

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**THIRD PARTY NOTICE NO. 16 OF 2014**

**IN**

**SUIT NO. 173 OF 2014**

**WITH**

**INTERIM APPLIATION (L) NO. 22189 OF 2021**

**WITH**

**INTERIM APPLICATION (L) NO. 11072 OF 2021**

Modern India Ltd & Ors

...Plaintiffs

*Versus*

Financial Technologies (India) Ltd & Ors

...Defendants

SHEPHALI  
SANJAY  
MORMARE

Digitally signed  
by SHEPHALI  
SANJAY  
MORMARE  
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**Mr Kyrus Modi, i/b M/s. Rashmikant & Partners, for Original  
Plaintiff in S/173/2014.**

**Ms Nikita Vardhan, with Vishal Tiwari & Harsh Shah, i/b Kanga &  
Company, for Defendant No. 30 in S/173/2014**

**Mr PR Yadav, with Saumitra Salunke, for the third Party.**

**Ms Namita Shetty, with Mohit Prabhu, i/b Cyril Amarchand  
Mangaldas, for Defendant No. 1 in S/173/2014.**

**Mr Ravi Kadam, Senior Advocate, with Ashish Kamat, Baibhav  
Bhure, Melvyn Fernandes, Supriya Majumdar & Tarak Shah, i/b  
Vaish Associates, for Defendant No. 2/Applicant-National Spot  
Exchange Ltd).**

**Ms Khushboo Agarwal, i/b Thodur Law Associates, for Defendant  
No. 12.**

**Mr Ansh Sheth, i/b Dave & Girish & Co, for Defendant No. 24.**

**Mrs Jyoti Chavan, AGP, for State-present.**

**CORAM: G.S. PATEL, J**

**DATED: 4th October 2021**

**PC:-**

1. This is an order on Report No. 49 dated 30th March 2019. It is a report made by a three-member committee under the Chairmanship of Hon'ble Mr Justice VC Daga, Former Judge of this Court. The other two members are Mr JS Solomon, Advocate of this Court and Mr Yogesh Thar, Chartered Accountant and partner of M/s. Bansi S Mehta & Co. The order of 2nd September 2014 appointed Mr VC Daga's Committee as a fact-finding authority with the following five broad terms of reference:

- (a) to determine the amounts payable by the defaulters / third parties to National Spot Exchange Ltd ("NSEL");
- (b) to ascertain the assets of the defaulters / third parties and amounts received directly or indirectly from NSEL in respect of various trades;
- (c) to explore and negotiate mutual settlements between NSEL and the alleged defaulters / third parties and their clients;
- (d) to seek appropriate direction from the Court for sale / monetization of assets of defaulter and their clients and any other persons; and
- (e) to perform the duties and functions as provided in the Order dated 2nd September 2014.

2. Annexure “X” to the order of 2nd September 2014 was a Minutes of the Order that itself had exhibits. Exhibit-1 was a list of defaulting members of NSEL . This showed the present noticee in Third Party Notice No. 16 of 2014, Shree Radhey Trading Co (“SRTC”) as one of the defaulting members of NSEL. It also showed (i) Shree Krishna Trading Company; (ii) Suavity Trading Company Pvt Ltd; (iii) RS Nagpal Traders Pvt Ltd; and (iv) Harsha Traders as clients of SRTC.

3. The present Report is in respect of SRTC and its four clients.

4. NSEL took out a Third Party Notice No. 16 of 2014 against SRTC and the four entities named above. NSEL claimed that an amount of Rs34.59 crores and interest from the date of filing of the present Suit No. 173 of 2014 until payment was due from SRTC and its four clients, since they had received various amounts from different investors who had traded on the NSEL platform. The defaulting members and their clients were, NSEL claimed, required to make good the claim of the Plaintiff.

5. The Committee issued notices to SRTC and its four clients. Their Advocates appeared before the Committee.

6. The Report is comprehensive and detailed. Initially, it places some of the background. Various dates and events are noted in paragraph 7.

7. What we are concerned with here, and what the underlying transactions are, can be gauged from paragraphs 7(iv) to (vi). The trades are essentially in commodities, including, in particular, red chilli and black pepper. On 19th December 2014, SRTC filed an affidavit of the constituted attorney of the sole proprietor of SRTC. The sole proprietor is one Ramesh Nagpal. The constituted attorney is one Sunny Nagpal. Ramesh is apparently also the sole proprietor of Harsha Traders, one of the four SRTC clients. A copy of that affidavit is annexed at Exhibit “D” to the present Report. The affidavit took the same stand as is argued before me today, namely, that SRTC and its clients or group concerns were not liable to pay any amount at all to NSEL. The affidavit asserted that all the goods or commodities under transactions for the sale of red chilli and black pepper by the SRTC group companies were delivered to the warehouse or cold storage of one Shri Krishna Cold Storage and Co at Saharanpur. This was leased to NSEL by an agreement of 13th October 2011. Thus, all commodities that were the subject matter of the trade were in NSEL’s custody.

8. In paragraph 5 of that affidavit, Nagpal alleged that for the period 13th October 2011 to 31st July 2013 transactions known as the T+2 and T+25 transactions in respect of black pepper and red chilli (aggregating to over Rs.481 crores) were executed. Under these transactions, two of SRTC’s clients, namely Shree Krishna Trading Company and Suavity, sold commodities worth over Rs.249 crores approximately under T+2 trades to the Indian Bullion Market Association (“**IBMA**”) and Anand Rakhi Commodities Limited (“**ARCL**”), alleged to be purchasers nominated by NSEL and also clients or members of NSEL. This is precisely the argument taken

before me today. The Report notes that according Nagpal's affidavit, if accounts were "properly settled" and goods in alleged to be in NSEL's custody (i.e. in the warehouse leased to NSEL) were accounted for, that is to say if the books of IBMA and ARCL were also examined, it would be found that SRTC was not liable to pay any amount to NSEL. On the contrary, there would be an amount recoverable by SRTC from NSEL under certain other heads. The affidavit specifically sought that copies of the ledger accounts and documents of SRTC group concerns had been submitted. Nagpal sought that ledger accounts of NSEL, its members, its clients accounts and a forensic audit be furnished to SRTC.

9. I will pass over the narrative regarding certain interim orders and come next to what happened on 22nd January 2015, when SRTC submitted an application reiterating its earlier stand, now supported by a compilation of documents. SRTC now claimed to be entitled to recover Rs. 2.60 crores from NSEL and its clients. In this application, SRTC specifically sought a direction from the committee to NSEL to file its book of accounts, ledger accounts, and balance sheets for the years 2011-2012, 2012-2013, 2013-2014 in relation to ARCL, IBMA and two other entities namely PACE Commodities and Sahara Q-Shop. SRTC said that it had submitted necessary documents to the EOW to facilitate an investigation.

10. NSEL resisted this application. It said that it could not be directed to file such book of accounts. It maintained then, as it does now, that these records were not necessary to ascertain the liability of SRTC to NSEL. Then NSEL filed with the Committee a statement of computation of its claim along with supporting

documents including, importantly for today's purposes, a ledger account of SRTC maintained by the NSEL.

11. At a meeting on 3rd February 2015, the Justice Daga Committee found that the accounts SRTC had produced were incomplete. The Committee directed SRTC to furnish complete accounts. SRTC responded by filing two volumes running in to 744 pages. It also filed a rejoinder by Nagpal to NSEL's reply. SRTC maintained its earlier position regarding the other four entities, namely ARCL, IBMA, PACE Commodities and Sahara Q Shop. Nagpal/SRTC then asked the Committee to issue notice to these four entities. There followed a further response from NSEL to this rejoinder and further filings.

12. On 5th August 2015, SRTC filed another application showing that it had issued notices through its Advocate to IBMA, ARCL and PACE Commodities calling on them to produce their books of account before the Committee. Paragraph 17 of the Report notes the submission by the Advocate for SRTC. I believe this will be crucial to what followed. For SRTC now submitted that its documents with its Chartered Accounts were burnt in a fire during some riots in Saharanpur, and most of the other documents had been given by SRTC to the EOW. The Committee immediately asked EOW for photocopies. SRTC agreed to reconstruct its records based on these documents, including a stock register of goods purchased and sold. EOW did give these documents to SRTC including documents in relation to its four clients.

13. On 1st September 2015, SJ Kathawalla J rejected NSEL's application in Notice of Motion No. 739 of 2015 for a decree on admission in the amount of Rs.34.59 crores.

14. SRTC then filed with the Committee another affidavit now alleging that an Agreement of 11th February 2012 between SRTC and NSEL was forged and fabricated.

15. On 5th October 2015, NSEL filed an affidavit of its authorised signatory tendering before the Committee its various ledgers for the period 1st April 2011 to 30th September 2013. It also submitted an extract relating to SRTC from the audit report by M/s Sharp and Tannan Associates. A copy of this affidavit is also annexed to the present Report.

16. There is also a Report of the Chief Investigation Officer of EOW in confirmation of having supplied photocopies of the record to SRTC.

17. Paragraph 23 of the Report notes that SRTC repeatedly filed applications before the Committee for the same purpose, i.e. to produce the accounts of IBMA, ARCL, PACE Commodities and Sahara Q Shop, and for the issue of notices to them to produce these accounts. In paragraph 23, the Committee found that for the purposes of reconciliation of accounts between NSEL and SRTC, the accounts between NSEL and these four other entities (IBMA, ARCL, PACE Commodities and Sahara Q Shop) were irrelevant. The Committee did not pass any directions in that behalf.

18. Paragraph 24 of the Report really sets out the purpose and ambit of the present enquiry. The Committee found that substantial amounts claimed by NSEL from its members were on account of outstanding transactions in what is described as “paired trades”. In these types of trades, sales of goods under what are called T+2 transactions, where payment was due two days after the date of the trade by NSEL to SRTC, was followed by a repurchase of the same or similar goods under a T+10/T+25 format (payment due 10 or 25 days after the date of trade by SRTC to NSEL for the purchase transaction). SRTC’s claim was that neither it nor its clients received delivery of goods under the T+10/T+25 purchase contracts and were therefore not liable to NSEL to make payment for the sale. It is in this context that it was submitted before the Committee, and is submitted even today, that all these goods are lying in the warehouse in the custody of NSEL.

19. Considering this defence by SRTC, the Committee called on both NSEL and SRTC to produce stock registers, the delivery orders and other relevant records to indicate the existence and availability of goods in quantities sufficient to support the SRTC’s trades on the NSEL platform.

20. What follows is crucial.

21. SRTC said it was unable to produce before the Committee some of these records. These, too, were said to have been destroyed by riots or fire. SRTC’s tax audit reports also did not report or show the necessary quantitative details relating to the movement of stock



in trade. The Committee then found Shree Krishna Trading, a client of SRTC, had credit facilities against stock from the State Bank of Patiala, Saharanpur Branch. The Committee asked for copies of the sanction letters and stock statements submitted by the Shree Krishana Trading to State Bank of Patiala for April 2011 to 31st March 2013. The response from SRTC was to tell the committee that an overdraft facility of Rs. 20 lakhs extended by the State of Bank of Patiala to SRTC had been discontinued in January 2014 and therefore it was not possible to submit the monthly stock statements. The position up to this point from SRTC was, to put it shortly, that it did not produce complete records. It claimed some of its records were destroyed by riots or fire. Others it said were simply not available for historical reasons. It claimed that its agreement with NSEL was forged and fabricated. Instead of producing its own material, it demanded again and again that Committee should obtain the accounts relating to four other entities IBMA, ARCL, PACE Commodities and Sahara Q Shop. The Committee through its Secretary wrote twice to the State Bank of Patiala asking for true copies of the sanction letters, true copies of the stock statements and other materials relating to the facility granted to SRTC's client, concern Shree Krishna Trading. The State Bank of Patiala did not respond. That bank is now merged with State Bank of India. The Committee reiterated its requests to the State Bank of India ("SBI"). There is no response from SBI either. The Committee in fact submitted a Report No. 37 for directions to the State Bank of India for production of true copies of these documents. The request also related to the other three group concern and extended to true copies of the stock statements. No orders have been passed on that Report.

22. Thus, the Committee had before it the records that I have briefly alluded to above. These included the NSEL's filings, the partial or incomplete disclosures by SRTC and some documents from EOW. The Committee noted that SRTC had entered in to T+2 contracts until 31st March 2013 on behalf of Shree Krishna Trading and other T+2 contracts on behalf of Suavity Trading, Harsha Traders and Nagpal Traders, all clients of SRTC. At the end of the year, i.e. 31st Mach 2013, balances in the accounts of SRTC and the four entities were transferred to SRTC by journal entries. There was no consistency in the accounting followed by the group companies from year to year. In two diagrams below Paragraph 30 the Committee analysed and explained these T+2 versus T+10 /T+25 transactions.

23. The Committee then prepared a draft reconciliation statement on the basis of the material that it had. Both sides were asked to make their submissions. NSEL and SRTC were directed to file statements of all receipts and payments with particulars of account heads and accounts for all amounts that NSEL had received not only from SRTC but from its four clients.

24. NSEL submitted some documents. A list is in paragraph 32. It submitted a note on the reconciliation of data of SRTC. For its part, SRTC wrote to the Committee seeking time but then no further response came from SRTC to the draft reconciliation statement. SRTC also did not refute before the Committee the statement of accounts it had received from NSEL or the statement of accounts between SRTC and its clients with NSEL.

25. The Committee gave both sides an opportunity to file their submissions in writing and a last opportunity to respond to the data reconciliation and the note on accounts. It also give time finally to produce a statement of receipts and payments with the details noted above.

26. Parties appeared before the Committee on 15th March 2019. SRTC's Advocate demanded inspection, predictably, of the accounts of IBMA, ARCL, PACE Commodities and Sahara Q Shops and accounts of these four entities. The Committee was of the view, and this is reflected in paragraph 36, that it was primarily concerned with the T+2 and T+10/T+25 purchase transactions by SRTC on the NSEL platform. The accounts and transactions between NSEL and other NSEL members, i.e. IBMA, ARCL, PACE commodities and Sahara Q Shop were irrelevant to the reconciliation of accounts between NSEL and SRTC. They had no bearing on the determination of liability of SRTC to NSEL. In an order sheet of 15th March 2019, the Committee recorded these applications and the fact that they were rejected. It also noted that SRTC continued to be in default of compliance of the Committee's directions and had not made any written submission on the draft reconciliation statement, the draft note or the statement of receipts and payments and ledger accounts produced by NSEL.

27. The Committee closed the proceedings relating to SRTC on 15th March 2019. It is this finding of the Committee regarding the irrelevance of the accounts between NSEL and IBMA, ARCL, PACE Commodities and Sahara Q Shop that is assailed once again before me today. The grounds are precisely those that were taken

before the Committee. It is argued yet again before me as it was at least half a dozen times, if not more, before the Committee that these accounts are relevant. Indeed, that is all that SRTC has to say. It keeps repeating this like some mantra, possibly in the hope that if repeated often enough, it will be accepted. It will not. There is simply no answer from SRTC to what NSEL contended or to the findings that the Committee ultimately rendered.

**28.** In paragraph 38, the Committee set out the consolidated sales and purchases of SRTC on the NSEL platform. It then dealt with T+2 and T+10/T+25 transactions between SRTC and its four clients and associated entities. It compared two statements, one based on records produced by SRTC and one on the trade summary produced by NSEL, and then reconciled these transactions in the table below paragraph 40 from pages 24 to 26 of the report. Then there follows a revised reconciliation from pages 26 to 28.

**29.** From paragraph 42, the committee rendered its findings on this process of reconciliation. It first looked at the bye-laws of the NSEL including the bye-laws relating to production of records for evidence, indemnity, closing out, reports and so on. Paragraphs 42.2, 42.3, 42.4 and 42.5 are best reproduced in their entity.

“42.2 SRTC have not produced before the Committee any evidence or documents to disapprove the correctness of any of the entries in the accounts of SRTC maintained by NSEL. SRTC have not produced before the Committee any material to indicate that at any time prior to August 2013, SRTC had raised any objection to the entries made in the accounts relating to SRTC maintained by NSEL.

42.3. SRTC and its clients have failed to produce before the Committee complete records of sales and purchases and transactions on NSEL platform including all Sales and Purchases Invoices and complete sales and purchases and stock registers and stock statements submitted to the concerned Brokers. The incomplete record produced by SRTC/clients of SRTC before the Committee is not adequate for considering the veracity of claims of SRTC

42.4 Under Bye-law 3.5 of Byelaws of NSEL quoted in para 421. above, records of NSEL constitute the agreed and authenticated record and evidence in relation to any transaction entered on exchange of NSEL.

42.5 Therefore, the Committee is of the view that the entries as recorded in the books of NSEL are required to be relied upon while determining the liability of SRTC to NSEL.”

**30.** The committee then turned its attention to the amounts claimed by NSEL from SRTC and rendered its finding. The summary is set out in paragraph 43.5 and 43.6. Then in 43.9, the findings are summarised and the committee concluded that the total amount payable by SRTC to NSEL was Rs.32,77,01,449/-.

**31.** In 44.1, the committee considered SRTC’s principal defence. Paragraphs 44.1 and 44.2 read thus:

“44.1 The main defence of SRTC to the claim of NSEL is that all the goods / commodities under the T+2 sale contracts were delivered to the warehouse in the custody and control of NSEL and SRTC and their clients are not liable for the consequences of non-delivery of the commodities under the outstanding T+10/T+25 purchase contracts as shown in “Annexure 1” to Report dated 2nd

April 2014 of Sharp & Tannan (Exhibit “B” of Affidavit dated 3rd October 2015 filed on behalf of NSEL a copy whereof is pages 1414 Volume IV Part V of V hereto), a copy whereof is marked as **Exhibit “P”** hereto.

44.2 Under T+2 sale contracts 622 MT (311 Qty of 2 MT each) Red Chilli and 871.25 MT Black Pepper (697 MT of 1.25 MT each) was shown as sold by SRTC and its clients to members of NSEL, for which SRTC has received payment / credit of amounts aggregating to Rs. 35.78 crores from NSEL and corresponding T+25 purchase contracts, SRTC and its clients have agreed to purchase 622 MT Red Chilli and 871.25 MT Black Pepper from members of NSEL for a total consideration of Rs.36.30 crores. It is claimed that the stock of 622 MT Red Chilli and 871.25 MT Black Pepper sold by SRTC under T+2 sale contracts mentioned above, was stored in the warehouse/ cold storage of Shri Krishna Stock and Food at Saharanpur leased to NSEL under Agreement dated 13th October 2011 (a copy whereof is annexed as Exhibit “E” to this Report). SRTC and its clients have not produced before the Committee documents or accounts to establish that SRTC and its clients had acquired stock of 622 MT Red Chilli and 871.25 MT Black Pepper for delivery under T+2 sale contracts mentioned above for which SRTC have received payments / credit from NSEL of amounts aggregating of Rs. 35.78 crores. The excuse given by SRTC for non-production of such record is that the relevant document, which were with the Chartered Accountants of SRTC, were burnt in fire during the riots at Saharanpur. The documents handed over by SRTC to EOW, copies whereof have been made available to SRTC as also to the Committee, do not establish that on 26th June 2013 SRTC and its clients had stock of 622 MT Red Chilli and 871.25 MT Black Pepper. The documents produced before the Committee by SRTC and its clients, do not contain quantitative details relating to movement of stock in

trade during the relevant period. SRTC have failed to produce before the Committee copies of sanction letters and stock statements submitted by Shri Krishnan Trading Co to State Bank of Patiala, Saharanpur Branch.”

32. There is simply no answer to these findings because SRTC did not produce the documents that it could have. SRTC cannot possibly expect to succeed by suppressing its own documents, whatever the reason, failing to submit notes and reconciliation statements and submissions before the specially appointed Committee and to argue that the committee should inferentially, from the accounts of other NSEL members, come to a conclusion in SRTC’s favour. Taken at its simplest — perhaps even oversimplifying — if SRTC had any kind of transactions with IBMA, ARCL, PACE Commodities and Sahara Q shops, it seems to me inconceivable and, simultaneously unacceptably convenient, that all of SRTC’s records in relation to such transactions are missing. What SRTC says is that, instead, it should be allowed to proceed on conjectures and surmises drawn from third party records. It is for this reason that, on the basis of whatever was available to it, the Committee went through the trouble in actually preparing a monthly stock register of SRTC’s clients who transacted on NSEL platform through SRTC. Paragraph 44.3 shows the accounts of Shree Krishna Trading and the stock statements. The finding is that Shree Krishna Trading had a gross profit of nearly 38% but the tax audit report for the same year shown by SRTC to the Committee showed a gross profit ratio of only 0.4%. The committee asked for an explanation. SRTC replied that in March 2012, Shree Krishna Trading purchased red chilli from Harsha Traders and sold this on the NSEL

platform at a loss. SRTC said that in March 2012, Shree Krishna Trading purchased from Harsha Traders red chilli at Rs. 97/- per kg and in March 2012 sold this on the NSEL platform at Rs. 54/- per kg. Thus, it said that against the gross profit reported earlier, SRTC had made a loss on that purchases and sales in the month of March 2012 and, therefore, the gross profit had been reduced. The Committee found that the prices claimed by SRTC and its clients were unrealistic and unreliable.

**33.** In paragraph 44.4 and 44.5 there are workings of the stock statements of Black Pepper of Harsha Traders prepared by the Committee. There are similar stock statements prepared for various commodities and entities. In paragraph 44.1 and 44.2, the Committee noted that there are several transactions that were partly or wholly not reflected in SRTC's record. There were thus unexplained discrepancies. The Committee, therefore, concluded in 44.3 that the transactions of sales and purchases by SRTC on NSEL platform were actually financing transactions. Under T+2 contracts, SRTC received payments from NSEL or members of NSEL, and under corresponding T+10/T+25 contracts SRTC agreed to make payment of a higher amounts to NSEL or NSEL members irrespective of the availability of the sufficient stock. There is also a discrepancy about the identity of the member, i.e. a discrepancy between SRTC and NSEL records. This was not taken into account and rightly so because this would have carried the matter no further.

**34.** In paragraph 48, the Committee looked at the bank account statements of the SRTC Settlement Account with HDFC bank. These showed that the total amounts paid by NSEL to SRTC



aggregated to Rs.303.47 crores and the total amount received by NSEL from SRTC was Rs. 278.54 crores. Thus SRTC received from NSEL a net amount of Rs. 24.90 crores. On a summation of the debits and credits in the accounts of SRTC maintained by NSEL, the Committee found that the amount payable by SRTC to NSEL was Rs.32.77 crores (exactly Rs. 32,77,01,499/-).

35. I can see no reason not to accept this report and make it an order of the Court. As I have noted earlier, the same excuse that has been paraded before the committee for the last five or six years since 2014–2015 or 2015–2016 continues even today, namely that the accounts of IBMA, ARCL, PACE Commodities and Sahara Q Shop will show something or the other; hopefully, according to SRTC, that it has to pay nothing to NSEL but has to instead recover from NSEL. This does not in any way account for SRTC’s incessant failures to complete its filings and make its submission before the Committee despite repeated opportunities.

36. At a broader level this cannot take the form of a First Appeal. There is no procedural irregularity *per se* that is pointed out. It is not as if the Committee’s report is lacking in reasons for its rejection of SRTC’s application to summon third-party accounts. Indeed, there are cogent and unassailable reasons to reject those applications. SRTC cannot simply paper over its own defaults in this fashion. Once the decision-making process cannot be assailed, then I see no reason why I should entertain an application made only across the bar by SRTC to either substitute this report with a finding of my own or to further delay matters by sending it back and remanding it to the Committee for a reconsideration. There is nothing to

reconsider. SRTC itself has no material it can produce. All it can say now is what it has unsuccessfully tried to say for the last six years — that other parties' accounts should be produced. The Committee was right in rejecting that request. Once that is the finding, nothing remains of the opposition to the report.

37. The report is therefore accepted and there will be in an order in its terms in favour of NSEL and against SRTC. Liberty to the NSEL to recover the costs of the reports from the SRTC at any stage in the proceedings. Obviously, the amount payable by SRTC will carry interest from 30th September 2013 till payment or realisation. The interest must be at a commercially reasonable rate. That interest will therefore under 12% per annum.

38. All concerned will act on production of a digitally signed copy of this order.

**NOTE: 26TH NOVEMBER 2021**

39. This order was dictated in open court on 4th October 2021. It was transcribed shortly thereafter. However, due to some internal miscommunication or oversight, it remained to be corrected, signed and uploaded. The error is regretted.

**(G. S. PATEL, J)**