



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

REPORT NO. 47

IN

SUIT NO. 173 OF 2014

Modern India Limited & Ors.

.. Plaintiffs/Applicants

Versus

Financial Technologies (I) Ltd,
Now known as 63 Moons
Technologies Ltd. & Ors.

.. Defendants

And

Vimladevi Agrotech Ltd. & Ors.

.. Third Party Noticees

And

Related Suits

...

Mr. Ashish Kamat, Senior Advocate a/w Mr. Vaibhav Bhure, Mr. Shlok Paresh, Ms. Supriya Majumdar & Ms. Anuya Pathare i/b Vaish Associates, for Defendant No.2.

Mr. Sanjiv Punalekar a/w Mr. Yogesh Mishra i/b PRS Legal, for Third Party Noticee (Vimladevi Agrotech)

Ms. Rebecca Gonsalves, for Dy. Collector & Competent Authority.

Ms. Saba Khan i/b Rashmikant & Partners, for Plaintiff.

Ms. Prachi Kolembekar a/w Ms. Ruchita Chavan i/b Thodur Law Associates, for Defendant No.12.

Ms. Nikita Vardhan i/b Kanga & Co., for Defendant No.30.

Mrs. Jyoti Chavan, Addl. GP for State, EOW.

Mr. Mahadeo Kirwale, Competent Authority (NSEL), present.

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CORAM : **SANDEEP V. MARNE J.**
RESERVED ON : **3 APRIL 2024.**
PRONOUNCED ON : **12 APRIL 2024.**

JUDGMENT :-

1) Report No. 47 dated 8 October 2018 is filed by the High Court Committee (HCC) constituted by this Court's Order dated 2 September 2014. Report No.47 is filed by HCC crystallizing the liability of Third Party Noticee-Vimladevi Agrotech Ltd. in the sum of Rs.13,72,51,730/- as due and payable by it to NSEL as on 30 September 2013.

2) HCC was constituted by this Court's Order dated 2 September 2014 for assisting this Court in examining the voluminous documents and accounts statements, hear rival contentions and for crystallizing the liability of defaulting trading members of NSEL, who are Third Party Noticees in the Suit and for placing reports before this Court for its approval and for passing of Order thereon. *G. S. Patel J.*, while passing Order in Report No.49 dated 30 March 2019 has enumerated following five broad terms of reference of HCC:

- (a) to determine the amounts payable by the defaulters / third parties to National Spot Exchange Ltd ("NSEL");*
- (b) to ascertain the assets of the defaulters / third parties and received or indirectly from NSEL in respect of various trades;*
- (c) to explore and negotiate mutual settlements between NSEL and the alleged defaulters / third parties and their clients;*
- (d) to seek appropriate direction from the Court for sale / monetization of assets of defaulter and their clients and any other persons; and*
- (e) to perform the duties and functions as provided in the Order dated 2nd September 2014.*

3) NSEL seeks acceptance of the report and passing of an Order in its favour and against Vimladevi Agrotech Ltd. (**Vimladevi**) for recovery of the amount of Rs.13,72,51,730/- crystallized in the report of the HCC along

with interest from 30 September 2013 till payment or realization. By Orders passed by this Court on 30 October 2018 and 29 November 2018, repeated opportunities were granted to *Vimladevi* to file its reply/objections to the Report No. 47. However, despite grant of repeated opportunities, *Vimladevi* has not filed its reply/objections to the report. However, a compilation of documents is filed on behalf of *Vimladevi* containing *inter alia* 'Points to be urged in brief' together with supporting documents. Mr. Punalekar has canvassed detailed submissions opposing the Report based on the said brief note and documents filed along with the compilation. The Deputy Collector and Competent Authority has filed Affidavit in Reply opposing the Report.

4) Mr. Kamat, the learned Senior Advocate appearing for NSEL would submit that HCC has undertaken a detailed exercise of verifying the records and accounts while crystallizing the liability of *Vimladevi*. That the liability is crystallized after giving adequate opportunity of hearing to *Vimladevi*. That initially *Vimladevi* had admitted the liability to the extent of Rs.14 Crores during the course of meeting of the committee held on 19 December 2014. Notwithstanding such admission on part of *Vimladevi*, HCC has undertaken indepth exercise of verifying all the records as well as considering all objections raised by *Vimladevi* and has thereafter crystallized its liability at Rs.13,72,51,730/- as on 30 September 2013. That Report No.47 of HCC is exhaustive and shows application of mind by HCC to each and every aspect while crystallizing *Vimladevi's* liability. He would therefore submit that Report No.47 is required to be accepted by making an Order against *Vimladevi* in the sum of Rs.13,72,51,730/- along with interest at commercial rate w.e.f. 30 September 2013 till realization of the amount.

5) Mr. Punalekar, the learned counsel appearing for *Vimladevi* would oppose the Report. He would submit that the purpose of constitution

of HCC by this Court's Order dated 2 September 2014 is not for determining or crystallizing any disputed claims of NSEL against Third Party Noticees. Taking me through the Order passed by this Court on 2 September 2014, Mr. Punalekar would contend that the real objective behind constitution of HCC was to merely make recommendations in respect of settled claims between NSEL and its members. That the Order constituting HCC was secured by NSEL primarily with a view to seek adjudication of settled and admitted claims against its members and their clients. That where there is a dispute in respect of any claim by NSEL's member, HCC is not competent to adjudicate such claim. He would submit that this Court cannot make an Order directing Third Party Noticee to pay any amount to NSEL, merely on the basis of recommendations made by HCC.

6) Mr. Punalekar would rely upon Chapter VIII Bombay High Court (Original Side) Rules, 1980 (**Original Side Rules**) in support of his contention that "Third Party Procedure" prescribed in Chapter VIII does not permit passing of a decree by this Court against Third Party Noticee before commencement of trial and conclusion of the main suit. Relying Rule 112, Mr. Punalekar would submit that the decree against Third Party Noticee making default in appearance can be passed only after decision of the main suit. That therefore in respect of Third Party Noticee, who contests the Notice by filing reply, the Notice cannot be adjudicated before commencement or conclusion of trial in the main suit. That Rules 112 and 114 cannot be read to mean as if a Third Party Noticee contesting the claim of Defendant is put to disadvantageous position as compared to a Third Party Noticee who makes a default in appearance and against whom ex-parte decree can be passed. Mr. Punalekar would contend that so far the trial in the main suit is yet to commence. That the liability of Defendant in the suit is yet to be established. That therefore before establishment of its liability, the Defendant

cannot be permitted to seek decree against Third Party Noticee merely on the basis of recommendations of HCC.

7) Mr. Punalekar would further submit that mere of passing of various orders by this Court in accepting previous reports cannot be construed to mean as if this Court can pass a decree against *Vimladevi* on the basis of recommendations of HCC. That the points that are sought to be raised by him in the present reports were not raised by the Noticees involved in previous Reports. He would submit that the issue whether this Court can pass a decree on the basis of recommendations of HCC needs to be referred to Division Bench for adjudication, in the event, this Court feels bound by disposal of previous Reports by other Single Judges of this Court.

8) Mr. Punalekar would further submit that, *Vimladevi* was not given proper opportunity of defence and principles of natural justice were violated while crystallizing liability against it. That despite making a request, *Vimladevi* was not permitted to cross-examine any of the witness. That no evidence was led by NSEL by examining witnesses which could be cross-examined by *Vimladevi*. That passing of Order by this Court accepting HCC report would result in a decree against *Vimladevi* without undertaking the process of adducing of evidence by granting opportunity of defence to it.

9) Mr. Punalekar would further submit that HCC has made its recommendations by assuming innocence by NSEL. That HCC has ignored the fact that NSEL owned and operated various Godowns for storage of goods and therefore NSEL should be held responsible in respect of amounts for the goods stored in its Godowns. That NSEL is the prime accused in the case and decree against Third Party Noticee cannot be passed presuming NSEL's innocence. Mr. Punalekar would request for rejection of the Report.

10) I have also heard Ms. Gonsalves the learned Special Public Prosecutor appearing for the Deputy Collector and Competent Authority, who would rely upon the Affidavit in Reply dated 10 December 2018 filed opposing the Report.

11) After having considered the submissions canvassed by the learned counsel appearing for rival parties, it is seen that this Court passed Order on 2 September 2014 in terms of Minutes of the Order, under which a committee of following persons was constituted:

- i) Mr. Justice V. C. Daga (Retd.), Chairman
- ii) Mr. J. S. Solomon
- iii) Mr. Yogesh Thar, Partner of M/s. Bansi S. Mehta & Co., Chartered Accountants.

The HCC has been appointed on account of NSEL taking out various Third Party Notices, and according to the NSEL the Noticees are its defaulting members and from whom various amounts are due and payable under the trades executed at NSEL's trading platform. The Third Party Notices taken out by NSEL in the Suit filed by the Plaintiff, being one of the investors of NSEL, for itself as well as on behalf of other investors claiming various amounts due and payable to them in respect of trades executed on NSEL's trading platform. As there were large number of defaulters as well as investors and since determination of liability in respect of Third Party Noticees involved undertaking mammoth task of scrutinizing records relating to various transactions made on NSEL's platform, this Court thought it appropriate to constitute HCC, both for the purposes of exploring and negotiating mutual settlements between NSEL and its alleged defaulters as well as for determining the liability of Third Party Noticees to NSEL.

12) Since Mr. Punalekar has raised an objection about competence of HCC to crystallize disputed liability of *Vimaladevi*, it would be apposite to refer the relevant findings and directions of this Court in Order dated 2 September 2014 for better understanding of the functions to be performed by the HCC. This Court directed in para 14 of the Order as under:

"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 sub-clause (i) of Para 5 that any party affected by any decision of the Committee in this behalf shall be entitled to approach this Court."

13) Thus HCC has been vested with all the powers of Commissioner under Order XXVI of the Code of Civil Procedure 1908 of local investigation,

examination of accounts, making proposals of preservation, custody and management of assets under the custody of the Court etc. It is also vested with power to examine the parties and require attendance and examination of witness. The committee is empowered to call upon various defaulting members/clients of members of NSEL and seek information and documents for the purpose of determining the extent of liability by making a report to this Court for further directions.

14) It must be observed here that constitution and scope of enquiry to be conducted by HCC has been recognized by the Apex Court, while passing Order dated 4 May 2022, by which the Apex Court has constituted its own High-Power Committee (**Supreme Court Committee**) headed by Mr. Justice Pradeep Nandrajog J. (Retired) for execution of all the decrees/orders /arbitral awards as well as for execution of decrees/orders passed by this Court by accepting reports made by HCC. Thus, as per the Order passed by the Apex Court on 4 May 2022, the Supreme Court Committee is empowered to execute the decree/Orders passed by this Court by accepting the reports of HCC. What is pertinent to note here is that the Apex Court has taken note of pendency of Reports filed by HCC for acceptance by this Court crystallizing liability of five defaulters included in 'Annexure 3' to the Order. *Vimladevi* figures at Serial 5 of 'Annexure '3'. This means that the Apex Court has not just recognised the jurisdiction of this Court to make orders/decrees by accepting reports of HCC, but as in fact directed that such orders/decrees be executed through Supreme Court Committee.

15) It is also matter of fact that by now, this Court has accepted several reports of HCC and passed decrees against various Third Party Noticees in the sum crystallized by the HCC after conduct of enquiry as

contemplated under Order passed by this Court on 2 September 2014. Though Mr. Punalekar has attempted to contend that the issue of permissibility of passing decrees by this Court on the basis of recommendations of HCC was not raised while accepting various reports by this Court in past, in my view all the submissions sought to be canvassed by Mr. Punalekar about correctness of constitution of HCC, the ambit of its powers and permissibility of this Court to pass Orders/decrees in the sum crystallized by HCC are totally baseless and are raised only for the purpose delaying discharge of its liability as crystallized by HCC. All the objections raised on behalf of *Vimladevi* in this regard deserves rejection for reasons recorded in paragraphs to follow.

16) First objection of Mr. Punalekar is that this Court cannot pass a decree against Third Party Noticee before commencement and till conclusion of trial in the main suit. That decree against Third Party Noticee can be passed only when decree is passed against the main Defendant in the Suit. What Mr. Punalekar argues is that mere constitution of HCC vide Order dated 2 September 2014 for the purpose of settlement of claims (according to Mr. Punalekar such settlement was supposed to be mutual settlement) does not clothe this Court with jurisdiction contrary to the procedure prescribed in the Original Side Rules. According to Mr. Punalekar, under the Chapter VIII of the Original Side Rules, decree against the Third Party Noticee can never be passed before passing a decree in the main suit. To consider the submissions canvassed by Mr. Punalekar, it would be necessary to make a quick reference to Chapter VIII of the Original Side Rules. Chapter VIII deals with "Third Party Procedure", under which the procedure is prescribed for decision of Third Party Notice taken out by Defendant in a suit against any person who is not party to that suit. Rule 107 provides for application to be made by a Defendant in Suit against any party who is not

party thereto *inter alia* to seek relief or remedy relating to or connected with the subject matter of the Suit. Rule 107 reads thus:

107. Third party notice

Where in a suit a defendant claims against any person not already a party to the suit (hereinafter called the third party)—

(a) that he is entitled to contribution or indemnity, or

(b) that he is entitled to any relief or remedy relating to or connected with the subject matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff, or

(c) that any question or issue relating to or connected with the subject matter of the suit is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and the defendant and the third party or between any or either of them,

he may apply to the Judge in Chambers for leave to issue a notice (hereinafter called the "Third Party Notice") to that effect. The application shall be made by affidavit, stating the nature of the claim made by the defendant and the facts on which proposed Third Party Notice is based and may be made ex-parte. The application shall be made within four weeks from the service of the writ of summons upon the defendant.

17) Rule 108 deals with form and service of Third Party Notice. Under Rule 109, upon service of notice on Third Party Notice, he becomes party to the Suit as if he has been duly sued in the ordinary way by the Defendant. Under Rule 109, the Third Party Noticee can enter appearance, if he desires to dispute the Plaintiff's claim in the Suit as against the Defendant, on whose behalf of the notice is taken out. Rule 111 provides for consequence of failure to enter appearance by Third Party Noticee. Rule 112, on which Mr. Punalekar places strong reliance, provides for passing of decree upon default by Third Party Noticee to make appearance and reads thus:

112. Decree when third party makes default in appearance or vakaltnama

Where the Third Party makes default in entering an appearance in person or a vakalatnama in the suit—

(1) In cases where the suit is tried and results in favour of the plaintiff, the Judge who tries the suit may, at or after the trial, pass such decree in favour of the defendant against the Third Party as the nature of the case may require :

Provided that execution thereof shall not issue without the leave of the Judge in Chambers until the decree against the defendant has been satisfied, and

(2) In cases where the suit is decided in the plaintiff's favour, otherwise than by trial, the Judge may, at any time after the decree against the defendant has been satisfied, on the application of the defendant by Notice of Motion pass such decree in favour of the defendant against the Third Party as the nature of the case may require.

18) Rule 113 provides for filing of Affidavit in Reply to the Affidavit filed by Defendant in support of Third Party Notice. Rule 114 provides for adjudication of the Third Party Notice in which the Noticee has entered appearance and filed his Affidavit under Rule 113 and provides thus:

114. Appearance or vakalatnama of third party.

(1) Where the Third Party enters an appearance in person or a vakalatnama and files his affidavit as required by the last preceding rule, and the suit appears on board for directions before the Judge in Chambers, the Judge may—

(a) Directions to be given.—Order any claim, question or issue stated in the Third Party Notice to be tried in such manner, before, at or after the trial of the suit, as the Judge may think fit and may, in that event, give the Third Party leave to defend the suit either alone or jointly with any defendant, upon such terms as he may think just, or to appear at the trial and take such part therein as he may think just and generally may make such orders and give such directions as to the Judge may appear proper for having the questions and the right and liabilities of the parties most conveniently determined and enforced and as to the extent to which the Third Party shall be bound or made liable by any decree in the suit, or

(b) Dismiss the Third Party notice.

2) Any order made or direction given under this rule may be varied or rescinded by the Court or the Judge in Chambers at any time before the disposal of the suit.

19) In the present case, there is no dispute to the position that *Vimladevi* entered appearance in the Third Party Notice taken out by NSEL and has also filed Affidavit in Reply as envisaged under Rule 113. Thus Rule 112, providing for passing of decree upon default of Third Party Noticee, is inapplicable to the present case. What applies is the provisions of Rule 114, under which the Third Party Notice is required to be adjudicated after filing of Affidavit in Reply by the Noticee. Under Rule 114, the Judge is empowered to make an Order either 'before, at or after' the trial of the suit granting leave to the Third Party to defend the suit either alone or jointly with any Defendant. Alternatively, the Judge can direct that the Third Party Noticee can take part in the trial of the main suit. After the Judge passes an Order either granting leave to defend to the Third Party Noticee or to appear at the trial and take part therein, the Judge can thereafter determine and enforce the rights and liabilities of the parties including the extent to which

the Third Party can be made bound or made liable by any decree in the suit. Ofcourse, if the Judge finds that there is no merit, he can also dismiss the Third Party Notice.

20) What is relevant in Rule 114 is use of the words '*before, at or after the trial of the suit*'. Thus, the steps included in Rule 114 (1) (a) can be taken by the Judge 'before at or after the trial of the suit'. It therefore cannot be stated that in every case the Judge must wait till conclusion of the trial in the main suit for the purpose determining liability of Third Party Noticee. The determination of liability of Third Party Noticee can also be determined, in a given case, before the trial of the suit. It would all depend on facts and circumstances of each case.

21) Strenuous reliance is placed by Mr. Punalekar on Rule 112 in support of his contention that a Third Party Noticee entering appearance by filing Affidavit in Reply cannot be put to disadvantageous position as compared to the one who makes a default in appearance. According to Mr. Punalekar, under Rule 112, the decree against Third Party Noticee making default in appearance can only be passed along with passing a decree in the main suit. In my view Rule 112 cannot be read to me that a decree against Third Party Noticee, who makes a default in appearance, can only be made at the trial of the suit or that the same cannot be enforced unless the main decree against the Defendant is first executed. In ordinary circumstances, the provision empowers a Defendant to take out a Third Party Notice to satisfy claim of the Plaintiff raised against the Defendant, essentially to reduce the liability of the Defendant in respect of same transaction, where something is due to the Defendant from Third Party, for which Plaintiff has sued that Defendant. Therefore, in a given case, the Judge may find it appropriate to determine liability between Plaintiff and Defendant and Defendant and Third

Party simultaneously at the end of the Trial of the Suit. However, in a given case the Judge may find it necessary to first determine the liability of Third Party Noticee against the Defendant. In the present case, this Court has directed that notwithstanding pendency of the main suit, Defendant NSEL is permitted to pursue its claims against Third Party in Noticees so as to satisfy Plaintiff's claim in the main suit. The present suit is unique one where Plaintiffs, in their representative capacity, are seeking to recover dues of investors who have lost money on a large scale on trading platform of NSEL. NSEL on the other hand claims that several of its members, who traded on its platform, have deceived NSEL by not paying amounts due to it in respect of those transactions. This Court has thought it appropriate to appoint HCC to ensure that NSEL is in a position to recover amounts due from its members by verification of transactions traded on NSEL's platform by crystallizing the liability against such defaulting members, who are Third Party Noticees. To expect that such exercise can only be conducted at the end of the trial of the main suit, would defeat the very purpose why this Court appointed HCC.

22) Also of relevance is the fact that HCC has been appointed by this Court by Order passed on 2 September 2014. HCC issued notices dated 22 October 2014 to *Vimladevi Agrotech Ltd.* and *Varlaxmi Agrotech Ltd.* to appear before it. After receipt of notices, both *Vimladevi* and *Varlaxmi* appeared before HCC and never raised any objection about jurisdiction or competence of HCC to crystallize their liability *qua* NSEL. If *Vimladevi* and *Varlaxmi* were of the view that either the Order passed by this Court on 2 September 2014 was erroneous or that HCC did not have jurisdiction or competence to crystallize their liability, they ought to have challenged the Order of this Court dated 2 September 2014. Far from doing so, both *Vimladevi* and *Varlaxmi* participated in proceedings before HCC without raising any objection to its jurisdiction or competence nor they challenged

the Order passed by this Court on 2 September 2014. On the contrary the advocate appearing for *Vimladevi* initially admitted liability to the extent of Rs. 14 crores during first day of hearing. *Vimladevi*, later wriggled out of that admission made by its advocate by filing Affidavit-in-Reply. As observed above, constitution and competence of HCC to some extent finds approval in the Order passed by the Apex Court on 4 May 2022, by which the Apex Court has directed that the Orders passed by this Court upon any report made by HCC (including against *Vimladevi*) would be executed by the Supreme Court Committee. *Vimladevi* therefore cannot be permitted to now raise a belated objection (not supported by Affidavit in Reply) that this Court cannot make an Order in Report No.47 before Trial and till conclusion of the main suit. The objection raised by Mr. Punalekar that making an Order/decreed on Report No.47 would be contrary to the provisions of Original Side Rules is therefore repelled.

23) The next objection of Mr. Punalekar is that opportunity of cross examination was not provided to *Vimladevi* by the HCC. However, upon being asked to demonstrate as to when and how *Vimladevi* sought cross examination of any individual or entity, Mr. Punalekar is unable to point out any application to that effect being made before HCC. In absence of any specific application seeking cross examination of any person before HCC, *Vimladevi* cannot now be permitted to raise that objection, which is not even supported by any Affidavit in Reply.

24) What is more striking in the present case is that *Vimladevi* has not raised any objection about merits of finding recorded by the HCC in its report. In detailed submissions canvassed by Mr. Punalekar, he has not criticized HCC on merits of liability determined by it *qua Vimladevi*. Thus, *Vimladevi* does not have any grievance in respect of the merits of

determination of liability of Rs.13,72,51,730/- as on 30 September 2013. If this is the position, it is safe to assume that *Vimladevi* is seeking to raise baseless objections (unsupported by any Affidavit in Reply) merely to delay an Order being passed on the report of HCC which is submitted on 8 October 2018. I therefore find all the objections sought to be raised by *Vimladevi* to be totally unfounded.

25) Perusal of the Report No.47 of HCC would indicate that an indepth exercise has been undertaken by the committee. The Committee requisitioned several documents from *Vimladevi* and *Varlaxmi*. The Committee has noted that *Vimladevi* and *Varlaxmi* had not raised any objection to any of the entries made by NSEL in the accounts and records relating to *Vimladevi* maintained by NSEL. The Committee gave repeated opportunities to *Vimladevi* and *Varlaxmi* to produce documents to counter the entries made by NSEL in its records. The Committee has found that *Vimladevi* and *Varlaxmi* did not produce complete accounts maintained by them for their transactions on NSEL platforms. On 1 March 2018, the counsel appearing for *Vimladevi* submitted before the committee that all documents in possession of *Vimladevi* were already submitted and that no other documents were available for being submitted on behalf of *Vimladevi*. Perusal of the report of HCC would indicate that it has applied its mind to each and every entry and transactions. It has reduced to amount of Rs.2,16,996/- and Rs.6,296/- as well as VAT amount of Rs.18,96,430/- (totaling aggregating of Rs.21,19,722/-) from the total balance due from *Vimladevi* of Rs. 13,93,71,452/- and has thereafter crystallized *Vimladevi*'s liability to NSEL at Rs. 13,72,51,730/-. This Court, in Order dated 4 October 2021 while adjudicating Third Party Notice No.16 of 2014 and Report No.49 dated 30 March 2019 has held that the jurisdiction of this Court while making an Order on Report of the Committee is not that of First Appellate

Court. This Court held in para 36 of the Order as under:

"36. At a broader level this cannot take the form of a First Appeal. There is no procedural irregularity per se that is pointed out. It is not as if the Committee's report is lacking in reasons for its rejection of SRTC's application to summon third-party accounts. Indeed, there are cogent and unassailable reasons to reject those applications. SRTC cannot simply paper over its own defaults in this fashion. Once the decision-making process cannot be assailed, then I see no reason why I should entertain an application made only across the bar by SRTC to either substitute this report with a finding of my own or to further delay matters by sending it back and remanding it to the Committee for a reconsideration. There is nothing to reconsider. SRTC itself has no material it can produce. All it can say now is what it has unsuccessfully tried to say for the last six years that other parties' accounts should be produced. The Committee was right in rejecting that request. Once that is the finding, nothing remains of the opposition to the report."

26) Affidavit in Reply is filed on behalf of Deputy Collector and Competent Authority appointed under Section 5 of Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (MPID). I have gone through the Affidavit. Affidavit is mainly targeted against Report No. 45 which is not being decided by present Order. *Qua* Report No. 47 following objection is raised:

*63. With regard to Report No. 47, I say that the figure arrived at by the Committee in paragraph 29.13 of the said Report is at variance with the figure arrived at by Forensic Auditor appointed by Government of Maharashtra. The Committee has concluded that an amount of Rs. 13,72,51,703/- was due and payable by M/s. Vimladevi Agrotech Ltd. to NSEL as on 30/9/2013. The Government of Maharashtra had appointed forensic auditors to carry put a forensic audit in EOW Cr. No. 89/2013. The Forensic Audit Report on M/s. Vimadevi Agrotech Ltd. is dated 15/2/2018. The said audit was done by U.S. Gandhi & Co., Chartered Accountants. The said Report has concluded that liability of M/s. Vimadevi Agrotech Ltd. as on 31/8/2013 was Rs. 14,02,05,085/-. The Forensic Audit Report is based on forensic analysis of the relevant data by experts in the field and is far more reliable than Report No. 47 which is the conclusion of the Committee based on the data provided and the submissions made by NSEL and M/s. Vimadevi Agrotech Ltd. I say that therefore, Forensic Audit Report must be given precedence over the Report of the Committee. A copy of Forensic Audit Report on M/s. Vimadevi Agrotech Ltd. dated 15/2/2018 is annexed herewith as **Exhibit 'N'**.*

27) Thus, the only objection raised by Competent Authority is about variance in the amount of liability of *Vimladevi* as Competent Authority claims that the Forensic Auditors appointed by Government of Maharashtra have concluded the liability of *Vimladevi* as on 31 August 2013 at

Rs.14,02,05,085/-. Competent Authority is aggrieved by crystalizing lesser amount of Rs.13,72,51,730/-. Perusal of the calculation chart by HCC in para 29.7 would indicate that *Vimladevi's* liability was actually considered at Rs.14,02,05,311/-. However, HCC gave credit of Rs. 8,33,858/- for fixed deposit encashed on 23 September 2013 and arrived at balance of Rs.13,93,71,452/-. HCC thereafter reduced the amount of Rs.18,96,430/- towards VAT, Rs. 2,16,996/- towards warehouse receipts and Rs.6,296/- towards transfer charges and thereafter crystallized liability of *Vimladevi* to NSEL at Rs.13,72,51,730/-. I therefore find the objection raised by the Competent Authority in its Affidavit in Reply to be unfounded in light of detailed exercise carried out by HCC in arriving at exact amount which *Vimladevi* is liable to pay to NSEL.

28) After perusal of the report of the HCC, I am of the view that there is no procedural irregularity or perversity in the findings recorded by the Committee. I do not find any valid reason not to accept Report No.47. HCC has crystalized liability of *Vimladevi* towards NSEL at Rs. 13,72,52.730 as on 20 September 2013. Since the transactions are commercial in nature, in my view reasonable commercial interest @ 12% needs to be awarded.

29) Accordingly Report No.47 is accepted and there shall be an Order in favour of NSEL and against *Vimladevi* in the sum of Rs.13,72,51,730/- along with interest at the rate of 12% per annum with effect from 30 September 2013 till realization of the amount.

[SANDEEP V. MARNE J.]