

NSEL Clarifies

Clarifications on the comments of the Chairman, FMC, on NSEL

Chairman, FMC, in an interview to Economic Times on November 3, 2014 made certain comments which NSEL found not consistent with facts. NSEL, now responds to specific comments by the Chairman, FMC.

The Chairman, Forward Markets Commission, in an interview to The Economic Times on 3rd November, made certain comments, which were published with the title "Unified probe needed under a Chief Secretary in NSEL scam".

NSEL takes strong exception to certain comments made in this regard. To correct certain accusations that were found in the interview and also present the current and actual picture in regard to various developments at NSEL, it is considered important for NSEL to give a detailed clarification.

Given below is the NSEL stand on various comments made by the Chairman, Forward Markets Commission, which NSEL believes are not based on facts and made in a frivolous manner without considering or validating facts, which may adversely affect the pace of recovery taking place and speedy resolution of the crisis.

NSEL RESPONSES TO SPECIFIC COMMENTS OF THE CHAIRMAN, FMC

| COMMENT OF THE CHAIRMAN FMC | NSEL RESPONSE |
|---|---|
| NSEL has little capital to pursue recovery of funds from defaulters | <p>a) NSEL has used its entire equity capital of Rs 45 crore and reserves of Rs 145 crore by July 31, 2013</p> <p>b) Though NSEL has used all its reserves for pay-out to affected member brokers, FTIL is supporting NSEL in its recovery efforts and is providing all other support in terms of finance, manpower and infrastructure. Hence, the argument of "NSEL has little capital" does not hold good</p> <p>c) NSEL has already paid Rs 179 crore to make payment of 50 percent of dues to 7053 small trading clients with receivables of less than Rs 10 lakh after taking a without prejudice loan from FTIL</p> <p>d) NSEL has to receive Rs 103 crore from NAFED since one year. NAFED is willing to pay about Rs 68 crore or so as settlement, whereas NSEL is in discussion to realize more</p> <p>e) All NSEL employees have been receiving their salary, increments, and bonus on time</p> <p>f) Currently, 781 clients (6 percent collectively) have to receive 69 percent of the total outstanding dues. Moreover, seven defaulters account for 85 percent of total outstanding dues. Similarly, out of 148 brokers, 30 brokers account for over 68 percent of total dues</p> <p>g) The appropriate course of action should be to concentrate on recovery from 22 defaulters collectively by NSEL, investigative agencies and the government machinery</p> |

CONCLUSION: NSEL is fully supported by FTIL and has spent Rs 14.54 crore in handling litigation since July 2013 to contest 47 cheque bouncing cases, 42 MPID cases, 5 arbitration cases and many recovery suits in High Court. It is wrong to say NSEL doesn't have money. The proposal of amalgamation will divert the focus from what NSEL is currently pursuing through investigative agencies and the Court of Law.

| COMMENT OF THE CHAIRMAN FMC | NSEL RESPONSE |
|---|--|
| NSEL has few staff | <p>a) NSEL had over 115 employees in Mumbai while it was functioning in full-fledged manner encompassing operations, clearing and settlement, client membership, warehousing, etc.</p> <p>b) Currently, NSEL has 57 staff including 17 senior management officials, which are entirely dedicated either directly or indirectly in recovery and legal matters</p> <p>c) NSEL has external consultants / advisors over and above the regular staff in the payroll to look into legal and recovery work</p> |
| CONCLUSION: NSEL has adequate staff for legal and recovery issues. | |

| COMMENT OF THE CHAIRMAN FMC | NSEL RESPONSE |
|--|--|
| NSEL has no capacity to recover | <p>a) NSEL has recovered more than Rs 360 crore, provided asset details of around 300 companies of defaulters for attachment, which is valued at around Rs. 5,000 crore. However, sale of attached assets and disbursement to affected members shall happen through a legal mechanism only</p> <p>b) NSEL has filed 47 cheque-bouncing cases in various Metropolitan Magistrate Courts, filed or intervened in 42 MPID cases for recovery or sale of assets and filed 5 arbitration petitions and several recovery suits</p> <p>c) Bombay High Court has constituted a committee under the chairmanship of a retired judge of Bombay High Court to fix liabilities and recover the dues</p> <p>d) e-Series, another product on the Exchange which was stalled, has been eventually redeemed up to 99 percent through a transparent mechanism to around 33,000 trading clients during the last few months. This involved auctioning of metals within the given parameters by NSEL and over 1 lakh bank remittances to individual trading clients. The way NSEL executed the whole process, starting from re-materialization, subsequent auction of the remaining metals and payment to trading clients has invited appreciation from all, including FMC. Hence, the FMC is well aware of NSEL's capacity for execution</p> <p>e) Members who paid money were neither creditors of NSEL nor the members who received money are debtors of NSEL</p> |
| CONCLUSION: NSEL has capacity to recover money and is doing everything possible in this regard. | |

| COMMENT OF THE CHAIRMAN FMC | NSEL RESPONSE |
|---|--|
| NSEL has no money to pay legal expenses | <p>a) NSEL, supported by FTIL, has so far spent Rs 14.54 crore for legal cases since July 2013</p> <p>b) During a meeting, the FMC and MAC complained that NSEL legal spending was high, which is contrary to FMC's views here</p> |
| CONCLUSION: NSEL is well-supported by FTIL for contesting the legal cases. | |

| COMMENT OF THE CHAIRMAN FMC | NSEL RESPONSE |
|--|---|
| Holding company should step in, in order to pursue recovery | <p>a) Holding company has already been assisting NSEL with money, infrastructure and staff for recovery and amalgamation may lead to loss of focus on recovery</p> <p>b) NSEL's sole objective now is to pursue effectively the recovery process and court cases. Whereas FTIL is a company with a primary objective of creating and servicing IT products</p> <p>c) NSEL has power of bye-laws and regulatory relationships with members, defaulters and trading clients which FTIL doesn't have. So merger may make recovery complex and legally untenable</p> <p>d) As the FMC is empowered to settle outstanding dues, it can act against defaulters, order for forensic audit of defaulters or initiate other action against them</p> <p>e) In IPO scam, regulator like SEBI never proposed merger of NSDL</p> |
| CONCLUSION: Amalgamation of NSEL with its Holding Company is not a solution. It seems the FMC is more focused on amalgamation of NSEL with its Holding Company than supporting NSEL to expedite recovery process that may provide the required relief to the trading clients. | |

| COMMENT OF THE CHAIRMAN FMC | NSEL RESPONSE |
|---|--|
| NSEL has been asking FTIL for funds, we were told in meetings, but they were not getting help | <p>a) FTIL is rendering all support for recovery, legal, technology, and administration and has also given a without prejudice loan of Rs 179 crore for payment to small trading clients</p> <p>b) NSEL is receiving required money from FTIL to meet Court-approved expenses such as administrative, salaries of employees and legal expenses, etc.</p> |
| CONCLUSION: NSEL has been getting prompt help to meet all the Court approved expenses including legal expenses. Hence, the FMC's statement is out of context and thereby given a meaning that is exactly the opposite of what was intended | |

| COMMENT OF THE CHAIRMAN FMC | NSEL RESPONSE |
|--|---|
| Co-ordination mechanism for investigative agency under Chief Secretary | <p>a) The FMC was given omnibus power on August 5, 2011 to oversee spot exchanges by the Department of Consumer Affairs for: "investors protection"; "ensuring that the conditions stipulated for exemption u/s 27 of the FMC Act, 1952 are duly complied with"; and "to take action in case there is any breach of the stipulated conditions for exemption"</p> <p>b) Further, the FMC was given additional powers through gazette notification dated August 6, 2013. The para 2 (ii) of the said notification states: "Settlement of all outstanding one day forward contracts at NSEL shall be done under the supervision of FMC and any order or direction issued by the FMC in this regard shall be binding upon NSEL and any person, intermediary or warehouse connected with NSEL, and for this purpose, the FMC is authorized to take such measures, as it deems fit"</p> |
| <p>CONCLUSION: Hence, the FMC enjoys adequate power to deal with NSEL and the crisis. A pragmatic approach to coordinate with all investigative agencies proactively and targeting the defaulters instead of NSEL and its promoters will complement NSEL's recovery efforts. The FMC has written to SEBI, RBI, MCA, EOW, and also to FTIL, which could have been done for brokers and defaulters as well.</p> | |

| COMMENT OF THE CHAIRMAN FMC | NSEL RESPONSE |
|--|---|
| It did not have power to regulate NSEL | <p>a) DCA wrote a letter to FMC on August 5, 2011 giving power to oversee NSEL for investor protection and also to seek information as designated agency and do needful</p> <p>b) FMC inspected NSEL on August 18, 2011 after the latter applied for registration under section 14A of FCRA (1952) on November 9, 2010, and didn't report anything adverse (ANX-52)</p> <p>c) FMC met trading clients along with NSEL staff in investor meets, giving full impression of regulating spot exchanges as it did similar meeting with commodity futures exchanges and most members of futures exchange and spot exchange were common</p> <p>d) Firstly: the FMC designed the information format for seeking information from spot exchanges every fortnight and also called spot exchanges for meetings. Secondly: NSEL has given about 30 fortnightly reports with stock details of members and trading clients (including the defaulting members) to the FMC</p> <p>e) The new Board of NSEL desired to meet FMC but appointments were given after follow-up with several letters and the appointment was always given along with MAC constituted by FMC. NSEL had shared with FMC in writing vide its letter dated January 2, 2014, that MAC will have a conflict of interest with NSEL due to court cases and the Board would like to discuss these issues (ANX-53). The exclusive appointment for the Board never came through however, FMC disbanded MAC after almost 10 months</p> |

| COMMENT OF THE CHAIRMAN FMC | NSEL RESPONSE |
|--|--|
| <p>All efforts are needed to recover money from the defaulters which includes civil and criminal actions which must be pursued with greater vigour.</p> | <p>It has been projected that NSEL is not effective in recovery process whereas the facts are contrary. These facts have to be seen in the light that all matters are being handled through the Courts, i.e., MPID, High Court and other Court for 138 matters where the progress can't be determined by anyone except the Court and all that can be done is to put the best counsels with comprehensive data which NSEL has already done.</p> <p>On NSEL's proposal, supported by FTIL, a high-powered Committee – comprising of Justice Daga (Retd.) and two other Honourable Members – has been appointed by the Bombay High Court to fix liabilities and recover the dues from the defaulters. The Committee has commenced their meetings wherein NSEL is providing all the required data information. It has begun hearings and has issued notices to all the Defaulters.</p> <p>a) Assets of 22 Defaulters of NSEL worth approximately Rs 5,000 crore have already been secured by the Economic Offences Wing of Mumbai police (EOW) for attachment and liquidation under MPID Act, 1999. NSEL officials assisted the EOW over the last one year for attachment of assets.</p> <p>b) The Enforcement Directorate (ED) is also said to have attached multiple assets of Defaulters having book value of more than Rs 200 crore under the Prevention of Money Laundering Act, 2002 (PMLA). NSEL understands from press reports that the Government of India is actively considering the proposal of the Trading Clients to amend the PMLA so that the proceeds of the assets attached under the PMLA can be paid to the Trading Clients instead of the same going to the Government.</p> |
| <p>CONCLUSION: Conclusion: NSEL doesn't function under the Sarfaesi law that allows banks and financial institutions to auction properties (residential/commercial) when borrowers fail to repay their loans. Despite this, NSEL is making all efforts under the judicial framework to file cases with vigour. There is no prohibition on the FMC from joining NSEL in these cases and strengthening NSEL's hands to achieve better results if they consider doing that. The FMC could give us direction and suggestion to take the recovery process forward.</p> | |