

Email to the Economic Times, 29th August 2016

JUSTICE FOR NSEL INVESTORS

The Chairperson of a large PSU bank lamented to a prominent editor that in the Kingfisher matter there have been 508 hearings and a staggering 180 adjournments at various legal forums. One could have attributed this to the lack of adequate motivation or interest on the part of the law officers of the bank, or the credit officers who could have even questioned the wisdom of granting those loans in the first place, had they wanted to.

But here is a curious case of NSEL investors who have lost Rs. 5600 Crores, having invested their money on a regulated exchange, which had all approvals, licenses and necessary regulatory oversight, pleading with the executive, the law makers and the investigating agencies. While we rejoice an arrest here and an attachment there, Courts around the country are granting reliefs to various defaulters on "sound legal principles" of liberty, equity, justice. It makes one wonder, what about equity and justice to the aggrieved investors.

Strangely, some of these orders/reliefs were granted even without the parties/agencies being present in Court, leave aside being heard.

The case is even more curious that the actions of the Enforcement Agencies, belated as they are, finds no favour with the Courts either because of lack of due process or smart advocacy on behalf of the "innocent until proven guilty" defaulters. Sadly, the victims can't afford that kind of legal help and the state which is expected to have top notch legal talent, is either indifferent or caught up in "providing governance".

The bravado and belligerence of the defaulters must be seen to be believed. They do not bother to answer the summons, and keep citing some or the other precedence/protection granted by some court or the other. The "overworked" enforcement agencies do not even have the wherewithal to appear before all forums across the country, neither have resources to challenge such orders which hamper the investigation process.

In the same Kingfisher case cited above, despite the PSU Bank armed with an order from the High Court, could not get possession of the said property as the Collector at Goa inexplicably conducted number of hearings and then proceeded on leave, without complying with the High Court order.

In the NSEL case, the Collector of Mumbai, which houses the office of the Competent Authority under the MPID Act, is yet to liquidate the attached assets/properties (with more than 700 properties having been notified by the Maharashtra State in its Gazette) and realize any substantial sum of monies for investors, despite court orders in some cases. Ironically, the Special MPID Court has issued a "show cause notice" to the Competent Authority for non-compliance of its order.

We, NSEL Investors, can consider ourselves lucky, as the Central Government has constituted a "Special Team of Secretaries" to monitor the NSEL Scam Investigation, which even publishes its minutes of the meeting, for those interested. However, the recommendations, as the name suggests, are merely recommendatory in nature, as we are yet to see any concrete actions on the ground. A Special Court was to be constituted to hear the MPID and PMLA matters on a day to day

basis, for expedited liquidation of properties and restitution for the aggrieved investors. But one can only hope that the State is able to send senior law officers to further these noble objectives.

The agonizing wait of over three years also includes “severe scrutiny” at the hands of a committee appointed by the Hon’ble High Court, which is yet to “declare” whether we investors are indeed bona-fide and worthy of justice or just charlatan “trading clients”. We had submitted our claims to the Committee over a year ago, and the same is being “tabulated” since then. While NSEL, FTIL and few of the Third Party Noticees (Defaulters) continue to mislead the Committee and the Court, with the net result that the expenses towards the committee proceedings seems to have outstripped the actual recovery. And it is interesting to note that no payouts have been made to investors after the committee was constituted in September 2014.

As victims of this unprecedented fraud, already having spent years expecting justice, hope that the perpetrators are punished, and delayed actions of the agencies has not diluted our case so badly, that it becomes impossible for the courts to convict the perpetrators. And our case becomes one more in the endless list of cases, where justice has already been delayed, and denied too.

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Disclaimer: Views are personal

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