

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (LODGING) NO. 3362 OF 2025
IN
NOTICE OF MOTION NO. 240 OF 2014
WITH
INTERIM APPLICATION (LODGING) NO. 6826 OF 2026
WITH
INTERIM APPLICATION NO. 7796 OF 2025
WITH
INTERIM APPLICATION (LODGING) NO. 11183 OF 2026
IN
APPEAL (LODGING) NO. 3362 OF 2025**

LOIL Overseas Foods Limited and others ... Appellants/Applicants
vs.
Modern India Ltd. and others ... Respondents

Mr. Pradeep Sancheti, Senior Advocate, a/w. Mr. Sagar Ghogare and
Mr. Sarvesh Gawade, i/b. Mr. Suraj Ghogare for appellants/applicants.

Mr. Ashish Kamat, Senior Advocate, a/w. Mr. Vaibhav Bhure, Mr. M.
Fernandes, Mr. Shlok Parekh, Mr. Ibrahim Shaikh and Ms. Drishti Bhatia,
i/b. Vaish Associates for respondent No.6 – NSEL.

**CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ**

DATE : 12th OCTOBER, 2026

ORDER (*Per Manish Pitale, J*):

. The learned senior counsel for the parties were heard on
interim application seeking condonation of delay in filing appeal, on
the question of admission of appeal and on the interim application
for stay filed on behalf of the appellants.

2. It is to be noted that the present proceedings were assigned to

this Bench on the basis of an order dated 04.03.2026 passed on the administrative side by the Hon'ble Chief Justice, in the light of the fact that one of the Judges of the Bench before whom the appeal was listed as per extant assignment, could not take up the present proceedings for hearing. Upon the proceedings being specifically assigned to this Bench, arguments were heard on the aforesaid applications and on the admission of appeal.

Interim Application No.7796 of 2026 (Application for condonation of delay):

3. By this application, the applicants (original appellants) are seeking condonation of delay of 125 days in filing the appeal. In the present case, the operative portion of the impugned order was passed on 20.12.2023. It is not in dispute that the reasoned order was uploaded on 03.06.2024. Thereafter, an application for speaking to the minutes was moved by respondent No.6 – National Spot Exchange Limited (NSEL), which led to the modified final order being uploaded on the website of this Court on 09.08.2024. The applicants claim to have become aware about the final modified order on 21.08.2024. They applied for certified copy on 26.08.2024 and the same was made available on 30.08.2024. The applicants claim that the period of 30 days for filing the appeal expired on 30.09.2024 and on this basis, it is claimed that the delay of 125 days, has been occasioned.

4. In this application, the applicants have stated the reasons for delay in paragraph Nos.9.1 to 9.6, 12.1 to 12.4 and 14.1 to 14.5. This Court has perused the reasons stated in the said paragraphs of the application seeking condonation of delay. One of the reasons stated therein is the fact that there was an untimely death in the

family of the advocate on record for the applicants (appellants).

5. In the reply affidavit filed on behalf of respondent No.6 – NSEL (original defendant No.2), it is stated that the actual delay ranges between 146 days to 222 days in filing the appeal. The reasons stated on behalf of the applicants seeking condonation of delay, have been opposed and it is stated that the present advocate on record was very much part of the team of advocates for the applicants before the learned Single Judge and therefore, the ground of change of advocate was wholly unjustified. It was further stated that the claim of untimely death in the family of the advocate on record, was unsubstantiated and it was vague. After placing parawise reply on record, the said respondent prayed for dismissal of this application and consequently, the appeal itself.

6. The applicants filed rejoinder affidavit, specifically stating that the advocate on record in the appeal was merely an advocate assisting the arguing counsel before the learned Single Judge and he was involved in providing logistical support and his role was peripheral and supportive in nature, including tracking of cause list and performing such other incidental functions. As opposed to this, the said advocate is the filing advocate on record and in charge of the present matter and therefore, his role is completely different, justifying the claim of being the new advocate on record in the matter.

7. On this basis, it is submitted that there is no question of the applicants lying on oath as claimed by respondent No.6 – NSEL. In the rejoinder, it was disputed that the reason of untimely death in the family of the advocate on record, was merely a delaying tactic. In

order to substantiate the same, a copy of death certificate of the relative of the advocate on record, was annexed at Exhibit A to the rejoinder affidavit.

8. This Court has perused the application, affidavit-in-reply and rejoinder affidavit as well as the aforesaid copy of death certificate filed with the rejoinder affidavit. Having perused the entire material on record, this Court is satisfied that sufficient cause is made out by the applicants for condonation of delay in filing the appeal. In the application, in paragraph Nos.9.1 to 9.6, 12.1 to 12.4 and 14.1 to 14.5, the applicants have stated reasons explaining delay for each phase of the total period of delay. We find substance in the contention raised on behalf of the applicants that in the face of such detailed reasons placed on record, the application deserves to be allowed, so that the applicants (original appellants) have an opportunity to argue their case in the appeal on merits before this Court.

9. This Court is unable to agree with respondent No.6 – NSEL that the reasons stated for delay are vague. Specific reasons have been stated for each phase of delay with supporting material on record and therefore, we are inclined to allow the application.

10. In view of the above, the application for condonation of delay is allowed in terms of prayer clause (a). The application is disposed of.

Appeal (Lodging) No.3362 of 2025:

11. Heard learned senior counsel for the rival parties.

12. Arguable questions arise in the appeal. Hence, admit.
13. The entire record of original proceedings shall be placed along with the appeal.
14. The appellants are granted liberty to file compilation of documents, if not already filed. The appellants shall remove office objections, if any, within a period of two weeks from today.
15. List the appeal for hearing in the second week of February, 2027.

Interim Application (Lodging) No.11183 of 2026 (Application for stay):

16. By this application, the applicants have prayed for stay of the impugned judgement/decree dated 20.12.2023, read with the reasoned order uploaded on 03.06.2024 and the clarificatory order dated 09.08.2024, during the pendency of the appeal. The applicants have also prayed for stay of execution proceedings pertaining to the said impugned judgement/decree and orders, further praying for restraining respondent No.6 – NSEL from taking coercive or precipitative steps for execution of the said impugned judgement/decree and orders, during the pendency of the appeal.
17. Respondent No.6 – NSEL filed its affidavit-in-reply in the application, to which the applicants filed their rejoinder affidavit. The pleadings were completed and the application was taken up for consideration.
18. The applicants are praying for an unconditional stay of the

impugned judgement/decreed and order passed by the learned Single Judge of this Court in third party notices initiated by respondent No.6 – NSEL. The said respondent has opposed the aforesaid application, particularly the prayer for unconditional stay, on the ground that the impugned judgement/decreed is a money decreed and as per settled law, even if stay is to be granted, the entire decretal amount must be deposited by the applicants before this Court, as a condition for grant of stay.

19. A brief reference to the backdrop and relevant events leading to the impugned judgement/decreed and order of the learned Single Judge, would be appropriate for understanding the rival submissions made in respect of the present application.

20. The impugned judgement/decreed and order arise out of third party notices initiated by respondent No.6 – NSEL against the applicants in Suit No.173 of 2014 filed by respondent Nos.1 to 4. These third party notices were initiated by the said respondent (original defendant No.2). Suit was filed under Order I Rule 8 of the Code of Civil Procedure, 1908 (CPC) in representative capacity by the original plaintiffs, claiming amounts towards unfulfilled contracts. The controversy revolved around the manner in which the said respondent No. 6 acted as a commodity exchange platform for trades, wherein the said respondents (original plaintiffs) and many other investors were allegedly duped.

21. In the said suit, the respondent No.6 filed third party notices against entities from whom it claimed recoveries, including the applicants herein. In the context of the said proceedings and third party notices, on 02.09.2014, a learned Single Judge of this Court

passed an order on the basis of minutes of order dated 27.08.2014 presented by the rival parties in the original suit, appointing a Committee of three members, which included a retired Judge of this Court as its Chairman and a solicitor as well as a partner of a Chartered Accountant firm, as its members. This Committee is hereinafter referred to as the High Court Committee (HCC).

22. While referring to the aforesaid minutes of order and dealing with the submissions made on behalf of various parties, including the applicants herein, the learned Single Judge of this Court, in the said order, specified the role to be performed by the HCC. Accordingly, the aspect of claims made by respondent No.6 – NSEL against the applicants, was referred to the HCC for consideration. Such reference was also made in the context of other third party noticees. The HCC considered the rival submissions on accounts and submitted reports before the learned Single Judge of this Court. The said respondent relies upon a number of orders/decrees passed by learned Single Judges, by accepting such reports submitted by the HCC.

23. At this stage, it is relevant to note that when the question with regard to implementation and execution of such orders/decrees passed by the High Court, came up for consideration before the Supreme Court, by its order dated 04.05.2022 passed in Writ Petition (Civil) No.995 of 2019 (*National Spot Exchange Limited vs. Union of India and others*), the Supreme Court in turn constituted a High Powered Committee headed by a retired Chief Justice of this Court, hereinafter referred to as the Supreme Court Committee (SCC) for carrying out execution proceedings. The impugned judgement/decreed and order of the learned Single Judge is presently being executed before the SCC at the behest of respondent No.6 –

NSEL.

24. Mr. Pradeep Sancheti, learned senior counsel appearing for the applicants (appellants) submitted that a strong case for unconditional stay of the impugned judgement/decreed and order of the learned Single Judge, is made out by the applicants, for the reason that since the proceedings concerning such third party notices, under the relevant Rules of the Bombay High Court (Original Side) Rules, 1980 (Original Side Rules), have to be undertaken as a trial and since the learned Single Judge failed to even frame issues, the entire impugned judgement/decreed and order of the learned Single Judge, is completely vitiated.

25. The learned senior counsel invited attention of this Court to Chapter VIII of the Original Side Rules, consisting of Rules 107 to 120, to contend that such third party notices are to be considered and disposed of in the same manner as a trial. On this basis, it was submitted that the learned Single Judge could not have accepted the reports submitted by the HCC without framing issues, recording evidence and then rendering findings in the matter.

26. It was submitted that the said error of the learned Single Judge was compounded by the fact that three interim applications moved on behalf of the applicants for framing issues, were rejected without recording any reasons in the impugned judgement/decreed and order. On this basis, it was asserted that there was a fundamental jurisdictional error in the said impugned judgement/decreed and order and therefore, a strong case was made out for granting unconditional stay.

27. The learned senior counsel for the applicants further submitted that the HCC was primarily constituted for ascertaining the possibility of settlement of disputes and it could not substitute the Court in any manner for determining the *inter se* liabilities of the applicants as third party noticees and respondent No.6 – NSEL (original defendant No.2). Much emphasis was placed on an order dated 16.07.2018 passed by a Division Bench of this Court in Appeal (Lodging) No.310 of 2018 filed by the applicants, challenging an order of a learned Single Judge on the basis of a report submitted by the HCC. It was claimed that a proper reading of the same would show that issues for determination of liability were required to be framed, when the report of the HCC, ascertaining liability of the applicants, was accepted by the learned Single Judge in the impugned judgement/decreed and order. It was submitted that the said order of the Division Bench would also assist this Court in properly interpreting the aforementioned order dated 02.09.2014, passed by the learned Single Judge, whereby the HCC was constituted.

28. The learned senior counsel further relied upon a judgment and order dated 30.03.2026 passed by a learned Single Judge of this Court in Notice of Motion No.1488 of 2015 in Commercial Suit No. 126 of 2021 (*National Spot Exchange Limited vs. M/s. N. K. Proteins Ltd. and others*). It was contended that in the said case concerning a similar controversy, issues were directed to be framed and evidence was to be recorded.

29. It was further submitted that all attempts were made by the applicants to convince the learned Single Judge that respondent No.6 – NSEL ought to be directed to lead evidence, to prove its documents

pertaining to accounts and opportunity ought to be granted for cross-examination its witnesses, with further opportunity to the applicants to lead their evidence. But, in the impugned judgement/decreed and order, the learned Single Judge erroneously emphasized upon the conduct of the applicants and directly accepted the report submitted by the HCC, without any opportunity to the applicants to challenge the same, in accordance with law. On this basis, it was submitted that this Court may consider granting unconditional stay in favour of the applicants.

30. As regards reliance placed on behalf of respondent No.6 – NSEL on the judgement of the Supreme Court in the case of *Lifestyle Equities C.V. and another vs. Amazon Technologies Inc.*, (2026) 3 SCC 641, it was submitted that a proper reading of the ratio of the said judgement, particularly paragraph No.138, would show that the same inures to the benefit of applicants. It was submitted that the impugned judgement/decreed and order of the learned Single Judge is perverse, patently illegal and wholly untenable. It was submitted that in the light of the fact that the SCC was going ahead in the matter for execution of the impugned judgement/decreed and order, this Court may grant unconditional stay.

31. On the other hand, Mr. Kamat, learned senior counsel appearing for respondent No.6 – NSEL submitted that the application for stay deserved to be dismissed. It was submitted that in the event this Court was of the opinion that the grounds raised in the appeal require consideration and on that count, the stay of the impugned judgement/decreed and order of learned Single Judge, could be considered, the same being a money decree, as per settled law, the applicants ought to deposit the entire decretal amount with interest

as a condition for grant of stay.

32. Much emphasis was placed on the aforesaid judgement of the Supreme Court in the case of **Lifestyle Equities C.V. and another vs. Amazon Technologies Inc.** (*supra*), to contend that the impugned judgement/decreed was in consonance with the position of law and there was no question of the same being branded as egregiously perverse, patently illegal or untenable. On the contrary, it was submitted that the errors sought to be demonstrated by the applicants are non-existent and it can be demonstrated that the impugned judgement/decreed does not deserve any interference.

33. The learned senior counsel for the said respondent submitted that as per Rule 114(1)(a) of the Original Side Rules, while considering a third party notice, the Court could issue appropriate directions at any stage before, at or after the trial of the suit and therefore, no error can be attributed to the impugned judgement/decreed and order. It was submitted that the relevant Rules were deliberately being misread to claim that issues were required to be framed and full-fledged trial was required to be conducted before accepting the report of the HCC.

34. Much emphasis was placed on the aforesaid order dated 02.09.2014 passed by the learned Single Judge of this Court, constituting the HCC. It was submitted that a perusal of the said order and the minutes of order, on the basis of which the same was passed, would clearly show that the HCC was empowered to call upon the parties to place their respective documents and material on record, for ascertaining liabilities and for determination of the same, apart from examining as to whether the dispute between the parties

could be settled in such third party proceedings. It was submitted that the aforesaid order dated 16.07.2018 passed by the Division Bench of this Court in Appeal (Lodging) No.310 of 2018 was being wrongly interpreted by the applicants. The order passed by the learned Single Judge of this Court in the case of **National Spot Exchange Limited vs. M/s. N. K. Proteins Ltd. and others** (*supra*), was factually distinguishable.

35. Thereupon, the learned senior counsel for the said respondent referred to and relied upon series of orders passed by various learned Single Judges of this Court in identical proceedings, concerning reports submitted by the very same HCC. It was emphasized that in the said orders, reports were considered and after hearing the parties, the same were accepted. Reliance was placed on an order dated 12.04.2024 passed by a learned Single Judge of this Court, while accepting Report No.47 submitted by the HCC, wherein identical arguments pertaining to the necessity of trial and opportunity to lead evidence, were specifically rejected.

36. The learned senior counsel for the said respondent extensively read the reports of the HCC on the basis of which, the learned Single Judge passed the impugned judgement/decreed and order, in order to emphasize that at every stage, the applicants tried to stall the proceedings and to delay the same. It was submitted that they refused to submit to the jurisdiction of the HCC, despite specific orders passed by the learned Single Judge of this Court on reports submitted by the HCC, as regards non-compliance and non-cooperation of the applicants. It was submitted that such an obstructive conduct of the applicants dis-entitles them from claiming unconditional stay of the impugned judgement/decreed and order.

37. Reference was made to the execution proceedings before the SCC, to emphasize that the applicants did not move this Court for interim relief with alacrity. They moved this Court after much delay and only after effective orders were passed in the execution proceedings by the SCC. It was submitted that such delay and lack of urgency on the part of the applicants, completely dis-entitles them to claim unconditional stay of the impugned judgement/decreed and order. It was emphasized that the application for stay itself deserves to be dismissed on the said ground.

38. This Court has considered the rival submissions and the instant application for stay filed by the applicants (appellants). The Supreme Court, in the aforementioned judgement in the case of **Lifestyle Equities C.V. and another vs. Amazon Technologies Inc.** (*supra*), has considered the jurisdiction to be exercised by the Appellate Court under Order XLI Rules 1 and 5 of the CPC, for grant of stay. After referring to a cross-section of precedents, the Supreme Court has rendered its conclusions as follows:

‘F. Conclusion

138. We summarize our final conclusion on the grant of benefit of stay of execution of a decree by an appellate court in term of Order 41 as under:

138.1. Order 41 Rule 5 contains the provision for the grant or refusal of stay of execution of the decree by the appellate court under CPC. It categorically stipulates that mere filing of an appeal against an order of execution, shall not *ipso facto* operate as stay of proceedings. Any execution proceeding or an order therein, shall be stayed only if a specific, reasoned order granting such stay is passed by the appellate court, after proper application of mind.

138.2. For the grant of stay of execution of a decree in

terms of Order 41, a prayer to such effect has to be specifically made to the appellate court and the appellate court has the discretion to grant an order of stay or to refuse the same.

138.3. Order 41 Rule 5(3)CPC provides for satisfaction regarding sufficient cause as a pre-condition for granting benefit of stay of execution of decree, and it casts an obligation upon the appellate court to record its satisfaction for stay of execution such decree.

138.4. The power of the appellate court to order stay of execution of the decree is circumscribed and made subject to the existence of a “sufficient cause” in favour of the appellant being shown. In order to ascertain whether a “sufficient cause” exists for the grant of stay of execution of a decree under Order 41 CPC, the appellate court as per sub-rule (3) of Rule 5 is required to examine:

- (i) Whether there will be substantial loss to the party applying for stay;
- (ii) Whether the application has been made without unreasonable delay; and
- (iii) Whether security has been given by the applicant for due performance of the decree.

138.5. For the grant of stay of execution of the decree, the appellate court is required, after perusing the materials on record, to assign reasons for its satisfaction regarding the existence of a “sufficient cause”. Such reasons should be cogent and adequate. The reasons assigned must indicate the necessity for the *status quo* prevailing on the date of the decree and/or the date of making of the application for stay, to continue by granting stay, and not merely the reasons why stay should be granted.

138.6. Although, Order 41 Rule 5 CPC, uses the word “shall”, yet a combined reading of the sum and substance of Rules 1(3) and 5(5) would reveal, that for the grant of stay of execution, it is not mandatory for the appellate court to impose a condition for deposit of the amount in dispute. The aforesaid provisions make it abundantly

clear that the appellate court, for the grant of stay of execution, has a discretion to impose a condition of deposit of the amount depending on the facts and circumstances of each case.

- 138.7. A deposit is not a condition precedent for an order of stay of execution of the decree by the appellate court. The only guiding factor and statutory mandate, for the grant of such stay of execution as indicated in Rule 5, is the existence of “sufficient cause” in favour of the appellant, on the availability of which the appellate court would be inclined to pass an order of stay.
- 138.8. For the grant of benefit of an unconditional stay of execution of a decree, an exceptional case has to be made out before the appellate court. This discretion of the appellate court to grant an unconditional stay of execution of decree must not be exercised arbitrarily. It must be exercised sparingly and only if an exceptional case is made out for such stay in view of the peculiar facts and attending circumstances of the case before it.
- 138.9. A lodestar for bringing a case within the purview of “exceptional case” for the purpose of granting benefit of unconditional stay of the execution of money decree by the appellate court would be, if the money decree in question:
 - (i) is egregiously perverse;
 - (ii) is riddled with patent illegalities;
 - (iii) is facially untenable; and/or
 - (iv) such other exceptional causes similar in nature.
- 138.10. For the purpose of the grant or refusal of stay of execution of the decree under Rule 5 of Order 41, it is immaterial whether the decree is a money decree or any other decree. The language couched in the said provision is very clear. Order 41 Rule 5 CPC makes no distinction between a money decree and other decrees, and the said provision applies with full rigour in both instances. Yet as a rule of prudence and established practice evolved over a period of

time, no stay of execution of a money decree should be granted, except on the condition that the decretal amount be deposited in the court. However, such condition for deposit cannot be said to be mandatory and non-prescription thereof does not operate as a bar to staying the execution of a money decree.

- 138.11. There is no provision under Order 41 Rule 5 CPC imposing a mandate to deposit cash security as the only mode of security for execution of the decree. Security, for the purpose of the said provision, can be in the shape of property, bond and or in the form of an appropriate undertaking from the appellant to abide by the decree, seeking stay of execution.'

39. This Court is of the opinion that the prayers made in the instant application are required to be considered within the above-quoted parameters clarified and reiterated by the Supreme Court.

40. Since we have admitted the appeal on the basis that certain issues raised by the applicants (appellants) deserve consideration, the next question would be as to whether the applicants have made out a *prima facie* case for stay of the impugned judgement/decreed and order. We find that it cannot be disputed that the impugned judgement/decreed is nothing but a money decree. It is settled law that ordinarily, the stay of a money decree can be granted only upon the appellant depositing the entire decretal amount. This has been reiterated in the above-quoted paragraph No.138.10 of the judgement of the Supreme Court.

41. It is indicated that as per rule of prudence and practice evolved over a period of time, stay would be granted upon the decretal amount being deposited in the Court. There can be no doubt that in a given case, unconditional stay of a money decree may also be

warranted. But, at the same time, it is settled law that an application seeking unconditional stay of such a decree, must make out an exceptional case before the Appellate Court.

42. As indicated in paragraph No.138.9 of the above-quoted judgement of the Supreme Court, the factors demonstrating exceptional case include the impugned money decree being egregiously perverse, riddled with patent illegalities, facially untenable or such other exceptional causes of similar nature. Undoubtedly, for an applicant to succeed in obtaining an unconditional stay of a money decree, an extremely high threshold is to be satisfied. It is on this touchstone that the case of the applicants in this application, is required to be considered.

43. The main emphasis on the part of the applicants before this Court is on alleged fundamental jurisdictional error committed by the learned Single Judge, while passing the impugned judgement/decreed and order, in failing to frame issues and granting opportunity to the parties to lead evidence, while considering the report submitted by the HCC. The role of HCC is being read in a very limited scope by the applicants to contend that leading of evidence was a *sine qua non*, while considering the report of HCC and disposing of the third party notices.

44. Having perused the order dated 02.09.2014 passed by the learned Single Judge of this Court, whereby the HCC was constituted, we are unable to agree with the applicants that the only role attributable to the HCC was to explore the possibility of settlement of disputes between respondent No.6 – NSEL (defendant No.2) and third party noticees, like the applicants herein.

45. We find that such objections raised by various third party noticees, including the applicants herein, were duly considered by the learned Single Judge in the order dated 02.09.2014 and it was specifically held that the HCC was indeed mandated to seek information and documents from the parties, particularly defaulters of respondent No.6 – NSEL, including the applicants, for the purpose of determining the extent of liability and propose a determination thereof by making a report to the Court for further directions. The aspect of coercive process was obviously left to the Court. Reading of the said order does not justify the contention of the applicants that the role of the HCC was limited to facilitating settlement of disputes.

46. A perusal of the minutes of order that stood approved by the aforesaid order, constituting the HCC, shows that the HCC had the power to carry out forensic audits of the defaulting entities like the applicants, by engaging experts for the purposes of recovering amounts. The HCC is headed by a retired Judge of this Court, with a solicitor and a Chartered Accountant being its members. Although it was sought to be argued on behalf of the applicants that this was a situation of a Commission appointed under Order XXVI of the CPC and hence, subject to objections and evidence, we find that such a Commission pertained to verification of accounts, wherein the parties were mandated to present their documents for scrutiny.

47. The record shows that in the case of the applicants, the HCC was constrained to submit a report before the Court, stating that the applicants were not cooperating at all and that they were stalling the proceedings. The learned Single Judge of this Court took notice of the aforesaid conduct of the applicants and specifically directed them

to abide by the directions issued by the HCC. On a challenge raised to the order of the learned Single Judge, a Division Bench of this Court, in the said order dated 16.07.2018 passed in Appeal (Lodging) No.310 of 2018, merely recorded that eventually, the matter would be considered by the Court and that the applicants could certainly raise their objections before the learned Single Judge of this Court. Merely because the Division Bench of this Court in the said order, observed that upon such objections being raised, the learned Single Judge would deal with appropriate issues regarding determination of liability, it cannot *ipso facto* be concluded that a full-blown trial was indicated by the Division Bench of this Court.

48. In any case, report Nos.39 and 43 submitted by the HCC and which were accepted in the impugned judgement/decreed and orders, record the conduct of the applicants. Despite the learned Single Judge and Division Bench of this Court directing the applicants that they need to abide by the directions issued by the HCC for examination/scrutiny and verification of its accounts, the applicants repeatedly stated before the HCC that they shall not submit to the jurisdiction of the HCC. The learned Single Judge of this Court, in the impugned judgement/decreed and order, recorded that the aforesaid conduct of the applicants was reprehensible and that it was in the teeth of the repeated orders passed by this Court. The applicants chose to adopt the approach of non-cooperation before the HCC and made attempts to stall the proceedings. No attempt was made to produce documents and accounts to justify their stand that they were not liable to pay any amount to respondent No.6 – NSEL (defendant No.2).

49. In this backdrop, the HCC carried out an extensive exercise of

examining the accounts and documents submitted by respondent No.6 – NSEL and arrived at figures pertaining to liability of the applicants. All that the applicants placed before the HCC was a statement of chronology of events and no documents pertaining to their accounts were placed before the HCC.

50. Even before the learned Single Judge of this Court, other than filing applications for framing of issues and claiming that respondent No.6 – NSEL must lead evidence in the matter, no explanation was given as to why they were not liable to satisfy the liability determined by the HCC or what was their version with regard to the accounts and documents.

51. Such conduct of applicants in refusing to submit to the jurisdiction of the HCC and failing to produce their own material before the HCC and the learned Single Judge of this Court, disentitles them to claim unconditional stay of the impugned judgement/decreed and order.

52. There is substance in the contention raised by respondent No.6 – NSEL that the applicants (appellants) never showed any urgency in the matter, after the impugned judgement/decreed and order was passed. As a matter of fact, the appeal suffered from delay. The application for stay was filed only on 27.03.2026, while the appeal itself was belatedly filed on 31.01.2025. These proceedings were initiated after respondent No.6 – NSEL initiated execution proceedings before the SCC and number of orders were passed by the SCC in such proceedings.

53. Even before the SCC, the applicants adopted delaying tactics

and only when the application for lifting of corporate veil was filed before the SCC, that the applicants were galvanized into filing the present application for stay on 27.03.2026. On the pretext of having filed the present application, the applicants took adjournment before the SCC. But eventually on 14.07.2026, the SCC reserved its order on the application for lifting of corporate veil and on 25.08.2026, the SCC allowed the application of respondent No.6 – NSEL for lifting of corporate veil.

54. It is in this backdrop that the present application for stay has been pursued by the applicants. One of the factors noted in the aforementioned judgement of the Supreme Court in the case of **Lifestyle Equities C.V. and another vs. Amazon Technologies Inc.** (*supra*), while considering granting stay and particularly granting unconditional stay, is the urgency with which the party seeking such relief moves the Court. We find the applicants to be absolutely deficient on this count.

55. Moreover, we find that respondent No.6 – NSEL is justified in relying upon series of orders passed by the learned Single Judges in identical situations, wherein reports submitted by the HCC against third party noticees have been accepted and made decrees of this Court. A learned Single Judge of this Court accepted report No.47 submitted by the HCC by the order dated 12.04.2024, rejecting identical arguments pertaining to the alleged necessity of framing the issues and leading of evidence, before such report could be accepted.

56. In the written notes submitted on behalf of the applicants, reference was made to a number of judgements, not read in Court during the course of arguments. Yet, this Court has perused the same

and it is found that the emphasis on the part of applicants, is on the nature of proceedings before the HCC, asserting that mere entries of books of accounts could not be relied upon and that the report of the HCC could, at best, be called as the report of a conciliator and not binding.

57. While the said contentions can be considered when the appeal is heard, for the purpose of examining the crucial question as to whether the impugned judgement/decree and order of the learned Single Judge of this Court can be said to be so egregiously perverse that unconditional stay is warranted, this Court finds the entire approach of the applicants to be of stalling the process of determination of liability, by showing completely non-cooperative and obstructionist attitude before the HCC constituted by the order of this Court, without in any manner coming clean with respect to its claims. At this stage, reliance placed on the said judgements cannot be of any assistance to the applicants to insist on unconditional stay of the impugned judgement/decree and order.

58. On the other hand, a perusal of the written notes submitted on behalf of the contesting respondent No.6 – NSEL shows elaboration of submissions made before this Court with regard to the nature of exercise carried out by the HCC as per Order XXVI Rules 11 and 12 (commissioner of accounts) of the CPC. The position of law clarified by the Supreme Court in the case of *Soni Dineshbhai Manilal and others vs. Jagjivan Mulchand Choksi*, (2007) 13 SCC 293 makes it amply clear that the report of such a Committee, as the HCC, has to be treated as evidence in Court and that it has to be treated as part of the record.

59. A party may well be entitled to contest the findings in such report, by either pointing out defect in the procedure or conclusions reached on merits, upon examination of account books and other documents. But a party, like the applicants herein, who refused to submit to the jurisdiction of HCC, despite specific orders of this Court, cannot be heard to say that the learned Single Judge, in the impugned judgement/decreed and order, could not have relied upon the findings of the report of HCC. The applicants have not been able to demonstrate any fundamental defect in the manner in which the HCC proceeded and submitted its report.

60. In fact, the reports submitted by HCC are replete with reference to repeated opportunities given to the applicants to place their material and documents on record. But, the applicants stoutly refused to do so, challenging the very jurisdiction of the HCC, despite specific orders of this Court directing the applicants to submit to the jurisdiction of HCC. In such circumstances, no case is made out for granting unconditional stay of the impugned judgement/decreed and order, which is nothing but a money decree against the applicants.

61. The applicants have relied upon order passed by the learned Single Judge in the case of **National Spot Exchange Limited vs. M/s. N. K. Proteins Ltd. and others** (*supra*), to contend that the learned Single Judge, in present case also, ought to have framed issues and conducted trial, before proceeding to accept the reports submitted by the HCC. A perusal of the said judgement and order of the learned Single Judge shows that it was passed in a suit filed by NSEL as the plaintiff, wherein it filed a notice of motion, seeking a direction to apply the order and mechanism of HCC, as per the aforesaid order dated 02.09.2014, whereby the HCC was constituted. It was

submitted that either a similar mechanism be adopted or an order, like the aforesaid order dated 02.09.2014, be passed in the suit.

62. In such a scenario, the learned Single Judge of this Court found that the order dated 02.09.2014 was passed in a representative suit filed under Order I Rule 8 of the CPC, wherein the considerations were found to be distinct from the regular suit filed by NSEL against the aforesaid M/s. N. K. Proteins Ltd. The present case is governed by the order dated 02.09.2014 passed in the aforesaid Suit No. 173 of 2014 and it concerns third party notices issued by the original defendant No.2 i.e. respondent No.6 herein – NSEL.

63. Since, the aforesaid suit filed by NSEL against M/s. N. K. Proteins Ltd. was a regular suit and the same was not a representative suit, the learned Single Judge found that issues were required to be framed for conducting trial. The distinguishing features are evident and therefore, this Court is not impressed with the contention of the applicants that the aforesaid order of the learned Single Judge demonstrates a grave error committed in the impugned judgement/decreed and order, which is subject matter of challenge in this appeal.

64. We also find that as per Rule 114 of the Original Side Rules, concerning procedure pertaining to third party notices, the Court can issue directions pertaining to any claim, question or issue, before, at or after the trial of the suit. Thus, decision on the reports submitted by the HCC need not await the stage of trial and the learned Single Judge was clearly entitled to consider as to whether the reports submitted by the HCC were to be accepted or not. We find that the learned Single Judge also gave ample opportunity to the applicants,

to demonstrate why the findings regarding determination of liability of the applicants in the reports of the HCC, could not be accepted. The applicants, *prima facie*, continued to adopt the same approach that they had adopted of stalling the proceedings before the HCC and in view of such conduct, it cannot lie in the mouth of the applicants that they are entitled to unconditional stay of the impugned judgement/decreed and order.

65. This Court cannot be oblivious of the fact that the third party proceedings leading to the impugned judgement/decreed and order have arisen in a representative suit and that this Court as well as the Supreme Court have been constrained to evolve the mechanism of constituting committees for determination of liability and execution of orders passed by the Court upon reports submitted by the HCC.

66. Even the Supreme Court found that such a mechanism was required to be evolved in the light of large scale controversy regarding fixing of liability and ensuring recovery of amounts due, in respect of trade conducted on the platform of respondent No.6-NSEL. The whole purpose of the said mechanism evolved by this Court as well as the Supreme Court, is to expedite matters. The approach of the applicants is clearly at cross purposes with the said object and this is another reason why unconditional stay of the impugned judgement/decreed and order cannot be granted. If at all, the applicants insist upon stay, the impugned judgement/decreed being a money decree, as per settled law, the applicants must deposit the decretal amount as a pre-condition for grant of stay, in the facts and circumstances of the present case. We find that the position of law clarified by the Supreme Court in the above quoted paragraphs of its judgement in the case of **Lifestyle Equities C.V. and another vs.**

Amazon Technologies Inc. (*supra*), squarely applies in favour of grant of conditional stay.

67. The learned senior counsel appearing for the applicants submitted that certain properties were already attached in the proceedings undertaken by the Enforcement Directorate, under the provisions of the Prevention of Money Laundering Act, 2002 (PMLA) and the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (MPID Act). It was submitted that the applicants are ready to submit an undertaking before this Court that if the said properties are released from attachment, the applicants shall not deal with them, during the pendency of the appeal.

68. This Court is of the opinion that such a submission cannot be accepted, as attachment of property for prosecutions under PMLA and MPID Act, demonstrates that the applicants do not deserve any indulgence and that such prosecutions cannot become a qualification or an excuse for the applicants to virtually seek unconditional stay of the impugned judgement/decreed and order.

69. In view of the above, the contentions raised on behalf of the applicants, for seeking unconditional stay of the impugned judgement/decreed and order, are rejected. The instant application is disposed of by directing that there shall be stay of the impugned judgment and decreed/order of the learned Single Judge of this Court dated 20.12.2023, read with reasoned order uploaded on 03.06.2024 and the clarificatory order dated 09.08.2024, subject to the applicants depositing the decretal amount, along with interest, before the Prothonotary and Senior Master of this Court, within eight

weeks from today.

70. It is made clear that in the event, the applicants fail to deposit the said amount within the said period of time, the direction granting stay shall stand vacated, without further reference to this Court.

71. The Prothonotary and Senior Master of this Court is directed to invest the said amount as per standard practice, to earn interest, during the pendency of the appeal.

72. Interim Application (Lodging) No. 11183 of 2026 is disposed of in above terms.

73. Since, no arguments were advanced in Interim Application (Lodging) No. 6826 of 2026, seeking disclosures, the same shall be listed separately for consideration.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)