

**COMMITTEE OF PRIVILEGES  
(SIXTEENTH LOK SABHA)**

7

**SEVENTH REPORT**

**Notice of question of privilege dated 16 March, 2017 by Shri Sanjay Dhotre, MP (signed by 2 other MPs) against the CEO of National Spot Exchange Ltd (NSE) for allegedly causing obstruction in the discharge of parliamentary duties of Dr. Kirit Somaiya, MP and Notices of question of privilege dated 17 March, 3 April and 7 April, 2017 given by Dr. Kirit Somaiya, MP on a similar subject.**

*[Presented to the Speaker, Lok Sabha on 13 December, 2017]*

*[Laid on the Table on 20 December, 2017]*



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**LOK SABHA SECRETARIAT  
NEW DELHI**

December, 2017/Agrahayana, 1939 (Saka)

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**PERSONNEL OF THE COMMITTEE OF PRIVILEGES  
(2017-2018)**

**Smt. Meenakashi Lekhi - Chairperson**

**MEMBERS**

2. Shri Anandrao Adsul
3. Shri Kalyan Banerjee
4. Shri Anant Kumar Hegde
5. Shri Kesineni Srinivas
6. Shri J.J.T. Natterjee
7. Shri Jagdambika Pal
8. Shri Konda Vishweshwar Reddy
9. Shri Tathagata Satpathy
10. Shri Jyotiraditya M. Scindia
11. Shri Raj Kumar Singh
12. Shri Rakesh Singh
13. Shri Sushil Kumar Singh
14. Dr. Kirit Somaiya
15. Prof.(Dr.) Ram Shankar

Secretariat

- |    |                         |   |                     |
|----|-------------------------|---|---------------------|
| 1. | Shri Ravindra Garimella | - | Joint Secretary     |
| 2. | Shri M.K. Madhusudhan   | - | Director            |
| 3. | Ms. Miranda Ingudam     | - | Deputy Secretary    |
| 4. | Shri K.V.V. Rama Rao    | - | Executive Assistant |

## REPORT OF COMMITTEE OF PRIVILEGES

(SIXTEENTH LOK SABHA)

### **I. Introduction**

I, the Chairperson of the Committee of Privileges, having been authorized by the Committee to submit the eighth report on their behalf, present this report to the Speaker, Lok Sabha on the Notice of question of privilege dated 16 March, 2017 by Shri Sanjay Dhotre, MP (signed by 2 other MPs) against the CEO of National Spot Exchange Ltd (NSE) for allegedly causing obstruction in the discharge of parliamentary duties of Dr. Kirit Somaiya, MP and Notices of question of privilege dated 17 March, 3 April and 7 April, 2017 given by Dr. Kirit Somaiya, MP on the same subject.

2. The Committee in all held 04 sittings. The relevant minutes of these sittings form part of the Report and are appended hereto.

3. The Committee at their sitting held on 27 July, 2017 considered the Memorandum on the subject. The Committee, thereafter, decided to hear Shri Sanjay Dhotre, MP and Dr. Kirit Somaiya, MP in the first instance.

4. The Committee at their second sitting held on 30 August, 2017 heard Shri Sanjay Dhotre, MP and Dr. Kirit Somaiya, MP and also decided to call the relevant witness namely Shri Prakash Chaturvedi,

Chief Executive Officer (CEO), National Spot Exchange Limited (NSEL).

5. At their third sitting held on 09 October, 2017, the Committee examined on oath Shri Prakash Chaturvedi, CEO, National Spot Exchange Limited. The Committee, after some deliberations directed the Secretariat to prepare a draft report in the matter.

6. At their fourth sitting held on 14 November, 2017, the Committee considered the draft report and after some deliberations adopted the same. The Committee, then, authorized the Chairperson to finalize their report accordingly and present the same to the Speaker, Lok Sabha and thereafter, to lay the same in the House.

## **II. Facts of the Case**

7. Shri Sanjay Dhotre, MP *vide* above notice<sup>1</sup> signed by 2 other MPs had alleged breach of privilege against the CEO of NSEL (National Spot Exchange Ltd.) for allegedly causing obstruction in the discharge of parliamentary duties of Dr. Kirit Somaiya, MP. The Member stated that Dr. Kirit Somaiya, MP and Chairperson, Standing Committee on Labour has been working for protection of small investors and as a crusader against corruption has exposed several scams including that of NSEL. He alleged that Shri Prakash Chaturvedi, CEO of NSEL had given a representation addressed to Prime Minister's Office and copy thereof

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<sup>1</sup> Appendix I

endorsed to several other Ministries/Authorities drawing attention to the alleged attempts made by Dr. Somaiya through various authorities for influencing/instigating action against the NSEL. He further stated that action against NSEL and other fraudsters had already been taken and that NSEL Director, Shri Jagnesh Shah and its Senior Executives are facing imprisonment.

The Member requested that strong action be taken against Shri Prakash Chaturvedi, CEO of NSEL and to treat the instant matter as a breach of privilege and refer it to the Committee of Privileges for appropriate action. A copy of the representation submitted by Shri Prakash Chaturvedi, CEO of NSEL was annexed by the Member in support of his contentions.

8. Subsequently, Dr. Kirit Somaiya, MP himself tabled a privilege notice<sup>2</sup> dated 17 March, 2017 on the subject, wherein he had contended as under:-

- (i) The representation of Shri Prakash Chaturvedi, CEO, levying charges against me about corrupt practices and influencing the investigation is not only shocking but also derogatory and hindering my functioning as a Parliamentarian.
- (ii) More than 13000 small investors lost their hard earned money in the NSEL Scam. I am fighting for them.

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<sup>2</sup> Appendix II

- (iii) Almost all the regulators including SEBI, RoC, MCA, EoW, GoM, Commodity Exchange Board, Forward Market Commission, ED, CBI have taken action against NSEL, its promoter, FTIL, Jignesh Shah and various officials of NSEL.
- (iv) Jignesh Shah and officials of NSEL had been arrested and were in jail for several weeks/months. Now they have written a letter and also put this on social media and used the language for me that ~~it~~ is unbecoming of a Member of Parliament”.
- (v) In the letter along with various references, CEO, NSEL, has levied various charges against me and also blamed me for things unbecoming of a Member of Parliament.

The Member had sought strong action against NSEL officials, particularly Shri Prakash Chaturvedi, CEO. He further stated that he has been threatened that legal action will be taken against him. He added that the CEO has also submitted representations to various Ministers and officials stating that his (Dr. Kirit Somaiya's) conduct and functioning is unbecoming of a Member. The Member contended that these actions have brought disrepute to him and his party and the Government and is a coercive practice. He has further stated that :-

- (a) NSEL fraud has been initially exposed by the activists, journalists and myself.
- (b) I am a merit-holder Chartered Account and done my Ph.D. in Small Investors Protection (Finance) from Mumbai University.



- (c) I am a small investors' protection activist since long and has been member of Government/SEBI Committees also.
- (d) As investors' activist I have filed several PILs and got justice to small investors.

The Member requested that the issue be taken up as breach of privilege and the same be sent to Privilege Committee/Protocol Committee so as to protect him in his functioning as a Member of Parliament. Shri Somaiya, MP *vide* his further notices of question of privilege dated 3<sup>3</sup> and 7<sup>4</sup> April, 2017 substantiated his charges against the CEO of NSEL, wherein he has stated that the Advocate of CEO, NSEL (Shri Prakash Chaturvedi) has sent a defamation notice against him.

9. A copy each of the Member(s)' notices were sent to the Ministries of Corporate Affairs and Finance, for their comments. The Ministry of Corporate Affairs *vide* their factual note dated 30 March, 2017 *inter alia* stated amongst others that **“the action taken by MCA (against NSEL) are in accordance with the law and after following the due office procedures, and there has not been any interference in this, from any person”**.

10. In their factual note dated 10 April, 2017, the Ministry of Finance *inter alia* stated amongst others that **“Department of Economic**

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<sup>3</sup> Appendix III

<sup>4</sup> Appendix IV

**Affairs appointed a Special Team of Secretaries (STS) on August, 2013 to suggest measures that could be taken to ensure that there is no systemic impact of the NSEL developments, STS made certain recommendations in their report and the issues relating to such recommendations are being examined/investigated into by certain Ministries/Departments on the basis of which actions have been initiated against the CSEL/FTIL and further investigation is under process. Several cases against the CSEL/FTIL have been filed by various agencies.”**

11. The Hon‘ble Speaker, Lok Sabha, after examining the notices of the Member(s) in the matter, in exercise of her powers under Rule 227 of the Rules of Procedure and Conduct of Business in Lok Sabha, referred the matter to the Committee of Privileges for examination, investigation and report on 11 April 2017.

### **III. Evidence**

#### **Evidence of Shri Sanjay Dhotre, MP**

12. During his evidence before the Committee, on 30 August, 2017, Shri Sanjay Dhotre, MP *inter-alia* stated as follows:-

–Dr. Kirit Somaiya is an Hon‘ble MP and I know him for many years. He was not a member in 15<sup>th</sup> Lok Sabha, but he fought for

small investors like us. He also exposed many cases of corruption. In this case, he spoke against Director, Shri Jignesh Shah & CEO, Prakash Chaturvedi, inside as well as outside the Parliament. SC, HC and ED are investigating this case. Jignesh Shah was arrested and action is being taken against Prakash Chaturvedi. Prakash Chaturvedi tried to pressurize by filing defamation charges. I feel that this is a matter which amounts to breach of Privilege and therefore, I gave this notice.

I appeal to the Committee to take stringent action in this case. If there are obstacles in discharging our duties, it will be very difficult for us to work.”

### **Evidence of Dr. Kirit Somaiya, MP**

13. During his evidence before the Committee on 30 August, 2017, Dr. Kirit Somaiya, MP *inter-alia* stated as under:-

—..... Today is the completion of fourth year. Four years back, I had started this struggle, this fight and this mission. Exactly on 31<sup>st</sup> August, 2013, I filed my PIL with the Mumbai High Court on NSEL Scam asking relief and protection for 13,500 small investors who lost around Rs. 8,500 crore of their small savings. This is just a co-incidence for me that after four years I am getting one more opportunity. In these four years, when I was not a Member of Parliament, at that time, I took up this issue on all available

platforms. The NSEL scam can be written in the history as to how to mock or demean regulatory framework of Ministry of Finance. The promoter of Commodity Exchange, misused provisions of law and parked money of Rs.13,500 persons with two dozen big shots. Let me tell something about my activism on investor side. Basically, I am a Chartered Accountant but I have done my Ph.D from Mumbai University on small investor protection. We, couple of chartered accountant and investor activists, have formed an investors grievances forum and NGO in 1993-94. Since then, we have filed more than a dozen petition to protect small investors including plantation scam and other scam. NSEL Scam, the people approach us who are small investors and that is why, we took up that issue. Before I become MP, I took up the issue with all the concerned authorities whether it is ED, whether it is CBI, whether it is EOW or the Finance Ministry or the then Finance Minister.

Now, shockingly what I found on 28<sup>th</sup> March, 2017, I received a notice from the so-called CEO of NSEL. It is a very detailed notice that why we cannot file defamation case against you. Before that, he has written letter to all the authorities, including Hon'ble Speaker, Prime Minister, Finance Minister and various authorities that Shri Kirit Somaiya is abusing his membership of Parliament. He has written letter in detail to all the places. He has also written to the PMO. Representation against Shri Kirit Somaiya, Hon'ble

MP for influencing investigation in the matter of National Spot Exchange Limited in a manner that tantamount to obstructing the path of justice. From the PMO to everybody, he has written letter in detail, and he has annexed many annexures.

While I went through all these things, what I found, the NSEL has stated, we approached the authorities; we approached the regulatory bodies; and we approached the investigative agencies. But the action or directives have been given and issued by the courts. In several cases, it is the High Court or may be, the CBI court or may be, the ED or may be, the Supreme Court. Yes, I have taken initiative to fight for the small investors but the investigation has been conducted and action is being taken by the agencies, by the Government or by the regulator, and the court has taken cognizance of it. Till today, at present, everybody, including the NSEL's MD, was arrested. They were behind the bar for months together, and now the same NSEL is writing such things against me.

That is why, I approached the Parliament through the Hon'ble Speaker that I am performing my duty as an activist, as a public person before MP also and after becoming MP also. Whatever detail he has given here that I am raising questions in Parliament and I raise the issue in the Standing Committee, what I feel is that as an MP whatever work I am doing is to protect the small investors. Who are making allegations? Both Jignesh Shah and the

NSEL. All their officials have been arrested or some time suspended. Four times they have gone to jail. From ED, CBI, EOW, SEBI—all the agencies have filed criminal cases against them. The court has appointed an SIT. If you read all these things, it is horrible.

Now he is asking me to come to face the defamation case. In this connection, I would request and I think you already have all the documents. If you want I can submit documents relating to what they have written to the PMO and other places. So I want to request the Committee that it is the issue of not only 13,500 small investors but also the action taken by investigative agencies and directives issued by the courts. But the issue is that they want to challenge Parliament. Therefore, my point is that they want I should dilute my activism because of this. So I need protection from you.”

14. Dr. Kirit Somaiya, MP further submitted as under: -

—Now, I will read out one paragraph. The NSEL has issued me a defamation notice. I will read out paragraph no.2:-

My client states that while the concerned offices are conducting overseeing investigation in the matter relating to NSEL payment and settlement default crisis, you have been misusing or rather abusing the hon. Offices of Member of Parliament in order to

influence, threaten, coerce, browbeat and pressurize the investigative agencies and concerned Government authorities to conduct their investigation in an unfair, biased and one-sided manner so as to tarnish, attack and ruin my client's establishment, NSEL, my client's parent company, FTIL and their officials.”

15. The Committee sought to know whether he had influenced the court or the investigating agency in this regard. In response, Dr. Kirit Somaiya, MP stated as under:

—Yes, how can I influence both? I can represent the issue. High Court and Supreme Court have issued orders, not once but there are a dozen of such orders.”

16. When asked whether the NSEL has brought into question, his conduct as a Member of Parliament, Dr. Kirit Somaiya, MP replied as under:

—Yes. As a Member of Parliament I am raising not only this issue but several other small investors' protection issues. Everybody knows it. As I have told, I am an activist associated for 25 years with an organisation which is recognised by all the agencies. I have done my PhD on Small Investors'. Whenever I speak in Parliament also, everybody respects me. You can see the language

which has been used, the one who is lodged in a jail or the one who frequents to the jail. There are half-a-dozen cases. His property is attached. Everything is attached.”

17. To a pointed query as to how his rights as a Member of Parliament has been infringed upon in the discharge of his duties by the actions of the CEO, NSEL, Dr. Kirit Somaiya, submitted as under:

—... this has become a very major issue, particularly, for the investors of Maharashtra and Gujarat because more than 90 per cent investors are from Maharashtra and Gujarat. If you google this issue, you will find so much is going on social media. So, it is not only Kirit Somaiya’s issue, several Members of Parliament are continuously raising this issue of NSEL. This is a major public issue.

Secondly, I have been raising several dozens of issues connected with small investor’s protection in the Parliament including ponzi companies, bogus chit fund, etc.

The third one is an issue which I have been raising from the past. I am giving you a small example, I think, during the last two days, the Finance Minister also made an announcement that we are bringing a national level anti-ponzi bill. Even 20 years back, when I was a Member of the Maharashtra Legislative Assembly, I introduced and it got this Bill passed. When I became the Member



of the 13<sup>th</sup> Lok Sabha, I insisted the Government of India. That activism on small investors is one part. So, as a Member of Parliament, I had pursued NSEL issue also. Now, this gentleman, in his notice asking me Rs. 50 crore, a defamation case, for what, he was saying: –As I Member of Parliament, you are continuously following this issue.” He has written: –You are abusive. You are influencing the agencies.” I have been putting the factual report before the agency. You can ask the agencies whether they have got influenced by me or whether the court got influenced by me. So my point is that as a Member of Parliament I am pursuing this issue. It is not that today Kirit Somaiya but tomorrow, other MPs will be targeted like that person can file Rs.50 crores defamation case and will write to various agencies. Nowhere – he has not mentioned and I am also ready to take oath – that my company does not have any interest”.

**Evidence of Shri Prakash Chaturvedi, CEO, National Spot Exchange Limited (NSEL)**

18. Shri Prakash Chaturvedi, CEO, National Spot Exchange Limited (NSEL), during his deposition before the Committee on 09 October, 2017, *inter-alia* stated as follows:-

—I am extremely sorry that because of me and my actions some of the Members have been aggrieved. They have been anguished and shocked. I am extremely sorry for that.

....Basically, I am a technology person working with financial technologies. This assignment was given to me only for checking and ensuring that the money is recovered from the defaulters on the one side of the exchange and paid to the trading clients who were on the receiving side.

NSEL came into being in the year 2005-06 and was granted permission to trade in June, 2007 under a gazette notification. The trading was happening till 2012 when NSEL received a show-cause notice from the Ministry of Corporate Affairs over allegations made regarding violation of norms and the management had replied to it. I joined the NSEL management in November, 2014. The reply to the show-cause was sent in August, 2012 and a reminder was also sent after the reply but the adjudication was not completed.

In July, 2013, the Ministry of Corporate Affairs issued a communication to NSEL that they should discontinue the contracts which were being traded on the exchange. For an exchange this kind of a communication is like a capital punishment. So, they appealed to the Ministry that this may create panic but the Ministry insisted and on July 31, 2013 all exchange operations were

suspended and payment default happened to the tune of about Rs. 5,600 crore. In that default, there were 24 defaulting members on the one side whose payment was due from them to about 148 members on the receiving side. This happened on 31<sup>st</sup> July, 2013.

On the 4<sup>th</sup> August, 2013, the Forward Markets Commission under the Chairmanship of Shri Ramesh Abhishek convened a meeting where NSEL Board and executive management was present. At that time, the defaulters and some leading brokers were also present. The defaulters agreed that they owed this money and they also admitted having the commodities with them which were a back-up for the payment of Rs. 5,600 crore. Though a schedule was prepared the defaulters did not honour the schedule; they never paid. After that, an audit of the warehouses was also done. It was found that the commodity stocks were not there while they had claimed the presence of stocks with them.

The meeting took place on the 4<sup>th</sup> August but on the 2<sup>nd</sup> August Dr. Kirit Somaiya wrote to the Prime Minister that all fault was with the NSEL management, and its parent company FTIL and its owners and that all action should be taken against all of them and that NSEL should be taken over by the Government. Definitely if the default happened at the exchange, the exchange cannot say they were not at fault but it has not been conclusively established till date.

If NSEL is closed, there will be nobody to fight for the cause of the small trading clients and carry on the work of recovery of money from the defaulters.

02 defaulters made the payment. Now, there are 22 defaulters. A lot of people have committed mistakes in this case. There are some brokers also who were found violating the norms set by the regulators for their conduct with their clients. The defaulters, the brokers and some of the Board Members of NSEL were arrested. Some of the executives of NSEL, including the CEO at that time, were arrested. Nobody has been given a clean chit. There are many people at fault and all the investigations are on. Everybody has been screaming. It is the mistakes of NSEL and the Government should take up this matter. Government has passed orders and all matters are under investigation and *sub-judice*. Meanwhile, it is being said that it the mistake of one party and action should be taken especially, for a person as powerful and eminent as Dr. Kirit Somaiya, we feel may influence the investigation and prejudice the judiciary against us. It was done merely with the purpose of not letting the procedure, process and the judiciary influenced against NSEL as my job as the CEO of NSEL is limited to recovering money from the defaulters and paying it to the trading clients. This is the mandate. If, in the process I have said or done something, I am extremely sorry. The

common objective of Dr. Somaiya and NSEL is to collect money from defaulters and give that money to trading clients, 13,000 small investors is the number which has been stated everywhere. It is not 13000 trading clients, this number cannot be validated. There are 781 clients, whose outstanding dues are more than Rs.1 crore. They are corporate clients. They cannot be called small. For small trading clients, NSEL took loan and settled dues in the month of August. It settled 50% of cases between 2 lakhs and 10 lakhs. Around Rs.6000 crores of dues were settled and remaining dues are still pending.

This is my submission. If in the process I have breached the privileges of a Member of Parliament, I am extremely sorry. I personally, in my organisation, hold Dr. Kirit Somaiya, every parliamentarian in the House, in high regards. I apologise unconditionally for what I have said. If the Committee finds any fault with me, I am giving it in writing.”

19. The Committee while drawing attention of the witness to certain paras in the legal notice served by the Advocate of NSEL to Dr. Kirit Somaiya, MP, which apparently contained allegations and cast aspersions on Dr. Kirit Somaiya, in his conduct as an MP as also as Chairperson of the Parliamentary Standing Committee on Energy, sought his comments in the matter. The CEO of the NSEL in his response stated as under: -

—have nothing to defend on that. If the Committee feels that it is a breach of privilege, then it is. I am willing to face the consequences of that. But, if the Committee permits, I would like to explain as to what occasioned or caused me to mention those words. Those words were drafted wrongly.”

20. During his deposition before the Committee on 09 October, 2017, the CEO, NSEL, Shri Prakash Chaturvedi submitted a letter dated 06 October, 2017 addressed to the Chairperson, Committee of Privileges, wherein besides presenting facts in the case, have also tendered his unconditional apology to the Committee and Dr. Kirit Somaiya with the request to treat the lapses of NSEL as an error of oversight. The important points contained in the letter have been summarized as under:-

—...NSEL wrote several letters to Dr. Somaiya explaining the role of various entities who contributed to the crisis especially the Defaulters. Since the objectives of Dr Somaiya and NSEL were (and still are) common, we sought (and still seek) his help and assistance in recovering money from the Defaulters, who are the real culprits and liable to pay...

...However, and in spite of our repeated attempts, Dr Somaiya did not even acknowledge any communication from NSEL and all our entreaties for making a detailed presentation to him and seeking his help remained unanswered.

The Hon'ble Committee may please note that finite and conclusive statements made by a Hon'ble Member of Parliament, of the eminence of Dr Somaiya, on the matters which are under investigations by various agencies and *subjudice* before various judicial forums, are capable of influencing Investigations, prejudice the judiciary and thus potentially obstruct the path of justice.

In the context, as explained above, in a desperate attempt, I wrote to the Hon'ble PM to seek a rational perspective. (NSEL also sent a legal notice to Dr Somaiya). A copy of the letter to the PMO is attached as Annexure.... It is my duty (in my capacity as the CEO of NSEL) to help and assist the genuine trading clients to recover their money from the defaulters....As a common citizen the judiciary is the only recourse available to me to seek a redress on my complaints. And I have a right to approach an appropriate court. ....There is no conflict in my objective with Dr Somaiya. I did not have any intention to violate the privileges of the Hon'ble MP or damage his reputation or cause an obstruction in his working and his duties hold Dr Kirit Somaiya in high regards.

....If the Hon'ble Committee feels that my actions or any content of my letter to the PMO and the legal notice served, are violative of the laws of the land and breaching the privileges of the Hon'ble Member of Parliament or attempting to cause any obstruction to his duties or having crossed the line at any point, *I tender my*

*unconditional apology to Dr Kirit Somaiya, to the Hon'ble Committee and to the Parliament, and I request you to treat this as an error of oversight. I stand chastised”.*

#### **IV. Findings and Conclusions**

21. The Committee note that the main thrust of the instant notices of question of privilege against the CEO of NSEL for allegedly causing obstruction in the discharge of parliamentary duties of Dr. Kirit Somaiya, MP is as follows:-

- (i) The CEO of NSEL in his representation dated 06 October, 2017 questioned the conduct of Dr. Kirit Somaiya, MP as a Parliamentarian and has alleged that he is influencing the investigation against the company for the NSEL Scam in his capacity as Member of Parliament; and
- (ii) The legal notice for defamation dated 28 March, 2017 served by the Advocate of NSEL to Dr. Kirit Somaiya, MP contains allegations which have cast aspersion on his conduct as a Member of Parliament and also as Chairperson of the Parliamentary Standing Committee on Energy. The notice contains explicit paras which have allegedly cast aspersions on the findings/recommendations of the



Parliamentary Committee.

22. The Members who have given the instant notices of breach of privilege have contended that the aforesaid reflections on the conduct of the Dr. Kirit Somaiya as an MP as well as Chairperson of a Parliamentary Committee have not only amounted to breach of his parliamentary privilege but also have breached the privileges of a Parliamentary Committee and, therefore, amounts to denigration of the Parliament as an Institution.

23. The Committee find it prudent not to dwell on the aspect of the financial irregularities in the NSEL scam as raised by the MPs as also the counter allegations made by the CEO, NSEL as it falls within the purview of the Investigating Agencies or Courts and, *therefore, have decided to confine themselves only to the issues pertaining to breach of Privilege of the Member both as MP and Chairperson of the Parliamentary Committee in so far as the reflections that have been cast on the conduct of the Member as also on the findings of the Parliamentary Committee, which in turn have denigrated the Parliament as a whole as an Institution.*

24. The Committee find that the representation dated 06 February, 2017 addressed to the Prime Minister's Office (PMO) and copies endorsed to 15 other Authorities given by the CEO, NSEL contained the following paras which apparently casts aspersion on the conduct of

the Member as a Parliamentarian as well as a Chairperson of a Parliamentary Committee:-

**(Page -1; Paras 2-4)** - —..Shri Kirit Somaiya, Hon‘ble Member of Parliament, is seen attempting to influence the process of investigation in a manner, that is impeding with justice and giving a pre-determined twist to the outcome of the case... This is unbecoming of Hon‘ble Member of Parliament and a case of gross abuse of the high public office. It should not be permitted to continue. As a result of the motivated actions of Shri Somaiya, the entire investigation is being pushed in one direction *i.e.*, exclusively against NSEL.

**(Page -7; Para 7)** - —Thereafter, Shri Kirit Somaiya became a Member of Parliament and was the Chairman of the Parliamentary Committee on Energy. He was also a member of Public Accounts Committee, Finance Committee, Privilege, Protocol and Consultative Committee on Ministry of Urban Development. It was expected, now that Shri Somaiya had become an MP, he would show restraint and not abuse his official letter head.....”

**(Page – 9; Para 13)** – “Shri Somaiya, who is also the Chairman of the Standing Committee on Energy, submitted the 14<sup>th</sup> report of the Committee dated 27 April, 2016 before the Lok Sabha and the Rajya Sabha... In the said report, at Pg.80, it has been specifically

stated at Para vi, vii, viii, ix and Pg. 81 Para xii and xiii that....~~the~~ Committee feels that due to manipulation and non-transparency, 97% trade is going to one power exchange *i.e*, IEX”. What is more shocking is that the Committee, which had Shri Somaiya as its Chairman went on to state ~~–~~The Committee is shocked as to how a scam ridden company and promoter of FTIL/NSEL/IEX, who is debarred from all the positions and from participation in the activities of the exchange, have been allowed to continue with the control of IEX till 2015”. What is disturbing about these findings in the report is the fact that neither NSEL nor its promoters were even heard before these findings were finalized. Furthermore, when a report, such as this, is submitted to the (H)ouse of the (P)eople, it is expected that loose statements would be avoided but unfortunately they were not. It does not take much to infer that such findings would be the direct result of the inherent bias which Shri Somaiya has against NSEL and its promoters”.

25. Similarly, the Committee find that the Legal Notice dated 28 March, 2017 served by the Advocate of NSEL, filing a defamation case against Dr. Kirit Somaiya, MP contains similar allegations, which had cast aspersion on his conduct as a Member of Parliament also as Chairperson of the Parliamentary Standing Committee on Energy (Para 2, 8 (f) and 10 of Annexure \_\_\_\_)

26. The Committee further find that the Ministry of Corporate Affairs *vide* their factual note dated 30 March, 2017 *inter-alia* stated that **“the action taken by MCA (against NSEL) are in accordance with the law and after following the office procedures, and there has not been any interference in this, from any person”**. The Committee, therefore, observe that the allegations of interference in the investigation process stands refuted.

27. With a view to understand the implications/ramifications of the observations/recommendations of the above Report (cited in the Legal Notice), the Committee obtained a copy of the 14<sup>th</sup> Report of the Parliamentary Standing Committee on Energy on ~~E~~valuation of Role, Performance and Functioning of the Power Exchanges pertaining to the Ministry of Power, presented/laid in both the House of Parliament on 24 April, 2016. The relevant observations/recommendations of the Committee, to which NSEL has taken objection are as follows: -

- (i). The Committee feel that due to manipulation and non-transparency, 97% trade is going to one power exchange, *i.e.* IEX. All the authorities concerned, including CERC, State regulators and officials concerned, have either ignored or allowed themselves to be sued for such monopolistic hegemony.
- (ii). The Committee is shocked as to how a scam ridden

company and promoter of FTIL/NSEL/IEX, who is debarred from all the positions and from participation in the activities of the exchange, have been allowed to continue with the control of IEX till 2015.

- (iii). After interaction with a cross-section of stake holders, the Committee feel that monopoly of one power exchange should be avoided as this is corrosive to the healthy functioning of the system and against the interests of the people.
- (iv). After the NSEL scam episode, the experience of all the stake holders, as apprised to the Committee, is that there should be at least two well functional power exchanges in the market.
- (v). Implementation/execution of the order of CERC regarding dilution of FTIL share holding in IEX needed to be checked thoroughly. It is the duty of the Ministry/Regulator to see that no cross holding/holding through share companies/buy back arrangement/control/cross control by promoter of FTIL is allowed in any form.
- (vi). Forensic audit must be ordered to check such cross control/non-transparent control/share holding of IEX promoter of FTIL in the IEX.

## Legal Position

28. The legal position obtaining in the matter and relevant to the case is brought out as under:

**'Practice and Procedure of Parliament' by Kaul and Shakdher (6th edn.) lays down as follows:-**

**„Speeches and writings reflecting on the House or its Committees or members are punished by the House as a contempt on the principle that such acts „tend to obstruct the Houses in the performance of their functions by diminishing the respect due to them“. (p. 293).**

**...In order to constitute a breach of privilege, however, a libel upon a Member of Parliament must concern his character or conduct in his capacity as a member of the House and must be „based on matters arising in the actual transaction of the business of the House“. Reflections upon members otherwise than in their capacity as members do not, therefore, involve any breach of privilege or contempt of the House. Similarly, speeches or writings containing vague charges against members or criticizing their parliamentary conduct in a strong language, particularly in the heat of a public controversy, without, however, imputing any *mala fides* are not treated by the House as a contempt or breach of privilege“. (p. 293)**

### **Contempt of the House**

*“Contempt of the House may be defined generally as ‘any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or **impedes any member or officer of such House in discharge of his duty**, or which has a tendency, directly or indirectly, to produce such results, even though there is no precedent of the offence’. Hence, if any act, though not tending directly to obstruct or impede the house in the performance of its functions, has a tendency to produce this result indirectly by bringing the House into odium, contempt or ridicule or by lowering its authority, it constitutes a contempt. Further, the House may punish not only contempts ‘arising out of facts of which the ordinary courts will take cognizance, but also those of which they cannot, such as contemptuous insults, gross calumny or foul epithets by word of mouth not within the category of actionable slander or threat of bodily injury.’(p.267)*

\*                    \*                    \*                    \*

The privileges of Parliament are granted to members in order that ~~they~~ they may be able to perform their duties in Parliament without let or hindrance”. **They apply to individual members „only insofar as they are necessary in order that the House may freely perform its functions“.** (p. 219)

\* \* \* \*

29. **'Parliamentary Procedure' by Subhash C.Kashyap (3rd edn.)** lays down as follows:-

—Alleged obstructions to a member in carrying out his Parliamentary duties and assault on him by certain persons: Disallowing question of privilege, Deputy Speaker (G.G. Swell) who was then in the Chair, ruled *inter alia*; It has been a well laid convention that if a member proceeds to attend Parliament as a Member of Parliament and if he is obstructed in that process then it is a privilege... As Members of Parliament, as leaders, we have many other duties that call us everywhere and the bigger the person, more the duties. When we go out of this House and perform our duties as political leaders, we encounter difficulties. Whether that comes within the purview of obstructing a member from doing his duty is a new question which I think the House must go into very carefully.. So, I repeat that question is open and it cannot be a question of privilege at this stage'." (LS Deb., 28.11.1974, cc. 237-58)(Page 542).

**30. As per the well-established practices with regard to privilege matters, "it is a breach of privilege and contempt of the House to make speeches, or to print or publish any libels, reflecting on the character or proceedings of the House or its Committees, or any**



**member of the House for or relating to his character or conduct as a member of Parliament". It is also well-established that ".....a libel on a member of Parliament may amount to a breach of privilege without being a libel under the civil or criminal law". (Page 293, Kaul & Shakhder).**

In order to constitute a breach of privilege, a libel upon a member of Parliament must concern his character or conduct in his capacity as a member of the House and must be **“based on matters arising in the actual transaction of the business of the House.”**

31. The Committee are of the considered view that some paras contained in pages 1, 7 and 9 of the impugned representation given by CEO, NSEL as well as in the legal notice served on Dr. Kirit Somaiya, MP have undoubtedly cast serious aspersions on the conduct of the Member in relation to the discharge of his parliamentary duties both as a Member of Parliament as well as that of a Chairperson of the Parliamentary Committee of Energy. Further, by casting reflections on the findings and recommendations made by the Standing Committee of Energy (14<sup>th</sup> Report, 16th Lok Sabha presented to the House on 27 April, 2016), the CEO, NSEL have breached the privilege of not only the Parliamentary Committee but of the Parliament as a whole, as an institution.

32. The Committee, however, note that the CEO, NSEL, Shri Prakash

Chaturvedi have explained their position in the matter and also stated that the objectives of NSEL and that of Dr. Kirit Somaiya, MP were similar *i.e.*, to get back dues from the defaulters and he as CEO, NSEL has been constrained by circumstances to seek the intervention of the Courts in the matter. *The Committee further note that the CEO, NSEL repeatedly admitted to their lapse on the aspect of breach of Parliamentary Privileges and tendered their unconditional apology and also emphasised that there was no intention to either cause defamation or breach the privilege of the Member, the Parliamentary Committee or of the Parliament. The Committee also note that the CEO, NSEL has tendered his apology in writing, wherein he had submitted that he holds the Parliament in highest respect and esteem and tendered his unconditional apology in the matter and requested that the lapses of NSEL may be treated as an error of oversight.*

## **V. Recommendation**

**33. The Committee keeping in view the constraints and circumstances under which NSEL had to seek the intervention of the Courts to get the dues back from the defaulters to get justice for the small investors, which is purportedly the common objective of the Member as well; followed by the expression of genuine regrets and showing utmost respect of the Parliament, Parliamentarians as well**

**as the Parliamentary Committees, coupled with tendering of „unconditional apology“ by the CEO, NSEL to the Committee, both orally and in writing - feel that it would not be prudent to pursue the matter any further. The Committee, therefore, recommend that the matter be allowed to rest. The Committee, however, would like to impress upon the CEO, NSEL to exercise due constraint and follow due diligence in so far as matters relating to Parliament and its Constituents is concerned so that such unavoidable situations do not arise in future.**

**SMT. MEENAKASHI LEKHI  
CHAIRPERSON  
COMMITTEE OF PRIVILEGES**

**New Delhi  
December, 2017**

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## **MINUTES OF SITTINGS**

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**MINUTES OF THE TWENTY SECOND SITTING OF THE COMMITTEE  
OF PRIVILEGES**

The Committee sat on Thursday, 27 July, 2017 from 1500 hrs. to 1535 hrs. in Committee Room \_D', Ground Floor, Parliament House Annexe, New Delhi.

**PRESENT**

Smt. Meenakashi Lekhi - Chairperson

**MEMBERS**

2. Shri Kalyan Banerjee
3. Shri Jagdambika Pal
4. Shri Raj Kumar Singh
5. Shri Rakesh Singh
6. Shri Sushil Kumar Singh
7. Dr. Kirit Somaiya

**LOK SABHA SECRETARIAT**

Shri M. K. Madhusudhan - Director

Ms. Miranda Ingudam - Deputy Secretary

**WITNESSES:-**

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**MINUTES OF THE TWENTY FIFTH SITTING OF THE COMMITTEE OF  
PRIVILEGES**

The Committee sat on Wednesday, 30 August, 2017 from 1130 hrs. to 1335 hrs. in Room No. 53, First Floor, Parliament House, New Delhi.

**PRESENT**

Smt. Meenakashi Lekhi - Chairperson

**MEMBERS**

2. Shri Anandrao Adsul
3. Shri Kalyan Banerjee
4. Shri Kesineni (Nani)
5. Shri J. J. T. Natterjee
6. Shri Jyotiraditya M. Scindia
7. Shri Raj Kumar Singh
8. Dr. Kirit Somaiya
9. Prof. (Dr.) Ram Shankar

**LOK SABHA SECRETARIAT**

Shri M. K. Madhusudhan - Director

Ms. Miranda Ingudam - Deputy Secretary

**WITNESSES:-**

- (i) Dr. Kirit Somaiya, MP  
(ii) Shri Sanjay Dhotre, MP  
(iii) \*\*\* \*\*

At the outset, the Chairperson extended a warm welcome to the members of the Committee. The Committee then took up the first item of the agenda i.e. notice of question of privilege dated 16 March, 2017 given by Shri Sanjay Dhotre, MP (signed by 2 other MPs) against the CEO of NSEL (National Spot Exchange Ltd.) for allegedly causing obstruction in the discharge of parliamentary duties of Dr. Kirit Somaiya, MP and notices of question of privilege dated 17 March, 3 April, and 7 April, 2017 given by Dr. Kirit Somaiya, MP on the same subject.

Dr. Kirit Somaiya, MP was called in and examined on oath.

*(Verbatim record of his evidence was kept)*

*(The member then withdrew).*

Shri Sanjay Dhotre, MP was called in and examined on oath.

*(Verbatim record of his evidence was kept)*

*(The member then withdrew).*

2. \*\*\* \*\*
3. \*\*\* \*\*

***The Committee then adjourned.***

\*\*\*\*



**MINUTES OF THE TWENTY EIGHTH SITTING OF THE COMMITTEE  
OF PRIVILEGES**

The Committee sat on Monday, 09 October, 2017 from 1400 hrs. to 1535 hrs. in Room No. 53, First Floor, Parliament House, New Delhi.

**PRESENT**

Smt. Meenakashi Lekhi - Chairperson

**MEMBERS**

2. Shri Kalyan Banerjee
3. Shri Kesineni (Nani)
4. Shri J. J. T. Natterjee
5. Shri Tathagata Satpathy
6. Shri Rakesh Singh
7. Dr. Kirit Somaiya

**LOK SABHA SECRETARIAT**

Shri Ravindra Garimella - Joint Secretary

Ms. Miranda Ingudam - Deputy Secretary

**WITNESS:-**

- |       |   |     |     |
|-------|---|-----|-----|
| (i)   | ***   | *** | *** |
| (ii)  | ***   | *** | *** |
| (iii) | Shri Prakash Chaturvedi, CEO, National Spot Exchange Limited. |     |     |

At the outset, the Chairperson extended a warm welcome to the members of the Committee.

2.       \*\*\*   \*\*\*   \*\*\*

3.       \*\*\*   \*\*\*   \*\*\*

4.       \*\*\*   \*\*\*   \*\*\*

5.       The Committee, thereafter, took up the next item of the agenda *i.e.* further examination of the notice of question of privilege dated 16 March, 2017 given by Shri Sanjay Dhotre, MP (signed by 2 other MPs) against the CEO of NSEL (National Spot Exchange Ltd.) for allegedly causing obstruction in the discharge of parliamentary duties of Dr. Kirit Somaiya, MP and notices of question of privilege dated 17 March, 3 April, and 7 April, 2017 given by Dr. Kirit Somaiya, MP on the similar subject.

6.       Shri Prakash Chaturvedi, CEO, NSEL (National Spot Exchange Ltd.) was called in and examined on oath. The witness made his submission and also replied to the various queries raised by the Members.

*(Verbatim record of the evidence was kept)*

*(The witness then withdrew)*

7.       \*\*\*   \*\*\*   \*\*\*

8.       \*\*\*   \*\*\*   \*\*\*

***The Committee then adjourned.***

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**MINUTES OF THE THIRTIETH SITTING OF THE COMMITTEE OF  
PRIVILEGES**

The Committee sat on Tuesday, 14 November, 2017 from 1400 hrs. to 1427 hrs. in Committee Room B, Ground Floor, Parliament House Annexe, New Delhi.

**PRESENT**

Smt. Meenakashi Lekhi - Chairperson

**MEMBERS**

2. Shri Anandrao Adsul
3. Shri Kalyan Banerjee
4. Shri Kesineni (Nani)
5. Shri J. J. T. Natterjee
6. Shri Konda Vishweshwar Reddy
7. Dr. Kirit Somaiya

**LOK SABHA SECRETARIAT**

Shri Ravindra Garimella	-	Joint Secretary
Shri M.K. Madhusudhan	-	Director
Ms. Miranda Ingudam	-	Deputy Secretary

At the outset, the Chairperson extended a warm welcome to the members of the Committee. The Committee then took up the draft reports on the following matters for consideration and adoption:

(i) \*\*\*\*                                 \*\*\*\*                                 \*\*\*\*                                 \*\*\*\*

(ii) \*\*\*\*                                 \*\*\*\*                                 \*\*\*\*                                 \*\*\*\*

(iii) Notice of question of privilege dated 16 March, 2017 by Shri Sanjay Dhotre, MP (signed by 2 other MPs) against the CEO of NSEL (National Spot Exchange Ltd.) for allegedly causing obstruction in the discharge of parliamentary duties of Dr. Kirit Somaiya, MP and notices of question of privilege dated 17 March, 3 April, and 7 April, 2017 by Dr. Kirit Somaiya, MP on the similar subject.

(iv) \*\*\*\*                                 \*\*\*\*                                 \*\*\*\*                                 \*\*\*\*

2. The Committee, after some deliberation, adopted the reports mentioned at serial numbers \*\*\*\* , (iii) and \*\*\*\* above.

3. \*\*\*\*                                 \*\*\*\*                                 \*\*\*\*                                 \*\*\*\*

*The Committee then adjourned.*

\*\*\*\*

**APPENDIX I**

KS/DEL/Ponzi/2017

15<sup>th</sup> March, 2017

The Hon'ble Speaker  
Lok Sabha  
Parliament House  
New Delhi

**Sub: NSEL Fraud- Action against Prakash Chaturvedi, CEO, NSEL for creating hurdles and breach of privilege in the functioning of Dr. Kirit Somaiya, MP**

Respected Madam,

It is well-known that Dr. Kirit Somaiya, Member of Parliament and Chairman, Standing Committee on Labour is always fighting for protection of small investors. He is known as crusader against corruption and has exposed several scams including that of NSEL. In Parliament also he has been fighting for protection of small investors.

We are shocked for such a mischievous and malicious representation of Shri Prakash Chaturvedi, CEO of NSEL against Dr. Kirit Somaiya. Shri Chaturvedi wants to pressurize the investigation and Parliamentary work/ethics and customs.

We all know that Courts including Supreme Court, High Court, SEBI, MCA, ED have taken serious action against NSEL and fraudsters, NSEL Director Jignesh Shah have been arrested and put behind the bar including the senior Executives of NSEL.

We request that strong action be taken against Shri Prakash Chaturvedi, CEO of NSEL. The issue be taken up as breach of privilege and the same be sent to the Privilege Committee/Protocol Committee.

With regards,

Yours sincerely,

Sd/-

SANJAY DHOTRE

## Appendix II

KS/DEL/Ponzi/2017

16<sup>th</sup> March, 2017

The Hon'ble Speaker  
Lok Sabha  
Parliament House  
New Delhi

**Sub: Mischievous representation/behaviour of Shri Prakash Chaturvedi, CEO, NSEL.**

**Ref: NSEL Fraud.**

Respected Madam, Hon'ble Speaker

I request you to refer to the shocking misleading and misbehaving representation of Shri Prakash Chaturvedi, CEO, NSEL about the NSEL fraud, particularly against myself (my functioning as Member of Parliament).

- (i) The representation of Shri Prakash Chaturvedi, CEO, levying charges against me about corrupt practices and influencing the investigation, is not only shocking but also derogatory and indulging into my functioning as a Parliamentarian.
- (ii) More than 13000 small investors lost their hard earned money in the NSEL Scam. I am fighting for them.
- (iii) Almost all the regulators including SEBI, RoC, MCA, EoW, GoM, Commodity Exchange Board, Forward Market Commission, ED, CBI have taken action against NSEL, its promoter, FTIL, Jignesh Shah and various officials of NSEL.

- (iv) Jignesh Shah and officials of NSEL had been arrested and were in jail for several weeks/months. Now they have written a letter and also put this on social media and used the language for me that ~~it~~ is unbecoming of a Member of Parliament.”
- (v) In the letter along with various references NSEL, CEO has levied various absurd charges against me and also blamed me as not becoming a Member of Parliament. Almost all the courts, regulators, Government Departments have taken severe/serious action against NSEL, FTIL and Jignesh Shah.

Strong action required against –

- (i) Such NSEL officials, particularly Prakash Chaturvedi, CEO.
- (ii) In the last paragraph of the letter I have been threatened that legal action will be taken against me. He has also written to various Ministers and officials stating my conduct and functioning is unparliamentarily. This is disrepute to my party and the Government.
- (iii) This is nothing but coercive practice.

I like to mention here that –

- NSEL fraud has been initially exposed by the activists, journalists and myself.
- I am a merit-holder Chartered Account and done my Ph. D. in Small Investors Protection (Finance) from Mumbai University.



- I am a small investors' protection activist since long and has been member of Government/SEBI Committees also.
- As investors' activist I have filed several PIL and got justice to small investors.

I request you to that the issue be taken up as a breach of privilege and the same be sent to Privilege Committee/Protocol Committee to-

- (i) Protect me for functioning as Member of Parliament.
- (ii) Protect the interest of 13000 NSEL's small investors.
- (iii) To take Strong action against such NSEL officials.

With regards,

Yours sincerely,

Sd/-

(Kirit Somaiya)

### Appendix III

KS/DEL/HS/NSEL/2017

3 April, 2017

Respected Madam

**Sub: Threat/harassment by National Spot Exchange Limited (NSEL)  
to my functioning as Member of Parliament.**

**Ref: My Privilege/Protocol Motion/Request Letter.**

Now, the Advocate of CEO, NSEL has sent me a Defamation Notice of Rs. 50 crore. The main charges against me that as a Member of Parliament, I have raised concern/issue at various levels.

In my earlier Privilege Motion letter to yourself, I have given all detail of the issue.

I request you to help, guide and protect me to protect 13500 small investors of NSEL Scam.

It may be noted that all the major State Governments as well as Union Government agencies have already initiated action against NSEL, several Directors and officials of NSE have been arrested, High Courts and Supreme Court have also passed strictures and orders against NSEL Scam.

Since the formation of XVI Lok Sabha, i.e. May 2014, I have been continuously raising NSEL issue with various agencies, regulators. Now, in 2017, the NSEL CEO has started threatening me with such a Rs. 50 Crore Defamation case. He has already written to various departments to

tarnish my character and create hurdles for my fight against the NSEL Scam and to protect 13500 small investors of NSEL.

With regards,

Yours sincerely,

Sd/-

(Dr. Kirit Somaiya)

Smt. Sumitra Mahajan  
Hon'ble Speaker  
Lok Sabha  
New Delhi.

**Appendix IV**

KS/DEL/PRIVELEGE-NSEL/2017

7 April, 2017

Respected Madam

**Sub: Privilege Motion.**

Request to admit my Privilege Motion against Shri Prakash Chaturvedi, CEO, NSEL, who is threatening me and creating hurdles for my work as Member of Parliament, raising public issues in Lok Sabha and also in Parliament Committees:

- Threatening by issuing defamation notice of Rs. 50 crores
- By filing fictitious complaints with various authorities.

Request to accept the privilege and oblige.

Thanking you

Yours sincerely  
Sd/-  
(Dr. Kirit Somaiya)

Smt. Sumitra Mahajan  
Hon'ble Speaker  
Lok Sabha  
Parliament House  
New Delhi.