IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for Writs/Mandates in the nature of Certiorari, Mandamus and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 411/2023

1. Mr. G.C.S. Ramanayake.
   No. 75, Ward Place,
   Colombo 7.

2. Mrs. K.M. Ramanayake,
   No. 75, Ward Place,
   Colombo 7.

PETITIONERS

Vs.

1. Securities and Exchange Commission of Sri Lanka,
   Level 28 and 29,
   East Tower,
   World Trade Center, Echelon Square,
   Colombo 1.

2. Colombo Stock Exchange,
   Level 04-01, West Block,
   World Trade Center, Echelon Square,
   Colombo 1.

3. Rajeeva Bandaranayake,
   Chief Executive Officer,
   Colombo Stock Exchange, Level 04-01,
   West Block, World Trade Center,
   Echelon Square,
   Colombo 1.

4. LOLC Securities Limited,
   No. 481, T.B. Jayah Mawatha,
   Colombo 10.

5. Dushan Rajaguru,
   Associate Manager - Investment Advisory,
   LOLC Securities Limited, No. 481,
   T.B. Jayah Mawatha,
   Colombo 10.

6. Lakmal Rodrigo,
   Manager Finance & Compliance LOLC
   Securities Limited, No. 481,
   T. B. Jayah Mawatha,
   Colombo 10.

7. The Central Depository System (PVT)
   Limited, Ground Floor, M&M Center
   341/5.
   Kotte Road,
   Rajagiriya.

8. Sriyan Gurusinghe, Chief Executive
   Officer, LOLC Securities Limited,
   No. 481, T.B. Jayah Mawatha,
   Colombo 10.

RESPONDENTS

Before: **N. Bandula Karunarathna J. P/CA**

&

M. Ahsan R. Marikar J.

Counsel: Shaheeda Barrie, AAL with Swasha Fernando, AAL instructed by Sanjeewa Kaluarachchi, AAL for the Petitioners.

Riad Ameen, AAL with Rushitha Rodrigo, AAL instructed by Wasana Wickrama Pathirana, AAL for 4th, 5th and 6th Respondents.

Written Submissions: By the Petitioners – 17.08.2023

By the Respondent – 24.08.2023

Supported on : 03.08.2023

Decided on : **13.11.2023.**

N. Bandula Karunarathna J. P/CA

The 1st Petitioner is an investor and a Joint Account Holder of the CDS Account bearing No. LSE-610470017-XN/01. The 2nd Petitioner is the wife of the 1st Petitioner and a joint account holder of the aforesaid CDS Account bearing No. LSE-610470017-XN/01.

The 01st Respondent is the Securities and Exchange Commission of Sri Lanka (hereinafter referred to as the "SEC"). The 2nd Respondent is the Colombo Stock Exchange (hereinafter referred to as the "CSE"), licensed by the 1st Respondent. The Colombo Stock Exchange is a Company Limited by Guarantee, which took over the Stock Market from the Colombo Share Brokers Association. Its entire membership consists of institutions which are licensed to operate as stockbroker's. Thus, it is not an entity wholly independent of Stock Brokers and Broker Firms.

The 3rd Respondent is the Chief Executive Officer of the 2nd Respondent. Pursuant to the complaint of the Petitioners, the "Panel" appointed by the 3rd Respondent under Rule 10.3 of the Stockbroker Rules of the Colombo Stock Exchange made a decision dated 2nd March 2023. Thereafter, the matter was considered, in appeal, by the Dispute Resolution Committee appointed under Rule 10.3 and 10.4 of the Stockbrokers. Rules of the Colombo Stock Exchange which made a decision dated 22nd May 2023. The Panel (hereinafter sometimes referred to as "the CSE Panel") and the Dispute Resolution Committee (hereinafter referred to as "DRC') made the aforesaid decisions on behalf of the 2nd Respondent and thus acted as agents of the 2nd and 3rd Respondent.

It is brought to the attention of court that, under and in terms of Dispute Resolution Rules of the Colombo Stock Exchange dated 3rd April 2023, the DRC has now been replaced with an entity identified "Dispute Resolution Panel". The 4th Respondent is the Stockbroker Firm, a member of the 2nd Respondent and registered with the 2nd Respondent and licensed by the Securities Exchange Commission of Sri Lanka. The 5th and 6th Respondents are employees of the 4th Respondent and is the investment Advisor assigned to the Petitioners. The 6th Respondent is the Compliance Officer of the 4th Respondent. The 7th Respondent is the Central Depository System (CDS), a wholly owned subsidiary of the 2nd Respondent, in charge of clearing, settlement and registration of securities trading at the Colombo Stock Exchange. The 8th Respondent is the Chief Executive Officer of the 4th Respondent who is at present suspended by the 1st Respondent on the basis that he is not a qualified person to be a Key Management Personnel or an employee dealing with clients of a market intermediary licensed by the Securities Exchange Commission.

The Petitioner says that this application relates to the unreasonable, callous, and arbitrary failure on the part of the 2nd Respondent to grant the Petitioners redress in respect of the grave and irreparable loss caused to the Petitioners, by the illegal conduct of the 4th, 5th and 6th Respondents, and the inaction on the part of the 1st Respondent.

The illegal conduct of 4th, 5th and 6th Respondents were *inter alia* as follows:

1. effecting unauthorized share purchases in the name of the Petitioners in their account bearing number LSE-6104700 17-XN/0 1;

2. unilaterally and without prior consent, using the credit facility available to the Petitioners to fund such unauthorized transactions;
3. indiscriminately accruing interest thereon;
4. falsely making the Petitioners believe that the said unauthorized transactions would not cause prejudice to the Petitioners;
5. eventually seeking to recover the full purchase price for the aforesaid unauthorized purchases and interest thereon from the Petitioners by demanding payment, and thereupon by force selling shares legitimately financed by the Petitioner to recover the cost and interest of said illegally shares dumped in the Petitioners' account.

The Petitioner says that even though the said conduct was in clear violation of the CSE Rules and held to be as such by the CSE Panel and the DRC Panel which fall under the authority of the 2nd Respondent, the 2nd Respondent failed to redress the grievance of the Petitioners and have now permitted the 4th, 5th and 6th Respondents to indiscriminately deplete the account bearing number LSE-610470017-XN/01 of the Petitioners' and to illegally recover from the Petitioners. The 1st Respondent is yet to consider the complaints of the Petitioners and take remedial measures thereon.

The Petitioners state that the 4th Respondent held out that,

a. It is a stockbroker firm duly registered with 2nd Respondent and licensed by the 1st Respondent and that their operations are in accordance with the applicable rules of the CSE, SEC & Central Depository Systems (Pvt) Limited. (hereinafter referred to as the "CDS");

b. The Investment Advisors employed by the 4th Respondent were experts possessing the necessary skill and knowledge to conduct operations according to law;

c. The advice provided is done so in good faith and in the best interest of the clients.

In view of the above representations, the Petitioners state that in order to have shares of identical entities in one CDS account, the Petitioners closed some of their accounts with several other broker firms and moved a significant part of their portfolio to the 4th Respondent, under the account bearing no. LSE-610470017-XN/01.

In February 2022, without the prior consent and order instructions of the Petitioners, purchases were made by the 4th Respondent. The Petitioners state that they were particularly concerned about this transaction, because this transaction had been funded through broker credit, unilaterally extended by 4th Respondent, which would place the Petitioners in debt to the 4th Respondent, and make the Petitioners vulnerable to repay the principal with interest, on such credit. As per the Credit Agreement the said credit was secured on all the Petitioners own securities lying in the account No. LSE-610470017-XN/01. Prior to the said unauthorized transactions, the Petitioners' account was on 'Zero' credit and no sums were due and owing to the 4th Respondent broker firm, as credit and interest. However, pursuant to the

unauthorized transactions, the Petitioners entire share portfolio had become vulnerable to loss. A risk that the Petitioners would not have taken on their own initiative.

In view of the serious repercussions of purchasing shares and effectively imposing broker credit without prior consent, on receipt of the 'bought notes' pertaining to aforesaid purchases;

a. The Petitioners acted in compliance with the instructions set out in the "bought notes" which state that "If there are any errors or discrepancies you are requested to contact us by 9:00 a.m. on the following day following the receipt of this confirmation. Failure to do so would be taken as acceptance of the trades confirmed herein" and verbally complained to the 5th Respondent";

b. The Petitioners continued to repeatedly complain to the 5th Respondent and inquired as to why such shares were purchased, as the Petitioners had not instinct the purchase of such shares and as prior order instructions were not provided by the Petitioners;

c. The 5th Respondent accepted the position that it was a disputed transaction and repeatedly assured the Petitioners that he would take steps to regularize the process and reinstate their portfolio and that they would not be detrimentally affected;

d. By virtue of the repeated reassurances, and by assuring the Petitioners that he was acting in their best interests, the 5th Respondent cleverly ensured that the Petitioners would not tender a written complaint in the hope of maintaining a cordial, amicable relationship with the Investment Advisor. However, while the Petitioners did not make a written complaint they continued to inquire into and protest and object to the purchases that had been made without order instructions from the Petitioners.

e. Thereafter, on or about the 10th of February 2022, on the specific request of the 5th Respondent to make even a small payment, the Petitioners made a payment of Rs.5,482,240.00 (a figure specifically suggested by the 5th Respondent) and categorically informed the 4th Respondent and the 5th Respondent that such payment was made without prejudice and did not in any way signify consent and acquiesce to the illegal and unlawful purchases;

f. Furthermore, as the Petitioners expected to carry out other transactions, they anticipated that the aforesaid payment could be used for subsequent purchases, such as the purchase of shares from Seylan Bank PLC in respect of which order instructions had already been given. Further, the said amount could also round up and lower the average of the shares in the portfolio of the Appellants. In any event, a receipt has not been issued in respect of the said payment, to-date.

The Petitioners state that thereafter, to their utmost dismay, on or about 1st November 2022, the Petitioners were in receipt of an e-mail from the 6th Respondent, acting on behalf of the

4th Respondent, demanding that the Petitioners pay the 4th Respondent a sum of Rs.68,539,668.00, on the basis that the credit margin of the Petitioners had exceeded. The Petitioners were shocked as the 4th and 5th and 6th Respondents acted contrary to their previous representations of settling the account so that the Petitioners would not be prejudiced by the unlawful transactions by changing their stance and requesting payment from the Petitioners on the purported basis that they had exceeded their credit margin.

The Petitioners state that the sum of Rs.68,539,668.00 so demanded constituted the purchase price of the aforementioned unauthorized shares purchased by the unilateral and unauthorized credit foisted upon the Petitioners as aforesaid, and the interest thereon. They strongly resisted and objected to the aforesaid request and demand made by the 4th and 6th Respondent (vide P7), which is *ex facie* illegal and unlawful and *mala fide*, in the following manner;

a. The Petitioners replied the aforesaid email on or about 4th November 2022, categorically denying any liability as the purchases under dispute were unilaterally made by the 4th Respondent and 5th Respondent, in the absence any order instructions from and without the prior consent of the Petitioners;

b. By email dated 9th November 2022, the 6th Respondent, acting on behalf of the 4th Respondent, informed the Petitioners of their purported and unsubstantiated contention that the Petitioners had in fact provided order instructions for the disputed purchases;

c. Thereafter, by email dated 11th November 2022, the Petitioners denied the aforesaid and informed the 6th Respondent and the 4th Respondent not to force sell any of the Petitioners' shares.

Having breached the Client an Agreement and Credit Agreement was entered into by the Petitioners and the 4th Respondent by making unauthorized purchases, the agreements would be null and void. Therefore, the Petitioners state that having acted contrary to the explicit terms of the Agreement, the 4th Respondent cannot attempt to enforce other clauses of the Agreement to rectify their mistakes. The same was communicated once again by email dated 31st March 2023. In view of the aforesaid dispute, the Petitioners' lodged a formal complaint with the 2nd Respondent on or about 11th November 2022, and thereafter a "fact-finding" inquiry commenced into the dispute between the Petitioners and the 4th Respondent (Ref: CSE/IC/2022-11) by a panel appointed by the 3rd Respondent. The Petitioners also appealed to the 2nd Respondent by email dated 14th November 2022, seeking *inter alia* to restrain and prevent the 4th Respondent, 5th Respondent and 6th Respondents from force selling the shares of the Petitioners. The Petitioners verily believe that there are many other similar complaints made by other aggrieved persons against the 4th Respondent, in connection with unauthorized purchase of shares, which have been submitted to the 1st and 2nd Respondent.

The Petitioners further state that pursuant to the fact-finding inquiry carried out by the CSE Panel appointed by the 3rd Respondent, it pronounced its decision dated 2nd March 2023, and held that it will not be pursuing the complaint of the Petitioners. It is apparent that the Panel of Inquiry of the 3rd Respondent, had opted to selectively enforce certain CSE Rules to the

detriment of the investor whilst not strictly enforcing the rules against the broker firm. Such conduct, reflects the general perception of bias of the CSE in favour of its members, when resolving disputes between brokers and investors. The Petitioners were dismayed by the decision of the CSE Panel, as it had refused the Petitioners' relief notwithstanding the fact that the Panel has clearly identified and observed that the Stockbroker Firm has violated several CSE Rules set out below:

(i) Rule 3.2.1 of the Section 3 of the Stockbroker Rules of the CSE Stockbroker Firms shall within a period of 6 months from the date of adoption of these rules: use a telephone recording system with notice to the client, to record the order instructions including date and time of the order and maintain such telephone recordings as part of its records for at least six (6) years for the purposes of these Rules, or ensure that the order instructions are received from clients in writing and such written instructions are maintained as part of its records for at least six (6) years

(ii) Rule 7. 1. 3 (2) of the Section 7 of the Stockbroker Rules of the CSE The credit extended to a client shall not exceed 50% of the Market Value of the Securities portfolio held in the client's CDS account. For the purposes of these Rules 'Market Value' is defined as the value of the Securities portfolio held in the client's CDS account, including Pending Buys, and excluding Pending Sells, marked to market at the end of each Market Day.

At page 5 of the Decision marked P13, the Panel also expressly acknowledges Rule 3.2.2 of Section 3 of the CSE Rules that provide as follows;

> "In the event of a complaint made by a client against a Stockbroker Firm relating to a particular transaction, if it is revealed that the order instructions have not been recorded and maintained by the Stockbroker Firm as required in terms of Rule 3.2.1 above, it shall be the responsibility of the Stockbroker Firm to provide sufficient proof that the Stockbroker Firm received order instructions from the client pertaining to the disputed transaction. If the Stockbroker Firm fails to do so, the Stockbroker Firm shall be held liable".

It is clear from a plain reading of Rule 3.2.2 that where a transaction is disputed, if the stock broker fails to establish with sufficient proof that the order instructions were received from the client, the stock broker firm shall be held liable, for the particular transactions.

Despite the express acknowledgement of the said Rule 3.2.2 and the aforesaid finding that Rule 3.2.1 has been violated, which affirm a clear violation of the CSE Rules and contractual obligations of the Stockbroker firm, the CSE Panel has informed the Complainants that,

> "the Panel appointed by the Chief Executive Officer of the CSE in respect of the captioned Complaint has, decided that the Panel cannot proceed any further with regard to the Complaint."

The primary reason for CSE Panel to refuse relief was, *inter alia*, that, no exceptional circumstances, were demonstrated in order to waive the application of Rule 2.16.1 of section

2 of the Stockbroker Rules and therefore the complaint was delayed, which fact was subsequently overruled by the DRC. Further as clearly recognized by CSE Panel, the 4th Respondent is also obligated to comply with the following Rules of the Colombo Stock Exchange which state that:

7.1.3 (2) referred about the initial margin. The credit extended to a client shall not exceed 50% of the Market Value of the Securities portfolio held in the client's CDS account. For the purposes of these rules Market Value is defined as the value of the Securities portfolio held in the client's CDS account, including Pending Buys and excluding Pending Sells, marked to market at the end of each Market Day. In the event the Market Value of the Securities pledged by the client falls by 25%, the Stockbroker Firm shall inform the client to meet the shortfall by the next Market Day.

The Petitioner further states that, the 4th Respondent had not only exceeded well over 50% in the grant of credit but it had also failed to make the request and demand on the basis that the credit margin has exceeded as required by the Rules and the provisions in the Gazette Extraordinary No 2271/09 dated 15th March 2022. Thus, not only did the 4th Respondent illegally enlarge the credit amount foisted on the Petitioners, but by delaying the aforesaid request and demand, it also illegally and fraudulently and unconscionably accumulated interest to its benefit.

The CSE Panel appointed by the 3rd Respondent also conveniently ignored the harm caused to the Petitioners by the violation of Rule 7.1.3.2 in the following manner,

a. In terms of the said rule, the 4th Respondent was required to make the request and demand in view of exceeded credit at 50%. (vide Rule 7.1.3.2);

b. The said rule, which was violated by the Stockbroker, *inter alia* protects the investor's account being leveraged in an unsustainable manner;

c. The Stockbroker does not have a right to sell the Petitioners shares indiscriminately thereafter;

d. Had the aforesaid request and demand been made in April the due date as held by the CSE Panel the Petitioners would have been alternated to the situation and could have taken remedial measures;

e. The 4th Respondent was not entitled in law, to sell the Petitioners shares after the date mandated by law.

Even in terms of the aforesaid Credit Agreement, the 4th Respondent could not trade on credit exceeding 50% of market value of the securities pledged and that the 4th Respondent had no power and authority to force-sell the Petitioners shares, other than strictly in terms of the Rules. In other words, having allowed the credit to accumulate beyond 50%, illegally, and having gained accrued interest thereon, the 4th Respondents had no right to recover such illegal sums by forced sale. The Petitioners state that the aforesaid conduct of the 4th Respondent from the very inception, in force selling the shares of the Petitioners has been carried out in a draconian manner, resulting in the unjust enrichment of the 4th Respondent,

despite the requests made by the Petitioner directly to the 4th and 6th Respondents as well as to the 2nd Respondent to prevent any forced sale in the account of the Petitioners.

At the fact-finding inquiry carried out by the CSE Panel appointed by the 3rd Respondent, the 4th and 5th and 6th Respondent admitted that there was no evidence of prior order instructions and thereby concealed evidence before the Panel. The Petitioners further state that, although there was no obligation cast on the Petitioners, the Petitioners in good faith shared the previous WhatsApp correspondence, depicting the manner in which the Petitioners generally provided order instructions. Furthermore, as evinced in the said correspondence, on 2nd February 2023, the Petitioners' shared a social media link regarding criticism of LOFC, which is demonstrative of the fact that the Petitioners had no intention of purchasing LOFC shares at the time.

The Petitioners state that the CSE Panel, wholly disregarded this illegality and predicament of the Petitioners, when it refused the Petitioners relief, even though at page 9, 11 and 12 of its decision it specifically acknowledged that Rules 3.2.1 and 7.1.3 have been violated. Being wholly dissatisfied with such a clearly arbitrary decision, to refuse to grant the Petitioners relief, notwithstanding the finding that the CSE Rules had been violated, the Petitioners state that they submitted an Appeal to the Dispute Resolution Committee appointed under the 2nd Respondent, on or about 9th March 2023. On or about 3rd April 2023, the Petitioners were afforded a hearing before the DRC at which representations were made to the Dispute Resolution Committee of the 2nd Respondent.

The Petitioners further state that meanwhile on or about 31st March 2023, the Petitioners also sought the intervention of the 1st Respondent, by email dated 31st March 2023; however, the 1st Respondent is yet to address the grievances of the Petitioners. On or about 30th May 2023, the Petitioners were informed that the Dispute Resolution Committee of the 2nd Respondent had found that "there is no merit in the complaint" and had disallowed the Appeal tendered by the Petitioners. The primary reasons for the decision were that, the DRC was of the opinion that;

a. The 4th Respondent has satisfied that the disputed purchases had been made with the knowledge or instructions of the Petitioners;

b. Even if the initial purchases had been made without the consent/authorization of the Petitioners, that the Petitioners had subsequently acquiesced and accepted the said transactions by their own conduct.

c. The Petitioners are, by their own conduct, estopped from claiming that the said purchases were 'unauthorized' transactions as they themselves elected to not take any formal action against the Investment Advisor relying on the "assurances" provided by the Investment Advisor.

As the Petitioners were aggrieved by the decision of the Dispute Resolution Committee of the 2nd Respondent, for the reason that it was irrational and/or unreasonable and/or *ex facie* misconceived in law and fact. Therefore, the Petitioners submitted a formal Appeal against the said decision to the 1st Respondent.

The Petitioners state that, being aggrieved by the aforesaid Decisions of the 2nd Respondent (P13 and P19), the Petitioners complained to the 1st Respondent and the matter is yet to be considered by the 1st Respondent under and in terms of the Securities and Exchange Commission of Sri Lanka Act No 19 of 2021. However, the Petitioners are concerned that any further delay will result in further accrual of interest on the Petitioners account and the force sale of the Petitioners' entire portfolio.

The Petitioners state that the decision of the DRC and/or the 2nd Respondent dated 22nd May 2023, is *ultra vires*, illegal and bad in law in as much as:

i. it erred in concluding that estoppel could be a defence for illegal conduct and violations of express provisions of the law;

ii. it erred in concluding that estoppel operates to deny the Petitioners relief in the circumstances of this case;

iii. it erred in imputing/inferring that the Petitioners had authorized the transactions,

iv. its decision renders express CSE Rules redundant;

v. it erred in relying on the bought note as evidence of consent for the purchase, when there are no provisions in the CSE Rules to do so;

vi. it erred in undermining efficacy of the CSE Rules;

vii. it erred by recognizing the violation of Rule 3.2.1 by the 4th Respondent and yet failing to grant the Petitioners' the necessary relief;

viii. it erred in not preventing the 4th Respondent, executing forced sales, relying on a Credit Agreement, which has been breached by the 4th Respondent;

ix. it erred in accepting the contention of the CSE Panel that the payment of Rs. 5,482,240/- amounted to acquiescence and/or a partial settlement of the outstanding balance created from the disputed transactions;

x. it erred in determining that there has been an acquiescence by the Petitioners although there can be no acquiescence of illegality;

xi. It erred in making a wrongful determination on the purported knowledge of the Petitioners of the unlawful transactions and failed to consider the requirement of proof of prior consent and/or proof of prior order instructions as required by CSE Rules

It appears that the deposit of Rs.5,482,240.00, referred to above has been construed in a manner wholly detrimental to the Petitioners. As such the Petitioners states further that the said deposit into the Petitioners own account was made under the following circumstances and in no way amounted to a partial payment and/or acquiescence of the disputed transactions,

a. In or around the end of January 2022, the 5th Respondent informed the Petitioners that there was a restriction on the broker credit offered by the 4th Respondent to clients;

b. On 7th February, the Petitioners requested (via WhatsApp message) the purchase of 95,000 shares of Seylan Bank PLC, however the 5th Respondent requested a small payment to be made;

c. Thereafter after perusing the bought notes of 7th February 2022, the Petitioners contacted the 5th Respondent and complained and/or objected to the said unauthorized transactions. However, the 5th Respondent guaranteed that the process would be regularized.

d. In view of the repeated requests of the 5th Respondent, the Petitioners made a payment to their own CDS account, amounting to the sum of Rs.5,482,240.00, as specifically requested by the 5th Respondent, in order to enable the purchase of the aforesaid 95,000 shares of Seylan Bank PLC, and any future transactions;

e. The Petitioners categorically informed the 5th Respondent that the aforesaid payment was not to be used against the unauthorized purchases;

f. However, the 4th Respondent and/or 5th Respondent and/or 6th Respondent have completed violated their fiduciary duties by acting in bad faith and usurping the payment made by the Petitioners to settle their unauthorized purchases.

The Petitioners state that the DRC has held that the Petitioners did not complain about the unauthorized transactions on the basis that the Investment Advisor has assured that the price of the shares will increase and the appellants were acting based on that "assurance".

The Petitioners states that;

a. The Petitioners did not make a written complaint as the investment advisor admitted the unauthorized purchases and assured that he would regularize the process and restore the Petitioners' account;

b. In any event, it is a well-established fact that there can be no basis and/or possibility to acquiesce to an illegality;

c. The unauthorized purchases were illegal and/or unlawful;

d. In terms of the CSE rules, the liability for disputed transactions, where proof of the same is not available, shall befall on the stockbroker;

e. The DRC too has accepted that fact and yet failed to take necessary steps to grant the Petitioners' their relief.

In any event the composition of the DRC appointed by the 2nd Respondent and/or 3rd Respondent, is contrary to the Rules of the CSE, and therefore, the decision of CSE made through the putative DRC is of no force or avail in law. The Petitioners state that the CSE is a Company Limited by Guarantee consisting of several trading members. It is a self-regulatory body. The 4th Respondent being a member of the CSE, the objectivity of the CSE and its own dispute resolution arms (Panel/DRC) is necessarily tainted with the perception or appearance of bias. The Petitioners state that as the CSE is an entity comprising of its own members, it has generated a perception of bias in its dispute resolution processes which in fact is widely discussed. In view of this, the CSE has amended its rules, as at April 3rd 2023. Therefore, the Petitioners state that there is a legitimate ground for their grievance to be considered.

The CSE and the DRC is amenable to the Writ Jurisdiction of this Court, *inter alia*, as;

a. The SEC Act requires the rules of the 2nd Respondent to make satisfactory provision for investigating into trading in securities and financial transactions of stock brokers and is an essential component of the system of statutory regulation;

b. The 1st Respondent, as a governmental body would have assumed control over the activity regulated by the body under challenge;

c. The 2nd Respondent is performing public duties or exercising powers that can be characterized as "public" and as such is subject to review and scrutiny;

d. The legislature dictates the scope and ambit of the rules of the 2nd Respondent and the SEC Act prohibits the amendment, variation or rescinding of any rules of the 2nd Respondent without the prior approval of the SEC;

e. The 2nd Respondent can carry on the business of operating a stock exchange only because it fulfils the requirements in the SEC Act;

f. Unlike any registered company, the 2nd Respondent cannot permit the distribution of profits to its members in the Articles of Association and the membership of the 2nd Respondent is limited to brokers and dealers only and it is engaged solely in the business of operating a stock exchange;

The Inaction of the Part of the SEC is Amenable to the Writ Jurisdiction of this Court. The Petitioner states that the 1st Respondent, SEC, is a statutory body established, in terms of the Securities and Exchange Commission of Sri Lanka Act No. 19 of 2021 ("SEC Act"), *inter alia* for the purpose of regulating the securities market in Sri Lanka. It has *inter alia* the power to grant licenses to stock exchanges and stockbrokers. One of its primary objects and functions is the protection of investors.

The Petitioner states that the 1st Respondent is also empowered under the Securities and Exchange Commission of Sri Lanka Act No. 19 of 2021 *inter alia* as follows:

179. (1) The Commission may take one or more of the following actions where a market intermediary who handles or is entrusted with monies of clients or assets in the course of his business contravenes any provision of this Act, regulation, rule or directive issued thereunder or is no longer fit and proper and the Commission is of the view that interests of investors, the clients of a market intermediary or unit holders of collective investment schemes are likely to be jeopardized, or are jeopardized-

(a) direct the market intermediary not to deal with monies and properties of any investor or its clients in such manner as the Commission thinks appropriate or to transfer the monies and properties of such investors or its clients or any document or electronic record in relation to such monies or properties to any other person as may be specified by the Commission;

The 1st Respondent, as the regulatory authority of the 2nd Respondent, in which the 4th Respondent is a trading member is yet to take steps in view of the illegal or fraudulent or unconscionable conduct of the 4th Respondent, thereby causing grave harm, loss or irreparable damage to the Petitioners. In view of the aforesaid illegal or unlawful or irrational or arbitrary conduct (or lack thereof) on the part of the CSE, DRC and SEC the Petitioners have indicated that they have been compelled to invoke the jurisdiction of this Court.

The learned counsel for the Petitioners state that, emboldened by decisions in its favour, the 4th Respondent Company has taken steps to force-sell the shares of the Petitioners, on the wrongful premise of the of alleged failure to settle dues consequent to the purported request and/or demand on the basis of exceeding credit. Interest continues to accrue on the sums spent on the impugned illegal purchase, and that the 4th Respondent will continue to illegally sell the Petitioners own shares, to illegally recover the sums of money, purportedly owned by the Petitioners.

Irreparable loss and damage and prejudice is caused to the Petitioners, in the sale of such shares as the Petitioner life savings and earnings and monies are being depleted due to the illegal conduct of the 4th Respondent, in respect of which the 1st Respondent is yet to take action and the 2nd Respondent has failed to duly appreciate and rectify. As a result of the above, the entire Portfolio of the Petitioners, amounting to a sum of approximately Rs.124,711,247.21 and the sum of Rs 5,482,240.00 paid by the Petitioners in good faith, has been held to ransom by the 4th Respondent and the Petitioners are deprived of accessing and/or utilizing the same.

It is important to mention the law relating to the protection of investors under the securities and exchange commission of Sri Lanka, Act No 19 of 2021.

The Petitioners state that, the Securities and Exchange Commission of Sri Lanka Act No 19 of 2021, provides that, a market intermediary or registered person shall not trade in securities in contravention of such rules of the Commission or the rules of a market institution. The Panel of Inquiry and the Dispute Resolution Committee appointed by the 2nd Respondent have clearly acknowledged that the 4th Respondent has violated Rule 3.2.1 of the Stockbroker Rules

of the Colombo Stock Exchange, by failing to maintain a telephone recording system to record instructions or in having failed to obtain instructions from the Client in writing.

Therefore, there is clear evidence that market intermediary has traded in securities in contravention of the rules of the Commission or the rules of the market institution. The 1st Respondent is empowered to "Protect the Investors Assets" and therefore, where a market intermediary who handles or is entrusted with monies of clients or assets in the course of his business contravenes any provision of the Act, regulation, rule or directive issued thereunder, the 1st Respondent has a statutory duty and/or obligation to take steps under the Act. The Petitioners state that they reserve their right to amend papers, tender further affidavits and documents substantiating the averments contained above and also to add other Respondents in the event of further material becoming available regarding the averments made herein not available to the Petitioners at the time of instituting the above-styled action.

In view of all of the circumstances set out above, preliminary objections raised by the respondents dismissed. We issue notices to all the respondents.

The Petitioners are entitled in law to the interim relief as prayed for in prayer "O" and "R" of the Petition dated 20.07.2023.

Registrar of this Court is directed to issue notices to all the Respondents. A copy of the interim relief should also be served along with the notices, to all the Respondents. Further we direct the Registrar to re-produce prayer "O" and "R" of the Petition dated 20.07.2023 on the documents to be served upon the Respondents, enabling them to understand the contents of the prayer "O" and "R".

Notice returnable on 08.01.2024.

President of the Court of Appeal

M. Ahsan R. Marikar J.

I agree.

Judge of the Court of Appeal