

महाराष्ट्र MAHARASHTRA

2018

AL 972399

प्रधान मुद्रांक कार्यालय, मुंबई  
प.सू.वि.क्र. ८००००२०  
28 AUG 2018  
सक्षम अधिकारी

श्री. दि. क. गवई

Before The Arbitral Tribunal of :  
Justice S. P. Kurdukar  
(Former Judge, Supreme Court of India)  
Sole Arbitrator

Arbitration proceeding between  
Lotus Refineries Pvt. Ltd  
And  
National Spot Exchange Ltd.

Appearances :

For Claimant:

Mr. Zaid S. Ansari, Advocate i/b.

SPK

जोड़पत्र - २ Annexure - II

003

EA SEP 2018

मुद्रांक विवरणों की संख्या, क्रमांक/दिनांक (Serial No /Date)	12
रसम का प्रकार (Nature of Payment)	Award
मुद्रांक का रजिस्ट्रेशन आवश्यक है (Registration is to be registered)	YES/NO
मुद्रांक का रजिस्ट्रेशन किया गया है (Registration has been done)	-
मुद्रांक का रजिस्ट्रेशन किया गया है (Registration has been done)	S.P.



Kundukur  
for

EA SEP 2018

पुनम जगन्नाथ गायकवाड़

पुनम जगन्नाथ गायकवाड़ स्टेट  
पब्लिशिंग प्रिंटर प्रोप्रायटी लि.  
कार्यवाही, एन.ए. रोड, पिन कोड, २४, गान्धी नं. २४,  
पनोटी, रायपुर - ४९०००२.  
ज्या कारखानों के मुद्रांक खरीदी के लिए मुद्रांक खरीदने वाले का मुद्रांक  
मुद्रांक खरीदी के लिये प्रस्तुत किया जाना आवश्यक है।

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The Respondent is a Company incorporated under the Companies Act, 1956, having its Registered Office at the address mentioned in the cause title. The Respondent carried on business as a Spot Exchange providing for an electronic platform for spot contracts in commodities on a compulsory

**Introduction of Parties in the Counter Claim:**

1. At the outset, it needs to be stated that this Award is only in respect of the Counter Claim filed by the Respondent/Counter Claimant (NSEL) on 18<sup>th</sup> March 2016, who will be hereinafter referred to as "the Respondent". This Counter Claim is filed against the Claimant, who will be hereinafter referred to as "the Claimant". It is also made clear that in this Award the averments made by the parties in the Counterclaim and Reply to the Counterclaim are referred to by the Arbitral Tribunal. It is further made clear that the documents filed by the parties along with the Counterclaim and Reply to the Counterclaim are referred to and relied upon by the Arbitral Tribunal in this Award.

**AWARD ON THE COUNTER CLAIM**

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- For Respondent - Counter Claimant:
1. Mr. Arvind Lakhawat, Counsel
  2. Ms. Madhu Gadodia, Advocate
  3. Mr. Shashank Trivedi, Advocate
  4. Mr. Vishwanathan Iyer, Advocate.
  5. Mr. H.B. Mohanty, representative of the Respondent - Counter Claimant
- 
- Mr. Arunkumar Sharma, Director of the Claimant.....Absent
- M/s. Zaid S. Ansari & Associates, Advocates .....Absent

delivery basis. The Respondent commenced its operations in 2008 and it ceased in August 2013 pursuant to the Notification issued by the Ministry of Consumer Affairs, Food & Public Distribution, Government of India (hereinafter referred to as "the Government").

2.2 The Claimant is a Company incorporated under the Companies Act, 1956, and is a trading-cum-clearing Member on the Respondent Exchange and which, inter alia, trades in various commodities including Vegetable Oil / Edible Oil / Refined Palmolein Oil for itself. The Claimant is controlled by Mr. Arun Kumar Sharma who is one of the two Directors of the Company and also holds 99.96% shares of the Company.

2.3 All the trades on the Respondent Exchange required compulsory delivery of the commodities sold and purchased on the Exchange Platform within the time period permitted by the Contract Note. The Claimant was trading in two Contracts with the same goods and delivery conditions but with different deliveries / settlement cycles as agreed between the two Trading Members.

2.4 The Respondent commenced its operations as stated earlier vide Notification dated 5<sup>th</sup> June 2007 allowing it to conduct trading in one day forward contracts in commodities subject to conditions stated in the Notification. The said Notification expressly exempted the Respondent Exchange from the ambit of the Forward Contracts (Regulations) Act, 1953 under Section 27 thereof on the terms and conditions contained therein.

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2.7 It may be stated that while making the above two Applications, the Claimant also executed an Undertaking for Internet Based Trading (hereinafter referred to as "Undertaking for Online Trading"). Under Clause 1 of the said Undertaking for Online Trading made it clear that the Respondent's access to and use of the account or authorised User Id/s with the Exchange and was dependent on the Claimant's "compliance with all the terms and conditions set forth" in the Undertaking. The relevant provisions of the said Undertaking for the trading are contained in various clauses as set out by the Respondent in paragraph 8 of the Counter Claim.

2.6 By Membership Application dated 15<sup>th</sup> February 2012, the Claimant in its former name viz. Lotus Pharmachem Pvt. Ltd. applied to the Respondent. The Respondent granted the said Application and this is how the Claimant became the Member of the Respondent Exchange. At a later point of time, the Claimant vide its Application dated 11<sup>th</sup> June 2012 changed the former name viz. Lotus Pharmachem Pvt. Ltd. to Lotus Refineries Pvt. Ltd. The Claimant thereafter made a fresh Application dated 17<sup>th</sup> July 2012 to the Respondent Exchange for membership of the Respondent Exchange in the name of Lotus Refineries Pvt. Ltd. and the same came to be granted.

2.5 The Respondent permits trading through its Members or Trading Members or Trading-cum-Clearing Members as the case may be and only these Members are entitled to trade on the Exchange for themselves and/or their clients.

It is needless to set out all the clauses as the same are not in dispute. I may set out only relevant Clauses 7.2, 7.7 and 11.7 which read as under:

“7.2 Electronic Communication of Documents: The Exchange shall send to the Member by electronic means trade confirmations of the trades executed on the Exchange at the end of the day, reports and other information. The Member agrees that the Exchange fulfills its legal obligations to deliver to the Member any such document if sent via electronic delivery. The Member understands that upon receipt by electronic means, the Member is responsible for review of all confirmations, statements, notices, contracts, bills and other communications. All information contained therein shall be binding upon the Member, If the Member does not object, either in writing or via electronic mail, within twenty four hours after any such document is sent to the Member. The Exchange reserves the right to determine the validity of the Member's objection, If any, to the transaction. The Member agrees that the Exchange will not be responsible for non-receipt of documents sent via electronic delivery due to change in email address of the Member. The Member also agrees that the Exchange shall not take cognizance of out-of-office/out-of-satisfaction auto replies and the Member is deemed to have received such electronic mails;

7.7 Conclusiveness of Records: The Exchange's own records of the trades/transactions maintained through computer systems or

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otherwise shall be deemed conclusive and binding on the Member for all purposes.

11.7 Compliance with Laws: All transactions that are carried out by and on behalf of the Member shall be subject to Government notifications, the rules, regulations and guidelines issued by the statutory and regulatory authorities and the bye-laws, constitution, rules, regulations, customs and usage of the Exchanges and its clearing house, If any, on which such transactions are executed and/or cleared by the Exchange."

2.8

The Government thereafter issued various Circulars adding several commodities which could be traded by the Members of the Respondent. It is not necessary to set out these various Circulars because the same are not in dispute. The Claimant and other Members of the Exchange were permitted with effect from 5<sup>th</sup> March 2012 spot trading in Mustard Oil ex-Jaipur (T+2 Contract) as well as Mustard Oil ex-Jaipur (T+25 Contract). The Respondent has annexed therewith by way of two sample Contracts approved by the Respondent Exchange and filed at pages 69 to 77 and 78 to 86, respectively in Vol. I of the Counter Claim. Identical Circulars were also issued for different commodities and the same are filed by the Respondents at pages 87 to 95, 96 to 104, 105 to 113, 114 to 122, 123 to 131, 132 to 140, 141 to 149, 150 to 158, 159 to 167, 168 to 176, 177 to 185, 186 to 195, 196 to 206, and 207 to 218, respectively in Vol. I of the Counter Claim. A flow chart explaining the steps in T+2 and T+25

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Contracts are filed at page 219 of the same Compilation. It is marked as

Exhibit RCCA/31.

2.9

At this stage, it would be relevant to refer to T+2 and T+25 Contracts. "T" means "Trade Day", the day on which the trade takes place and "+2" or "+25" or any such number means the number of business dates on expiry of which the delivery and payment is due to be effected by the buying member and the selling member as the case may be. For instance, (i) T+2 means the trade is concluded on T day and the delivery and payment would be effected on the second business day from T day by the selling and buying member as the case may be; and (ii) T+25 means the trade is concluded on T day and the delivery and payment would be effected on 25<sup>th</sup> business day from T day by the selling and buying member as the case may be. The steps involved in execution of T+2 and T+25 Contracts briefly stated as under:

Contract (T+2):

Step 1 (T): Trade is done by a Member on "T" day and Selling Member sells commodity and Buying Member buys commodity.

Step 2 (TU): Trade file is sent to Buying and Selling Member respectively

at the end of "" day on File Transfer Protocol ("FTP").

Step 3 (T+1): Obligation Report is generated by the Respondent Exchange

and sent to the Buying Member on "T+1" day setting out the Buying

Members Pay-In Obligations for the total quantity, total value and charges,

if any.

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Step 4 (T+2): On 2<sup>nd</sup> business day from "T" day (T+2), the Respondent Exchange sends the bank file to the Clearing Bank to debit Buying Member's Clearing Bank Account by 9.00 AM. It is clarified that the Clearing Bank Account is the bank account of a Member in the Clearing Bank. "Clearing Bank" means a bank that is designated or appointed to provide banking and other facilities to the Exchange, Clearing House of the Exchange and the members of the Exchange to facilitate clearing and settlement functions. The Buying Member needs to ensure he deposits required money in his Bank Account on "T+2". Upon receipt of response filed from Clearing Bank, the Respondent Exchange updates the Exchange system and sends bank files to Clearing Bank to credit the Selling Member's Clearing Bank Account.

Contract (T+25):

Step 1 (T): Trade is done by a member on "T" day i.e. Selling Member sells the commodities and Buying Member buys commodities.

Step 2 (T): Trade file is sent to Buying and Selling Members respectively at the end of "T" day on file transfer protocol.

Step 3 (T+24): Obligation Report is generated by the Respondent Exchange and sent to the Buying Member on "T+24" days setting out the Buying Members Pay-In Obligation for total quantity, total value and charges, if any.

Step 4 (T+25): On "T+25", the Respondent Exchange sends bank file to the Clearing Bank to debit Buying Member's Clearing Bank Account by

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including sending of Offer Letters to the Exchange and on the basis of such the Offer Letters and comply with Rules, Regulations and Bye-Laws the goods / commodities on the 1<sup>st</sup> day (excluding 'T' date) and forward contracts under "T+2" and "T+25". The Claimant was supposed to deposit The Respondent has averred that the Claimant has entered into several business day from the trade date.

3.

whereas the obligation to make Pay-In of funds would become due on 25<sup>th</sup> second business day from the trade date on deposit of commodities to receive Pay-Out of funds under "T+2" Contract would become due on both Contracts would fall on different dates. The entitlement of a Member executed by a Member on the same trade day, the settlement dates under "T+2" Contract. While both "T+2" and "T+25" Contracts would be Member would buy equivalent quantity of the commodity as shown under member would enter into corresponding "T+25" Contract whereby the Contract and the Contract on the "T" day and on the same day, such It may be stated that some Member who sell its commodities under "T+2"

2.10

is at page 219 of the Counter Claim Volume-I.  
The flow chart explaining the above steps in "T+2" and "T+25" Contracts Bank Account.

and sends back to the Clearing Bank to credit the Selling Member Clearing Clearing Bank, the Respondent Exchange updates the Exchange system in his Clearing Bank Account on "T+25". Upon receipt of file from 9.00 a.m. The Buying Member needs to ensure he deposits required money

correspondence, the buying party would deposit the amount on the 2<sup>nd</sup> day which the Respondent Exchange will thereafter credit to the account of the seller of T+2. The same principle would apply in T+25. On 24<sup>th</sup> T<sup>h</sup> day, the seller would purchase the said commodities from the buyer and deposit the purchase price to the Respondent Exchange on 25<sup>th</sup> T<sup>h</sup> day which will be transferred to the credit of the seller i.e. buyer in "T+2" Contract. It may also be noted that the Respondent Exchange maintains the separate ledger for each member by computer system and accordingly, debit and credit entries are entered at the end of the day. These ledger entries were sent to the respective members at the end of the day. If any objection is raised by any trading member, the same shall be resolved by mechanism provided under the Act, Rules, Regulations and Bye-laws.

4.

In paragraphs 22 and 23 of the Counter Claim, the Respondent has set out the transactions entered into by the Claimant under "T+2" and "T+25" with various members of the Respondent. It is pleaded by the Respondent that it bonafide believed on the Offer Letters sent by the Claimant to the Exchange as well as the deposit receipts forwarded by the warehousing in-charge. Pursuant to such information, the Respondent released the payments. It is also stated that the Claimant has been trading through the Respondent Exchange from the year 2012 in various commodities upto end of July 2013. Out of these various transactions, the dispute in the present Counter Claim is restricted to only 18 transactions under "T+25". Notwithstanding the fact that the Claimant received the payments in

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respect of these 18 transactions under "T+2", but refused to comply with the obligations under "T+25" on the ground that the commodities / goods should be delivered to it, then only the question of paying the price thereof would arise. It is case of the Respondent that the Claimant has admitted all the 18 transactions that had taken place under "T+2" and "T+25" with the members of the Exchange. According to the Respondent, the Claimant with the connivance of the warehousing Manager / employees, has not deposited the goods / commodities in the accredited warehouses / godowns in all these 18 transactions and forwarded the fake Offer Letters to the Respondent which it believed to be true and accordingly, released the payments. From time to time, the copies of the ledgers of the accounts maintained by the Respondent in its computer system were sent to the Claimant and at no point of time, any objection as regards the debit and credit entries in the ledger was ever raised by the Claimant. It is averred in paragraph 23 of the Counter Claim that in respect of dealing in Soyabean Seed and Muster Seed Contracts, the Claimant had only purchased the commodities and requested for issuance of delivery. The Respondent has categorically stated that the Claimant did not sell these two commodities on the Exchange Platform. The Claimant issued Offer Letters in case of Muster Oil, ex-Jaipur, Rajasthan; Cotton Wash Oil, ex-Samshabad, Andhra Pradesh; Sunflower Oil ex-Chennai, Tamil Nadu; Refined Sunflower Oil, ex-Samshabad; Refined Soyabean Oil, ex-Samshabad, Andhra Pradesh; RBD Palmolein Oil, ex-Kakinada, Andhra Pradesh Contracts stating that it

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had deposited commodities in the warehouses as mentioned in the Offer Letters on the basis of which warehouse receipts were issued. The Respondent had stated that the warehouse receipts were received on the basis of these fraudulent representations made by the Claimant. The fact of fraudulent representations has become clear from the charge sheet dated 6<sup>th</sup> January 2014 filed by the Economic Offences Wing, Mumbai Police (EOW) against Mr. Arunkumar which records that the Claimant issued false Stock Offer Letters. The Tribunal, however, makes it clear that the fact of filing of the Charge Sheet can be noted, but however, contents thereof cannot be considered in the present proceedings as the criminal trial is pending.

5. It is further averred by the Respondent that the warehouse agreements were executed by the Respondent for limited purpose of storing the commodities / goods in the said warehouses and only constructive possession of the said warehouses remained with the Respondent. Actual control of the said warehouses would remain with the Claimant at all times. It is further claimed by the Respondent that the Trade Summary giving details of the Contracts traded by the Claimant on the Respondent Exchange during the period from 5<sup>th</sup> March 2012 until 30<sup>th</sup> July 2013 have been set out in Exh-RCCA-33(collly.) Vol-II pages 409 to 418. It is then stated by the Respondent that the Clearing Bank Account of the Claimant from 27<sup>th</sup> February 2012 until 31<sup>st</sup> July 2013 were also forwarded to the Claimant showing the details of Pay-In / Pay-Out, received from / paid to members.

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6. After going through the ledger account of credit and debit of the Claimant and the deposits made by the Claimant to the Respondent, it is found that the Claimant was obliged to make Pay-In amount in T+25 contracts immediately on receiving the Obligation Report, but it failed to do so and as a result, a total sum of Rs.252,47,64,751.45 (Rupees Two Hundred Fifty Two Crores Forty Seven Lakhs Sixty Four Thousand Seven Hundred Fifty One and Paise Forty Five) are receivable from the Claimant. The Respondent also claimed interest @ 18% per annum. The Particulars of Claim are marked as Exhibit RCCA/42, page 580, Vol. II of the Counter Claim. The Respondent also relied upon the admission in email dated 16-5-2013 Exh-R-13(coll.) Pg 591 to 595 Counterclaim Vol-II given by the Claimant (CFO) admitting the liability of Rs.241,36,26,831.00 as on 31<sup>st</sup> March 2013 being payable to the Respondent. The Respondent then stated that the Claimant is the defaulter and accordingly, on 22<sup>nd</sup> August 2013, issued a Default Notice to the Claimant calling upon it to pay the outstanding amount of Rs.252,47,64,751.45. The Claimant did not comply with the Default Notice. In the present Counter Claim, the Respondent has claimed from the Claimant an amount of Rs.252,47,64,751.45 with interest @ 18% per annum.

7. The Claimant on or about 27<sup>th</sup> May 2016 filed its Reply to the Counter Claim. In its Reply, the Claimant has set out various details of transactions that it had done through the Respondent Exchange right from 2012 up to end of July 2013. The following facts are not disputed by the Claimant:

(i) The Claimant Company is a Member of the Respondent Exchange and it used to do the trading in "T+2" as well as "T+25" on the Respondent's Platform;

(ii) The Claimant had done simultaneously "T+2" and "T+25" transactions with the Members of the Respondent Exchange. Most of these Contracts were entered into on the same day;

(iii) The Claimant had complied with all the obligations under the Act, Rules, Regulations and Bye-Laws;

(iv) The Claimant used to send the Offer Letters to the Respondent Exchange without any delay and also used to deposit the goods / commodities on Day 1 in the accredited godowns / warehouses of the Respondent;

(v) After depositing the goods / commodities, the receipts of such deposits used to be forwarded to the Respondent Exchange;

(vi) Various Circulars issued by the Government in respect of various goods / commodities;

(vii) The 18 transactions are subject matter of the present Counter Claim. However, it is the case of the Claimant that the buyers who have purchased the goods / commodities under "T+2" transactions were not in a position to deliver the goods / commodities, the issue of obligation on the part of the Claimant to deposit the price of the said goods / commodities with the Respondent Exchange does not arise. The price of the said goods to be payable only if the delivery of the

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2013. In the said Suit, a defence was raised on behalf of the Respondent as Civil Suit in the Hon'ble Bombay High Court being Suit (L) No. 870 of large sum of about Rs.2,500 Crores. The Claimant has, therefore, filed a

9. It is then pleaded that the Respondent is liable to pay to the Claimant a costs.

Counter Claim of the Respondent is false and the same be dismissed with the Respondent has to prove the same in accordance with law. The entire false receipts of deposit of the goods / commodities are totally untrue and staff of the accredited godowns / warehouses, the Claimant obtained the allegations of the Respondent that with the connivance of the supervisory obligations to look after the goods / commodities ceases to exist. The Letters and Deposit Receipts are sent to the Respondent/Exchange, its contract period over these godowns / warehouses. The moment Offer employees. The Claimant never had any control at any time during the Respondent Exchange and the same are managed and supervised by their accredited godowns and warehouses are in actual possession of the

8. It is pleaded by the Claimant in its Reply to the Counter Claim that the

also filed with the Respondent.

(viii) Undertakings as required by Rules, Regulations and Bye-Laws were with the Respondent by way of Pay-In Obligation;

the Claimant to deposit the price of the said goods / commodities were delivered to the Claimant. there is no obligation whatsoever on goods / commodities which were deposited in "T+2" transactions



regards the maintainability of the said Suit. This challenge was based upon the Arbitration Agreement entered into between the Claimant and the Respondent. The Hon'ble Bombay High Court ruled that the Arbitration Agreement is binding between the parties. It is in these circumstances, the present arbitration proceedings commenced.

10.

It is not in dispute that an Agreement dated 5<sup>th</sup> March 2012, Vol-I Exh-RCCA-23 Pgs 227 to 231 between the Claimant and the Respondent contained a clause whereby the Respondent has been given authority to nominate the Arbitrator in the present proceedings. Accordingly, the Respondent nominated the Sole Arbitrator to resolve the dispute between the parties. The Arbitral Tribunal held the preliminary meeting sometime in November 2015 and issued directions to the parties. Pursuant to the said directions, the Claimant on 1<sup>st</sup> January 2016 filed a Statement of Claim against the Respondent claiming, inter alia, compensation and/or damages of Rs.2773,29,37,405/- (Rupees Two Thousand Seven Thousand Seven Hundred Three Crores Twenty Thousand Thirty Seven Thousand Four Hundred Five only) with interest at the rate of 18% per annum thereof. It needs to be mentioned that the said Statement of Claim is signed and verified by Mr. Arunkumar Sharma, Chairman and Director of the Claimant. The Claimant in support of its Claim filed several documents compiled in various volumes. Mr. Arunkumar Sharma filed his Affidavit in lieu of examination-in-chief.

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11. The Respondent in response to the above Statement of Claim, filed a Statement of Defence dated 18<sup>th</sup> March 2016 denying all the claims made by the Claimant. On 18<sup>th</sup> March 2016, the Respondent filed the present Counter Claim against the Claimant praying for an Award and a direction to the Claimant to pay Rs.252,47,64,751.45 (Rupees Two Hundred Fifty Two Crores Forty Seven Lakhs Sixty Four Thousand Seven Hundred Fifty One and Forty Five Paisa only) along with interest at the rate of 18% per annum from 9<sup>th</sup> August 2013 upto the date of payment / realization of the said amount. The particulars of Counter Claim are set out at Exhibit RCCA-42, page 580, Vol. II of the Counter Claim. The Respondent relied upon several documents in support of its defence to the Statement of Claim as well as some more documents in support of its Counter Claim contained in Counter Claim Volume Nos. I, II and III. The Respondent in support of its defence to the Statement of Claim as well as in support of its Counter Claim, filed the Affidavit of Mr. Santosh Dhuri, RW-1 along with certain documents.
12. The Claimant has filed its' Reply dated 27<sup>th</sup> May 2016 to the Counter Claim denying the claims made therein by the Respondent / Counter Claimant. the principal defence taken up by the Claimant in its reply to the Counter Claim is that the Respondent / Counter Claimant while asking for payment from the Claimant being "Pay-In" obligations in the outstanding unsettled "T+25" Contract, it has not offered the delivery of the goods purchased by the Claimant in the said Contracts.

13. The then Learned Tribunal on 14<sup>th</sup> September 2016, framed the following

Points for Determination / Issues:

- (1) Whether the Claimant proves that it is entitled to an Award of Rs.2773,29,37,405/- from the Respondent on account of transactions done in respect of various commodities?
- (2) Whether the Claimant proves that it is entitled to an Award of Rs.5,83,41,591/- against the Respondent on account of levying warehouse charges?
- (3) Whether the Claimant proves that it is entitled to an Award of Rs.14,27,79,380/- against the Respondent on account of withholding of excess margin monies in respect of the various transactions held between the parties?
- (4) Whether the Claimant proves that it is entitled to an Award of Rs.3,07,24,054/- against the Respondent on account of levy of penalties in respect of the various transactions held between the parties?
- (5) Whether the Claimant proves that it is entitled to an Award of Rs.115,14,53,371/- against the Respondent on account of the refund of the VATG which the Claimant is entitled to on account of purchases in respect of the various transactions held between the parties?
- (6) Whether the Claimant proves that it is entitled to an Award of Rs.200,00,00,000/- against the Respondent on account of loss of

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business and reputation besides severely damaging business growth of the Claimant due to violation of the bye-laws, rules, circulars, etc. and the resultant breach of the same by the Respondent?

(7) Whether the Claimant proves that it is entitled to an Award of Rs.35,00,00,000/- against the Respondent as due to the illegal act and conduct of the Respondent, the Claimant was unable to recover money from its debtors as they stopped the payments?

(8) Whether the Respondent proves that the Claimant is liable to pay the Respondent Rs.252,47,64,751.45 (Rupees Two Hundred Fifty Two Crores Forty Seven Lakhs Sixty Four Thousand Seven Hundred Fifty One and Forty Five Paisa only), along with interest at the rate of 18% per annum?

(9) On the amount if awarded, whether the Claimant or the Respondent are entitled to interest? If so, at what rate?

(10) Who will bear the costs of the Arbitral Proceedings and if so, in what proportion?

(11) What relief and what order?

14.

At this stage, it would be necessary to state that the present arbitration proceedings commenced on 26<sup>th</sup> November 2016 before the Hon'ble Dr. Justice F.I. Rebellio (Retd.). However, vide Procedural Order Sheet No. 19 dated 5<sup>th</sup> September 2017, the Learned Arbitrator recused himself from the arbitration proceedings on account of the Claimant's insistence to fix an early date for hearing in the Claim Petition which was not possible prior to

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(i) The documents filed by the Claimant in support of its Statement of Claim and which were admitted by the Respondent/Counter Claimant were marked as Exhibit C-1, C-2 etc. The documents which were denied by the Respondent/Counter Claimant were marked as X-1, X-2, etc.

(ii) The documents filed by the Claimant opposing the Counter Claim and which were admitted by the Respondent were marked as Exhibit RCC-1, RCC-2, etc. Documents which were denied by the Respondent (NSEL) were marked as RCX-1, RCX-2, etc. The

have been marked in the following manner:

16. The Arbitral Tribunal vide its Procedural Order No. 6 dated 12<sup>th</sup> April 2017, directed the Advocates to mark the documents filed by them in the presence of the parties as well as the Arbitral Tribunal and these documents

15. In the abovementioned circumstances, the Respondent on 13<sup>th</sup> September 2017 appointed me (Justice S.P. Kurdukar, Retd.) as a Sole Arbitrator and the arbitration proceedings commenced on 14<sup>th</sup> October 2017 vide Procedural Order No. 1 dated 14<sup>th</sup> October 2017. The fees of the Sole Arbitrator was fixed with the agreement of the Learned Advocates for both the parties after taking due instructions from their respective clients.

The Learned Arbitrator therefore rescued/resigned from the arbitral August 2018 due to the Learned Arbitrator's pre-schedule commitments. proceedings.

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At the request of Learned Advocate for the Claimant for fixing the hearing in the arbitration proceedings as early as possible, the Arbitral Tribunal fixed first slot from 26<sup>th</sup> February to 1<sup>st</sup> March 2018, but the Claimant's Advocate sought an adjournment and by consent, the same was granted. Thereafter, the hearing was fixed from 19<sup>th</sup> March to 22<sup>nd</sup> March 2018, but again the Learned Advocate for the Claimant sought an adjournment and the meetings / hearings were cancelled. Thereafter, the Arbitral Tribunal fixed the hearing from 9<sup>th</sup> April to 13<sup>th</sup> April 2018. Again the proceedings

17.

"I" and so on.

RCCA-1 is "Respondent to the Counter Claim admitted document by the Claimant were marked as D-1, D-2, etc. The long form of Exhibits RCCA-1, RCCA-2, etc. The documents which were denied documents which were admitted by the Claimant were marked as (NSEL) in support of its Counter Claim were concerned, those

(iv)

Insofar as the documents filed by the Respondent/Counter Claimant marked as A-1, A-2, etc. R-2, etc. The documents which were denied by the Claimant were which were admitted by the Claimant were marked as Exhibit R-1, support of its Statement of Defence to the Claim, the documents

(iii)

In respect of the documents filed by the Respondent (NSEL) in document "I" and so on. nomenclature RCC-1 means "Respondent to the Counter Claim

could not make any progress due to non-cooperation of the Claimant.

However, the meetings were held on 12<sup>th</sup> and 13<sup>th</sup> April 2018.

18. The Learned Advocate for the Claimant conducted further examination-in-chief of Mr. Arunkumar Sharma, CW-1 in support of its Claim on 12<sup>th</sup> and 13<sup>th</sup> April 2018. The Learned Advocate for the Respondent commenced the cross examination of Mr. Arunkumar Sharma, CW-1 on 13<sup>th</sup> April, 23<sup>rd</sup> April and 26<sup>th</sup> April 2018. This was followed by re-examination of Mr. Arunkumar Sharma, CW-1 by the Advocate for the Claimant on 27<sup>th</sup> April 2018. The recording of evidence of Mr. Arunkumar Sharma thus concluded and witness came to be discharged. On 27<sup>th</sup> April 2018, further examination-in-chief of Mr. Santosh Vasudeo Dhuri, RW-1 in support of the defence of the Respondent to the Statement of Claim commenced and the same remained incomplete and to be continued on the next date of hearing.

19. It is relevant to note that suddenly after the hearing dated 27<sup>th</sup> April 2018, the Claimant and its Advocate stopped participating in the arbitration proceedings and continued to remain absent despite ample opportunities being granted by the Arbitral Tribunal. It may also be noted that every minutes of the meeting was forwarded to the Claimant and its Advocate for information immediately. Despite this, the Claimant and its Advocate continued to remain absent. In the circumstances, the Arbitral Tribunal vide its Procedural Order No. 12 dated 8<sup>th</sup> May 2018 was constrained to invoke Section 38(2) of the Act and suspended the arbitration proceedings

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in respect of the Claim / Statement of Claim filed by the Claimant. By the same Procedural Order, the Arbitral Tribunal fixed the Counter Claim for hearing on Saturday, 9<sup>th</sup> June 2018, Monday, 18<sup>th</sup> June 2018 and Tuesday, 19<sup>th</sup> June 2018 from 11.00 a.m. to 4.00 p.m. Certain directions as regards the deposit of fees were also given in the said Procedural Order.

20. Accordingly, meeting was held on 9<sup>th</sup> June 2018. Mr. Santosh Dhuri, RW-1 was administered an oath. The witness, RW-1 gave evidence in support of the Counter Claim filed by the Respondent. Mr. Lakhawat, Learned Counsel for the Respondent continued the examination-in-chief of Mr. Santosh Dhuri, RW-1 on 18<sup>th</sup>, 19<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup> June 2018 to prove the documents filed along with his affidavit. It may be stated that the Respondent has relied upon various documents which have been denied by the Claimant in the list of their admission and denial. It is because of this, the Learned Advocate for the Respondent required some more time to prove the documents relating to the disputed 18 transactions which are subject matter of the Counter Claim. Neither the Claimant nor its Advocate ever remained present or participated in the Counter Claim proceedings. Resultantly, the evidence of Mr. Santosh Dhuri, RW-1 remained unchallenged by the Claimant. RW-1 also referred to various documents which are annexed along with his affidavit of evidence as well as along with the Counter Claim. He referred to all these documents and proved the same in support of the Respondent's Counter Claim. Ultimately, the Learned Advocate for the Respondent concluded the examination-in-chief

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Claimant dated 24<sup>th</sup> February 2012 (Exh. RCCA-2 @ pg. 45-51, Vol. I of Counter Claim) and the Trading-cum-Clearing Undertaking of the 2016 submitted by the Claimant (Exh. RCCA-1 @ pg. 42-44, Vol. I of the It is submitted that as per the Membership Application dated 15<sup>th</sup> February

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and rendered itself as a defaulter.  
 on record to show that the Claimant has not complied with its obligations evidence of Santosh Dhuri RW-1, there is enough documentary evidence produced by the Respondent. He submitted that apart from the oral drew the attention of the Tribunal to the various documents on record Counsel to commence his arguments. Learned Counsel for the Respondent Counter Claim. In the circumstances, the Tribunal permitted the Learned on 16<sup>th</sup> July 2018, he be permitted to make his submissions on merits of the neither the Claimant nor its Advocate is present as per the hearing schedule Mr. Lakhawat, Learned Counsel for the Respondent submitted that since

21.

record at every time.  
 be communicated by email to the Claimant as well as its Advocate on Notes of Evidence of RW-1 as well as the Minutes of the Meetings used to and cross examine Mr. Santosh Dhuri, RW-1. It needs to be stated that the opportunity, the Claimant and its Advocate chosen not to remain present Procedural Order No. 17 dated 26<sup>th</sup> June 2018). Despite sufficient I, further hearing in the matter was adjourned to 16<sup>th</sup> July 2018 (see the Claimant to remain present and cross examine Mr. Santosh Dhuri, RW- of RW-1 on 26<sup>th</sup> June 2018. With a view to give one more opportunity to

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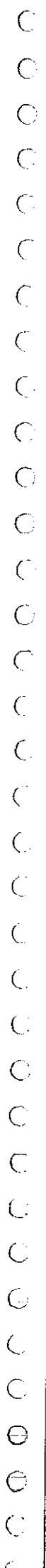
the Counter Claim), the Claimant was entitled to carry on the trading on the Respondent's Platform. Both these documents are admitted by the Claimant who is bound by the Rules, Bye-Laws, Regulations, Circulars and Orders issued by the Respondent Exchange from time to time. The Claimant is also liable for all contracts and transactions entered into by it on the platform of the Respondent Exchange and is liable to comply with the requirements of the Respondent Exchange relating to the settlement thereof. The Claimant has also given undertaking to abide by all the decisions of the Respondent Exchange with respect to operations of the Exchange and has also undertaken to perform its financial obligation / responsibility as decided by the Respondent Exchange from time to time. Learned Counsel for the Respondent then read out Clause 30 of the Trading-cum-Clearing Undertaking given by the Claimant as well as Clause 7 by which the Claimant has given the undertaking for internet based trading on 23<sup>rd</sup> February 2012 (Exh. RCCA-3 @ pg. 52-58, Vol. I of the Counter Claim). Conjoint reading of these various clauses, it is quite clear that it clearly recognizes validity of electronic communication of the documents sent by the Respondent Exchange to the Claimant (see Clause 7.2). The Claimant has undertaken the responsibility of reviewing all such documents and has agreed that all information contained therein shall be binding upon the Claimant if it does not object either in writing or via email (electronic media) within 24 hours after such document is sent by the Respondent to the Claimant. Clause 7.7 of the said Undertaking clearly

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provides that the Respondent Exchange's own records of the trade transactions maintained through computer system or otherwise shall be deemed conclusive and binding on the member for all purposes. Bye-Law 3.5 of the Respondent provides that the records of the Respondent Exchange as maintained by Central Processing Unit or on NEST constitute the agreed and authenticated records in relation to any transaction entered into or executed through NEST or any other trading system of the Exchange. It further provides that records as maintained by the Respondent Exchange constitute valid and binding evidence between and amongst the parties for the purpose of any dispute or claim between the members of the Exchange. Further, under Bye-Law 3.10, every member has agreed to indemnify the Respondent Exchange in respect of defending any suit, litigation or prosecution suffered or incurred losses by the Respondent Exchange on account or as a result of any act of commission or omission or default in complying with the Bye-Laws, Rules and Regulations of the Exchange or due to any transaction executed in pursuance thereof or on account of negligence or fraud on the part of any member of the Exchange.

23.

With this preface, Mr. Lakhawat, Learned Counsel for the Respondent drew the attention of the Tribunal to the pleadings in the present Counter Claim proceedings. At the outset, he submitted that in fact, the Claimant never disputed the fact of "T+2" and "T+25" trading transactions which took place in the month of June 2013. He read out paragraph 5 read with paragraph 24 of the Counter Claim, Vol. I and the Claimant's Reply to the



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The Claimant had done the trading in "T+2" in June 2013 with various buying members on the Platform of the Respondent. The details of the transactions are at Exh. R-9, pg.386, Counter Claim Vol. II. All these transactions are sale transactions by the Claimant under "T+2" wherein it had received the money in respect of these transactions. On the same day, the Claimant entered into "T+25" contracts with the same buyers of "T+2" and the details are set out at Exh. R-10 @ pg. 387, Counter Claim Vol. II. The mutual obligations under "T+2" and "T+25" contracts were already referred to earlier. In short, in "T+2", "T" stands for trade date wherein the seller (Claimant) is supposed to deposit the commodities on the following

- (i) Mustard Oil at warehouse in Jaipur, Rajasthan;
- (ii) Cotton Wash Oil, Shamshabad (A.P.);
- (iii) Sunflower Oil, Chennai;
- (iv) Refined Sunflower Oil, Shamshabad (A.P.);
- (v) Refined Soyabean Oil, Shamshabad (A.P.); and
- (vi) RBD Palmolein Oil, Kakimada (A.P.).

the commodities in which the Claimant had done the trading as under:  
 69-207 of Counter Claim Vol. I. All these Circulars, he submitted, relate to "T+25" contracts. All these circulars are at Exh. RCA-4 to RCA-19, pg. issued various Circulars for trading in various commodities in "T+2" and submitted that from 3<sup>rd</sup> March 2012 onwards, NSEL i.e. the Respondent Claim, Vol. I). He also read out paragraph 24 @ pg. 54, Vol. I and said paragraphs (in its paragraph 5) (@ pg.47 of the Reply to Counter

day in the accredited warehouses of the Respondent. On deposit of such commodities, the warehousing authority of the Respondent will issue the receipt of deposit of commodities which will be forwarded to the Respondent on the basis of such depository receipts, the Respondent will call upon the buyer to pay-in the money with the Respondent which will be transferred to the Claimant (seller)'s credit account on the second day. Identical procedure is followed when "T+25" transaction is to take place. The seller in "T+2" transaction becomes the buyer in "T+25" transaction and the buyer (Claimant herein) is supposed to deposit the agreed purchase price with the Respondent to be transferred to the credit of the seller in "T+25" transaction. After such deposit by the purchaser in "T+25" transaction, the commodity will be allowed to be shifted by the buyer in "T+25" transaction on the 25<sup>th</sup> day. It may also be noted that the purchase and sale transactions between the two parties under "T+2" as well as "T+25" take place on the same day although delivery of commodity and the payment thereof is deferred in "T+25" transactions. After completion of these transactions, the settlement takes place and which is recorded in the ledger account of the Respondent maintained through electronic media. It may also be noted that each member has got a separate ledger and copies of such ledgers reflecting debit and credit are forwarded to the parties respectively. It may also be noted that the Claimant had issued several offer letters to the Respondent and the buyer in T+25 transactions. These

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24. As mentioned earlier, the present Counter Claim by the Respondent is restricted to only 18 transactions and the commodities covered by these transactions were allegedly deposited in three warehouses / godowns located at:
- Location 1 : Warehouse / godown - premises owned by NCS Industries, Kakimada, Andhra Pradesh;
  - Location 2 : Warehouse / godown - premises owned by Sarda Agro Oil Ltd, Kakimada, Andhra Pradesh;
  - Location 3 : Warehouse / godown - premises owned by NCS Storage Ltd, Kakimada, Andhra Pradesh.
25. RW-1, Mr. Santosh Dhuri has filed the tabular statements relating to "T+2" transactions and "T+25" transactions which are marked as Exh. R-9 and R-10, respectively @ pg. 386 & 387 of Countr Claim, Vol. II. Mr. Santosh Dhuri has stated on oath that these 18 transactions are culled out from the Letters of Offers as well as the ledger maintained by the Respondent in due course of business. The same are true and correct. There is no cross examination on this issue by the Claimant. I therefore see no reason to reject the evidence of Mr. Santosh Dhuri, RW-1 along with the two tabular statements, Exh. R-9 and R-10. Accordingly the same is accepted as true.
26. By way of illustration, initially, I may reproduce one "T+2" and one "T+25" transactions in question:

(1) "T+2" transaction:

Trade Date : 04.06.2013

Commodity : RBDPLM

Quantity sold : 5800 MT

Accredited Warehouse : NCS Storage Tank No. T7 and Sarda

Agro Oil Ltd. Tank No. R-1 and R-5

(Kakinada)

Offer Letter Date : 05.06.2013 issued by the Claimant to the

Respondent stating that Claimant had

deposited (i) 1950 MT RBDPLM oil at

NCS Storage Tank No. T7; (ii) 2900 MT

RBDPLM oil at Sarda Agro Oil Ltd.

Tank No. R-1 and (iii) 1950 MT

RBDPLM oil at Sarda Agro Oil Ltd.

Tank No. R-5. Total deposit of

commodity comes to 5800 MT.

Payment

: Claimant received Rs.29,95,27,400/-

from the buyer. The Respondent

thereafter credited to Claimant's account

[see Exh. RCCA-35 (colly) @ pg.419-

456 of the Counter Claim, Vol. II ledger

extracts of the Respondent (NSEIL)] (see

relevant entry @ pg.453).

~~J.P.K~~