

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI**

CA No. 75/C-1/2015

in

CP No. 1 of 2015

Under Sections 388B, 388C, 397, 398, 401, 402, 403, 406 and 408 of
the Companies Act, 1956

In the matter of

NSEL Investors' Action Group (*Applicant investors*)

Vs.

Union of India, (*Respondent No.1/Petitioner*)

M/s.Financial Technologies (India) Ltd & Ors. (*Respondent
No.2/Respondent No.1*)

Order delivered on 1st of December, 2017

CORAM :


**CH MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER(TECHNICAL)**

*For Applicant investors
Respondent No.1/Petitioner
Respondent No.2/Respondent No.1*

*: Mr. Naveen Kumar Murthy, Counsel
: Mr. B. Dhanaraj & Dr.Simon, Counsels
: Mr. Noorddin Dhila, Counsel*

ORDER

Per : CH MOHD SHARIEF TARIQ, MEMBER (J)

1. Under consideration is an Application filed by NSEL Investors' Action Group, for being arrayed as Respondent in the Petition filed by the Union of India against Financial Technologies (India) Limited (FTIL) 

and Ors. The grounds taken for filing the Application are summarised as follows:-

> The Applicants were trading on the National Spot Exchange Limited (NSEL) through brokers/trading members of the NSEL and are victims of the fraud on NSEL and have lost huge amounts on the exchange which they want to be recovered from the 2nd Respondent/1st Respondent viz., Financial Technologies (India) Limited.

> NSEL as well as FTIL has colluded with each other to defraud several thousand investors to the tune of over Rs.500 Crores.

> As a result of the scam, the lives of the persons who invested monies into the exchange have been irreversibly affected, and in some cases, completely destroyed. Therefore, the investors want to recover all their amounts invested.

> The Applicant investors have also made representation to the Ministry of Corporate Affairs *inter alia* seeking exercise of powers by the Central

Government under Section 388B, 388C and 408 of the Companies Act 1956 for superseding the Board of Directors of the 2nd Respondent/1st Respondent Company viz., Financial Technologies (India) Limited.

> The Applicant investors have also been allowed to intervene by the Hon'ble High Court of Bombay in Writ Petition filed by the 2nd Respondent/1st Respondent viz., Financial Technologies (India) Limited challenging amalgamation of NSEL with FTIL and they support the proposed amalgamation.


> The Applicant investors have also filed Affidavit dated 21.01.2015 in the Writ Petition pending before Hon'ble High Court of Bombay setting out the manner in which the fraud was played by NSEL on the investors and also deep pervasive control of FTIL and it's Board of Directors in the affairs of NSEL.

> That the Applicant Investors are interested in the present proceedings as the interest of the investors is involved in the Petition filed by the Union of India against the Financial Technologies (India) Limited.

> The Applicant Investors, by being arrayed as Respondent in the present Petition, want to place before this Bench the true and correct picture in the form of various facts relating to the scheme under discussion.

Having stated so, the Applicant Investors prayed for the reliefs as follows:-

- (a) That the Applicant may be joined as a party Respondent in the present Application and be permitted to file the Affidavit in reply to the present Petition.*
- (b) The Applicant may be permitted to make submissions before this Hon'ble Tribunal at the time of hearing of the present Petition.*
- (c) For such and further reliefs as this Hon'ble Court may deem fit and proper.*

2. In relation to CA.No.75 of 2015, the 1st Respondent Company viz., Financial Technologies (India) Ltd, (FTIL) has filed the reply denying all allegations, statements and contentions made in the 


CA. It has been stated that the Applicant/ Investors have no *locus-standi* to maintain the present Application before this Tribunal.

3. It has been stated that the Applicant/ Investors are neither shareholders, members, employees nor a part of the management of either Respondent No.2/Respondent No.1 viz., FTIL or Respondent No.29 viz., NSEL, and there exists no connection between the Applicants and FTIL and NSEL as the main Petition has been filed under Sections 388B, 388C, 397, 398, 402, 403, 406 and 408 of the Companies Act, 1956 on the grounds of purported oppression and/or mismanagement of the FTIL and NSEL.

4. In the reply, FTIL has stated that the Applicant/Investors want to recover their money from the defaulters/members and not from FTIL or NSEL. It has further been submitted in the reply that the Applicant/Investors have not filed any proceedings for recovery of any amount either from FTIL or NSEL or the defaulters/members.

5. It has further been averred in the reply filed by FTIL that the Applicant/Investors cannot add/supplement the Petitioner's case in the present matter. The Applicant/Investors must make out a case for relief on the basis of their cause of action and pleadings.

6. It has also been denied by the FTIL that the outcome of the petition will have any bearing on the rights and interest of the Applicant/Investors and the presence of the Applicant/Investors will not in any way augment, aid or enable the Tribunal to effectively adjudicate upon the present matter and therefore, the present application ought not to be allowed. Based on these submissions the prayer is made to dismiss the application. It appears that Union of India/Petitioner in the main CP has not filed any reply to this application.

7. Before dealing with the contention of the Applicant/Investors, it is necessary to refer to main reliefs prayed for by the Respondent No.1/Petitioner 

(Union of India) in CP.No.1 of 2015. The reliefs prayed for in the CP inter-alia provide as follows: -

“a) Declare that the Respondent Nos. 2 to 28 of Respondent No.1 Company are not ‘fit and proper’ persons to hold the office as Director or any other office connected with the conduct and management of Respondent No.1 Company and Respondent No. 29 Company and also not eligible for appointment as Director in any other Company by invoking the provisions of Section 388 B(1) (a) to (d) of the Companies Act 1956.


b) Declare that Respondent Nos.2 to 28 were/are acting in an oppressive manner against the Respondent No.1 Company and Respondent No.29 Company;

c) Declare that the Respondent Nos. 2 to 28 were/are conducting the affairs of the Respondent No.1 Company and Respondent No. 29 Company in a manner prejudicial to the public interest as well as the interest of the Respondent Companies.

d) Direct the Petitioner to replace the existing Directors by appointing Government Nominee Directors on the Board of Respondent No. 1 Company in order to prevent further acts of fraud, misfeasance, breach of trust of the stakeholders of the Respondent No. 29 Company, persistent neglect of the obligations and functions to be discharged by the Board of Directors of the Respondent No.1 Company, and in public interest.”

8. The contents of the Application filed by the Applicant/Investors for being arrayed as Respondents in the main CP reveal that they have become the victims of alleged fraud of NSEL and have lost huge amounts. Their purpose is to recover their amount from the defaulters/members. But the present petition has been filed by the Union of India for declaring the Respondent Nos. 2 to 28 of Respondent No. 2, (FTIL) as unfit persons to hold office as Director and to replace the existing Directors.

9. In the main CP, no relief has been claimed against the Applicant/Investors. Hence, the final outcome in the CP is not going to affect the interests/rights of the Applicant/Investors. The main CP is not for recovery of the amount of Applicant/Investors as has been sought to be made out by them.

10. The Applicant/Investors' plea is that they want to place on record the true and clear picture in the form of various facts relating to the "Scheme of 

Amalgamation” before this Bench. But, the said “Scheme of Amalgamation” is not the subject matter of CP.No.1 of 2015 pending adjudication. Therefore, the Applicant/Investors have not been able to make out a *prima facie* case for being arrayed either necessary or proper party in CP 1/2015.

11. Thus, the Applicant/Investors are neither necessary nor proper party for being arrayed as Respondents in the main CP. Hence, the Application stands rejected.



S. VIJAYARAGHAVAN
MEMBER (TECHNICAL)

PAM


CH. MOHD SHARIEF TARIQ
MEMBER (JUDICIAL)