

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO. 240 OF 2014****IN****SUIT NO. 173 OF 2014****WITH****TPN 2 OF 2014 TO TPN 15 OF 2014**

Modern India Limited & Ors.

...Plaintiffs / Applicants

vs.

Financial Technologies (India) Ltd. & Ors.

...Defendants

with

NOTICE OF MOTION (L) NO. 2052 OF 2013**IN****SUIT NO. 221 OF 2014**

MMTC Ltd.

...Plaintiff

vs.

The National Spot Exchange Ltd. & Ors.

...Defendants

with

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

with

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

with

NOTICE OF MOTION NO. 765 OF 2014**IN****SUIT (L) NO. 328 OF 2014**

**WITH
NOTICE OF MOTION (L) NO. 807 OF 2014
WITH
NOTICE OF MOTION (L) NO. 914 OF 2014
WITH
NOTICE OF MOTION (L) NO. 1633 OF 2014**

The National Spot Exchange Ltd. ...Plaintiff
vs.
P.D. Agro Processors Pvt.Ltd.& Ors. ...Defendants

Mr. Mustafa Doctor, Senior Advocate with Mr. Akshay Patil, Mr. C. Rashmikant, Ms. Pooja Kothari, Ms. Hiral Thakkar i/b. M/s. Federal & Rashmikant, for Plaintiff in Suit 173/2014.

Mr. Janak Dwarkadas with Mr. Zal Andhyarujina, Mr. Kunal Dwarkadas, Mr. Shailesh Shukla, Mr. Luckyraj Indorkar i/b. M/s. J. Sagar Associates for Defendant No.1 in NM No.240/2014.

Mr. Viraj Tulzapurkar, Senior Advocate with Dr. Birendra Saraf, Mr. Chirag Kamdar, Mr. Ameet Naik, Mr. Abhishek Kale and Ms. Anuja Jhunhunwala, i/b. M/s. Naik Naik & Co. for Plaintiffs in SL 328/2014 and for Defendant No.2 in NMS 240 of 2014 in Suit 173/2014, for Defendant No.1 in NMSL 2052/2013 in Suit 221/2014, for Defendant No.1 in NMSL 2166/2013 in SL 991/2013 and for Defendant No.2 in NMS 212/2014 in Suit 121/2014.

Mr. J.P. Sen, Senior Advocate with Dr. Poornima Advani, Mr. Aditya Mehta and Mr. Pulkit Sukhramani, i/b. M/s. The Law Point, for Plaintiffs in Suit 221/2014.

Dr. Poornima Advani with Mr. Aditya Mehta and Mr. Pulkit Sukhramani i/b. M/s. The Law Point, for Plaintiff in SL 991/2013.

Mr. Aditya Mehta with Ms. Namrata Shah, i/b. M/s. Mansukhlal Hiralal & Co., for Plaintiffs in Suit 121/2014 with NMS 212/2014.

Ms. Sneha Vani i/b. M/s. Law Charter, for Applicants in CHS 198/2014, 250/2014 and 251/2014.

Mr. Subham Chatterjee, i/b. M/s. Dave Girish & Co., for Defendant No.24 in Suit 173/2014.

Mr. M.H. Kane with Mr. Rahul Kadam, i/b. M/s. W.S. Kane & Co., for Defendant Nos.14 in NM (L) No.16344/2014 in S(L) 328/2014.

Mr. Arun Siwach with Mr. Jay Sanklecha, i/b. M/s. Amarchand & Mangaldas & S.A. Shroff & Co., for Defendant No.15 in SL 328/2014 & NMS 765/2014.

Mr.S.A. Oak i/b. M/s. Mahesh Menon & Co., for Third Party Noticee in TPN

4/2014 and TPN 12/2014.

Mr.Vivek Sheth i/b. M/s.DSK Legal for Respondent No.10 in Suit 121/2014 and for Respondent No.173/2014.

CORAM : S.C. GUPTE, J.

09 OCTOBER 2014

P.C. :

On 2 September 2014, this Court passed an order in terms of the Minutes of Order tendered by the parties and appointed a committee consisting of three members for carrying out the exercise referred to in the Minutes of Order. According to that order, the committee was expected to peruse the papers, comprehend the overall exercise involved and accordingly make a report to this Court. The committee has made a report to this Court on 30 September 2014. The Committee has suggested its remuneration in accordance with para 5 of its report. The suggestion emanating from para 5 of the report seems to be reasonable. The parties before the Court have no objection to any of the proposals contained in para 5. Accordingly, the remuneration of the committee is fixed in accordance with para 5 of the report dated 30 September 2014.

2 In terms of the order dated 2 September 2014 together with the Minutes of Order, referred to above, the committee has proposed in para 6 of the report that if any independent forensic audits are required to be carried out to enable the committee to perform its functions, the same may be carried out by M/s.Bansi S. Mehta & Co., Chartered Accountants. The Committee has indicated its reasons in support of the proposal in para 6 of the report. The committee has also noted the professional charges indicated by M/s.Bansi S. Mehta & Co. for carrying out such forensic audits of the accounts of NSEL and 24 defaulters.

3 Mr.Tulzapurkar, learned Senior Counsel appearing for Defendant No.2-NSEL, submitted that though his clients have no objection to the proposal of audit through M/s.Bansi S. Mehta & Co. and the fees indicated by the firm for such audit, the question whether or not audit of NSEL is required for performing

the functions of the committee may not be treated as concluded by means of the observations made by the committee in para 6 of its report. He submitted that this question may still be kept open and as and when the committee is of the opinion that an independent forensic audit of the accounts of NSEL is required, before proposing such audit, the committee may hear NSEL. He particularly relied on Clause 5(f) of the Minutes of Order which authorizes the committee to carry out forensic audit of the alleged defaulting entities. He submits that as of now, the committee has not concluded either that NSEL is a defaulting entity or that an independent forensic audit of NSEL is required.

4 Mr. Doctor, learned Senior Counsel appearing for the Plaintiffs, submits that an independent forensic audit of NSEL is surely contemplated within the terms of the Minutes of Order taken on record by this Court.

5 In my view, this question need not be decided at this stage, but it would be open to the committee, if it finds that for the task it has been entrusted with, it is necessary to carry out independent audit of NSEL, to do so after hearing NSEL in this behalf. It is needless to add that if, as a result of the decision of the committee, the NSEL is aggrieved or has any issue with such decision, it will always be open for NSEL to bring the matter to this Court under the order passed by this Court on 2 September 2014 read with the Minutes of Order.

6 As far as the last sentence of para 6 of the committee's report is concerned, namely, the possible involvement of forensic audit of FTIL and other group entities, individuals and the fees that may have to be fixed in such event, it is obvious that this exercise is referred to merely as a possible exercise and that no ruling on any such exercise is called for at this stage.

7 Accordingly, the remuneration of the committee members and the proposal for audit by the firm of M/s. Bansi S. Mehta & Co. in terms of paras 5 and 6 of the Committee's Report (subject to the clarification referred to above) are approved. The committee has also proposed directions in terms of Clauses (c)

and (d) of para 10 of its report. The parties have no objection to these directions being passed. Accordingly, Mr.Yogesh C. Parikh, Advocate, is appointed as an officer in charge in terms of Clause (c) of para 10 of the report and the committee is permitted to appoint a clerk, stenographer and peon at a remuneration, as it may deem fit and proper, in accordance with Clause (d) of para 10 of the report.

8 S.O. to 30 October 2014 for directions.

(S.C. Gupte, J.)

Bombay High Court