

**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**

The National Spot Exchange Ltd.

...Plaintiff

vs.

P.D. Agro Processors Pvt. Ltd.& Ors.

...Defendants

.....

Mr. F.E. Devitre, Senior Advocate with Mr. Shyam Mehta, Senior Advocate, with Mr. Mustafa Doctor, Mr. Akshay Patil, Mr. Gautam Ankhad, Mr. C. Rashmikant, Mr. Rohan Dakshini, Ms. Pooja Kothari, Ms. Hiral Thakkar and Ms. Nikita Mishra, i/b. M/s. Federal & Rashmikant, for Plaintiff in Suit 173/2014.

Mr. Janak Dwarkadas, Senior Advocate, Mr. Ravi Kadam, Senior Advocate with Mr. Zal Andhyarujina, Mr. Kunal Dwarkadas, Mr. Shailesh Shukla and Mr. Luckyraj Indorkar, i/b. M/s. J. Sagar Associates, for Defendant Nos.1 & 5 in Suit 173/2014 and for Defendant Nos. 2 & 4 in Suit 221/2014 and SL 991/2013 and for Defendant Nos.1 & 4 in Suit 121/2014.

Mr. Viraj Tulzapurkar, Senior Advocate with Dr. Birendra Saraf, Mr. Chirag Kamdar, Mr. Ameet Naik, Mr. Abhishek Kale and Ms. Anuja Jhunjhunwala, 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. R.V. Desai, Senior Advocate with Mr. R.B. Pardeshi and Ms. J.N. Pandhi for Enforcement Directorate.

Mr. Darius Khambata, Advocate General, for the State of Maharashtra.

Mr. Anil Singh, Additional Solicitor General with Mr. A.K. Saxena, for Income Tax Department.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mihir Mody and Mr. Rushin Kapadia, i/b. M/s. K. Ashar & Co., for Forward Market Commission.

Mr. Darius Khambata, Advocate General with 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 and NMSL 2052/2013.

Mr. Darius Khambata, Advocate General with Dr. Poornima Advani with Mr. Aditya Mehta and Mr. Pulkit Sukhramani i/b. M/s. The Law Point, for Plaintiff in SL 991/2013 and NMSL 2166/2013.

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

Mr. Praveer Diwan with Mr. Shailesh Shukla and Mr. Luckyraj Indorkar, i/b. M/s. J. Sagar Associates, for Defendant No.3 in Suit 173/2014, for Defendant No.17 in Suit 221/2014, for Defendant No.17 in SL 991/2013 and for Defendant No.25 in Suit 121/2014.

Mr. Siddharth Samantaray, i/b. M/s. Shiralkar and Co., for Defendant No.4 in Suit 173/2014 & Notice of Motion No.240/2014, for Defendant No.37 in Suit 221/2014 & NMSL 2052/2013, and for Defendant No.25 in SL 991/2013 & NMSL 2166/2013.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Naudish Chudgar and Ms. M. D'Souza, for N.K. Proteins.

Mr. Aurelius D'Silva, i/b. M/s. Law Charter, for Applicants in CHS 198/2014, 250/2014 and 251/2014.

Mr. S.P. Bharti with Mr. P.R. Yadav, for Defendant No.7 in Suit 173/2014 and for Third Party Noticee Nos.3, 5 and 12.

Mr. Vivek Shetty, i/b. M/s. DSK Legal, for Defendant No.21 in Suit 173/2014.

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

Mr. Dhaval Mohan with Mr. Jayesh Gawde, i/b. M/s. Thakore Jariwala & Associates, for Defendant No.34 in Suit 173/2014.

Mr. Vijay K. Singh i/b. M/s. Singh & Associates, for Defendant Nos.1 to 7, 9 to 13 and 16 in SL 328/2014.

Mr. M.H. Kane with Mr. Rahul Kadam, i/b. M/s. W.S. Kane & Co., for Defendant Nos.14 in SL 328/2014.

Mr. Vishal Kanade with 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.

Ms. Pragya Khaitan, i/b. M/s. Crawford Bayley & Co. for Defendant No.18 in SL 328/2014.

Mr. N.S. Shah, i/b. M/s. Shantilal & Co., for Defendant Nos.21, 22 and 30 in Suit 221/2014.

Mr. Nikunj Mehta, i/b. Ms. Neha Bhosale, for Defendant No.18 in Suit 173/2014, for Defendant No.15 in SL 991/2013, for Defendant No.16 in Suit 121/2014 and for Defendant No.15 in Suit 221/2014.

Mr. Govind Solanke, for Third Party Noticees.

Ms. Gunjan Mangla, for Third Party Noticee.

Mr. Sunil Humbre, for Noticee No.10.

Mr. C.M. Jadhav, i/b. M/s. Mahesh Menon & Co., for Third Party Noticee in TPN 4/2014 and TPN 12/2014.

Mr. Nirav Shah, i/b. M/s. DSK Legal, for Defendant No.21 in Suit 173/2014.

Mr. Nirav Shah, i/b. M/s. DSK Legal, for Defendant No.10 in Suit 121/2014.

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CORAM : S.C. GUPTE, J.

SEPTEMBER 2, 2014

P.C. :

. Defendant No. 2 – The National Spot Exchange Limited - was incorporated to create a platform for conducting electronic spot trading in commodities. The present suit is filed by the Plaintiff, who is one of the investors who has dealt on the platform of Defendant No.2 and entered into trades on it. The suit is filed by the Plaintiff for itself and on behalf of other

investors and traders claiming various amounts as due and payable in respect of the trades executed on the platform of Defendant No.2. There are other suits filed by other Plaintiffs, who also claim to be investors having traded on Defendant No.2. It is the case of Plaintiffs in the various suits filed by them that there were fraudulent contracts undertaken with the knowledge and/or consent and/or collusion on the part of Defendant No.1 herein, who is the holding Company of Defendant No.2 and one Mr. Jignesh Shah, who is the Chairman and Managing Director of Defendant No.1. Third party notices have been taken out in these suits *inter alia* against various counter parties to these trades, who are claimed by Defendant No.2 as defaulters and their clients. It is the case of Defendant No.2 that amounts payable under various trades by these parties have not been received.

2. At the hearing of these Notices of Motion, the parties arrived at certain understanding concerning *inter alia* ascertainment of default amounts in respect of trades executed on the exchange, accessing assets of the defaulters and preservation, protection and management of assets and funds with a view to protect the interests of respective parties. Accordingly, Minutes of the Order were proposed by the parties, which mainly envisaged formation of a Committee with a view to make investigation, facilitate mutual settlements between the parties, collect, sell and monetize various assets, both immovable and movable, of defaulting members and their clients and any other persons and manage these assets and funds and finally approach the Court in the event any coercive process was necessary with a view to protect these assets and funds. The Minutes of Order originally proposed envisaged *inter alia* the Committee's power to request various statutory authorities, including the Enforcement Directorate ('ED') and the Forward Markets Commission ('FMC') to furnish copies of relevant records

in the custody of these authorities for the purposes of carrying out the functions of the Committee as also to sell/monetize the assets, which have been or may be attached by any statutory authority, including the ED & FMC, and to hold these assets as interim security until sale and realization of monies and also to distribute amounts between non-defaulting members towards satisfaction of their respective claims. Having regard to the fact that the Minutes of Order proposed by the parties involved acts touching upon statutory functions of authorities including the ED, the FMC etc., this Court was of the view that the respective statutory authorities should be heard before the Minutes of Order are taken on record and orders are passed on the basis thereof. Accordingly, notices were issued to various statutory authorities, including the ED and the FMC.

3. Upon such notices being issued, the FMC appeared through its Counsel, who informed the Court on instructions that the FMC had no objection to the proposed Minutes of Order save and except a particular clause of the Minutes which dealt with exploration and negotiation of mutual settlements as also giving effect to these settlements. The statement was accepted by this Court. Learned Counsel appearing for the ED filed a detailed affidavit of ED opposing certain features of the Minutes.

4. All the parties to the suits before the Court including third party noticees as well as the various statutory authorities, including the ED and FMC, were heard in extenso by the Court on the Minutes of Order proposed by the parties.

5. It is submitted by the learned Counsel for the ED that the tradings conducted on the exchange of Defendant No.2 are hit by the

provisions of the Prevention of Money-Laundering Act, 2002 ('PMLA'). It is submitted that FIRs have been registered against Defendant No.2, its directors, key managerial personnel, as also various defaulting members of Defendant No.2 under Sections 120B, 409, 465, 467, 468, 471, 474 and 477(A) of the Indian Penal Code by the Police. Charge-sheets have been filed by the EOW Mumbai under Sections 409, 465, 467, 468, 471, 474, 477(A) read with Section 170(B) of the Indian Penal Code as well as Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 ('MPIDA'). It is submitted that these offences are scheduled offences within the meaning of the PMLA; that from out of 24 defaulting members of NSCL, three defaulter groups, namely, Mohan India Group, P.D. Agro Ltd. and Astha Group fraudulently obtained huge funds from Defendant No.2 in bogus sale transactions against non-existent stocks of their commodities; that as per records collected from Defendant No.2, the total liability of Mohan India Group was approximately Rs. 921.40 crores as on 31 August 2013, whereas liabilities of P.D. Agro Processors Pvt. Ltd. and Astha Group were respectively to the tune of Rs. 637.35 crores and 243.07 crores. It is submitted that these default amounts were in the nature of proceeds of crime within the meaning of Section 2(u) of the PMLA. It is submitted that these amounts, being proceeds of crime, were laundered by defaulters by diverting the funds and investing them in real estate, high end vehicles, payment of business dues, purchase of raw materials, repayment of bank loans, etc. It is submitted that various assets of these three groups, which have been listed in the affidavit filed by the ED, have been provisionally attached under Section 5(1) of the PMLA. It is submitted by the learned Counsel for the ED that having regard to the provisions of Sections 41, 67 and 71 of the PMLA, the Civil Court has no jurisdiction in respect of attachment proceedings conducted under the

PMLA. Lastly, it is submitted that this Court or any Committee set up by it in the present matter, would have no jurisdiction or authority to direct the sale of the assets which have been attached under the PMLA.

6. These submissions are considered in brief hereinbelow. (Many of these submissions may not have to be dealt with elaborately since in the midst of the hearing, the Minutes of Order have undergone some important changes and some of the apprehensions voiced by the learned Counsel of the ED have been adequately taken care of.) Section 41 of the PMLA provides for the bar of jurisdiction of Civil Courts *“in respect of any matter which the Director, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act, (i.e. PMLA), to determine.”* It also provides that *“no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”* The matters to be determined by the various named authorities under Section 41 of the PMLA are set out in Chapter III of the PMLA. The scheme of Chapter III of PMLA is that where the authorities under Act have reason to believe that any person is in possession of any proceeds of crime and charged of having committed a scheduled offence, and such proceeds of crime are likely to be concealed or transferred or dealt with in a manner which may result in frustrating any proceedings in relation to confiscation of proceeds of crime, the authorities may by a provisional order under Section 5 of the PMLA attach such property for a certain stipulated period. Section 8 of the PMLA requires the adjudicating authority to adjudicate and record a finding on the money-laundering. Upon such adjudication, the attachment of any property provisionally made under Section 5 of the PMLA is confirmed. Thereafter the adjudicating authority makes an order confiscating such property, whereupon the property vests in

the Central Government under Section 9 of the PMLA. The property thus vested in the Central Government is managed by the administrator to be appointed by the Central Government under Section 10 of the PMLA. The various machinery provisions for effecting this attachment, adjudication and confiscation, are provided under Chapter III of the PMLA. The PMLA further provides for authorities of Tribunals etc. for determination of various matters.

7. The jurisdiction of various authorities under the PMLA, thus, commences with a provisional order of attachment under Section 5 of the PMLA and culminates in the vesting of the property so attached in the Central Government. It transpires from the record produced before the Court by the ED that so far, out of 24 defaulting entities, ED has proceeded only against 3 defaulting groups comprising 6 defaulting entities. Even as far as these 6 defaulting entities are concerned, out of the alleged proceeds of crime of approximately Rs.1800 crores, the ED has so far attached funds or proceeds aggregating to Rs.180 crores only. On the other hand, the total amount alleged to be receivable from these 24 defaulting entities is a staggering Rs.5,647.20 crore. There can possibly be no objection on the part of the ED if these other assets are collected under orders passed by this Court and the amounts of default are secured for the benefit of the investors. So long as this is achieved without accessing in any way the properties already attached by the ED, whether provisionally or finally, and in respect of which alone the authorities under the PMLA have jurisdiction, the ED can possibly have no grievance. Such orders do not in any way fall foul of the provisions of the PMLA restricting the jurisdiction of this Court.

8. In any event, in the Minutes of Order now proposed, the

provisions concerning accessing the relevant records of the ED or selling or monetizing assets which have been attached by the ED and distributing amounts realized out of these assets to non-defaulting members, have been dropped. What the Minutes now provide is that in the event of any assets presently attached by the ED being released from attachment, the defaulters/third parties and the ED shall forthwith inform the Plaintiffs and Defendant No.2 herein as well as the Committee appointed by this Court, and the Committee may thereafter take such steps as may be necessary to take charge of these assets, as and by way of security. With these alterations, the objections of the ED have adequately been taken care of. As far as the Minutes now proposed are concerned, having regard to the various objections of the ED dealt with above, the orders being passed in terms of these Minutes do not in any way impinge upon the jurisdiction or authority of the various authorities under the PMLA to determine matters within their purview.

9. Now, as far as the FMC objections noted above are concerned, the basis of these objections is the notification issued by the Ministry of Consumer Affairs on 6 August 2013. By that notification, the Ministry has directed that the settlement of all outstanding one day forward contracts shall be done under the supervision of the FMC and any order or direction issued by the FMC in this regard shall be binding upon the National Spot Exchange and any person, intermediary or warehouse connected with the National Spot Exchange and, for this purpose, the FMC is authorized to take such measures as it deems fit. The Minutes originally proposed required the Committee appointed under the Minutes to explore and negotiate a mutual settlement between Defendant No.2 and the alleged defaulting members/third parties and their clients and receipt of these

amounts of settlement and distribution thereof without recourse to the FMC. After taking into account the objections of the FMC, the parties now propose instead that before any such mutual settlement is finalized, the FMC shall be heard by the Committee. The Minutes also provide for notice to FMC before any settlement is given effect to or any money is received thereunder. The minutes actually contemplate that the Committee and the FMC shall work in coordination in working out such settlements. With these proposals, the grievances of the FMC have been adequately addressed. The FMC is duly involved in the whole exercise of reaching mutual settlements and collecting monies thereunder. The FMC has now no objection to these minutes being taken on record.

10. Some of the parties before the Court, who are third parties to whom notices have been issued, have also voiced grievances about certain terms of the Minutes of Order proposed. These will be briefly dealt with now.

11. It is submitted by some of the parties that there are pending MPIDA proceedings between Defendant No.2 and third parties, where collection and distribution of amounts in default have been proposed by the respective Courts. It is submitted that having regard to this exercise, which is being conducted by the MPIDA Court under proceedings before it, once the settlements are reached and collection and distribution of assets are proposed thereunder, leave of this Court once again need not be sought with the intervention of the Committee. The Minutes of Order merely require the Committee to explore mutual settlements between Defendant No.2 and the alleged defaulters/third parties and their clients. Once these settlements have been explored and arrived at, the Committee is required

to record, supervise and implement the settlements, but the implementation of the settlements and any coercive process required for such implementation, can only be under the orders of this Court. Having regard to the fact that the exercise proposed to be carried out by the Committee under this order is a mammoth exercise involving thousands of crores of rupees and several parties, there is an imperative need that this exercise is properly co-ordinated through a central mechanism, overseen by this Court. It is in the fitness of things that all parties, even if they be parties in pending proceedings before the MPIDA Court or any other Court or authority, are asked to approach this Court and have the particular arrangement vetted by this Court on a report of the Committee, even if it involves some inconvenience on the part of those parties. After all, at that stage, the parties would have to be heard by this Court and directions, if any, would be passed only after all stake holders' interests are assessed by this Court. This objection, therefore, does not merit acceptance.

12. Another provision of the Minutes of Order opposed by some parties concerns dealing with attached assets (i.e. by statutory authorities other than the ED). The Minutes provide for dealing with these assets only with the leave of the Court. Such a provision is necessary so as to ensure the overall monitoring of the disposal of assets of the defaulters other than assets attached by the ED, which are, as noted above, to be dealt with separately. No party can really have a grievance, since the merits of such disposal shall any way be considered by this Court whenever such leave is applied.

13. On behalf of some of the parties, who are third parties in the proceedings before the Court, it is submitted that the Committee's power to

issue notices to various authorities/parties, including defaulters/third parties/their clients and also authorities including the EOW, the Income Tax Department, the FMC etc. for the purposes of accessing information and documents, is in the nature of authorizing the Committee to collect evidence from parties, who are yet to be heard by this Court. It is submitted that by this process, without filing any substantive proceedings, the parties to these suits would be able to collect evidence from various statutory authorities and that this course is not permissible. Mr. Sancheti, learned Senior Counsel appearing for these parties, relies upon various judgments in this behalf, including the judgments of the Supreme Court in the cases of **Padam Sen Vs. State of Uttar Pradesh**¹ and **K. Joseph Augusthi Vs. A. Narayanan**², as also a judgment of this Court in the case of **Syed M. Ahmad Vs. Syed A.A. Khan**³. On the basis of these judgments, it is submitted by Mr. Sancheti that the Committee cannot be permitted to issue notices to third parties, including the various statutory authorities, with a view to access information and documents.

14. It is obvious that the Committee to be appointed under these 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

1 (1961) 1 SCR 884

2 AIR 1964 SC 1552

3 W.P. No.2017/2011 Bom HC (Nagpur Bench)

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. Whilst carrying out this exercise, the Committee may request the various statutory authorities, including the EOW, Income Tax Department and the FMC etc., to furnish documents and relevant records for the purpose of performing the functions of the Committee. Such request and the response, if any, from these authorities in pursuance of this request cannot be termed as an exercise in collecting evidence from parties, who are yet to be heard by the Court. Any coercive process in this respect can be issued only by the Court upon an application made to it by the Committee. In the event of such application being made, in an appropriate case, the Court may call upon the affected party to show cause why such process should not be ordered. That does not, of course, mean that the parties are entitled to notice as of right under the present

order to be heard every time a process is to be issued calling for information or documents from any third party, including the authorities. The notice, if any, and opportunity of hearing that may be required will be considered by the Court on a case to case basis. Having regard to the relevant provisions of the Minutes of Order proposed and in the backdrop of the discussion above, the apprehensions of the third parties in this behalf are misplaced. Besides, the Minutes of Order also propose in sub-clause (i) of Para 5 that any party affected by any decision of the Committee in this behalf shall be entitled to approach this Court.

15. The judgment of **Padam Sen** (supra) relied upon by the learned Counsel for the third parties deals with seizing of the books of accounts as part of an order passed by the Court in exercise of its inherent powers. The Court in that case held that the defendants had no right to these account books; that they lay no claim to these accounts books. They applied for the seizure of the books on an apprehension that the plaintiffs might make entries in the accounts books which would go against the defendants' case which they were trying to set up. It is in that context that the Supreme Court said that it was no business of Court to collect evidence or even to protect a party from the evil consequences of making entry in account books. This case has no relevance to the facts with which we are concerned in the present case. The case of **K. Joseph Augusthi** (supra) involves the issue of compelling a person to be a witness against himself. This case again has no application to the facts of our case. The Committee is not authorized by the Court under the Minutes of Order to issue a coercive process by itself. In any case, where compulsory attendance is required or a person is required to depose against his wishes, the matter will have to be brought before the Court and an appropriate order will have to be sought in

that behalf. This is clear from the Minutes of Order proposed by the parties and no party needs to entertain any apprehension in this respect. In **Syed M. Ahmed's** case (supra), a learned Single Judge of this Court was examining the validity of an order appointing a Court Commissioner passed by a Civil Judge, Junior Division. The relevant issues before the trial court in that case covered the validity of a sale deed, which was challenged in the suit and the plaintiff's entitlement to the possession of the suit site. There was no issue of any encroachment or boundary dispute or identity of the property in question. In this context, it was held by our Court that the Court Commissioner's report which was directed to state the extent of construction carried out by the respondent on the suit property would not have facilitated the decision of the court in the suit and was totally unwarranted. These facts are clearly distinguishable from the facts of our case.

16. Learned Counsel appearing for one of the third parties, namely, M/s. LOIL Continental Foods Ltd., submits that in its Civil Suit, where LOIL Continental Foods are the plaintiffs, the defendants, who include Defendant No.2 herein, have been restrained from taking any coercive steps in any manner against the plaintiffs until further orders. It is submitted that, having regard to these directions, the liability of M/s. LOIL Continental Foods Ltd., if any, cannot be investigated by the Committee to be appointed by this Court under the Minutes of Order proposed. Once again, as mentioned above, the Committee is not authorized to take any coercive steps against any third party. Even otherwise, the Committee will of course be bound by any order that may be passed by any Court, having a bearing on the functions to be carried out by the Committee in terms of the present order. The committee may, in such an event, seek a direction from this Court. There is, thus, no merit in the submissions of M/s. LOIL.

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 prosecution 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 stake holders, 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 'X' and 'X-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 27 August 2013.

19. The Committee is expected to peruse the papers, comprehend the overall exercise involved and accordingly make a report to this Court to fix their remuneration in the first place. Upon such report being made and remuneration being fixed, the Committee shall meet from time to time as it may choose to do and make periodical reports to this Court, preferably once a month, so as to apprise the Court of the progress of the work carried out by the Committee in terms of the Minutes of Order.

20. Office to permit the Plaintiff in Suit (L) No.991 of 2013 to number the exhibits collectively and accordingly register the plaint.

21. A copy of the letter dated 1 September 2014 addressed by M/s. Bansi S. Mehta & Co., Chartered Accountants, to M/s. Federal &

Rashmikant, Advocates and Solicitors, is placed on record marked "Y" for identification. None of the parties has any objection to the appointment of Mr. Yogesh Thar, Partner of M/s. Bansi S. Mehta & Co. as member of the Committee appointed by the Minutes of Order dated 27 August 2014.

22. Place these Motions along with Notice of Motion No.765 of 2001 in Suit (L) No. 328 of 2014 and Notice of Motion (L) N0.1633 of 2014 in the same suit as also Notices of Motion No.914 of 2014, 1128 of 2014 and 765 of 2014 on 6 October 2014.

(S.C. Gupte, J.)

Bombay High Court