

Atul

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

IN

COMMITTEE REPORT NO. 11 OF 2016

WITH

REPORT NO. 7 OF 2016

Modern India Ltd & Ors

...Plaintiffs

Versus

63 Moons Technologies Ltd & Ors

...Defendants

Mr Akshay Patil, *with Ms Namrata Vinod, i/b M/s Federal & Rashmikant, for the Plaintiffs in Report No. 7 of 2016.*

Mr Navroz Seervai, *Senior Advocate, a/w Mr Nooruddin D & Ms Namita Shetty, i/b Cyril Amarchand Mangaldas, for the Defendant No. 1 in Suit No. 173 of 2014.*

Mr S.U. Kamdar, *Senior Advocate, with Ameet Naik, with Mr Chirag Kamdar, a/w Ms Anuja Jhunjunwala, i/b Naik Naik & Co, for the Respondent No. 2.*

Mr JP Sen, *Senior Advocate, a/w Mr Aditya Mehta, Mr Bhushan Shah, Jogan Punjabi, Ms Neha Lakshman, i/b Mansukhlal Hiralal & Co, for LJ Tanna Shares & Securities Pvt Ltd.*

Mr Chetan Kapadia, *a/w Pankaj Uttaradhi, for MK Commodity Pvt Ltd.*

Mr Naushad Engineer, *i/b Mr Nimesh Bhatt, for The Estate Investment Co Pvt Ltd.*

Mr Prateek Seksaria, *a/w Mr Abdul Wahab AH Mukri, i/b M/s Purohit & Co, for Anand Rathi Commodities.*

Mr Simil Purohit, *a/w Mr Abdul Wahab AH Mukri, i/b M/s Purohit*

& Co, for Philip Commodities.

Mr Simil Purohit, *i/b Ashwin Duggal & Associates, for Geofin Comtrade Ltd.*

Mr Rahul Karnik, *for Motilal Oswal Com. Brokers Pvt Ltd.*

Ms Bijal Mehta, *i/b Deven Dworkadas & Partners, for NAARA in Report No. 7/16.*

Mr Tejas A Luniya, *i/b Devendra Avhad, for the Defendant No. 12.*

CORAM: G.S. PATEL, J
DATED: 11th April 2017

PC:-

1. I have before me for consideration today Report No. 7 of 2016 dated 4th April 2016 of a Special Committee appointed by this Court under the Chairmanship of Mr Justice VC Daga, Retired Judge of this Court. That appointment was by an order dated 2nd September 2014 in Notice of Motion No. 240 of 2014 in Suit No. 173 of 2014 and associated matters. The 2nd Defendant in that Suit is the National Spot Exchange Limited (“NSEL”), an entity incorporated to create a platform for electronic spot trading in commodities. The Plaintiff, Modern India Limited, was an investor on the NSEL platform and entered into the trades on it. Other claimants also came forward with their own suits. The Plaintiffs in these various actions alleged that there were fraudulent contracts between NSEL and the 1st Defendant, Financial Technologies (India) Limited (“FTIL”) as it was then known (it now has a more colourful name). The fraud alleged was at the instance of the Chairman and Managing Director of the 1st Defendant, one Jignesh Shah.

2. Before SC Gupte J on 2nd September 2014 there were Minutes of the Order placed by, amongst others, the 1st Plaintiff, other investors, Jignesh Shah, NSEL and FTIL. Gupte J delivered a detailed speaking order accepting those Minutes and explaining why the appointment of a three-Member Committee was obviously necessary. Mr Kamdar for NSEL has taken me through this order. Some portions are relevant for today's purposes.

"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 coordinated 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* and *K. Joseph Augusthi Vs. A. Narayanan*, as also a judgment of this Court in the case of *Syed M. Ahmad Vs. Syed A.A. Khan*. 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 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 subclause (i) of Para 5 that any party affected by any decision of the Committee in this behalf shall be entitled to approach this Court.”

(Emphasis added)

3. Once the Committee started functioning there have been Reports made periodically and orders have been passed on the Committee’s recommendations. The ambit of this Committee includes making recommendations for distribution amongst non-defaulting members of NSEL and parties entitled to the a share once funds and assets are realized. The Committee has issued directions periodically and entertained applications that are before it.

4. The immediate background to the present Report is perhaps traced to an order of 28th November 2014 where the Committee asked NSEL to indicate the outstanding per investor, the entire outstanding due and payable, and details of disbursements made periodically.

5. On 22nd January 2015, NSEL has made an application to the Committee seeking its permission and directions to what I will describe as a process of data gathering. The application sought this:

“3(a) Permit NSEL to issue advertisement/circulars on NSEL website and/or any other platform and 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 the trading members and their respective clients under oath.

(b) NSEL be permitted to advertise in newspapers across India in English and required regional languages calling upon persons desirous of lodging their claim to do so with NSEL along with all supporting documents/details as indicated by NSEL; and

(c) For such further and other reliefs as this Hon'ble Committee may deem fit and proper having regard to the facts and circumstances of the present case.”

6. The Committee ruled on this application on 22nd January 2015, thus:

“1. Mr Naik on behalf of NSEL has presented Application No. 21 of 2015 seeking permission of the Committee to compile data with respective clients.

2. After having heard, NSEL is permitted to take steps as indicated in the said application.

3. The application is thus allowed and disposed of in terms of this Order.”

7. NSEL then issued circulars calling for a large volume of information. A form was provided with 30 separate columns and considerable details. That circular was available online. In a compilation that Mr Kamdar has given me this circular and its accompaniments are at pages 46 to 49. Some of this information was obviously wide-ranging, and some investors sought a recall of this

order by a separate application dated 18th February 2015 (compilation pages 51 to 55).

8. There then follows a Report dated 5th March 2015. This was Report No. 1 of 2015. It noted the steps NSEL had taken to compile the data and issuance of its circular. It also noted that the original Plaintiff, Modern India Limited, sought to urge that the remit of the Committee was narrower than what the Committee itself believed and that the Committee was lending itself to purposes not contemplated by Gupte J's order. There were various other complaints as well, and the objections and statements of various investor and clients were considered from paragraphs 22 onwards. In paragraph 32 the Committee noted a concession on behalf of the NSEL that some of the information that it had sought was not necessary for the purposes of the Committee and that the NSEL was prepared to modify the pro-forma by which information was sought.

9. On this, the Committee in paragraph 47 sought the following directions from this Court:

“47. On considering the submissions made before the Committee, the Committee is of the view that it is advisable to seek directions from the Hon'ble Court on the following issues in order to avoid repeated challenge to the jurisdiction of this Committee on this count by each investor at every stage of proceedings and calling upon the Committee to rule thereon and then to carry the matter to different forums at law to test the validity of the orders passed by the Committee;

(a) whether functions of the Committee under the Order dated 2nd September 2014, include 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 on NESL exchange;

(b) In case the functions of the Committee include 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 on NEL exchange, whether the Committee should ascertain names of non-defaulting members and their clients and amounts payable to them according to the records of NSEL only in view of the provisions of Bye-law 3.5 of NSEL mentioned in para 25 above;

Or

whether the Committee can authorize NSEL to address and publish communications to its members and clients of members requiring them to furnish information to the Secretary of the Committee with copy to NSEL in the Proforma hereto annexed and marked as **Exhibit "CC".**

10. An order was made on this Report on 1st April 2015 by Gupte J and paragraph 3 of that order is relevant. This is how it reads:

“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.”

11. It is with this in mind that I have to assess what is it that the Committee seeks in the present Report No. 7 of 2016. The Committee seeks directions on these questions:

“13. In the circumstances, directions of the Hon'ble Court are requested on

(i) Whether the Committee may engage professional services of M/s Bansi S Mehta & Co., Chartered Accountants for carrying out audit of the accounts, bank accounts, income tax returns and relevant documents of the clients/investors and brokers/members of NSEL mentioned in para 12 above and of NSEL in relation to transactions concerning the clients/investors and brokers/members of NSEL mentioned in paragraph 12 above,

(ii) the clients/investors and brokers/members of NSEL mentioned in para 12 above and NSEL may be directed to make available to M/s Bansi S Mehta & Co. Chartered Accountants and the Committee records in their possession or power in relation to the transactions by them on the platform of NSEL concerning the clients mentioned in para 12 above.”

12. Now there are very many issues that have been addressed at some length before me. The first of these is the suggestion of the

name of M/s Bansi Mehta & Co as Chartered Accountants for carrying out this recommended audit. This is a firm that is held in the very highest regard across the country. It is also internationally reputed, and all for very good reason. The difficulty is therefore not with the firm's credentials; it cannot be. The issue is that one of the Members of the Committee, Mr Yogesh Thar, is even now a partner in M/s Bansi Mehta & Co. The exercise that the Committee suggests will undoubtedly take some time. I imagine it goes without saying that M/s Bansi Mehta & Co will be remunerated for it, as any firm should be. And there lies the starkest conflict. What the recommendation envisages is that a firm in which one of the Committee members is an active partner be appointed and remunerated to discharge some functions for the Committee. I do not think this is at all in the interests of M/s Bansi Mehta & Co to lend themselves to the inevitable controversy that will follow. I see no reason why a firm highly respected professionals should even inadvertently have to be involved in any such controversy.

13. I am told that a previous recommendation of the appointment of M/s Bansi Mehta & Co was accepted by this Court. This was by an order of 9th October 2014 in Report No. 1 of 2014. That Report contained a recommendation of the appointment of M/s Bansi Mehta & Co for a proposed audit of NSEL itself and 24 defaulters. In paragraph 7 of his order dated 9th October 2014, Gupte J noted that none of the parties before him then had an objection to these directions. That was the context in which he allowed this. This can hardly mean that even if parties do have an objection, as they do most strenuously before me today, that appointment should continue or be renewed or repeated. Nor am I prepared to accept

that an order such as the one made on Report No. 1 of 2014 necessarily binds all future orders. The potential conflict is clear, and I see no reason to invite any greater controversy than already exists. It is not in the interests of M/s Bansi Mehta & Co to get further embroiled in this.

14. This seems to me to be the least of the problems in the Report. Paragraph 12 of this Report and table below it are of some consequence.

"12. On consideration Application No. 7 of 2014 and Application No. 54 of 2015 and submissions thereon and discrepancies between the claims filed by the investors – clients of members with the Committee with the data submitted by NSEL and the Affidavits dated 3rd July 2015 and 17th March 2016 of Mr Achal Agarwal, the Committee has passed Interim Order dated 31st March 2016 on Application No. 7 of 2014 and Application No. 54 of 2015, a copy whereof is hereto annexed and marked **Exhibit "F"**, in which the Committee has recorded that at this stage, in the opinion of the Committee, it is necessary to carry out audit of the account books, bank accounts and income tax returns of few of the investors as well as of the relevant documents, account books etc. of their brokers including that of NSEL, in relation to the trading members and their clients named below:-

<u>Sr. No.</u>	<u>Name of Client / Investor</u>	<u>Name of Broker / Member of NSEL</u>
1.	Ketan Anil Shah	Motilal Oswal Commodities Brokers Pvt Ltd
2	Ketan Anil Shah	Philip Commodities India Pvt Ltd
3	Achal Agarwal	Geofin Comtrade Ltd (formerly Goojit Comtrade Ltd.)
4	The Estate Investment Co. Pvt Ltd	Systematix Commodities Services Pvt Ltd
5	The Estate Investment Co Pvt Ltd.	MK Commodity Brokers Ltd
6	MK Commodity Brokers Ltd	Systematix Commodities Services Pvt Ltd
7	Paterson Securities Pvt Ltd	India Bullion Market Association Ltd.
8	Sujana Sudini	Anand Rathi Commodities Ltd
9	Jyotsna Desai	CD Commosearch Pvt Ltd
10	Kunal Comtrade Pvt Ltd	Indian Bullion Market Association Ltd
11	CD Equifinance Pvt Ltd	CD Commosearch Pvt Ltd."

15. What Committee suggests is that it has *prima facie* found several discrepancies and has, therefore, recommended the appointment of an audit firm to address these. But its recommendation in paragraph 13(iv) is in extraordinarily wide terms. This firm is required to carry out an audit of “accounts, bank accounts, income tax returns and relevant documents”. I do not think it is possible to accept a recommendation worded like this. Certainly, income tax documents are not the kind of material that should readily be allowed to be summoned in this manner or with

this background by a sub-consultant appointed at the instance of the Committee.

16. We must, I think, go back to the words of Gupte J in his order constituting this Committee. They seem strangely prescient. He said the powers of the Committee are restricted to calling for information and to arrive at settlement proposal, and to suggest ways to collect and place in judicial custody assets and funds. The Committee, Gupte J, was “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.” In doing so, it could request information from various authorities, including the EOW, Income Tax and so on, asking for documents and *relevant* records for its purposes. This is not evidence gathering in the context of the task before the Court. Most importantly, Gupte J said:

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.

None may claim a right to notice, that is to say, a right to be heard every time a process is issued calling for information or documents from a third party or agency — this is always case-specific — and, indeed, that is not even the grievance before me today.

17. The recommendation is not just overbroad; it is unwarranted even by its context. Of the various persons noted in the table below paragraph 12, the only ones the Committee heard were Achal Agrawal, Motilal Oswal Commodities Brokers Pvt Ltd, Philip Commodities Pvt Ltd, Geofin Comtrade Ltd and Anand Rathi Commodities Ltd. None of the others were heard at all. No notice was issued to them. Yet the Committee seemed to form an opinion that there are yet discrepancies involving a raft of entities and persons. Conceivably on a notice being issued, these discrepancies might have been explained, hardly justifying the sweep of paragraph 13(i). For example, there was apparently a question of a discrepant PAN card number between the Estate Investment Co Pvt Ltd and MK Commodity Brokers Ltd. These discrepancies were resolved before the Committee, and this finding of a discrepancy previously noted has been deleted by a subsequent corrigendum. Now this could also have been so for Item No. 4 of the table. This is a so-called discrepancy between the Estate Investment Company Pvt Ltd and Systematix Commodities Pvt Ltd. The only difference between these two entities and NSEL in fact is in the amount of VAT; all other amounts reconcile to the last naya paisa. A very similar situation arises for the parties at Sr No 5 of the table. Mr Seksaria for Anand Rathi Commodities Pvt Ltd says that when an explanation was offered by his client, the Committee did not deal with the explanation at all, but proceeded straightaway to say there was a discrepancy. What the very many opponents say is that the Committee gave them, or many of them, no opportunity to show that no such information or documents were even necessary; that there were no 'discrepancies' as noted; that any discrepancies had perfectly good explanations; and that, in any case, the power to call

for such wide-ranging documents is not one that can be sub-delegated to a consulting firm. I have to agree with this, and its companion submission that, at a minimum, the Committee ought to have considered these submissions. This is not the kind of material or finding that supports a recommendation to empower a Chartered Accountancy firm to call for income tax returns, all documents, records, etc. etc. There are rival considerations to which the Committee could have addressed itself before deciding whether an investigation of this kind was necessary and if so against whom.

18. As I see it, the Committee has before it two data sets. One is the NSEL data, if I may call it that, and the other is the information received from members, investors and so on in response to the circular and data-gathering call issued by NSEL. If there has to be an exercise of comparing these data sets, and this is certainly not something new to the digital world, this needs to be done in a specific framework. It may be possible, for instance, to ask an outside agency to reconcile these data sets as a first step, and to begin by identifying the areas of discrepancy more precisely. The next step would be to call on the individuals or entities involved to submit an explanation for that. If even that does not yield the necessary result, the consulting Chartered Accountant may identify the further documents that should be called for and from whom (Income Tax, EOW, etc). The Committee could then make its recommendations on that basis, and this would certainly merit close consideration by the Court. All I am suggesting is a more granular approach. Much of the data embraced in the ambit of Paragraph 13(i) of the Report is very personal and confidential; an invasive trawl through a person's annual financial returns or tax returns may

not be necessary where there are only a few identified transactions that are found to be discrepant. I am unable to see any basis for a sector-wide forensic audit of anyone and everyone who is supposed to have a 'discrepancy' in their data, without regard to what that discrepancy is or whether it even exists. For instance, taking our instance of the discrepant VAT amount, this is hardly the kind of material that would merit calling for the parties' tax records for the whole year. I cannot, with respect, accept a recommendation framed in such broad and sweeping terms.

19. Mr Kamdar asks me to nominate a Chartered Account or firm of my choice. I decline to do so, because to do that I must necessarily accept the need for calling for such records in this generalized manner in the first place.

20. This is the only order that I am prepared to make on this Report today. I will leave it to the Committee to decide what steps it wishes to take, and whether it wishes to issue fresh notices to these parties, hear them, and make a fresh set of recommendations. It may suggest the appointment of another firm with a more limited remit for more precisely identified questions, discrepancies, etc., where the Committee finds explanations given to it unconvincing or unsatisfactory. Then the outside agency may be required to make a more detailed delineation of the issues involved and to suggest what other documents may be necessary to address the controversy. The Committee can then frame its recommendations on that basis. The Committee is best placed to decide how best to proceed with the material before it.

21. As to Mr Kamdar's submission that this will cause delay and 'investors will suffer', the only possible response is that the ends never justify the means.

22. While I am keeping open the Committee's discretion to revisit paragraph 13(i) of the Report, I am specifically rejecting paragraph 13(ii). There is no question of any firm of Chartered Accountants or the Committee being empowered to direct any person to produce all records in their power or possession in this fashion. No such omnibus authority will be sub-delegated.

23. Mr Sen for LJ Tanna Shares & Securites Pvt Ltd points out that this company, also a plaintiff in one of the suits, in fact sought a forensic audit of NSEL itself in Application No. 7 of 2014. This was kept pending along with NSEL's Application No. 54 of 2015, although much of the present Report seems to be based on the statements made by NSEL in its Application. I would request the Committee to kindly take up both these applications and dispose them of on merits at its earliest convenience. While I am not addressing either of these applications on merits, I cannot agree with the Committee's view that these applications are premature. If such discrepancies are noted, and the Committee found it necessary to ask for a sub-delegation to a Chartered Accountancy firm with broad powers to summon all manner of documents, surely both applications ought to have been decided. Indeed, I find it difficult to conceive of a more appropriate time when these applications need to be decided. A simple question that arises to an application such as the one made by LJ Tanna is "If not now, when?"

24. We should not lose sight of one important facet. NSEL is not a nodal statutorily-empowered agency for detection, recovery and distribution. It is a *defendant* in a set of civil suits, and against it are even now the most serious allegations that it must address in those civil proceedings. The fact that it played a part or role in the establishing of the special Committee cannot clothe it with additional powers, duties or authorities, nor absolve it of its obligations, responsibilities and liabilities as a defendant. It will not do to proceed on the assumption that NSEL is blameless; it may be, or it may not. The outcome of the civil suit will decide that. But we cannot presage that conclusion today, and nor should we act on a presumption that NSEL's success in its defence is a foregone conclusion. It is not. For this reason, too, Mr Sen's application is one that must be decided. I notice that in paragraph 13(i), the Committee did include NSEL, that is to say, it recommended that the consultant be empowered to call for data and records from NSEL too. That is completely correct, and in consonance with the frame of the civil suits. But that also means that where a party makes an application, and is prepared to justify it, seeking a more detailed examination of NSEL's own workings, that application should not be deferred. It assumes urgency even in the light of the Committee's own recommendations in this very report. For all we know, the discrepancies that troubled the Committee might lie entirely at NSEL's door, or, on a closer examination, might not arise at all.

25. Finally, I would also request the Committee to number its reports and applications serially or sequentially rather than starting afresh each year. In the current system, where there are reports with

the same number though of different years, errors and mistakes are apt to occur, and it would certainly be simpler to maintain a single running sequence of report and application numbers.

26. The Report is disposed of accordingly.

(G. S. PATEL, J.)

