

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

REPORT NO. 39

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 / Applicants
v/s.

Financial Technologies (I) Ltd. & Ors. ...Defendants

AND

LOIL Overseas Foods LtdNoticee in Third Party Notice
No. 6 of 2014

LOIL Health Foods Limited ...Noticee in Third Party Notice
No.14 of 2014

LOIL Continental Food Limited ...Noticee in Third Party Notice
No. 13 of 2014

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Modern India Limited & Ors. ...Plaintiffs

Vs.

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AND

LOIL Overseas Foods LtdNoticee in Third Party
Notice No. 6 of 2014

LOIL Health Foods Limited ...Noticee in Third Party
Notice No.14 of 2014

LOIL Continental Foods Limited ...Noticee in Third Party
Notice No. 13 of 2014

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

IN

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 SUBMIT THEIR 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 - Advocates and Solicitors (iii) Mr. Yogesh Thar – Chartered Accountant – Partner of M/s. Bansi S. Mehta & Co., Chartered Accountants, has been constituted to
 - determine the amounts payable by the alleged defaulters / third parties to National Spot Exchange Ltd. ("NSEL") and
 - ascertain assets of the alleged defaulters / third parties and amounts received directly or indirectly from NSEL in respect of various trades and
 - explore and negotiate mutual settlements between NSEL and the alleged defaulters / third parties and their clients and
 - seek appropriate directions from the Court for sale /monetization of the assets both immovable and/or movable of alleged defaulting members and their clients and any other persons and
 - perform duties and functions as provided in the Order dated 2nd September, 2014.
2. The Order dated 2nd September, 2014 provides that the Committee shall meet from time to time and make periodical reports to this Hon'ble Court so as to appraise the Court of the progress of the work carried out by the Committee in terms of the Minutes of Order.
3. This Report is limited to determination of amounts payable by (i) LOIL Overseas Foods Ltd., (ii) LOIL Health Foods Ltd. and (iii) LOIL Continental Foods Ltd. (**LOIL Group**) to NSEL.
LOIL Group has been represented before the Committee by the same Advocates and matters relating to LOIL Group were considered by the Committee at the same time.

4. NSEL - Defendant No. 2 in Suit No. 173 of 2014 - has taken out Third Party Notice No. 6 of 2014 (Third Party (L) No. 1 of 2014) dated 3rd May 2014 against LOIL Overseas Foods Ltd., (being a trading member of NSEL) and against Punjab Greenfield Resources Ltd., (being clients of LOIL Overseas Foods Ltd.) claiming an amount of Rs.85.11 Crores (Eighty Five Crores and Eleven Lakhs only) along with interest from the date of filing of Suit No. 173 of 2014 till payment / realization.
5. NSEL - Defendant No. 2 in Suit No. 173 of 2014 - has taken out Third Party Notice No. 14 of 2014 (Third Party (L) No. 15 of 2014) dated 3rd May 2014 against LOIL Health Foods Ltd., (being a trading member of NSEL) and against LOIL Continental Foods Ltd., (in their capacity as clients of LOIL Health Foods Ltd.) claiming an amount of Rs. 294.48 Crores (Rupees Two Hundred and Ninety Four Crores And Forty Eight Lakhs Only) along with interest from the date of filing of Suit No. 173 of 2014 till payment /realization.
6. NSEL - Defendant No. 2 in Suit No. 173 of 2014 - has taken out Third Party Notice No. 13 of 2014 (Third Party (L) No.8 of 2014) dated 3rd May 2014 against LOIL Continental Foods Ltd., (being a trading member of NSEL) and against LOIL Health Foods Ltd., (in their capacity as clients of LOIL Continental Foods Ltd.) claiming an amount of Rs. 347.71 Crores (Rupees Three Hundred Forty Seven Crores and Seventy One lakhs only) along with interest from the date of filing of Suit No. 173 of 2014 till payment /realization.
7. In the Third Party Notices mentioned in paragraphs. 4, 5 and 6 above, 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.
8. Appeal (L) No.741 of 2014 has been filed by N. K. Proteins Ltd. and Appeal (L) Nos.766 and 767 of 2014 have been filed by White Water Foods Pvt. Ltd. and others in respect of the Order dated 2nd September 2014, in which **Order dated 17th June 2015** has been passed by the Hon'ble Court as under:-

"ORDER

(a) The Appeals are admitted.

(b) By an interim order we direct that the impugned order of learned Single Judge passed on 2nd September 2014 shall not be operative against the appellant N. K. Proteins Limited.

(c) The impugned order passed by learned Single Judge shall be operative against the appellants in two appeals i.e. Appeal (L) Nos.766/2014 and 767/2014 on the following conditions.

i) The Committee shall function in accordance with Section 75 of the Civil Procedure Code while discharging its functions under the Minutes of Order and the directions issued by the learned Single Judge.

ii) The Committee shall not have any adjudicatory powers."

9. By Order dated 13th July 2017, Appeal (L) No.201 of 2015 filed by Ark Import Pvt. Ltd. and others and Appeal (L) No.802 of 2014 filed by P.D. Agroprocessors Pvt. Ltd. and others and Appeal (L) No.416 of 2015 filed by Yathuri Associates in respect of the Order dated 2nd September 2014 have been admitted for hearing and it is ordered as under:-

"3. We also heard the parties on the prayer for stay. Having gone through the order dated 17 June, 2015 passed by the Division Bench of this Court in various Appeals and Notices of Motion arising out of the same impugned order, we are not inclined to grant interim order staying further proceedings of the Committee appointed by the learned Single Judge by the impugned order."

10. LOIL Overseas Foods Ltd. LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. have filed Appeal (L) No.806 of 2014 in respect of Order dated 2nd September 2014. By Order dated 20th December 2017, Appeal (L) No.806 of 2014 filed by LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd in

respect of Order dated 2nd September 2014 has been admitted and the prayer for interim relief therein has been rejected.

11. The Committee issued notices dated 22nd October 2014 to LOIL Overseas Foods Ltd., LOIL Health Foods Ltd., LOIL Continental Foods Ltd. and Punjab Greenfield Resources Ltd. calling upon them to appear before the Committee and make their submissions and intimating that failure to attend may lead to ex-parte determination of the liability.
12. The matters relating to LOIL Overseas Foods Ltd., LOIL Health Foods Ltd., LOIL Continental Foods Ltd. and Punjab Greenfield Resources Ltd. were considered by the Committee at the meetings held before the Committee on the dates mentioned in **Exhibit "A"** hereto.
13. The Committee is filing herewith record of proceedings before the Committee relating to LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. and their clients in ten volumes as under:-

Volume No.	Particulars	Page No. / Exhibit No.
Volume-I	Order Sheets	Pages 1 to 62 as per Index Exhibit "B-1" hereto
Volume-II	Notices and correspondence	Pages 1 to 186 as per Index Exhibit "B-2" hereto
Volume-III	Statements and Affidavits filed with the Committee in 2014	Pages 1 to 380 as per Index Exhibit "B-3" hereto
Volume-IV	Statements and Affidavits filed with the Committee in 2015	Pages 381-428 as per Index Exhibit "B-4" hereto
Volume-V	Statements and Affidavits filed with the Committee in 2015	Pages 678-987 as per Index Exhibit "B-5" hereto
Volume-VI	Statements and Affidavits filed with the Committee in 2015	Pages 988-1297 as per Index Exhibit "B-6" hereto
Volume-VII	Statements and Affidavits filed with the Committee in 2015	Pages 1298-1606 as per Index Exhibit "B-7" hereto
Volume-VIII	Statements and Affidavits filed with the Committee in 2015	Pages 1607-1669 as per Index Exhibit "B-8" hereto

Volume-IX	Statements and Affidavits filed with the Committee in 2016-2017	Pages 1-77 as per Index Exhibit "B-9" hereto
Volume-X	Statements and Affidavits filed with the Committee in 2018	Pages 1-698 as per Index Exhibit "B-10" hereto

14. At the meeting held on 3rd December 2014, NSEL filed a note, a copy whereof is hereto annexed and marked **Exhibit "C"** along with Annexure pages 1 to 268 as mentioned therein, showing the amounts receivable by NSEL from LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. as under:

CM Name	LOIL Overseas Foods Ltd. Rs. (crores)	LOIL Health Foods Ltd. Rs. (crores)	LOIL Continental Foods Ltd. Rs. (crores)	Total Rs. (crores)
Total Original Receivables 31.07.13	86.19	294.48	356.21	736.88
Total Fund Recd.	1.08	7.00	8.50	16.58
Balance amount receivable 21.11.14	85.11	287.48	347.71	720.30

15. At the meeting held on 3rd December 2014, the Committee directed LOIL Group to respond to the compilation of documents submitted by NSEL, a copy whereof was furnished to the Advocate for LOIL Group. At the meeting held on 3rd December 2014, the Committee also directed the LOIL Group to produce ledger accounts of NSEL maintained by them in their books of account.
16. At the meeting held before the Committee on 27th March 2015 NSEL filed three compilation of documents relating to (i) LOIL Overseas Foods Ltd., (ii) LOIL Health Foods Ltd. and (iii) LOIL Continental Foods Ltd. along with copies of ledger accounts of LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. in (i) Initial Margin Ledger, (ii) Member Daily Obligation Ledger and (iii) Member's Delivery Obligation Ledger for the period 1st April 2012 to 30th September 2013 and Trade Summary for the period 1st April

2012 to 30th September 2013 along with a Note titled "Description of Ledger Entries in NSEL books of account" showing amounts outstanding as per NSEL as under:-

	LOIL Overseas Foods Ltd. (Rupees In Crores)	LOIL Health Foods Ltd. (Rupees In Crores)
Initial Margin	(8,25,20,779.46)	(24,56,46,859.96)
Daily Obligation	1,46,915.00	2,44,704.86
Delivery Obligation	94,43,20,005.61	319,02,24,208.45
Total liability	86,19,46,141.15	294,48,22,053.35
Amount received till 31 st August 2013	1,00,00,000.00	7,00,00,000.00
Liability as on 31 st August 2013	85,19,46,141.15	287,48,22,053.35
Amount received from 1 st September 2013 till 26 th November 2014	8,00,000.00	00.00
Balance due	85,11,46,141.15	287,48,22,053.35

	LOIL Continental Foods Ltd. (Rupees In Crores)
Initial Margin	(34,90,75,690.58)
Daily Obligation	4,84,449.85
Delivery Obligation	382,57,09,779.83
Total liability as on 13 th September 2013	347,71,18,539.10
Liability as on 31 st August 2013	347,71,18,539.10
Amount received from 1 st September 2013 till 26 th November 2014	5,00,00,000.00
Balance due	342,71,18,539.10

A copy of Note titled "Description of Ledger Entries in NSEL books of account" submitted by NSEL on 27th March 2015 is **Exhibit "D"** hereto. On 27th March 2015, the Committee directed issue of fresh notice to LOIL Group returnable on 13th April 2015. Accordingly, Notice dated 4th April 2015 was issued on behalf of the Committee to LOIL Group, a copy whereof is **Exhibit "E"** hereto.

17. On 13th April 2015, the Committee directed LOIL Group to produce their books of account before the Committee and to comply with the directions of the Committee to respond to the compilation of documents submitted by NSEL, without prejudice to their rights in the Appeal filed by LOIL Group of Companies in respect of Order dated 2nd September 2014.

18. The Committee has submitted Report No.14 of 2015, dated 7th September 2015 requesting that notices may be issued by the Hon'ble Court to LOIL Overseas Foods Ltd., LOIL Health Foods Ltd., LOIL Continental Foods Ltd. and Punjab Greenfield Resources Ltd. directing them to appear before the Committee and to produce documents as may be required by the Committee, on which this Hon'ble Court has been pleased to pass Order dated 6th October 2015 under which LOIL Overseas Foods Ltd., LOIL Health Foods Ltd., LOIL Continental Foods Ltd. and Punjab Greenfield Resources Ltd., without prejudice to the rights and contentions raised in their pending Appeal, were directed to appear before the Committee and make all their submissions, including submission that the directions issued to them by the Committee to produce their accounts/documents etc. amount to issuing/taking coercive steps and the Committee was directed to pass appropriate orders. Hereto annexed and marked **Exhibit "F"** is a copy of Order dated 6th October 2015 on Report No.14 of 2015.

19. At the meeting of the Committee held on 10th October 2015, the Ld. Advocate for LOIL Group appeared without prejudice to their rights and contentions in Appeal and filed 4 Statement of Facts and Relevant Dates and Events all dated 10th October 2015 relating to (i) LOIL Overseas Foods Ltd., (ii) LOIL Health Foods Ltd., (iii) LOIL Continental Foods Ltd. and (iv) Punjab Greenfield Resources Ltd. objecting to the directions issued by the Committee to them to produce their books of account, documents etc.

20. LOIL Overseas Foods Ltd. in paragraphs 21 of their Statement of Facts with Relevant Dates and Events dated 10th October 2015 has submitted as under:

"21. That LOIL submits that in the above scenario, there was a serious dispute between LOIL and NSEL concerning the settlement of their accounts, which can be demonstrated as under:

- a) NSEL claims an amount of Rs.85 crores from LOIL, though, it is the case of LOIL that LOIL has not received any such amount on account of any trading or otherwise, from NSEL Bank Accounts till date.

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- b) The balance sheet of NSEL, as on 31st March, 2013 shows nil balance against LOIL. The membership of LOIL expired in March, 2013 (31st March, 2013) and thereafter, LOIL has not traded on the platform of the exchange.
 - c) That LOIL has paid an amount of Rs.28.20 crores to the agent of NSEL through NSEL, for the period from 17.07.2013 to 26.08.2013, to honour the buy position taken by LOIL. For this amount of Rs.28.20 crores, LOIL has not received any stock till date and the matter is pending adjudication before the competent court at Fatehgarh Sahib, Punjab wherein, injunction is operating in favour of LOIL.
 - d) NSEL is unauthorisedly retaining an amount of Rs.85 crores, which was lying with it towards margin money.
 - e) NSEL at a belated stage, wrongly called upon LOIL to issue back dated invoices for Rs.452 crores, though, it is LOIL, who is to receive the huge amounts from NSEL and its agents and/or stocks of the equivalent value."

21. LOIL Health Foods Ltd. in paragraphs 21 of their Statement of Facts with Relevant Dates and Events dated 10th October 2015 has submitted as under:

"21. That LOIL submits that in the above scenario, there was a serious dispute between LOIL and NSEL concerning the settlement of their accounts, which can be demonstrated as under:

- a) NSEL claims an amount of Rs.294 crores from LOIL, though, it is the case of LOIL that LOIL has not received any such amount on account of any trading or otherwise, from NSEL Bank Accounts till date.
- b) The balance sheet of NSEL, as on 31st March, 2013 shows nil balance against LOIL. The membership of LOIL expired in March, 2013 (31st March, 2013) and thereafter, LOIL has not traded on the platform of the exchange.

- c) That LOIL has paid an amount of Rs.80.75 crores to the agent of NSEL through NSEL, for the period from 17.07.2013 to 26.08.2013, to honour the buy position taken by LOIL. For this amount of Rs.80.75 crores, LOIL has not received any stock till date and the matter is pending adjudication before the competent court at Fatehgarh Sahib, Punjab wherein, injunction is operating in favour of LOIL.
- d) NSEL is unauthorisedly retaining an amount of Rs.44.07 crores, which was lying with it towards margin money.
- e) NSEL at a belated stage, wrongly called upon LOIL to issue back dated invoices for Rs.452 crores, though, it is LOIL, who is to receive the huge amounts from NSEL and its agents and/or stocks of the equivalent value."

22. LOIL Continental Foods Ltd. in paragraphs 21 of their Statement of Facts with Relevant Dates and Events dated 10th October 2015 submitted as under:

"21. That LOIL submits that in the above scenario, there was a serious dispute between LOIL and NSEL concerning the settlement of their accounts, which can be demonstrated as under:

- a) NSEL claims an amount of Rs.347 crores from LOIL, though, it is the case of LOIL that LOIL has not received any such amount on account of any trading or otherwise, from NSEL Bank Accounts till date.
- b) The balance sheet of NSEL, as on 31st March, 2013 shows nil balance against LOIL. The membership of LOIL expired in March, 2013 (31st March, 2013) and thereafter, LOIL has not traded on the platform of the exchange.
- c) That LOIL has paid an amount of Rs.46.35 crores to the agent of NSEL through NSEL, for the period from 17.07.2013 to 26.08.2013, to honour the buy position taken by LOIL. For this amount of Rs.46.35 crores, LOIL has not received any stock till date and the matter is pending adjudication before the

- competent court at Fatehgarh Sahib, Punjab wherein, injunction is operating in favour of LOIL.
- d) NSEL is unauthorisedly retaining an amount of Rs.44.07 crores, which was lying with it towards margin money.
- e) NSEL at a belated stage, wrongly called upon LOIL to issue back dated invoices for Rs.452 crores, though, it is LOIL, who is to receive the huge amounts from NSEL and its agents and/or stocks of the equivalent value."
23. The Ld. Advocate for LOIL Group of Companies filed with the Committee Written Submissions dated 15th December 2015 reiterating objections of LOIL to the notices issued and directions given by the Committee in paragraphs 1 (a) whereof, it was submitted as follows:-
- "1. (a) There was a serious accounting dispute between LOIL and Defendant No.2 (NSEL). The LOIL has already supplied all the details/ ledgers/bills/Accounting books to the Investigating Officer of EOW and also to the Chartered Accountants who were assisting the Investigating Officer of EOW to investigate the matter."
24. After hearing the Ld. Advocates for LOIL Group and NSEL and considering their submissions, including written submissions dated 15th December 2015 on behalf of LOIL Group and written submissions dated 29th January 2016 on behalf of NSEL, the Committee has passed Order dated 16th January 2017, in which the Committee has rejected the submissions of LOIL Group of Companies. Hereto annexed and marked **Exhibit "G"** is a copy of Order dated 16th January 2017 passed by the Committee.
25. By notice dated 24th October 2017 issued by the Committee, LOIL Overseas Foods Ltd., LOIL Health Foods Ltd., LOIL Continental Foods Ltd. and Punjab Greenfield Resources Ltd. were called upon to appear before the Committee on 20th November 2017 and on subsequent dates as may be fixed by the Committee and make their submissions on accounts and transactions between NSEL and LOIL Overseas Foods Ltd., LOIL Health Foods Ltd., LOIL Continental Foods Ltd. and Punjab Greenfield Resources Ltd. and their clients.

26. At the meeting before the Committee on 20th November 2017, LOIL Group of Companies moved Application dated 20th November 2017 numbered Application No.68 of 2017 for adjournment on the ground that LOIL Group has challenged the legality of the Order dated 16th January 2017 passed by the Committee before this Hon'ble Court. The Committee by Order dated 20th November 2017, a copy whereof is hereto annexed and marked Exhibit "H" rejected the Application No.68 of 2017 of LOIL Group to defer the proceedings before the Committee and directed LOIL Overseas Foods Ltd., LOIL Health Foods Ltd., LOIL Continental Foods Ltd. and Punjab Greenfield Resources Ltd. to comply with the directions issued by the Committee and adjourned the proceedings to 7th December 2017.
27. At the meeting of the Committee held on 20th November 2017, NSEL filed with the Committee a copy of Order dated 21st September 2017 passed by the High Court of Punjab and Haryana, Chandigarh in Civil Revision No.7081 of 2015 and other 12 concerned revisions filed by NSEL against LOIL Foods Ltd. and others, allowing the Revision Petitions filed by NSEL in respect of the Order passed by the Civil Court at Fatehgarh Sahib Punjab in suits filed by LOIL Health Foods Ltd. and others, under which Civil Court at Fatehgarh Sahib Punjab have been directed to return the Plaints in the suits filed by LOIL Health Foods Ltd. and others and it is held that the Civil Court at Fatehgarh Sahib Punjab lacked territorial jurisdiction to entertain suits filed by LOIL Health Foods Ltd. and others.
28. At the meetings held before the Committee on 8th December 2017, 5th January 2018 and 8th February 2018, the Learned Advocate for LOIL Group appeared and applied for adjournment of the proceedings before the Committee.
29. The Committee by letter dated 1st February 2018 addressed to Advocates for NSEL and LOIL Group directed NSEL and LOIL Group to file with the Committee by 20th February 2018, statements of all receipts and payments with particulars of account-head, dates and amounts of all amounts received by NSEL from LOIL Group and their clients including Punjab Greenfield Resources Ltd. and all amounts paid by NSEL to LOIL Group and their clients.

30. The Committee by letter dated 15th February 2018 called upon LOIL Continental Foods Ltd., LOIL Health Foods Ltd. and LOIL Overseas Foods Ltd. to appear before the Committee on 1st March 2018 and comply with the directions issued by the Committee and make their submissions on accounts and transactions between NSEL and LOIL Group and their clients. In the notice dated 15th February 2018, it was mentioned that in case LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. failed to comply with the directions of the Committee, the Committee will proceed to submit report to the Hon'ble Court in the matters relating to LOIL Group and their clients.
31. The Advocates for NSEL by their letter dated 20th February 2018 have submitted to the Committee:

(I) In respect of LOIL Overseas Foods Ltd.:

- (i) Ledger accounts for the period 1st April 2012 to 30th September 2013
- (ii) Statement of amounts aggregating to Rs.1092,34,72,425.50 paid by NSEL to LOIL Overseas Foods Ltd. between 31st August 2012 and 31st July 2013.
- (iii) Statement of amounts aggregating to Rs.1030,00,52,345.27 received by NSEL from LOIL Overseas Foods Ltd. during the period 29th August 2012 and 26th August 2013.
- (iv) Account-head-wise details relating to LOIL Overseas Foods Ltd. as under:-

Account Head	Amount Rs.
Transaction charges	33,75,973.59
Warehousing Receipt Transfer Charges	2,92,49,697.16
VAT	-6,75,77,127.10
Other charges	3,22,169.19
TOTAL	-3,46,29,287.16

- (v) Statement of account of HDFC Bank in respect of Account No.00990680025776 of LOIL Overseas Foods Ltd. NSEL settlement account for the period 14th August 2012 to 26th August 2013.

(II) In respect of LOIL Health Foods Ltd.:

- (i) Ledger accounts for the period 1st April 2012 to 30th September 2013.
- (ii) Statement of amounts aggregating to Rs.889,18,12,849.35 paid by NSEL to LOIL Health Foods Ltd. between 30th November 2012 and 29th July 2013.
- (iii) Statement of amounts aggregating to Rs.660,61,24,960.99 received by NSEL from LOIL Health Foods Ltd. during the period 29th November 2012 and 26th August 2013.
- (iv) Account-head-wise details relating to LOIL Health Foods Ltd. as under:-

Account Head	Amount Rs.
Delivery Shortage adjustment	-0.45
Members Delivery Obligation MS	0.00
Penalties for fund shortage	11,92,986.51
Service Tax refund	-8504.63
Transaction charges	39,97,674.60
VAT	10,31,72,891.50
Warehousing Receipt Transfer Charges	3,33,44,739.73
TOTAL	14,16,99,787.26

- (v) Statement of account of HDFC Bank in respect of Account No.00990680026564 of LOIL Health Foods Ltd. NSEL settlement account for the period 29th November 2012 to 26th August 2013.

(III) In respect of LOIL Continental Foods Ltd.:

- (i) Ledger accounts for the period 1st April 2012 to 30th September 2013.
- (ii) Statement of amounts aggregating to Rs.917,35,45,796.45 paid by NSEL to LOIL Continental Foods Ltd. during the period 1st November 2012 and 31st July 2013.
- (iii) Statement of amounts aggregating to Rs.639,22,01,686.38 received by NSEL from LOIL Continental Foods Ltd. during the period 30th October 2012 and 26th August 2013.

- (iv) Account-head-wise details relating to LOIL Continental Foods Ltd. as under:-

Account Head	Amount Rs.
Transaction charges	45,13,400.56
Warehousing Receipt Transfer Charges	3,62,28,638.12
VAT	19,14,88,998.10
Other Charges	3,84,788.66
TOTAL	23,26,15,825.44

- (v) Statement of account of HDFC Bank in respect of Account No.00990680026554 of LOIL Continental Foods Ltd. NSEL settlement account for the period 3rd October 2012 to 26th August 2013.

Copies of letter dated 20th February 2018 of the Advocates for NSEL and its enclosures have been forwarded to the Advocates for LOIL Group.

In the Statement of Facts mentioned in para. 20 above NSEL has stated that LOIL Overseas Foods Ltd. has paid an amount of Rs.28,20,00,000/- to the Agents of NSEL through NSEL for the period from 17th July 2013 to 26th August 2013 to honour the buy position taken by LOIL Overseas Foods Ltd. and has claimed that for this amount LOIL Overseas Foods Ltd. has not received any stock till date.

In the Statement of Facts mentioned in para. 21 above NSEL has stated that LOIL Health Foods Ltd. has paid an amount of Rs.80,75,00,000/- to the Agents of NSEL through NSEL for the period from 17th August 2013 to 26th August 2013 to honour the buy position taken by LOIL Health Foods Ltd. and has claimed that for this amount LOIL Health Foods Ltd. has not received any stock till date.

In the Statement of Facts mentioned in para. 22 above NSEL has stated that LOIL Continental Foods Ltd. has paid an amount of Rs.46,35,00,000/- to the Agents of NSEL through NSEL for the period from 17th July 2013 to 26th August 2013 to honour the buy position taken by LOIL Continental Foods Ltd. and has claimed that for this amount LOIL Continental Foods Ltd. has not received any stock till date.

On scrutinising the Statement of Account of HDFC Bank in respect of NSEL settlement accounts of these three companies filed with the Committee as mentioned in para. 31 above, the Committee finds that between 17th July 2013 and 26th August 2013, amount aggregating to Rs.28,20,00,000/- has been received by NSEL from LOIL Overseas Foods Ltd., amount aggregating to Rs.80,75,00,000/- has been received by NSEL from LOIL Health Foods Ltd. and amount aggregating to Rs.46,35,00,000/- has been received by NSEL from LOIL Continental Foods Ltd as mentioned in the table below. LOIL Group has not produced any material before the Committee to indicate that the LOIL Group had not received any stocks in respect of the settled trades.

(Amt in Rs.)

LOIL Overseas Foods Ltd.		LOIL Health Foods Ltd.		LOIL Continental Foods Ltd.	
Date	Amt	Date	Amt	Date	Amt
17-07-2013	50,00,000	17-07-2013	12,50,00,000	19-07-2013	5,00,00,000
18-07-2013	5,00,00,000	18-07-2013	10,00,00,000	22-07-2013	14,00,00,000
22-07-2013	5,00,00,000	19-07-2013	8,00,00,000	23-07-2013	5,00,00,000
23-07-2013	3,50,00,000	22-07-2013	10,00,00,000	24-07-2013	8,25,00,000
24-07-2013	2,00,00,000	23-07-2013	15,00,00,000	25-07-2013	5,60,00,000
25-07-2013	4,70,00,000	24-07-2013	18,25,00,000	06-08-2013	5,00,00,000
26-07-2013	1,00,00,000	20-08-2013	6,00,00,000	20-08-2013	2,50,00,000
26-08-2013	6,50,00,000	26-08-2013	1,00,00,000	26-08-2013	1,00,00,000
Total	28,20,00,000	Total	80,75,00,000	Total	46,35,00,000.

32. LOIL Group have not submitted any documents and have not complied with the directions issued by the Committee by their letter dated 1st February 2018 mentioned in paragraphs 29 above.
33. At the meeting of the Committee held on 1st March 2018, the Ld. Advocate for LOIL Group filed Affidavit dated 27th February 2018 of Admission and Denial of Documents, in which it is stated that all the documents, including Ledger Account filed by NSEL are false and fabricated and hence denied at this stage. At the meeting of the Committee on 1st March 2018, the Committee clarified to the Ld. Counsel appearing for LOIL Group that there may be no further stage before the Committee and LOIL Group may not get further opportunity to produce documents before this Committee. The Ld. Advocate for LOIL Group stated that all submissions made by and on behalf of LOIL Group were without prejudice to the rights and

contentions raised in the Appeal filed by the LOIL Group and relied upon the judgment in the case of Bareilly Electricity Supply Company & Ors. V/s. Workmen reported in 1971(2) SCC 617 to contend that if the documents are denied, then the person producing the documents is expected to enter the witness box and offer himself for cross-examination.

34. At the meeting of the Committee held on 1st March 2018, the Ld. Advocate for NSEL submitted a Note with Annexures A to F thereto. Copies of Application for membership in NSEL and trading-cum-clearing membership undertaking signed by LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. under which LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. agreed to abide by, comply with and to bound by the Byelaws and Rules of NSEL was annexed as Annexure "C" to this Note. Hereto annexed and marked **Exhibit "I"** is a copy of the Note submitted on behalf of NSEL on 1st March 2018 (without Annexures).
35. At the Committee meeting held on 1st March 2018, the Ld. Advocate for NSEL referred to three Affidavits all dated 3rd October 2015 of Santosh Dhuri, Authorised Signatory of NSEL and the ledger extracts of accounts of LOIL Overseas Limited, LOIL Health Foods Limited and LOIL Continental Foods Limited in the Accounts of NSEL and other documents annexed thereto and extracts of audit report dated 2nd April 2014 of by M/s. Sharp and Tannan, Associates Chartered Accountants relating to LOIL Overseas Limited, LOIL Health Foods Limited and LOIL Continental Foods Limited and submitted that the liability of LOIL Overseas Limited, LOIL Health Foods Limited and LOIL Continental Foods Limited to NSEL be crystallised as under:-

(I) LOIL Overseas Food Limited

(i)	Total outstanding of LOIL Overseas Food Limited to NSEL towards pay in obligation as per Member's Delivery Obligation Sub-ledger as on 9 th August 2013	94,43,20,005.61
(ii)	Plus: Total outstanding of LOIL Overseas Food Limited to NSEL towards pay-in obligation as per Member's Daily	1,46,915.00

	Obligation Sub-Ledger as on 2 nd August 2013	
(iii)	Less: Credit balance available in the Initial Margin Account of LOIL Overseas Food Limited with NSEL as on 31 st July 2013	8,25,20,779.46
(iv)	Balance due	86,19,46,141.15
(v)	Less: Amount received by NSEL from LOIL Overseas Food Limited from 9 th August 2013 till 31 st August 2015	1,08,09,572.42
(vi)	Balance Due	85,11,36,568.73
(vii)	Plus: Interest from 9 th August 2013 till 31 st August 2015 computed at 18% p.a. computed daily after taking into account payments received.	38,21,73,798.46

(II) LOIL Health Foods Limited

(i)	Total outstanding of LOIL Health Foods Limited to NSEL towards pay-in obligation as per Member's Delivery Obligation Sub-ledger as on 9 th August 2013	319,02,24,208.45
(ii)	Plus: Total outstanding of LOIL Health Foods Limited to NSEL towards pay-in obligation as per Member's Delivery Obligation Sub-ledger as on 2 nd August 2013.	2,44,704.86
(iii)	Less: Credit balance available in the Initial Margin Account of LOIL Health Foods Limited with NSEL as on 31 st July 2013	24,56,46,859.96
(iv)	Balance due	294,48,22,053.35
(v)	Less: Amount received by NSEL from LOIL Health Foods Limited from 9 th August 2013 till 31 st August 2015	7,00,00,000.00
(vi)	Balance Due	287,48,22,053.35
(vii)	Plus: Interest from 9 th August 2013 till 31 st August 2015 computed at 18% p.a.	129,09,04,015

	computed daily after taking into account payments received.	
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(III) LOIL Continental Foods Limited

(i)	Total outstanding of LOIL Continental Foods Limited to NSEL towards pay-in obligation as per Member's Delivery Obligation Sub-ledger as on 9 th August 2013	382,57,09,779.83
(ii)	Plus: Total outstanding of LOIL Continental Foods Limited to NSEL towards pay-in obligation as per Member's Delivery Obligation Sub-ledger as on 2 nd August 2013	4,84,449.85
(iii)	Less: Credit balance available in the Initial Margin Account of LOIL Continental Foods Limited with NSEL as on 31 st July 2013	34,90,75,690.58
(iv)	Balance due	347,71,18,539.10
(v)	Less: Amount received by NSEL from LOIL Continental Foods Limited from 9 th August 2013 till 31 st August 2015	3,50,00,000.00
(vi)	Balance Due	344,21,18,539.10
(vii)	Plus: Interest from 9 th August 2013 till 31 st August 2015 computed at 18% p.a. computed daily after taking into account payments received.	154,52,50,718.54

[It is noticed that in the Affidavit dated 3rd October 2015, relating to LOIL Overseas Foods Limited T+2, T+25 and T+10 trades have been wrongly described as T+2 and T+25 trades. In Affidavit dated 3rd October 2015, LOIL Health Foods Limited T+1, T+10 and T+34 trades have been wrongly described as T+2 and T+25 trades. In Affidavit dated 3rd October 2015 relating to LOIL Continental Food Limited T+1, T+10 and T+34 trades have been wrongly described as T+2 and T+25 trades]

36. At the Committee meeting held on 1st March 2018, the Ld. Advocate for LOIL Group submitted Affidavit dated 27th February 2018 of Ashok Chopra, Authorised Representative of LOIL Group, in which existence and contents of all the documents submitted by NSEL along with the letter dated 20th February 2018 mentioned in paragraphs 31

above was denied and it was stated that LOIL Group is not producing any document at this stage and it was submitted that the documents submitted by NSEL are false and fabricated.

37. At the meeting held on 1st March 2018, the Committee called upon the Learned Advocate appearing for LOIL Group to make submissions on Affidavits dated 3rd October 2015 of Shri Santosh Dhuri of NSEL relating to LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. and ledger accounts of these companies produced by NSEL, when the Ld. Counsel appearing for LOIL Group stated that he did not have with him copies of these three Affidavits dated 3rd October 2015 and he was not sure whether copies thereof had been served on the previous Advocate on record of LOIL Group. Copies of these three Affidavits dated 3rd October 2015 were handed over by NSEL to the Advocate for LOIL Group at the Meeting before the Committee held on 1st March 2018.
38. After conclusion of the meeting before the Committee on 1st March 2018, the Committee received a letter dated 1st March 2018 from the Ld. Advocate for LOIL Group in which it is stated that copies of three Affidavits all dated 3rd October 2015 of Shri Santosh Dhuri of NSEL relating to LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. were received by the Advocate for the LOIL Group for the first time at the meeting before the Committee held on 1st March 2018 and that the previous Advocate on record of LOIL Group has confirmed that copies of these three Affidavits had not been served on him earlier. On checking the records with the Committee, three original Affidavits dated 3rd October 2015 of Shri Santosh Dhuri of NSEL relating to LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. are not found in the records of the Committee. The Committee has subsequently received copies of these three Affidavits from the Advocates for NSEL and the same are placed in the records of the Committee. On considering letter dated 1st March 2018, the Committee by Corrigendum dated 5th March 2018 corrected the Order Sheet No.78B dated 1st March 2018 and directed the proceedings relating to LOIL Group to stand over to 13th March 2018 with directions to LOIL Group of Companies to make their submissions on the three Affidavits dated 3rd October 2015 of Mr. Santosh Dhuri relating to LOIL Overseas

Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd., including ledger accounts of LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. produced by NSEL.

39. At the meeting of the Committee on 13th March 2018, the Learned Advocate appearing for LOIL Group referred to Affidavit dated 6th March 2018 of Authorised Representative of LOIL Group of Admission and Denial of documents in which reference was made to three Affidavits dated 3rd October 2015 submitted by NSEL (copies whereof were handed over to the Ld. Advocate for LOIL Group at the meeting held on 1st March 2018) and existence and contents of all the documents annexed to the three Affidavits all dated 3rd October 2015 and existence and contents of Annexures "A", "B", "D" and "F" to the Note tendered on behalf of NSEL at the meeting on 1st March 2018 were denied and as regards Annexure "C" to the Note tendered on behalf of NSEL at the meeting on 1st March 2018, it was stated that at the relevant time, NSEL was in a dominant position and LOIL Group did not have any other option but to execute the said documents and it was submitted that Bye-law 3.5 of the Bye-laws of NSEL was against public policy as also against the provisions of The Indian Evidence Act, 1872 and Code of Civil Procedure and therefore unenforceable. At the Meeting on 13th March 2018, the Ld. Advocate for LOIL Group applied for adjournment. On being asked by the Committee whether LOIL Group want to comply with the directions issued by the Committee, the Ld. Counsel appearing for LOIL Group made a categorical statement that LOIL Group does not want to comply with the directions issued by the Committee 'at this stage'. The Committee made it clear to the Ld. Advocate for the LOIL Group that there may be no other or further stage before this Committee. At the meeting on 13th March 2018, the Ld. Counsel for LOIL Group stated that he was unable to proceed for want of instructions. Thereupon the Committee permitted the Ld. Counsel for LOIL Group to file written submissions by 19th March 2018 and stated that the written submissions, if any, filed by the LOIL Group will be taken into consideration by the Committee while crystallising the liability, if any.

40. On 19th March 2018 and 27th March 2018, the Learned Advocate for LOIL Group has submitted before the Committee brief Written Submissions and Additional Written Submissions on behalf of LOIL Group in which the main submissions are as under:-

- (a) The Committee does not have any adjudicatory powers;
 - (b) Inspection of original documents relied upon by NSEL has not been granted in spite of letter dated 12th March 2018 addressed by Advocate for LOIL Group for such inspection;
 - (c) No findings can be given on the basis of disputed facts and as the existence and contents of documents produced by NSEL is disputed, the documents are required to be proved by leading positive evidence.
 - (d) Bye-law 3.5 of NSEL Bye-laws is void and unenforceable and no presumption can be drawn on the basis of Bye-law 3.5.
41. In the Additional Written Submissions filed by the Learned Advocate for LOIL Group on 27th March 2018, it is submitted that in Writ Petition NO.1403 of 2015 filed by NSEL before this Hon'ble Court, NSEL has submitted as under:-

"3.The Petitioner's Exchange is only an online Trading Platform & did not itself receive / retain the purchase price paid....."

"4(b) The Petitioner's Commodities Spot Exchange only provided an Electronic / Online Trading Platform for the purchase & Sale of commodities...."

"5(b) The Petitioner's Exchange / online trading facility / platform, only enabled such trading and for all such contracts / trades effected on and through the Exchange, the Petitioner's Exchange received only a minuscule percentage of the total traded value, as a fee."

That being so, NSEL cannot claim any amount from LOIL Group and claims raised by NSEL against LOIL Group are without any substance or supporting documents and NSEL have failed to produce Punjab VAT No., Punjab Market Commodity License, VAT Bills and VAT Quarterly Returns to prove any supply of commodities to LOIL Group and NSEL have not proved delivery of goods to LOIL Group and no documents evidencing delivery of goods have been produced in the proceedings before the Committee and no claim can be sustained on

the basis of self-generated documents without proof of actual delivery of goods.

42. NSEL have filed with the Committee Certificates dated 16th March 2018 issued by Mr. Vinod Tamore - Assistant Manager, NSEL under Section 65-B of the Indian Evidence Act, 1872 relating to extract of ledger accounts maintained by NSEL relating to LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. filed with the Committee.
43. On 19th March 2018, the Committee received Application dated 17th March 2018 of LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. for directions to NSEL to provide inspection to the Applicants of all original copies of documents sought to be relied upon by NSEL in the proceedings before the Committee and for inspection of all the documents filed by NSEL before the Committee. For the reasons mentioned hereafter, the Committee did not consider it fit to direct NSEL to grant inspection of original documents relied upon by NSEL in the proceedings before the Committee to LOIL Group. As requested in the Application dated 17th March 2018, inspection of records of the Committee relating to LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd., including all documents filed by NSEL before the Committee was granted to the Advocates for LOIL Group on 3rd April, 2018 in the office of the Committee, when the Advocate for NSEL was also present.
44. On considering the Application dated 17th March 2018 of LOIL Group for directions to NSEL to provide inspection of documents relied upon by NSEL in the proceedings before the Committee, the Committee did not consider it fit to direct NSEL to grant such inspection, as the Application dated 17th March 2018 of LOIL Group was at a belated stage after conclusion of hearings before the Committee on 13th March 2018, when the Ld. Advocate for LOIL Group was permitted to file written submissions. At the meeting before the Committee on 13th March 2018 as also at earlier meetings, the Learned Advocate for LOIL Group made a categorical statement that LOIL Group does not want to comply with the directions issued by the Committee from time to time to LOIL Group for production of their books of accounts. LOIL Group in their Affidavit dated 27th February 2018 referred to in

para 33 above and in their Affidavit dated 6th March 2018 referred to in para 38 above have denied existence and contents of documents produced by NSEL, including Bank Statements showing receipt and payment of amounts into NSEL Settlement Bank Account. In the circumstances, the Committee was of the view that the demand for inspection of documents relied upon by NSEL which mostly consist of electronic records of transactions on NSEL Exchange made by LOIL Group in their Application dated 17th March 2018 was not bonafide.

45. Though as mentioned above, original Affidavits dated 3rd October 2015 of Shri Santosh Dhuri of NSEL relating to LOIL Overseas Foods Ltd., LOIL Health Foods Ltd., and LOIL Continental Foods Ltd. with copies of ledger accounts in the records of NSEL annexed thereto are not found in the records of the Committee and the Committee has subsequently received copies of these three Affidavits dated 3rd October 2015 from the Advocates for NSEL and copies of these three Affidavits dated 3rd October 2015 were received by LOIL Group at the meeting before the Committee on 1st March 2018, the Committee at their meeting on 13th March 2018 rejected the Application on behalf of LOIL Group for adjournment, in view of failure of LOIL Group to comply with the directions of the Committee, including production of entries in the books of accounts of LOIL Group relating to their dealings on NSEL platform. As mentioned in paragraph 16 above, at the meeting held before the Committee on 27th March 2015 NSEL had filed three compilation of documents relating to (i) LOIL Overseas Foods Ltd., (ii) LOIL Health Foods Ltd. and (iii) LOIL Continental Foods Ltd. along with copies of ledger accounts of LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. in (i) Initial Margin Ledger, (ii) Member Daily Obligation Ledger and (iii) Member's Delivery Obligation Ledger for the period 1st April 2013 to 30th September 2013 and Trade Summary for the period 1st April 2013 to 30th September 2013 along with a Note titled "Description of Ledger Entries in NSEL books of account" showing amounts outstanding as per NSEL. LOIL Group had sufficient time to consider the ledger accounts produced by NSEL and make their submissions thereon. In proceedings for examination of accounts between two business entities, both the parties are expected to produce their books of accounts so that the entries can be reconciled and disputed entries can be identified and the grounds for objection can be

examined. In view of categorical statement made before the Committee that LOIL Group does not want to comply with the directions issued by the Committee, the Committee did not consider it appropriate to prolong the proceedings or to direct NSEL to grant inspection of electronic record and other documents or to call upon NSEL to lead oral evidence before the Committee.

46.1 Bye laws No.3.5, 3.10, 5.17, 11.5 and 11.6 of the Bye-laws of National Spot Exchange Limited provide 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."

"3.10 INDEMNITY

Every member of the Exchange shall indemnify and keep indemnified the Exchange from and against all harm, loss, damages, injury and penalty suffered or incurred and all costs, charges and expenses incurred in instituting and/or carrying on and/or defending any suits, action, litigation, arbitration, disciplinary action, prosecution or any other legal proceedings suffered or incurred by the Exchange on account of or as a

result of any act of commission or omission or default in complying with any of the provisions or the authorities regulating spot trading in the area where such trading takes place, and the Rules framed thereunder or these Bye-Laws or the Rules, Business Rules or Regulations of the Exchange or due to any agreement, contract or transaction executed or made in pursuance thereof or on account of negligence or fraud on the part of any member of the Exchange or the Clearing House and their employees, servants and agents."

"5.17 CLOSING-OUT - EXCHANGE MEMBER'S RESPONSIBILITY

The exchange member shall be fully accountable for the closing out of transactions effected by the Exchange on his behalf and shall indemnify the Exchange against any loss or cost arising out of or incidental to such close-out of transactions either directly or indirectly."

"11. REPORTS

11.5 All Members of the Exchange as well as other market intermediaries shall be required to maintain such Books of Accounts, Registers, Statements and other Records, either in physical or electronic form, as may be specified by the Relevant Authority. All such documents and records shall be kept in good order and preserved at least for such period, as may be specified by the Relevant Authority. All such documents and records shall be made available to the Exchange by the member for inspection, whenever required.

11.6 Each member of the Exchange shall submit itself to audit and investigation and furnish all books, records, files and such other information as required upon the direction of the Relevant Authority. The audit and investigation shall be restricted to the affairs of the Exchange member as a provider of trading, clearing and settlement services to their client as also in respect of his trading, either directly or through another Clearing member."

46.2 LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. have not produced before the Committee accounts maintained by LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. of their transactions on the NSEL platform. Entries made in the Trading System of the Exchange relating to sales and purchases on the Exchange are based on information by the concerned member. LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. have not produced before the Committee any evidence or documents to disprove correctness of any of the entries made in the Ledger Accounts produced by NSEL. LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. have not produced before the Committee any material to indicate that at any time prior to August 2013, LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. had raised any objection or dispute relating to any of the entries made by NSEL in the accounts and records relating to LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. maintained by NSEL. LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. have failed to submit before the Committee any objections or surcharges on the accounts produced by NSEL. In the circumstances, adverse inference can be drawn as held in the case of Hiralal v. Badkulal (AIR 1953 Supreme Court 225) books of accounts of the Plaintiff is sufficient evidence and in Goswami Shri Mahalaxmi Vahuji vs Rannchoddas Kalidas And Ors (AIR 1970 Supreme Court 2025).

46.3 The Committee has considered the submissions made in the Statements of Facts with relevant dates and events dated 10th October 2015 submitted by LOIL Group referred to in paras 20, 21 and 22 above, in which LOIL Group have denied receipt of any amount on account of trading or otherwise from NSEL Bank Accounts. As mentioned in paragraph 31 above, NSEL has produced Bank Statements relating to NSEL Settlement Accounts of LOIL Overseas Foods Ltd., LOIL Health Foods Ltd., and LOIL Continental Foods Ltd. which show details, including cheques / reference no of amounts paid by LOIL Overseas Foods Ltd., LOIL Health Foods Ltd., and LOIL Continental Foods Ltd. to NSEL as also amounts paid by NSEL to LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. Except for denying the existence and correctness of Bank

Statements and other documents produced by NSEL, LOIL Group have not produced any documents or evidence to dispute any of the entries in the bank statements and other documents produced by NSEL. As regards the submission of LOIL Group that balance sheet of NSEL as on 31st March 2013 shows nil balance against LOIL, from the ledger accounts produced by NSEL, it is seen that all T+2/T+1 transactions for sale of commodities by LOIL Group and corresponding T+25/T+34 purchase transactions of the same commodity by LOIL Group have been settled by delivery and/or payments, except sale transactions entered into after 21st February 2013 in case of LOIL Overseas Foods Ltd., after 7th February 2013 in case of LOIL Health Foods Ltd., and after 7th February 2013 in case of LOIL Continental Foods Ltd. The claim that LOIL Group has not traded on the NSEL platform after 31st March 2013 is disapproved by the ledger accounts produced by NSEL as also by the statements made in the Statements of Facts dated 10th October 2015 submitted by LOIL Group referred to in paras 20, 21 and 22 above. LOIL Group have not produced any documents to substantiate their claims to the effect that NSEL called upon them to issue backdated Invoices or that LOIL Group has to receive huge amounts from NSEL and its agents and/or stocks of equivalent value.

46.4 A copy of Complaint in Civil Suit No. 7 of 2013 filed by LOIL Health Foods Ltd as Plaintiffs against Pace Agrofarms Pvt. Ltd. as Defendant No.1 and NSEL as Defendant No.2 in the Court of Civil Judge, Senior Division, Fatehgarh Sahib, Punjab is annexed to the Statement of Facts dated 10th October 2015 filed on behalf of LOIL Health Foods Ltd. before the Committee. In paragraphs 9, 10, 11 and 20 of this Complaint, reproduced in **Exhibit "I"** hereto. LOIL Health Foods Ltd. has sought to explain the manner in which trading of commodities was carried out on the Exchange. In paragraph 20 of the Complaint in Civil Suit No. 7 of 2013 filed by LOIL Health Foods Ltd., it is stated that between 17th July 2013 to 21st July 2013, the Plaintiff (LOIL Health Foods Ltd.) in order to meet the settlement obligations with respect to buy positions taken by it on the NSEL platform had deposited in Settlement Account No.00990680026564, a total sum of Rs.73,75,00,000/- and on settlement date, title to goods/ merchandise (subject of Plaintiff's buy position) passed to the Plaintiff and custody of said goods legally and jurally vested with the Plaintiff. In Civil Suit No. 7 of 2017 filed by LOIL Health Foods Ltd., LOIL Health Foods Ltd. have prayed for a

declaration to the effect that transactions dated 17.07.2013, 18.07.2013, 19.07.2013, 22.07.2013, 23.07.2013, 24.08.2013, 20.08.2013 and 26.08.2013 whereby the Plaintiff has deposited an amount of Rs.80,75,00,000.00 (Rupees Eight Crore Seventy Five Lacs Only) in settlement account No:00990680026564 maintained at Fort, Mumbai Branch of the HDFC Bank for purchase of commodities are valid, legal and complete and for a decree of declaration to the effect that the title to the commodities vests with the Plaintiff. Similar statements and prayers have been made in the Plaints filed by LOIL Overseas Foods Ltd. and LOIL Continental Foods Ltd. in Civil Suits in the Court of Civil Judge, Senior Division, Fatehgarh Sahib, Punjab. The statements and averments in the Plaints filed in Court of Civil Judge, Senior Division, Fatehgarh Sahib, Punjab included in the Statement of Facts dated 10th October 2015 referred to in paragraphs 20, 21 and 22 above disapproved the stand taken on behalf of LOIL Group before the Committee of total denial of existence and correctness of contents of ledger accounts and documents produced by NSEL before the Committee.

46.5 LOIL Group in the Written Submissions dated 15th December 2015 filed before the Committee referred to in paragraph 22 above, have stated that they have already supplied all the ledger / bills / account books to the Investigating Officer of EOW and also to the Chartered Accountant who were assisting the Investigating Officer of EOW to investigate the matter. In the circumstances, the Committee sees no justification for refusal of LOIL Group to produce before the Committee details / ledgers / bills / account books relating to their dealings on NSEL platform. In the view of the Committee, refusal of LOIL Group to produce their accounts and documents relating to their dealings on NSEL platform leads to adverse inference against them.

46.6 The Committee has considered the submissions made in the Written Submissions dated 19th March 2018 and Additional Written Submissions dated 27th March 2018 filed on behalf of LOIL Group. Any examination of accounts between two business entities has to be necessarily based on examination of entries in the ledgers of the parties to the transactions and documents supporting such entries. No objections or Surcharges have been filed on behalf of LOIL Group on the ledger accounts produced by NSEL. The blanket denial by LOIL

Group of existence and correctness of contents of ledger accounts and documents produced by NSEL, while withholding from the Committee their own books of accounts and records, cannot justify their demand for additional evidence from NSEL or for cross-examination. Under Bye-law 3.5 of NSEL Bye-laws, it is agreed that the records as maintained by NSEL shall for the purpose of any dispute or claim, inter alia, between the members of the exchange and the exchange constitute valid and binding evidence between and among the parties. LOIL Group have not produced any material to dispute any of the entries in the ledger accounts produced by NSEL. The statements in Writ Petition No.1403 of 2015 filed by NSEL relied upon by LOIL Group mentioned in para 40 above do not disapprove claim of NSEL on LOIL Group.

46.7 The entries in the ledgers of NSEL cannot be terms as 'self-generated documents', as the entries are based on data supplied by or on behalf of trading members.

46.8 The Ld. Advocate for LOIL Group relied upon the judgment in Bareilly Electricity Supply Co. Ltd. v/s. The Workmen and Others reported in 1971 (2) Supreme Court Cases 617 in para. 14 whereof it is held as under:-

"... no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the questions that naturally arise is, is it a genuine document, what are its contents and are the statements contained therein true. When the Appellant produced the balance-sheet and profit and loss account of the company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the Appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure under Order XIX, Civil Procedure Code and the Evidence Act both of which incorporate the general principles. Even if all technicalities

of the Evidence Act are not strictly applicable except in so far as Section 11 of the Industrial Disputes Act, 1947 and the rules prescribed therein permit it, it is inconceivable that the Tribunal can act on what is not evidence such as hearsay, or can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witness who have executed them, if they are alive and can be produced. Again if a party wants an inspection, it is incumbent on the Tribunal to give inspection in so far as that is relevant to the enquiry. The applicability of these principles are well recognised and admit of no doubt."

The case of Bareilly Electricity Supply Co. Ltd. V/s. The Workmen related to determination by the Labour Tribunal of available surplus for payment of bonus to workmen, where accounts of the employer alone are required to be examined and there is no obligation on the party contesting the accounts produced by the employer to produce his own accounts. It is well settled that in civil proceedings parties are expected to produce best evidence available with them and in case of suppression of evidence, adverse inference can be drawn. In the opinion of the Committee the ratio of Bareilly Electricity Supply Co. Ltd v/s. The Workmen is not applicable to the facts of this case.

The Committee finds that production by NSEL of ledger accounts of LOIL Group maintained by them supported by Affidavit dated 3rd October 2015 of Mr. Santosh Dhuri, Authorised Signatory of NSEL and Certificate under Section 65-B of The Indian Evidence Act, 1872 dated 16th March 2018 of Mr. Vinod Tamore issued in respect thereof is sufficient evidence for determining the amounts payable by LOIL Group to NSEL, particularly in view of refusal of LOIL Group to produce entries in their books of accounts or any other contemporaneous material available with LOIL Group relating to their dealings on NSEL platform.

46.9 The Ld. Advocate for LOIL Group relied upon the following judgments and submitted that Clause 3.5 of the Bye-laws of NSEL is unconscionable term and opposed to the Public Policy of India and, therefore, unenforceable:-

- (a) Central Inland Water Transport Corpn. Ltd. and Another V/s. Brojo Nath Ganguly and Another AIR 1986 Supreme Court 1571.

- (b) Murlidhar Aggarwal and Another Vs. State of Uttar Pradesh and Others, (1974) 2 SCC 472, paragraphs 17, 21 to 34.
- (c) Shri Krishna Khanna Vs. Additional District Magistrate, Kanpur and Others, (1975) 2 SCC 361, paragraph 11.
- (d) Harshad Chiman Lal Modi Vs. DLF Universal Ltd. and Another (2005) 7 SCC 791, paragraphs 23 to 34 and 38.

Central Inland Water Transport Corporation Ltd. and Another V/s. Brojo Nath Ganguly AIR 1986 Supreme Court 1571 deals with the case of a contract between a State acting through a Government company and its employees, where, considering the inequality in bargaining power of the parties, a clause in the contract of employment was held to be void under Section 23 of the Contract Act as opposed to Public Policy and as being *ultra vires* of Article 14 of the Constitution. The ratio of this decision is not applicable to the facts of the present case, in which applicants for membership in NSEL voluntarily agreed to be bound by the Bye-laws of NSEL and have traded on NSEL platform and have received substantial benefits from such trades. In the cases of Murlidhar Aggarwal and Another V/s. State of Uttar Pradesh and Others, (1974) 2 SCC 472, and Shri Krishna Khanna Vs. Additional District Magistrate, Kanpur and Others, (1975) 2 SCC 361, it is held that considering the inequality of bargaining power between a landlord and a tenant and the protection granted under the Rent Control Legislation based on Public Policy, contractual provisions to the extent they are inconsistent with the provisions of the statute may not be enforceable. In the case of Harshad Chiman Lal Modi Vs. DLF Universal Ltd. and Another (2005) 7 SCC 791, it is held that agreement conferring jurisdiction on a court not having jurisdiction is opposed to Public Policy and void but agreement restricting jurisdiction between many courts having jurisdiction is not opposed to Public Policy and is legal, valid and enforceable. The ratio of the judgments cited by the Ld. Advocate for LOIL Group is not applicable to the present proceedings.

The Committee finds that in spite of adequate opportunity LOIL Group have not produced before the Committee their Books of Accounts or any documents to rebut the presumption arising from Bye-law 3.5 of NSEL Bye-laws.

47. **LOIL Overseas Foods Ltd.**

- 47.1 Ledger accounts maintained by NSEL in relation to transactions executed by LOIL Overseas Foods Ltd. on the trading system of NSEL, copies whereof have been produced in the compilation filed with the Committee on 27th March 2015 as also along with the Affidavit dated 3rd October 2015 of Shri Santhosh Dhuri, Authorised Signatory of NSEL and in respect whereof Certificate dated 19th March 2018 under Section 65-B of the Indian Evidence Act, 1872 issued by Vinod Tamore of NSEL has been submitted to the Committee, show the amount due and payable by LOIL Overseas Foods Ltd. to NSEL as on **18th July 2013** as under:-

(Amount in Rs.)		
Particulars	Dr.	Cr.
Balance in Initial Margin Ledger Account		12,28,20,779.46
Balance in Member Daily Obligation Ledger Account	00.00	
Balance in Member's Delivery Obligation Ledger Account		00.00

- 47.2 Between 19th July 2013 and 31st July 2013, amounts aggregating to Rs.4,03,00,000/- has been withdrawn from Initial Margin Ledger Account of LOIL Overseas Foods Ltd. with NSEL, leaving a credit balance of Rs.8,25,20,779.46 as on 31st July 2013.
- 47.3 Members Delivery Obligation Ledger Account produced by NSEL contain entries relating to T+2 trades as also corresponding T+25 or T+10 trades and charges related to the trades and bank pay-in/pay-out in respect thereof.
- 47.4 Member Daily Obligation Ledger Account produced by NSEL reflect members obligation not directly related to trades such as exchange transaction charges and any bank pay-in/ bank pay-out towards the same.
- 47.5 Members Delivery Obligation Ledger Account of LOIL Overseas Foods Ltd. maintained by NSEL show the balance as on 18th July 2013 as '0.00'. Thus, all T+2 and T+25 trades for which due date was prior to 18th July 2013 have been settled without any dispute being raised by LOIL Overseas Foods Ltd.

47.6 A summary of entries in Member's Delivery Obligation Account of LOIL Overseas Foods Ltd. produced by NSEL for the period from 19th July 2013 to 31st July 2013 is as under:-

(Amount in Rs.)

Sr. No.	Particulars	Dr.	Cr.	Balance
1.	Closing balance as on 18.07.2013	0	0	0
2.	T+2 obligation entered from 19 th July 2013 as per Exhibit "K" hereto	-	12,60,57,358.00	12,60,57,358.00 Cr.
3.	T+25 obligations from 19 th July 2013 as per Exhibit "L" hereto	50,19,60,088.00		37,59,02,730.00 Dr.
4.	VAT Obligation	1,03,09,913.60		38,62,12,643.60 Dr.
5.	Warehouse Transfer Charges	5,17,861.04		38,67,30,504.64 Dr.
6.	Penalty for fund shortage	1,85,037.80		38,69,15,542.44 Dr.
7.	Amount received between 19 th July 2013 and 31 st July 2013		25,73,00,000.48	12,96,15,541.96 Dr.
	Balance as on 31.07.2013			12,96,15,541.96 Dr.

47.7 The position of Member Delivery Account of LOIL Overseas Foods Ltd. produced by NSEL for the period 1st August 2013 to 30th September 2013 is as under:-

(Amount in Rs.)

Sr. No.	Particulars	Dr.	Cr.	Balance (Dr.)
1.	Closing Balance as on 31.07.2013 (Refer table in Para 49.6)	12,96,15,541.96	-	12,96,15,541.96
2.	T+25 and T+10 trade obligations after 31 st July 2013 as per Exhibit "M" hereto.	71,44,66,494.00		84,40,82,035.96

3.	Obligations of cancelled Trades T+2	3,24,89,366.00		87,65,71,401.96
4.	Service Tax Refund		10,576.94	87,65,60,825.02
5.	VAT Obligation	6,76,56,103.20		94,42,16,928.22
6.	Warehouse transfer charges	1,03,077.31		94,43,20,005.53
7.	Credit Balance of Initial Margin Account transferred to Members Delivery Obligation Account on 18 th September 2013		8,25,20,779.46	86,17,99,226.07
8.	Debit Balance in Member Daily Obligation Account transferred to Member Delivery Obligation Account on 18 th September 2013	1,46,915.00		86,19,46,141.07
9.	Receipt from Bank			
	26.08 1,00,00,00 .2013 0		1,00,00,000.00	85,19,46,141.07
	Balance as on 30.09.2013			85,19,46,141.07

47.8 After 30th September 2013, out of balance of Rs.85,19,46,141.07 shown as due on 30th September 2013, NSEL has received from LOIL Overseas Foods Ltd. amounts aggregating to Rs.8,09,572.42 on 10th October 2013; leaving balance of Rs.85,11,36,568.65.

47.9 Member Daily Obligation Ledger Account of LOIL Overseas Foods Ltd. produced by NSEL show the amounts claimed by NSEL from LOIL Overseas Foods Ltd. every month from September 2012 till July 2013 and show that the amounts claimed by NSEL from LOIL Overseas Foods Ltd. every month have been received by NSEL and the balance in Member Daily Obligation Account of LOIL Overseas Foods Ltd. with NSEL as on 17th July 2013 is Nil and that the amount debited on 2nd August 2013 by NSEL to the Member Daily Obligation Account of LOIL Overseas Foods Ltd. for the month of July 2013 is Rs.1,46,915.00, which is pending. Thus, the amounts debited by NSEL to Member Daily Obligation Account of LOIL Overseas Foods Ltd. for the months September 2012 to June 2013 have been settled without any dispute.

47.10 On considering the accounts and documents produced by NSEL, the Committee finds that VAT obligation of Rs.1,03,09,913.60 mentioned at Item 4 in para. 47.6 above and VAT charges of Rs.6,76,56,103.20 mentioned at Item 5 in para. 47.7 above are not payable to NSEL at this stage, as the T+25 and T+10 trades in respect whereof these VAT charges have been claimed by NSEL have not been completed. If and when VAT invoices are raised and VAT is paid on these trades the liability for payments to NSEL of amount of VAT thereon can be considered.

47.11 On considering the defaults on the part of NSEL and its employees and agencies engaged by NSEL in providing and monitoring warehousing and other services and in the absence of sufficient justification for the amount of warehouse transfer charges of Rs.5,17,861.04 mentioned at Item 5 in para 47.6 above and warehouse transfer charges of Rs.1,03,077.31 mentioned at Item 6 in para 47.7 above, the Committee has not included the same in the amounts payable by LOIL Overseas Foods Ltd. to NSEL.

47.12 The Committee also find that amount of Rs.1,85,037.86 claimed by NSEL as penalty for fund shortage mentioned at Item 6 of para. 47.6 above is not payable, as delays and defaults in payment may result in liability for interest and not for payment of penalty.

47.13 On disallowing and reducing the amounts mentioned at Items 4, 5 and 6 in para 47.6 above and the amounts mentioned at Items 5 and 6 in para 47.7 above aggregating to Rs.7,87,71,992.95 from the balance as on 30th September 2013 of Rs.85,11,36,568.65 mentioned in para 47.8 above, the amount of Rs.77,31,74,148.12 is remaining due and payable by LOIL Overseas Foods Ltd. to NSEL as on 30th September 2013, against which amounts aggregating to Rs.8,09,572.42 have been received by NSEL as shown in paragraph 49.8 above, leaving a balance of Rs.77,23,64,575.70 due and payable by LOIL Overseas Foods Ltd. to NSEL.

47.14 Accordingly, the Committee finds that an amount of Rs.77,23,64,575.70 is due and payable by LOIL Overseas Foods Ltd. to NSEL as on **31st August 2015.**

47.15 In the absence of proof of availability and physical delivery of commodities in sufficient quantities in respect of T+2 sale contracts entered into by LOIL Overseas Foods Ltd. prior to July 2013, non-delivery of stock cannot justify default in payment by LOIL Overseas Foods Ltd. to NSEL.

48. **LOIL Health Foods Ltd.**

48.1 Ledger accounts maintained by NSEL in relation to transactions executed by LOIL Health Foods Ltd. on the trading system of NSEL, copies whereof have been produced in the compilation filed with the Committee on 27th March 2015 as also along with the Affidavit dated 3rd October 2015 of Shri Santhosh Dhuri, Authorised Signatory of NSEL and in respect whereof Certificate dated 19th March 2018 under Section 65-B of the Indian Evidence Act, 1872 issued by Vinod Tamore of NSEL has been submitted to the Committee, show the amount due and payable by LOIL Health Foods Ltd. to NSEL as on 24th July 2013 as under:-

(Amount in Rs.)

Particulars	Dr.	Cr.
Balance in Initial Margin Ledger Account		31,56,46,859.96
Balance in Member Daily Obligation Ledger Account	00.00	
Balance in Delivery Obligation Ledger Account		00.00

48.2 On 29th July 2013, an amount of Rs.7,00,00,000/- has been withdrawn from Initial Margin Ledger Account of LOIL Health Foods Ltd. with NSEL, leaving a credit balance of Rs.24,56,46,859.96 as on 31st July 2013.

48.3 Members Delivery Obligation Ledger Account produced by NSEL contain entries relating to T+1 trades as also corresponding T+34 or T+10 trades and charges related to the trades and bank pay-in /pay-out in respect thereof.

48.4 Member Daily Obligation Ledger Account produced by NSEL reflect members obligation not directly related to trades such as exchange transaction charges and any bank pay-in/bank pay-out towards the same.

48.5 Members Delivery Obligation Ledger Account of LOIL Health Foods Ltd. maintained by NSEL show the balance as on 24th July 2013 as '0.00'. Thus, all T+1 and T+34 trades for which due date was prior to 24th July 2013 have been settled without any dispute being raised by LOIL Health Foods Ltd.

48.6 A summary of entries in Member's Delivery Obligation Account of LOIL Health Foods Ltd. produced by NSEL for the period from 25th July 2013 to 31st July 2013 is as under:-

(Amount in Rs.)

Sr. No.	Particulars	Dr.	Cr.	Balance
1.	Closing balance as on 24.07.2013	0	0	0
2.	T+1 obligation entered from 25 th July 2013 as per Exhibit "N" hereto		6,82,72,372.00	6,82,72,372.00 Cr.
3.	T+34 obligations from 25 th July 2013 as per Exhibit "O" hereto	60,36,32,428.00	-	53,53,60,056.00 Dr.
4.	VAT Obligation	53,80,351.20	-	54,07,40,407.20 Dr.
5.	Warehouse Transfer Charges	7,16,463.18	-	54,14,56,870.38 Dr.
6.	Penalty for fund shortage	6,89,466.36	-	54,21,46,336.74 Dr.
7.	Amount received between 25 th July 2013 and 31 st July 2013		7,00,00,000.77	47,21,46,335.97 Dr.
	Balance as on 31.07.2013			47,21,46,335.97Dr.

48.7 The position of Member Delivery Account of LOIL Health Foods Ltd. produced by NSEL for the period 1st August 2013 to 30th September 2013 is as under:-

(Amount in Rs.)

Sr. No	Particulars	Dr.	Cr.	Balance (Dr.)
1.	Closing Balance as on 31.07.2013 (Refer table in Para 48.4)	47,21,46,335.97	-	47,21,46,335.97

2.	T+34 and T+10 trade obligations after 31 st July 2013 as per Exhibit "P" hereto..	250,87,37,518.00		298,08,83,853.97
3.	Service Tax Refund		8,504.63	298,08,75,349.34
4.	VAT Charges	20,92,63,039.10		319,01,38,388.44
5.	Warehouse transfer charges	85,816.95		319,02,24,205.39
6.	Credit Balance of Initial Margin Account transferred to Members Delivery Obligation Account on 18 th September 2013		24,56,46,859.96	294,45,77,345.43
7.	Debit Balance in Member Daily Obligation Account transferred to Member Delivery Obligation Account on 18 th September 2013	2,44,704.86		294,48,22,050.29
8.	Receipt from Bank			
	20.08.2013	6,00,00,000		
	26.08.2013	1,00,00,000	7,00,00,000	287,48,22,050.29
	Balance as on 30.09.2013			287,48,22,050.29

48.8 Member Daily Obligation Ledger Account of LOIL Health Foods Ltd. produced by NSEL show the amounts claimed by NSEL from LOIL Health Foods Ltd. every month from December 2012 till July 2013 and show that the amounts claimed by NSEL from LOIL Health Foods Ltd. every month have been received by NSEL and the balance in Member Daily Obligation Account of LOIL Health Foods Ltd. with NSEL as on 17th July 2013 is Nil and that the amount debited on 2nd August 2013 by NSEL to the Daily Obligation Account of LOIL Health Foods Ltd. for the month of July 2013 is Rs.2,44,704.86, which is pending. Thus, the amounts debited by NSEL to Member Daily Obligation Account of LOIL Health Foods Ltd. for the months December 2012 to June 2013 have been settled without any dispute.

48.9 On considering the accounts and documents produced by NSEL, the Committee find that VAT obligation of Rs.53,80,351.26 mentioned at Item 4 in para 48.6 above and VAT charges of Rs.20,92,63,039.10 mentioned at Item 4 in para. 48.7 above are not payable to NSEL at this stage, as the T+34 and T+10 trades in respect whereof these VAT charges have been claimed by NSEL have not been completed If and when VAT invoices are raised and VAT is paid on these trades the

liability for payments to NSEL of amount of VAT thereon can be considered

48.10 On considering the defaults on the part of NSEL and its employees and agencies engaged by NSEL in providing and monitoring warehousing and other services and in the absence of sufficient justification for the amount of warehouse receipt charges of Rs.7,16,463.18 mentioned at Item 5 in para. 48.6 above and warehouse transfer charges of Rs.85,816.95 mentioned at Item 5 in para. 48.7 above, the Committee has not included the same in the amounts payable by LOIL Health Foods Ltd. to NSEL.

48.11 The Committee also find that amount of Rs.6,89,466.36 claimed by NSEL as penalty for fund shortage mentioned at Item 6 of para. 48.6 above is not payable, as delays and defaults in payment may result in liability for interest and not for payment of penalty.

48.12 On disallowing and reducing the amounts mentioned at Items 4, 5 and 6 in para. 48.6 above and the amounts mentioned at Items 4 and 5 in para. 48.7 above aggregating to Rs.21,61,35,136.79 from the balance as on 30th September 2013 of Rs.287,48,22,050.29 mentioned in para. 48.7 above, the amount of Rs.265,86,86,913.50 is remaining due and payable by LOIL Health Foods Ltd. to NSEL as on 30th September 2013.

48.13 Accordingly, the Committee finds that an amount of Rs.265,86,86,913.50/- is due and payable by LOIL Health Foods Ltd. to NSEL as on 30th September 2013.

48.14 In the absence of proof of availability and physical delivery of commodities in sufficient quantities in respect of T+1 sale contracts entered into by LOIL Health Foods Ltd. prior to July 2013, non-delivery of stock cannot justify default in payment by LOIL Health Foods Ltd. to NSEL.

49. **LOIL Continental Foods Ltd.**

49.1 Ledger accounts maintained by NSEL in relation to transactions executed by LOIL Continental Foods Ltd. on the trading system of NSEL, copies whereof have been produced along with the Affidavit

dated 3rd October 2017 of Shri Santhosh Dhuri, Authorised Signatory of NSEL and in respect whereof Certificate dated 19th March 2018 under Section 65-B of the Indian Evidence Act, 1872 issued by Vinod Tamore of NSEL has been submitted to the Committee, show the amount due and payable by LOIL Continental Foods Ltd. to NSEL as on 30th July 2013 as under:-

(Amount in Rs.)

Particulars	Dr.	Cr.
Balance in Initial Margin Ledger Account		34,90,75,690.58
Balance in Member Daily Obligation ledger account	00.00	
Balance in Delivery Obligation ledger account		00.00

- 49.2 On 31st July 2013, a sum of Rs.1,00,00,000/- has been withdrawn from Initial Margin Ledger Account of LOIL Continental Foods Ltd. with NSEL leaving a credit balance of Rs.34,90,75,690.58 as on 31st July 2013.
- 49.3 Members Delivery Obligation Ledger Account produced by NSEL contain entries relating to T+2 trades as also corresponding T+25 or T+10 trades and charges related to the trades and bank pay-in and pay-out in respect thereof.
- 49.4 Daily Obligation Ledger Account produced by NSEL reflect members obligation not directedly related to trades such as exchange transaction charges and any bank pay-in or bank pay-out towards the same.
- 49.5 Members Delivery Obligation Ledger Account of LOIL Continental Foods Ltd. maintained by NSEL show the balance as on 18th July 2013 as '0.00'. Thus, all T+2 and T+25 trades for which due date was prior to 18th July 2013 have been settled without any dispute being raised by LOIL Continental Foods Ltd.
- 49.6 A summary of entries in Member's Delivery Obligation Account of LOIL Continental Foods Ltd. produced by NSEL on 31st July 2013 is as under:-

Sr. No.	Particulars	Dr.	Cr.	Balance
1.	Closing balance as on 30.07.2013	0	0	0
2.	T+1 obligation entered on 31 st July 2013 as per Exhibit "Q" hereto		9,30,75,441.20	9,30,75,441.20 Cr.
3.	T+34 obligations entered on 31 st July 2013 as per Exhibit "R" hereto	11,25,07,528.00		1,94,32,086.80 Dr.
4.	Warehouse Receipt Charges	93,234.80		1,95,25,321.60 Dr.
5.	Amount received on 31 st July 2013		1,00,63,340.97	94,61,980.63 Dr.
	Balance as on 31.07.2013			94,61,980.63 Dr.

49.7 The position of Member Delivery Obligation Account of LOIL Continental Foods Ltd. produced by NSEL for the period 1st August 2013 to 30th September 2013 is as under:-

(Amount in Rs.)

Sr. No.	Particulars	Dr.	Cr.	Balance (Dr.)
1.	Closing Balance as on 31.07.2013 (Refer table in Para 49.6)	94,61,980.63		94,61,980.63
2.	T+34 and T+10 trade obligations after 31 st July 2013 as per Exhibit "S" hereto.	353,13,05,750.00		354,07,67,730.63
3.	Obligations of cancelled T+1 trades of 31 st July 2013	9,30,75,441.20		363,38,43,171.83
4.	VAT charges	27,67,52,835.80		391,05,96,007.63
5.	Warehouse transfer charges	1,13,772.12		391,07,09,779.75
6.	Credit Balance of initial margin account transferred to Members Delivery Obligation Account on 18 th September 2013		34,90,75,690.58	356,16,34,089.17
7.	Debit Balance in Member Daily Obligation Account transferred to Member Delivery Obligation Account on 18 th September 2013	4,84,449.85		356,21,18,539.02
8.	Receipt from Bank			

06.08.2013	5,00,00,000			
20.08.2013	2,50,00,000			
26.08.2013	1,00,00,000		8,50,00,000	347,71,18,539.02
Balance as on 30.09.2013				347,71,18,539.02

The amount of Rs.382,57,09,779.83 mentioned as the outstanding towards pay-in obligation as on 9th August 2013 in the Particulars of Claim Exhibit "C" to the Affidavit has been arrived at after reducing the amounts of Rs.2,50,00,000/- received by NSEL on 20th August 2013 and Rs.1,00,00,000/- received by NSEL on 26th August 2013 from the outstanding amount of Rs.386,07,09,779.75 in the Members Delivery Obligation Account of LOIL Continental Foods as on 9th August 2013. In the Statement of Liability relating to LOIL Continental Foods Ltd. included in the Compilation of Documents, filed with the Committee at the meeting held on 27th March 2015 mentioned in para. 16 above NSEL has shown amounts received from 1st September 2013 to 26th November 2014 as Rs.5,00,00,000.00. The ledger accounts of LOIL Continental Foods Ltd. filed with the Committee are for the period upto 30th September 2013, which do not show receipt of this amount of Rs.5,00,00,000.00 shown by NSEL in the Statement of Liability submitted by NSEL before the Committee at the meeting held on 27th March 2015. Accordingly, the Committee has given LOIL Continental Foods Ltd. credit for the said amount of Rs.5,00,00,000.00.

49.8 Daily Obligation Ledger Account of LOIL Continental Foods Ltd. produced by NSEL show the amounts claimed by NSEL from LOIL Continental Foods Ltd. every month from November 2012 till July 2013 and show that the amounts claimed by NSEL from LOIL Continental Foods Ltd. every month have been received by NSEL and the balance in Member Daily Obligation Account of LOIL Continental Foods Ltd. with NSEL as on 17th July 2013 is Nil and that the amount debited on 2nd August 2013 by NSEL to the Daily Obligation Account of LOIL Continental Foods Ltd. for the month of July 2013 is Rs.4,84,449.85, which is pending. Thus, the amounts debited by NSEL to Member Daily Obligation Account of LOIL Continental Foods Ltd. for the months November 2012 to June 2013 have been settled without any dispute.

- 49.9 On considering the accounts and documents produced by NSEL, the Committee find that VAT charges of Rs.27,67,52,835.80 mentioned at Item 4 in para. 49.7 above are not payable to NSEL at this stage, as the T+34 trades in respect whereof these VAT charges have been claimed by NSEL have not been completed. If and when VAT invoices are raised and VAT is paid on these trades the liability for payments to NSEL of amount of VAT thereon can be considered.
- 49.10 On considering the defaults on the part of NSEL and its employees and agencies engaged by NSEL in providing and monitoring warehousing and other services and in the absence of sufficient justification for the amount of warehouse receipt charges of Rs.93,234.80 mentioned at Item 4 in para. 49.6 above and warehouse transfer charges of Rs.1,13,772.12 mentioned at Item 5 in para. 49.6 above, the Committee has not included the same in the amounts payable by LOIL Continental Foods Ltd. to NSEL.
- 49.11 On disallowing and reducing the amounts mentioned at Items 4 in para. 49.6 above and the amounts mentioned at Items 4 and 5 in para. 49.7 above aggregating to Rs.27,69,59,842.72 and the amount of Rs.5,00,00,000/- stated by NSEL as having been received from 1st September 2013 to 26th November 2014 as mentioned in para. 49.7 above, from the balance as on 30th September 2013 of Rs.347,71,18,539.02 mentioned in para 49.7 above the amount of Rs.315,01,58,696.30 is remaining due and payable by LOIL Continental Foods Ltd. to NSEL as on 30th September 2013
- 49.12 Accordingly, the Committee finds that an amount of Rs.315,01,58,696.30 is due and payable by LOIL Continental Foods Ltd. to NSEL as on 26th November 2014.
- 49.13 In the absence of proof of availability and physical delivery of commodities in sufficient quantities in respect of T+1 sale contracts entered into by LOIL Continental Foods Ltd. prior to July 2013, non-delivery of stock cannot justify default in payment by LOIL Continental Foods Ltd. to NSEL.

50. The liability of LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. to NSEL arise out of commercial transactions and the rate of interest as also the date from which interest may be payable by LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. on amounts due and payable by LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. to NSEL may be determined by the Hon'ble Court.
51. In view of Orders dated 17th June 2015 and 13th July 2015 referred to in paragraph nos. 8 and 9 above, the Committee has confined its functions to taking accounts between NSEL and LOIL Group of Companies and determining the amount payable by LOIL Overseas Foods Ltd., LOIL Health Foods Ltd. and LOIL Continental Foods Ltd. to NSEL.
52. Copies of this Report are being served on the following:-
- | | | |
|------|---------------------------------|---|
| (1) | M/s. Naik Naik & Co. | Advocates for National Spot Exchange Ltd. |
| (2) | M/s. Federal & Rashmikant | Advocates for Modern India Ltd. |
| | M/s. Cyril Amarchand | Advocates 63 Moons Technologies |
| (3) | Mangaldas & Co. | Ltd. |
| (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/ Mr. P.B Loke | EOW |
| (7) | Mr. K. Suryakrishnamurthy | 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) Mr. Deepak Lad Advocate for LOIL Group

Dated this 26th day of April, 2018.

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

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

Sd/-
(Yogesh Thar)
Chartered Accountant
Member

EXHIBIT "A"

STATEMENTS OF ATTENDANCES AT MEETING BEFORE THE COMMITTEE RELATING TO LOIL GROUP:-

Sr. No.	Dates of Meeting	Order Sheet No	Meeting attended by NSEL/ on behalf of NSEL	Meeting attended by Plaintiffs in Suit No. 173 of 2014	Meeting attended by Plaintiffs in Suit No. 121 of 2014	Meeting attended by/ on behalf LOIL	Meeting attended by EOW/ on behalf of EOW	Meeting attended by Competent Authority/ on behalf of Competent Authority
1.	03.12.2014	11B	Yes	Yes	Yes	Yes	Yes	Yes
2.	22.12.2014	14F	Yes	Yes	No	No	Yes	Yes
3.	22.01.2015	17B	Yes	Yes	No	No	Yes	No
4.	27.03.2015	24B	Yes	Yes	Yes	Yes	Yes	Yes
5.	13.04.2015	26A	Yes	Yes	Yes	Yes	Yes	Yes
6.	28.04.2015	28A	Yes	Yes	Yes	Yes	Yes	Yes
7.	24.08.2015	36A	Yes	Yes	Yes	Yes	Yes	No
8.	10.10.2015	44E	Yes	Yes	Yes	Yes	Yes	No
9.	30.11.2015	47D	Yes	Yes	Yes	Yes	Yes	No
10.	21.12.2015	50	Yes	Yes	No	Yes	No	No
11.	18.01.2016	53H	Yes	Yes	No	Yes	No	No
12.	29.01.2016	56A	Yes	Yes	No	Yes	Yes	Yes
13.	20.11.2017	73C	Yes	Yes	Yes	Yes	No	Yes
14.	08.12.2017	75A	Yes	No	Yes	Yes	No	No
15.	05.01.2018	76D	Yes	Yes	Yes	Yes	Yes	No
16.	08.02.2018	77C on Application No.71 of 2018	Yes	Yes	Yes	Yes	Yes	No
17.	01.03.2018	78B	Yes	Yes	Yes	Yes	No	No
18.	05.03.2018	78B Corrigendum	Yes	Yes	Yes	Yes	No	No
19.	13.03.2018	81A	Yes	Yes	Yes	Yes	Yes	No

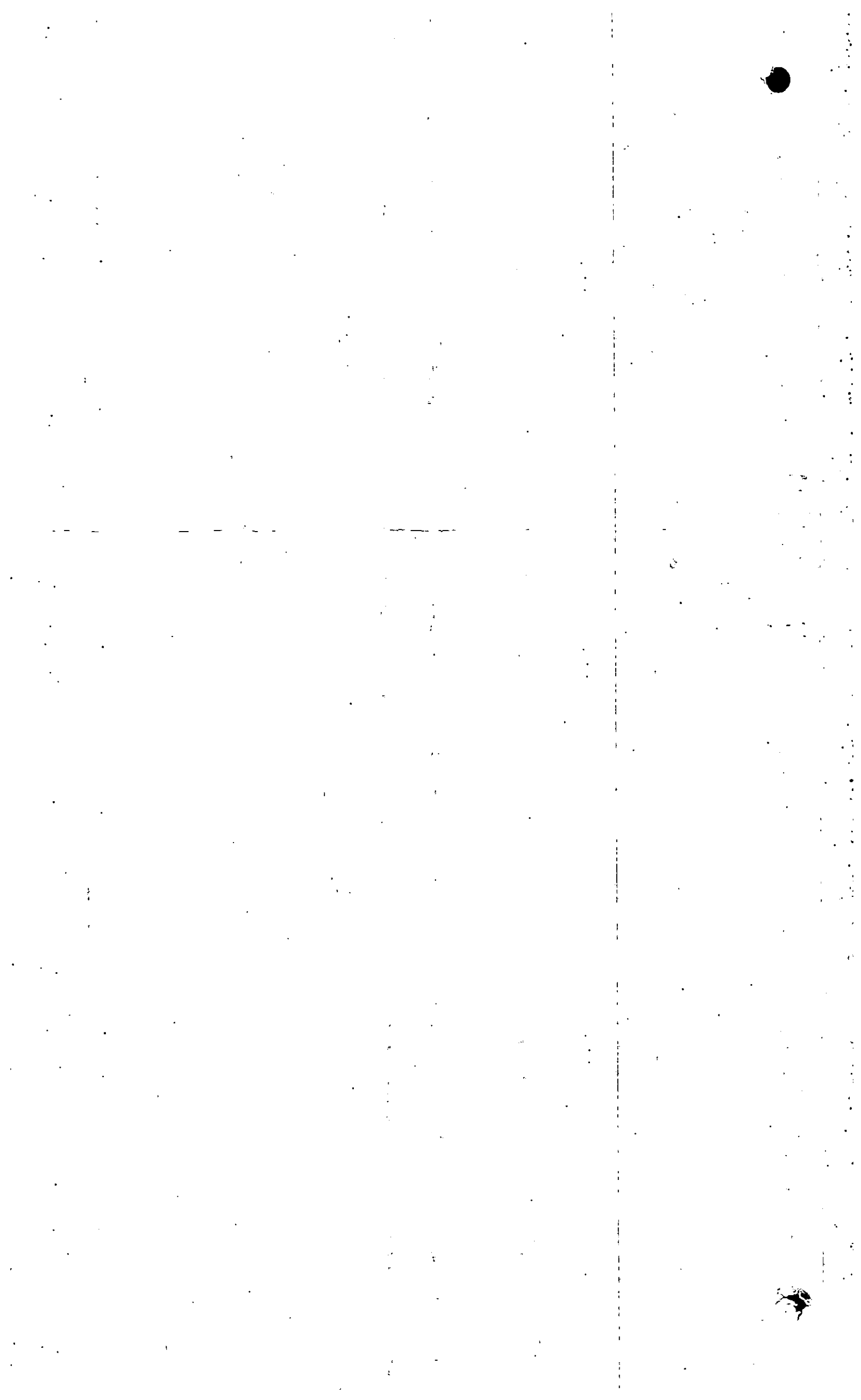


Exhibit "B-1"

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

REPORT NO. 39

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

versus

Financial Technologies (I) Ltd. & Ors. ...Defendants

Index to volume I - Orders passed by the Committee

Sr. No.	Date	Particulars	Pg. No.
1.	03.12. 2014	Order Sheet No.11B	1-3
2.	22.12. 2014	Order Sheet No.14F	4-6
3.	22.01.2015	Order Sheet No.17B	7-8
4.	27.03.2015	Order Sheet No. 24B	9-10
5.	13.04.2015	Order Sheet No.26A	11-13
6.	28.04. 2015	Order Sheet No.28A	14-15
7.	24.08.2015	Order Sheet No.36A	16-18
8.	10.10.2015	Order Sheet No.44E	19-20
9.	30.11.2015	Order Sheet No. 47D	21-22
10.	21.12.2015	Order Sheet No. 50	23-24
11.	18.01.2016	Order Sheet No.53H	25-26.
12.	29.01.2016	Order Sheet No. 56A	27-28
13.	16.01. 2017	Order passed by the Committee.	29-45
14.	20.11.2017	Order Sheet No. 73C	46-47
15.	20.11.2017	Order on Application No. 68 of 2017	48-51
16.	08.12. 017	Order Sheet No. 75A	52
17.	05.01.2018	Order Sheet No. 76D	53-54
18.	08.02.2018	Order Sheet No. 77C on Application 71 of 2018	55-56
19.	01.03. 2018	Order Sheet No. 78B	57-58
20.	05.03.2018	Corrigendum to Order Sheet No. 78B	59-60
21.	13.03.2018	Order Sheet No. 81A	61-62

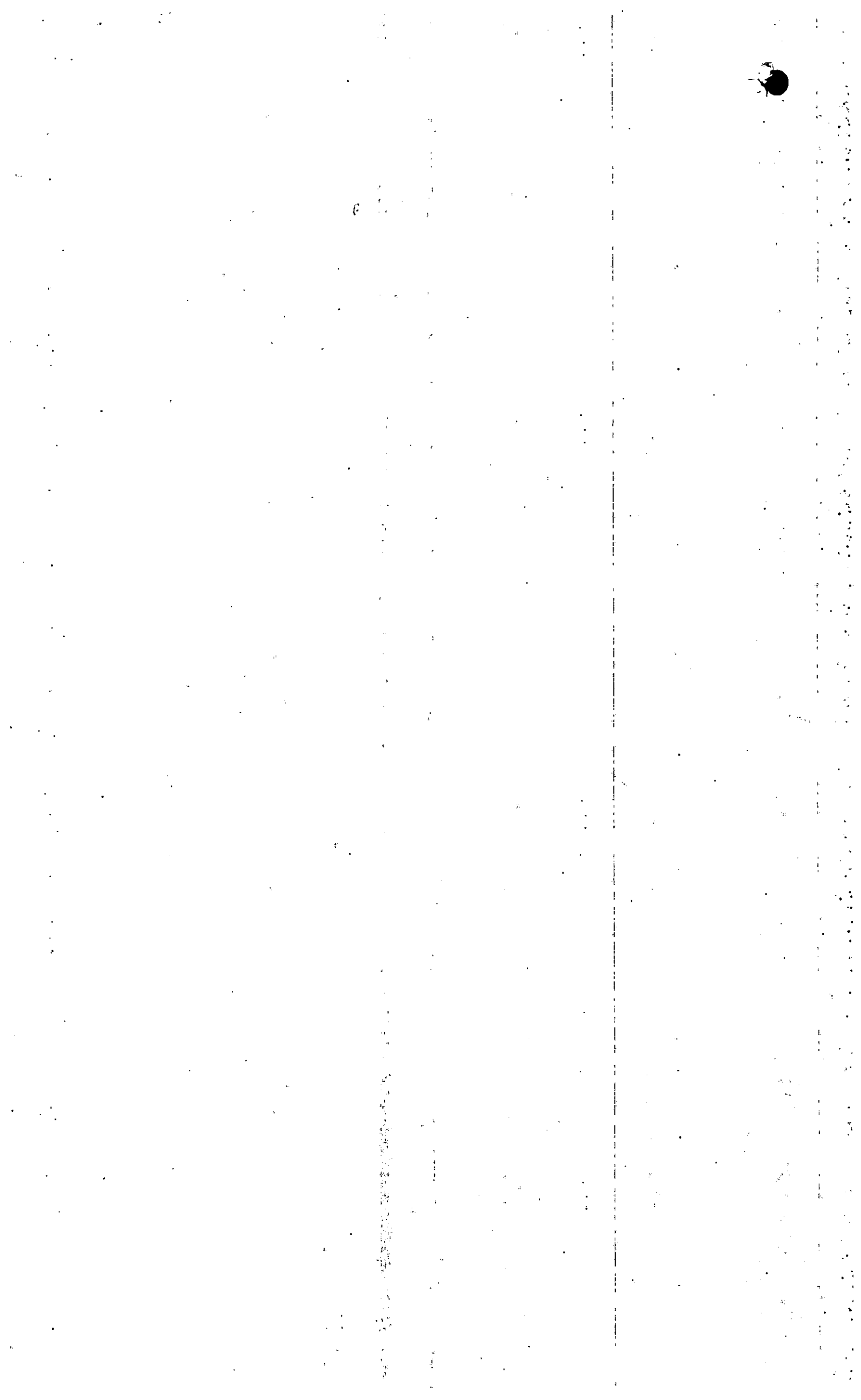


Exhibit "B-2"

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

REPORT NO. 39

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
versus
Financial Technologies (I) Ltd. & Ors. ...Defendants

Index to volume II - Notices and Correspondences

Sr. No.	Date	Description	Pg. No.
1.	22.10.2014	Notice addressed by the Secretary (Legal) of the Committee to LOIL Overseas Foods Ltd.	1-2
2.	22.10.2014	Notice addressed by the Secretary (Legal) of the Committee to LOIL Health Foods Ltd.	3-8
3.	22.10.2014	Notice addressed by the Secretary (Legal) of the Committee to LOIL Continental Foods Ltd.	9-14
4.	22.10.2014	Notice addressed by the Secretary (Legal) of the Committee to Punjab Greenfield Resources Ltd.	15-16
5.	03.12.2014	Letter addressed by the Advocate for LOIL Group to the Committee.	17
6.	16.12.2014	Letter addressed by the Secretary (Legal) of the Committee to Advocate for LOIL Group enclosing copy of Order Sheet No. 11B dated 3 rd December 2014.	18
7.	22.12.2014	Letter addressed by Advocate for LOIL Group to Committee.	19-20
8.	26.12.2014	Letter addressed by the Secretary (Legal) of the Committee to Advocate for LOIL Group enclosing copy of Order Sheet No.14F dated 22 nd December 2014.	21
9.	22.01.2015	Letter addressed by Advocate for LOIL Group to Committee.	22-23
10.	28.01.2015	Letter addressed by the Secretary (Legal) of the Committee to Advocate for LOIL Group enclosing copy of Order Sheet No.17B dated 22 nd January 2015.	24



11.	18.02.2015	Letter addressed by Advocate for LOIL Group to Committee.	25-26
12.	04.04.2015	Notice addressed by the Secretary (Legal) of the Committee to Advocate for LOIL Group.	27-32
13.	13.04.2015	Letter addressed by Advocate for LOIL Group to Committee.	33-34
14.	22.04.2015	Letter addressed by the Secretary (Legal) of the Committee to Advocate for LOIL Group enclosing copy of Order Sheet No.26A dated 13 th April 2015.	35
15.	30.04.2015	Letter addressed by the Secretary (Legal) of the Committee addressed to the Advocate for LOIL Group enclosing copy of Order Sheet No.28A dated 28 th April 2015.	36
16.	08.05.2015	Letter addressed by Advocate for NSEL to Committee.	37-38
17.	10.08.2015	Notice addressed by the Secretary (Legal) of the Committee to Advocate for LOIL Group.	39-41
18.	24.08.2015	Letter addressed by Advocate for LOIL Group to Committee.	42-44
19.	02.09.2015	Letter addressed by the Secretary (Legal) of the Committee to Advocate for LOIL Group enclosing copy of Order Sheet No.36A dated 24 th August 2015	45
20.	15.10.2015	Letter addressed by the Secretary (Legal) of the Committee enclosing Order Sheet No.44E dated 10 th October 2015 addressed to Advocate for LOIL Group.	46
21.	19.10.2015	Letter addressed by NSEL Action Investors Action Group to Mr. Kevic Setalvad, Senior Advocate.	47
22.	11.12.2015	Letter addressed by the Secretary (Legal) of the Committee to Advocate for LOIL Group enclosing copy of Order Sheet No.47D dated 30 th November 2015.	48
23.	17.12.2015	Letter addressed by Advocate for NSEL to Advocate for LOIL Group.	49-50
24.	07.01.2016	Letter addressed by the Secretary (Legal) of the Committee to Advocate for LOIL Group enclosing Order Sheet No.50.	51



25.	11.01.2016	Letter addressed by Advocate for LOIL Group to the Committee.	52
26.	14.01.2016	Notice addressed by the Secretary (Legal) of the Committee to Advocate for LOIL Group.	53-58
27.	21.01.2016	Letter addressed by the Secretary (Legal) of the Committee to Advocate for LOIL Group enclosing Order Sheet No.53H.	59
28.	04.02.2016	Letter addressed by the Secretary (Legal) of the Committee addressed to Advocate for LOIL Group enclosing copy of Order Sheet No.56A.	60
29.	24.01.2017	Letter addressed by the Secretary (Legal) of the Committee to Advocate for LOIL Group and Advocate for NSEL enclosing copy of order dated 16 th January 2017.	61-63
30.	24.10.2017	Notice addressed by the Secretary (Legal) of the Committee to Advocate for LOIL Group.	64-75
31.	28.11.2017	Letter addressed by the Secretary (Legal) of the Committee to Advocate for LOIL Group enclosing copy of Order Sheet No.73C.	76-78
32.	04.12.2017	Letter addressed by the Secretary (Legal) of the Committee to Advocate for LOIL Group and Advocate for NSEL enclosing copy of Order dated 20 th November 2017 on Application No. 68 of 2017.	79-80
33.	19.12.2017	Letter addressed by the Secretary (Legal) of the Committee to Advocates for NSEL and LOIL Group enclosing Order Sheet No.75A.	81-83
34.	09.01.2018	Letter addressed by Advocate for LOIL group to the Committee.	84-88
35.	17.01.2018	Letter addressed by the Secretary (Legal) of the Committee enclosing Order Sheet No.76D dated 5 th January 2018 to Advocate for LOIL Group.	89
36.	29.01.2018	Letter addressed by Advocate for LOIL Group to the Committee in respect of Affidavit.	90
37.	29.01.2018	Letter addressed by Advocate for LOIL Group to the Committee in respect of Vakalatnama.	91
38.	29.01.2018	Letter addressed by Advocate for LOIL Group to the Committee in respect of Application No.71 of 2018.	92
39.	01.02.2018	Notice addressed by the Secretary (Legal) of the Committee addressed to Advocate for NSEL and LOIL Group.	93

40.	15.02.2018	Letter addressed by the Secretary (Legal) of the Committee to Advocate for LOIL Group enclosing Order Sheet No.77C dated 8 th February 2018.	94-95
41.	15.02.2018	Letter addressed by Advocate for LOIL Group to the Committee.	96-103
42.	15.02.2018	Letter addressed by Advocate for LOIL Group to the Committee.	104-106
43.	16.02.2018	Letter addressed by Advocate for NSEL to LOIL Group.	107-109
44.	20.02.2018	Letter addressed by Advocate for NSEL to the Committee.	110-111
45.	22.02.2018	Letter addressed by Advocate for NSEL to LOIL Group.	112-114
46.	22.02.2018.	Letter addressed by Advocate for NSEL to the Committee.	115-116
47.	26.02.2018	Letter addressed by Advocate for LOIL Group to the Committee.	117-123
48.	28.02.2018	Letter addressed by Advocate for LOIL Group to Committee.	124
49.	01.03.2018	Letter addressed by Advocate for LOIL Group to the Committee relating to the affidavit dated 3 rd October 2015 which was show to them for the first time in the meeting.	125-126
50.	06.03.2018	Letter by Advocate for LOIL Group to the Committee.	127-147
51.	07.03.2018	Letter addressed by Advocate for NSEL to the Committee.	148-154
52.	07.03.2018	Letter addressed by Advocate for LOIL Group to Committee in respect of Affidavits dated 3 rd October, 2015 enclosing copy of Admission and denial.	155-156
53.	08.03.2018	Letter addressed by the Secretary (Legal) of the Committee to Advocate for LOIL Group enclosing copy of Order dated 1 st March 2018.	157-158A
54.	12.03.2018	Letter addressed by the Secretary (Legal) of the Committee enclosing copy Order Sheet No.78B dated 1 st March 2018 and Corrigendum dated 5 th March, 2018 to Advocate for LOIL.	159



55.	12.03.2018	Letter addressed by Advocate for LOIL Group to Committee.	160-163
56.	15.03.2018	Letter addressed by the Secretary (Legal) of the Committee enclosing copy of Order Sheet No.81A to Advocate for LOIL Group.	164
57.	19.03.2018	Letter by Advocate for LOIL Group to Committee in respect of written submission.	165-166
58.	19.03.2018	Letter by Advocate for LOIL Group to Committee in respect of application for inspection of documents.	167-168
59.	19.03.2018	Letter by Advocate for NSEL to Advocate for LOIL Group.	169-170
60.	20.03.2018	Letter addressed by Advocate for NSEL to Committee.	171-172
61.	27.03.2018	Letter by Advocate for LOIL Group to Committee.	173
62.	30.03.2018	Letter addressed by the Secretary (Legal) of the Committee to the Advocate for LOIL Group.	174-174A
63.	04.04.2018	Letter by Advocate for LOIL Group to the Committee.	175
64.	09.04.2018	Letter by Advocate for LOIL Group to the Committee.	176-178
65.	09.04.2018	Letter addressed by the Secretary (Legal) of the Committee to the Advocate for LOIL Group.	179-186

Exhibit "B-3"

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

REPORT NO. 39

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

versus

Financial Technologies (I) Ltd. & Ors. ...Defendants

Index to Volume III**Statements and Affidavits filed with the Committee in 2014**

<u>PLEADINGS</u>			
2014			
Sr. No.	Date	Particulars	Pg. No.
1.	23.04.2014	Third Party Notice No. 14 of 2014 in Suit No. 173 of 2014- LOIL Health Foods Limited and Anr.	Not Filed
2.	03.05.2014	Third Party Notice No. 13 of 2014 in Suit No. 173 of 2014-LOIL Continental Foods Limited.	Not Filed
3.	03.05.2014	Third Party Notice No. 6 of 2014 in Suit No. 173 of 2014 - LOIL Overseas Foods Limited.	Not Filed
4.	03.12.2014	Compilation of Documents submitted by NSEL.	1-271
5.	18.08.2012	Trading-cum-clearing membership undertaking between NSEL and LOIL Overseas Foods Limited.	272-380
6.	29.09.2012	Trading-cum-clearing membership undertaking between NSEL and LOIL Health Foods Limited.	
7.	29.09.2012	Trading-cum-clearing membership undertaking between NSEL and LOIL Overseas Foods Limited.	

Exhibit "B-4"

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

REPORT NO. 392

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

versus

Financial Technologies (I) Ltd. & Ors. ...Defendants

Index to Volume IV**Statements and Affidavits filed with the Committee in 2015**

<u>PLEADINGS</u>			
2015			
Sr. No.	Date	Particulars	Page No.
1.	27.03.2015	Statement of liability of LOIL Overseas Foods Limited.	381-428
2.	27.03.2015	Statement of liability of LOIL Health Foods Limited.	429-472
3.	27.03.2015	Statement of liability of LOIL Continental Foods Limited.	473-517
4.	03.10. 2015	Affidavit on behalf of NSEL - ledger LOIL Overseas Foods Limited.	518-573
5.	03.10. 2015	Affidavit on behalf of NSEL - ledger LOIL Health Foods Limited.	574-624
6.	03.10. 2015	Affidavit on behalf of NSEL - ledger LOIL Continental Foods Limited.	625-677

Exhibit "B-5"

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

REPORT NO. 39

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

versus

Financial Technologies (I) Ltd. & Ors. ...Defendants

Index to Volume V

Statements and Affidavits filed with the Committee in 2015

<u>PLEADINGS</u>			
2015			
Sr. No.	Date	Particulars	Page No.
1.	10.10.2015	Statement of Facts with Relevant dates and events- LOIL Overseas Foods Limited.	678-987

Exhibit "B-6"

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

REPORT NO. 39

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

versus

Financial Technologies (I) Ltd. & Ors. ...Defendants

Index to Volume VI**Statements and Affidavits filed with the Committee in 2015**

PLEADINGS			
2015			
Sr. No.	Date	Particulars	Page No.
1.	10.10.2015	Statement of Facts with Relevant dates and events- LOIL Health Foods Limited.	988-1297

Exhibit "B-7"

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

REPORT NO. 39

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

versus

Financial Technologies (I) Ltd. & Ors. ...Defendants

Index to Volume VII**Statements and Affidavits filed with the Committee in 2015**

PLEADINGS			
2015			
Sr. No.	Date	Particulars	Pg. No.
1.	10.10.2015	Statement of Facts with Relevant dates and events- LOIL Continental Foods Limited.	1298-1606



Exhibit "B-8"

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

REPORT NO. 39

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

versus

Financial Technologies (I) Ltd. & Ors.

...Defendants

Index to Volume VIII**Statements and Affidavits filed with the Committee in 2015**

<u>PLEADINGS</u>			
2015			
Sr. No.	Date	Particulars	Pg. No.
1.	10.10.2015	Statement of facts with relevant dates and events-Punjab Greenfield Resources Limited.	1607-1636
2.	15.12.2015	Written submission on behalf of LOIL	1637-1669

Exhibit "B-9"

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

REPORT NO. 39

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

versus

Financial Technologies (I) Ltd. & Ors. ...Defendants

Index to Volume IX**Statements and Affidavits filed with the Committee in 2016 and 2017**

Sr. No.	Date	Particulars	Page No.
2016			
1.	29.01.2016	Written Submission by NSEL	1-40
2017			
2.	21.09.2017	Copy of Order passed in Civil Revision No. 7081 of 2015 by High Court of Punjab and Haryana at Chandigarh.	41-59
3.	20.11.2017	Application No. 68 of 2017 (Order Passed on 20.11.2017) of LOIL Group.	60-76
4.	08.12.2017	Application filed by LOIL Group	77

Exhibit "B-10"

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

REPORT NO. 39

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

versus

Financial Technologies (I) Ltd. & Ors. ...Defendants

Index to Volume X**Statements and Affidavits filed with the Committee in 2018**

2018			
Sr No.	Date	Particulars	Page No.
1.	16.01.2018	Affidavit filed by LOIL Group	1-4
2.	19.01.2018	Application No. 71 of 2018 for rectification of Order Sheet dated 8 th December, 2017 (Order passed on 08.02.2018 in Order sheet No. 77C)	5-28
3.	29.01.2018	Vakalatnama of Advocate for LOIL Group.	29-34
4.	20.02.2018	Documents filed by Advocate for NSEL in respect Ledger accounts, statement of amounts paid by NSEL, Statement of amounts received by NSEL, account head wise details, bank account statements of LOIL Group.	35-417
5.	27.02.2018	Affidavit filed by LOIL on admission and denial of documents filed by NSEL	418-451
6.	01.03.2018	Note submitted by NSEL.	452-512
7.	01.03.2018	Submitted by LOIL Group- Supreme Court Cases 617 M/s. Bareilly Electricity Supply Co. Ltd. versus The Workmen and Others	513-529
8.	06.03.2018	Affidavit of Admission and denial of documents tendered on 01/03/2018	530-534

9.	16.03.2018	Application on behalf of Applicants/Third Party notice for inspection of original documents	535-555
10.	16.03.2018	Certificate under Section 65B of the Indian Evidence Act, 1872 for LOIL Continental foods Ltd.	556-557
11.	16.03.2018	Certificate under Section 65B of the Indian Evidence Act, 1872 for LOIL Health Foods Ltd.	558-559
12.	16.03.2018	Certificate under Section 65B of the Indian Evidence Act, 1872 for LOIL Overseas foods Ltd.	560-561
13.	19.03.2018	Written submissions by LOIL	562-564
14.	27.03.2018	Additional written submission on behalf of LOIL Group.	565-698

LOIL Group

- 1) LOIL Group includes LOIL Health Foods Limited, LOIL Continental Foods Limited and LOIL Overseas Foods Limited.
- 2) Total amount due – Rs 736.89 crores: **[Page 1]**

Sr No	LOIL Health	LOIL Continental	LOIL Overseas
Amount Due	Rs.294.48	Rs. 356.21 crores	Rs. 86.19 crores
Amount Paid till 28 th November 2014	Rs. 7 Crores	Rs. 8.5 crores	Rs. 1.08 crores
Balance Amount.	Rs. 287.48 Crores	Rs. 347.71 crores.	Rs. 85.11 crores

- 3) Commodity Trades: Paddy

- 4) List of Clients:

LOIL Health (Trading cum clearing member)

Client

LOIL Continental

LOIL Continental (Trading cum clearing member)

Client

LOIL Health

LOIL Overseas (Trading cum clearing member)

Clients

- 1) LOIL Continental
- 2) LOIL Health
- 3) Punjab Greenfield-Recourses Limited-settled position

Mr. Balbeer Singh Uppal, Gurdeep Singh and Sanjeev Sood – Director in LOIL overseas

Mr. Balbeer Singh Uppal, Gurdeep Singh and Roshanlal Sood – Director in LOIL Health

Mr. Balbeer Singh Uppal, Gurdeep Singh and Ashok Kumar Chopra - Director in LOIL Continental

- 5) Admission of liability by 14th August 2013 **email** does not include amount **[Page 2]**

- 6) **MPID Proceedings:**

- a) MA No 161 of 2014 filed by NSEL for defreezing of 7 accounts of LOIL group (details mentioned below) freezed by EOW and to transfer the amount to NSEL escrow account. Amount is Rs. 1 crores 18 lakhs approx. Application is pending.
All three LOIL Group have filed their reply stating that various suits have been filed in the courts at fatehgarh sahib and have stayed the operation of attachment by EOW. It is also submitted that MIPD is not applicable and therefore MPID Court does not have jurisdiction.
Matter is Pending. **[Page 3-190]**

- 7) **LOIL has filed 12 Suit in Fatehgarh Sahib (Punjab)**

• LOIL Health Foods Limited

- (a) Suit No 8 – LOIL Continental v/s IBMA and NSEL
- (b) Suit No 9 - LOIL Continental v/s Pace Agro Farms and NSEL
- (c) Suit No 11 – LOIL Continental v/s Anand Rathi Commodities and NSEL
- (d) Suit No 13 – LOIL Continental v/s IBMA and NSEL

Prayers

- i. Pass a decree of declaration to the effect that the transactions dated 19.07.2013, 22.07.2013, 23.07.2013, 24.07.2013, 25.07.2013, 06.08.2013, 20.08.2013 and 26.08.2013 whereby the Plaintiff has deposited an amount of Rs. 46,35,00,000.00 (Rupees Forty Six Crore Thirty Five Lacs Only) in settlement account No: 00990680026554 maintained at Fort, Mumbai branch of the HDFC Bank for purchase of commodities are valid, legal and complete.
- ii. Pass a decree of declaration to the effect that the title to the commodities vests with the Plaintiff.
- iii. Pass a decree of prohibitory injunction against the Defendants Nos.1 & 2 restraining them in perpetuity from interfering in plaintiffs rights to recourse to the merchandise.
- iv. Pass a decree of mandatory injunction mandating Defendants to provide inspection and documents enabling the plaintiff to access to the merchandise in question.
- v. Award costs of the suit in favour of the Plaintiff and against the Defendants.
- vi. Pass such further order(s) and / or direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the Interest of Justice.

• LOIL Health Foods Limited

- (e) Suit No 5 – LOIL Health v/s Anand Rathi & NSEL
- (f) Suit No 7 – LOIL Health v/s Pace Agro Farms & NSEL
- (g) Suit No 10 – LOIL Health v/s Arihant Future & NSEL
- (h) Suit No 13 – LOIL Health v/s Arihant Future & NSEL.

Prayers

- i. Pass a decree of declaration to the effect that the transactions dated 17.07.2013, 18.07.2013, 19.07.2013, 22.07.2013, 23.07.2013, 24.08.2013, 20.08.2013 and 26.08.2013 whereby the Plaintiff has deposited an amount of Rs. 80,75,00,000.00 (Rupees Eighty Crore Seventy Five Lacs Only) in settlement account No: 00990680026564 maintained at Fort, Mumbai branch of the HDFC Bank for purchase of commodities are valid, legal and complete.
- ii. Pass a decree of declaration to the effect that the title to the commodities vests with the Plaintiff.
- iii. Pass a decree of prohibitory injunction against the Defendants Nos.1 & 2 restraining them in perpetuity from interfering in plaintiffs rights to recourse to the merchandise.
- iv. Pass a decree of mandatory injunction mandating Defendants to provide inspection and documents enabling the plaintiff to access to the merchandise in question.
- v. Award costs of the suit in favour of the Plaintiff and against the Defendants.
- vi. Pass such further order(s) and / or direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the Interest of Justice.

• LOIL Overseas

- (i) Suit No 6 – LOIL Overseas v/s IBMA & NSEL
- (j) Suit No 12 - LOIL Overseas v/s IBMA & NSEL
- (k) Suit No 15 - LOIL Overseas v/s Anand Rathi & NSEL
- (l) Suit No 15/1- LOIL Overseas v/s Pace Agro Farms & NSEL.

Prayers

- i. Pass a decree of declaration to the effect that the transactions dated 17.07.2013, 18.07.2013, 22.07.2013, 23.07.2013, 24.07.2013, 25.07.2013, 26.07.2013 and 26.08.2013 whereby the Plaintiff has deposited an amount of Rs. 28,20,00,000.00 (Rupees Twenty Eight Crore Twenty Lacs Only) in the Settlement account bearing No. 00990680025776 maintained at Fort, Mumbai branch of the HDFC Bank for purchase of commodities are valid, legal and complete.
- ii. Pass a decree of declaration to the effect that the title to the commodities vests with the Plaintiff
- iii. Pass a decree of prohibitory injunction against the Defendants Nos.1 & 2 restraining them in perpetuity from interfering in plaintiffs rights to recourse to the merchandise
- iv. Pass a decree of mandatory injunction mandating Defendants to provide inspection and documents enabling the plaintiff to access to the merchandise in question.
- v. Award costs of the suit in favour of the Plaintiff and against the Defendants
- vi. Pass such further order(s) and / or direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the Interest of Justice

Identical Orders in all 12 Suits are passed all are dated 4th January 2014 (ex-parte)
[Page 191-226]

"Defendants are hereby restrained from alienating or encumbering the commodities which form a subject matter of the present suit and from indulging in any further trading activity with regard to the said subject matter till 10th February 2014"

Order 7 Rule 11 application filed by NSEL before the same Court, the matter argued and reserved for orders (next date January 2015).

All brokers have filed Section 8 application before the same Court, the same is pending.

- 8) Three more Suit over and above these 12 Suits are filed by LOIL Group independently for restraining NSEL from publishing any circular, notice, advertisement against the Plaintiff or taking such like coercive steps.

- Suit No 717 of 2014 – LOIL Continental Foods Limited v/s NSEL.
- Suit No 723 of 2014 – LOIL Overseas v/s NSEL
- Suit No 718 of 2014 – LOIL Continental v/s NSEL

- (i) pass a decree of declaration to the effect that the news update appearing on the website of NSEL from 30.05.2014 onwards titled as "NSEL DEFAULTERS", as detailed in paragraph 43 of the plaint, is false, scandalous, insinuatary and defamatory to the Plaintiff.

- 66
- (ii) pass a decree of declaration to the effect that the public notice issued by NSEL and published in The Economic Times and The Tribune of 22nd July 2014 is false, scandalous, insinuatory and defamatory to the Plaintiff;
 - (iii) pass a decree of permanent injunction in favour of the Plaintiff and against the Defendant thereby restraining the Defendant, its agents, assigns and representatives from printing or publishing or circulating the news update appearing on the website of NSEL from 30.05.2014 onwards titled as "NSEL DEFAULTERS" or any public notice referring to the Plaintiff as a defaulter or publishing the photographs of its Directors or other officers / promoters or publishing any like advertisement, notice or story or any other material which is defamatory to the Plaintiff in print or electronic or any other form;
 - (iv) pass a decree of mandatory injunction in favour of the Plaintiff and against the Defendant thereby directing the Defendant, its agents, assigns and representatives to remove/withdraw/recall from its website or from the market all such news update appeared on the website of NSEL from 30.05.2014 onwards titled as "NSEL DEFAULTERS" as well as any such or similar material or review of the same in printed or electronic or any other form;
 - (v) pass a decree of mandatory injunction in favour of the Plaintiff and against the Defendant thereby directing the Defendant, to tender an unqualified and unconditional public apology to the Plaintiff for having defamed the Plaintiff by publishing / posting on its website the update titled as "NSEL DEFAULTERS" and by publishing the public notice in The Economic Times and The Tribune of 22nd July 2014;
 - (vi) award costs of the suit in favour of the Plaintiff and against the Defendant; and
 - (vii) grant any other or further relief in favour of the Plaintiff and against the Defendant that this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interests of justice

Identical Orders in all 3 Suits are passed all are dated 25th July 2014 (ex-parte) [Page 227-232]

" The Court is satisfied that there is a prima facie case in favour of the Plaintiff, the Defendant is restrained from printing and/or publishing or circulating any notice or advertisement in news paper or in any other manner or any form against the Plaintiff or any such like coercive steps which lowers the goodwill and image of the Plaintiff and is defamatory to the Plaintiff in any manner till further orders."

- 9) One more Suit over and above these 12 Suits are filed by LOIL Group independently for rendition of the accounts and for mandatory injunction against Economic Offences Wing ("EOW").
 - Suits No 0006791 of 2014 – LOIL Continental Foods Limited, LOIL Health and LOIL Overseas v/s NSEL, Anand Rathi Commodities International Private Limited, Arihant Futures and Commodities Limited, Pace Agro Farms Private Limited, Indian Bullion Market Association and Sr Insp of Police (EOW), Mumbai.

Order dated 4th August 2014 (ex-parte) is passed in this Suit. [Page 233-241]

" This Court is satisfied that there is a prima facie case in favour of the Plaintiff's so the Defendants their agents, representatives are restrained from taking any coercive steps in any manner against the Plaintiff for determination of the liability of the Plaintiff's if any till further orders."

- 10) 3 Writ Petition have been filed by LOIL Group:

Writ Petition No. 14442 of 14

Writ Petition No. 14451 of 14

Writ Petitions are challenging the invocation of MPID Act and notices issued to the Collector thereunder by EOW, Mumbai.

- 11) No cheques are available with NSEL and therefore no 138 applications have been filed.
- 12) EOW has attached 18 properties. [Page 242-244] NSEL has submitted list of one property which is not attached [202, Naman Corporate Link Wing C BKC Bandra East, Mumbai].
- 13) NSEL has also addressed a letter dated 6th February 2014, requesting EOW to attach their Brands i.e. "Laxmi Foods". [Page 245-246] On 24th Feb, 2014 NSEL has written another letter for releasing funds lying in the accounts frozen by EOW. [Page 247-248]
- 14) Specific complaint was filed by NSEL with EOW against LOIL Group which was not considered.
- 15) An application under section 156(3) of CR. P. C is made before Metropolitan Magistrates' court at Esplande. The same is pending.
- 16) E-mails addressed by NSEL requesting to settle the amounts [Page 249-268]
- 17) NSEL hereby request that EOW should submit the money trail, Bank account details with is attached along with bank statement of such attached account and details of all assets of all directors of LOIL Group.
- 18) There is 3 kilometer long factory situated at Khamao, Chandigarh. DAR and stock offer letters are issued from this factory by LOIL, this is the factory cum warehouse of LOIL. Therefore, goods are in possession of LOIL.

4

Description of ledger entries in NSEL books of account

I. TYPES OF SUB-LEDGERS

There are three types of sub-ledgers:

- i. Initial Margin Ledger - This is used to reflect bank Pay-In / Pay-Out received / paid to Member towards Margin Requirements;
- ii. Member Daily Obligation Ledger - This is used to reflect Member Obligations not directly related to trades such as Exchange Transaction charges and any bank pay-in / pay-out towards the same.
- iii. Member's Delivery Obligations Ledger - This is used to reflect Member's Obligations related to Trades and Charges related to the same and bank pay-in / pay-out towards the same.

II. DESCRIPTION OF ENTRIES IN MEMBER'S DELIVERY OBLIGATIONS LEDGER

There are two types of entries in the Member's Delivery Obligations Ledger as follows:

1. **Bank Entries** - These entries are classified into:
 - o Bank Payment (BP) is debit entry reflecting payment done by NSEL to Member.
 - o Bank Receipt (BR) is credit entry reflecting payment received by NSEL from Member.These entries in the NSEL Ledger are consistent with the Bank Statement of Member's Bank Account.
2. **Settlement Transactions (ST)** - These entries are classified into:
 - o Pay-Out Entry- is the credit entry reflecting the amount payable by NSEL to Selling Member towards the quantity sold by Member as per the obligation report and charges thereon.
This credit entry for Pay-Out is done on the Settlement Day [2nd business day from the date of trade for T+2 contracts].
 - o Pay-IN Entry- is the debit entry reflecting the amount payable by Buying Member to NSEL towards the quantity purchased as per obligation report.
This debit entry for Pay-In is done on the Settlement Day [2⁵th business day from the date of trade for T+25 contracts].
3. **Adjustment of Shortage in Pay-in**
 - I) Buying Member is required to complete Pay-In between 9.00 AM to final cut-off time of 1 p.m. on the due date (settlement date). Any shortage in Pay-in is kept outstanding in the Member's account.
 - II) During the day when there is Pay-Out to be made to a Member, such amount is adjusted towards the debit lying in the Member's account, if any. After such adjustment, the difference, if any is paid to the Member.

COMMITTEE CONSTITUTED UNDER BOMBAY HIGH COURT

ORDER DATED 2ND SEPTEMBER 2014 IN

SUIT NO. 173 OF 2014 AND OTHER RELATED SUITS

Mr. Justice V.C Daga
Former Judge – Bombay
Chairman
51, Rajgir Chambers, 6th Floor,
Opposite Customs House,
12/14 Shahid Bhagat Singh Rd,
Fort, Mumbai – 400 001
Tel: +91-22-22658622
Email: vijaycdaga@gmail.com

Mr. J. S Solomon
Advocate & Solicitor
Member
Calcot House, 3rd Floor,
8/10, M. P. Shetty Marg,
(Tamarind Street),
Fort, Mumbai 400023.
Tel: +91-22-66273900
Email: jonathan.solomon@slmnc.co.in

Mr. Yogesh Thar
Chartered Accountant
Member
Merchant Chamber, 3rd Floor, 41,
New Marine Lines,
Mumbai 400020
Tel: +91-22-22014922
Email: yogesh.thar@bsmco.net

Ref No. 6 of 2015-16 BY COURIER / E-MAIL

Date: 4th April, 2015

To,

1. LOIL Continental Foods Ltd.,
SCO 18-19, 1st Floor, Sector 9-D,
Madhya Marg, Chandigarh – 160017.
2. LOIL Health Foods Ltd.
SCO 18-19, 1st Floor, Sector 9-D,
Madhya Marg, Chandigarh – 160017.
3. LOIL Overseas Foods Ltd.
4128, 2nd Floor, Naya Bazar,
Delhi – 110 006.

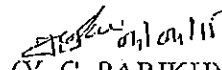
Re: Notice to appear before the committee on 13th April 2015 at 2:00 p.m. in respect of amounts due and payable to National Spot Exchange Ltd. ("NSEL").

Dear Sir/Madam,

At the meeting held before the committee on 22nd January 2015, you were directed to inform the Hon'ble Committee on 19th March 2015 about the progress in the Appeal filed by you. Thereafter, by letter dated 18th March 2015, your Advocates were informed of the adjournment of the meeting on 19th March 2015 to 27th March 2015. However, on 27th March 2015, none appeared on your behalf and the matter is now adjourned to 13th April 2015 at 2:00 p.m.

Please find attached herewith a copy of the Order Sheet No. 17B dated 22nd January 2015 and Order Sheet No. 24B dated 27th March 2015.

You are called upon to appear before the Hon'ble Committee on 13th April 2015 at 2:00 p.m. at Committee Room, World Trade Center, Center-1, Cuff Parade, Mumbai, either in person or through your Advocate or through your authorized representative and to inform the committee about the progress in the appeal filed by LOIL and group companies.


(Y. C. PARIKH)
Secretary (Legal)

For and on behalf of the Committee

Encl: As above

CC:

✓ Mr. Govind B. Solanke,
Advocate for LOIL Group,
10, Sai Sadan, 4th Floor,
68, Janmabhoomi Marg,
Near Flora Fountain,
Opp. Siddharth College of Commerce,
Fort, Mumbai - 400 001.

COMMITTEE CONSTITUTED UNDER BOMBAY HIGH COURT

ORDER DATED 2ND SEPTEMBER 2014 IN

SUIT NO. 173 OF 2014 AND OTHER RELATED SUITS

<p>Mr. Justice V.C Daga Former Judge – Bombay Chairman 51, Rajgir Chambers, 6th Floor, Opposite Customs House, 12/14 Shahid Bhagat Singh Rd, Fort, Mumbai – 400 001 Tel: +91-22-22658622 Email: vijaycdaga@gmail.com</p>	<p>Mr. J. S Solomon Advocate & Solicitor Member Calcut House, 3rd Floor, 8/10, M. P. Shetty Marg, (Tamarind Street), Fort, Mumbai 400023. Tel: +91-22-66273900 Email: jonathan.solomon@slmnco.in</p>	<p>Mr. Yogesh Thar Chartered Accountant Member Merchant Chamber, 3rd Floor, 41, New Marine Lines, Mumbai 400020 Tel: +91-22-22014922 Email: yogesh.thar@bsmco.net</p>
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Ref No. 6 of 2015 -16 BY COURIER / E-MAIL

Date: 4th April, 2015

To,

1. LOIL Continental Foods Ltd.,
SCO 18-19, 1st Floor, Sector 9-D,
Madhya Marg, Chandigarh – 160017.
2. LOIL Health Foods Ltd.,
SCO 18-19, 1st Floor, Sector 9-D,
Madhya Marg, Chandigarh – 160017.
3. LOIL Overseas Foods Ltd.
4128, 2nd Floor, Naya Bazar,
Delhi – 110 006.

Re: Notice to appear before the committee on 13th April 2015 at 2:00 p.m. in respect of amounts due and payable to National Spot Exchange Ltd. ("NSEL").

Dear Sir/Madam,

At the meeting held before the committee on 22nd January 2015, you were directed to inform the Hon'ble Committee on 19th March 2015 about the progress in the Appeal filed by you. Thereafter, by letter dated 18th March 2015, your Advocates were informed of the adjournment of the meeting on 19th March 2015 to 27th March 2015. However, on 27th March 2015, none appeared on your behalf and the matter is now adjourned to 13th April 2015 at 2:00 p.m.

Please find attached herewith a copy of the Order Sheet No. 17B dated 22nd January 2015 and Order Sheet No. 24B dated 27th March 2015.

You are called upon to appear before the Hon'ble Committee on 13th April 2015 at 2:00 p.m. at Committee Room, World Trade Center, Center-1, Cuff Parade, Mumbai, either in person or through your Advocate or through your authorized representative and to inform the committee about the progress in the appeal filed by LOIL and group companies.

Encl: As above

CC:

✓ Mr. Govind B. Solanke,
Advocate for LOIL Group,
10, Sai Sadan, 4th Floor,
68, Janmabhoomi Marg,
Near Flora Fountain,
Opp. Siddharth College of Commerce,
Fort, Mumbai - 400 001.

Y. C. Parikh
(Y. C. PARIKH)

Secretary (Legal)

For and on behalf of the Committee

COMMITTEE CONSTITUTED UNDER BOMBAY HIGH COURT

ORDER DATED 2ND SEPTEMBER 2014 IN

SUIT NO. 173 OF 2014 AND OTHER RELATED SUITS

Mr. Justice V.C Daga
Former Judge – Bombay
Chairman
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Mr. Yogesh Thar
Chartered Accountant
Member
Merchant Chamber, 3rd Floor, 41,
New Marine Lines,
Mumbai 400020
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4128, 2nd Floor, Naya Bazar,
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7A

Please find attached herewith a copy of the Order Sheet No. 17B dated 22nd January 2015 and Order Sheet No. 24B dated 27th March 2015.

You are called upon to appear before the Hon'ble Committee on 13th April 2015 at 2:00 p.m. at Committee Room, World Trade Center, Center-1, Cuff Parade, Mumbai, either in person or through your Advocate or through your authorized representative and to inform the committee about the progress in the appeal filed by LOIL and group companies.

Y. C. Parikh
(Y. C. PARIKH)
Secretary (Legal).

For and on behalf of the Committee

Encl: As above

CC:

✓ Mr. Govind B. Solanke,
Advocate for LOIL Group,
10, Sai Sadan, 4th Floor,
68, Janmabhoomi Marg,
Near Flora Fountain,
Opp. Siddharth College of Commerce,
Fort, Mumbai - 400 001.

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

SUIT NO.173 OF 2014

Modern India Ltd. and Ors. ... Plaintiffs
versus
Financial Technologies (India) Ltd. & Ors. ... Defendants

Mr. Akshay Patil with Mr. Ashwin Bhadang i/by M/s. Federal and Rashmikant, for Plaintiffs.

Dr. Birendra Saraf with Mr. Ameet Naik, Ms. Anuja Jhunjhunwala, Ms. Purvi Doctor i/by M/s. Naik Naik and Co., for Defendant No.2.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Kevic Setalvad, Senior Advocate with Mr. Kishan Khurana, Mr. Sagar Ghoghure, Ms. Sunil Patil i/by Mr. Govind B. Solanke, for LOIL Group.

Ms. Medha Agarwal i/by M/s. Khare Legal Chambers, for Third Party Noticee Nos.1, 2 and 3 and 6 in TPN No.10 of 2014.

Mr. Binal Nisar with Mr. Sandeep Shukla i/by Mr. Dhiren Shah, for Defendant Nos.10 and 11.

Mr. Rahul S. Kadam, for Defendant No.14.

CORAM: S.J. KATHAWALLA, J.

DATE: 6th OCTOBER, 2015

P.C.:

1. Heard learned Advocates for the parties and the following order is passed:

(i) LOIL Health, LOIL Continental, LOIL Overseas and Punjab Green Field Resources Limited, shall without prejudice to their rights and contentions raised in the pending appeal, appear before the Committee on 10th October, 2015 and make all their submissions including the submission that the directions issued to them by the

ssp

1/3

Committee to produce their accounts/documents etc., amounts to issuing/taking of coercive steps.

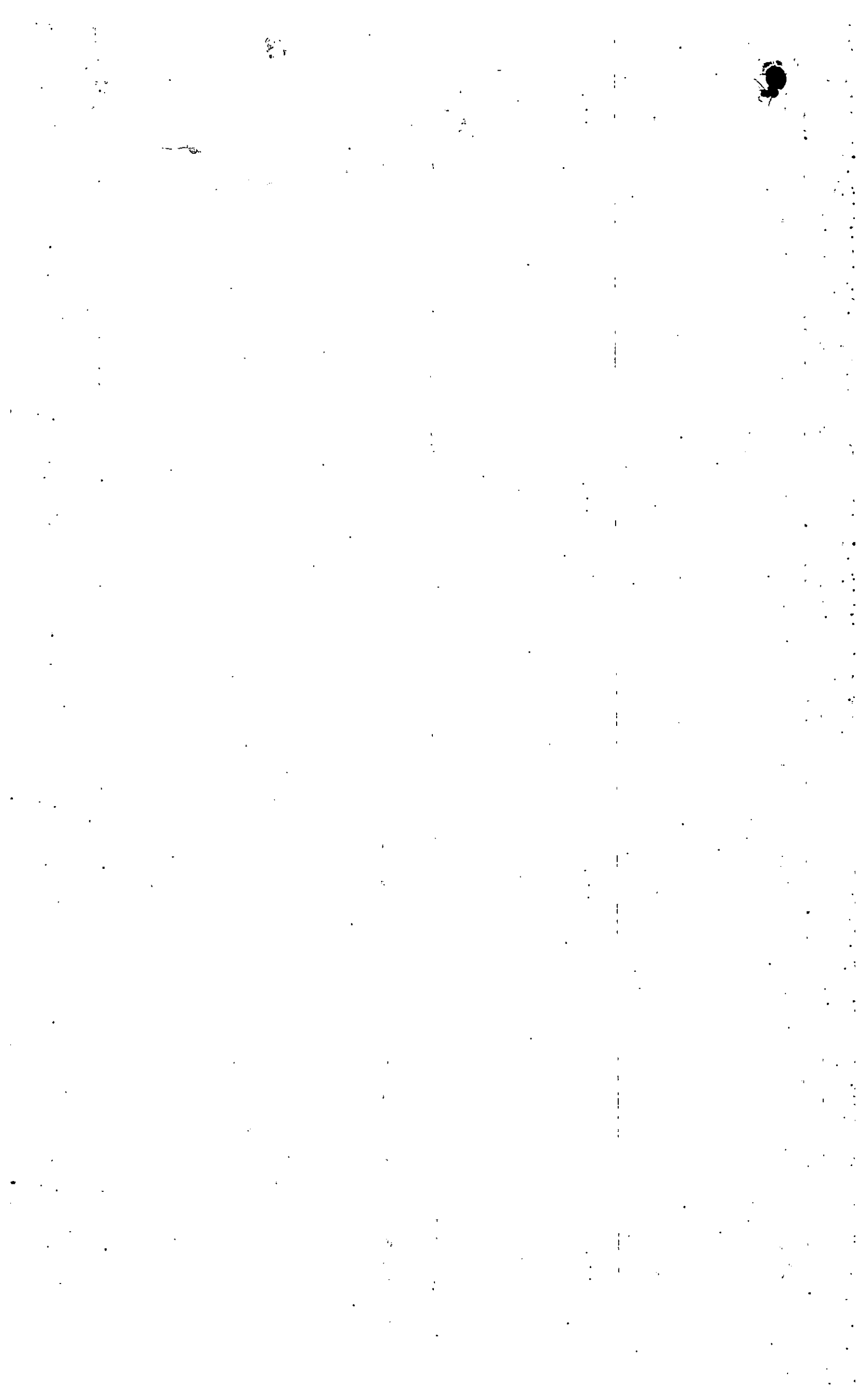
(ii) The Committee shall place the matter pertaining to LOIL Health, LOIL Continental, LOIL Overseas and Punjab Green Fields Resources Ltd., at the bottom of their Board on 10th October, 2015 and after hearing the parties pass appropriate orders. Stand over to 12th October, 2015 for Directions.

(S.J.KATHAWALLA, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.

Bombay High Court



BEFORE THE COMMITTEE CONSTITUTED UNDER THE BOMBAY HIGH
COURT ORDER DATED 2ND SEPTEMBER, 2014 IN SUIT NO. 171 OF 2014

AND OTHER RELATED SUITS

COMPRISING OF MR. JUSTICE V.C. DAGA (RETD), CHAIRMAN,
MR. J. S. SOLOMON (ADVOCATE AND SOLICITOR), MEMBER

AND

MR. YOGESH THAR (CHARTERED ACCOUNTANT), MEMBER

REPORT NO. 14 OF 2015

IN

SUIT NO. 173 OF 2014

WITH

T.P. NOTICE NO.2 OF 2014 TO T.P. NOTICE NO. 15 OF 2014

WITH

OTHER RELATED SUITS.

ORDER

(Dated 16.1.2017)

1. M/s LOIL Health Foods Ltd., LOIL Continental Foods Ltd., LOIL Overseas Foods Ltd. and Punjab Greenfields Resources Ltd. (hereinafter called as "LOIL Group") moved an Application raising various objections to the jurisdiction of this Committee to issue notices calling upon them to appear before this Committee and produce their books of accounts and other relevant information for the purpose of determining their liability towards National Spot Exchange Limited ("NSEL" for short) so as to make proper reporting to the Hon'ble High Court to facilitate settlement between the parties. The challenge is based on the contention that issuance of notices by the Committee and calling upon them to produce such information ex-facie constitute taking coercive steps against them. As such the Committee should withdraw its directions contained in the orders dated 3.12.2014, 13.04.2015 and 28.04.2015 and last such notice being dated 10.8.2015. Another challenge is that the aforesaid orders and notice are in violation of the order passed by Hon'ble Civil Court at Fatehgarh Sahib, Punjab and in breach of Doctrine of Comity and Res-sub-judice.

2. In order to appreciate the above submissions challenging the jurisdiction of this Committee, some background facts need to be sketched.

3. **BACKGROUND FACTS:**

M/s Modern India Limited and others have filed a Suit for recovery, being Suit No. 173 of 2014 for a sum of Rs.5087,22,52,883/- along with interest against Financial Technologies (India) Ltd and 37 others, wherein National Spot Exchange Limited (NSEL) has been arrayed as Defendant No.2, pleading, inter alia, that:

- (a) The Plaintiffs are all parties who have allegedly entered into contracts for the purchase and sale of commodities at NSEL, Defendant No.2 and all claim to be victims of a fraud that has been perpetrated by the Defendants in collusion and connivance with each other;
- (b) The Plaintiffs have alleged that the NSEL was promoted and established by Defendant No.1 and Defendant No.5, Mr. Jignesh Shah as an exchange purportedly for the purposes of spot trading in various different commodities. NSEL was in fact not established for the bona fide purpose of running an exchange, but was established in order to circumvent the existing statutory regulations that governed forward contracts. At the relevant time, this fact was not known to the Plaintiffs and the Plaintiffs and many others like them began transactions on NSEL through its members who acted as brokers for the purpose of buying and selling commodities and in the bona fide belief that such trades were being properly administered by the NSEL under its regulations and Bye-laws and in accordance with the circulars that have been issued by it from time to time and further most importantly with the belief that the NSEL had secured the underlying commodities in which the trades were taking place, as represented by it to the world at large through its Bye-laws and circulars;

(c) The Plaintiffs have alleged that they entered into contracts in this regard through members of the NSEL on the basis that the underlying commodities in which they were trading were available for delivery and/or secured in some manner or the other. It has now come to light that the underlying commodities in which the Plaintiffs were trading were either non-existent or fell far short of the quantities required to complete delivery. This has resulted in a large scale default on contracts executed on the NSEL. The Plaintiffs have collectively suffered a loss in excess of approximately Rs. 30 Crores and the estimated collective loss suffered by all investors on the NSEL is Rs. 5574.31 Crores.

4. The Counsel for the LOIL Group appeared before Hon'ble Bombay High Court as recorded in the order dated 2nd September, 2014. Contentions were raised and submissions were made opposing the formation of the Committee. Various other third parties also appeared before the Court and made their submissions that the Court cannot appoint a Committee to call for information from third parties as the same would tantamount to collection of evidence for NSEL. These submissions are recorded in paragraph 13 of the Order dated 2nd September, 2014. While dealing with these various objections, the Court held 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 regard 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 direction above, the apprehension 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"

5. Hon'ble Bombay High Court during the course of hearing of the above suit vide its aforesaid order dated 2nd September, 2014 (hereinafter referred to as "said order") was pleased to constitute the three member committee ("the Committee" for short), inter alia, to determine the liability of the defaulter trading members and to explore mutual settlement between the parties.
6. The modalities of functioning of the Committee as finalized in the Minutes of Order dated 22nd August, 2014 by the parties to Suit No.173 of 2014 was specifically accepted by the Hon'ble Bombay High Court vide the said order.
7. This Committee was accordingly empowered to act as a Commissioner and Receiver with all necessary powers as conferred by the Hon'ble High Court in the aforesaid order and as set out in the Code of Civil Procedure, 1908 read with the Bombay High Court (Original Side) Rules, 1980.
8. Pursuant to the aforesaid order of the Hon'ble High Court, notices were issued by the Committee to the LOIL Group calling upon them to appear before this Committee and produce books of accounts and other relevant material so as to determine their liability payable to NSEL with specific view to place it before the Hon'ble High Court to bring about possibility of settlement between the parties. LOIL Group did not appear before the Committee in spite of repeated notices.
9. Non-appearance of LOIL Group led the Committee to submit Report to the Hon'ble High Court bearing No. 14/15, dated 7.9.2015 wherein the Committee sought directions against LOIL Group for the purpose of carrying out the functions of the Committee as envisaged in the order dated 2nd September, 2014 so as to determine the liability of the LOIL Group consisting of LOIL Health Foods Ltd., LOIL Continental Foods Limited, LOIL Overseas Foods Ltd. - members of NSEL and Punjab Greenfield Resources Ltd. to NSEL with a prayer to issue notices to the said parties directing them to appear before the Committee in person or through their Advocate or Authorized Representative and to produce documents as may be required by the Committee.

10. Pursuant to the notices issued by the Hon'ble High Court, LOIL Group appeared before the Hon'ble High Court and challenged the jurisdiction of this Committee on various grounds. The Hon'ble Bombay High Court by Order dated 6th November 2015 directed them to appear before this Committee without prejudice to their rights and contentions raised in the pending Appeal filed by them and make all their submissions, including the submission that the directions issued to them by the Committee to produce accounts/ documents etc. amount to taking coercive steps. In turn the Committee has been directed to pass appropriate orders after hearing them. The said order is reproduced herein below for immediate reference:

"CORAM S.J. KATHAWALLA, J

DATE 6TH OCTOBER, 2015

P.C.:

1. Heard learned Advocate for the parties and the following order is passed:

- (i) **LOIL Health, LOIL Continental, LOIL Overseas and Punjab Green Field Resources Limited, shall without prejudice to their rights and contentions raised in the pending appeal, appear before the Committee on 10th October, 2015 and make all their submissions including the submission that the directions issued to them by the Committee to produce their accounts/ documents etc., amounts to issuing/ taking of coercive steps**
- (ii) **The Committee shall place the matter pertaining to LOIL Health, LOIL Continental, LOIL Overseas and Punjab Green Field Resources Ltd., at the bottom of their Board on 10th October, 2015 and after hearing the parties pass appropriate orders. Stand over to 12th October, 2015 for directions.**

Sd/-

(S.J. Kathawalla, J).

11. On 10th October, 2015, (i) LOIL Health Foods Ltd (ii) LOIL Continental Foods Ltd., (iii) LOIL Overseas Foods Ltd., and (iv) Punjab Greenfield Resources Ltd. appeared and filed compilations containing statements of facts and their legal submissions along with copies of documents in which it is submitted that the orders dated 3rd December 2014, 13th April 2015 and 28th April 2015 and the notice dated 10th August 2015

of the Committee (annexed as Exhibits "D", "L", "M" and "O" to Report No. 14 of 2015) are in contravention of the Order dated 4th August 2014, passed by the Hon'ble Court at Fatehgarh Sahib, Punjab in Suit No.765 of 2014 as well as order dated 2nd September 2014 of the Hon'ble Bombay High Court and prayed for withdrawal thereof. Oral submissions were also advanced to bring home their submissions.

12. At the meeting of the Committee held on 21st December 2015, Written Submissions dated 15th December 2015 have also been filed on behalf of LOIL Group.
13. The Learned Senior Counsel appearing on behalf of LOIL Group referred to Order dated 2nd September 2014, particularly paragraphs 14, 15 and 16 thereof and submitted that under the said Order, the function of the Committee is to facilitate settlements amongst the parties who are voluntarily willing to submit to the authority and jurisdiction of the Committee pursuant to the Order dated 2nd September 2014 and that LOIL Group does not want to submit to the jurisdiction of the Committee.
14. The learned Senior Counsel for LOIL Group further submitted that LOIL Group of Companies has filed several suits against NSEL and others in the Court of Civil Judge, Fatehgarh Sahib. Ad-interim order dated 4th August 2014 relied upon by LOIL has been passed in Suit No.765 of 2014 filed by LOIL Health Foods Ltd., LOIL Continental Foods Ltd. and LOIL Overseas Foods Ltd against (i) NSEL, (ii) Arihant Futures and Commodities Ltd, (iii) Anand Rathi Commodities Ltd., (iv) Pace Agro Farms Pvt. Ltd., (v) Indian Bullion Market Association and (vi) Senior Inspector of Police EOW as Defendants. In the said suit, the matter is sub-judice.
15. The main submissions on behalf of LOIL are as under:
 - (a) That under the Order dated 2nd September 2014 passed by this Hon'ble Court, this Committee has been constituted on the basis of consent by the parties. No such consent was given by LOIL and as such the Committee does not have any power to bind LOIL by any settlement.

- (b) That Order dated 2nd September 2014 provides that settlement has to be explored mutually between the parties and does not provide for any adjudicatory function for the Committee.
- (c) That the Order dated 2nd September 2014 expressly provides that the Committee cannot take any coercive steps against any of the parties. Directions passed by the Committee concerning LOIL are coercive in nature and are not warranted.
- (d) That the directions passed by the Committee are in violation of Order dated 4th August 2014 passed by the Court of Civil Judge, Fatehgarh Sahib in Suit No.765 of 2014 and in violation of the doctrine of comity and doctrine of res-sub judice, as the Court at Fatehgarh Sahib Punjab has taken cognizance and exercised its jurisdiction prior to initiation of the Third Party proceedings against LOIL in the Bombay High Court.
- (e) Criminal investigations are pending against LOIL and as such LOIL cannot be compelled to produce documents which can be used against LOIL in pending criminal proceedings, as such compulsion will be violative of Article 20(3) of the Constitution of India.
- (f) That the procedure prescribed under Rules 103 to 116 of the Bombay High Court (Original Side) Rules has not been complied with in issue of Third Party Notice No.13 of 2014, 6 of 2014 and 14 of 2014 against LOIL.

SUBMISSIONS OF NSEL

16. On 30th January 2016, Written Submissions dated 29th January 2016 have been filed on behalf of NSEL.
17. In reply to the above, the learned Counsel appearing for NSEL submitted that the Counsel for LOIL Group appeared before Hon'ble Bombay High Court as recorded in the order dated 2.9.2014. Contentions were raised and submissions were made for opposing formation of this Committee. Various other third parties also appeared before the Court and made submissions that the Hon'ble

High Court cannot empower the Committee to call for information from Third parties as the same is tantamount to collection of evidence. According to NSEL, all these submissions were recorded in para 13 of the order dated 2.9.2014 and after dealing with these various objections, Hon'ble High Court has rejected all these contentions and objections.

18. The substantive part of the submission of NSEL revolves around the text of the order passed by the Hon'ble High Court dated 2nd September 2014 which needs no reference since the said order and its impact is being considered in the later part of this order while considering rival contentions of the parties.
19. In addition to above, other submissions of the NSEL can be summarized in short as under:
 - (a) That it is erroneous on the part of LOIL Group to contend that the Committee has been formed without their consent and therefore LOIL Group is not bound by the Order dated 2nd September 2014;
 - (b) Had that been so, LOIL Group would not have been aggrieved by the order of 2nd September 2014 so as to invoke Appellate Jurisdiction of Hon'ble High Court to modify the said order and no interim order has been passed in the said Appeal;
 - (c) That the functions of the Committee include collection and verification of the information sought by the Committee in order to assist Hon'ble High Court;
 - (d) That the suit filed by LOIL Group at Fategarh Sahib, Punjab and interim injunction order dated 04.08.2014 issued therein neither operates against the Committee nor it impinges upon the order of the High Court dated 2nd September 2014 and that it does not tantamount to stay of the proceedings before this Committee;
 - (e) That the effect of the order dated 4.8.2014 is considered by the Hon'ble High Court in its order dated 2.9.2014

- (f) That issuance of the notice by the Committee does not amount to coercive step taken by NSEL, since the committee is not the extended hand of NSEL;
- (g) That the issuance of Notices to LOIL Group by the Committee is not in breach of doctrines of Comity and Res-sub-judice.
- (h) Reliance is placed on *Maqbool Hussain Vs. State of Bombay AIR 1953 SC 325* (para 12) and *Raja Narayanlal Vs. Maneck AIR 1961 SC 29 (para 23)*;
- (i) That Order dated 2nd September 2014 is in compliance with the provisions of Chapter VII of Bombay High Court (O.S.) Rules.

POINTS FOR DETERMINATION.

20. Having heard both parties and Advocates supporting the contentions advanced by LOIL Group, the points for determination are as under:
- (i) Whether in absence of consent of LOIL Group to the Hon'ble High Court Order dated 2nd September 2014, the Committee has power to issue notices to take accounts between NSEL and its members viz. LOIL Group?
 - (ii) Whether the issuance of various notices by the Committee to LOIL and directions contained therein are coercive in nature and not warranted by the order of the Hon'ble High Court dated 2nd September 2014?
 - (iii) Whether the notices issued by the Committee to LOIL and directions contained therein are in violation of the order of injunction passed in Suit No. 765/2014 and in violation of the Doctrine of Comity and doctrine of Res-sub-judice.
 - (iv) Whether the directions contained in the various notices issued by the Committee to LOIL Group to produce Account Books and relevant documents are violative of Article 20(3) of the Constitution of India in view of the pendency of criminal investigation against LOIL Group?

- (v) Whether the proceeding before Committee against LOIL Group suffer from non compliance with the procedure prescribed under Rules 103 to 106 of the Bombay High Court (O.S.) Rules?

CONSIDERATION.

21. In order to appreciate the above submissions and to determine the issues referred to hereinabove, it is necessary to turn to the Order passed by the Hon'ble High Court on 2nd September 2014 wherein the Hon'ble High Court has in para 16 sketched the very same submissions advanced by LOIL Group before this Committee, the contents of which are reproduced herein below for immediate reference:

"16. Learned Counsel appearing for one of the third parties, namely, M/s. LOIL Continental Foods Ltd., submits that in its Civil Suit, where LOIL Continental Foods are the plaintiffs, the defendants, who include Defendant No.2 herein, have been restrained from taking any coercive steps in any manner against the plaintiffs until further orders. It is submitted that, having regard to these directions, the liability of M/s. LOIL Continental Foods Ltd., if any, cannot be investigated by the Committee to be appointed by this Court under the Minutes of Order proposed. Once again, as mentioned above, the Committee is not authorised to take any coercive steps against any third party. Even otherwise, the Committee will of course be bound by any order that may be passed by any Court, having a bearing on the functions to be carried out by the Committee in terms of the present order. The committee may, in such an event, seek a direction from this Court. There is, thus, no merit in the submissions of M/s. LOIL."

22. Perusal of the aforesaid para 16 will show that almost all the contentions raised by the LOIL Group before this Committee were raised before the Hon'ble High Court. The same were considered by Hon'ble High Court which rejected them holding them to be without any merit. Under the aforesaid Order dated 2nd September 2014, this Committee has been appointed Commissioner and conferred with functions as provided in the Order. The aforesaid Order dated 2nd September 2014, even though a subject matter of Appeal filed by LOIL

Group before the Division Bench of the Hon'ble High Court, would hold the field so long as it is not modified or set aside by the Hon'ble Division Bench and the said Order shall bind the LOIL Group. Consent of LOIL Group is not required to enable the Committee to perform its functions as Commissioner for Taking Accounts under the Order dated 2nd September 2014.

23. The contentions of LOIL Group, revolving around the submission that the Committee cannot be permitted to collect evidence for a party is sought to be supported on the basis of the Judgment of the Hon'ble Supreme Court in the case of Padam Sen Vs. State of Uttar Pradesh reported in (1961) 1 SCR 884. The very same contention based on the very same Judgment has already been considered by the Hon'ble High Court in paras 13 and 14 of its order dated 2nd September 2014 and the same is distinguished by the Hon'ble High Court.
24. In addition to above, the submission revolving around the provisions of Article 20(3) of the Constitution of India has also been considered by the Hon'ble High Court in para 15 of its order dated 2nd September 2014 wherein the Court considered the Judgment of the Apex Court in the case of K. Joseph Augusthi reported in AIR 1964 SC 1552 and held that this case has no application to the facts of this case.
25. The Committee is of the view that the Injunction Order dated 4th August 2015 passed in Suit No.765 of 2014 by the Court of Civil Judge, Fatehgarh Sahib, Punjab under which the Defendants in that Suit viz., (i) NSEL, (ii) Arihant Futures and Commodities Ltd., (iii) Anand Rathi Commodities, (iv) Pace Agro Farms Pvt. Ltd., (v) Indian Bullion Market Association and (vi) Senior Inspector of Police, Economic Offences Wing, Unit V, Brihan Mumbai Police and their agents or representatives are restrained from taking any coercive steps in any manner against the Plaintiffs in that suit, viz, (i) LOIL Continental Foods Ltd., (ii) LOIL Health Foods Ltd. and (iii) LOIL Overseas Foods Ltd. for determination of the liability of the Plaintiffs, if any, till further orders, cannot and does not bind the Committee, since this Committee is not a party to the said suit. This Committee is not an extended hand of NSEL or any of the other parties to that suit. It does not derive its powers from NSEL or any of the parties to that suit. The Committee is of the view that Notices and directions issued by the Committee in

performance of its functions under Orders of the Hon'ble Bombay High Court cannot be construed as being contrary to the Order dated 4th August 2015 in Suit No.765 of 2014 and will not be a violation of the doctrine of comity. The parties and issues in the suits and proceedings in which Order dated 2nd September 2014 appointing this Committee has been passed, are not the same as the parties and issues in Suit No.765 of 2014 and therefore doctrine of Res-sub-judice cannot be invoked.

26. The next submission of Ld. Counsel for LOIL that any action whereunder a person is called upon to perform against his will any act amounts to a coercive step, cannot be accepted. At the meeting held before the Committee on 27th March 2015, the Ld. Counsel appearing for NSEL tendered copies of ledger accounts of LOIL Overseas Foods Ltd., LOIL Continental Foods Ltd. and LOIL Health Foods maintained by NSEL. At the meeting of the Committee held on 13th April 2015, the Committee directed LOIL to produce their books of accounts without prejudice to their rights involved in the Appeal and to respond to the Compilation of documents submitted by NSEL in order to offer an opportunity to LOIL to produce material before the Committee relevant for taking accounts between the parties. The Committee is of the view that the Injunction Order dated 4th August 2015 passed in Suit No.765 of 2014 by the Court of Civil Judge, Fatehgarh Sahib, Punjab under which the Defendants in that suit and their agents and representatives are restrained from taking any coercive steps in any manner against the Plaintiffs for determination of the liability of the Plaintiffs, if any, cannot be construed as a stay of legal proceedings. The submission of Ld. Counsel of LOIL that any action which a person may be called upon to perform against his will amounts to a coercive step, cannot be accepted. In civil proceedings, a party may or may not choose to produce any evidence or documents and may allow an ex-parte determination of the issue. Affording an opportunity to a party of being heard and calling upon it to produce evidence which the party may or may not avail of, cannot be termed as a 'coercive step'. The Committee has done nothing except making an attempt to provide reasonable opportunity of being heard following principles of natural justice.

27. In the Written Submissions on behalf of LOIL, it is stated that there is serious accounting dispute between LOIL and NSEL and that LOIL has already supplied all the details/ledgers/ bills accounting books to the Investigating Officer of EOW and also to the Chartered Accountants who were assisting the Investigating Officer of EOW to investigate the matter. If this is so, then the Committee sees no reason for LOIL Group not to make available the same documents and material to the Committee and to claim some reservation in that behalf.
28. The Committee is of the view that the Committee is acting as Commissioner under Section 75 and Order XXVI of the Code of Civil Procedure, 1908 for taking accounts pursuant to Order dated 2nd September, 2014 passed by the Hon'ble High Court in proceedings in which LOIL Group are parties. Notices and directions issued by the Committee in the course of performance of the functions of the Committee as such Commissioner cannot by any means be termed as 'coercive step' or as violation of the Injunction Order dated 4th August 2014 issued by the Court of Civil Judge, Fatehgarh Sahib in Suit No.765 of 2014 or violation of doctrine of comity.
29. The question whether it is desirable to permit civil and criminal proceedings to be taken simultaneously, has come up for consideration before the Supreme Court in a number of cases. In those cases, the argument was primarily based on the right of a person to protection against self-incrimination or testimonial compulsion, as enshrined in Article 20(3) of the Constitution and it was sought to be contended that an accused has a constitutional right to maintain silence and he cannot be compelled to state his defense in a criminal proceeding by filing affidavit in suit. The theory of protection under Article 20(3) in a case where the accused files an affidavit or examines himself as a witness in a civil suit on the plea that it would tantamount to compelling him to be a witness against himself in respect of the criminal proceedings has been rejected on the ground that protection under Article 20(3) relates to the question of compulsion, which is non-existent in such a situation. It was observed that the rule against testimonial compulsion does not go to the extent of making the accused a universally privileged person. Protection of Article 20(3) is available to the Accused in criminal proceedings in which he is the Accused and does not automatically

extend to civil and other proceedings in which he may be a party, particularly when in such civil and other proceedings, the party is given a right and opportunity to produce evidence, if he so desires and is not subjected to compulsion to do so.

30. Under Section 75 and Order XXVI of the Code of Civil Procedure 1908, the Court is empowered to appoint Commissioner, inter alia for taking accounts at any stage of the proceedings. Under Order dated 2nd September 2014, the Committee has been appointed as the Commissioner for taking accounts. Considered from this angle, the objection raised on behalf of LOIL to the effect that LOIL cannot be compelled to produce documents which can be used against LOIL in pending criminal proceedings is unsustainable. It is well settled that pendency of criminal proceedings is not a bar to domestic enquiries or civil proceedings and a plea of protection under Article 20(3) of the Constitution of India cannot be an excuse for not producing evidence in civil proceedings.
31. The Learned Counsel for LOIL relied upon decisions of the Apex Court in M.P. Sharma Vs. Satish Chandra, District Magistrate, Delhi reported in - AIR(1954) SC 300. In this case, the question as to whether search warrants issued under the Code of Criminal Procedure for seizure of documents from the custody of accused person were unconstitutional and illegal on the ground that in effect they tantamount to compelling production of evidence was considered and the Apex Court held that they are not violative of Article 20 of the Constitution of India.
32. The learned Counsel for LOIL also relied on decision of Bombay High Court in State of Maharashtra vs. The Nagpur Electric Light and Power Co. Ltd. reported in 1961 Criminal Law Journal 200 (paras 3 to 5) in which summonses issued in criminal cases in which a company was the Accused to its officers for production of documents were quashed on the ground that the same were violative of the protection against testimonial compulsion guaranteed by Article 20(3) of the Constitution of India. The ratio of this case has no application to the proceedings before the Committee acting as Commissioner for Taking Accounts in civil proceedings.

33. The Committee is of the view that the report of the Committee to the Hon'ble High Court praying that for the purpose of carrying out the functions of the Committee under Order dated 2nd September 2014 and determining the amount payable by LOIL Group, notices may be issued by the Hon'ble High Court to LOIL Group Companies directing them to appear before the Committee and produce documents as may be required by the Committee cannot be termed as 'testimonial compulsion' in violation of the constitutional guarantee under Article 20(3) of the Constitution of India or as coercive in nature not warranted by Order dated 2nd September 2014 of the Hon'ble Bombay High Court or in violation of Order dated 4th August 2014 of the Court of Civil Judge, Fatehgarh Sahib in Suit No.765 of 2014.
34. The Learned Counsel for LOIL referred to the decision of the Apex Court in the cases of Hareesh Dayaram Thakur Vs. State of Maharashtra & Ors reported in AIR(2000)6 SCC 179 (Para 19) and Mysore Cements Ltd Vs. Syedala Barmac Ltd. reported in AIR(2003) SCC 3493 (para 14) in which it is held that a conciliator is a person who is to assist parties to settle their dispute and a settlement under Section 73 of the Arbitration and Conciliation Act, 1996 comes into existence only on compliance with the requirements of that Section. In our view, these decisions are not relevant for consideration of the objections to the role of the Committee functioning as Commissioner under Section 75 and Order XXVI of the Code of Civil Procedure in quantifying the amounts due from LOIL Group to NSEL.
35. As regards the submission on behalf of LOIL that third party procedure prescribed under Chapter VIII Rules 107 to 120 of the Bombay High Court (Original Side) Rules has not been complied with, the Committee is informed that Third Party Notices have been issued with the leave of the Hon'ble Court under Rule 107 of the Bombay High Court (Original Side) Rules.
36. The learned counsel for LOIL referred to Rule 114 which provides that where the third party enters an appearance, directions are required to be issued by the Court and that the liability of the Defendant has to be adjudicated upon by the Court. This submission on behalf of LOIL does not appear to be sound. Rule 114 provides that the Court may 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 generally may make such orders and give such directions as 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.

37. The aforesaid submission was not raised before the Court when LOIL Group was heard by the Hon'ble High Court. It is nothing but an afterthought. Having appeared before the Court, this submission has no legs to stand. Even otherwise, the contention which ought to have been raised in an earlier proceeding and not raised stands hit by the Doctrine of Constructive Res-Judicata.
38. In the result, the Application is liable to be rejected and all objections raised by LOIL stand overruled for want of any merit.

Ordered accordingly.


JUSTICE V.C. DAGA (RETD.)
CHAIRMAN


J.S. SOLOMON
ADVOCATE & SOLICITOR


YOGESH THAR
CHARTERED ACCOUNTANT

MEMBERS



BEFORE THE COMMITTEE CONSTITUTED UNDER THE BOMBAY HIGH
COURT ORDER DATED 2ND SEPTEMBER 2014 IN SUIT NO. 173 OF 2014 AND
OTHER RELATED SUITS

COMPRISING OF MR. JUSTICE V.C. DAGA (RETD), CHAIRMAN,
MR. J. S. SOLOMON (ADVOCATE AND SOLICITOR), MEMBER

AND

MR. YOGESH THAR (CHARTERED ACCOUNTANT), MEMBER

SUIT NO.173 OF 2014

WITH

T.P. NOTICE NO.2 OF 2014 TO T.P. NOTICE NO. 15 OF 2014

WITH

OTHER RELATED SUITS.

ORDER

ON APPLICATION NO.68 of 2017 DATED 20th NOVEMBER 2017 OF LOIL
HEALTH FOODS LTD., LOIL CONTINENTAL FOODS LTD., LOIL OVERSEAS
FOODS LTD. AND PUNJAB GREENFIELDS RESOURCES LTD.

(Dated 20th November, 2017)

1. At the meeting of the Committee held on 20th November 2017, Application No.68 of 2017 dated 20th November 2017 has been filed on behalf of LOIL Health Foods Ltd., LOIL Continental Foods Ltd. and LOIL Overseas Foods Ltd. raising objections to the notice dated 24th October 2017 issued by the Committee calling upon LOIL Health Foods Ltd., LOIL Continental Foods Ltd., LOIL Overseas Foods Ltd. and Punjab Greenfields Resources Ltd. to appear before the Committee and make their submissions on accounts and transactions between NSEL and LOIL Health Foods Ltd., LOIL Continental Foods Ltd., LOIL Overseas Foods Ltd. and Punjab Greenfields Resources Ltd. (hereinafter called "LOIL Group") and their clients, on the ground that challenge by LOIL Group has filed Additional Affidavit dated 12th July 2017 in Report No.14 of 2015 of the Committee challenging the legality of Order dated 16th January, 2017 passed by the Committee and the matter is pending before the Hon'ble Bombay High Court and has been adjourned on 14th July 2017 to 4th August 2017.
2. In Report No.14 of 2015 dated 7th September 2015, the Committee has submitted that for the purpose of carrying out the functions of the Committee under the Order dated 2nd September 2014 and determining the amount payable by LOIL Overseas Foods Ltd., LOIL Continental Foods Ltd. and LOIL Health Foods Ltd. to NSEL, notices may be issued by the Hon'ble

Court to LOIL Health Foods Ltd., LOIL Continental Foods Ltd., LOIL Overseas Foods Ltd. and Punjab Greenfields Resources Ltd. directing them to appear before the Committee and to produce documents as may be required by the Committee.

3. By Order dated 6th October 2015 passed by the Hon'ble Bombay High Court in Report No.14 of 2015, LOIL Health Foods Ltd., LOIL Continental Foods Ltd., LOIL Overseas Foods Ltd. and Punjab Greenfields Resources Ltd. were directed to appear before the Committee and make all their submissions and the Committee was directed to pass the appropriate orders after hearing the parties.
4. After considering the submissions and hearing the parties, the Committee has passed Order dated 16th January 2017 rejecting the application of LOIL Group and objections raised by LOIL to the notices issued by the Committee.
5. In Report No.14 of 2015, reference has been made to Order dated 17th June 2015 passed by the Hon'ble Bombay High Court in Appeal (L) No.741 of 2014 filed by N. K. Proteins Ltd. and Appeal (L) No.766 of 2014 and Appeal (L) No.767 of 2014 filed by Whitewater Foods Pvt. Ltd. and others in respect of the Order dated 2nd September 2014 under which the Committee has been constituted by which the Appeals have been admitted and it is directed that the Order dated 2nd September 2014 impugned therein shall be operative against the Appellants in Appeal (L) No.766 of 2014 and Appeal (L) No.767 of 2014 on condition that the Committee shall function in accordance with Section 75 of the Code of Civil Procedure while discharging its function under the Minutes of Order and the directions issued by the Learned Single Judge.
6. By Order dated 13th July 2017 in Appeal (L) No.802 of 2014 filed by P. D. Agro Processors Pvt. Ltd. and others in respect of the Order dated 2nd September 2014 under which the Committee has been constituted, the Appeal has been admitted and it is ordered as under:-

"3. We also heard the parties on the prayer for stay. Having gone through the Order dated 17th June, 2015 passed by the Division Bench of this Hon'ble Court in various Appeals and Notices of Motion arising out of the same Impugned Order, we are not inclined to grant interim order

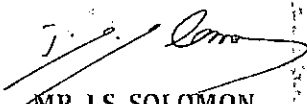
staying further proceedings of the Committee appointed by the Learned Single Judge by the Impugned Order."


7. By the Order dated 2nd September 2014 under which the Committee has been constituted, the Committee has been authorized to issue notices to various parties, including the alleged defaulters / third parties, their clients and any other party and it is provided that if necessary, the Committee may make an application to the Court after giving notice to the affected party to order appearance of parties and discovery, inspection and production of various documents. Accordingly, notice dated 24th October 2017 has been issued on behalf of the Committee calling upon LOIL Health Foods Ltd., LOIL Continental Foods Ltd., LOIL Overseas Foods Ltd. and Punjab Greenfields Resources Ltd. to appear before the Committee and make their submissions on accounts and transactions between NSEL and LOIL Health Foods Ltd., LOIL Continental Foods Ltd. and LOIL Overseas Foods Ltd. and their clients.
8. At the meeting before the Committee on 20th November 2017, the Learned Advocate appearing on behalf of LOIL Health Foods Ltd., LOIL Continental Foods Ltd. and LOIL Overseas Foods Ltd. stated that he was appearing for Punjab Greenfields Resources Ltd. as well. The objections raised in Application No.68 of 2017 dated 20th November 2017 to the authority of the Committee to issue notice to LOIL Group are identical to the objections considered and rejected by the Committee by Order dated 16th January 2017.
9. The Committee has considered the submission on behalf of LOIL Group that since challenge to the legality and propriety of the Order dated 16th January 2017 of the Committee is pending adjudication before the Hon'ble High Court and there is no change in the circumstances requiring the Committee to issue a fresh notice, proprietary demands that the Committee should await the decision of the Hon'ble High Court on the challenge of LOIL Group to the Order dated 16th January 2017 of the Committee and defer the proceedings before the Committee concerning LOIL Group and till the Hon'ble Court adjudicates the legality and correctness of the Order dated 16th January 2017 of the Committee.
10. The Committee is of the view that, in the absence of stay of operation of Order dated 2nd September 2014 of the Hon'ble Court or of Order dated 16th January, 2017 passed by the Committee and in the absence of any Order of the Hon'ble Court directing the Committee not to proceed with hearing

before the Committee in matters related to LOIL Group, the Committee is bound to function as Commissioner under Section 75 and Order XXVI of the Code of Civil Procedure, 1908 and consider submissions of parties on accounts and transactions between NSEL and LOIL Group and their clients and submit Report thereon to the Hon'ble High Court.

11. Appearance of LOIL Group in proceedings before the Committee and compliance by LOIL Group with directions of the Committee can be without prejudice to the objections of LOIL Group to the jurisdiction of the Committee and without prejudice to the rights and contentions of LOIL Group, including in Appeal filed by LOIL Group in respect of Order dated 2nd September, 2014 and objections filed on behalf of LOIL Group to Report No.14 of 2015 submitted by the Committee and to the Order dated 16th January 2017 of the Committee.
12. The Application No. 68 of 2017 of LOIL Group to defer the proceedings before the Committee is rejected.
13. LOIL Health Foods Ltd., LOIL Continental Foods Ltd., LOIL Overseas Foods Ltd. and Punjab Greenfields Resources Ltd. are directed to comply with the directions issued by the Committee and report compliance by 7th December 2017.
14. The proceedings relating to LOIL Group adjourned to 7th December 2017 at 2.00 p.m.


 JUSTICE V.G. DATTA (RETD.)
 CHAIRMAN

 MR. J.S. SOLOMON
 ADVOCATE AND SOLICITOR

 MR. YOGESH THAR
 CHARTERED ACCOUNTANT

MEMBERS

EXHIBIT

EXHIBIT

"I"

99

LOIL GROUP

Compliance by NSEL as per the directions of HCC:

- (i) Ledger from 01 April 2012 to 30.09.2013
- (ii) Statements of amount paid by NSEL to LOIL
- (iii) Statement of amounts received by NSEL from LOIL
- (iv) Account head-wise detail
- (v) Bank account statement of LOIL

Grounds of argument

1. LOIL Continental Foods Ltd, LOIL Health Foods Ltd and LOIL Overseas Foods Ltd ("LOIL Group")
2. LOIL Continental Foods Ltd, LOIL Health Foods Ltd and LOIL Overseas Foods Ltd became a member of the Exchange on 15 October 2012, 15 October 2012 and 28 August 2012 respectively as per the provisions of the Bye-Laws and Rules of the Exchange.
3. From 15 October 2012, 15 October 2012 and 28 August 2012 to 31st July, 2013 LOIL Continental Foods Ltd, LOIL Health Foods Ltd and LOIL Overseas Foods Ltd respectively traded on its behalf and on behalf of its clients in the contracts pertaining to paddy.
4. It is to be noted that LOIL group until June 2013, not once had disputed the obligation reports generated by the exchange.
5. Pursuant to the trades executed on the Exchange, LOIL Continental have defaulted pay-in of funds amounting to Rs. 356.21 crore, LOIL Health have defaulted pay-in of funds amounting to Rs. 294.48 crore and LOIL Overseas have defaulted pay-in of funds amounting to Rs. 86.19 crore. It is submitted that the liability is arising out of outstanding trades for which the said defaulter have not made the pay-in funds due and payable by them to the Exchange. Moreover, it is pertinent to note that the amount outstanding is actually the open trades position which were falling due post July 2013

- i.e. after the suspension of operations of the exchange, hence disputing the payment obligation now is a matter of convenient after thought.
6. AS LOIL Group defaulted in making pay-in obligation of the Exchange, all the three entities were declared as a defaulter on 28 August 2013 as per the provisions of the Byelaws of the Exchange. Further, once LOIL Group entities were declared defaulters, LOIL Group accrued a total liability of Rs. 736.89 crore.
 7. The total amount received from LOIL Continental, LOIL Health and LOIL Overseas in the escrow account are Rs 8.5 crore, Rs. 7.00 crore and Rs.1.08 crore respectively and as on today there is an outstanding of Rs. 720.31 crore.
 8. LOIL Group has admitted liability to tune of Rs. 575.20 crore vide their email dated 14 August 2013. Hereto annexed and marked is a copy of the email dated 14 August 2013 at **Annexure - A**.
 9. Board of Directors of NSEL held an independent audit where they had appointed Sharp and Tannan as auditors. Sharp and Tannan Associates (Chartered Accountant) in their audit report dated 2nd April 2014 observed that total outstanding amount from LOIL group as on 31 July 2013 was Rs 711.07 crores. Hereto annexed and marked as **Annexure - B** are the relevant extracts from the audit report submitted by Sharp and Tannan Associates on 2 April 2014.
 10. All the members including LOIL Group (who defaulted in their funds pay-in obligation) while applying for taking membership on NSEL (signed membership application form attached at **Annexure - C**, for reference) have given undertaking to abide by the Rules, Bye-Laws, and Circulars issued by the Exchange from time to time. The said members have further confirmed that they shall be liable for all contracts and transactions entered on the Exchange and shall comply with the requirements of the Exchange relating to the settlement thereof.

11. As per NSEL Bye-law No. 11.7 (as restated below), based on the trades entered into by the defaulter members on the NSEL exchange platform, the obligation report as per the records of the Exchange is final, conclusive and binding on all the defaulter members.

"In case of any dispute or difference of opinion originating from or pertaining to orders or trades due to a mismatch between the member's report and the Exchange's report, the report as per records of the Exchange shall be final, conclusive and binding on the members."

12. The Settlement Bank Account of the Members, in this case the defaulter members, is in the name of the member itself. Like in any other Exchange, the authority to use the Settlement Bank Account of the Member is given by the members (including the defaulter members) to the Exchange for ONLY Pay-in and Pay-out operations which are 'due from' or 'due to' the members. Exchange does not have any say/role in the client bank account of the member. The members have the sole right and authority to transfer funds between Settlement Bank Account of the Member and its client accounts. (copies of the relevant circulars are enclosed at Annexure - D). Privity of contract is between the member and its clients and Exchange has no privity with individual clients therefore, it is apparent that it is the member, in this case the defaulter members, who have transferred the funds from their settlement account to their client account - and vice versa - by giving instructions to the clearing bank.

13. Even the Ministry of Corporate Affairs itself in its February 12, 2016 Order in Para 8.1 has noted *"Total amount due and recoverable from 24 defaulters is Rs 5689.95 crore"*. (Out of 24, 2 defaulting members have admitted their liability and paid money, now there are 22 defaulters left). Please find the relevant extract from the order annexed as Annexure - E.

14. Besides the Minister of State Finance Shri Arjun Ram Meghwal, in reply to a question in the Lok Sabha on 5 August 2016, has stated at SI. No. 20, 21 and 22 in the Table to statement that PD Agro has defaulted in the funds pay-in of Rs.736.88 crores on the Exchange platform. Copy of the statement along with the table attached at Annexure - E

15. It is therefore prayed that the Hon'ble Committee be pleased to crystallise the liability of LOIL Agro on the basis of the documents submitted by the Exchange being final and binding on the Members as per the provisions of ByeLaw 11.7 and for other reasons set out above and submit its report to the Hon'ble High Court for acceptance.

9. Before proceeding with elucidating its grievance, the Plaintiff seeks to explain the manner in which trading of commodities was carried out on the Exchange. It is submitted that in the course of trading through broker, the Plaintiff could either sell commodities (take a "Sell' Position") or buy commodities (take a "Buy' Position") through the Exchange. In case of the Plaintiff taking a 'Sell' position, deliveries were made by the Plaintiff to NSEL at designated Warehouse and, after deliveries, payments were received from NSEL against VAT paid invoices issued by the Plaintiff.

10. That in case of the Plaintiff taking a 'Buy' position, payments were made by the Plaintiff to NSEL and deliveries/allotment orders were issued by NSEL to the Plaintiff. It is pertinent to point that each of NSEL's contracts on which Sell/Buy trade was carried out by the Plaintiff, a Warehouse was designated by NSEL in which stocks of commodities were to be deposited by the Seller with NSEL and from which stocks of commodities were to be delivered by NSEL to the Buyer. These Warehouses were always under the exclusive occupation supervision and control of NSEL.

11. The Sell/Buy trade was carried out by the Plaintiff through a broker in the following manner:

SELL TRADE

Step 1 - The seller would offer a particular quantity of stock of the commodity mentioned in the trading circular appearing on the trading portal of NSEL at the price quoted by the seller.

Step 2 - Any Buyer may accept the offer to purchase the above said quantity of stock of commodities at the price quoted by the Seller by clicking on NSEL's Trading Portal.

Step 3 - On the settlement of date (T+X days), the Seller would deliver quantity of stock of commodity at the designated Warehouse of NSEL. As per the admitted position of NSEL on this day physical verification of quality and quantity of the stock of the offered commodity was carried out by the employees of NSEL and an inspection report was prepared by them. Except for offering the

stocks at the above said designated Warehouse, the Seller has no role in such physical verification or preparation of inspection report which was an internal activity of NSEL. Upon being satisfied that these stocks offered by the Seller were of the requisite quality (as per specifications and standards, if any provided in the trading circulars), the possession of the stock of commodity was taken over and kept under lock and key of NSEL in the designated Warehouse under NSEL's exclusive occupation, supervision, control and custody.

Step 4 – On the above said settlement date, NSEL would also raise an invoice for Warehouse receipt transfer charges upon the Seller.

Step 5 – On the above said settlement date, NSEL would also call upon the Buyer to make the immediate payment for the traded commodity at the price at which stocks had been offered by the Seller and accepted by the Buyer.

Step 6 – On the above said settlement date, NSEL would also raise an invoice claiming Warehouse receipt transfer charges from the Buyer and would also claim the applicable VAT on the price of the commodity.

Step 7 – On the above settlement date, the Buyer would make payment of the price of the commodity to NSEL.

Step 8 – On the above said settlement date or within one day whereof, the Buyer would make payment of the Warehouse receipt transfers charges and the applicable VAT to NSEL.

Step 9 – Upon making payment of the price of the commodity and the above said Warehouse receipt transfers charges by the Buyer to NSEL, either NSEL issued stock allotment letter/stock delivery order/stock release order addressed to the Warehouse Manager of NSEL's designated Warehouse (where stock of commodities had been delivered by the Seller) directing him to release the specific quantity of stocks to the Buyer.

Step 10 – Simultaneously after the issuance of such stock allotment letter/stock delivery order/stock release order to the Buyer, NSEL released the base sale consideration received by it from the Buyer to the Seller and provided the details of the Buyer to the Seller to enable the Seller to issue the invoices in the name of the respective Buyers and forward such invoices in the name of the Buyers to NSEL.

Step 11 – Upon receiving the details of the Buyers from NSEL the Sellers raised VAT paid invoices for the amount comprising of (1) base sale consideration/price of the commodity and (2) VAT component on the said price. These invoices were raised upon the respective Buyers details whereof were provided by NSEL to the Seller. These invoices were forwarded by the Seller to NSEL.

Step 12 – The above said invoices received by NSEL from the Seller was in turn forwarded by NSEL to the concerned Buyers.

Step 13 – After receiving the above said invoices from the Seller, NSEL would make payment of the VAT component mentioned in the said invoices to the Seller.

20. That between 17/07/2013 to 24/07/2013. The Plaintiff in order to meet the settlement obligations with respect to "Buy" positions taken by it on the NSEL's trading platform had deposited in the aforesaid Settlement Account No. 00990680026564 a total sum of Rs.73,75,00,000.00 (Rupees Seventy Three Crores and Seventy Five Lacs Only). It is submitted that on settlement date title to goods/merchandise (subject of Plaintiff's Buy position) passed to the Plaintiff. Custody of said goods thus legally and jurally vested with the Plaintiff. It is pertinent to mention here as per the practice prevailed in the market, consequent to the aforesaid sale, the Defendant No.2 further transferred the said amount or part thereof to Defendant No.1 as payment for the purchased commodities (which already stood appropriated to the sale to Plaintiff) and such goods/merchandise (that thus became under entrustment with PACE were to be delivered (as per the contract) to the Defendant No. 2 for ultimate delivery to Plaintiff. Plaintiff

has also come to know that till date the Defendant No.1 has not done so nor accounted for the merchandise entrusted to it nor delivered supplied the commodities to the Defendant No.2 and as such the Defendant No.2 has failed to deliver any commodity whatsoever to the Plaintiff. In fact, the Plaintiff has never been offered even inspection of the commodities to be delivered to it for the said payment.

LOIL Overseas Foods Ltd.

T+2 obligations entered from 19th July, 2013

Trade Date	Original Due Date	Ledger Date	Commodity	Sell Qty	Sell Amount (Rs.)
17-07-2013	19-07-2013	19-07-2013	PBP1121LH2	22	1,04,82,752.00
18-07-2013	22-07-2013	22-07-2013	PBP1121LH2	2	9,53,120.00
19-07-2013	23-07-2013	23-07-2013	PBP1121LH2	8	38,15,700.00
22-07-2013	24-07-2013	24-07-2013	PBP1121LH2	1	4,77,106.00
23-07-2013	25-07-2013	25-07-2013	PBP1121LH2	2	9,54,800.00
24-07-2013	26-07-2013	26-07-2013	PBP1121LH2	99	4,72,62,880.00
25-07-2013	29-07-2013	29-07-2013	PBP1121LH2	41	1,95,89,710.00
26-07-2013	30-07-2013	30-07-2013	PBP1121LH2	21	1,00,31,924.00
29-07-2013	31-07-2013	31-07-2013	PBP1121LH2	29	2,86,67,030.00
29-07-2013	31-07-2013	31-07-2013	PBP1121LH2	30	38,22,336.00
				Total	12,60,57,358.00

LOIL Overseas Foods Ltd.

T+25 obligations entered from 19th July, 2013

Trade Date	Original Due Date	Ledger Date	Commodity	Buy Qty	Buy Amount (Rs.)
13-06-2013	19-07-2013	19-07-2013	PP1121LH25	86	4,15,33,184.00
14-06-2013	22-07-2013	22-07-2013	PP1121LH25	98	4,73,47,720.00
17-06-2013	23-07-2013	23-07-2013	PP1121LH25	109	5,26,77,520.00
18-06-2013	24-07-2013	24-07-2013	PP1121LH25	110	5,31,91,600.00
19-06-2013	25-07-2013	25-07-2013	PP1121LH25	126	6,09,55,020.00
20-06-2013	26-07-2013	26-07-2013	PP1121LH25	98	4,73,77,904.00
21-06-2013	29-07-2013	29-07-2013	PP1121LH25	36	1,74,10,680.00
24-06-2013	30-07-2013	30-07-2013	PP1121LH25	186	8,99,94,240.00
25-06-2013	31-07-2013	31-07-2013	PP1121LH25	189	9,14,72,220.00
Total					50,19,60,088.00

LOIL Overseas Foods Ltd.

T+25 and T+10 obligations entered after 31st July, 2013

Trade Date	Original Due Date	Ledger Date	Commodity	Buy Qty	Buy Amount (Rs.)
26-06-2013	01-08-2013	01-08-2013	PP1121LH25	94	4,54,67,800.00
27-06-2013	02-08-2013	02-08-2013	PP1121LH25	73	3,52,77,396.00
28-06-2013	05-08-2013	05-08-2013	PP1121LH25	103	4,98,00,912.00
22-07-2013	06-08-2013	06-08-2013	PP1121LH25	105	5,07,89,970.00
23-07-2013	06-08-2013	06-08-2013	PP1121LH25	2	9,61,044.00
03-07-2013	07-08-2013	07-08-2013	PP1121LH25	110	5,32,23,940.00
24-07-2013	07-08-2013	07-08-2013	PP1121LH25	99	4,75,85,538.00
04-07-2013	08-08-2013	08-08-2013	PP1121LH25	114	5,51,22,648.00
25-07-2013	08-08-2013	08-08-2013	PP1121LH25	41	1,97,05,420.00
05-07-2013	12-08-2013	09-08-2013	PP1121LH25	112	5,41,93,216.00
08-07-2013	13-08-2013	09-08-2013	PP1121LH25	125	6,05,18,500.00
09-07-2013	14-08-2013	09-08-2013	PP1121LH25	62	3,00,24,120.00
10-07-2013	16-08-2013	09-08-2013	PP1121LH25	25	1,21,10,000.00
11-07-2013	19-08-2013	09-08-2013	PP1121LH25	132	6,39,77,760.00
12-07-2013	20-08-2013	09-08-2013	PP1121LH25	131	6,35,11,420.00
15-07-2013	21-08-2013	09-08-2013	PP1121LH25	85	4,12,27,550.00
16-07-2013	22-08-2013	09-08-2013	PP1121LH25	10	48,51,700.00
17-07-2013	23-08-2013	09-08-2013	PP1121LH25	22	1,06,76,820.00
18-07-2013	26-08-2013	09-08-2013	PP1121LH25	2	9,70,228.00
19-07-2013	27-08-2013	09-08-2013	PP1121LH25	8	38,83,152.00
22-07-2013	28-08-2013	09-08-2013	PP1121LH25	1	4,85,520.00
26-07-2013	12-08-2013	09-08-2013	PP1121LH25	21	1,01,01,840.00
Total					71,44,66,494.00

LOIL Health Foods Ltd.

T+1 obligations entered from 25th July, 2013

Trade Date	Original Due Date	Ledger Date	Commodity	Sell Qty	Sell Amount (Rs.)
25-07-2013	26-07-2013	26-07-2013	PP1121KH1	12	51,18,260.00
26-07-2013	29-07-2013	29-07-2013	PP1121KH1	1	4,26,482.00
27-07-2013	29-07-2013	29-07-2013	PP1121KH1	36	1,53,59,400.00
29-07-2013	30-07-2013	30-07-2013	PP1121KH1	111	4,73,68,230.00
Total					6,82,72,372.00

Exhibit "O"

LOIL Health Foods Ltd.

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T+34 obligations entered from 25th July, 2013

Trade Date	Original Due Date	Ledger Date	Commodity	Buy Qty	Buy Amount (Rs.)
06-06-2013	25-07-2013	25-07-2013	PP1121KH34	453	19,66,78,104.00
07-06-2013	26-07-2013	26-07-2013	PP1121KH34	286	12,41,56,032.00
10-06-2013	29-07-2013	29-07-2013	PP1121KH34	205	8,90,21,660.00
11-06-2013	30-07-2013	30-07-2013	PP1121KH34	270	11,73,23,640.00
12-06-2013	31-07-2013	31-07-2013	PP1121KH34	176	7,64,52,992.00
Total					60,36,32,428.00

LOIL Health Foods Ltd.

T+34 and T+10 obligations entered after 31st July, 2013

Trade Date	Original Due Date	Ledger Date	Commodity	Buy Qty	Buy Amount (Rs.)
13-06-2013	01-08-2013	01-08-2013	PP1121KH34	211	9,17,01,022.00
14-06-2013	02-08-2013	02-08-2013	PP1121KH34	257	11,16,27,950.00
17-06-2013	05-08-2013	05-08-2013	PP1121KH34		6,08,24,680.00
18-06-2013	06-08-2013	06-08-2013	PP1121KH34	57	2,47,72,314.00
19-06-2013	07-08-2013	07-08-2013	PP1121KH34	377	16,37,65,784.00
20-06-2013	08-08-2013	08-08-2013	PP1121KH34	578	25,11,59,496.00
25-08-2013	08-08-2013	08-08-2013	PP1121KH34	12	51,55,920.00
21-06-2013	12-08-2013	09-08-2013	PP1121KH34	246	10,69,22,424.00
24-06-2013	13-08-2013	09-08-2013	PP1121KH34	245	10,65,22,010.00
25-06-2013	14-08-2013	09-08-2013	PP1121KH34	443	19,27,02,342.00
26-06-2013	16-08-2013	09-08-2013	PP1121KH34	229	9,97,00,188.00
27-06-2013	19-08-2013	09-08-2013	PP1121KH34	279	12,15,34,714.00
28-06-2013	20-08-2013	09-08-2013	PP1121KH34	176	7,65,93,440.00
02-07-2013	21-08-2013	09-08-2013	PP1121KH34	381	16,59,14,070.00
03-07-2013	22-08-2012	09-08-2013	PP1121KH34	163	7,09,47,380.00
04-07-2013	23-08-2013	09-08-2013	PP1121KH34	250	10,88,85,000.00
05-07-2013	26-08-2013	09-08-2013	PP1121KH34	246	10,71,77,280.00
08-07-2013	27-08-2013	09-08-2013	PP1121KH34	240	10,46,30,400.00
09-07-2013	28-08-2013	09-08-2013	PP1121KH34	295	12,86,49,500.00
10-07-2013	29-08-2013	09-08-2013	PP1121KH34	294	12,81,51,660.00
11-07-2013	30-08-2013	09-08-2013	PP1121KH34	174	7,58,93,580.00
12-07-2013	02-09-2013	09-08-2013	PP1121KH34	170	7,41,84,600.00
15-07-2013	03-09-2013	09-08-2013	PP1121KH34	155	6,76,60,600.00
26-07-2013	12-08-2013	09-08-2013	PP1121KH34	1	4,30,038.00
27-07-2013	12-08-2013	09-08-2013	PP1121KH34	36	1,54,81,368.00
29-07-2013	13-08-2013	09-08-2013	PP1121KH34	111	4,77,49,758.00
Total					2,50,87,37,518.00

Exhibit "Q"

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LOIL Continental Foods Ltd.

T+1 obligations entered on 31st July, 2013

Trade Date	Original Due Date	Ledger Date	Commodity	Sell Qty	Sell Amount (Rs.)
30-07-2013	31-07-2013	31-07-2013	PP1121KH1	195	8,32,48,631.20
30-07-2013	31-07-2013	31-07-2013	PP1121KH1	23	98,26,810.00
Total					9,30,75,441.20

Exhibit "R"

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LOIL Continental Foods Ltd.

T+34 obligations entered on 31st July, 2013

Trade Date	Original Due Date	Ledger Date	Commodity	Buy Qty	Buy Amount (Rs.)
12-06-2013	31-07-2013	31-07-2013	PP1121KH34	259	11,25,07,528.00
Total					11,25,07,528.00

LOIL Continental Foods Ltd.

T+34 and T+10 obligations entered after 31st July, 2013

Trade Date	Original Due Date	Ledger Date	Commodity	Buy Qty	Buy Amount (Rs.)
13-06-2013	01-08-2013	01-08-2013	PP1121KH34	340	14,77,64,680.00
14-06-2013	02-08-2013	02-08-2013	PP1121KH34	259	11,24,96,650.00
15-06-2013	02-08-2013	02-08-2013	PP1121KH34	10	43,43,500.00
17-06-2013	05-08-2013	05-08-2013	PP1121KH34	487	21,15,82,994.00
18-06-2013	06-08-2013	06-08-2013	PP1121KH34	491	21,33,89,582.00
23-07-2013	06-08-2013	06-08-2013	PP1121KH34	18	77,29,344.00
19-06-2013	07-08-2013	07-08-2013	PP1121KH34	113	4,90,86,296.00
24-07-2013	07-08-2013	07-08-2013	PP1121KH34	233	10,00,94,470.00
20-06-2013	08-08-2013	08-08-2013	PP1121KH34	501	21,77,00,532.00
25-07-2013	08-08-2013	08-08-2013	PP1121KH34	312	13,40,53,920.00
21-06-2013	12-08-2013	09-08-2013	PP1121KH34	246	10,69,22,424.00
24-06-2013	13-08-2013	09-08-2013	PP1121KH34	302	13,13,04,768.00
25-06-2013	14-08-2013	09-08-2013	PP1121KH34	194	8,43,88,836.00
26-06-2013	16-08-2013	09-08-2013	PP1121KH34	196	8,53,32,912.00
27-06-2013	19-08-2013	09-08-2013	PP1121KH34	174	7,57,96,140.00
28-06-2013	20-08-2013	09-08-2013	PP1121KH34	242	10,53,15,980.00
02-07-2013	21-08-2013	09-08-2013	PP1121KH34	281	12,23,67,070.00
03-07-2013	22-08-2013	09-08-2013	PP1121KH34	93	4,04,79,180.00
04-07-2013	23-08-2013	09-08-2013	PP1121KH34	262	11,41,11,480.00
05-07-2013	26-08-2013	09-08-2013	PP1121KH34	255	11,10,98,400.00
08-07-2013	27-08-2013	09-08-2013	PP1121KH34	253	11,02,97,880.00
09-07-2013	28-08-2013	09-08-2013	PP1121KH34	257	11,20,77,700.00
10-07-2013	29-08-2013	09-08-2013	PP1121KH34	248	10,81,00,720.00
11-07-2013	30-08-2013	09-08-2013	PP1121KH34	269	11,73,29,730.00
12-07-2013	02-09-2013	09-08-2013	PP1121KH34	389	16,97,51,820.00
15-07-2013	03-09-2013	09-08-2013	PP1121KH34	398	17,37,34,960.00
16-07-2013	04-09-2013	09-08-2013	PP1121KH34	328	14,32,47,440.00
17-07-2013	05-09-2013	09-08-2013	PP1121KH34	171	7,46,92,800.00
18-07-2013	06-09-2013	09-08-2013	PP1121KH34	106	4,62,82,992.00
19-07-2013	10-09-2013	09-08-2013	PP1121KH34	99	4,32,76,464.00
22-07-2013	11-09-2013	09-08-2013	PP1121KH34	55	2,40,46,330.00
26-07-2013	12-08-2013	09-08-2013	PP1121KH34	348	14,96,53,224.00
29-07-2013	13-08-2013	09-08-2013	PP1121KH34	194	8,34,54,532.00
Total					3,53,13,05,750.00

IN THE HIGH COURT OF JUDICATURE AT
BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
REPORT NO. 39

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

LOIL Overseas

Foods Ltd.

... Noticee in

Third Party Notice No. 6 of 2014

LOIL Health

Foods Ltd.

...Noticee in

Third Party Notice No.14 of 2014

LOIL Continental

Foods Ltd.

...Noticee in

Third Party Notice No. 13 of 2014

REPORT

Dated this *26th* day of April 2018

Justice V. C. Daga (Retd.) – Chairman

Mr. J. S. Solomon

and

Mr. Yogesh Thar

Members

DBS Office Business Centre,
Raheja Chambers, 213, Nariman Point,
Mumbai -400 021.