

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

CA No. 74/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

**Shareholders of Financial Technologies India Limited and 11
Ors. (Applicants)**

Vs.

Union of India (Respondent-1/Petitioner)

M/s. Financial Technologies (India) Limited (Respondent-
2/Respondent No.1)

Order delivered on 1st December of 2017

CORAM :

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

<i>For Applicants</i>	<i>: Mr. Raj Kumar Jhabakh and Ms. Ranjana, Counsels</i>
<i>For Respondent-1/Petitioner</i>	<i>: Mr. B. Dhanaraj & Dr. Simon, Counsels</i>
<i>Respondent-2/Respondent-1</i>	<i>: Mr. Noorddin Dhillia, Counsel</i>

ORDER

Per : CH MOHD SHARIEF TARIQ, MEMBER (J)

1. CA No.74 has been filed in CP No. 1/2015. The
Company Application has been filed by the
shareholders of the Financial Technologies (India)

Limited. The main Company Petition has been filed by the Union of India against the Financial Technologies (India) Limited and Ors.

2. We have heard the Counsel for the Applicants and the Counsel for the Union of India. The grounds taken in CA are that the shareholders of the 1st Respondent Company viz., Financial Technologies (India) Limited, have formed an association known as 'Shareholders of Financial Technologies India Ltd. (for short, "SHAFT") and have sought registration under the Societies Registration Act, and the Applicant Nos. 2 to 12 are stated to be the founding members of the 1st Applicant and have authorised the Applicant No.1 to file Interim Application/Affidavit in support thereof. The grounds taken in the Application are as follows.


> The Applicant No.1 is formed by members of the 1st Respondent Company as a collective voice against various actions taken by the Central Government, Ministry of Corporate Affairs, which


will cause prejudice and harm the 1st Respondent Company including rights and interest of the shareholders of the 1st Respondent Company.

> The draft order of the amalgamation dated 21.10.2014 that proposes forcible amalgamation of Respondent No.29 with Respondent No.1 is without considering right and opinion of the shareholders.

> That the Applicants want to resist the Petition filed by the Union of India because they have faith and confidence in the board and members in the management of 1st Respondent Company.

> The outcome in the Petition filed by the Union of India will gravely affect the rights and interests of the Applicants. Therefore, they wish to intervene in the present Petition and oppose reliefs sought by the Petitioners/Union of India.


Having said so, the Applications prayed as follows:- 

- a) *That this Hon'ble Board be pleased to permit the Applicants/Interveners to intervene in the Company Petition and be permitted to file necessary affidavits/pleadings, make oral submissions through Counsel and to do all acts and things that may be necessary in the present Company Petition; and*
- b) *That pending the hearing and final disposal of the present application, the present petition not be proceeded with;*
- c) *That if this Hon'ble Board is not pleased to grant prayer (b), that no reliefs be granted to the Petitioner, whether ad-interim, interim or final relief, before hearing the Applicants/Interveners herein;*
- d) *For ad-interim relief in terms of Prayer (b) and (c) above;*
- e) *For other and further reliefs as this Hon'ble Bench may deem fit and necessary in the facts and circumstances of the present case.* 

3. In the reply filed by the Respondent/Union of India on 28.12.2015, it has been submitted that the Application is not maintainable and deserves to be dismissed at the threshold. The Respondent/Union of India submitted that the Applicants have not established any legal right/legal injury which is likely to occur if they are not heard in the present proceedings. Further, it has been averred that the Applicants have not spelt out their shareholdings.

It has been denied in the counter that the Union of India would require to take the consent of the present Applicants before initiating the amalgamation between FTIL and NSEL. It has been averred that due to defaults of the trading clients of NSEL about 13,000 investors of NSEL have been affected, which is attributable to the deliberate and wilful acts of oppression and mis-management committed by the then directors of FTIL and NSEL, its wholly owned subsidiary. Therefore, the Central Government/Union of India has deemed it appropriate to amalgamate both the FTIL and NSEL in public interest to facilitate the

speedy recovery of dues from the defaulters in NSEL and FTIL. It has further been placed on record that several acts of oppression and mis-management have been committed at the hands of erstwhile directors, i.e. Respondent Nos. 2 to 4 and there are continuing acts of oppression and mismanagement being committed by incumbents holding influential managerial posts, who are acting at the behest of outgoing Respondent Nos. 2 and 4 to the detriment of the members of the FTIL and in a manner prejudicial to public interest. As the magnitude of the fraud perpetrated by FTIL and its directors led to the colossal payment crises of Rs.5600 Crores in the 29th Respondent Company. In view of the submissions, the Respondent/Union of India prayed that the Application of the shareholders is liable to be dismissed *in limine*.


4. Before dealing with the contention of the Applicants, it is necessary to refer to the main relief prayed for by the Respondent/Petitioner (Union of India) in Company Petition No.1 of 2015. Therefore, for 

the sake of convenience, the main reliefs prayed for in the Company Petition are 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.” 

5. From the contents of the application, it appears that the Applicants are aggrieved with draft order of Amalgamation dated 21.10.2014 that proposes amalgamation of Respondent No. 29 with Respondent No.1. But the issue of the draft order of Amalgamation is the subject matter of Writ Petition No. 2743 of 2014 that is subjudice before the Hon'ble High Court of Bombay. Therefore, this Tribunal has no jurisdiction to comment upon the said issue, even if the Applicants are allowed to be impleaded as party Respondent in the main Company Petition.

6. The second ground taken by the Applicants is that being the Shareholders of the first Respondent Company viz., Financial Technologies (India) Limited (FTIL), have faith and confidence in the Board and Members in the management of the first Respondent Company. Therefore, the outcome of the main Petition will gravely affect the rights and interests of the Applicants, so they want to be impleaded in the main Company Petition to defend the Board and the

Members in the Management of the first Respondent Company. This ground appears to be misconceived for the reasons that the Board/Management of FTIL can themselves defend their rights and interests without the array of the Applicants as Respondents in the main Company Petition. Even otherwise, the affidavits/pleadings, or oral submissions, which the Applicants propose to make can be made by the Board/Members in the Management of the first Respondent Company. Therefore, the Applicants as witnesses or having any relevant documentary evidence are not required to be made as party in the Company Petition. In this connection, we may refer to the ruling given by Hon'ble High Court of Madras in *Somasundaram Chettiyar & others -vs- Balasubramanian* [1998(1) C.T.C.626 = 1998-1 L.W.772], wherein it was held that a person does not become a necessary party merely because he has some evidence relevant to the case on hand. 

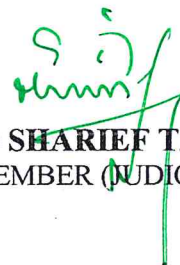
7. The Applicants are neither necessary nor proper party in the matter as they have not been able to establish any legal right/legal injury which is likely to be violated/inflected, if they are not heard in the present proceedings. Moreover, the present Application is in support of the Management and the Board of Directors who have already made out their case through R-1 (FTIL) in the main C.P. The shareholders are represented by the Board of Directors acting through Respondent No.1 in the main Petition.

8. In the light of the above, CA.No. 74/C-1/2015 stands rejected. However, any observation made in this Order shall have no bearing on the merits of the main case.



S. VIJAYARAGHAVAN
MEMBER (TECHNICAL)

PAM



CH. MOHD SHARIEF TARIQ
MEMBER (JUDICIAL)