

Date: 24 February, 2015

SUBJECT: UNITED AGAINST THE PROPOSED FORCED AMALGAMATION OF NSEL WITH FTIL

Dear Shareholders,

We cherish the faith and confidence reposed by you in your Company during these turbulent times and we look forward to your continuing support to save your Company. As you are aware, the Ministry of Corporate affairs (the "MCA"), vide its Draft Order of amalgamation dated October 21, 2014 (the "Draft Order"), has proposed to forcibly merge/amalgamate the National Spot Exchange Limited ("NSEL") with your company Financial Technologies (India) Limited ("FTIL"). In view of the gravity of the issues and far-reaching ramifications and repercussions of the Draft Order on FTIL stakeholders' value as well as FTIL's future growth plan, it is important and critical to share with you the fundamental rationale behind your Company's opposition to the forced amalgamation of NSEL into FTIL proposed by the Draft Order which relies and follows, without any application of mind, a purported recommendation made by the Forward Markets Commission (the "FMC"), and the FMC Order referred to below (the "Draft Order").

Pursuant to the counter-party payment defaults that occurred on NSEL's trading platform which is a subsidiary of your Company, the FMC declared, by an Order of December 17, 2013, your Company as not a 'fit and proper person' to hold shares in any commodity exchange recognized by the government ("FMC Order"). The FMC Order has been challenged by your Company before the Hon'ble Bombay High Court by way of a writ petition. The Hon'ble High Court has admitted the said writ petition and expedited the hearing thereof. Thus, your Company's challenge to the legality and validity of the FMC Order is currently pending in the Hon'ble Bombay High Court. As such, should your Company's challenge against the FMC Order be successful, the FMC Order would be set aside and the finding of the FMC against it of not being a fit and proper person could be reversed. Accordingly, the MCA relying primarily on the FMC Order during the pendency of the legal challenge before the High Court is highly irresponsible and misconceived in as much as, if your Company succeeds, though the FMC Order will be set aside, the subsequent drastic and irreversible actions taken/proposed to be taken against your Company on the basis of the FMC Order (including copycat orders by other regulators), will remain, the most drastic of them being the MCA's proposal to merge NSEL with FTIL. Notably, **the forced amalgamation of NSEL (a limited liability subsidiary Company) with FTIL (its parent holding Company) is without even seeking the consent of the stakeholders (including shareholders and creditors), of both the companies. Using an executive fiat through an administrative order issued under Sec. 396 of the Companies Act 1956 would set a very dangerous precedent in India's corporate sector as it lifts the corporate veil between two companies in the private sector without any sound reason and ignores valuable rights granted under law to the various stakeholders of a company.** Additionally, the FMC Order is sub judice, as are several civil proceedings, including the suits filed by the so-called investors who traded in commodities on the NSEL's exchange platform in the Bombay High Court wherein they seek to make your Company liable for the alleged events at NSEL by lifting the corporate veil.

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Your Company is defending these proceedings diligently. Your Company cannot be held to be liable for alleged events at NSEL and / or for any alleged but unproven liability of NSEL, unless and until so ordered by the Hon'ble Bombay High Court in these civil proceedings. What the Draft Order effectively does, is to lift the burden of proof of proving NSEL's and your Company's liability and/or involvement in the alleged events that transpired at NSEL, which burden of proof is squarely on the plaintiffs in the various suits, by amalgamating NSEL with FTIL. This is because; upon being amalgamated the alleged debts/liabilities of NSEL will automatically become the debts/liability of FTIL, as specifically noted in the Draft Order.

Besides adversely affecting over 63,000 shareholders and more than 1000 employees and their families of FTIL apart from other stakeholders, the proposed forced amalgamation will have far-reaching ramifications for all companies in India and global investors who are keenly observing how the MCA treats a corporate entity and its stakeholders, including whether it protects and recognizes the rights of shareholders and minority interests in public listed companies. Should the proposed amalgamation be permitted, it will open the doors for similar action being taken in every case where a subsidiary is facing an unproven /potential liability, so that the holding company is then sought to be held liable through the mechanism of such forced amalgamation. That apart, in the present case, the MCA has even ignored the fact that the entire matter is sub-judice before the Hon'ble Bombay High Court.

The Board of Directors of your Company has unanimously opposed the proposed forced amalgamation of NSEL with your Company and the Draft Order, and has challenged the same by way of filing a Writ Petition on November 10, 2014 before the Hon'ble High Court of Bombay. On behalf of the FTIL Board and Management, I am writing to you to seek your support against the proposed forced amalgamation of NSEL with FTIL under section 396 of Companies Act 1956.

The stand taken by FTIL in its Writ Petition against the Draft Order has further been strengthened by the fact that separate Writ Petitions have also been filed by significant minority shareholders (the Sheth Brothers), and the founders and Promoters of FTIL against the Draft Order as well as the intervention applications by Banks (Syndicate Bank, Union Bank, Standard Chartered Bank, and DBS Bank of Singapore), public shareholders and employees of FTIL, all of whom oppose such a draconian step being taken by the MCA and the legality thereof.

We wish to state that FTIL has the utmost faith in the Indian judiciary and also unconditionally believes that truth will prevail. What we fail to understand is why the MCA is in such a tearing hurry to forcibly amalgamate NSEL with FTIL, when the challenge to the FMC Order is pending and the question of whether or not FTIL is liable for the alleged events at NSEL is pending adjudication before the Hon'ble Bombay High Court?

Your Company has Rs 2000 crore cash and debt of Rs 475 crore after it was forced to sell its stake in MCX, MCX-SX, IEX (Transaction yet to be concluded), NBHC, SMX, over the past year and half by various regulators relying solely on the FMC Order. Besides, assets like BFX, Bourse Africa, DGCX and Atom will add further to FTIL's cash reserves. ***These cash reserves of FTIL belong to you and only you, the 63000+ shareholders of FTIL, as your legal right.***

Your Company is pursuing every legal means available under the law of our country to ensure that the rights of its 63,000+ shareholders are protected. **You too are entitled to object to the forced amalgamation of NSEL with your Company by exercising your right of opposition under Section 396 of the Companies Act, 1956.**

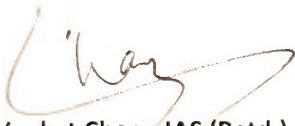
Likewise the Trading Clients can also pursue within the framework of law to recover their amount from defaulting members. *Separate Annexures is attached herewith giving further details on the matter.*

Therefore, we request you as a responsible owner of your Company to send to MCA, your genuine, bona fide and reasoned objections to the Draft Order, either through accessing their portal www.mca.gov.in or through e-mail sanjay.sood@mca.gov.in by **March 5, 2015**.

For details contact **022-66862222** between 9 am and 9 pm Monday to Sunday or simply log on to <https://sh.ftindia.com/opinion.aspx> and voice your objection. We will take it to the MCA.

With warm regards,

Yours sincerely,



Venkat Chary, IAS (Retd.)

Chairman of the Board

Independent, Non-Executive Director

Financial Technologies (India) Limited

Former Chairman, Forward Markets Commission (FMC);

Former Member Maharashtra Electricity Regulatory Commission (MERC)

Former Home Secretary, Finance Secretary, Maharashtra, Municipal

Commissioner, Mumbai, Secretary to Chief Minister, Maharashtra

Attachment: List of Annexures is provided in the next page.



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[@united_AFA](https://twitter.com/united_AFA)



uafa.wordpress.com

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Data Source: Respective Companies

ANNEXURE-A

THE CASE AGAINST THE PROPOSED FORCED AMALGAMATION

1. Why is the Forced Amalgamation illegal?

- (a) Section 396 of the Companies Act, 1956 (Act) **violates Article 14** of the Constitution as it suffers from excessive delegation because there are no guidelines for the exercise of power under this Section by the Central Government. MCA is invoking Section 396 knowing well that the matter on lifting of Corporate Veil is still pending for hearing.
- (b) **Forced non-consensual amalgamation of two companies in the private sector is discriminatory and ignores the MCA's own Circular dated April 20, 2011, which sets out guidelines for amalgamation** (albeit of two Government companies) under Section 396 wherein consent of 100% Shareholders and 90% Creditors is obtained. No such opportunity has been given to the shareholders or creditors of NSEL and / or FTIL to consent / object to the proposed amalgamation, Article 14 of the Constitution is violated.
- (c) Section 396 does not provide any substantive appeal mechanism. The appeal to the Company Law Board is limited to the amount of compensation only. Thus, **it is arbitrary.**
- (d) The **pre-requisite of "essential public interest"** for exercise of power under Section 396 is absent. **Interest of 63,000+ shareholders is ignored vis-à-vis the interest of so called "Trading Clients of NSEL".**
- (e) FMC's recommendation that NSEL has failed in recovery and does not have human and financial resources for recovery is contrary to the facts.
- (f) Complete non-application of mind by MCA as it has primarily relied on FMC's recommendation (which FMC/MCA have refused to disclose), and the FMC Order without conducting an independent inquiry of its own.
- (g) By forcefully amalgamating NSEL into FTIL, FTIL will become commercially unviable as its net worth will be eroded. This **violates FTIL and its shareholders' fundamental right to carry on business under Article 19(1)(g) of the Constitution** which can only be curtailed by legislation, and not by an executive action.
- (h) Forced amalgamation constitutes **expropriation of the property rights of FTIL and its shareholders** by a mere executive fiat which is in breach of Article 300-A of the Constitution.
- (i) It will **destroy the concept of "limited liability"** which is the fundamental principle of corporate jurisprudence.
- (j) Based solely on a temporary and transient FMC Order which is valid only for a maximum period of 3 years, the forced amalgamation is proposed which is permanent and irreversible.
- (k) While the FMC's **Fit and Proper Order** and the Civil Suits regarding alleged liability of NSEL and FTIL are *sub-judice* in the Bombay High Court, the proposed Amalgamation is premature and a clear attempt to overreach and bypass the judicial process.
- (l) It destroys the concept of corporate veil, despite the issue being *sub-judice* in the Bombay High Court.

- (m) No synergy between the two companies, i.e., FTIL and NSEL. FTIL is a software Company and NSEL is a commodities spot exchange.
- (n) **No previous precedence of a forced amalgamation under executive fiat:** Section 396 was used previously in only a few instances, wherein two public companies were merged. No private Company has ever been forced to merge with another independent Company.
- (o) **Forced amalgamation will not create any value for shareholders:** The amalgamation is generally perceived as a mechanism/tool to cause willful unification of two companies to create value for the business and its shareholders. But by causing forced amalgamation, the value will get eroded which is not in the larger public interest.

2. There is no "Public Interest"

- (a) Public Interest is not defined under the Act. As per Webster's New World Dictionary, Public Interest means the people's general welfare and wellbeing, something in which the populace as a whole has a stake.
- (b) In other words, while determining "public interest", interest of all the concerned should be taken into account in a transparent manner. It should not appeal/safeguard only to certain class of public to the prejudice of others. Any such approach will be unfair and unreasonable to public at large.
- (c) 781 trading clients (6% collectively) have to receive around 66% of the said total outstanding settlement obligation from the defaulting members.
- (d) 30 members, out of total 148 members are to receive about 70% of total dues from defaulting members.
- (e) 7 Defaulters account for 85% of Rs. 5,600 crore and the same is payable to 30 Brokers by the defaulting members.
- (f) The Forced Amalgamation completely disregards the interest of more than 63,000 public shareholders of FTIL, 1000+ employees of FTIL, lenders, vendors, and other stakeholders of FTIL to allegedly protect the interest of 781 High Net Worth (HNI), sophisticated Trading Clients, who account for 66% of the total outstanding. These Trading Clients have been termed as "**bogus trader**" by the Hon'ble High Court, Bombay.
- (g) Under the Companies Act, the Central Government can amalgamate two companies only if such amalgamation is "essential in the public interest". The interest of the 13,000 clients of the brokers who traded on NSEL platform for higher returns (hereinafter referred to as the "Trading Clients") cannot be termed as "public interest" when 66% of the entire outstanding amount is being claimed by just 6% of the Trading Clients (i.e., by just 781 persons) vis-à-vis ignoring interest of 63,000+ shareholders of FTIL. Further, the Hon'ble High Court of Bombay, in its order dated 22 August 2014 has questioned whether these Trading Clients are "genuine investors"?
- (h) If the dues of the Trading Clients are considered as "public interest", then the interests of more than 63,000+ public shareholders of FTIL are equally important and construe "public interest". **Should more than 63,000+ public shareholders of FTIL suffer a non-existent liability of Rs. 5,600 crore by the device of a forced amalgamation, when the very existence of any legal liability of NSEL and consequently of FTIL as its holding Company is sub-judice before the Hon'ble High Court of Bombay?**
- (i) The Draft Order of Ministry of Corporate Affairs (MCA), dated 21.10.2014, proposing amalgamation of NSEL with FTIL under the pretext of public interest is not legally tenable, as protecting the alleged interests and claims of Trading Clients at the cost of the interests and rights of the stakeholders of each of the private companies cannot be construed as "**public interest**".

- (j) Trading clients are neither creditors of NSEL nor did they invest in FDs/Debentures in NSEL. No “interest” was paid to Trading Clients by NSEL and hence they are not investors as they wrongly call themselves.
- (k) The Report of the Mayaram Committee, being a committee constituted by the Government of India to look into the NSEL crisis, states that most of the trading clients were HNIs or corporate entities who traded through top brokers. It is further observed in the Order dated August 22, 2014 passed by the Hon'ble High Court, Bombay that “... *These investors are not middle class or lower class people, but are themselves businessmen. The transactions in question were being entered through brokers who had knowledge of the commercial market...*”
- (l) Association of National Exchanges Members of India (ANMI) has admitted that over Rs. 1,200 crore of the total default amount belongs to brokers. Considering that and the extent of financing that could have happened from broker related NBFCs, it appears that it is more an HNI and broker funded trading, besides proprietary trading.

3. The concept of “Limited Liability” will be undermined and defeated

- (a) The forced amalgamation of NSEL, a private limited Company, with its publicly listed parent (FTIL) will defeat the fundamental edifice of “limited liability” in Company law.
- (b) This is an unprecedented step in India, and will open flood-gates for vested interests seeking amalgamation of subsidiaries with their parent companies whenever there is some problem at a subsidiary level.
- (c) The action will result in far-reaching and damaging consequences on the industrial sector and also adversely impact FDI flow into India.

4. There is no case to lift “Corporate Veil”

- (a) The question whether NSEL is at all liable for the alleged dues of Trading Clients is currently sub-judice in four civil suits before the Bombay High Court.
- (b) **No court or tribunal, till date, has held NSEL, FTIL or their respective managements liable for Trading Clients’ dues.**
- (c) The proposed Draft Order of amalgamation has been issued as an alternative tool to lift the corporate veil, knowing that FTIL has sufficient reserves to make good for unproven / potential liabilities of NSEL.
- (d) Thus, the proposed amalgamation of NSEL with FTIL will be overriding/ pre-judging the outcome of these court proceedings in the civil suits pending before the Bombay High Court.
- (e) **The Trading Clients have no privity of contract with NSEL and NSEL is not liable to them; as such, there is no question of any liability on the part of FTIL. Though the privity of contract of the Trading Clients is with their brokers, curiously, they have not proceeded against them. Similarly, the FMC has not initiated any action against brokers or defaulters. Both the Trading Clients and the FMC have instead targeted NSEL and FTIL.**

5. The foundation of recommendations of FMC on amalgamation on lack of human resources, financial resources or organizational capability itself is without any basis and false

(a) On Financial Resources:

- (i) FTIL has provided unwavering support to NSEL by providing loan of Rs. 15 crore towards working capital and will continue to do so everything possible within the ambit of law so that NSEL can put its every effort to recover dues from Defaulters can be executed.
- (ii) NSEL has to receive Rs. 103 crore from NAFED of which NAFED has agreed to release the part amount;

(b) On Human Resources:

- (i) NSEL has 57 full time staff members of which 18 members are senior management and working only to recover amount from Defaulters;
- (ii) The staff members are working tirelessly and co-operating with various investigating and regulatory authorities to recover dues from Defaulters;
- (iii) Apart from the employees of NSEL, NSEL has also appointed various lawyers, counsels, consultant to support in recovery process;
- (iv) Salary / fees have been paid in time by NSEL and no default in payment of TDS, or any other statutory taxes;

(c) NSEL's Recovery is on Track:

- (i) NSEL has recovered about Rs. 362.43 crore from defaulting members and distributed to the Trading Clients;
- (ii) **With prior intimation to FMC, NSEL has already, paid Rs. 179 crore to pay 100% of amount for a claim up to Rs. 2 lakh and 50% amount between Rs. 2 lakh to Rs. 10 lakh to 6,445 Trading Clients, after taking a loan from FTIL.**
- (iii) **The EOW, with the assistance of NSEL officials, has already secured the interests of 13,000 Trading Clients by attaching assets / properties of 22 Defaulters, worth around Rs. 5,000 crore under the MPID Act, 1999.**
- (iv) The ED has also attached multiple assets of Defaulters having book value of over Rs. 200 crore under the Prevention of Money Laundering Act, 2002 (PMLA).
- (v) 12 Defaulters have admitted to liability of around Rs. 2,800 crore through "liability acceptance letter" dated 01.08.2013, settlement agreements signed and minutes of meetings.
- (vi) NSEL provided EOW with details of around 380 assets belonging to companies / entities / associates / key persons of Defaulters for attachment. The sale of attached assets and disbursement to affected members will happen through the "due process of law";
- (vii) The MAC appointed by FMC has observed in a meeting that *"the recovery process has gained momentum since the start of the joint meetings with NSEL Board and FMC"*.
- (viii) 33,000 clients of e-Gold and e-Silver have redeemed up to 99% through a transparent mechanism. This involved auctioning of metals by NSEL within the given parameters and over one lakh bank remittances made to individual trading clients.

- (ix) NSEL has filed over 150 cases including 37 cheque-bouncing cases in various Metropolitan Magistrate Courts, filed/intervened in 27 MPID court cases for recovery or sale of assets and filed 5 arbitration petitions and several recovery suits against Defaulters.
- (x) NSEL has entered into Settlement Agreements worth Rs. 940.85 crore with three Defaulters (Mohan India, NCS Sugar, Swastik), which Settlement Agreements have been filed in the MPID Court as well as the Bombay High Court.;
- (xi) Liability of Rs. 38 crore has been admitted by another Defaulter Spin Cot in an arbitration petition before the Bombay High Court;
- (xii) Another five Defaulters (Aastha, ARK Imports, Metkore Alloys, Shri Radhey Trading and Yathuri) have given commitments to pay Rs. 1,020 crore before the MPID Court;
- (xiii) Another Defaulter, White Waters has admitted before the EOW liability worth Rs. 60 crore.
- (xiv) Thus, these Defaulters have already admitted liability worth more than Rs. 2,000 crore before the Bombay High Court and/or the MPID Court and/or the EOW.
- (xv) The Court has issued decree against the defaulter for worth of Rs. 513 crore;

Please note

1. **With the consent of FMC, the Hon'ble High Court, Bombay has constituted under the chairmanship of a former judge of the Bombay High Court to recover all the monies of the Trading Clients' from the Defaulters under the direct supervision of the Hon'ble High Court, Bombay.**

Source: NSEL website/reply of affidavit etc.
2. **MCA passed in hurriedly manner the Draft Order on October 20, 2014 (within 3 days of the second recommendation which included Saturday and Sunday) without verifying the facts of the matter as stated below and solely relying on the recommendations of FMC when the various legal matters related to the "gainful settlement of rights and liabilities of stakeholders" are sub-judice.**

6. Ramification of forced amalgamation: Domestic - For corporate India

- (a) "Make in India" initiative recently started by the Government of India will be adversely affected by the forced amalgamation of NSEL with FTIL as it will destroy the concept of limited liability in India and will take the Indian corporate law back to the Dark Age, including hindering seamless development of companies.
- (b) The precedent of NSEL-FTIL amalgamation will be misused across India to seek amalgamation of subsidiaries into their parent companies on the ground of some alleged irregularities at the subsidiary level.
- (c) It will open flood-gates of public interest litigations seeking amalgamation of companies into their parent/ group companies in all cases where the subsidiary is not able to honour its financial commitments such as bank loans, or where certain irregularities are alleged at the subsidiary level.
- (d) As a result, everyone - from local to global investors, from FIIs from promoters to venture capitalists - will be scared to invest in a Company in India.
- (e) Absence of limited liability will discourage corporate enterprise, especially in high risk, long gestation investments such as infrastructure, renewable energy etc.

7. Ramification of forced amalgamation: Global - For foreign investors

- (a) **FDI will be the first casualty of MCA's action**
- (i) According to Moody's, the global credit rating agency, net FDI in the first five months of 2014-15 was \$14.1 billion.
 - (ii) Industry expectation is that such flows will be more than \$60 billion during the year as foreign investors gain confidence in the new government.
 - (iii) This expected flow of funds may not materialize as a forced amalgamation may erode confidence in the investors at large, government and the country.
- (b) **Growth will be hampered and shake the confidence of foreign companies**
- (i) India will require almost US\$1trillion in the 2012-17 period to fund infrastructure growth
 - (ii) Such a flow of funds will require strong investor confidence in the country and its legal framework.
 - (iii) A high-handed executive action like a forced amalgamation may adversely affect foreign investors' perception of the country and curtail India's growth trajectory.
- (c) **Uncertain conditions would erode global giants' perception of ease of doing business in India**
- (i) India's rank is 142 in the Ease of Doing Business index compiled by the World Bank, benchmarked to June 2014.
 - (ii) Business decisions, such as amalgamations and acquisitions, are best when taken by the companies involved keeping in mind economic and strategic factors.
 - (iii) A forced amalgamation involving "public interest", which is not clearly defined and has room for ambiguity, will further drive down India's rank in the index.

8. FTIL, its Board and Management have not benefitted

- (a) Investigations for over a year by multiple agencies – EOW, CBI and ED – **haven't found any money trail to NSEL, FTIL or promoter of FTIL.** The same has been stated by the Hon. Bombay High Court order dated 22.08.2014 *"...the money invested has not come to NSEL but has gone to borrowers i.e. bogus sellers. It is the borrowers who have been benefited by the transactions and money of 'investors' has gone to them.... Thus, though projected scam of Rs. 5600 crore, ill-gotten amounts has not gone to the applicant, or for that matter, to NSEL..."*
- (b) **All Trading Clients funds have been traced to the last paisa to all the Defaulters.** The same has been observed by the Order passed by the Hon'ble MPID Court on November 27, 2013 that, *"...if the total amount of all the 25 Defaulters is considered, it comes to around Rs. 5,600 crore, and thus it prima facie appears that the only persons responsible for the entire fiasco are these Defaulters....."*
- (c) NSEL has never paid any dividend to FTIL.
- (e) FTIL dividend payouts DO NOT have any contributions from NSEL Profits.
- (f) All dividends are always paid from standalone income and as is the case with FTIL.
- (g) FTIL is "cash negative" in terms of NSEL investment. FTIL had invested a total of around Rs. 276 crore (including one time loan) in NSEL but only gained Rs. 86 crore over 10 years which includes rent and common services like HR and technology licensing and AMC fees.

9. The facts about NSEL Trading Clients

- (a) NSEL's Trading Clients are within their rights in recovering dues through legal means within the Indian judicial framework, without incorrectly projecting themselves as Investors.
- (b) NSEL is an e-platform where Trading Clients through Brokers have bought and sold by trading one-day forward contracts.
- (c) NSEL Trading Clients are neither creditors of NSEL nor did they invest in FDs/Debentures in NSEL. NSEL did not pay any 'interest' to its Broker Members and hence are not investors.
- (d) Trading Clients traded in commodities on the NSEL through their brokers – having large legal and compliance departments - consciously selected counterparty, paid/received VAT and have acted as clearing and forwarding agents.
- (e) Many Brokers of Trading Clients, while trading on NSEL, visited the warehouses to verify the commodities and found them to be in order on various occasions.
- (f) Trading Clients have no privity of contract with NSEL. Their privity of contract is with the Brokers.

10. The propaganda that NSEL was incorporated to defraud Trading Clients is with malice, baseless and false

- (a) **NSEL was set up by MCX on invitation of Government of India (GoI) and not by FTIL as alleged**
- (b) NSEL is a demutualized organization/exchange in that the ownership and management are totally separated;
- (c) **Exemption under Section 27 of the FC(R) Act was given by GoI to 3 spot exchanges NMCE, NCDEX and NSEL.**
- (d) NSEL and NCDEX Spot Exchange (controlled by NSE) launched contracts beyond 11-day maturity as the exemption granted was a 'general exemption' under Sec 27 of the FCRA.
- (e) Like other subsidiaries of FTIL, NSEL was also managed by a well-qualified and experienced Managing Director and CEO and a group of senior officials having adequate experience in commodities markets.
- (f) **There were no complaints by any of the participants who were trading on the platform of NSEL, brokers have periodically visited the warehouses and never raised any red flag. It was running fine for almost five years;**
- (g) It is pertinent to note that at no point in time was there any information regarding any alleged irregularities on NSEL's electronic platform and/or any instances of alleged fraud were ever brought to the attention of the Board of Directors of FTIL;
- (h) In an affidavit in Writ Petition 2340/2013, the Department of Consumers Affairs (DCA) admitted that it has not determined whether NSEL violated any conditions.
- (i) For chronology event of setting up of NSEL, please refer to the Annexure.

11. Businesses of NSEL and contracts are legitimate

- (a) NSEL was an electronic platform for trading of commodities between willing buyers and sellers.
- (b) **It only acted as a pass through mechanism;**
- (c) NSEL has neither received any deposit nor paid any interest nor has issued any equity shares / preference shares or any debenture instruments to the so called "investors";
- (d) NSEL was mere intermediary and an exchange and was never the legal or beneficial owner of funds or commodities;
- (e) **NSEL launched "independent" 1-day forward contracts for 2nd day and 25th day etc.;**
- (f) NSEL did not receive any benefit save and except to the extent of transaction charges by the exchange against the transaction;

ANNEXURE-B

FTIL WRIT PETITION AGAINST THE DRAFT ORDER: UPDATE

On 21 October 2014, based primarily on the recommendation of the FMC and without any independent application of mind, the MCA issued the Draft Order of Amalgamation (“Draft Order”) proposing to forcibly amalgamate NSEL with FTIL under Section 396 of the Companies Act, 1956 (“Act”).

On 10 November 2014, FTIL challenged the Draft Order before the Bombay High Court by way of Writ Petition.

On 27 November 2014, the Bombay High Court granted “status quo” in the matter which was extended until 22 December, 2014.

On 22 December 2014, the Bombay High Court extended the status-quo order until 4 February 2015.

On 4 February 2015, the Bombay High Court vacated the status quo and allowed MCA to consider passing Final Order after hearing contentions of FTIL, NSEL and all other interested parties, in the following time frame:

- (a) FTIL, NSEL and all interested parties to file objections within 30 days;
- (b) the Central Government to pass appropriate order within 4 weeks thereafter after giving brief hearing to all the interested parties;
- (c) If any adverse order is passed by the MCA, then the same will not be notified for 2 weeks from the date of its communication to FTIL;
- (d) The Court has kept the Writ Petition pending till such Final Order is passed by MCA,
- (e) FTIL’s petition and FTIL’s contentions relating to the jurisdiction of MCA to issue the said order and challenging the constitutional validity of Section 396 are kept open.

The matter is pending before Hon’ble High Court, Bombay for hearing.

ANNEXURE-C

REPRESENTATIVE SUIT FILED BY MODERN INDIA: UPDATE

1. Representative Suit is filed by Modern India on 8th January, 2014, in Bombay High Court ***that includes prayer for lifting of corporate veil of FTIL.***
2. Suit is filed by Modern India on behalf of all alleged investors i.e. "Trading Clients".
3. On 2nd September 2014 High Court appointed a High Power Committee to ensure proper supervision and settlement from the Defaulters, to which FMC had consented.
4. 15 third party notices has been issued to Defaulters by NSEL;
5. 4 decrees obtained against Defaulters amounting to a total of ~ Rs. 513 crore.
5. 11 injunctions orders against Defaulters;
6. **The matter is pending before Hon'ble High Court, Bombay for hearing.**

ANNEXURE-D

CASE AGAINST “FIT AND PROPER” ORDER BY FMC: UPDATE

1. On 17th December 2013, FMC issued an order declaring FTIL to be not fit and proper to hold shares in any commodity exchange.
2. The FMC order is primarily based on the Grant Thornton Report which has no legal basis and is contrary to well established principles of natural justice.
3. FTIL challenged the order on 20th December 2013 by way of Writ Petition in Bombay High Court.
4. Post the order, on 6th May, 2014 revised norms were introduced by FMC to empower the commodity exchanges to take actions in case of any person / entity declared as not fit and proper *inter alia* the Board of Directors of the commodity exchange has right to sale the shares held by “not fit and proper” person, keep the corporate benefits in abeyance, no voting rights etc.
4. Subsequently, FMC by its affidavit clarified that it has not directed to divest from commodity exchange. However FMC was not renewing contracts of MCX and thereby MCX was forcing FTIL to divest its entire stake from MCX.
5. On February 28, 2014, the Writ Petition was admitted, however interim relief was not granted including subsequent notice of motion was also not granted by the Hon’ble High Court, Bombay.
6. **The matter is pending before Hon’ble High Court, Bombay for hearing.**

ANNEXURE-E

**APPLICATION OF LENDERS IN THE WRIT PETITION OF FTIL AGAINST
THE PROPOSED AMALGAMATION**

Lenders (Syndicate Bank; Union Bank; Standard Chartered Bank, UK; DBS Bank Ltd., Singapore) file intervention application in FTIL's Writ Petition against the proposed amalgamation of NSEL with FTIL. The intervention application has been allowed by the Bombay High Court vide its Order dated February 4, 2015 and the Lenders have been made party-Respondents to FTIL's Writ Petition.

Excerpts from the intervention applications in the Bombay High Court

- The lender banks jointly, including nationalised banks and foreign banks operating in India, had advanced an external commercial borrowing (ECB facility) of USD 85 million to FTIL as principal and interest thereon, under which an amount of USD 61.2 million as principal and interest thereon is currently outstanding.
- On 21st October 2014, the government purportedly, in exercise of its power under Section 396 of the Companies Act, 1956, has issued a draft order proposing amalgamation/amalgamation of NSEL with the FTIL. The said Draft Order among other things, postulates that FTIL shall assume the entire liabilities and obligations of NSEL.
- The said Draft Order, allegedly proposed and issued in the public interest, is essentially premised on orders and recommendations made by the government, the orders of which are under challenge and currently sub-judice.
- The said draft order, inter alia, has neither explained, considered nor substantiated the public interest justifying the proposed amalgamation/amalgamation. The said draft is conspicuously and absolutely silent about the rights and interest of the banks, who are creditors of FTIL and whose exposure in FTIL is substantial.
- The funds were disbursed based on FTIL's sound financial health and was preceded by a thorough due diligence conducted by the lender banks. The events that have subsequently unfolded were never in contemplation. The lender banks apprehends that in the eventuality that the said draft order is allowed to culminate into a final order without any provisioning or modifications that safeguard the rights and interests of the lender banks, it would not only severely impact the financial health/performance of FTIL, but also adversely affect the lender bank's capacity to recover the funds advanced to FTIL and would, virtually, render them remediless.
- The lender banks intervened in the matter as they are bound to be affected by the adjudication of the disputes and issues raised in the petition and implication and consequences thereof.

ANNEXURE-F

**PETITION OF SHETH BROTHERS AGAINST PROPOSED
AMALGAMATION**

Mr. Ravi Sheth and Mr. Bharat Sheth (hereinafter Sheth Brothers) filed a Writ Petition before the Hon'ble Bombay High Court challenging the constitutionality, legality and validity of proposed amalgamation of NSEL with FTIL.

Excerpts from Writ Petition in the Bombay High Court

- (a) The proposed action of Government to amalgamate NSEL with FTIL is absurd and untenable and goes against the legislative intent behind the Companies Act, 1956
- (b) The proposed move completely ignores the provisions of the Act and also ignores the underlying public interest involved that the Government and FMC are obligated to protect
- (c) By the Impugned Draft Order, the Government has purported to invoke the provisions of Section 396 of the Companies Act in respect of private entities, an action which is being considered for the first time in Indian corporate history
- (d) The Impugned Draft Order militates against the very foundation of a Company being a separate legal entity as opposed to its shareholders and purports to burden FTIL with the alleged liabilities of NSEL to the detriment of FTIL and its 63,000 shareholders including the Sheth Brothers.
- (e) The issue of NSEL's alleged liability is sub-judice. This purported action of forced amalgamation of NSEL and FTIL cannot be said to be in "public interest" as the same is clearly against the interest of about 63,000 shareholders of FTIL.
- (f) By issuing the Impugned Draft Order and proposing a forcible amalgamation, the Government has completely ignored the statutory rights of the shareholders of FTIL.
- (g) It is absurd to contend that just because FTIL is a majority shareholder of NSEL, and NSEL is its subsidiary, it is in public interest for the FTIL to pay off the alleged claims of about 13,000 trading clients against NSEL to the detriment of its own shareholders in spite of the fact that such claims are sub judice. There is therefore no element of "public interest" whatsoever in the proposed forced amalgamation.
- (h) The Impugned Draft Order has affected and impacted the shareholders of FTIL in as much as the value of the shares of FTIL has been substantially decreased
- (i) The Impugned Draft Order is aimed at securing private interest of a handful trading clients of NSEL, who claim to have lost money as a result of their private commercial dealings motivated to earn profits as against jeopardizing the value of the shareholding of over 63,000 shareholders of FTIL.
- (j) The fact that FTIL may have been purportedly declared to be not a fit and proper person' to hold shares in a recognized commodities exchange has no bearing at all on the public interest alleged to be protected by the proposed forced amalgamation
- (k) It is absurd to suggest that it is in public interest to amalgamate an allegedly defaulting entity such as NSEL into its parent Company, i.e. FTIL.
- (l) The prerequisite of "essential in the public interest" has not been satisfied while issuing the Impugned Draft Order

- (m) The Impugned Draft Order should be quashed and set aside in as much as it has been issued contrary to the Article 14 of the Constitution of India and by ignoring the well-established principles of independent corporate personality, and is therefore liable to be struck down
- (n) It is arbitrary and unjust to mandate that FTIL, in spite of being otherwise independent and separate entity, should be held liable for the alleged acts or omissions of its subsidiary, NSEL vide a forced amalgamation without the consent of the respective shareholders and stakeholders of NSEL and FTIL.
- (o) The Impugned Draft Order smacks of mala fides, arbitrariness and a colorable exercise of power, apart from being in excess of the jurisdiction vested with Government under Section 396 of the Companies Act
- (p) As NSEL and FTIL are independent corporate entities with independent Boards of Directors and management, there is no case made out whatsoever of lifting the corporate veil of NSEL and FTIL so as to saddle FTIL with the allegedly liabilities of NSEL, which the Government seeks to do under the guise of the proposed forced amalgamation
- (q) If the forced amalgamation were effected as proposed in the Impugned Draft Order and recommended by the FMC, it would constitute an act of expropriating the property rights of FTIL and its shareholders.
- (r) The Impugned Draft Order is ultra vires Article 14 of the Constitution of India as it is arbitrary, unreasonable and suffers from non-application of mind
- (s) Such an action is in fact not only prejudicial to the public interest, but also to the general corporate climate and foreign investors in the Company
- (t) Forced amalgamation of NSEL with FTIL would have an adverse impact on the legitimate business activity of FTIL, making it commercially unviable and hampering the interests of its shareholders
- (u) The Impugned Draft Order is bad in law, illegal, void and non-est and is ultra vires the provisions of Section 396 of the Companies Act and violates of shareholders' rights under Article 14 of the Constitution of India

The Impugned Draft Order is arbitrary, unreasonable, perverse, and capricious, without / in excess of jurisdiction and without / in excess of authority of law and should be set aside by the Court.

ANNEXURE-G

**FOUNDERS AND PROMOTERS OF FTIL FILE WRIT PETITION IN
BOMBAY HIGH COURT AGAINST THE CONSTITUTIONALITY,
LEGALITY, AND VALIDITY OF PROPOSED AMALGAMATION OF NSEL
AND FTIL**

Excerpts from Writ Petition in the Bombay High Court

- (a) By the Impugned Draft Order the MCA and FMC are seeking to hold FTIL responsible for payment Defaults on NSEL. This could not have been the intent of Section 396. Such forceful amalgamation and the resultant foisting of the alleged liability of RS. 5,600 crore on FTIL will completely destroy FTIL and render an otherwise robust and sound financial entity into a loss making concern which will not only affect the 63,000 shareholders, promoters and other stakeholders but will also not be conducive for the economy of n the country and the market where FTIL is a strong competitor.
- (b) The forcible amalgamation of the NSEL with FTIL would have serious repercussions on FTIL, its business, future prospects and the very survival of FTIL in view of the fact that there is no synergy between the business of FTIL and NSEL.
- (c) The forced amalgamation of two private corporate entities i.e. NSEL and FTIL will defeat and destroy the fundamental edifice of limited liability and independent corporate personality in Company law.
- (d) When Courts are yet to adjudicate after full enquiry of material facts, documents and evidences as to who, if any, are the alleged victims, perpetrator and / or beneficiary of the fraud, and indeed even whether any fraud was committed, then such "prima facie view" / conclusion taken by the MCA without full appreciation of evidence and based solely on the recommendation of the FMC, is unfair, unconstitutional, outside the purview of Section 396 of the Act and untenable.
- (e) If Section 396 of the Act is construed as an unfettered and unrestricted power of the Central Government to pass any order for forced amalgamation of independent private entities, without any conditions or guidelines for the exercise thereof, it is illegal and void, being ultra vires of Articles 14, 19(1)(f), 19(1)(g) and 300-A of the Constitution of India.

- (f) The Draft Order ignores the fundamental principles and tenets of independent corporate personality and not only seeks to lift the “corporate veil”, but destroys the veil and defeats the very principle thereof
- (g) The Draft Order has not been issued, and the proposed forced amalgamation is no, “essential in public interest” as mandated by Section 396 of the Act.
- (h) The only interest that the MCA and FMC wish to protect, under the guise of ‘public interest’, is really just the alleged claims and rights of 13,000 private clients of brokers who traded on the platform afforded by the 3rd Respondent for higher returns out of which only 781 private clients were exposed to 66% of the settlement defaults.
- (i) Such forced amalgamation will not only affect the 63,000 shareholders, but approximately 1000 employees. Additionally the creditors, lenders, vendors, customers and other stakeholders of FTIL and also the employees of such securities commodities market will be prejudicially and adversely affected.
- (j) If the forced amalgamation as proposed in the Draft Order was effected, it would constitute an act of expropriating the property rights of FTIL and its shareholders thrusting upon it, the alleged liabilities (contingent or otherwise), of NSEL solely on the purported basis that NSEL has become weak.
- (k) The Draft Order suffers from non-application of mind
- (l) On a perusal of the Draft Order it appears that the MCA has simply relied on the purported “information” provided by the FMC and passed the Draft Order. It is irresponsible for a Government Authority such as the MCA to rely on the same, let alone pass an order such as the Draft Order that would have such serious and irreversible repercussions based on unfounded allegations without independent verification.

ANNEXURE-H

NSEL - CHRONOLOGY OF EVENTS

NSEL business was bona-fide and approved by Government

2004:	NSEL was conceptualized from the then PM's vision to create national "Single Market"
July 8, 2004:	Then FM in his budgetary speech asserted importance of Spot Market
2003-06:	Economic Survey of 3 consecutive years support PM's vision on Spot Market
May, 2005:	NSEL was incorporated by MCX and not by FTIL as alleged;
May 31, 2006:	FMC seek concepts paper from MCX on creation of National Spot Market
July 18, 2006:	MCX submits a concept paper on setting up of spot market;
January, 2007:	11th Planning Commission recommends setting up of Spot Exchanges;
June 5, 2007:	NSEL was approved as a spot exchange by DCA. So were NMCE and NCDEX;
2008 onwards:	6 States' Governments issue license to NSEL under Model APMC Act - Gujarat, Karnataka, Maharashtra, Madhya Pradesh, Rajasthan and Orissa
August 26, 2010:	FMC recommends FCI to use Spot Exchange platforms like NSEL, as they provide better service and facilities compared to other models;
August 5, 2011:	FMC appointed as designated agency to regulate Spot Exchanges
August 5, 2011:	FMC wrote to MCA urging RBI to exempt Spot Exchanges from the purview of Payment and Settlement System Act
Nov 30, 2011:	FMC starts obtaining fortnightly full stock detail reports from NSEL and other Exchanges
Feb 22, 2012:	FMC seeks clarification from NSEL on fulfillment of conditions
April 10, 2012:	FMC misleads MCA despite detailed clarification from NSEL
April 27, 2012:	MCA issues Show Cause Notice to NSEL
May 23 and	NSEL responds twice to allegations, explaining the exemption granted was a 'General
August 11, 2012:	exemption' from all provisions of the FCRA and there was no violation of any condition
July 12, 2013:	15 months after the first show cause notice by DCA, DCA asked NSEL to stop launching fresh contracts and settle the existing contracts on due dates. This abrupt action led to disruption of the market equilibrium and created uncertainty and doubt about continuity of trading on the Exchange leading to most of the participants started withdrawing from the market. There was no effort to minimize risk or to ensure a gradual and smooth closure as was done in the case of NCDEX.
August 4 2013:	In a meeting convened by the FMC Chairman with the Defaulters, Defaulters admitted that they owe money and assured the FMC chairman that they would make good the money in a phased manner.
August 6 2013:	MCA issued a Notification in the Gazette empowering the FMC to take actions necessary against all person including Defaulters, brokers and warehouses. No action taken as yet on the Defaulters, brokers and warehouses.

December 17, 2013: Based on a Grant Thornton report (G T Report) which contained a disclaimer that the same may not be used for legal purposes which later came to be withdrawn, the FMC declared FTIL as not fit and proper to hold shares in a commodity exchange.

The G T Report was based on a very limited audit, where no cross examination was given and the management response was not included. While brokers, defaulters, Trading Clients were also mentioned, action was taken only against FTIL and the same report became the basis for recommending Section 396 for forced amalgamation of NSEL with FTIL.

This Order has been challenged in the Bombay High Court and the Writ Petition for this has been admitted.

December 2013 / January 2014: 4 Suits are filed *inter alia* against NSEL and FTIL in the Bombay High Court. Prayers include a prayer to lift corporate veil. Suits are pending in the Bombay High Court

August 8, 2014: FMC makes a representation to MCA to amalgamate NSEL with FTIL on the basis that NSEL doesn't have adequate resources, financial and human to recover money from the defaulter.

September 2, 2014: FMC consents before the Bombay High Court to appoint a High Power Committee to ensure proper supervision and settlement of Defaulters

October 17, 2014: FMC now recommends the amalgamation to MCA, *inter alia*, on the basis that equity shareholders must bear the risk for acts of omission and commission of FTIL

October 21, 2014: Only 2 working days after second recommendation, Draft Order for amalgamation issued by MCA. This Draft Order is based primarily on FMC's proposal and a consideration of the Order declaring not fit and proper which was passed by FMC on December 17, 2013. This is tantamount to lifting of the corporate veil, an issue which is already pending before the Bombay High Court. The Fit and Proper matter is also pending before the Bombay High Court in a Writ Petition which has already been admitted

When:

- (a) FTIL has without prejudice to its rights complied with FMC's order;**
- (b) Liabilities are admittedly those of Defaulters;**
- (c) Issues forming the basis of the Draft Order are yet to be determined by the Hon'ble High Court, Bombay;**

Is it justified to recommend the Draft Order and implement expropriation of 63,000 + shareholders' property by a forced amalgamation?

ANNEXURE-I

FINANCIAL TECHNOLOGIES (INDIA) LTD. (FTIL): FACTSHEET

1. Make in India: Indian Technology Leadership (Since 1995)

- FTIL was among the first companies in mid 90s to make financial market trading products from India and its ODIN suite of products has 2nd largest market share in Trading Terminal segment globally.
- MCX, set-up by FTIL, is the 2nd largest commodities exchange in the world in a short span of 10 years and is also recognized for multiple innovations in the world.
- IEX, set-up by FTIL, is India's # 1 energy exchange and among the leading exchanges globally.
- NBHC, set-up by FTIL, is India's #1 private sector warehouse management Company and among the top leaders in the segment in Asia.
- SMX and DGCX, international exchange ventures set-up by FTIL in Singapore and Dubai, are the leading exchanges in Asia and the Middle East.

2. Global Recognition

Region	Name	Credentials	Equity Stake
Middle East	Dubai Gold and Commodity Exchange	<p>Fastest growing exchange in Middle East.</p> <ul style="list-style-type: none"> • FOW Exchange of the Year 2014 (MEA) • FOW Emerging Exchange of the Year 2014 • FOW World Second-Fastest Growing Exchange 2012 • The "Best Global Commodities Exchange 2013" Award by MENAFX • JFEX Best Middle East FX Exchange 2013 	JV
Middle East	Bahrain Financial Exchange	<p>First multi asset exchange in the MENA region with a diverse portfolio of products</p> <ul style="list-style-type: none"> • Rated as Most Sophisticated Financial Market in the GCC and Supported by Established Regulatory Environment • Total cumulative trading turnover crosses \$50bn with total cumulative trading volumes of over 4 million contracts in February 2013 	100%
South East Asia	Singapore Mercantile Exchange	<p>Only the second exchange in Singapore approved by Monetary Authority of Singapore.</p> <ul style="list-style-type: none"> • Recognized as World's Fastest Growing Exchange by FOW in 2012 • SMX wins 3 awards at 'FOW Awards for Asia 2012', including for the most innovative new contract <p>Following the FMC order declaring FTIL not Fit and Proper, MAS also asked FTIL to exit SMX. SMX was sold to the world's largest exchange group Inter Continental Exchange (ICE) for USDE 150 million</p>	100%
Africa + Europe	Bourse Africa, Mauritius	<p>Multi-asset exchange based in Mauritius</p> <ul style="list-style-type: none"> • Recorded highest daily turnover of \$76m in May 2013 • First exchange in Africa to launch CFD contracts 	100%

3. Impeccable track record of creating and delivering shareholder value

- (a) Current FTIL management has delivered consistent shareholder value by paying **dividends for the past 37 quarters**.
- (b) FTIL is amongst the first few companies to be invited by international financial centers like Singapore, Dubai, Mauritius and Bahrain to set up and develop their financial markets and related ecosystem in their countries.
- (c) The same management has thrived in highly regulated markets across the globe displaying extraordinary standards of corporate governance, thus making the nation proud.
- (d) The book value of your Company as on September 30, 2014 was **Rs. 614 per share**.
- (e) FTIL contributed to the exchequer to the Government of India over **Rs. 1,000 crore by direct and indirect taxes since past 10 years**.
- (f) FT Tower, your Company's prized asset of 125,000 square feet is valued at Rs 500 crore.
- (g) FTIL was built by its Founder Mr. Jignesh Shah, first generation technocrat with a vision to reshape the financial market infrastructure space not just in India but globally. With almost no money and no infrastructure, FTIL was built to what it is today. FTIL under the leadership of Mr. Jignesh Shah put India into the world map by emerging as the world's largest creator of Greenfield exchange, a feat not achieved by any other Company in the world.

4. Social impact and employment creation

- (a) **Create New Tax Payers and New Tax Revenues:** FTIL exchanges like MCX and IEX helped organize markets in unorganized segments like Commodities and energy and bring the trades "on market" in turn creating new tax payers and new tax revenue for GOI.
- (b) **New Employment:** Exchanges like MCX and IEX among others set-up by FTIL combined with its ecosystem partners, such as Brokers, Banks, Depositories, Warehouse providers, Information service providers etc., helped create new jobs / employment of over 1 million as per one study done by TISS (Tata Institute of Social Science).

5. Financial inclusion and ecosystem development

Exchanges such as MCX, MCX-SX and IEX have helped create over 1000+ new broking members and an equally large no of sub-broker community to trade and hedge in new asset classes in turn deepening and widening of markets and democratizing their access to the last mile.

6. Value realization for stakeholders

FTIL Companies / Assets have attracted blue chip domestic and international companies as demonstrated during the recent stake sale in midst of the crisis on NSEL's platform.

Name	Purchaser	Remarks
SMX	ICE Group, USA	ICE is the world's largest exchange Group by market capitalization and invested post a thorough diligence on SMX.
NBHC	India Value Fund	India's premier private equity fund known for management buyouts and invested post a thorough internal and external diligence.
MCX	Kotak Mahindra Bank Limited (KMBL) (15%)	KMBL is India's leading private sector bank with market capitalization in excess of Rs. 83,000 crore invested in listed MCX.
IEX	M/s. TVS Shriram Growth Fund 1, , M/s. TVS Capital Funds Limited, and other investment/growth funds	TVS Capital Funds Ltd. manages the TVS Shriram Growth Fund which is more than INR 1,100 crore Assets Under Management domestic rupee fund across two Schemes - 1A and 1B

Subsequent to FMC's "Not Fit and Proper" order, FTIL was forced to exit from all the exchanges that it had promoted and built. These exits have resulted in FTIL building up on its cash reserves as below and currently the standalone net cash on its books is Rs. 1585 crore (Rs 344 per share).

FTIL Exits	Value Realized in INR (crore)
SMX	USD 150 million (Rs. 900 crore+)
NBHC	230
MCX	887
MCX SX	63
IEX	73
Total Value Realized till date*	2153+
Total Debt in FTIL	474

- *(a) FTIL has entered into SPA with Purchasers to sell 25.64% stake in IEX at a valuation of Rs 2250 cr.
- (b) Assets yet to be exited: (i) 100% of BFX, (ii) 100% of BA, (iii) 27.3% in DGCC due to regulatory considerations and (iv) 95% in Atom Technologies Limited

~ RS. 2000 CRORE CASH (LESS DEBT ~ RS. 475 CRORE)*

+ FT TOWER + FT TALENT + FT TECHNOLOGY BUSINESS

= NEW GROWTH TRAJECTORY FOR FTIL.

* As on 19 /2/2015

ANNEXURE-J

FTIL BOARD OF DIRECTORS: BRIEF PROFILE

(1) Mr. Venkat Chary, IAS (Retd.), Chairman, Independent Non-Executive Director



- Former Chairman, Forward Markets Commission (FMC)
- Former Member Maharashtra Electricity Regulatory Commission (MERC)
- Former Home Secretary, Finance Secretary, Maharashtra, Municipal Commissioner, Mumbai, Secretary to Chief Minister, Maharashtra.
- Former Deputy Director, LBS National Academy of Administration, Mussorie
- Former National President, Indo- French Technical Association (IFTA)

(2) Mr. Prashant Desai, CEO and MD



- Chartered Accountant, Graduate in Cost and Works Accountant
- Professional experience of over 20 years
- Ex-Head IR and Investments – Future group
- Ex-Head Research – RARE Enterprises

(3) Justice R.J. Kochar (Retd.), Independent Non-Executive Director



- Former Judge, Bombay High Court
- Judicial career of over 30 years in legal fraternity
- Founder member of the reputed Labour Law Journal - Current Labour Reports, Bombay

(4) Mr. A. Nagarajan, IAS (Retd.) Independent Non-Executive Director



- Former Special Chief Secretary and Development Commissioner, Government of Tamil Nadu
- Former Special Commissioner of Treasuries and Accounts
- Former Member Secretary of State Planning Commission
- Additionally Secretary, Industries – Government. of Tamil Nadu
- Commissioner – Regional Provident Fund, Chennai
- Executive Director – National Seeds Corporation

(5) Mr. Berjis Desai, Non-Independent, Non-Executive Director



- Law graduate from the Mumbai University and a post-graduate in law from Cambridge University, U.K
- Managing Partner of J. Sagar Associates, leading law firm, Solicitor and Advocate
- Specializes in financial and international business laws and international commercial arbitration

(6) Mr. Anil Singhvi, Non-Independent, Non-Executive Director



- Chairman, ICAN Investment Advisors Pvt. Ltd.
- Chartered Accountant by profession with over 30 years of experience in the Corporate Sector
- Ex-MD and CEO of Ambuja Cements

(7) Mr. S. Rajendran, Independent Non-executive Director



- More than 36 years of rich experience as a senior banking professional and multi-functional experience covering most areas of commercial banking and Enterprise-wise Risk Management
- Extensive experience in Corporate Credit, Treasury and Investment Management, International Banking, Overseas Expansion, Skill Development and Training, Business Development, Branch banking set-up and operations and Customer Relationship Management, Internal controls, Regulatory Compliance and Audits and Training, Research and Knowledge Management.

(8) Ms. Neesha Dutt, Independent Non-executive Director



- Holds an M.S. and MBA degrees from Oklahoma State University and Ohio University respectively
- Has spent over a decade in consulting across both mainstream and development projects in over dozen countries.
- Keen understanding of markets and consumer behavior
- Has an astute sensitivity for creating successful roadmaps into low-income markets
- Has been able to deploy both traditional and cutting edge technology-driven solutions with a firm focus on the triple bottom line for her clients.

(9) Mr. Sunil Shah, Non-Independent, Non-Executive Director



- Managing Director of Motivation Engineers and Infrastructure Pvt. Ltd.
- Serves as Chairman of Vibrant Motivation and Development Foundation and Advisory Board of Vedic-Vocational and Educational Development Institute of Calorax.
- Serves as Advisor to esteemed organizations i.e. E-MBA programme of Ahmedabad University and MBA Programme of Kalol Institute of Technology, as well as Government Polytechnic for Girls, Ahmedabad.

(10) Mr. Miten Mehta, Non-Independent, Non-Executive Director



- Specialist in technology start-up and finance domain with over 20 years of experience across geographies
- Passionate about mentoring and investing in start-ups to leverage Social, Mobile, Analytics, and Cloud (SMAC) for creating tangible values in order to bring forth social impact across educational and healthcare domains
- Member of TIE, Mumbai Angels and CodeForIndia and several other NGOs
- Frequent speaker at industry events / conferences
- His current responsibilities include driving and contributing FTIL's endeavor to transform itself as preferred technology platform

(11) Mr. Jigish Sonagara, Executive Director



- Leading Trading Transaction Technology Specialist, with over 14 years of professional experience in implementing automation for all aspects of Trading Transaction Technologies for Broker to Exchanges.
- Has strong functional, technical and operational expertise in diverse trading market verticals viz. Equity, Commodity, Currency, Fixed Income and Power, and has spearheaded and provided complete exchange solutions to various exchanges across the globe including Singapore Mercantile Exchange (SMX), in Singapore, Bourse Africa in Mauritius, Bahrain Financial Exchange (BFX) in Bahrain, Bourse Africa in Botswana; and Multi Commodity Exchange (MCX), MCX-Stock Exchange (MCX-SX) and Indian Energy Exchange (IEX) in India.

(12) Mr. Rajendra Mehta, Executive Director



- Chartered Accountant has over 22 years of professional experience in Capital Market, particularly in Stock Broking and Investment Banking.
- He is a Market and Operations expert, with significant understanding of market mechanics and regulatory
- With CLSA India for both broking and investment business as Chief Operating Officer and Whole Time Director
- Currently, looks after a suite of products catering to Member Technology, banking and banking regulatory solutions viz. ODIN, Match, STP, RiskCalculator, Treasury Back-office, ARISC, and Data Collector Solution, among others.

ANNEXURE-K

FTIL 3.0: THE ROAD AHEAD
FOUNDER'S VISION: DIGITALINDIA@2025

**'Make in India' Technology of FTIL 3.0 to power 108
New Digital Disruptors over next 10 years**



FTIL 1.0 was founded by Mr. Jignesh Shah, Mr. Dewang Neralla and Mr. Ghanshyam Rohira, as a technology provider for financial markets and is today the # 2 global leader by licensing volume, in the space operating the largest financial distribution network in the country through its ODIN suite or Trading Terminals, with close to 1 million licensees from over 600 cities, towns and villages.

FTIL 2.0 was the evolution of FTIL in to creating and operating financial markets (exchanges) across India, Middle East, Africa and South East Asia, recreating the new electronic silk and spice routes that connected these markets again through online trade and commerce. MCX, MCX-SX and IEX in India, SMX in Singapore, DGCX in Dubai and Bourse Africa in Mauritius, set-up by FTIL are among the most globally respected institutions in their respective market segments and geographies.

FTIL 3.0 is the transformation of FTIL in to becoming the de facto 'powered by' technology partner of choice to create and develop ecosystem of 108 new Digital Disruptors from India in key sectors such as Retail, Education, Healthcare, Agriculture, Environment, Infrastructure and Space among others over the next 10 years by 2025.

FTIL 3.0 will leverage its Technology, Capital, Talent, Infrastructure, Experience and Ecosystem to become the obvious choice as partner for entrepreneurs and organizations to optimize their resources in their core focus areas and scale up their business.

Social Media



digitalindia2025.com



[@DIndia2025](https://twitter.com/DIndia2025)



<http://on.fb.me/1A0FMEE>

ANNEXURE-L

FTIL FORCED EXITS - COSTING SHAREHOLDERS CRORE OF LOSSES

Relying solely on FMC Order, various other regulators like Securities and Exchange Board of India (SEBI), Central Electricity Regulatory Commission (CERC) etc. and international regulators like Central Bank of Bahrain (CBB), Financial Services Commission (FSC), have also declared your Company as not fit and proper and thereby not to hold any shares in the said companies.

As a result, Your Company, without prejudice to its legal rights and remedies, had to take a decision to exit the unique and valuable assets it promoted like

- Multi Commodity Exchange (MCX), India
- Singapore Mercantile Exchange (SMX), Singapore
- Indian Energy Exchange (IEX), India
- National Bulk Warehousing Company Limited, India (NBHC)
- Bahrain Financial Exchange, Bahrain (BFX)
- Bourse Africa, Mauritius (BA)
- Dubai Gold and Commodity Exchange, Dubai (DGCX)
- Atom Technologies Limited, India (Atom)

The said FMC Order and subsequent actions based on this order by other Regulators have led to a forced exit by Your Company resulting in hundreds of crore of losses to Your Company.

What is surprising is that FTIL was compelled to exit even before the verdict on the FMC Order has yet to be arrived upon, thereby causing potential losses to FTIL shareholders.

Your Company had expressed its bona fide relinquishing the Board seat in MCX by resigning from the board of MCX too.

FTIL and FTIL shareholders have suffered massively both financially and reputation-wise due to these actions.

ANNEXURE-M

MONEY TRAIL TO THE LAST PAISA HAS BEEN ESTABLISHED TO NSEL DEFAULTERS Ref: Sharp and Tanon Audit Report Dt. 2nd April 2014

Messrs. National Spot Exchange Ltd.

Exhibit A

Amounts receivable from members as on 31/8/2013 from the period commencing 01/08/2013

Sr.	Member Name	Member ID	Amount receivable (Rs. crores)	Enclosure ref.
1	AASTHA MINMET INDIA PVT LTD	13960	23.87	A1
2	ARK IMPORTS PVT LTD	14070	719.42	A2
3	BRINDA COMMODITY	14730	14.01	A3
4	JUGGERNAUT PROJECTS LTD	14770	219.20	A4
5	LOIL CONTINENTAL FOOD LTD	14460	338.40	A5
6	LOIL HEALTH FOODS LTD	14470	287.48	A6
7	LOIL OVERSEAS FOODS LTD	14350	85.19	A7
8	LOTUS REFINERIES PVT LTD	14180	252.56	A8
9	METKORE ALLOYS & INDUSTRIES LTD	14680	98.08	A9
10	MOHAN INDIA PVT LTD	14510	575.08	A10
11	MSR FOOD PROCESSING	14260	9.05	A11
12	N K PROTEINS LTD	12510	964.89	A12
13	NAMDHARI FOOD INTERNATIONAL PVT LTD	13990	51.07	A13
14	NAMDHARI RICE & GENERAL MILLS	14170	10.45	A14
15	NCS SUGARS LIMITED	14230	58.85	A15
16	P D AGROPROCESSORS PVT LTD	13790	637.55	A16
17	SHREE RADHEY TRADING CO	13780	34.59	A17
18	SPIN COT TEXTILES PVT LTD	14630	38.26	A18
19	SWASTIK OVERSEAS CORPORATION	13910	100.83	A19
20	TAVISHI ENTERPRISES PVT. LTD.	14740	333.01	A20
21	VINI ADEVI AGROTECH LIMITED	14160	14.02	A21
22	WHITE WATER FOODS PVT LTD	14050	84.87	A22
23	YATHURI ASSOCIATES	14310	424.64	A23
24	SANKIYA INVESTMENTS	14270	6.29	A24
25	TOPWORTH STEELS & POWER PVT. LTD.	14660	159.46	A25
Total			5,541.12	

Note: The amount have been rounded off to nearest rupees in crore.



Outstanding in LOIL Continental would be Rs. 347.71 crores and P D Agro would be 680.30 crores as on 31/08/13 as per below notes in the report

LOIL CONTINENTAL

* Buy trades executed prior to 31/07/2013 whose settlement date was later than 31/07/2013

Note: Sale trade executed by member, LOIL Continental Food Ltd (M ID 14460) on 31st July 2013 amounting to Rs. 9.31 crores were cancelled and accounted by NSEL in MATCH system on 18th September 2013. Therefore, Rs.9.31 crore is recoverable from the said member in addition to the reported receivables of Rs. 338.40 crores as on 31st August, 2013

P D AGRO

**Receivable from P.D Agroprocessors Pvt. Ltd. as on 31st August 2013 as shown above is considering a credit adjustment of Rs. 42.75 crores made by NSEL towards sale of commodity stocks to the tune of said amount by the said member. The said member did not deliver the commodities and the amount of Rs. 42.75 crores is recoverable from the said member in addition to reported receivables Rs. 637.55 crores as on 31st August, 2013, thereby making their liability to Rs. 680.30 crores.

ANNEXURE-N

UNANSWERED QUESTIONS ABOUT FMC RECOMMENDATION FOR AMALGAMATION

Information Source: NSEL Affidavit

1. Is FTIL being selectively targeted?

Dates	ACTION															
27 th April 2012	Department of Consumer Affairs (DCA) issues show cause notice to NSEL															
23 rd May 2012	NSEL replies to the show cause notice															
11 th August 2012	NSEL sends follow up reply letter on the show cause notice															
12 th July 2013	Pending legal advice (as to whether views of FMC is correct OR NSEL is correct) DCA writes to close all open position with immediate effect. DCA states that this is with a view to ensure that unless correct legal position is ascertained no new contracts should be allowed to be launched by NSEL. DCA also notes that, IF NSEL has committed violations then similarly NCDEX Spot Exchange could also have violated the exemption conditions.															
19 th July 2013	In response to DCA letter of 15 th July 2013, FMC responds stating that the exemption dated 05/06/2007 under section 27 of FCRA does not state whether it is a general or a specific exemption. Therefore NSEL view is apparently accepted by FMC. Even as of Today, DCA has not held that NSEL committed violations of the exemption conditions. Therefore it appears that the actions, pending legal advice upturned the market equilibrium, caused force majeure conditions and resulted in settlement defaults and siphoning of commodities by defaulters.															
31 st July 2013	Trading Suspended. Market closed.															
4 th August 2013	FMC meets brokers, defaulters, and NSEL to ascertain the situation & many defaulters agree to pay the amount in tranches.															
6 th August 2013	FMC gets all the required powers to Act against NSEL, Brokers, Trading Clients, and Defaulters															
August 2013 to February 2015 (30 Months)	<p>FMC: ACTION TAKEN REPORT</p> <table border="1"> <thead> <tr> <th>Parties</th> <th>Action taken</th> <th>Severity</th> </tr> </thead> <tbody> <tr> <td>NSEL / FTIL</td> <td>Yes</td> <td>Heavy</td> </tr> <tr> <td>Brokers</td> <td>No</td> <td>NA</td> </tr> <tr> <td>Trading Clients</td> <td>No</td> <td>NA</td> </tr> <tr> <td>Defaulters</td> <td>No</td> <td>NA</td> </tr> </tbody> </table>	Parties	Action taken	Severity	NSEL / FTIL	Yes	Heavy	Brokers	No	NA	Trading Clients	No	NA	Defaulters	No	NA
Parties	Action taken	Severity														
NSEL / FTIL	Yes	Heavy														
Brokers	No	NA														
Trading Clients	No	NA														
Defaulters	No	NA														

FMC claims almost everywhere that trading on NSEL platform was illegal contrary to the Reply filed by Ministry of Consumer Affairs in a Public Interest Litigation. Even so, then, as Forward Markets Regulator, why NO ACTIONS were taken by the FMC against the Brokers and the Trading Clients who traded in alleged 'illegal' forward contracts.

2. Facts about Grant Thornton report on whose basis FMC declared FTIL not Fit and Proper (though no adverse material was found against FTIL) and that led to forced exits from exchanges and recommendation to the Ministry of Corporate Affairs (MCA) for amalgamation

Time taken for the report to be prepared	Just about a month															
Hurried report	Yes															
Were NSEL / FTIL given opportunity for cross examination?	No															
Were NSEL / FTIL Management clarifications considered and incorporated in final report?	No															
Was any formal adjudication by statutory / legal body was done?	No															
Parties mentioned in the GT report	<ol style="list-style-type: none"> 1. Defaulters 2. Brokers (Geojit, Anand Rathi, India Infoline, Motilal Oswal, IBMA) 3. Trading Clients (not mentioned by specific names) 4. NSEL and FTIL 															
Action taken by FMC based on GT Report on which parties	<p>FMC: ACTION TAKEN REPORT</p> <table border="1"> <thead> <tr> <th>Parties</th> <th>Action taken</th> <th>Severity</th> </tr> </thead> <tbody> <tr> <td>NSEL / FTIL</td> <td>Yes</td> <td>Heavy</td> </tr> <tr> <td>Brokers</td> <td>No</td> <td>NA</td> </tr> <tr> <td>Trading Clients</td> <td>No</td> <td>NA</td> </tr> <tr> <td>Defaulters</td> <td>No</td> <td>NA</td> </tr> </tbody> </table>	Parties	Action taken	Severity	NSEL / FTIL	Yes	Heavy	Brokers	No	NA	Trading Clients	No	NA	Defaulters	No	NA
Parties	Action taken	Severity														
NSEL / FTIL	Yes	Heavy														
Brokers	No	NA														
Trading Clients	No	NA														
Defaulters	No	NA														

The GT Report could have been used as a basis for the actions against Brokers, Trading Clients and Defaulters. Yet, no Action has been taken by FMC against them. How can the regulator not be fair to all?

- a. FMC derives its powers from FCRA Act and hence its action should be limited to that jurisdiction.
- b. However, it goes out of its way to recommend to the MCA (not its jurisdiction) and recommends forced amalgamation of NSEL with FTIL without taking any such action on Brokers, Trading Clients and Defaulters. Why?

3. Was it in the power of FMC as the designated Agency / Regulator to recommend the amalgamation of NSEL with FTIL to MCA, when its Fit and Proper order was subjudice?

6 th August 2013	FMC gets all the required power to Act against NSEL, Brokers, Trading Clients and Defaulters
5 th September 2013	FMC moved from Department of Consumer Affairs, Ministry of Consumer Affairs to Department of Economic Affairs (DEA), Ministry of Finance
21 st September 2013	GT sends report to FMC under DEA
17 th December 2013	FMC under DEA declares FTIL not Fit and Proper
20 th December 2013	Not Fit and Proper Challenged in High Court - Matter <i>sub-judice</i>
27 th May 2014	DEA issues show cause notice to NSEL for withdrawal of exemption
17 th June 2014	NSEL replies to the show cause notice from DEA, stating not to withdraw the exemption and retain the status of designated agency of NSEL and special powers for settlement at NSEL in the interest of the market participants
18 th August 2014	Solely on FMC recommendation, DEA recommends to the MCA for amalgamation of NSEL with FTIL
19 th September 2014	DEA withdraws the exemption granted to NSEL under FCRA 1952, as a result FMC no longer remains the designated agency of NSEL and loses the special powers for settlement at NSEL.
17 th October 2014	Still, FMC under DEA sends second recommendation to MCA for amalgamation of NSEL with FTIL and the decision is taken in just two working days???

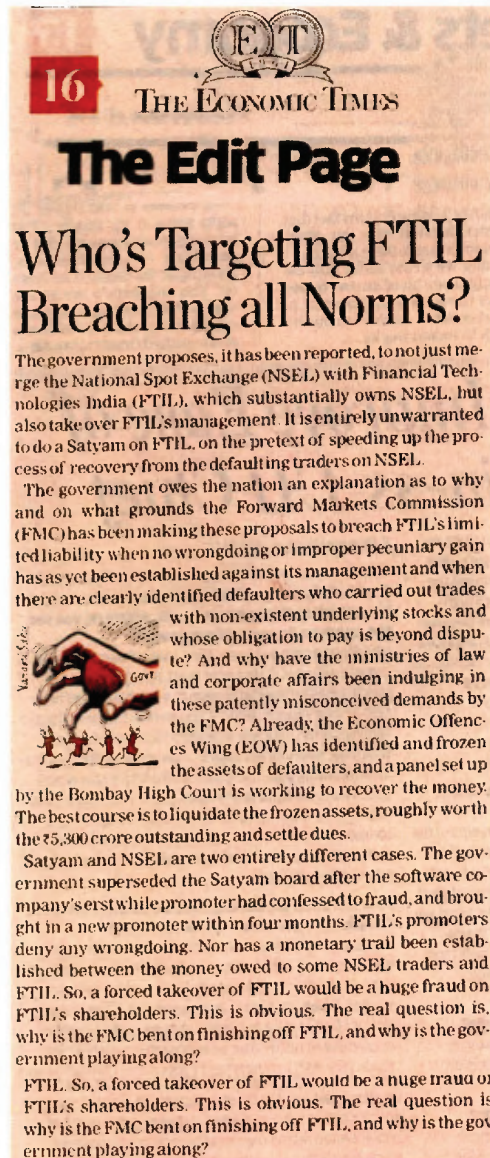
Even though DEA had issued a show cause notice way back in May 14 which was subsequently upheld by it in September 14 in spite of objections raised by NSEL, why in the interim period of August 14 the FMC under DEA recommended to MCA amalgamation of NSEL with FTIL. FMC under DEA even sent a follow-up letter to MCA in October 14 recommending the amalgamation of NSEL with FTIL. WHY?

4. Facts on the Trading Clients of NSEL

- a. **Bombay High Court's Order of 22.08.2014 classifies them as 'Bogus Traders'**
 - i. However, the FMC chooses to completely ignore the above fact and despite the High Court Order does not initiate any inquiry on Bogus Traders to verify them and their claims.
 - ii. To quote from the High Court Order, "*....These investors are not middle class or lower class people, but are themselves businessmen. The transactions in question were being entered through brokers who had knowledge of the commercial market...*"
- b. **These Trading Clients are largely HNIs and wealthy individuals (6% represent 66% Claims outstanding).**
- c. **High Court Committee appointed for recovery of Trading Clients' dues requests for details.**
However, in response to NSEL advertisement requesting the 13,000 Trading Clients to furnish information to establish legitimacy and genuineness of their claims, only 45 clients respond as on date!

As on date, there is need to establish whether the said 13,000 Trading Clients and their claims exist in reality? Also, what do they have to hide and why are they not coming forward with the details asked to establish their legitimate claims? With this reality, can the claims of these Trading Clients (whose legitimacy is yet to be established) be termed as Public Interest?

THE ECONOMIC TIMES - NOVEMBER 2014






Merger Violates Limited Liability

Task in NSEL is to recover dues from defaulters

The government proposes, via a draft order issued on Tuesday, to merge the National Spot Exchange (NSEL) with Financial Technologies India (FTIL), which substantially owns NSEL. The stated purpose is to facilitate the recovery of outstanding dues of 24 defaulting traders on the exchange, whose default has resulted in 1,300 other traders on the exchange not receiving around ₹5,600 crore they are owed. The exchange arranged ₹300-odd crore, leaving the unrealised amount as ₹5,300 crore. This kind of governmental activism will not help the traders who are owed money to recover their dues, but will taint India's record on respecting the basic principle of limited liability. The move will, in all probability, also amount to contempt of court, as the Bombay High Court is already seized of the matter and is in the process of recovering the amount from defaulters.



The Economic Offences Wing has already identified and frozen assets of the defaulters worth nearly the entire amount of the default. A committee set up by the Bombay High Court, under a former high court judge, is working to recover the money. While the exchange is probably guilty of carrying out trades that violate the spirit and letter of the law that governs a spot exchange, and of working in a regulatory vacuum, the defaulting traders' culpability in carrying out trades with non-existent underlying commodities is beyond dispute. And since they do have assets that can be seized and sold to make good their dues, this should be the priority for the government, instead of violating the basic principle of limited liability.

Things would be different if FTIL bosses are seen to have gained from the defaults on NSEL or any other monetary trail is established between the money owed to some NSEL traders and FTIL. Such a linkage has not been established. The recovery process should gain muscle from efficient functioning of the legal process and of government machinery, not by substituting FTIL for NSEL as the entity demanding such state action. The government should abandon the proposed merger.

BUSINESS STANDARD - OCTOBER 2014

Forced mergers are wrong

Govt violates principle of limited liability

It has been reported that the Union ministry of corporate affairs is to order the merger of the struggling and scandal-hit National Spot Exchange Ltd, or NSEL, with its parent company, Financial Technologies India Ltd, or FTIL. Last year, NSEL essentially went bust — a ₹5,600-crore shortfall in payments left 13,000 investors hanging. Naturally, given the thousands of crores for which NSEL is still liable, the stock of FTIL took a pounding, crashing 20 per cent on Tuesday, over and above the steep value erosion it saw in previous months.

The government can point out in its defence that FTIL owned 99 per cent of NSEL, and that both were essentially controlled by FTIL promoter Jignesh Shah. But Mr Shah and his associates own less than half of FTIL. What about the shareholders who own the other 55 per cent? They have just been forced by a government fiat to take a major capital loss, taking on the liabilities of another company. Is this how the government intends to protect minority shareholders? The ministry said that it is "essential, in the public interest" that FTIL and NSEL be merged. This evades the truth. In fact, it is essential, in the public interest, that minority shareholders be shown that they will not be held unfairly responsible for misjudgements and mismanagement by promoters. It is essential, in the public interest, to show that the government respects the norms that form the basis of capital markets and well-functioning corporate structures. Seen in this context, this order violates the public interest.

A basic rule underlying modern markets is being violated here. The ministry for corporate affairs, it appears, is unsure about why subsidiaries exist. They exist precisely to ensure that liabilities are properly managed. Parent corporations' liabilities in a limited company are, well, "limited" by how much it actually invested in the subsidiary firm. This is a basic principle of modern economic organisation that the government has chosen to arbitrarily dump, sending out a wrong signal to investors. Limited liability is a concept that has stood the test of time, and is an essential spur to entrepreneurship and to investment. Is the government now declaring that limited liability can be suspended whenever a bureaucrat decides "the public interest" is at stake? Worse, the idea that the public interest in this case is necessarily on the side of the creditors of NSEL rather than the many FTIL shareholders is open to question. It has been reported in the past that only nine brokers account for the bulk of NSEL's exposure. So the government is suspending the rule of law, and one of the most sacred principles of corporate finance, in order to ensure that nine brokers are compensated by the minority shareholders of FTIL. Remember, FTIL itself has a solid, viable business model. Why destroy the company because of its promoters' actions elsewhere?

Limited liability at NSEL

Govt gets it completely wrong on FTIL-NSEL merger

Given how the individuals who lost money at NSEL were fully aware of the risks involved and that such products violated trading norms—they were essentially financing products offering substantially higher rates of interest than what was available in the market—it is not immediately clear why the government feels they need to be compensated. Indeed, apart from NSEL, the brokers who guaranteed high returns to clients who bought these contracts also need to bear some part of the responsibility. More important, since NSEL's accounts don't list them as liabilities—the money is owed by defaulting parties on the exchange—it is not clear how merging NSEL with its parent FTIL is going to resolve the problem, even if we were to assume FTIL managed to liquidate its assets; it had cash and balances of ₹120 crore at the end of March 2014 as compared to the dues of around ₹5,500 crore to around 13,000 investors.

What is a lot more worrying, however, is that the central government has, by merging the subsidiary with the parent, completely thrown to the winds the principle of limited liability. Under limited liability laws, a person's liability in a company is limited to his/her equity contribution in the firm. It is this limited liability principle, the world over, that ensured people invested in firms to set up ventures which, sadly, also went bankrupt on occasion. If investors knew their personal assets could also be attached, many would cavil about investing in any ventures. Asking the parent FTIL to take over the liabilities—proven or unproven is not even the question—of the subsidiary NSEL is essentially making the point that FTIL's liabilities extend beyond its investment in NSEL. Apart from the fact that it will have a very negative impact as far as corporate India is concerned—many other investors can theoretically have their liabilities extend beyond their equity investments in companies—it is not even clear what the 'public interest' is here. The merger is being done under Section 396, a section used only rarely, and in the public interest. If it is to be assumed NSEL's 13,000 investors comprise the public, what of the 55,000 FTIL non-promoter shareholders? The sooner the government rescinds the merger order the better.

A bad precedent

The FT-NSEL merger could have a cascading effect on corporate India



Should a subsidiary be merged with the parent company to safeguard public interest? One can't recollect whether something of this sort has ever happened in the history of India. But soon, this will be an event in record, as the ministry for corporate affairs has accepted the recommendation of the Forward Market Commission to merge NSEL with Financial Technologies (FT). This may not happen immediately, as opinions are still being invited over the next 60 days. Also, it's likely that FT or its shareholders will challenge this proposal in the court of law. So, one can say the merger is at least a couple of months away.

While there is little doubt that NSEL has not followed procedure the way it should have and, because of that, investors have lost money, the irony is that there is little 'public interest' in this case. The court has not convicted anyone. Also, there is no charge yet that NSEL's promoters or the holding company itself has squandered funds belonging to NSEL. The liability of NSEL can be met by the borrowers, who have not yet denied their liability. There are cases pending in various courts against borrowers and the outcome of these is pending. Then, why is the corporate affairs ministry in such a hurry to merge NSEL with FT?

It's a little surprising that the ministry for corporate affairs is setting a bad precedent, with an excuse to protect the so-called 13,000 investors, out of which, 781 investors account for 66 per cent of NSEL's outstanding liability of ₹5,300 crore. These investors knew from day one that the product that they were investing in was a structured product. They were also aware that the product they were going in for carried a high risk. Also, most of the investors who took exposure were financially literate, unlike small gullible investors we normally see in most of the cases. If so, why is there a soft corner and concern for them all of a sudden? Why is the ministry for corporate affairs taking a path that has never been trodden before? And, even if it wants to take this path, then aren't there other such companies which did more damage to public interest than this case?

The repercussions of this decision are

likely to be felt not only by FT and its shareholders, but also by corporate India, as a whole. The ministry is setting a bad example, which may turn out to be a GAAR-ish kind of regulation. The very fact that the company incorporates its subsidiary is to protect one business from another, as each business has a different risk profile. If a holding company is liable to each and every decision of its subsidiary, then why do we need a different board of directors, a separate management team and distinct corporate identity for subsidiary companies? This is the fundamental issue the ministry must address.

Let's hope that good sense will prevail and such an odd decision would not be taken. If anyone is found guilty of the NSEL scam, that person or group of persons should be punished. But, taking this kind of a drastic step is not in the interest of the larger scheme of things pertaining to corporate India.

Minority shareholders of FT have nothing to do with whatever irregularities that have taken place at NSEL and, yet, they have been forced to pay a heavy price, as this merger announcement has pushed the FT stock down by 20 per cent on the stock exchanges. After the NSEL episode came to light, FT has lost market cap to the tune of as much as 90 per cent. Also, there are institutional investors, who have invested in FT, whose interests have also been impacted. In trying to protect the 13,000 investors of NSEL, the ministry is committing an injustice to 63,000 shareholders of FT.

The government must find the time and energy to bring the culprit of the NSEL scam to book and force the borrowers to cough up the money to pay the liabilities of NSEL. FICCI and CII also must protest against this bad precedent, as this could have a cascading effect on corporate India. Companies carry limited liability and that tenet should remain. This is the fundamental feature of a limited company. One hopes the Modi government, in its zeal to protect public interest does not do an injustice to the lakhs of investors who have invested in various listed companies. Sense should prevail, and we are hopeful that it would.

BUSINESSLINE - OCTOBER 2014

BusinessLine

MONDAY, OCTOBER 27, 2014

Faulty exchange

Apart from being totally one-sided, the FII-NSEL merger sets a dangerous precedent

The Centre's draft order merging the National Spot Exchange Ltd with its parent Financial Technologies (India) Limited is an ill-conceived document and sets a dangerous precedent. It is one thing to try and redress the grievances of those who lost money trading in paired commodity contracts on the NSEL, but quite another to do this in a manner that harms the shareholders of FTIL. Section 396 of the Companies Act has been used before to amalgamate companies, but never before to feed off the assets of one (FTIL) to recover the liabilities of another (NSEL). The Centre has used this provision only four times in the last three decades, but judiciously and in wholly different circumstances. In these cases, the merger had the interest of both the companies in mind. While the weaker company gained by being merged with a stronger company, the other benefited from the synergies arising from the merger. But the NSEL-FTIL merger is totally one-sided: NSEL, which has been shut down, does not add any value to FTIL. A merger will hurt the consolidated entity, which will bear liabilities and face pending litigation.

The order is also quite likely to fail in achieving its aim — help NSEL's investors recover the ₹5,300 crore due to them. These dues have to be recovered from the broker-members of NSEL, who were counter-parties in the trades in which investors lost money. NSEL is only an exchange that facilitated these trades and is not liable to repay these investors. It can only help in recovering these dues. Even if NSEL is merged with FTIL, it is doubtful whether the traders who have lost money on NSEL will be able to recover it from FTIL's assets.

The Centre is also treading on the sensitive turf by threatening to pierce the corporate veil through this move. It is important to uphold the sanctity of this principle — that establishes a company as a separate entity distinct from its promoters and other stakeholders — in order to retain the trust of the investors in equity markets. There have been rare instances in the past when the corporate veil was pierced to hold a parent company responsible for the misdoings of a subsidiary; but in these cases it was established that the subsidiary was set up with the sole intent to gain illegal benefit or to defraud others. In situations of mass disaster, such as the Bhopal Gas Case, the corporate veil was ignored since the assets of the subsidiary were insufficient to redress the victims. But such intent is hard to establish in FTIL's case and the plight of those trading in commodity contracts is hardly comparable to the innocent victims of the gas tragedy. If angry investors of companies that are in deep financial trouble began seeking merger with other group companies, and the Government started acceding to such requests, the result would be anarchy.

Blackstone, Sheth brothers to oppose NSEL merger order

By KHUSHBOO NARAYAN & ASHISH RUKHAIYAR

MUMBAI

Blackstone Group Lp and the Sheth brothers—the two largest minority shareholders in Financial Technologies (India) Ltd (FTIL)—plan to challenge a government order that the company merge with its fraud-hit subsidiary National Spot Exchange Ltd (NSEL), three people familiar with the matter said.

The investors are exploring options and likely to move in consonance in the next few days in opposing the draft order that the government said was in “public interest”. The order sought to transfer all liabilities of the commodities bourse to FTIL, the flagship company of entrepreneur Jignesh Shah.

“We will move in the next few days but we are trying to understand what will be the best way—public, legal, private,” said one of the three persons cited above. All three spoke on condition of anonymity.

The 21 October order sought to make FTIL, which owns 99.99% of NSEL, a party to all

TURN TO PAGE 2 ▶

29 Oct 2014 **mint**

Blackstone, Sheth brothers to oppose NSEL merger order

ORDER EFFECT

Shares of FTIL have fallen 13% since 20 October, wiping out ₹129 crore in market capitalization for shareholders.

Date	Share Price (₹)
20 Oct	212.05
21 Oct	140
22 Oct	190
28 Oct	184.15

Source: Bloomberg

FTIL and NSEL two months to file objections,” he says.

Loona cited the example of special purpose vehicles (SPVs) that companies form for specific projects, to explain the limited liability concept.

“The whole objective of promoting SPV is that parent company is not subjected to risk obligations of the SPV. FTIL may be the single largest shareholder of NSEL but why it should be exposed to liability of a separate legal entity?” Loona said.

Meanwhile, in a separate development, FTIL is considering filing a caveat before the Central bench of the Company Law Board against the possibility of a forced change in the management of the company after its merger with NSEL, said the third person quoted above.

A change in management was suggested by FMC in a letter to MCA on 18 August. On Monday, *The Indian Express* reported that the government was considering the suggestion.

The fraud at NSEL came to light on 31 July 2013 when the exchange suspended trading in all but its e-series contracts. These, too, were suspended a week later. The suspension may have been prompted by an instruction from the ministry of consumer affairs to the exchange asking it not to offer futures contracts. A spot exchange isn't supposed to do so, but NSEL was doing that.

NSEL tried to implement the change, but because its appeal was to investors and members who were not interested in spot trades, it eventually had to suspend all trading.

It later emerged that all trading on NSEL happened to paired contracts, with investors, through brokers, buying a spot contract and selling a futures one for the same commodity.

The entities selling on spot and buying futures were plaintiffs or processors and members of the exchange. It turned out there were only 24 of them, and they used the paired contracts as a way to raise easy money. Subsequent investigations highlighted the involvement of promoters.

On 14 August last year, NSEL proposed a payout plan, but has been unable to stick to it schedule and has not made single successful payout ever since.

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Ashish K. Mishra & PR Sanyal contributed to this story.

FROM PAGE 1

the contracts and agreements entered into by the exchange, on which trading was suspended after the ₹5,524.35 crore fraud came to light in July 2013. Initially as a payments crisis. The order gave FTIL and NSEL two months to file objections.

The merger was recommended by commodity market regulator Forward Markets Commission (FMC) and was also a long-standing demand of investors affected by the fraud at NSEL.

“Shareholders are exploring options to counter the move to merge NSEL and FTIL, not on the basis of responsibility standpoint, but the validity of such a move in terms of judicious corporate practices. Lawyers are examining various options to oppose this move as it is against established practices,” said a second person.

Blackstone Group holds a 7.02% stake in FTIL. Ravi Sheth, managing director of **Greatship (India) Ltd**, and his brother Bharat Sheth together hold 8.1% on the company. Greatship is an offshore services provider to energy companies.

Promoter Jignesh Shah directly and indirectly holds a total of 45.63% in FTIL.

An email sent to Blackstone Group and FTIL hadn't been answered as of press time on Tuesday.

The merger of FTIL and NSEL has been proposed under Section 396 of the Companies Act, that empowers the government to order such a union when it is deemed to be in public interest. This is the first time the government invoked the provision in a case involving non-state entities.

Shares of FTIL have fallen 13% since 20 October, wiping out ₹129 crore in market capitalization for shareholders. On Tuesday, the shares fell 1.47% to close at ₹184.15 while the BSE's benchmark Sensex rose 0.48% to 26,880.82 points.

Shareholders of FTIL say the government does not have a strong enough case to invoke Section 396.

“I think government did a mistake by invoking Section 396. If they merge NSEL with FTIL on the grounds of public interest, then there are many other matters where a merger should have been already initiated,” said the third person.

FTIL has opposed the proposed merger of NSEL with itself.

“The interest of the 13,000 clients of the brokers who traded on NSEL platform for higher returns cannot be termed as ‘public interest’ when 66% of the entire outstanding amount is being claimed by just 6% of the trading clients,” FTIL said in a letter to the stock exchange, last month.

Some analysts have opposed the government move on grounds that the government was forcing a parent company to take on the liability of a subsidiary, thereby ignoring the fact the subsidiary had been formed as a separate entity so that the parent's liability is limited to the extent of its investment in the firm.

The concept of limited liability will come into the picture only if the aggrieved party moves court against the final order, said R.S. Loona, former executive director (legal) at the Securities and Exchange Board of India.

“The government may go ahead and merge the companies citing ‘public interest’ but if the order is challenged in court then the issue of limited liability will be tested. The court would not want to interfere right now as MCA (ministry of corporate affairs) has given

Four banks oppose NSEL-FTIL merger in high court

SHARLEEN D'SOUZA & ABHIJIT LELE
Mumbai, 23 January

Four banks with loans to Financial Technologies (FTIL) have asked the high court here to be allowed to intervene in opposition to the Union government's proposal to merge scam-hit National Spot Exchange (NSEL) with the former, its promoter.

The four are Union Bank of India, DBS Bank, Syndicate Bank and Standard Chartered Bank. It appears they filed the plea last month. The HC

has asked them to file a detailed reply by February 4, the next date of hearing.

The ministry of corporate affairs had proposed the merger, on a recommendation from the Forward Markets Commission, the commodities market regulator, and the department of economic affairs. The HC has asked for status quo, till it hears the arguments for and against.

The proposed move was an attempt to speed the repayment to investors of the ₹5,600 crore on which NSEL had defaulted in July 2013. However, it is yet not

proven that the ₹5,600 liability is of NSEL.

The FTIL counsel had earlier argued the relevant section of the Companies Act invoked by the government had never been used for forcible merger of any private companies. Also, that the board of directors of both companies have to accept such a merger, after which it needs central Government approval.

FTIL had earlier also said it feared the default of its subsidiary would be transferred on its books, adversely hitting its shareholders.

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FTIL subsidiary NSEL is under scanner for ₹5,500 cr payment crisis

LawMin no to MCA proposal on taking control of FTIL

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NEW DELHI, JUNE 15

THE ministry of law and justice has rejected the ministry of corporate affairs' proposal to invoke legal provisions to take control of Financial Technologies India Ltd (FTIL) for 'deliberate bungling' in National Spot Exchange Ltd (NSEL) that is under scanner for Rs 5,500 crore payment crisis.

NSEL is a subsidiary of Jignesh Shah-led FTIL.

Terming that the legal provisions do not apply in the case, the law ministry has limited the scope of action on NSEL and Multi Commodity Exchange (MCX).

The ministry of corporate affairs (MCA) had, through a letter dated January 24, sought legal opinion from the law ministry to pur-

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sue action against FTIL as it concluded that the firm purposely faulted on conducting prudent and sound business of its subsidiaries — NSEL and MCX.

While MCA alleged "oppression and mismanagement" by a "common" board of directors of parent and subsidiaries under Sections 397 & 398 of the Companies Act and invoked Sections 401, 402 and 408 to approach the Company Law Board to take over or dissolve FTIL, the law ministry has in its opinion dated June 4, said that the said Sections are not applicable to FTIL.

"Section 397 might not

apply as NSEL which is (almost) wholly owned subsidiary of FTIL and NSEL's majority shareholders (i.e. FTIL) have never acted in any manner which could be termed as 'oppressive' against the minority shareholder of the company," said the deputy legal advisor in the ministry of law and justice in his opinion.

He further said, "Section 398 might also not be applicable as fraud and acts and mismanagement were allegedly done by the key officials and employees of NSEL and not FTIL and different statutory auditors have issued clearances to them."

While Section 397 of the

Act relates to application for relief in cases of oppression, Section 398 is for relief in cases of mismanagement.

In September 2013, MCA ordered an inspection on FTIL, NSEL and MCX in the wake of the payment default of around Rs 5,500 crore at NSEL. The interim inspection report put FTIL at fault on various accounts of mismanagement and recommended the MCA to take legal action under various sections.

Earlier, the management at MCX and MCX-SX regulated by FMC and Sebi respectively underwent complete overhaul and the board was made independent of FTIL by their respective regulators.

At NSEL, which defaulted on the payments and did not fall under Sebi or FMC's regulatory domain also witnessed changes in its management and board.