

"NAARA has sent the below to all Financial Dailies and News Agencies"

Subject: The unprecedented case of an EXCHANGE defaulting: NSEL vs. NAARA

Dear Sir / Madam,

At the outset we wish to thank you for your time and attention that you provide for the below. We wish to take this opportunity to introduce ourselves. We, NSEL Aggrieved and Recovery Association (NAARA), are a non-profit group comprising individuals who are victims of the massive National Spot Exchange Ltd. (NSEL) scam. For more about us, please visit

www.nselrecovery.com.

We are responding to the litany of untruths that NSEL has printed in their advertisement in leading national dailies on 04th December 2014. Please find below our detailed point wise reply. We would be happy to provide you all the information backing each of our replies.

RECOVERY EFFORTS

CLAIM: Hon'ble Bombay HC in its order dated 02/12/2014 has directed Mohan India to furnish its property details and also passed an injunction order against it for recovery of Rs. 922 crores. This has been achieved due to the relentless efforts of NSEL recovery team against all odds, including lack of interest among so called Trading Clients' Forums and Action Groups to chase Defaulting Members and recover default money.

NAARA: Mohan India signed a settlement agreement for Rs.775 Crores 14 months back, which NSEL publicised then too. The Forward Markets Commission (FMC) did not approve of that agreement because NSEL did not respond to FMC on how will the remaining of obligations be settled and also the collateral underlying to the agreement was inadequate. FMC believed that the agreement was an eye wash. Anyways, true to everyone's apprehensions, Mohan India defaulted in honouring the agreement and for nearly 11 months, NSEL took no action to enforce the default clauses. NSEL found it expedient to pursue the matter in the Hon'ble Bombay HC after the Draft Merger Order u/s 396 was issued, against which FTIL has filed a writ petition. The pursuit now against Mohan India also coincides with the pressure on Jignesh Shah through a FIR in New Delhi, filed by an investor who has directly accused Jignesh Shah and his brother Manjay Shah of being hand-in-glove with Mohan India. Would NSEL state on record when did they initiate proceedings against Mohan India and fully explain the delay?

The fact remains that clients at NSEL are bonafide investors to whom NSEL is obliged to pay since NSEL stood guarantee to all trades. Was it in NSEL Bye-laws that if NSEL committed a Fraud, investors were to directly chase defaulters. Since when did exchange traded contracts, with counter-party guarantee put this onus on investor to chase defaulters? NSEL is making a mockery of Law. Let us imagine a situation of SBI asking it's depositors to chase Kingfisher to make good the losses caused due to lending to KF. The fact that NSEL on its own is bankrupt, and it makes investors it's unpaid creditors. The FMC's 'NOT Fit & Proper' order has clearly exposed NSEL it's directors and its promoters. NSEL has chosen to undermine the relentless efforts and pursuit of various investors and investor groups towards recovery, but the truth shall prevail and justice will be served.

CLAIM: NSEL had earlier obtained injunction against PD Agro Group defendants, including their clients and such injunction is continuing. The PD Agro Group has been summoned by the

Hon'ble Bombay HC Committee on 04/12/2014. The Group has a total outstanding of 674.07 crore as on 02/12/2014.

NAARA: PD Agro Group did not attend the Retd. Justice Daga led High Court Committee (HCC) Hearing. PD Agro and their group concern, Dunaar Foods have used the funds borrowed from NSEL to repay their bank liabilities. MONEY, that NSEL allowed to be laundered are now proceeds of crime which could not have been used to repay bank or any other liabilities. Has NSEL even bothered to implead their Bankers as parties in the recovery suit? Further it may be noted that two other large borrowers LOIL Group and NK Proteins Group have challenged the jurisdiction of the committee, and in case of LOIL, the HCC has clearly told NSEL that NSEL should have worked at setting aside the reliefs granted to LOIL by the court in Punjab. The HCC clearly stated that they cannot exercise any jurisdiction in case of LOIL. Another defaulter, Lotus Refineries, who had filed a claim of Rs.2000 Crores plus on NSEL, also contested in front of the HCC citing specific grounds as to how they cannot be forced to appear before the HCC.

CLAIM: EOW has seized assets of 22 defaulting members worth around Rs. 5000 crore, which needs to be liquidated and paid to trading clients.

Defaulting members have admitted to liabilities of approximately Rs. 2000 crore through settlement agreements or otherwise before the Bombay HC, and authorities and concerned departments / forums and / or the EOW.

NAARA: EOW has seized assets / properties / bank accounts / demat accounts of NSEL Directors, Promoters etc. too under the MPID Act. When one of the borrowers - NK Proteins, with whom Jignesh Shah and FTIL have a very cozy relationship, filed a criminal writ petition praying for quashing the FIR and challenging the MPID invocation, NSEL's Ld. Advocate agreed with the Ld. Advocate of NK Proteins that MPID has been wrongly applied and should be set aside.

This demonstrates clear conflict of interest whereby NSEL and FTIL wants MPID to be set aside so that assets / properties / bank accounts / demat accounts of NSEL directors, promoters etc. are no longer attached and the only protective orders and efficacious remedy thus far is rendered redundant.

NSEL wanted to be admitted and heard as an intervener in this matter whereas in the past NSEL has demonstrated helplessness at not being allowed to intervene by virtue of being co-accused!

CLAIM: ED has attached multiple assets of defaulting members worth over Rs. 200 crore under PMLA. This Act is expected to be amended so that the proceeds of liquidation are paid directly to the trading clients instead of going to the public exchequer.

NAARA: The PMLA amendment, if and when it happens, would be due to no effort of NSEL or FTIL. One of the Broker Member who is also an aggrieved investor has filed a writ in the Hon'ble Supreme Court seeking this relief. NSEL has not even bothered to intervene in this matter, let alone filing NSEL's own proceeding. NSEL has not filed a single representation to

this effect and if NSEL has, then it is requested that NSEL share it with the aggrieved investors who NSEL conveniently choose to refer to as trading clients.

CLAIM: NSEL has filed multiple cases against defaulting members, including 38 cases for dishonoring of cheques by defaulting members, 17 applications in the MPID Court (Mumbai) and 5 arbitration petitions and recovery suits in the Hon'ble Bombay High Court to recover outstanding amounts.

NAARA: NSEL has merely filed these matters, post the MAC and FMC chasing NSEL to act. However, NSEL has not pursued a single matter seriously. The cheque bouncing cases are an eye wash because many defaulters have contested the very basis of deposit of cheques by NSEL. As regarding the cheque bouncing cases, they have not even clarified whether pursuant to a recent Judgement of Hon. Supreme Court, has NSEL filed these cases at locations of the drawer's Bank account. Investors have seen NSEL's casual and callous efforts in the Courts, besides none of this has led to any penny of recovery. NSEL has never published the exact particulars of these cases highlighting the date of filing and the push made by them.

Would NSEL answer as to why only 5 Recovery Suits if there are 22 identified defaulters?

CLAIM: NSEL filed third party notices against 15 defaulting members and their clients in a representative suit filed by Modern India. In the said suit, at NSEL's initiative, the Hon'ble Bombay High Court constituted a three member High Court monitored committee under the Chairmanship of a retired High Court Judge.

NAARA: The third party notices were an after thought and smart legal maneuvering. NSEL and FTIL's attempt was merely to delay the hearing of the Notice of Motion as well as the Suits where the prayers included lifting of the corporate veil. NSEL counsel was admonished in the open Court for attempting to delay the hearing of the Notice of Motion under the pretext of the Committee hearings that were to start. The Committee formation process was delayed for over 5 months since NSEL and FTIL advocates tried to seek too many concessions and frustrating the petitioners. Only when their shenanigans did not work and FTIL and NSEL were faced with a fait accompli did NSEL relent. LET not NSEL make a virtue out of a necessity.

CLAIM: NSEL has 57 staffers dedicated directly or indirectly for recovery, in addition to external consultants and advisors.

NAARA: Of the alleged 57 staffers and alleged advisors, only 3-4 are visible on the ground and they are middle management and junior staff. Besides there is not much to show for their so called dedicated efforts. NSEL should have elaborated their efforts and results.

CLAIM: NSEL had recovered and paid Rs. 545.29 crore to trading clients, including a without prejudice loan worth Rs. 179 crore from FTIL to clear upto 50% settlement liability of 7000 trading clients.

NAARA: The loan from the parent FTIL worth Rs. 179 crores was a feeble attempt to quell the public outrage and a charade to show that NSEL cared for the retail investor, as if liability towards other investors, by virtue of them being larger, do not deserve to be cleared. And one

alleged borrower, Topworth Steel cleared its dues due to followup of investor groups based in Mumbai.

CLAIM: NSEL has utilized its own funds amounting to Rs. 158 crore in making payouts to affected member brokers

NAARA: This amount was spent before 31/7/2013 to keep a lid on the scam. Please also note that there are allegations of certain entities perceived to be close to NSEL directors / promoters who exited before the scam broke out and they could be beneficiaries of NSEL largesse, besides blowing up the entire Settlement Guarantee Fund (SGF). Besides the investor outstandings of Rs.5600 crores, it is given to understand that there are margin monies of Broker members too that NSEL owes. Hence, it is an audacious claim by NSEL that it used its own funds!

CLAIM: Out of the original 24 defaulting members, two owing a total of Rs. 196 crore have almost cleared their dues.

NAARA: If only two have performed of the total 24, it shows NSEL's complicity and utter disregard for back-ground and credit checks, and how poorly NSEL chose the borrowing members. This points towards connivance of NSEL and FTIL with defaulters. NSEL has once again chosen to disregard the relentless efforts of certain investor groups who worked very hard and got one of the borrowers Topworth Steel to clear its dues.

CLAIM: 33,000 clients of e-series have redeemed upto 99% of their holdings through a transparent mechanism. NSEL has completed financial closure of e-gold, e-silver and e-copper with total payments of Rs. 297.44 crore. Financial closure for Platinum, Lead and Nickel are expected soon.

NAARA: The e - series settlements having been done are all due to the Court directives and under the watchful eye of the Forward Markets Commission. Given half a chance, NSEL would have botched it up and made a mess of it, and in all probability siphoned off those monies too.

NSEL: PROPOSED SOLUTION

1. The focus needs to be on the recovery from defaulting members as NIF has confirmed in its letter dated 11/3/2014 and MPID Courts have also observed that all Trading Clients money has gone to the 22 defaulting members of NSEL and also Hon'ble Bombay High Court in its order dated 22/8/2014 has observed that no money has gone to NSEL or its promoters.

NAARA: NSEL is quiet about the fact that the largest borrower NK Protein's director Mr. Nilesh Keshavlal Patel is the son-in-law of NSEL's then Chairman Shri Shankarlal Guru. NSEL is also quiet about the fact that more than Rs. 400 crore are owed by one NK Corporation (client of NK Proteins), is owned by one Mr. DB Patel whose brothers happen to be one Mr. AB Patel and another MR. KB Patel who were found to be indulging in price rigging of the shares of FTIL (NSEL's parent company) along with their cousin, one Mr. Dipak Patel who was a fund manager at an FII Passport Capital, who at one point in time was the largest public shareholder of FTIL holding in excess of 8% of the outstanding shares of FTIL.

Does NSEL think that the public is naive enough to believe that these are mere co-incidences and that these will go unnoticed?

NSEL has chosen to disregard the other observations in the 22/8/2014 Bombay High Court order which are inconvenient. That order clearly states that **NSEL enabled the borrowers to dupe investors** and that it **can't be** accepted that **Jignesh Shah had no knowledge of the same.**

2. The settlement defaults at NSEL are a 'commercial dispute' where in 781 trading clients (6% of the total trading clients with dues payable) represented by about 79 brokers, are claiming about 69% of the total outstanding dues and top 7 defaulting members account for around 85% of the total outstanding dues of the trading clients. Courts are more than capable of adjudicating such commercial disputes.

NAARA: The settlement defaults are not merely commercial disputes as NSEL has eloquently put, under instruction from FTIL. There is a clear-cut criminality and all-round dereliction of duties. NSEL was custodians of investor monies and commodities, if at all they ever existed. NSEL lent money to these crooked entities and promoters with a clear understanding of sharing the profits / loot 50:50. NSEL did all this in the guise of spot commodity trading by not only misleading the public but also giving false assurances to the regulator and the ministry. Despite several borrowers being in default over several months / years, NSEL chose to conceal that information and allowed the fraud to continue and grow to such mammoth proportions. NSEL brazenly defied all the laws of the land and kept obstructing any meaningful discoveries about NSEL's misdeeds. NSEL brazenly violated the conditions of the exemption granted to NSEL and misused the recognition granted by the Government of India. NSEL is an accused facing serious trial, so it should abstain from making callous remarks and calling this a commercial dispute.

NSEL is not qualified to make any remarks on the competency or capability of the justice system and their ability to adjudicate.

3. The Prevention of Money Laundering Act should be amended to enable the proceeds, of the liquidation of the defaulting member's assets attached by the ED, to go to the trading clients instead of the public exchequer.

NAARA: If NSEL is sincere about PMLA amendment, let it join the proceedings in the Hon'ble Supreme Court as a Party and admit that NSEL allowed these crooked defaulters to steal investors' monies under NSEL's watch and pray to the Hon'ble Court that monies be returned to investors. Investors hope to see their Super Star Counsels argue as passionately as they did while seeking bail for NSEL directors, while challenging the FMC Not 'Fit & Proper' Order and while seeking a stay on the draft order of merger under section 396.

4. Government agencies should support the High Court appointed committee for expediting liquidation of the top 7 defaulting members and other defaulting members' assets. The proceeds thereof should be used to pay the Trading clients.

NAARA: If NSEL expects the Government agencies to co operate, NSEL should go and engage with the executive branch of the Government. Let NSEL appeal to them in full public glare whilst admitting NSEL role in this mammoth scam. Investors urge NSEL and Jignesh Shah to use all their charm and advocacy skills which they used while trying to conceal all the wrongs and misdeeds committed during 2009 to 2013.

5. Government of India (GOI) should declare the defaulting members at NSEL as 'Wilful Defaulters' and bar them from availing credit from banks and financial institutions

NAARA: Investors dare NSEL to file appropriate proceedings with all the legal talent that FTIL has hoarded and try to declare these defaulters as Wilful Defaulters. Investors are not using the term 'dare' lightly. All the facts that have been exposed till date, point to NSEL and FTIL active connivance, which will make it very inconvenient for NSEL to proceed against these defaulters, who in turn will further expose NSEL and FTIL. NSEL is in the best position to expose them as NSEL has all the facts, money trail data and all relevant documentation at its disposal.

6. SARFAESI Act should be amended to enable exchanges such as NSEL to take control of the assets of defaulting members, liquidate them and distribute the sale proceeds among the trading clients

NAARA: Investors request NSEL to please file appropriate proceedings for amendment of the SARFAESI Act and in the mean time let it not help the defaulters to escape the MPID net. The protective orders under MPID are essential to go after the assets of all persons who were beneficiaries of these proceeds of crime.

7. GOI can have FMC act in similar fashion as other Regulators have in previous financial crisis for arriving at settlement for e.g. the IPO scam case of 2007 at a depository and the currency derivative dispute of 2012 involving 22 banks.

NAARA: GOI and FMC are very aware of their duties and responsibilities and do not need NSEL's unsolicited advice. Investors urge NSEL promoters not to challenge the well reasoned "NOT Fit & Proper" order of the FMC, just because the truth is inconvenient and exposes their dereliction of duties.

8. GOI can appoint a committee of 3 to 5 members from SEBI, MCA and MOF to work jointly with all stakeholders of NSEL including Brokers/Members, concerned Ministries and Regulator, on expeditious basis to reach an amicable solution for NSEL crisis within the legal and corporate framework, that is fair, equitable and just to all its stakeholders.

NAARA: The draft order u/s 396 is indeed a step in that direction only which NSEL's parent company has challenged. Investors know that the matter is sub-judice and await adjudication of the same. In the mean time, investors request NSEL to file appropriate Writs in the Hon'ble Supreme Court or High Court and pray that they set up a Special Investigation Team (SIT) and set up a fast track court which will hear this matter on a day to day basis.

We seek everyone's benevolent indulgence and wish to draw their attention to the Fit & Proper Status Report of FTIL, Jignesh Shah and Ors. issued by the Forward Markets Commission (FMC).

http://fmc.gov.in/show_file.aspx?linkid=Order dated 17-12-2013 in case of Fit and Proper Status-185672116.pdf

The same can be accessed from our website too.

<http://www.nselrecovery.com/wp-content/uploads/2014/10/FMCOrderincaseofFitProper.pdf>

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ALLOCATE SOME SPACE IN THEIR PUBLICATIONS FOR THE AGGRIEVED VICTIMS.*