

**HIGH COURT, BOMBAY**

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.****ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION (L) NO. 2263 OF 2014****WITH****THIRD PARTY NOTICE NO. 15 OF 2014****IN****SUIT NO. 173 OF 2014**

National Spot Exchange Limited ... Applicant (Orig. Deft.no.2)

In the matter between :

Modern India Ltd. and Ors. ... Plaintiffs

Versus

Financial Technologies (India) Ltd &amp; Ors. ... Defendants

And

Yathuri Associates and Ors. ... Third party Noticees

Mr. S.U. Kamdar, Sr. Advocate along with Dr. Birendra Saraf and Mr. Amit Naik i/by Naik, Naik &amp; Co. for applicant in Notice of motion/Original Defendant no. 2.

Mr. Akshay Patil along with Ms. Pooja Kothari, Ms. Hiral Thakkar i/by Federal Rashmikant for plaintiffs

None for Third Party Noticee.

**CORAM : R.D.DHANUKA J.****DATED : DECEMBER 18, 2014**

P.C.

Mr.Kamdar tenders two affidavits of service which indicates that the third party noticees are served with the papers and proceedings of this

notice of motion. None appears for third party noticees. No affidavit in reply is filed. By this notice of motion, the applicant seeks decree on admission against third party noticee nos. 1 and 2 in the sum of Rs.286 Crores with interest at the rate of 18% p.a., from August, 2013 till the date of payment and for further reliefs.

2. Learned senior counsel invited my attention to the application filed by Mr. Gagan Suri, proprietor of M/s. Yathuri Associates (Criminal Miscellaneous No. 67 of 2014) third party noticee no.1 herein before the learned Special Judge under the MPID Act at Mumbai and in particular paragraphs 1, 6 and 7. In paragraph 6 it is stated that the amount of Rs.286 Crores was payable by Yathuri to the applicant herein and out of which Yathuri has deposited an amount of Rs. 15 Crores as per details mentioned therein. In Para 9 of the said application it is stated that the said Mr. Gagan Suri had proposed to the applicant herein that he was agreeable to pay the balance aggregate amount of Rs.271 Crores to the credit of NSEL Escrow account in the manner set out in the schedule in the full and final settlement of the due amount and payable by him and/or claimant to Respondent no. 2 NSEL. In prayer clause (a) of the said application, the said applicant has prayed that the NSEL be directed to accept the aggregate amount of Rs.271 Crores in full and final settlement of all the amounts due and payable by him and/or claimant to defendant no. 2 for the various transactions. Learned senior counsel submits that as against the said admitted liability, third party noticee no. 1 has so far paid sum of Rs. 21.03 Crores to the applicant leaving balance amount of Rs.264.96 Crores out of the said admitted liability.

3. It is submitted by the learned senior counsel that though the third

party noticees have been served, no affidavit in reply has been filed. Though the liability is admitted at least to the extent of Rs.286 Crores out of more than Rs.400 Crores, the third party noticee no.1 has only paid sum of Rs.21.03 Crores. The averments made in the affidavit in support of the notice of motion are deemed to have been admitted. A perusal of the application filed by Mr. Gagan Suri, sole proprietor of third party noticee no. 1 clearly indicates that he has admitted the liability to the extent of Rs.286 Crores payable to the applicant herein. Third Party Noticee no. 1 has admittedly not cleared the said admitted liability and has paid only sum of Rs.21.03 Crores leaving balance amount of Rs.264.96 crores with interest.

4. In my view, the applicant has made out a case under Order 12 rule 6 of the Code of Civil Procedure and is entitled to decree against third party noticee no. 1 in the sum of Rs.264.96 Crores with interest at the rate of 18% p.a., from August 2013 till the date of payment.

5. I, therefore, pass the following order :

(a) Notice of motion is made absolute in terms of prayer clause (a) against third party noticee no.1 to the extent of Rs.264.96 Crores with interest at the rate of 18% p.a., from August 2013 till the date of payment.

(b) Third party notice in respect of the balance amount will remain pending for adjudication.

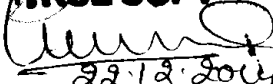
(c) Ad interim order passed by this court on 1<sup>st</sup> October, 2014 in terms of prayer clause (e) and (f) to continue for the period of three months from

today.

(d) The applicant is at liberty to produce authenticated copy of this decree before the committee appointed by this court by order dated 2<sup>nd</sup> September, 2014 for appropriate action.

(e) Notice of motion is disposed of in aforesaid terms. There shall be no order as to costs.

(R.D.DHANUKA, J.)

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22.12.2014  
Section Officer  
High Court, Appellate Side  
Bombay