

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

Mr. V. C. Daga
Former Judge, Bombay High Court
Chairman

Mr. J. S. Solomon
Advocate & Solicitor
Member

Mr. Y. A. Thar
Chartered Accountant
Member

BY HAND DELIVERY/COURIER/R.P.A. D

Ref No. 02 /2017

24th January, 2017

To,

1. 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

Naik Naik & Co.

Advocates

Received on 25/1/17

Time 12:50 p.m.

Inward No. 2826


2. M/s. Naik Naik & Company
Advocates for National Spot Exchange Ltd.
116-B, Mittal Towers, Nariman Point.

Dear Sirs,

Re: **Order Dated 16.01.2017 passed by the Hon'ble
Committee in respect of LOIL Group of Companies**

Please find enclosed herewith a copy of Order dated 16th January, 2017
passed by the Hon'ble Committee on the Application of LOIL group of companies.

Yours faithfully,


(Yogesh C. Parikh)
Secretary (Legal)

Encl.: as above

C.C. with copy of enclosure to:

1. Mr. Sanjay Kadam
Investigating Officer
EOW, Unit No V, Mumbai Police,
Ground Floor, Annex Building, Police Commissioner Office,
Crawford Market, Mumbai 400 001.
2. Mr. Ajit Sakhare,
Deputy Collector (Competent Authority under the MPID Act),
1st Floor, Old Custom House, Fort, Mumbai - 400 001.

3. M/s. Federal & Rashmikant
Advocates for Modern India Ltd.
101-104 Seksaria Chambers, 1st Floor,
139, Nagindas Master Road, Fort, Mumbai 400023.
4. Cyril Amarchand Mangaldas & Co.
Advocates for Financial Technologies (I) Ltd.
3rd Floor, Lentin Chambers, Dalal Street, Fort, Mumbai – 400001.
5. The Law Point
Advocates for MMTC Ltd. and PEC Ltd.
703 & 704, Tulsiani Chambers, Free Press Journal Marg,
Nariman Point, Mumbai 400021.
6. M/s. Markand Gandhi & Co.,
Advocates for NSEL Investors' Action Group
2nd Floor, 'Bhagyodaya', 79, Nagindas Master Road (Meadows Street),
Fort, Mumbai 400023.
7. M/s. Deven Dwarkadas & Partners
Advocates for NSEL Aggrieved and Recovery Association,
111/114 Vardhaman Chamber, 17G, Cawasji Patel Street, Fort,
Mumbai- 400 001
8. Mr. Sandeep Karnik
Advocate for NSEL Investors Forum
101, 1st Floor, Prospect Chambers, Opp. Thomas Cook,
Dr. D. N. Road, Fort, Mumbai 400001.
9. Mr. Mehul Shah
Advocate Defendant Nos.29 to 32, 34 and 35 in Suit No.173 of 2014.
131, 2nd Floor, Great Western Building,
Maharashtra Chamber of Commerce Lane,
Fort, Mumbai – 400023.
10. M/s. Mansukhlal Hiralal & Co.
Advocates for L. J. Tanna Shares & Securities Pvt. Ltd.
Intervenor in Application No. 13 of 2015
Surya Mahal, 2nd Floor, 5,
Burjorji Bharucha Marg, Mumbai 400023.

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.

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- (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.

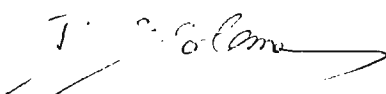
33. The Committee is of the view that the report of the Committee to the Hon'ble High Court praying that for the purpose of carrying out the functions of the Committee under Order dated 2nd September 2014 and determining the amount payable by LOIL Group, notices may be issued by the Hon'ble High Court 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

