

COMMITTEE CONSTITUTED UNDER BOMBAY HIGH COURT
ORDER DATED 2ND SEPTEMBER 2014 IN
SUIT NO.173 OF 2014 AND OTHER RELATED SUITS

Mr. V. C. Daga
Former Judge, Bombay High Court
Chairman

Mr. J. S. Solomon
Advocate & Solicitor
Member

Mr. Y. A. Thar
Chartered Accountant
Member

BY HAND DELIVERY/COURIER/R.P.A. D

Ref No. **49** /2017

28th July, 2017

To,

1. Vinay J Bhanushali
Chamber 8, 109 Esplanade Mansion,
M G Road, Fort, Mumbai - 400023.

2. P.D. Agro Processors Pvt. Ltd. & group companies
E- 245, Lower Ground Floor,
Greater Kailash II,
New Delhi - 110048.

Naik Naik & Co.

Advocates

Received on

Time

Inward No.


28/7/17
4:40pm
0822

Dear Sirs,

Re: Order Dated 25th July, 2017 passed by the Hon'ble Committee in respect of P.D. Agro Processors Pvt. Ltd. & Group of Companies

Please find enclosed herewith a copy of Order dated 25th July, 2017 passed by the Hon'ble Committee in respect of P.D. Agro Processors Pvt. Ltd. and Group Companies.

Yours faithfully,


(Yogesh C. Parikh)
Secretary (Legal)

Encl.: as above

C.C. with copy of enclosure to:

- ✓ 1. M/s. Naik Naik & Company
Advocates for National Spot Exchange Ltd.
116-B, Mittal Towers, Nariman Point.
2. M/s. Federal & Rashmikant
Advocates for Modern India Ltd.
101-104 Seksaria Chambers, 1st Floor,
139, Nagindas Master Road, Fort, Mumbai 400023.

3. M/s. Mansukhlal Hiralal & Co.
Advocates for L. J. Tanna Shares & Securities Pvt. Ltd.
Intervenor in Application No. 13 of 2015
Surya Mahal, 2nd Floor, 5,
Burlorji Bharucha Marg, Mumbai 400023.
4. Cyril Amarchand Mangaldas & Co.
Advocates for Financial Technologies (I) Ltd.
3rd Floor, Lentin Chambers, Dala! Street, Fort, Mumbai - 400001.
5. Mr. P.B Loke
Investigating Officer
EOW, Unit No V, Mumbai Police,
Ground Floor, Annex Building, Police Commissioner Office,
Crawford Market, Mumbai 400 001.
6. Mr. Ajit Sakhare.
Deputy Collector (Competent Authority under the MPID Act),
1st Floor, Old Custom House, Fort, Mumbai - 400 001.
7. The Law Point
Advocates for MMTc Ltd. and PEC Ltd.
703 & 704, Tulsiani Chambers, Free Press Journal Marg,
Nariman Point, Mumbai 400021.
8. M/s. Markand Gandhi & Co.,
Advocates for NSEL Investors' Action Group
2nd Floor, 'Bhagyodaya', 79, Nagindas Master Road (Meadows Street),
Fort, Mumbai 400023.
9. M/s. Deven Dwarkadas & Partners
Advocates for NSEL Aggrieved and Recovery Association,
111/114 Vardhaman Chamber, 17G, Cawasji Patel Street, Fort,
Mumbai- 400 001.
10. Mr. Sandeep Karnik
Advocate for NSEL Investors Forum
101, 1st Floor, Prospect Chambers, Opp. Thomas Cook,
Dr. D. N. Road, Fort, Mumbai 400001.
11. Mr. Mehul Shah
Advocate Defendant Nos.29 to 32, 34 and 35 in Suit No.173 of 2014.
131, 2nd Floor, Great Western Building,
Maharashtra Chamber of Commerce Lane,
Fort, Mumbai - 400023.

**BEFORE THE COMMITTEE CONSTITUTED UNDER THE BOMBAY
HIGH COURT ORDER DATED 2ND SEPTEMBER, 2014 IN SUIT NO. 173
OF 2014 AND OTHER RELATED SUITS**

COMPRISING OF MR. JUSTICE V.C. DAGA (RETD), CHAIRMAN,
MR. J. S. SOLOMON (ADVOCATE AND SOLICITOR), MEMBER
AND

MR. YOGESH THAR (CHARTERED ACCOUNTANT), MEMBER
REPORT NO. 14 OF 2015

IN

SUIT NO.173 OF 2014

WITH

T.P. NOTICE NO.2 OF 2014 TO T.P. NOTICE NO. 15 OF 2014

WITH

OTHER RELATED SUITS.

ORDER

(Dated 25th July, 2017)

1. (i) P.D. Agro Processors Private Limited, a Member of NSEL and (ii) Dulions Cereals, (iii) Dulions Foods, (iv) Dunar Food Limited and (v) Surender Gupta (**P.D. Agro and others**) have filed Appeal (L) No.802 of 2014 impugning Order dated 2nd September, 2014 passed in terms of Minutes of Order in the following proceedings before the Bombay High Court:-

- (i) Notice of Motion No.240 of 2014
In
Suit No.173 of 2014
With
TPN 2 of 2014 to TPN 15 of 2014
Modern Indian Limited & Ors. ...Plaintiffs
Vs.
Financial Technologies (India) Ltd. & Ors. ...Defendants
- (ii) Notice of Motion (L) No.2052 of 2013
In
Suit (L) No.221 of 2013
MMTC Ltd. ...Plaintiff
Vs.
The National Spot Exchange Ltd. & Ors. ...Defendants

- (iii) Notice of Motion (L) No.2166 of 2013
 In
 Suit (L) No.991 of 2013
 PEC Ltd. ...Plaintiff
 Vs.
 The National Spot Exchange Ltd. & Ors. ...Defendants
- (iv) Notice of Motion No.212 of 2014
 In
 Suit No.121 of 2014
 L.J. Tanna Shares and Securities Pvt. Ltd. & Ors. ...Plaintiffs
 Vs.
 Financial Technologies (India) Ltd. & Ors. ...Defendants
- (v) Notice of Motion No.765 of 2014
 In
 Suit (L) No.328 of 2014
 With
 Notice of Motion (L) No.807 of 2014
 The National Spot Exchange Ltd. ...Plaintiff
 Vs.
 P.D. Agro Processors Pvt. Ltd. & Ors. ...Defendants

Under the Order dated 2nd September 2014, the present Committee has been constituted for performance of functions as directed in the Order.

2.1 Modern India Limited and others have filed Suit No.173 of 2014 for recovery of a sum of Rs.5087,22,52,883/- along with interest and other reliefs against Financial Technologies (India) Ltd., now known as 63 Moons Technologies Ltd. and 37 others, wherein National Spot Exchange Limited (NSEL) has been arrayed as Defendant No.2. This Suit No.173 of 2014 has been filed in a representative capacity with the leave of the Court under Order I Rule 8 of the Code of Civil Procedure, 1908 on behalf of persons who may be interested in the outcome of that Suit. Prayer (b) in Suit No.173 of 2014 is for appointment of a Commissioner for Taking Accounts to trace monies paid by the Plaintiffs and other investors whom the Plaintiffs seek to represent as also the underlying commodities which were required to be delivered to the Plaintiffs and other investors as also the amounts paid into or transferred out of the Settlement Guarantee Fund and to recover the same for the purposes of paying the same to the Plaintiffs and other investors. NSEL, who are Defendant No.2 in Suit No.173 of 2014, have taken out Third Party Notice Nos.2 to 15 of 2014 against 15 members of the NSEL and their clients as mentioned in Exhibit 1 to the Minutes of Order dated 27th August, 2014. P.D. Agro and others

are not parties to Suit No.173 of 2014, Third Party Notice has not been taken out against P.D. Agro and others in Suit No.173 of 2014.

2.2 Suit No.221 of 2014 has been filed by MMTC Limited against NSEL and 35 others, including Dulisons Cereals (Defendant No.20) and Dulisons Foods (Defendant No.29) praying for a declaration that the transactions executed by MMTC Ltd. on the Exchange of NSEL are null and void ab initio and for a decree for refund of amount of Rs.227,46,04,047/- being the outstanding amount in respect of the transactions of MMTC Ltd. on the exchange of NSEL with interest and other reliefs. In Suit No.221 of 2014 MMTC Ltd., have also prayed for a decree against Dulisons Cereals (Defendant No.20) for payment/refund to the Plaintiff of the principal amount of Rs.101,92,90,230/- being the value of goods not delivered and interest.

2.3 Suit (L) No.991 of 2013 (now numbered Suit No.12 of 2015) has been filed by PEC Ltd., against NSEL and 23 others including P.D. Agro Processors Pvt. Ltd. (Defendant No.21), Dulisons Cereals (Defendant No.22) and Dulisons Foods (Defendant No.23) praying for a declaration that the transactions executed by PEC Ltd., on the Exchange of NSEL are null and void ab initio and for a decree for refund of amount of Rs.126,28,46,993/- being the outstanding amount in respect of the transactions of PEC Ltd. on the exchange of NSEL with interest and other reliefs. The Plaintiff in Suit (L) No.991 of 2013 (now numbered Suit No.12 of 2015 PEC Ltd.) have also prayed for a decree against P.D. Agro Processors Pvt. Ltd., (Defendant No.21) and Dulisons Cereals (Defendant No.22) for payment/refund to the Plaintiff of the principal amount of Rs.77,44,13,655/- being the value of goods not delivered and interest.

2.4 Suit No.121 of 2014 has been filed by L.J. Tanna Shares and Securities Pvt. Ltd. and two others., against Financial Technologies (India) Ltd., and 31 others including NSEL (Defendant No.2) praying for decree for a sum of Rs.4,44,88,527/- along with interest in favour of Plaintiff No.1, decree for a sum of Rs.155,27,57,687/- along with interest in favour of Plaintiff No.2 and decree for a sum of Rs.9,27,16,637/- along with interest in favour of Plaintiff No.3 and for other reliefs.

2.5 NSEL has filed Suit (L) No.328 of 2014 (now numbered Suit No.11 of 2014) against (i) P.D. Agro Processors Pvt. Ltd., (ii) Dulisons Cereals, (iii) Dulisons Foods, (iv) Dunar Food Limited, (v) Surender Gupta and 15 others praying for decree for a sum of Rs.680,23,97,706/- along with interest against Defendant Nos.1 to 16 and for other reliefs.

3. Order dated 2nd September 2014 has been passed in the above proceedings in terms of Minutes of Order annexed thereto, which have been signed on behalf of the Plaintiffs and Defendant Nos.1, 2, 3 and 5 in Suit No.173 of 2014 and their respective Advocates. The Order dated 2nd September 2014 has been passed after hearing Learned Advocates for the parties as mentioned in that Order, including the Learned Advocate for P. D. Agro and others being Defendant Nos.1 to 5 in Suit (L) No.328 of 2014 filed by NSEL.

4. Appeal (L) No.741 of 2014 has been filed by N. K. Proteins Ltd. and Appeal (L) Nos.766 and 767 of 2014 have been filed by White Water Foods Pvt. Ltd. and others in respect of the same Order dated 2nd September 2014, in which Order dated 17th June 2015 has been passed by the Hon'ble Court as under:-

"ORDER

(a) The Appeals are admitted.

(b) By an interim order we direct that the impugned order of learned Single Judge passed on 2nd September 2014 shall not be operative against the appellant N. K. Proteins Limited.

(c) The impugned order passed by learned Single Judge shall be operative against the appellants in two appeals i.e. Appeal (L) Nos.766/2014 and 767/2014 on the following conditions.

i) The Committee shall function in accordance with Section 75 of the Civil Procedure Code while discharging its functions under the Minutes of Order and the directions issued by the learned Single Judge.

ii) The Committee shall not have any adjudicatory powers.”

5. Order dated 8th December, 2015 has been passed in Notice of Motion (L) No.2919 of 2014 in Appeal (L) No.802 of 2014 filed by P.D. Agro and others in respect of the Order dated 2nd September, 2014 as under:-

“

CORAM: NARESH H. PATIL &
S.B. SHUKRE, JJ.
DECEMBER 08, 2015

P.C.

1. Heard Mr. Sancheti, learned Senior Counsel appearing for the applicants/appellants, Mr. S.U. Kamdar & Dr. Birendra Saraf, learned Senior Counsel appearing for respondent no.6 as well as learned counsel appearing for other respondents. We have perused the record and the impugned order dated 2/9/2014.

2. Mr. Sancheti, learned Senior Counsel submits that though Suit proceeding of Suit (L) No. 328 of 2014 was part of the record placed before the learned Single Judge, the present applicants/appellants neither signed any minutes of order nor gave their consent for being amenable to the jurisdiction of the Committee as per the minutes of order drawn and finalized in the proceeding of Notice of Motion No.240 of 2014 in Suit No.173 of 2014. Learned Senior counsel submits that a substantive Suit bearing (L) No.328 of 2014 is pending against the applicants/original defendants. The plaintiff may proceed for seeking appropriate relief against the appellants/original defendants in the proceedings of the substantive suit.

3. Mr. Sancheti, learned Senior Counsel, on instructions submits that an appropriate application would be tendered before the Committee by the applicants/appellants raising plea to the effect that they are not covered by the minutes of order, the impugned order passed by the learned Single Judge dated 2/9/2014 and that they do not wish to be party to the settlement process undertaken by the Committee. The application would be tendered within a week's time.

4. We observe that in case such an application is tendered by the applicants/appellants, the Committee would deal with the same and pass appropriate orders. We do not express any opinion on the merits of the subject issue. Needless to mention that Committee would hear the necessary parties before passing order.

5. Stand over to 8th January, 2016.

(S.B. SHUKRE, J.)

(NARESH H. PATIL, J.)

6. Accordingly, P.D. Agro and other Appellants in Appeal (L) No. 802 of 2014 have presented before the Committee Application dated 14th December, 2015 ("**Application**") in which they have submitted that they are not covered by the Minutes of Order and Order dated 2nd September, 2014 in terms thereof and they do not wish to be party to the settlement process undertaken by the Committee and accordingly notices and directions issued by the Committee against P. D. Agro Processors Pvt. Ltd. and related parties may be recalled and P. D. Agro Processors and related parties may not be directed to participate in the proceedings before the Committee.

7. NSEL have responded to the said Application by filing Affidavit dated 8th January, 2016 of their authorised signatory Mr. Santosh Dhuri in Reply as also Written Submissions dated 13th February, 2016.

8. The Committee at the meeting held on 28th January, 2016 heard submissions of Mr. Kevic Setalvad, Learned Senior Advocate for P.D. Agro and others as also Mr. Ameet Naik, Learned Advocate for NSEL and Mr. Akshay Patil, Learned Advocate for the Plaintiffs in Suit No. 173 of 2014 who supported the submissions on behalf of NSEL. At the meeting held before the Committee on 13th February 2016, Mr. Kevic Setalvad, Learned Senior Advocate for P.D. Agro and others made submissions in Rejoinder.

9. The main submissions on behalf of P.D. Agro and others ("**Appellants/Objectors**" for short) are as under:

- (i) The Appellants are not covered by the Order dated 2nd September, 2014 passed by the Learned Single Judge and the Appellants do not wish to be party to the settlement process undertaken by the Committee.
- (ii) The Order dated 2nd September, 2014 only binds the signatories to the Minutes of Order. The Appellants are not signatories to the said Minutes of the Order.

- (iii) Third Party Notice has not been taken out by NSEL against the Appellants and the Appellants are not included in the list of defaulters and clients described in Exhibit 1 attached to the Minutes of the Order.
- (iv) NSEL has filed an independent suit against the Appellants, namely, Suit No.781 of 2014 which is pending before the Hon'ble High court. In paragraph 17 of the Order dated 2nd September, 2014, it is clarified that the settlement proposed in terms of the Minutes of the Order does not in any way affect the third party including P.D. Agro in prosecuting their suit.
- (v) P.D. Agro Processors Pvt. Ltd. has taken out Notice of Motion (L) No.914 of 2014 in Suit No.781 of 2014 now converted to Commercial Suit No. 11 of 2014 filed by NSEL against P.D. Agro and others for referring the subject matter of Suit No.781 of 2014 now converted to Commercial Suit No. 11 of 2014 to Arbitration in terms of arbitration clause contained in the Bye-laws of the NSEL and the said Notice of Motion is pending for adjudication before the Hon'ble High Court. Some of the Defendants in Suit No.781 of 2014 now converted to Commercial Suit No. 11 of 2014 have taken out Notice of Motion for rejection of the Plaint and deleting their name from the array of Defendants in that suit.
- (vi) Under the Order dated 2nd September 2014, the Committee's mandate is to explore and negotiate mutual settlements and the Appellants cannot be forced to participate in a process of settlement without the consent of the Appellants.
- (vii) The function of the Committee is that of a Commissioner for rendering assistance in facilitating mutual settlements as held in paragraph 14 of the impugned Order dated 2nd September, 2014.
- (viii) The Committee as a Commissioner or a Receiver cannot exercise powers beyond what has been prescribed under

Order XXVI and Order XL of the Code of Civil Procedure. No adjudicating process can be undertaken by the Committee.

- (ix) The directions of the Committee to the Appellants for production of accounts, details of properties and details of bank accounts would amount to collecting evidence against the Appellants and seriously prejudice the rights of the Appellants in effectively defending the suit filed by NSEL against the Appellants. P.D. Agro and others are under no obligation to disclose any information, documents or material before the Committee.
- (x) NSEL deviated from its business model. NSEL instead of doing trading in commodities permitted financial transactions of lending and borrowing. The arrangements P. D. Agro Processors Pvt. Ltd. had with NSEL fall in the category of financial transactions of lending and borrowings.

10. The main submissions of NSEL are as under:-

- (i) The Order dated 2nd September, 2014 in terms of the Minutes of Order dated 27th August, 2014 is applicable to all parties concerned, including the Appellants, even though the Appellants have not signed the Minutes of Order dated 27th August, 2014 or consented to the Order dated 2nd September, 2014 and Minutes of Order dated 27th August, 2014.
- (ii) The Order dated 2nd September, 2014 has been passed in Notice of Motion taken out by NSEL in Suit No.784 of 2014 now converted to Commercial Suit No. 11 of 2014 filed by NSEL against P.D. Agro and others. The said Order has been passed after hearing all concerned parties and stake holders including P.D. Agro Processors Pvt. Ltd. and provides that the Order shall inure to the benefit of the Plaintiffs in the companion Suits, namely, Suit (L) No.221 of 2013, Suit (L) No.991 of 2013 and Suit (L) No.121 of 2014 and Suit (L) No.328 of 2014 filed by NSEL against P.D. Agro and others.

- (iii) The names of the Appellants P.D. Agro and others are included in the list of defaulters and their clients against whom NSEL has filed Suit and legal proceedings set out in Exhibit 2 to the Minutes of Order.
- (iv) NSEL have denied the contentions of the Appellants to the effect that in the Order dated 2nd September 2014 it is clarified that the Minutes of Order will not apply to the Appellants.
- (v) All objections raised by P.D. Agro and others to the constitution of the Committee have been considered by the Court in paragraph 17 of the Order dated 2nd September, 2014.
- (vi) The Committee is empowered to function as Commissioner in accordance with the provisions of Section 75 and Order 26 of the Civil Procedure Code, 1908 and act as a Commissioner in aid of the Bombay High Court by submitting its Reports to the Bombay High Court.
- (vii) The directions of the Committee to the Appellants for production of books of account and documents before the Committee are not in violation of Article 20(2) of the Constitution of India.

11. By Order dated 13th July 2017, Appeal (L) No.802 of 2014 filed by P. D. Agro and others in respect of Order dated 2nd September 2014 has been admitted for hearing and it is ordered as under:-

“3. We also heard the parties on the prayer for stay. Having gone through the order dated 17 June, 2015 passed by the Division Bench of this Court in various Appeals and Notices of Motion arising out of the same impugned order, we are not inclined to grant interim order staying further proceedings of the Committee appointed by the learned Single Judge by the impugned order.”

12. The Committee has considered the Application dated 14th December 2015 and submissions of P. D. Agro and others and NSEL on whether in the absence of consent of P. D. Agro and others and in spite of objections of P. D. Agro and others, the Committee can consider accounts and transactions between NSEL and P.D. Agro and others and function in accordance with the orders of the Hon'ble Court referred to above.

13. Minutes of Order in terms whereof the Order dated 2nd September 2014 has been passed, inter alia, provide that the Committee may:-

- (a) explore and negotiate mutual settlement between NSEL and the alleged defaulting members / third parties and their clients;
- (b) issue notices and call upon the alleged defaulting members / clients of the members / defaulters of NSEL or other parties to whom the monies of the alleged defaulters can be traced and all other parties concerned, for the purposes of determining the extent of liability, if any and propose a determination by making a report to the Court for further directions.
- (c) seek appropriate directions from the Court pursuant to any report made by the Committee and after hearing the affected parties including the parties to the suit, to sell / monetise the assets of defaulting members and their clients and any other person and also to hold the assets as interim security until sale and realisation of monies and to take steps to recover amounts due from defaulting members, their clients and others.

The Minutes provide that any party affected by any decision of the Committee shall be entitled to approach the Court.

14. Paragraphs 14, 17 and 18 of the Order dated 2nd September 2014 passed by the Hon'ble Court in terms of the above Minutes of Order are as under:-

"14. It is obvious that the Committee to be appointed under this Minutes of Order has a dual function to perform. **In the first place, it is supposed to conduct itself as a commissioner for investigation and examination of accounts and render assistance to the Court in facilitating mutual settlements between the parties.** Once these settlements have been arrived at and assets are collected in pursuance of these settlements, the Committee in effect acts as a receiver appointed by the Court in the matter of preservation, custody and management of the assets so collected. This entire exercise of the Committee, including its acts performed whether as a commissioner or as a receiver appointed by the Court, is to be conducted under the supervision and in accordance with the orders that may be passed by this Court from time to time. **Order XXVI of the Code of Civil Procedure authorizes appointment of such commissioners for various purposes, including local investigations, examination of accounts, making proposals of preservation, custody and management of assets under the custody of the Court, etc.** In fact, the commissioner so appointed by the Court may have extensive powers to examine the parties and require attendance and examination of witnesses. **The powers of the Committee, however, in the present case are restricted to calling for information and arrive at proposals of settlement in conjunction with the parties before the Court for collection and custody of the funds and assets involved. The Committee is simply permitted to call upon the various defaulting members / clients of the members / defaulters of Defendant No.2 or other parties and seek information and documents for the purpose of determining the extent of liability, if any, and propose a determination thereof by making a report to this Court for further directions-----**

"17. It is submitted on behalf of some parties, who are alleged to be defaulters M/s. Mohan India Group and M/s. P. D. Agro Processing Pvt. Ltd. - that there have been pending arbitration proceedings between these parties and Defendant No.2 herein, where awards have been passed. It is submitted that these awards will have to be executed and that recourse to the Committee need

not be had in the event of such execution. It appears that there is an award passed in terms of a settlement agreement between M/s. Mohan India Group and Defendant No.2 herein. **The Committee's mandate under the Minutes of Order proposed is to explore and negotiate mutual settlements *inter alia* between Defendant No.2 herein and the alleged defaulters/ third parties.** If any settlement is actually arrived at between Defendant No.2 and such defaulters / third parties under any other proceedings, the Committee is not expected to disturb that settlement but in fact, record, supervise any settlement that may have been already arrived at. Even otherwise, in case of settlements arrived at generally, the Committee is required to seek appropriate directions of the Court after a report in that behalf is made to this Court, to take steps to recover amounts due from defaulting members, their clients and others unless such recovery is by consent of the parties. Therefore, as far as this exercise is concerned, there is no merit in the grievance of the learned Counsel for these defaulters / third parties that the Minutes of Order proposed in any way impinge upon the settlements arrived at between the parties before other forii. **As far as M/s. P. D. Agro Processors are concerned, there is no settlement as such but a suit is pending between M/s. P. D. Agro Processors and Defendant No.2 herein. The settlement proposed in terms of the Minutes of Order herein does not in any way affect the third parties, including M/s. P. D. Agro Processors, in the prosecuting of their suit.** As already noted above, any coercive steps in relation to any funds or assets of third parties can only be sought from this Court, in which case the affected parties, as noted above, can always be heard by this Court."

"18. In these premises, after hearing all the concerned parties and stakeholders, this Court is of the view that it is in the interest of justice that the Minutes of Order proposed by the parties in the present suit be accepted and an order be passed in terms thereof. Accordingly, **there will be an order in terms of the Minutes of Order taken on record, identified as C and C-1 respectively. This order shall inure to the benefit of the Plaintiffs in the companion Suits, namely, Suit (L) No.221 of 2014, Suit (L) No.991**

of 2013, Suit (L) No.121 of 2014 and **Suit (L) No.328 of 2014**. The Plaintiffs in these Suits have no objection to these Minutes being taken on record as recorded in the Order of 27th August 2013." (Emphasis supplied)"

15. We have considered the question whether the role and function of the Committee under Order dated 2nd September 2014 is confined to exploring and negotiating mutual settlements between NSEL and their members and their clients and whether under the Order dated 2nd September 2014, the Committee is authorised to act as Commissioner under Section 75 and Order 26 of the Code of Civil Procedure for examination of accounts for the purposes of determining the extent of liability of members of NSEL and parties to whom the monies of the alleged defaulting members of NSEL can be traced and all other parties concerned and propose determination by making reports to the Hon'ble Court for further directions.

16. Order dated 2nd September 2014 is an order passed by the Court in terms of Minutes of Order signed on behalf of the Plaintiffs and Defendant Nos.1, 2, 3 and 5 in Suit No.173 of 2014. The Order dated 2nd September 2014 has been passed in Suit (L) No.328 of 2014 (now numbered Suit No.11 of 2014) filed by NSEL against P. D. Agro and other as well and provides that the same will inure to the benefit of the Plaintiffs in Suit (L) No.328 of 2014.

17. P. D. Agro and others are Defendant Nos.1 to 5 in Suit (L) No.328 of 2014 filed by NSEL. The Order dated 2nd September 2014 has been passed after hearing the Learned Advocate for P. D. Agro and others - Defendant Nos.1 to 5 in Suit (L) No.328 of 2014 (now numbered Suit No.11 of 2014). The submission of P. D. Agro Processors and others that they are not covered by the Order dated 2nd September 2014 as they do not wish to be party to the settlement process before the Committee and because P. D. Agro Processors and others are not signatories to the Minutes of the Order in terms whereof the Order dated 2nd September 2014 has been passed, is not tenable.

18. NSEL have not taken out third party notice against P. D. Agro Processors Pvt. Ltd. and others in Suit No. 173 of 2014. NSEL has filed Suit (L) No.328 of 2014 numbered as Suit No.784 of 2014 and now

converted to Commercial Suit No. 11 of 2014 against P. D. Agro Processors Pvt. Ltd. and others. It appears that P. D. Agro Processors have taken out Notice of Motion (L) No.914 of 2014 in Suit (L) No.328 of 2014 filed by NSEL against P. D. Agro Processors and others for referring the subject matter of that suit to arbitration in terms of arbitration clause contained in the Byelaws of NSEL. The Committee has not been informed of Orders, if any, passed in Notice of Motion (L) No.914 of 2014 in Suit (L) No.781 of 2014.

19. We have considered the submission on behalf of P. D. Agro Processors that under the Order dated 2nd September 2014, the function of the Committee is confined to exploring and negotiating mutual settlement and that in paragraph 17 of the Order dated 2nd September 2014, it is clarified that mandate of the Committee under the Minutes of Order is to explore and negotiate mutual settlement, inter alia, between NSEL and the alleged defaulters / third parties and that the settlement proposed in terms of the Minutes of Order does not in any way affect third parties, including M/s. P. D. Agro Processors and others in prosecuting of their suit. On considering the Order dated 2nd September 2014 and the Minutes of Order annexed thereto, we are of the view that the function of the Committee is not confined to exploring and negotiating mutual settlement between the parties. Exploring and negotiating mutual settlement is one of the functions of the Committee. Under the Order dated 2nd September 2014, the Committee has been appointed Commissioner for examination of accounts for the purpose of determining the extent of liability of the alleged defaulters of NSEL and other parties to whom the monies of the alleged defaulters can be traced and all other concerned parties and propose a determination by making a report to the Court for further directions. The function of the Committee as the Commissioner for examination of accounts is distinct from and is not confined to the process of negotiation of mutual settlement between NSEL and its defaulting members / third parties and their clients. The performance of the function of the Committee acting as Commissioner for examination of accounts between NSEL and its defaulting members / third parties and their clients, is not dependent on the consent of the concerned parties.

20. In view of the Orders dated 17th June 2015 passed in Appeal (L) No.766 and 767 of 2014 filed by White Water Foods Pvt. Ltd. and others mentioned in para 4 above and the Order dated 13th July 2017 passed in Appeal (L) No.802 of 2014 filed by P. D. Agro Processors Pvt. Ltd. and others mentioned in paragraph 11 above, subject to orders of the Court, the Committee shall function in accordance with Section 75 of the Code of Civil Procedure while discharging its functions under the Minutes of Order and directions under the Order dated 2nd September 2014 for examination of accounts between NSEL and its members / third parties and their clients and submission of Reports to the Hon'ble Court. The Committee is unable to accept the submission of M/s. P. D. Agro Processors and others that production of accounts, including bank accounts of P. D. Agro Processors and others before the Committee would amount to collecting evidence against P. D. Agro Processors Pvt. Ltd. and others and prejudice right of P. D. Agro Processors Pvt. Ltd. and others in effectively defending Suit (L) No.328 of 2014 registered as Suit No.784 of 2014 now converted to Commercial Suit No. 11 of 2014 filed by NSEL against P. D. Agro and others. The Committee is not collecting any evidence for any of the parties. What the Committee is doing is nothing but examination of the accounts between the relevant party and NSEL to place before the Hon'ble High Court Reports of the Committee thereon for directions as a commissioner appointed by Court to act within the parameters of the Civil Procedure Code.

21. The Committee finds that under the Order dated 2nd September 2014, the Committee has been appointed Commissioner for examination of accounts in Suit (L) No.328 of 2014 (now numbered Suit No.11 of 2014) filed by NSEL against P. D. Agro Processors Pvt. Ltd. and others as well. Order 26, Rules 11 and 12 of the Code of Civil Procedure,1908 provide that in any suit in which an examination or adjustment of the accounts is necessary, the Court may issue commission to such person as it thinks fit directing him to make such examination or adjustment and report thereon. The appointment of Commissioners for examination of accounts between NSEL and P. D. Agro Processors Pvt. Ltd. and others cannot prejudice the rights of the Defendants in Suit (L) No.328 of 2014 registered as Suit No.784 of 2014 now converted to Commercial Suit No. 11 of 2014 filed by NSEL in defending that Suit.

22. Prayer of P. D. Agro Processors Pvt. Ltd. and others in their Application dated 14th December 2015 that P. D. Agro Processors Pvt. Ltd. and others may not be directed to participate in the proceedings before the Committee is rejected.

23. NSEL has filed with the Committee Affidavit dated 3rd October 2015 of Shri Santosh Dhuri along with copies of ledger accounts maintained by NSEL of their member P. D. Agro Processors Pvt. Ltd., copies whereof have been served on the Advocates for P. D. Agro Processors and others. The Committee proposes to issue notices to P. D. Agro Processors and others and afford them an opportunity to make their submissions on the ledger accounts of P. D. Agro Processors Pvt. Ltd. produced by NSEL and examine the accounts and transactions between NSEL and P.D. Agro and others and other parties concerned and submit Report/s of the Committee thereon to the Hon'ble High Court

JUSTICE V. C. DAGA (RETD.)

CHAIRMAN

**MR. J.S. SOLOMON
ADVOCATE AND SOLICITOR**

**MR. YOGESH THAR
CHARTERED ACCOUNTANT**

MEMBERS