**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.) CHIARMAN, MR. J.S.SOLOMON (ADVOCATE AND SOLICITOR-MEMBER) AND MR. YOGESH THAR (CHARTERED ACCOUNTANT MEMBER)**

MODERN INDIA LIMITED & ORS ..PLAINTIFFS

VS.

FINANCIAL TECHNOLOGIES (INDIA) LTD.

AND OTHERS ..DEFENDANTS

**APPEARANCES:**

Mr. Ameet Naik with Mr. Chirag Kamdar, Ms. Anuja Jhunjhunwala, Mr. Amol Bavane, Mr. Sant, Ms.Priya Khaitan, Mr. Harish Khedkar, and Mr. Alpesh i/b Naik, Naik and Co. for NSEL

Mr. Rohit Mangalsule, Mr.Jayesh Hindu, Mr.Vishal Pokane, Mr. A.Jain, Mr.Aisiaz Jain, Mr. Prashant M. Jain, Mr.Jayesh Hingu, and Mr. H.B.Mohanty, representatives of NSEL present.

Mr. Pravin Malladi for Bomiddi Narsimharao Co.

Mr.Bimal Rajput for Pranam Enterprises

Mr.Nainesh N. Amin with Mr. Uday Tardalkar, for Union Bank of India.

Mr. Ajit Sakhare, Competent Authority and Dy. Collector

Mr. J.M.Parate, clerk of C.A.

Mr.Prashant Pawar, Advocate for Mr. Sunil Didwania, M/s. Raghukul Enterprises Pvt. Ltd, Horizon Corporate Services Pvt. Ltd

Mr. Rajesh Mehta representative of Mrs. Falguni Mehta sole proprietress of Swastik Overseas Corporation.

Ms. Rupali Nikam, Mr. S. P. Bharati, i/b Mr. P.R.Yadav, Advocate for Aastha Minmetes, Juggernaut Projects and Shri Radhey Trading Co

Mr. Awadh Bhoyar, Advocate for Horizon Corporation and others.

Mr.T. Sreeman Narayanan, Director with Ms.Keerthi Kyravadi, C.A. for M/s Sai Balaji Spoinge Iron India Pvt.Ltd.

Mr.D.Obulappa, Director of Works of Sree Venkateswara Spoinge and Power Ltd.

Mr. Bhushan Shah with Ms. Namrata Shah with Mr. Nirav Marjadi, Advocates i/b Mansukhlal Hiralal and Co. in L.J.Tanna suit no.121 of 2014.

Mr. Ravi Warrier, Mr. Akshay Patil, Mr.Ashwin Bhadang and Mr. Hiral Thakkar, i/b Federal and Rashmikant for plaintiff in suit no. 173 of 2014

Ms. Rupali Nikam, Advocate i/b Mr. P.R.Yadav, Advocate for one of the debtor of Aastha Minmates and for third party of Shri Radhey Trading Co.

Ms. Nidhi Shukla, Advocate and Mr.Ronak Shah for NAARA

Mr.Yusuf Iqbal Yusuf, Mrs. Anvee Mehta, Ms.Shaista Pathan and Mr.Varun, Shah Advocates i/b Yusuf and Associates for Prime Zone and Mr.Ranjeev Agarwal

Mr.Shubhabratha Chakraborti Advocate i/b Juris Crop for Union Bank of India.

Legal Officer for Allahabad Bank, Karnal, Haryana

Mr. Padmakar S.Garad Advocate for State Bank of Bikaner and Jaipur in Vimaladevi matter.

**ORDER SHEET NO. 31E**
**(Dated 26th June, 2015)**

**1** On notice being issued by this Committee, Mr. Mohit Agarwal had appeared on behalf of Aastha Minmates India Ltd. and filed affidavit on 29th November, 2014 indicating therein that he has no objection for sale and transfer proceeds of the sale amount to

Court or any account established for repayment to persons who have made contracts of buying and selling with his group companies.

**2** Mr. Mohit Agarwal, after above affidavit appearing through his Advocates repeatedly made the statement before this Committee that he will have no objection to sell TMT Bars and realize the sale proceeds thereof.

**3** This Committee, pursuant to the submissions made and "no objection" given for sale of TMT Bars, submitted report recommending sale of TMT bars vide its Report No.2 of 2014, dated 12th December, 2014. The said report was accepted by the Hon'ble High Court by its order dated 17th December, 2014.

**4** Mr. Mohit Agarwal again filed an affidavit in the month of March 2015 stating on oath that the stock of 700 tones of TMT bars is lying in the yard of NSEL at Kurnool (A.P.). He further stated that MPID had already passed an order on 26th August, 2014 permitting sale and that the market value of the said TMT bars lying at NSEL stock yard would be (approx.) Rs.2.80 crores which may be sold and proceeds may be credited to Escrow account of NSEL Committee.

**5** In view of the acceptance of recommendations of the Committee b y the Hon'ble High Court and affidavit of Mr. Mohit Agarwal, offers were invited for sale of TMT Bars from the intending purchasers. However, substantial offers were not received. Mr. Mohit Agarwal himself was requested to get the best offer since he is in the same business. Mr. Mohit Agarwal has placed two offers before the Committee said to have been received by him which were offering to purchase for a total amount ranging between Rs.68,00,000/- to Rs.72,00,000/- for entire quantity of TMT Bars.

**6** The Committee felt that the offers were not matching with the prevailing market price at the relevant time. Consequently,

the Committee directed the Competent Authority to invite offers from the public by publishing advertisement in the Newspapers vide order dated 2nd May, 2015. This order was also passed in presence of the Advocates appearing for Mr. Mohit Agarwal.

**7** The Competent Authority, pursuant to the Orders of this Committee issued public notice in four Newspapers i.e. Maharashtra Times, Deccan Chronicle, Hindustan Times and Eenadu, all dated 6th June, 2015 inviting bids from open market.

**8** The Competent Authority received bids from 7 persons. It was also notified in the terms and conditions of sale that the bids shall be opened on 26th June, 2015. Accordingly, bids were opened today on 26th June, 2015, at about 11.30 a.m., when Mr. Mohit Agarwal was absent. His Advocates were also absent. One Junior Advocate Ms. Rupal Nikam instructed by Mr. P.R.Yadav, Advocate, was present. The bids were opened by the Competent Authority in presence of all bidders, investors, officials of EOW, NSEL and all the contesting parties who were present in the meeting. Each bid was opened and announced in the house with details of each bid quoted by each tenderer. In order to examine and scrutinize the bids and validity thereof, the proceedings were kept back in the post lunch session. All were requested to remain present in the post-lunch session.

**9** In the post lunch session, all the bidders were present. They were again given opportunity to improve their offer. Some of the bidders improved their offer step by step. Ultimately, M/s Pranam Enterprises was adjudged as the highest bidder offering a bid of Rs.18,500/- per M.T. His bid was in consonance with tender invitation accompanied by EMD of Rs.10,00,000/-.

**10** Before giving an opportunity to improve the bidders' offers, the Committee explained to the bidders the procedure for

making future payment and modality for taking delivery of the material. All the bidders submitted that they may be given little more time to take delivery of the goods after making full payment. All of them agreed to make payment within 10 days from the date of acceptance of report by the Hon'ble High Court and requested for minimum 25 days time to take delivery of the goods. The Committee agreed to make suitable recommendations to the Hon'ble High Court in this behalf.

**11** Before accepting the highest bid of M/s. Pranam Enterprises, objections were invited from all concerned present in the meeting. Nobody raised any objection. Mr. Bharati, Advocate who was present on behalf of Mr. Mohit Agarwal with his authorized representative in the post lunch session was also requested to react to the acceptance of highest bid. After showing some non-cooperative attitude, he chose to go through all the bids received by the Committee. He prayed for adjournment to take instructions from his client. Needless to mention that the prayer made was rejected finding it to be unjustified in view of the fact that TMT bars are being sold through public auction with the consent of Mr. Mohit Agarwal in the presence of his advocates on a number of occasions, when he appeared in person along with his advocates including Mr. Bharati.

**12** When the report was submitted to the Hon'ble High Court, Mr.Bharati, Advocate had an opportunity to make his submissions before the Hon'ble High Court. The Hon'ble High Court accepted the report on 17th December, 2015 to the knowledge of the parties and their Advocates. Mr. Mohit Agarwal was given an opportunity on number of occasions to get the best offers. The offers which the Committee has received are much better than the offers already submitted by Mr. Mohit Agarwal.

**13** All bidders in the pre-lunch session made it clear that if bids are not to be accepted today as indicated in the Newspapers, then their EMD may be returned to them. They were not ready to wait. Apart from this, re-tendering would involve huge expenditure, as it is newspaper publications are costly affairs.

**14** In the above view of circumstances, the Committee is of the opinion that no useful purpose would be served by granting further adjournment and postponing acceptance of the highest bid which has come before the Committee. Thus, the request made by Mr. Bharati, Advocate, to grant time to take instructions is not bona fide and needs rejection. Accordingly, it is rejected.

**15** The highest offer of M/s Pranam Enterprises for purchase of the TMT Bars @ Rs.18500/- per M.T. is accepted by the Committee for being recommended to the Hon'ble High Court with a prayer to accept the said offer. The EMD furnished by M/s Pranam Enterprises is allowed to be retained by the Competent Authority. The Competent Authority may return the EMD of all the bidders whose bids are not accepted by the Committee.

**16** The Committee makes it clear that after accepting the bid of M/s Pranam Enterprises, the Committee shall recommend to the Hon'ble High Court to grant it 10 days time to make full payment of balance amount calculated at the rate of Rs.18,500/- per M.T. for total quantity of 686.955 M.T. TMT Bars and to give further time of about 25 days to take delivery of the material. Accordingly report would be submitted at the earliest opportunity.

**17** Surprisingly, Mr. Bharati who was seeking adjournment for want of presence of his client after dictating the above part of the order, quietly rose and submitted that his client would offer Rs.19,500/- per M.T. But when he was called upon to submit the Demand Draft of EMD, he was unable to produce the

same. Consequently, his client's offer was rejected since the Committee is of the confirmed opinion that such empty offer was nothing but a ploy to derail the auction process of the TMT Bars and to create hurdles in realization of the value of the goods for which this Committee is constituted.

**S.O to 14th July, 2015. At 02:00 p.m.**

**JUSTICE V.C.BAGA (RETD.)**
**CHAIRMAN**

**J.S.SOLOMON**
**ADVOCATE AND SOLICITOR**

**YOGESH THAR**
**CHARTERED ACCOUNTANT**

**MEMBERS**