

NSEL: FACTS BEHIND THE FICTION

So much is written and talked about NSEL in the last two years. Ironically much of it is without a basis and of little substance. The real picture as it could be borne out by certain facts given below will show how FTIL was made a victim to a combination of collusion and conspiracy. While brokers and defaulters who form both ends of the trading at NSEL and who were the root causes of the problem were left out completely without any investigation and penal actions, the entire burden was laid on NSEL and its parent company FTIL with severe punishments meted out on both of them and pushing them out from their legitimate exchange industry business.

It is important to know how callous approach of regulation and conspiracies of competitors can undermine not just the growth of enterprise in India but also the purpose of national interest. NSEL is a victim to such a conspiracy.

FMC TRIGGERED A DELIBERATE CRISIS

It all commenced with a plan engineered to create a default at NSEL.

- ▶ For two years, FMC did not follow the government directive which nominated it as a designated agency to carry out 'oversight', and collect 'fortnightly information' on all commodity spot exchanges. NSEL was just one of the exchanges functioning at that time
- ▶ For about a year, FMC did not respond to a detailed explanation given by NSEL on the legality of the business
- ▶ All of a sudden in July 2013, NSEL was instructed to stop issuing certain type of contracts, while remaining silent on its competitor exchange which continued to issue similar contracts
- ▶ Sudden stoppage of business is bound to lead to payment problems for those trading in the market which is exactly what happened

ROLE OF FMC: BIASED AND PREJUDICED

FMC instead of creating an effective plan and procedure to contain the problem and to put in place a strategy for a quick resolution, fueled it and not solved when solvable.

FMC never bothered to investigate brokers who are the principal party to the problem. Brokers have blatantly overlooked several market abuses indulged by them such as:

- ▶ False assurances and misrepresentations to clients
- ▶ Trading without clients authority
- ▶ Misuse | modification of Unique Client Code
- ▶ Funding with | without consent of the trading clients
- ▶ Trades not matching with the records of applicant
- ▶ Non-receipt of the pay-outs
- ▶ Manipulation of ledger accounts
- ▶ Fabrication and forgery of documents
- ▶ Some clients privately settling undermining the recovery mechanism

FMC never followed up with the defaulters

FMC only focused on penalising and punishing NSEL despite the liability not being established in the Court of Law and the entire money trail traced to the defaulters.

NSEL: LEGITIMATE AND LEGAL BUSINESS

- ▶ NSEL was an outcome of a policy to create a common nationwide market
- ▶ NSEL was carrying out a perfectly legal and legitimate business
- ▶ The contracts in dispute constituted a mere 17% of the total business of NSEL
- ▶ Brokers, Clearing banks, 2 depository with their legal and compliance departments traded, settled & demated on NSEL for 3 years and completed 1000+ settlement
- ▶ It is the brokers who are today disowning their own privity of contract with their clients
- ▶ Brokers independently inspected stock positions over 50 times. It was only after the problem broke out and FMC only penalised NSEL that emboldened defaulters migrated stocks

NSEL: A LONE FIGHTER FOR RECOVERY

In the last two years, NSEL have, entirely on their own, made several endeavours towards recovery and resolution.

- ▶ **33,000** | clients of e-series contracts fully settled
- ▶ **7,000** | clients in the traders contracts were partially settled
- ▶ **₹5,000 cr** | assisted EOW to attach assets of the defaulters
- ▶ **₹1200 cr** | assisted ED to attach assets
- ▶ **₹1233 cr** | obtained decrees
- ▶ **₹3052 cr** | claimed against which injunction has been obtained
- ▶ **₹577 cr** | is paid in settlement

NSEL payment problem is quite solvable yet FMC made no effort to solve it

- ▶ **7** defaulters owe upto **85%** of the amount
- ▶ **30** brokers account for **68%** of the claim
- ▶ **6%** of clients (781 UU-HNI) account for **69%** of the claim. Ultimate beneficiaries - NBFCs is yet to be known

GAPS IN UNDERSTANDING AND FEW PERTINENT QUESTIONS

Accusations against NSEL have been flying thick and high. Huge gaps are found in understanding, in the right perspective, the problem that happened at NSEL. Wrong perceptions have been created due to the incessant flow of a motivated campaign against NSEL without giving it enough scope to defend itself. For instance:

1. Is it right to call those affected by the NSEL problem as investors?

NSEL was a platform for trading of commodities which is established by its rules and bylaws as well. The KYC details of all the 13,000 so called investors along with their bank accounts are still not forthcoming. Honourable High Court, Mumbai, observed "the legalities of transaction were quite expected to be known to the brokers and traders... the brokers were quite experienced... It is difficult to accept that the brokers and their clients were deceived by NSEL".

2. Is it right to call the amount traded by clients as 'deposits'?

If the amount is considered as deposit, why payments were made for VAT, APMC cess, etc? Why were there visits of brokers' C&F agents to warehouses, based on which accountants certified the stocks in the respective balance sheets? If it is a deposit, then why the absence of a deposit form, agreement, tenure, rate of interest, TDS and income tax of 33% subjected on interest income?

3. What have the government investigations found?

The money trail has been traced to the last paise to the defaulters. No money trail was found leading to NSEL, FTIL or to its promoters.

4. Whether any liability has been established so far on NSEL?

No liability of any sort has been established as yet on NSEL. Thus the question of liability of FTIL, its holding company, does not arise.

5. Why has there been no investigation on the source of funds of brokers?

Whose interests are being served when no investigation was done to trace the source of funds, believed to have flowed in from the NBFCs of the respective brokers (which is against regulation), that created excessive leverage and subsequent default?

6. A few questions that remain unanswered

How could FMC declare 'Not Fit and Proper' solely on the basis of a hurriedly done audit report? How a merger can be possible when the proposal is rejected by the Board and shareholders? How a merger of a holding company and a subsidiary can be imposed, violating the legal principle of limited liability?

NSEL is committed to extend all support and cooperation, to each and every authority, in resolving the problem through discussion and within the judicial framework.