

JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

REPORT NO. 4 OF 2016

IN

NOTICE OF MOTION NO. 240 OF 2014

IN

SUIT NO. 173 OF 2014

WITH

TPN 2 OF 2014 TO TPN 15 OF 2014

Modern India Ltd & Ors

... Plaintiffs

Versus

Financial Technologies India Ltd & Ors

... Defendants

Mr Akshay Patil, *with Ms Namrata Vinod i/b M/s Federal & Rashmikant for the Plaintiffs.*

Dr Birendra Saraf, *with Ameet Naik, Anuja Jhunhunwalla, and Chirag Kamdar i/b M/s Naik & Naik for Defendant No.2.*

Bijal Mehta, *i/b Deven Dwarkadas & Partners for NAARA-NSEL Aggrieved & Recovery Association.*

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

Shivani Soni, *i/b Derwin Duggal & Associates for Geofin Ltd & Kunal Comtrade.*

Rishabh Ketan Shah, *for Mr Ketan Shah and Mr Sandeep Gupta for Philip C Pvt Ltd, Defendant Respondent No.16.*

CORAM: G.S. PATEL, J

DATED: 27th February 2017

PC:-

1. There is no opposition to Report No.4 of the Special Committee constituted by the order dated 2nd September 2014 under the Chairmanship of Mr Justice VC Daga.

2. On behalf of Namdhari Foods International P Ltd and Namdhari Rice and General Mills, a statement is made that the matter should be adjourned so that these entities can “give instructions” to their Advocates. The report is of 27th January 2016 i.e., it is already more than a year old. Both Namdhari entities are said to be a defaulting members of the NSEL. They are no strangers to these proceedings. They appealed against the order dated 2nd September 2014 and that appeal was rejected. On 3rd December 2014, Namdhari Foods International Pvt Ltd and its group companies appeared before the Committee. There followed further meetings and orders. All of these noted in Report No.4. For over one year after this report, matters have remained at standstill. The Namdhari entities did not feel it necessary to instruct their Advocates or to file any Affidavit. Even today, beyond asking for time, these entities have nothing at all to say on the report.

3. I see no reason to delay these matters. This will only frustrate the whole purpose of having this special committee at all.

4. The recommendations of committee are accepted and made an order of this Court.

(G. S. PATEL, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
REPORT NO.4 OF 2016

IN
NOTICE OF MOTION NO.240 OF 2014
IN
SUIT NO.173 OF 2014
WITH
TP No 2 OF 2014 TO TP No 15 OF 2014

Modern India Limited & Ors. ... Plaintiffs
vs.
Financial Technologies (I) Ltd. & Ors. ... Defendants

AND OTHER RELATED MATTERS

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
REPORT NO. 4 OF 2016

IN
NOTICE OF MOTION NO.240 OF 2014
IN
SUIT NO.173 OF 2014
WITH
TPN 2 OF 2014 TO TPN 15 OF 2014

Modern India Limited & Ors. ...Plaintiffs/Applicants
v/s.
Financial Technologies (I) Ltd. & Ors. ...Defendants

WITH

NOTICE OF MOTION (L) NO.2052 OF 2013
IN
SUIT NO.221 OF 2014

MMTC Ltd. ...Plaintiff
v/s.
The National Spot Exchange Ltd. & Ors. ...Defendants

WITH

NOTICE OF MOTION (L) NO.2166 OF 2013
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SUIT (L) NO.991 OF 2013

PEC Ltd. ...Plaintiff
v/s.
The National Spot Exchange Ltd. & Ors. ...Defendants

WITH

NOTICE OF MOTION NO.212 OF 2014
IN
SUIT NO.121 OF 2014

L. J. Tanna Shares and Securities Pvt. Ltd. & Ors. ...Plaintiff
v/s.
Financial Technologies (India) Ltd. & Ors. ...Defendants

WITH

NOTICE OF MOTION NO.765 OF 2014
IN
SUIT (L) NO.328 OF 2014
WITH

NOTICE OF MOTION (L) NO.807 OF 2014

The National Spot Exchange Ltd. ...Plaintiff
v/s.
P. D. Agro Processors Pvt. Ltd. & Ors. ...Defendants

SUBMITTED TO THE HON'BLE COURT:

THE COMMITTEE CONSTITUTED UNDER ORDER DATED 2ND SEPTEMBER 2014 RESPECTFULLY SUBMITS ITS REPORT AS UNDER:-

1. Under Order dated 2nd September 2014 passed by this Hon'ble Court in terms of Minutes of Order "X" and "X-1" thereto, a committee consisting of:
 - (i) Mr. Justice V. C. Daga (Retd.) - Chairman;
 - (ii) Mr. J. S. Solomon - Advocate; and
 - (iii) Mr. Yogesh Thar - Chartered Accountant - Partner of M/s. Bansi S. Mehta & Co., Chartered Accountants,has been constituted as a fact finding authority to determine the amounts payable by the defaulters / third parties to National Spot Exchange Ltd. ("NSEL") and to ascertain the assets of the defaulters / third parties and amounts received directly or indirectly from NSEL in respect of various trades and to explore and negotiate mutual settlements between NSEL and the alleged defaulters / third parties and their clients and to seek appropriate directions from the Court for sale / monetization of assets both immovable and/or movable of defaulters and their clients and any other persons and to perform the duties and functions as provided in the Order dated 2nd September, 2014. In Exhibit-1 of the Annexure "X" to the Order dated 2nd September, 2014, Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills are shown as defaulting members of NSEL and Namdhari Food International Pvt. Ltd., is also shown as client of Namdhari Rice & General Mills, defaulting member of NSEL. This interim Report is submitted in respect of Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills, members of NSEL and Namdhari Food International Pvt. Ltd. client of Namdhari Rice & General Mills, member of NSEL. The Committee proposes to submit separate Reports in respect of other defaulter members of NSEL as also further Reports in respect of Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills.
2. NSEL - Defendant No. 2 in Suit No. 173 of 2014 - has taken out Third Party Notice No.8 of 2014 (Third Party (Lodg.) No.14 of 2014) dated 3rd May, 2014 against Namdhari Food International Pvt. Ltd. (being a trading member of NSEL) claiming an amount of Rs.51.02 crores along with interest from the date of filing of Suit No. 173 of 2014 till payment

/ realization, in which it is stated that defaulting members of NSEL and their clients have received monies from various investing members who have traded on the NSEL platform and the defaulting members and their clients are required to make good the claim of the Plaintiffs in Suit No. 173 of 2014.

3. NSEL - Defendant No. 2 in Suit No. 173 of 2014 - has taken out Third Party Notice (Lodg.) No.3 of 2014 dated 3rd May, 2014 against Namdhari Rice & General Mills (being a trading member of NSEL) and Namdhari Food International Pvt. Ltd. (client of Namdhari Rice & General Mills) claiming an amount of Rs. 10.39 crores along with interest from the date of filing of Suit No. 173 of 2014 till payment / realization, in which it is stated that defaulting members of NSEL and their clients have received monies from various investing members who have traded on the NSEL platform and the defaulting members and their clients are required to make good the claim of the Plaintiffs in Suit No. 173 of 2014.
4. N. K. Proteins Ltd. have filed Appeal (L) No. 741 of 2014 and White Water Foods Pvt. Ltd. and others have filed Appeal (L) No. 766 of 2014 and Appeal (L) No. 767 of 2014 challenging the Order dated 2nd September 2014 passed by the Learned Single Judge under which the Committee has been constituted. By Order dated 17th June, 2015 passed by the Division Bench of this Hon'ble Court, these three Appeals have been admitted and Interim Order directing that the Order of the Learned Single Judge passed on 2nd September, 2014 shall not be operative against the Appellant - N. K. Proteins Ltd. and that the Order dated 2nd September, 2014 passed by the Learned Single Judge shall be operative against the Appellants in two Appeals i.e. Appeal (L) No. 766 of 2014 and Appeal (L) No. 767 of 2014, namely White Water Foods Pvt. Ltd. and (1) V.I.R. Foods Ltd., (2) Tradebiz Commodities, and (3) Bharat Food and Agro Products on condition that the Commission shall function in accordance with Section 75 of the Code of Civil Procedure while discharging its functions under the Minutes of Order and the directions issued by the Learned Single Judge and that the Committee shall not have any adjudicatory powers has been passed.
5. Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills have filed Appeal (L) No. 461 of 2015 on or about 22nd May, 2015

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in respect of Order dated 2nd September, 2014 constituting the Committee. The Committee has not been informed of any Orders in Appeal (L) No. 461 of 2015 filed by Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills.

6. The Committee is proceeding on the basis that the Order dated 17th June 2015 passed by the Division Bench of this Hon'ble Court is applicable in the case of Appellants in the three Appeals in which the said Order has been passed and that in case of other parties, including Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills subject to orders and directions which may be passed by the Hon'ble Court, the Committee is required to continue to perform functions as provided in the Order dated 2nd September, 2014 passed by the Learned Single Judge, which includes power to determine on facts found and recommend, without any judicial determination.
7. The Committee has submitted Report No.3 of 2015, Report No.12 of 2015 and Report No.17 of 2015 relating to sale by the Competent Authority, under the MPID Act of 900 metric tonnes of paddy in 18,000 bags of paddy weighing 50 kg., each stored at Namdhari Food International Pvt. Ltd., Village Shri Jiwan Nagar, Dabwali Road, Sirsa, Haryana. Pursuant to the Orders passed by this Hon'ble Court on these Reports, 633 MT of paddy has been sold and delivered to M/s. Sonagara Trading Co. at the rate of Rs.7,500/- per MT on receipt of purchase price thereof amounting to Rs.47,47,500/-. At the time of delivery of paddy sold as aforesaid, the quantity thereof was found to be 633 MT as against 900 MT and accordingly, the Committee in Report No.17 of 2015 has recommended a refund of Rs.20,02,500/- to M/s. Sonagara Trading Co., being excess payment for 267 MT of paddy (900 MT - 633 MT) not delivered to M/s. Sonagara Trading Co. at the rate of Rs.7,500/- per MT.
8. At the meeting of the Committee held on 20th October, 2014, NSEL moved Application No. 2 of 2014 to take on record the list of defaulter members who have admitted their liability and to issue notices to defaulter members and their clients. This Application was considered at the meeting held on 20th October, 2014 and notices were directed to be issued by the Committee to the defaulting members.

9. Accordingly, Notices dated 22nd October, 2014 were issued on behalf of the Committee to Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills calling upon them to appear before the Committee on 3rd December, 2014.

10. **Meeting held on 3rd December 2014**

At the meeting held before the Committee on 3rd December, 2014:

10.1 Mr. Nahar Narayan Singh appeared on behalf of Namdhari Food International Pvt. Ltd. and its group companies and sought time to appear through an Advocate. The liability of Namdhari Food International Pvt. Ltd. to NSEL was denied and a prayer for refund of the security deposit given to NSEL was made.

10.2 A compilation of documents was submitted by NSEL and a copy of the same was provided to Mr. Nahar Narayan Singh and Namdhari Food International Pvt. Ltd. was directed to respond to it.

10.3 The Committee noted that there is some dispute with regard to the liability of Namdhari Food International Pvt. Ltd., and it is necessary to reconcile accounts and directed Namdhari Food International Pvt. Ltd. to produce Ledger Account of NSEL maintained by them in their books of account and directed NSEL to produce Ledger Account of Namdhari Food International Pvt. Ltd., in their books of account of NSEL.

10.4 Hereto annexed and marked **Exhibit "A"** is a copy of Order Sheet No.11A dated 3rd December 2014.

10.5 The compilation of documents filed by NSEL with the Committee at the meeting held on 3rd December, 2014 including copies of the following:-

(i) A Note on liability of Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills to NSEL, a copy whereof is hereto annexed and marked **Exhibit "B-1"**.

(ii) A copy of Order dated 21st July, 2014 passed by Special Judge, M.P.I.D. Act & Addl. Sessions Judge, Bombay in Bail Application No.17 of 2014 of Inder Sing Bal, Director of Namdhari Food International Pvt. Ltd., a copy whereof is hereto annexed and marked **Exhibit "B-2"**.

- (iii) Letter dated 26th June, 2013 from Namdhari Food International Pvt. Ltd. to NSEL in which it is stated as under:-

"As you know we have a total exposure of 64.74 Cr (which include our 10% margin) till date with NSEL.

We here by submitting that we will liquidate 20% in the month of July, 40% in the month of August and 40% in the month of September, 2013", a copy whereof is hereto annexed and marked **Exhibit "B-3"**.

- (iv) Letter dated 26th June, 2013 from Namdhari Rice & General Mills to NSEL in which it is stated as under:- "As you know we have a total exposure of 14.02 Cr (which include our 10% margin) till date with NSEL.

We here by submitting that we will liquidate 20% in the month of Sept, 20% in the month of Oct, 30% in the month of Nov and 30% in the month of Dec. 2013", a copy whereof is hereto annexed and marked **Exhibit "B-4"**.

- (v) Affidavit dated 15th July, 2014 of Inder Sing Bal in Bail Application No.17 of 2014, a copy whereof is hereto annexed and marked **Exhibit "B-5"** in which it is stated that NSEL has falsely alleged that the NSEL has to recover Rs.53.07 crores from Namdhari Food International Pvt. Ltd., and it is stated that in fact Namdhari Food International Pvt. Ltd., is entitled to recover Rs.4.14 crore from NSEL. In this Affidavit it is also mentioned that the plant of Namdhari Food International Pvt. Ltd., at village Shri Jeevan Nagar, Dabwali Road, Sirsa, Haryana in which Company is carrying its business valued at Rs.40 crores. The para 9 of these Affidavits of Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills is as under:-

- "9. I say that there are no dues payable by the third party notice to defendant no.2 and by defendant no.2's own admission in terms of the report of Sharp & Mannan Associates attached at Exhibit D of the affidavit on behalf of defendant no.2, the alleged dues are in fact "unsettled buy position" which means that the third party

noticee did not buy the goods. As defendant no.2 claims to be a commodity exchange on spot basis, it goes without saying that "unsettled buy position" cannot be enforced unless the goods underlying such position are delivered. There is not even an iota of mention in affidavit of defendant no.2 for having delivered any goods or even for willingness to deliver any goods under the alleged "unsettled buy position". Admittedly the operations of defendant no.2 were suspended and this was the reason for existing contracts having been suspended. If the contracts have been suspended and if defendant no.2 did not act on its own contract, there is no question of defendant no.2 having any right to enforce the obligation of other side in a one-sided manner. The obligations and promises are mutual and reciprocal and there is no admitted debt by third party noticee in favour of defendant no.2. Therefore, this is in fact at fit case to dismiss the third party notice itself."

In para 17 of these Affidavits as regards the alleged admission in term of letters dated 26th June, 2013 (Exhibits "B-3" and "B-4" hereto) it is stated that any such letter prior to suspension of trade of Defendant No.2 is completely irrelevant and is no admission at all and the said letters are not an admission of debt but speak about clearing transactions, which means that payments would be released when goods are delivered and it is stated that NSEL had the obligation of delivery of goods and there was no question of making any payment without goods and when the trade of NSEL was suspended and NSEL failed to make deliveries, there was no question of making any payment to NSEL.

- (vi) List of assets of Namdhari Group including three properties attached by Economic Offences Wing and sixteen other properties, a copy whereof is hereto annexed and marked **Exhibit "B-6"**.
- (vii) Minutes of Meeting dated 5th September, 2013 between NSEL and Mr. Inder Sing and Mr. Daljit Singh of Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills which were not signed by Mr. Inder Sing and Mr. Daljit Singh, a copy whereof is hereto annexed and marked **Exhibit "B-7"**.

11. Meeting held on 22nd December 2014

At the meeting held before the Committee on 22nd December, 2014:

- 11.1 Mr. Mahhar Narayan Singh appeared on behalf of Namdhari Food International Pvt. Ltd., and requested for an adjournment.
- 11.2 NSEL submitted a compilation of documents relating to Namdhari Food International Pvt. Ltd., including a copy of NSEL's ledger account showing liability of Rs.51.07 Crores to NSEL as on 31st August, 2013 and a compilation of documents relating to Namdhari Rice and General Mills including a copy of NSEL's ledger account showing liability of Rs.10.45 Crores to NSEL as on 31st August, 2013, copies whereof were handed over to the representative of Namdhari Food International Pvt. Ltd. with a direction by the Committee to respond to the same and to comply with the directions issued under Order Sheet No.11A dated 3rd December, 2014 by the next date of hearing.
- 11.3 Hereto annexed and marked **Exhibit "C"** is a copy of Order Sheet No.11B dated 22nd December, 2014.

12. The Committee issued Notice dated 26th December, 2014 to Namdhari Rice and General Mills to appear before the Committee on 21st January, 2015 in respect of the amounts due and payable to NSEL. Hereto annexed and marked **Exhibit "D"** is a copy of the Notice dated 26th December, 2014 issued by the Secretary (Legal) to Namdhari Rice and General Mills.

13. Meeting held on 22nd January 2015

At the meeting held before the Committee on 22nd January, 2015:

- 13.1 Advocate for Namdhari Food International Pvt. Ltd., requested for an adjournment on the ground that Namdhari Food International Pvt. Ltd. wished to file an Appeal challenging the jurisdiction of the Committee. The Committee granted adjournment and noted that Namdhari Foods International Pvt. Ltd., had appeared before the Committee and

submitted to its jurisdiction and sought adjournment on more than two occasions to comply with directions issued by the Committee.

- 13.2 Hereto annexed and marked **Exhibit "E"** is a copy of Order Sheet No.17D dated 22nd January, 2015.

14. Meeting held on 18th February 2015

At the meeting held before the Committee on 18th February, 2015:

- 14.1 Advocate appearing for Namdhari Food International Pvt. Ltd. filed copies of Affidavits in Reply to Third Party Notices on behalf of Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills in Notice of Motion (L.) No. 2885 of 2014 in Third Party Notice Nos. 4 and 12 of 2014 in Suit No. 173 of 2014, copies whereof are hereto annexed and marked **Exhibits "F" and "G"** respectively.

- 14.2 The Committee noted that there had been no compliance with the directions issued by the Committee on 22nd January, 2015 and directed the parties to report compliance by 17th March, 2015.

- 14.3 Hereto annexed and marked **Exhibit "H"** is a copy of Order Sheet No. 20J dated 18th February, 2015.

15. Meetings held on 27th March, 2015, 28th April, 2015, 2nd May, 2015 and 8th September, 2015

- 15.1 No one was present on behalf of Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills at the Committee meetings held on 27th March, 2015, 28th April, 2015 and 2nd May, 2015.

- 15.2 Secretary (Legal) of the Committee by letter dated 10th August, 2015 addressed to Namdhari Food International Pvt. Ltd., and Namdhari Rice & General Mills noted that no one had attended on behalf of Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills at the Committee meetings held on 27th March, 2015, 28th April, 2015 and 2nd May, 2015 and called upon them before the Committee at the meeting fixed on 8th September, 2015 and comply with the directions contained in Order Sheet No.11A dated 3rd December, 2014

(Exhibit "A" hereto) and Order Sheet No. 17D dated 22nd January, 2015 (Exhibit "E" hereto). Hereto annexed and marked **Exhibit "I"** is a copy of the said letter dated 10th August, 2015.

15.3 No one was present on behalf of Namdhari Food International Pvt. Ltd., and Namdhari Rice & General Mills at the meeting held on 8th September, 2015.

15.4 Secretary (Legal) of the Committee by his letter dated 24th September, 2015 addressed to Mr. Nahar Narayan Singh who had previously appeared before the Committee on behalf of Namdhari Food International Pvt. Ltd., and its group companies called upon him to appear before the Committee at the meeting fixed on 3rd October, 2015 and comply with the directions previously issued by the Committee. Hereto annexed and marked **Exhibit "I"** is a copy of the letter dated 15th September, 2015 addressed by Secretary (Legal) of the Committee to the Advocates for Namdhari Food International Pvt. Ltd.

15.5 Hereto annexed and marked **Exhibit "K"** is a copy of the letter dated 24th September, 2015 addressed by Secretary (Legal) of the Committee to Shri Nahar Narayan Singh.

16. **Meeting held on 3rd October 2015**

At the meeting held before the Committee on 3rd October, 2015:

16.1 NSEL submitted Affidavit dated 3rd October, 2015 of Mr. Santosh Dhuri, authorized signatory of NSEL along with copies of Ledger Accounts of Namdhari Food International Pvt. Ltd., in the ledgers of NSEL showing liability of Namdhari Food International Pvt. Ltd., as under:-

Sr No.	Particulars	Amount (Rs.)
1	Outstanding towards paying obligation (as per Sub-Ledger "Member's Delivery Obligation") as on 9 th August, 2013.	59,57,79,756.54
2	Add: Outstanding towards paying obligation (as per Sub-Ledger "Member's Daily Obligation") as on 2 nd August, 2013.	1,26,107.71
		----- 59,59,05,864.25

3	Less: Credit balance available in the Initial Margin Account as on 31 st July, 2013.	6,52,32,511.53
		----- 53,06,73,352.72
	Less: Amounts received from 09.08.2013 till 31.08.2015	20,50,00,000.00

	Balance Due:	51,01,73,352.72
	Add: Interest compounded daily at 18% p.a. from 9 th August, 2013 till 31 st August, 2015 after taking into effect the payments received on various dates, if any.	22,90,68,347.21
	And further interest	

In the Affidavit dated 3rd October, 2015 it is submitted that the liability of Namdhari Food International Pvt. Ltd., to NSEL be crystalized at Rs. 51,01,73,352.72 as on 1st September, 2015 and Rs. 22,90,68,347.21 being interest @ 18% per annum till 31st August, 2015 and further interest and steps for realization of the same may be recommended by the Committee. Hereto annexed and marked **Exhibit "L"** is a copy of the Affidavit dated 3rd October, 2015 of Mr. Santosh Dhuri filed with the Committee on 3rd October, 2015 and its Annexures relating to Namdhari Food International Pvt. Ltd.

- 16.2 NSEL also submitted Affidavit dated 3rd October, 2015 of Mr. Santosh Dhuri, authorized signatory of NSEL along with Ledger Accounts of Namdhari Rice & General Mills in the ledgers of NSEL showing liability of Namdhari Rice & General Mills to NSEL as under:-

Sr. No.	Particulars	Amount (Rs.)
1	Outstanding towards paying obligation (as per Sub-Ledger "Member's Delivery Obligation") as on 9 th August, 2013.	12,52,13,237.06
2	Add: Outstanding towards paying obligation (as per Sub-Ledger "Member's Daily Obligation") as on 2 nd August, 2013.	24,722.96
		----- 12,52,37,960.02
3	Less: Credit balance available in the Initial Margin Account as on 31 st July, 2013.	17,70,08,98.32
		----- 10,75,37,061.70

Less: Amounts received from 09.08.2013 till 31.08.2015	36,25,000.00 -----
Balance Due:	10,39,12,061.70
Add: Interest compounded daily at 18% p.a. from 9 th August, 2013 till 31 st August, 2015 after taking into effect the payments received on various dates, if any.	4,66,74,447.46
Add: Further interest	

In the Affidavit dated 3rd October, 2015 it is submitted that the liability of Namdhari Rice & General Mills to NSEL be crystalized at Rs. 10,39,12,061.70 as on 1st September, 2015 and Rs. 4,66,74,447.46 being interest @ 18% per annum till 31st August, 2015 and further interest and steps for realization of the same may be recommended by the Committee. Hereto annexed and marked **Exhibit "M"** is a copy of the Affidavit dated 3rd October, 2015 of Mr. Santosh Dhuri filed with the Committee on 3rd October, 2015 and its Annexures relating to Namdhari Rice & General Mills.

- 16.3 Copies of the two Affidavits mentioned above and its Annexures were handed over to the Advocate appearing for Namdhari Group with directions to file reply to the said Affidavits by 10th October, 2015 and to comply with the previous directions issued by the Committee from time to time relating to production of accounts books for relevant period and the proceedings were adjourned to 10th October, 2015.
- 16.4 Hereto annexed and marked **Exhibit "N"** is a copy of Order Sheet No. 2E dated 3rd October, 2015.

17. Meeting held on 10th October 2015

At the meeting held before the Committee on 10th October 2015:

- 17.1 Four weeks' time was granted to Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills to file replies to the two Affidavits dated 3rd October, 2015 mentioned above filed by NSEL and file their books of accounts and documents to support their contentions and the proceedings were adjourned to 27th November, 2015. Hereto annexed and marked **Exhibit "O"** is a copy of Order Sheet No.44A dated 10th October, 2015.

18. Meeting held on 27th November 2015

At the meeting held before the Committee on 27th November, 2015:

- 18.1 Pursuant to the application of the Advocate for Namdhari Food International Pvt. Ltd., and Namdhari Rice & General Mills, one more opportunity was given to them to appear before the Committee on 3rd December, 2015 and to make submissions, if any, and the proceedings were adjourned to 3rd December, 2015. Hereto annexed and marked **Exhibit "P"** is a copy of Order Sheet No.46D dated 27th November, 2015.

19. Meeting held on 3rd December 2015

At the meeting held before the Committee on 3rd December, 2015:

- 19.1 No one appeared on behalf of Namdhari Food International Pvt. Ltd., and Namdhari Rice & General Mills. The Committee noted that the Committee is left with no other alternative but to make appropriate recommendations to the Hon'ble High Court on the basis of the material available with the Committee. Hereto annexed and marked **Exhibit "Q"** is a copy of Order Sheet No.48C dated 3rd December, 2015.

20. Copies of Order Sheet No.42E dated 3rd October, 2015, Order Sheet No.44A dated 10th October, 2015, Order Sheet No.46D dated 27th November, 2015 and Order Sheet No.48C dated 3rd December, 2015 have been forwarded by Secretary (Legal) of the Committee to Advocates for Namdhari Group.

21. On considering the documents produced before the Committee and after hearing the learned Advocates and parties at meetings of the Committee, the findings of the Committee are as under:-

- 21.1 Copies of two Affidavits both dated 3rd October, 2015 of Mr. Santosh Dhuri, authorized signatory of NSEL and its Annexures (Exhibits "L" and "M" hereto) have been served on the Advocates for Namdhari Food International Pvt. Ltd., and Namdhari Rice & General Mills at the Committee meeting held on 3rd October, 2015 with directions to file replies thereto including Ledger Accounts of Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills by 10th October, 2015 and to comply with the directions issued by the Committee from time to time relating to production of accounts books

for relevant period. Further time was granted to Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills to file their replies along with their books of accounts and documents to support their contentions. No replies have been filed by or on behalf of Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills to the Affidavits dated 3rd October, 2015 of NSEL. In spite of directions issued by the Committee from time to time, Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills have failed to produce before the Committee their books of accounts or documents indicating any dispute about the entries in the Ledger Accounts of Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills produced by NSEL. In the letters dated 26th June, 2015 copies whereof are (Exhibit B-3) and (Exhibit B-4) hereto, Namdhari food International Pvt. Ltd. have admitted their liability to pay to NSEL Rs. 64.34 Crores and Namdhari Rice and General Mills have admitted their liability to pay to NSEL Rs. 14.02 Crores and agreed to liquidate the same between July 2013 and December 2013.

- 21.2 Bye law No. 3.5 of the Bye-laws of National Spot Exchange Limited provides as under:-

"3.5 RECORDS FOR EVIDENCE

The records of the Exchange as maintained by a central processing unit or a cluster of processing units or computer processing units or on "NEST" or any other trading system of the Exchange, whether maintained in any register, magnetic storage units, electronic storage units, optical storage units or computer storage units or in any other manner or on any other accepted media, shall constitute the agreed and authenticated record in relation to any transaction entered into or executed through "NEST" or any other trading system of the Exchange.

The records as maintained by the Exchange shall, for the purpose of any dispute or claim between the members of the Exchange *inter se* or between any exchange member and his clients or between the members of the Exchange and the Exchange or the Clearing House regarding trading, clearing or settlement of any deal or transaction carried out on "NEST" or any other trading system of the Exchange and reported to the Exchange, constitute valid and binding evidence between and among the parties."

- 21.3 On considering Affidavit dated 3rd October, 2015 of Mr. Santosh Dhuri, authorized signatory of NSEL and copies of Ledger Accounts of Namdhari Food International Pvt. Ltd., annexed thereto (Exhibit "L" hereto), and letter dated 26th June 2013 (Exhibit B-3) hereto, the Committee finds that an amount of Rs. 51,01,73,352.72 was due and payable by Namdhari Food International Pvt. Ltd. to NSEL as on 9th August, 2013 and on giving credit for amounts aggregating to Rs.20,50,00,000/- received by NSEL between 9th August, 2013 to 31st August 2015, an amount of **Rs.51,01,73,352.72** remains due and payable by Namdhari Food International Pvt. Ltd. to NSEL.
- 21.4 On considering Affidavit dated 3rd October, 2015 of Mr. Santosh Dhuri, authorized signatory of NSEL and copies of Ledger Accounts of Namdhari Rice & General Mills annexed thereto (Exhibit "M" hereto), and letter dated 26th June 2013 (Exhibit B-4) hereto, the Committee finds that an amount of Rs.10,39,12,061.70/- was due and payable by Namdhari Rice & General Mills to NSEL as on 9th August, 2013 and on giving credit for amounts aggregating to Rs.36,25,000/- received by NSEL between 9th August, 2013 to 31st August 2015, an amount of **Rs.10,39,12,061.70/-** remains due and payable by Namdhari Rice & General Mills to NSEL.
- 21.5 The total outstandings of Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills to NSEL are over Rs.60 crores. Considering the wholesale selling price of paddy rice at Rs.35 per kg., about 17000 Metric Tonnes of paddy rice in around 3,40,000 lacs bags of 50 kgs. each ought to have been available in the trade. As against this, the quantity declared by NSEL of paddy at all the warehouses of Namdhari Food International Pvt. Ltd. as reported in Reports of SGS India Pvt. Ltd., was 11,688 MT i.e. 2,33,760 bags of 50 kgs., each. Thus, from the very outset, the stocks of paddy traded by Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills to NSEL platform seems to be insufficient as compared to outstanding contracts of Stock registers and proof of physical delivery of stock has not been produced before the Committee by NSEL or by Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills. Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills have not been produced before the Committee any evidence to indicate that Namdhari Food International Pvt. Ltd. and Namdhari Rice & General

Mills were possessed of sufficient stock of paddy to support their outstanding trades on the NSEL platform. Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills have received payments from NSEL under T+2 contracts for sale, which are paired with T+25 contracts for purchase of paddy, under which Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills are required to make payments to NSEL. In the absence of proof of availability and physical delivery of commodities in sufficient quantities under T+2 sale contracts, Namdhari Food International Pvt. Ltd. and Namdhari Rice & General Mills cannot deny their liability to make payment to NSEL under T+25 purchase contracts, on the ground that delivery of commodity agreed to be purchased has not been effected. In the absence of proof of availability of commodities in sufficient quantities to support trades on NSEL platform and in view of the fact that most of the contracts with Namdhari were paired contracts i.e. contract for sale of commodity along with contract for repurchase of the commodity, the transactions are in the nature of financing agreements. In the circumstances, non-delivery of stock cannot justify default in payment to NSEL.

22.6 The liability of Namdhari Food International Pvt. Ltd., as also Namdhari Rice and General Mills to NSEL arise out of commercial transaction and the date of interest as also the date from which interest may be payable by Namdhari Food International Pvt. Ltd., and Namdhari Rice and General Mills on amounts due and payable by them to NSEL may be determined by this Hon'ble Court.

22.7 Economic Offences Wing may be directed to make available to the Committee books of accounts and records relating to Namdhari Food International Pvt. Ltd. and Namdhari Rice and General Mills seized by Economic Offences Wing.

22. Copies of this Report are being served on following:-

- (1) M/s. Naik Naik & Co. Advocates for National Spot Exchange Ltd.
- (2) M/s. Federal & Rashmikant Advocates for Modern India Ltd.
- (3) Cyril Amarchand Mangaldas Advocates for Financial Technologies (India) Ltd.

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| (4) | The Law Point | Advocates for MMTC Ltd. |
| (5) | M/s. Mansukhlal Hiralal &
Co. | Advocates for L. J. Tanna Shares and
Securities Pvt. Ltd. |
| (6) | Mr. Sanjay Kadam | Economic Offences Wing |
| (7) | Mr. Ajit Sakhre | Competent Authority |
| (8) | M/s. Markand Gandhi & Co. | Advocates for NSEL Investors' Action
Group |
| (9) | M/s. Deven Dwarkadas &
Partners | Advocates for NSEL Aggrieved and
Recovery Association |
| (10) | Mr. Sandeep Karnik | Advocate for NSEL Investors Forum |
| (11) | Mr. Mehul Shah | Advocate for Defendant Nos.29 to 32,
34 and 35 in Suit No.173 of 2014 |
| (12) | M/s. PRS Legal | Advocate for Namdhari Foods
International Pvt. Ltd. |
| (13) | Mr. Nahar Narayan Singh | Namdhari Foods International Pvt.
Ltd. |
| (14) | Mr. Inder Bal Singh | Namdhari Rice & General Mills |

Dated this 27th day of January, 2016.

Sd/-
(Justice V. C. Daga (Retd.)
Chairman

Sd/-
(J. S. Solomon)
Advocate and Solicitor
Member

Sd/-
(Yogesh Thar)
Chartered Accountant
Member