondent has reiterated the same argument which was made by other applicants stating that this order should not have been passed against this Respondent for he being an Independent Director of the respective companies. Though this Petition was filed against 64 persons, only 16 persons were shown as accused in the FIR filed by PNB. Out of those 16, this Respondent is one.

45. For this Respondent being suspected to be involved in this fraud, this Bench is of the view that modification of order to the extent that is required

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is be-fitting relief in the light of the discussion made in other applications. Henceforth, the restraint order dated 23.2.2018 is hereby modified permitting this applicant to withdraw ₹2,00,000 per month from his Bank accounts, as to other assets of this Respondent is concerned, the order dated 23.2.2018, except to the extent of exemption given above, will continue as before until further orders. Accordingly, his application is hereby disposed of.

46. It is hereby held that if the Petitioner finds any incriminating material against any of the Respondents against whom this order has been vacated, the Petitioner is at liberty to seek revocation of this order.

47. Accordingly, MA 180/2018, 182/2018, 183/2018, 184/2018, 217/2018, 218/2018 and 219/2018 are hereby disposed of with the directions as mentioned above.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-

B.S.V. PRAKASH KUMAR
Member (Judicial)