

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****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 (L) NO. 2052 OF 2013****IN****SUIT NO. 221 OF 2014****WITH****NOTICE OF MOTION (L) NO. 2733 OF 2014****IN****SUIT (L) NO. 927 OF 2013**

MMTC Ltd. ...Plaintiff

vs.

The National Spot Exchange Ltd. & Ors. ...Defendants

WITH**NOTICE OF MOTION NO. 240 OF 2014****IN****SUIT NO. 173 OF 2014**

Modern India Limited & Ors. ...Plaintiffs / Applicants

vs.

Financial Technologies (India) Ltd. & Ors. ...Defendants

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Mr. Akshay Patil, a/w. Ms. Hiral Thakkar, Mr. Ashwin Bhadang, i/b. M/s. Federal & Rashmikant, for Plaintiff in Suit 173/2014.

Mr. S.U. Kamdar, Senior Counsel, a/w. Dr. Birendra Saraf, Mr. Ameet Naik, Ms. Anuja Jhunjhunwala and Asadulla Thangal, i/b. M/s. Naik Naik & Co., for Defendant No.1 in Suit 221/2014 and for Defendant No.2 in Suit 121/2014 and Suit 173/2014.

Dr. Poornima Advani a/w. Mr. Pulkit Sukhramani, i/b. M/s. The Law Point, for the Applicant in NMSL 2052/2013 & NMSL/2166/2013.

Mr. Vilas Gawai, i/b. Thodur Law Associates, for Defendant No.9 in S/121/2014.

Mr. Nooruddin Dhillal, a/w. Ms. Namrata Rao, Ms. Priyanka Vora, i/b. M/s. Amarchand & Mangaldas & S.A. Shroff & Co., for Defendant No.1 in S/173/14.

Mr. Tushar Cooper, i/b. M/s. Amarchand & Mangaldas & S.A. Shroff & Co., for Defendant No.3 in S/173/14.

Mr. Siddharth Samantaray, i/b. M/s. Shiralkar and Co., for Defendant No.37 in Suit No.121/2014 and for Defendant No.4 in S/173/2014.

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CORAM : S.C. GUPTE, J.

1 APRIL, 2015

P.C. :

. This group of suits is filed by and on behalf of investors and traders claiming various amounts as due and payable in respect of trades executed on the platform of Defendant No.2 - The National Spot Exchange Ltd.('NSEL'). It is the case of the Plaintiffs that there were fraudulent contracts undertaken on the platform in collusion with Defendant No.1, who is the holder company of Defendant No.2 as also the Chairman and Managing Director of Defendant No.1. Third party notices have been issued against various counterparties to these trades, who are claimed as defaulters, and their clients. At the hearing of the Notices of Motion taken out in these suits, on the basis of understanding arrived at between the parties to the suit, this Court appointed a Committee with several functions to perform. The Committee was broadly 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. The Committee was also supposed to act as a Receiver in the matter of preservation, custody and management of various assets collected *inter alia* through such mutual settlements. The entire exercise of this Committee was to be conducted under the supervision and in accordance with orders that may be passed by this Court from time to time. The Committee was expected to submit reports to this Court from time to time to apprise the Court of the progress of the work carried out by the Committee in terms of the order. The Committee has now presented its second report to this Court. The report *inter alia* concerns certain information proposed to be called for by the Committee from various third parties.

2. The gist of the report is that, as part of its functions, the Committee directed Defendant No.2 Exchange to indicate client/industry-wise outstandings and the entire outstandings due and payable and disbursement made towards such outstandings from time to time and to place on record a statement of outstandings of each of the clients of the defaulting members/brokers. Whilst these directions were partly complied with, this information was not fully made available by Defendant No.2 to the Committee. Instead, NSEL made a proposal to seek information and supporting data to ascertain legitimate, genuine, undisputed and clean claims of trading members and their clients. The Committee in its order dated 22 January 2015 allowed that application. It appears that accordingly, a circular was issued by NSEL calling for the information sought. At a subsequent meeting of the Committee objections were raised by some stakeholders to the circular, pointing out in particular that such exercise was extraneous to the assignment of the Committee in terms of the

order passed by this Court on 2 September 2014 read with the minutes of order. The Committee heard all the stake holders and came to a conclusion that the Committee would like to include only those questions in the proposed questionnaire which were germane from the point of view from the earlier order of the Committee dated 22 January 2015. Whilst it retained some of the questions proposed, the Committee dropped certain other questions and, accordingly, prepared a draft questionnaire in terms of **Exhibit "CC"** to the report of the Committee. It was pointed out before the Committee by some of the stake holders that even such questionnaire, as was finally proposed by it, was beyond the mandate of the Committee in terms of the order of this Court dated 2 September 2014 read with the minutes of the order of 22 August 2014 taken on record by this Court. In view of this controversy, the Committee in its report seeks directions from this Court as regards the functions of the Committee concerning collection and verification of information on amounts payable by NSEL to its non-defaulting members and amounts payable by non-defaulting members to their clients on account of transactions of NSEL. The Committee also wants to know whether, if its functions so include collection and verification of information, the Committee should ascertain this information only according to the records made available by NSEL or should the Committee require furnishing of information in the form of the questionnaire prepared as **Exhibit "CC"** to the report, from third parties.

2. At the hearing of the matter, various submissions were made by learned Counsel of respective parties. Whereas, on behalf of the Exchange it was submitted that it was indeed a part of the mandate of the Committee to call for this information, it was submitted by the Plaintiffs in some of these suits that the whole exercise of appointment of this Committee was to

facilitate mutual settlements between the parties and once amounts have been received in pursuance of these settlements, to act in the matter of preservation, custody and management of the assets so collected. It was submitted by the Plaintiffs that it was no part of the mandate of the Committee to collect the information sought for.

3. After hearing the respective stakeholders, this Court is of the view that it is no doubt true that the main focus of the exercise of the Committee ought to be investigation and examination of accounts and facilitation of mutual settlements between the parties, to receive assets, monetize them and act in the matter of preservation, custody and management of the assets so collected and monetized, the Committee is also expected to render assistance to the Court eventually towards distribution of amounts amongst non-defaulting members and parties entitled to the same. The Committee is expected to prepare a report to that end. It cannot be lost sight of that this whole exercise is ultimately for the benefit of the investors and traders claiming amounts due and payable in respect of the various trades conducted on the platform of the Exchange and for which these suits have been filed by the Plaintiffs in their representative capacity under Order 1 Rule 8 of the Code of Civil Procedure. There is also no doubt that the matter of distribution of amounts amongst non-defaulting members and parties entitled to the same arises after the amounts have been collected from defaulting members and their clients in terms of the order passed by this Court. Yet, at the same time, the Committee is well within its mandate to call for information with a view to enable it finally to prepare a report to this Court in terms of the order. The Committee is, accordingly, of the view that considering the fact that there are more than 13,000 investors involved, which in turn calls for

a mammoth exercise of collection and scrutiny of information, it is in order that the questionnaires are issued and the collection of information is started right now from the point of view of ultimately preparing a report to the Court for distribution of the amounts. There is nothing wrong with the timing of the exercise as such. The Committee, in its wisdom and with such expertise as is available at its disposal, is expected to conduct its business in terms of the order passed by this Court on 9 September 2014 read with the minutes of order taken on record, and order its work and determine its priorities accordingly.

4. Accordingly, this Court clarifies that the functions of the Committee do include collection and verification of the information referred to in clause (a) of para 47 of its report, though as noted above, presently the focus of the exercise should be on investigation and examination of accounts and facilitation of mutual settlements, collection and monetization of assets and funds and then acting in the manner of a receiver for preservation, custody and management of the assets collected. The questionnaire prepared by the Committee in terms of **Exhibit "CC"** to the report is approved. The same may be circulated by the Committee through NSEL. The information to be furnished by the parties in response to the circular shall be furnished directly to the Secretary of the Committee in terms of the second alternative referred to in clause (b) of para 47 of the report.

(S.C. Gupte, J.)

Member Id: _____

Client Id: _____

The information should be provided for the given Member ID, Client ID, even if traded through more than one Member (broker). All the details should be provided as required and where not applicable, "Not Applicable" or "NA" should be given.

1.	Full Name of Member/Client(s)	
2.	Permanent Account Number (PAN No.)	
3.	Email id	
4.	Contact Number	Mobile Other
5.	Contact Address	
6.	Type of Entity (Tick whichever is applicable)	Individual HUF Partnership Firm Private Limited Company Public Limited Company Others: _____ (Please specify)
7.	Whether any amount deployed by you at NSEL trade platform was borrowed from any trading member of NSEL. If so, please provide name of the trading member of NSEL and amount borrowed.	
9.	Net Amount receivable by you as pay-out as on 31 st July 2013 from NSEL / Member of NSEL	Rs. _____
10.	Have you received all payouts as declared by NSEL post 17 th August 2013 through your broker? Amount received by you as a part of special payout which was made by NSEL for small investors having claims of less than 10 lakhs Total amount received by you post 17 th August 2013 till 28 th February 2015 other than special payout	Yes No Rs. _____ Rs. _____
11.	Net Amount outstanding to be received by you as pay-out as on 25 th February 2015 from NSEL / Member of NSEL.	Rs. _____

Place

Signature

Date

Designation

Full Name and address of
Member / ClientSignature verified by
Notary Public / Judicial Magistrate