

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 & SOLICITOR MEMBER)

AND

MR. YOGESH THAR (CHARTERED ACCOUNTANT MEMBER)

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COMPOSITE REPLY TO: (I) APPLICATION NO. 26 FILED BY MODERN INDIA LIMITED (CLAIMING TO BE REPRESENTATIVE OF 13,000 INVESTORS), (II) REPRESENTATION / OBJECTION FILED BY NSEL AGGREIVEED AND RECOVERY ASSOCAITON (NAARA), (III) APPLICATION FILED BY NSEL INVESTORS FORUM, AND (IV) LETTER DATED 18TH FEBRUARY 2015 FILED BY NSEL INVESTORS ACTION GROUP (HEREINAFTER REFERRED TO AS "APPLICATIONS")

1. NSEL is filing a composite reply to the aforementioned applications at this stage as directed by the Hon'ble High Court Committee. NSEL is not dealing with any of the applications in detail and reserves its right to file a para-wise reply as and when occasions arises and will deal with any other application, representation or objections that may filed hereinafter by any other trading members / purported trading client group(s). Nothing mentioned in any of the applications shall deem to have been admitted by NSEL for reason of non-traverse.
2. At the outset, NSEL submits that these applications / representations / objections should not be entertained / allowed as they have been made with a mischievous / malafide intent and with a view to suppress and withhold information. It is repeated and reiterated that NSEL has not admitted that it is a defaulter as alleged or at all.

3. It is well known that NSEL, with the help of this Hon'ble Committee, is continuously taking efforts for recovering money from various defaulting Members which can be proved from the following: (i) decrees are obtained against four defaulting Members; (ii) there are various orders passed by this Hon'ble Committee recommending sale of commodities lying in various warehouses; and (iii) recommending appointment of Court Receiver on various immovable properties. It is further submitted that none of these Applicants have been able to prove / show, how providing of this information will derail / shift the focus of this Hon'ble Committee away from the defaulting Members. This Hon'ble Committee has been holding meetings on regular basis wherein such defaulting Members are appearing before the Hon'ble Committee. This Hon'ble Committee has only directed NSEL to collect compile data with regard to the claim of the trading members and their respective trading clients to facilitate pay outs after making report to the Hon'ble High Court.

4. It is important that trading members and their respective trading clients provide the information sought under the circular bearing no.NSEL/C&S/2015/2 dated 9th February 2015 ("**Circular**") for the following reasons:
 - i. As per paragraph 10 of the Minutes of the Order dated 27th August 2014, the Hon'ble Committee is required to distribute funds amongst the non-defaulting members and parties who are entitled to the same upon making a report to the Hon'ble High Court. In this regard, the Hon'ble Committee on 14th January 2015 sought relevant information from NSEL. Pursuant thereto, NSEL made an Application No.21, dated 22nd January 2015, for the purpose of, *inter alia*, permitting NSEL to issue advertisements/circulars in the format as NSEL may deem fit and proper to seek necessary information and supporting data to ascertain legitimate, genuine, undisputed and clean claims of trading members and their respective trading clients under oath. The Hon'ble Committee by its Order dated 22nd January 2015 has allowed NSEL to take steps as indicated in

the said application dated 22nd January 2015 in order to compile data with regard to the claim of the trading members and their respective trading clients.

ii. Additionally, NSEL received complaints from trading clients that they have not received the respective pay outs. Similarly, NSEL also received certain complaints from statutory authorities. In this regard, NSEL has issued a Circular dated 16th December 2014, whereby it was communicated that due to client code modification or for any other reason, various trading members/clients have not received their respective pay outs. In view of recent development and pursuant to the Order dated 22nd January 2015 passed by the Hon'ble Committee, NSEL has issued the said Circular.

5. The trading member / clients are aware of this issue of non-receipt of pay outs as mentioned in the Circular dated 16th December 2014, as the said Circular dated 16th December 2014 is available on the website of NSEL and as such is in public domain.
6. None of these applications / representations / objections have been able to show what prejudice may be caused to them by submitting this data. It is submitted that the trading members/clients should cooperate by providing information sought in the said Circular to facilitate the Hon'ble Committee to ascertain legitimate, genuine, undisputed and clean claims of trading members and their respective clients to make appropriate pay outs henceforth. It is submitted that Hon'ble Committee has ordered the NSEL to open a separate bank account for pay out purposes and not to operate the escrow account from which payouts were being made earlier. Therefore, one of the objectives of the information gathering is to ensure that future payouts are made to genuine trading clients, whose entitlement are clear under the Byelaws of NSEL.

7. NSEL further states that these application / representation / objection is an afterthought as the Order dated 22nd January 2015 permitting NSEL to collect data as sought in the said Circular, was passed in the presence of the Advocate appearing on behalf of Modern India Limited and in presence of various trading members, who are members / representatives of the Applicants and who are present during the Hon'ble Committee meetings and as such aware of the proceedings carried on / conducted by the Hon'ble Committee. Neither the Advocates representing the trading members / clients nor the various trading members present during the said hearing held on 22nd January 2015 raised any objection to the Application No. 21 pursuant to which the said Order was passed. It is therefore safe to assume / imply that the Advocates of the trading members / clients and various trading members present consented to the application pursuant to which the said Order was passed. In view of the aforesaid facts, the allegation that the application was not served is irrelevant. In any event the said Application No. 21 was handed over at the time of hearing during the hearings on 14th January 2015 and 22nd January 2015 and failed to raise any objections to the said applications.
8. In the event the trading members / clients had any issues / objections, they could have raised the same in the subsequent meeting dated 3rd and 4th February 2015. However, no objections / concerns / issues were ever raised during the said meetings and in view of the above, Order dated 22nd January 2015 has attained finality. NSEL further states that the Circular was issued on 9th February 2015 and it is only in the meeting held on 18th February 2015 the trading members / clients and their respective Advocates made Application No. 26, which, given the abovementioned circumstances, is clearly an afterthought. Pursuant to the said Circular, various trading members / clients were willing to and have provided information in accordance with the said Circular, and hence there is no justification for selective group of people refusing to provide information. In this regard, there have been instances where few of the trading members / clients are discouraging the trading members / clients by from providing information sought

in terms of the Circular and thereby not complying with the Order dated 22nd January 2015 passed by the Hon'ble Committee. In this regard, it is imperative to highlight the instances where the handful of trading clients are posting various comments on social networking websites, whereby they are questioning the information sought in the Circular and accordingly discouraging the trading members / clients at large from supplying the information. Hereto annexed and marked as **Exhibit "A"** is a copy of the relevant webpage of the social networking sites. Additionally, NIF NSEL Investors Forum on their webpage is misrepresenting to the trading members / clients at large that the Hon'ble Committee has passed a direction on 18th February 2015 that the "*Investor should not submit data till further Order from the HCC.*" Hereto annexed and marked as **Exhibit "B"** is a copy of the relevant webpage.

9. As demonstrated above, the information sought under the Circular is merely a fact finding exercise to facilitate the Hon'ble Committee to perform its duties in accordance with the Minutes of the Order dated 27th August 2014 and Order dated 2nd September 2014. It is shocking that a handful of trading clients are indulging into such misrepresentations with a malafide intent to discourage / influence the trading members / clients at large from providing information in accordance with the Circular. It is clear that these trading clients are creating hurdles/obstacles in gathering information which is imperative and asked for by the Hon'ble Committee for dispensation of its duty. It is submitted that by indulging in such misrepresentations and propaganda, few of the trading members / clients are deemed to have breached / violated the Orders dated 22nd January 2015 passed by the Hon'ble Committee and strict action should be recommended by this Hon'ble Committee to the Hon'ble High Court for such actions of members as stated hereinabove.

Maintainability of the application representation of objection

10. NSEL further states that under the garb of modification / seeking review of this Order, the so-called trading members and clients are effectively asking for the

recalling of an order dated 22nd January 2015 passed by the Hon'ble Committee. It is submitted that the Hon'ble Committee has passed the said order dated 22nd January 2015 to implement its duties confirmed / passed by the Hon'ble High Court in paragraph 10 of the Minutes of the Order dated 27th August 2014. As such, by means of the said Application, the Applicants are challenging the Order passed by the Hon'ble Committee in furtherance of the orders passed by the Hon'ble High Court. It is submitted that any such grievance / challenge cannot be made before the Hon'ble Committee but only before the Hon'ble High Court. In view of the above, this Applications cannot lie and should be dismissed.

11. NSEL hereby submits that these associations viz. so called Forums/action group who have filed these Applications have not produced any authority from their members and they have also not provided this Hon'ble Committee with any information/details on their members and have no locus to file the objections/applications. This Hon'ble Committee should immediately call upon these association forums/action groups to submit such data before these applications are heard and /or decided.

Information sought in Circular is confidential and NSEL may misuse the same.

12. It is alleged that the information sought under the Circular is confidential and privileged information and NSEL may misuse the said information. It is shocking that such allegations / apprehensions are made to a simple request of supplying information to the Hon'ble Committee to ascertain the respective claims of the trading members and their trading clients. This begs the question whether all of the so-called trading members / trading clients are genuine, if yes, why such reluctance to share / supply the requested information. It is imperative to mention that the order dated 22nd August 2014 passed by the Hon'ble High Court has while granting bail to Mr. Jignesh Shah in Bail Application No. 1263 of 2014, observes that "*The persons whose monies are lost, including, the First Informant, are apparently not the genuine traders for whom NSEL was supposed to provide a platform...*". This observation also casts suspicion in terms of the authenticity and

genuineness of at least few of the trading members / clients. Additionally, none of the trading brokers have raised any issue in supplying the information as sought in the said Circular and hence it is surprising that the clients who do not have any privity with NSEL are raising these issues. In fact, the Trading Brokers have been requesting Trading Clients to submit the data, but it handful people who are obstructing the collection of data.

13. NSEL hereby submits that there are allegations made in the application that seeking such information will lead to enormous confusion. However, neither of the Applicants before this Hon'ble Committee have been able to substantiate / prove that what is the confusion that will be created if such data as mentioned in the Circular is submitted. Therefore, it is clear that the trading clients are shy of sharing information as mentioned in the Circular. In view of the above, the applications are devoid of any merits and should be dismissed.
14. Without prejudice to what is stated hereinabove, NSEL is empowered to call for any information / data from its trading members / clients in respect of the trades entered into on the exchange platform in accordance with its bye-laws including but not limited to bye-law Nos.11 and 16.

Signed at Mumbai)

this 21st day of February 2015)



M/S Naik Naik & Co.

Advocates for NSEL

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**REPLY OF NATIONAL SPOT EXCHANGE
LIMITED (NSE) TO THE COMPILATION
OF BOOKS OF ACCOUNTS FILED ON
BEHALF OF AASTHA MINMET INDIA
PRIVATE LIMITED / JUGGERNAUT
PROJECTS LIMITED BEFORE THE
HON'BLE COMMITTEE ON 20TH JANUARY
2015**

Dated this _____ Day of February 2015

Naik Naik & Company

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