(2024) 02 BOM CK 0023

In the Bombay High Court

Case No : Notice Of Motion No. 58 Of 2019 In Suit No.121 Of 2014, Chamber Summons No. 662 Of 2019

?L.J. Tanna Shares And Securities Pvt. Ltd. And 2 Ors APPELLANT

Vs

63 Moons Technologies Ltd. And 31 Ors RESPONDENT

Date of Decision : 12-02-2024

Acts Referred:

Code Of Civil Procedure, 1908 — Order 39 Rule 2A, Order 39 Rule 11, Order 40 Rule 1

Citation : (2024) 02 BOM CK 0023

Hon'ble Judges : Sandeep V. Marne, J

Bench : Single Bench

Advocate : Sarosh Bharucha, Bhushan Shah, Akash Jain, Aakash Mehta, Mohammed Lokhandwala, Ravi Kadam, Ashish Kamat, Chirag Kamdar, Shlok Parekh, Anuya Pathare, Melvyn Fernande, Vaish, Atul Chitale, Namita Shetty, Mohit Prabhu, Ilina Peehu, Prachi Kolambekar, Ruchita Chavan, Nikita Vardhan, Vishal Tiwari, Kanga, Jyoti Chavan, Shashipal Shankar

Final Decision : Allowed/Dismissed

Judgement

Sandeep V. Marne, J

1. These three applications arise out of claims of rival parties to the amount of Rs. 32,14,94,304/- deposited by National Agricultural Co-operative Marketing Federation (NAFED) in the Delhi High Court towards satisfaction of the Arbitral Award dated 1 May 2017 passed in favour of Defendant No.2-National Spot Exchange Ltd. (NSEL). Plaintiffs have filed Notice of Motion No. 58 of 2019 inter alia seeking transfer of amount of Rs. 32,14,94,304/- deposited by NAFED with the Delhi High Court to the Registry of this Court. NAFED wants the amount to be transferred in escrow account opened at the directions of this Court for satisfying the claims of investors of NSEL. On the other hand, Defendant No.2-NSEL has filed Interim Application (Lodg.) No. 39615 of 2022 seeking leave of this Court to permit it to utilise the very same amount for its day-to-day activities as well as for giving financial support to its subsidiaries in accordance with the methodology

decided by this Court by various orders passed in the past.

2. Plaintiffs have filed Suit for recovery of money from Defendants. It appears that Plaintiffs are already protected by various interim orders passed by this Court in their favour. On 18 December 2013, this Court has passed Order recording a statement on behalf of NSEL that it shall not dispose off, alienate, encumber, part with possession of or create any third party right, title or interest in any of its assets except for payment of statutory dues, amount of preservation, maintenance and protection of their assets and wages and salaries without the written permission of Forward Markets Commission and in case of immovable properties, without the order of this Court. During pendency of the suit, Award dated 1 May 2017 came to be passed by the Arbitrator directing payment of various amounts in favour of NSEL by NAFED. The said Award was challenged by NAFED before the Delhi High Court, which rejected challenge to the Award by dismissing the petition filed by NAFED by Order dated 1 September 2017. The Order of the learned Single Judge of the Delhi High Court came to be upheld by the Division Bench by its Judgment dated 7 November 2017. Special Leave Petition preferred by NAFED has also been rejected by Order dated 17 September 2018, except by modifying the rate of interest from 14% to 12%. In execution proceedings filed by NSEL before the Delhi High Court, NAFED paid an amount of Rs. 65 crores directly to NSEL and the balance amount of Rs. 32,14,94,304/- came to be deposited by NAFED with the Registry of the Delhi High Court.

3. NAFED sought directions from Delhi High Court for deposit/transfer of Rs. 32,14,94,304/- in escrow account opened as per directions of this Court for settling the claims of investors of NSEL. Delhi High Court granted leave to NAFED to move this Court to seek such directions. Accordingly, NAFED has filed Chamber Summons No. 662 of 2019 in the present suit seeking direction against NSEL for deposit of amount of Rs.32,14,94,304/- in the escrow account for the purpose of settling the dues of the investors.

4. Plaintiffs are aggrieved by utilization of amounts awarded to NSEL by arbitral award and have filed Notice of Motion No. 58 of 2019 seeking various directions for bringing back the amounts already spent / transferred by NSEL. Plaintiffs rely upon Affidavit dated 27 August 2018 filed on behalf of NSEL contending that out of the amount awarded by the Arbitral Tribunal, an amount of Rs. 31,43,25,188 is transferred to Defendant No.1-FTIL and Rs. 30,06,70,265/- is used towards legal expenses, employees' salaries, statutory dues and administrative expenses. Plaintiffs are aggrieved by such transfer of funds from NSEL to FTIL as well as by spending of amount by NSEL without leave of this Court and contends that such action amounts to violation of various orders passed by this Court. Plaintiffs have accordingly filed Notice of Motion No. 58 of 2019 seeking the following reliefs :

(a) Pending the hearing final disposal of the Suit, this Hon'ble Court be pleased to direct the Defendant No 1 to deposit the sum of Rs 31,43,25,188/- (Rupees Thirty One Crore Forty Three Lac Twenty Five Thousand One Hundred and Eighty

Eight Only) paid to it by the Defendant No 2, along with interest thereon at the rate of 18% per annum from 29 May 2018 till payment and/or realization forthwith into the NSEL Escrow Account maintained for benefit of the investors of Defendant No 2 exchange;

(b) In the alternative to prayer clause a above, pending the hearing final disposal of the Suit, this Hon'ble Court be pleased to direct the Defendant No 1 transfer the sum of Rs 31,43,25,188/- (Rupees Thirty One Crore Forty Three Lac Twenty Five Thousand One Hundred and Eighty Eight Only) back to Defendant No 2, along with interest thereon at the rate of 18% per annum from 29 May 2018 till payment and/or realization with a direction to Defendant No.2 to deposit the said amount forthwith into the NSEL Escrow Account maintained for benefit of the investors of Defendant No 2 exchange;

(c) Pending the hearing final disposal of the Suit, this Hon'ble Court be pleased to direct the Defendant No. 2 to deposit the sum of Rs. 30,06,70,265/- (Rupees Thirty Crore Six Lac Seventy Lac Two Hundred and Sixty Five Only) received by it from NAFED, along with interest thereon at the rate of 18% per annum from 29 May 2018 till payment and/or realization, forthwith into the NSEL Escrow Account maintained for benefit of the investors of Defendant No 2 exchange;

(d) Pending the hearing final disposal of the Suit, this Hon'ble Court be pleased to direct the Defendant No 2 to deposit the sum of Rs. 3,50,00,000/- (Rupees Three Crore Fifty Lac Only). received by it from NAFED and not utilized by it, along with interest accrued thereon, forthwith into the Escrow Account maintained for benefit of the investors of Defendant No 2 exchange.

(e) Upon failure of the Defendant No. 1 to deposit the amount as per prayer clauses a or b above this Hon'ble Court be pleased to direct attachment of such assets of the Defendant No.1 as this Hon'ble Court may deem fit and proper to secure the said amount of Rs. 31,43,25,188/-

(f) Upon failure of the Defendant No2 to deposit the amount as per prayer clause c and d above this Hon'ble Court be pleased to direct attachment of such assets of the Defendant No. 2 as this Hon'ble Court may deem fit and proper to secure the said amount of Rs. 30,06,70,265/- and Rs 3,50,00,000/-.

(g) Pending hearing and final disposal of this Suit, this Hon'ble Court be pleased to direct Defendant No 1 to disclose on oath complete details and particulars along with documentary evidence, of the expenditure or utilization of the amount of Rs 31,43,25,188/- (Rupees Thirty One Crore Forty Three Lac Twenty Five Thousand One Hundred and Eighty Eight Only) which it received from Defendant No.2 on 29 May 2018

(h) Pending hearing and final disposal of this Suit, this Hon'ble Court be pleased to direct Defendant No 2 to disclose on oath, complete details and particulars along with documentary evidence with regards to expenditure of the amount of Rs 30,06,70,625/- (Rupees Thirty Crore Six Lac Seventy Thousand and Six

Twenty Five Only)

(i) Pending the hearing and Disposal of the present Suit, the Court Receiver Bombay High Court or any other fit and proper person may be appointed as the Receiver of all the movable and immovable assets of the Defendant No.2 with all powers under Order 40 Rule 1 including for sale of these assets, 13 February 2024.

(j) That this Hon'ble Court's be pleased to issue necessary orders under Order 39 Rule 2A read with Order 39 Rule 11 of the Code of Civil Procedure, 1908 as amended by the State of Maharashtra against the Defendant No 1 and 2 for breach of orders dated 7 October 2013, 18 December 2013 and 6 October 2015 of this Hon'ble Court and this Hon'ble Court further be pleased to direct;

(i) Attachment of all the properties of Defendant No 1 and Defendant No 2 and all the present directors of Defendant No 1 and Defendant No 2.

(ii) Strike off the defense of Defendant No 1 and Defendant No 2 in Suit 121 of 2015 and reply of Defendant No.1 and 2 to the notice motions taken out by Plaintiffs;

(jj) Pending the hearing final disposal of the suit, this Hon'ble Court be pleased to direct the Defendant No. 3 to deposit/ transfer the sum of Rs 32,14,92,304/- (Rupees Thirty-Two Crore Fourteen Lac Ninety-Two Thousand Three Hundred and Four Only) along with interest therein accrued thereon which are presently lying with the registry of the Hon'ble Delhi High Court with the Registry of this Hon'ble Court.

(k) for ad-interim reliefs in terms of prayer clause (a) to (i) above

(l) for costs of the Notice of Motion;

(m) Such other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of this case.

5. After deposit of the amount of Rs. 32,14,94,304/- by NAFED before the Delhi High Court, the Motion is amended to seek direction for transfer of the said amount from the Registry of the Delhi High Court to the Registry of this Court.

6. On the other hand, NSEL has filed Interim Application (Lodg.) No. 39615 of 2022 for permitting it to utilise the said deposited amount by NAFED before the Delhi High Court for day-to-day activities as well as for providing financial support to its subsidiaries in accordance with the methodology decided by this Court in various orders passed by it. The prayers in Interim Application (Lodg.) No. 39615 of 2022 read thus :

11. The Applicant prays that: -

a) Pending the hearing and final disposal of Notice of Motion No. 212 of 2014, this Hon'ble Court may be pleased to allow the Applicant to utilize the amount deposited with the Registry of Hon'ble Delhi High Court for its day to day activityin accordance with orders dated 26th April, 2019, 6th January, 2020, 14th January, 2020, 2nd March, 2020 and 13th January, 2022 passed by this Hon'ble Court including giving financial support to its subsidiary;

b) In the interim and pending the hearing and final disposal of the present Interim Application, this Hon'ble Court may be pleased to allow the Applicant to utilize the fundsfor providing financial support to its subsidiary i.e. IBMAin accordance with the methodology decided by this Hon'ble Court vide its orders dated 26th April, 2019, 6th January, 2020, 14th January, 2020, 2nd March, 2020 and 13th January, 2022, including to pay its outstanding due amounting to Rs. 10,23,756/- and Rs. 7,00,000/- for quarter till March 2023 which it may incur for its day to day operations.

c) For interim and ad interim reliefs in terms of prayer clauses

(a) above.

d) For further and other reliefs as this Hon'ble Court may deem fit and proper having regard to the facts and circumstances of the present case.

e) For the costs of the present Interim Application.

7. Thus, Plaintiffs seek transfer of amount of Rs. 32,14,94,304/- from the Registry of the Delhi High Court to the Registry of this Court, whereas NAFED seeks a direction for transfer of the said amount to the escrow account for satisfaction of dues of investors of NSEL. NSEL, on the other hand, desires the said amount to be utilised for its day-to-day activities, in accordance with the methodology decided by this Court on earlier occasions.

8. I have heard Mr. Bharucha, the learned counsel appearing for the Plaintiff. He would take me through the various orders passed by this Court injuncting NSEL from transferring any further amounts received by NSEL without seeking permission of this Court. He would submit that NSEL made an attempt before this Court to relax the injunction on transfer of amounts on the pretext of NSEL indulging in different businesses and offering different services apart from electronic trading platform for forward contracts in commodities. That this Court rejected NSEL's plea and held that irrespective of the activity or business which has caused creation of assets, the order of injunction shall continue to apply in respect of funds received through any business or activity of NSEL. That this Court infact issued contempt notice against both, NFCL and FITL for wilful breach of injunction order. He would invite my attention to Order dated 12 December 2018 passed by this Court, by which another attempt made by NSEL to create artificial difference between 'transfer' and 'utilisation' of funds was disapproved by this Court which restrained NSEL from utilizing any amounts received by NSEL from NAFED or from any other party without seeking permission of this Court. That the said Order dated 12 December 2018 has been confirmed by the Division Bench of this Court by dismissing NSEL'S Appeal. Mr. Bharucha would therefore submit that there is specific injunction order against NSEL from utilising any

funds received from NAFED without permission of this Court. He would therefore submit that the amount deposited by NAFED in the Delhi High Court cannot be permitted to be utilised by NSEL for any purposes.

9. Inviting my attention to the prayers made in Interim Application (Lodg.) No. 39615 of 2022, Mr. Bharucha would submit that NSEL is seeking a vague direction for utilisation of the amount deposited by NAFED before the Delhi High Court for its day-to-day activities without specifying the purpose for which such utilisation is sought. That various orders passed by this Court clearly mandate NSEL to provide details for which any amount received by it is to be utilised. That therefore NSEL cannot be permitted to seek a blanket permission from this Court for utilisation of amount deposited before the Delhi High Court without specifying the exact purpose and the details.

10. Mr. Bharucha would then submit that NSEL cannot be permitted to rely upon Orders dated 26 April 2019, 6 January 2020, 14 January 2020, 2 March 2020 and 13 January 2022 for the purpose of utilisation of amount deposited by NAFED before the Delhi High Court. That the said orders are passed by this Court permitting NSEL to utilise only the amounts which are infused by Defendant No.1 into NSEL. That at no occasion, this Court has ever permitted NSEL to utilise any amount other than the one infused by Defendant No.1 into NSEL. That therefore the methodology suggested by this Court for utilisation of various amounts infused by Defendant No.1 into NSEL cannot be adopted for the purpose of utilisation of amount deposited by NAFED in the Delhi High Court. Mr. Bharucha would therefore pray for dismissal of Interim Application (Lodg.) No. 39615 of 2022. He would submit that the amount deposited by NAFED in Delhi High Court must be brought to this Court alongwith interest accrued thereon as NSEL is liable to pay amounts running into thousands of crores to various creditors in respect of which several suits and other proceedings are filed against NSEL. That considering the past conduct of NSEL where it has breached the orders passed by this Court from time to time, if it is permitted to utilise the amount deposited by NAFED in the Delhi High Court, there is a likelihood of NSEL siphoning off the entire amount with the ulterior objective of defeating claims of the creditors like Plaintiffs.

11. Mr. Kadam, the learned senior advocate appearing for NSEL would submit that the amount deposited by NAFED in the Delhi High Court are the funds of NSEL, which must be permitted to be utilised for satisfying the various expenses, salaries, invoices of legal professionals etc. as permitted by this Court on various occasions in the past. Inviting my attention to the Order dated 13 January 2022, Mr. Kadam would submit that this Court has suggested a methodology for payment of various invoices of legal professionals of NSEL and the same methodology can be adopted for utilisation of amounts deposited by NAFED with the Delhi High Court. Referring to the order dated 12 June 2022, Mr. Kadam would submit that this Court has already permitted NSEL to pay salaries to its employees without filing any application to seek permission of this Court.

12. Mr. Kadam, would further submit that no conscious distinction has ever been made by this Court between equity infused by Defendant No.1 into NSEL and NSEL's own funds. That therefore NSEL must be permitted to utilise the amounts received not only towards the equity infused by Defendant No.1 into NSEL but also NSEL's own funds. That the distinction sought to be suggested by Plaintiffs between equity and own funds of NSEL is artificial without any basis and so long as necessary safeguards are followed as suggested by this Court, no prohibition can be imposed on NSEL from utilising its own funds. Mr. Kadam would further submit that Plaintiffs are alleged creditors of NSEL who have filed suit for recovery of amounts from NSEL. That interest of Plaintiffs are already secured on account of statements made on behalf of NSEL on 18 December 2013 for keeping the assets of NSEL unencumbered. That the nature of order sought for by the Plaintiffs is like attachment before judgment which in the facts of the present case cannot be granted. Mr. Kadam would therefore pray for permitting NSEL to utilise the amount deposited by NAFED in the Delhi High Court by following methodology adopted/suggested in series of orders passed by this Court since the year 2019.

13. Mr. Shankar, the learned counsel appearing for NAFED in Chamber Summons No. 662 of 2019 would invite my attention to the Order dated 24 January 2019 passed by the Delhi High Court in which the Delhi High Cout had granted liberty to file appropriate application before this Court for seeking clarification about deposit of amount of Rs.32,14,94,304/- in the escrow account. That the Chamber Summons has been filed in accordance with the said leave granted by the Delhi High Court. He would therefore submit that the amount deposited by NAFED must be transferred to the escrow account and that NSEL cannot be permitted to utilise the said amount for any other purpose.

14. I have considered the submissions canvassed by the learned counsel appearing for the parties. For the purpose of deciding the prayers made in the applications filed by Plaintiffs, NSEL and NAFED, it would be necessary to make a quick reference to the relevant orders passed in the present Suit:

(i) In Writ Petition (Lodg.) No. 2340 of 2013 and Writ Petition No. 2534 of 2013, Division Bench of this Court recorded a statement made on behalf of NSEL that it shall not dispose of, alienate, encumber, part with possession and/or create third party rights in respect of any of its assets without the written permission of Forward Markets Commission and in case of immovable properties, without the orders of this Court. The said Order passed by the Division Bench in Writ Petitions came to be incorporated as an order passed in this Suit by way of Order dated 6 October 2015 passed in the present suit. This Court directed that till further orders, the Order dated 7 October 2013 shall continue to operate in the present suit as well.

(ii) After receipt of amount of Rs. 65 crores by NSEL from NAFED, this Court passed Order dated 28 August 2018 recording utilisation of the said amount by transfer of Rs. 31 crores to FTIL and Rs. 30.5 crores towards legal expenses, salaries etc. It appears that an amount of Rs.3.5 crores remained with NSEL and this Court directed that utilisation of the said amount would be subject to further orders passed by this Court. However, this Court specifically injuncted NSEL from transferring any amount received by it without seeking permission of this Court.

(iii) When applications were filed alleging breach of orders passed by this Court while dealing with the amount of Rs.65 crores received by NSEL from NAFED, this Court passed Order dated 1 November 2018 holding that the injunction order operated qua all assets of NSEL irrespective of activity or business which caused creation of the assets. The order was required to be passed as NSEL took a defence that it had different businesses and offered different services apart from operating electronic trading platform for forward contracts in commodities and that the monies received from NAFED had nothing to do with the said electronic trading platform. NSEL accordingly took a stand that it was entitled to utilise the amount received from NAFED and the transfer of funds made by NSEL to FTIL was not contrary to law nor amounted to breach of injunction order. This Court however negatived the defences of NSEL and held that the amount of dues can be recovered from any asset of NSEL irrespective of particular activity or business. This Court accordingly issued notice for initiation of contempt of court proceedings against NSEL and FTIL.

(iv) By order dated 3 December 2018, this Court again directed NSEL not to transfer any amount from the funds received or expected to be received by it.

(v) On 12 December 2018, NSEL sought a clarification from this Court that the embargo imposed by various orders was only for ‘transfer’ of funds received by NSEL and that the same cannot be applied for ‘utilisation’ of funds. By Order dated 12 December 2018, this Court rejected the contention and directed that NSEL shall not release any amount received from NAFED or any other party without the permission of this Court as per earlier order dated 28 August 2018.

(vi) NSEL challenged the Order dated 12 December 2018 by filing Appeal before the Division Bench of this Court. The Appeal was rejected by Order dated 12 February 2019. This Court, however observed that the Single Judge of this Court would develop a suitable working methodology for supervision of legal and professional expenses incurred by NSEL.

15. Thus, by various Orders passed as discussed above, NSEL has been restrained by this Court from utilising the amounts received from NAFED without the permission of this Court. It is for this reason that NSEL has filed Interim Application (Lodg.) No. 39615 of 2022 seeking leave of this Court to utilise the amount deposited by NAFED before the Delhi High Court for its day-to-day activities.

16. It is contended by Mr. Kadam that the Division Bench has clearly observed in paras-12 and 14 of its Order dated 12 February 2019 that the Single Judge of this Court would develop suitable working methodology for utilisation of various amounts by NSEL for incurring various expenditure particularly for satisfying bills

of legal professionals. According to Mr. Kadam, the said methodology has accordingly been developed by this Court by Orders dated 22 July 2019, 6 January 2020, 14 January 2020, 2 March 2020 and 13 February 2022. It would be necessary to refer to the said orders. Before doing so, it must be observed that in accordance with the order passed by the Apex Court in 63 Moon Technologies Ltd. V/s. Union of India 2019 SCC Online SC 624, Defendant No.1 gave an Undertaking to the Apex Court that it shall continue to infuse funds into NSEL. In accordance with the said Undertaking, Defendant No.1 has been infusing funds into NSEL by way of capital infusion. Such infusion is not by way of loan given by Defendant No.1 to NSEL. After such capital infusion by Defendant No.1 into NSEL, the funds so received have been utilised by NSEL from time to time in accordance with the orders passed by this Court. By those orders, a methodology has been developed, which NSEL is expecting to be applied for utilisation of funds deposited in the Delhi High Court. It would therefore be necessary to refer to those orders passed by this Court:

(i) By Order dated 22 July 2019, this Court permitted utilisation of funds received towards capital infusion into NSEL by Defendant No.1 to satisfy dues of amount of Rs.8.86 crores. This Court, however, repeatedly clarified that such utilisation would only be against the funds that were infused or about to be infused into NSEL by Defendant No.1.

(ii) By further Order dated 17 October 2019, this Court once again permitted utilisation of funds infused by Defendant No.1 into NSEL by specifically clarifying that such utilisation cannot be from any other funds received by NSEL other than capital infusion from Defendant No.1.

(iii) By Order dated 6 January 2020 read with clarificatory Order dated 14 January 2020, this Court once again permitted incurring of expenditure by NSEL from funds infused by Defendant No.1 into it.

(iv) By further Order dated 2 March 2020, this Court once again permitted NSEL to make payments out of the funds infused by Defendant No.1 into it.

(v) By order dated 13 January 2022, when NSEL sought release of amount of Rs. 1.93 crores, this Court developed methodology for incurring of legal expenditure by NSEL as under :

6. As regards prayer Clause (b), which deals with the payments that are require to be made by the Applicant towards its expenditure and/or to Advocates, the same shall henceforth be made in accordance with the methodology suggested at paragraph 46 of the Interim Application, albeit with the timeline modification suggested by the Plaintiffs' Advocates. For avoidance of any doubt, such payments shall be made by the Applicant in the following manner:

a. The Applicant will provide a list of all the invoices alongwith copies of the invoices of legal professionals (Sr. Counsels, Law Firms, Arbitrators, etc.) to the Plaintiffs' Advocate for which the payment is required to be made, on a month to month basis by the 5th of every subsequent month.

b. The Plaintiffs shall intimate its objection as regards any particular invoice within ten (10) working days from the receipt of the list of payments. The Applicant shall proceed to make payments for the rest of the invoices which are not objected to by the Plaintiffs within ten (10) working days from the receipt of the list of payments.

c. The Applicant shall offer inspection of the invoice(s) as regards the objections raised by the Plaintiffs' Advocate within five (5) working days from the receipt of objection of the Plaintiff.

d. After inspection, the Plaintiffs' Advocate shall communicate its objection within five (5) working days from the date of inspection. If no objection is received the Applicant shall proceed to make payment.

e. Post inspection, if the Plaintiffs still object, the Applicant shall make an application before this Hon'ble Court for appropriate reliefs with respect to the objected invoices.

f. The payments to be made shall be made from the funds infused by way of equity from the Applicant's parent company i.e. Defendant No.1.

Here again this Court specifically directed that the payment must be made from funds infused by way of equity by Defendant No.1 into NSEL in accordance with the methodology.

(vi) Lastly on 12 June 2020, this Court has permitted payment of salaries to the employees of NSEL without filing any applications to this Court with a caveat that the payment must be made from funds infused by the first Defendant into NSEL.

17. The orders passed above would clearly indicate that this Court has consistently permitted NSEL to make various payments only through funds infused by Defendant No.1 into it. At no point of time, this Court ever had an occasion to decide the issue as to whether NSEL can make any payments through funds received by it other than capital infusion by Defendant No.1. This is the first time where NSEL has filed application seeking leave of this Court to utilise funds deposited by NAFED in the Delhi High Court for satisfying its day-to-day expenses and for providing financial support to its subsidiaries.

18. It must be noted here that the deposit of amount of Rs. 32,14,94,304/- is made by NAFED in the Registry of Delhi High Court sometime before January 2019 as such deposit has been recorded by the Delhi High Court in its Order dated 24 January 2019. Despite such deposit being made in the Delhi High Court as early as in January 2019, NSEL kept on making applications before this Court seeking utilisation of funds infused by Defendant No.1 into it to satisfy various invoices/dues. At no point of time, since January 2019, NSEL ever applied to this Court seeking permission to utilise the amounts lying in the Registry of the Delhi High Court for satisfying the dues towards legal expenses, salaries etc.

19. Though Mr. Kadam has urged that the distinction between equity infused by Defendant No.1 into NSEL and NSEL's own funds is artificial and that this Court has never consciously created distinction to that effect, it is difficult to believe that NSEL was not aware of amount of Rs.32,14,94,304/- remaining deposited with the Registry of the Delhi High Court since the year 2019. Despite full knowledge of such deposit, NSEL repeatedly undertook before this Court not to utilise any funds other than capital infused into it by Defendant No.1, for expenditure incurred by it from time to time. I therefore do not see any reason why this position, which has been obtaining for the last five long years, should be altered at this juncture. It is also seen that the prayers in Interim Application (Lodg.) No. 39615 of 2022 are vague and no particulars are specified for utilisation of amount deposited in the Delhi High Court by NSEL. Since the year 2019 and after deposit of the amount by NAFED in the Delhi High Court, this Court has permitted NSEL to utilise only the amounts infused by Defendant No.1 into NSEL towards capital equity by developing a mechanism. Otherwise, the earlier orders of injunction restraining NSEL from transferring or utilising any amounts received by it, including the amounts received from NAFED, has continued to operate for a considerable period of time. The order of the Division Bench passed in Appeal would indicate that in respect of the funds received by NSEL from NAFED, a mechanism will have to be developed by this Court to achieve the balance. After passing of the Order by the Appeal Court on 12 February 2019, NSEL never applied for development of any mechanism for utilisation of any amount received from NAFED. On the contrary, NSEL consciously took another route of filing applications before this Court for utilisation of amounts infused by Defendant No.1 in the capital of NSEL. Therefore, this Court had no occasion to develop any mechanism for utilisation of amount deposited by NAFED in the Delhi High Court. Considering the contents as well as prayers of Interim Application (Lodg.) No. 39615 of 2022, I am unable to convince myself that a mechanism can be designed for utilisation of any amount deposited by NAFED in the Delhi High Court. On the contrary, from various orders passed by this Court since the year 2019, it is clear that NSEL is able to manage its day-to-day affairs by utilising amounts received by it from Defendant No.1. The same arrangement can be continued and I do not find any reason why the same needs to be disturbed by permitting NSEL to utilise any amount deposited by NAFED in Delhi High Court, that too based on the averments and prayers made in Interim Application (Lodg.) No. 39615 of 2022. I am therefore not inclined to allow Interim Application (Lodg.) No. 39615 of 2022, which deserves to be dismissed.

20. Coming to Chamber Summons No. 662 of 2019 filed by NAFED, it is seen that NAFED is not party to the Suit. The deposit of amount is made by NAFED in the Delhi High Court in the execution proceedings for satisfaction of Arbitral Award. NAFED has absolutely no role to play in the issue involved in the suit. Therefore though the anxiety of NAFED can be appreciated, it cannot dictate terms about utilisation of amount deposited by it before Delhi High Court towards

satisfaction of the Arbitral Award. Therefore, Chamber Summons filed by NAFED cannot be allowed and the same deserves to be rejected.

21. This leaves Notice of Motion No. 58 of 2019 filed by the Plaintiff. Mr. Bharucha has fairly submitted that only prayer clause (jj) in Notice of Motion No.58 of 2019 is being pressed at this juncture. By that prayer, Plaintiffs have sought transfer of amount of Rs.32,14,92,304/- from the Registry of the Delhi High Court to the Registry of this Court. The prayer of NSEL in Interim Application (Lodg.) No. 39165 of 2022 for utilisation of amount of Rs. 32,14,92,304/- is being rejected by this Order. In that view of the matter and in the interest of justice, the amount deposited by NAFED in the Registry of the Delhi High Court needs to be brought to this Court as injunctive orders are operating against NSEL from transfer and utilisation of any amounts received by it including the amounts received from NAFED. Accordingly, prayer clause (jj) in Notice of Motion No. 58 of 2019 can be granted. So far as rest of the prayers are concerned, in the event they survive, the Plaintiffs would be at liberty to file appropriate application to press the same.

22. I accordingly proceed to pass the following Order :

(i) Notice of Motion No. 58 of 2019 is made absolute in terms of prayer clause (jj). The Registry of Delhi High Court is requested to transfer the amount of Rs. 32,14,92,304/- or such amount deposited by NAFED with the Delhi High Court towards satisfaction of the Arbitral Award dated 1 May 2017 alongwith accrued interest to the Registry of this Court. Upon transfer of the amount, the Registry of this Court shall invest the amount in interest bearing deposits, which will be subject to furthers orders that may be passed by this Court. It is clarified that this Court has not considered the other prayers in Notice of Motion No. 58 of 2019 and in case they survive, the Plaintiffs would be at liberty to file appropriate application to press the same.

(ii) Chamber Summons No. 662 of 2019 filed by NAFED is rejected.

(iii) Interim Application (Lodg.) No. 39615 of 2022 filed by NSEL is rejected. Rejection of Interim Application (Lodg.) No. 39615 of 2022 shall not preclude NSEL from filing a fresh application by giving better particulars for utilisation of amount deposited by NAFED in Delhi High Court, which is directed to be transferred to this Court. As and when such application is filed, the same shall be decided on its own merits. All rights and contentions of the parties in this regard, including the contention whether NSEL can at all be permitted to utilise the said amount, are kept open.