

GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS

Draft Order of Amalgamation
Of
National Spot Exchange Limited (Dissolved Company)
With
Financial Technologies India Limited (Transferee Company)
Under Section 396 of the Companies Act, 1956

The Central Government proposes to issue the following Order (presently in the Draft form) causing Amalgamation of National Spot Exchange Limited with its Holding Company Financial Technologies (India) Limited, the reasons for passing the proposed Order are set out in detail in the Annexure annexed with the draft Order.

Whereas the Central Government is satisfied that to leverage combined assets, capital and reserves, achieve economy of scale, efficient administration, gainful settlement of rights and liabilities of stakeholders and creditors and to consolidate businesses, ensure co-ordination in policy, it is essential, in the public interest, that Financial Technologies (India) Limited, a company incorporated under the Companies Act, 1956 (1 of 1956) having its Registered Office at Shakti Tower-1, 7th Floor, Premises E, 766, Anna Salai, Thousand Lights, Chennai - Tamilnadu-600002 and the National Spot Exchange Limited incorporated under the Companies Act, 1956 (1 of 1956) having its Registered Office at FT Tower, CTS No. 256 and 257, 4th Floor, Suren Road, Chakla, Andheri (East), Mumbai, Maharashtra - 400093, should be amalgamated into a single company.

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (2) of section 396 of the Companies Act, 1956 (1 of 1956) the Central Government makes the following order to provide for the amalgamation of the said two companies into a single company namely:

1. *Short title.*—This order may be called the *National Spot Exchange Limited and Financial Technologies (India) Limited (Amalgamation in Public Interest) Order, 2014.*

2. *Definitions.*—In this Order, unless the context otherwise requires—

(a) "Act" means The Companies Act, 1956 (1 of 1956)

(b) "appointed day" means the date on which this order is notified in the Official Gazette;

(c) "dissolved company" means the National Spot Exchange Limited ; and

(d) "transferee company" means the Financial Technologies (India) Limited

3. (a) The shareholding pattern of the two companies are as under:-

(i) Financial Technologies (India) Limited (Holding Company) is having paid up share capital of Rs. 92,104,112 consisting of 46052056 equity shares of Rs.2/- each as on 31.03.2014 (as per the information filed with National Stock Exchange Limited) the details of each category of shareholders are as under:

Category of Shareholders	Number of shares held	Amount
Promoter and Promoter Group: Indian Individuals/Hindu undivided family	8695910	17391820
Promoter and Promoter Group: Indian bodies corporate	12329968	24659936
Sub-Total (A)	21025878	42051756
Public Shareholding : Institutions		
Mutual funds	1254	2508
Financial Institutions /Banks	119773	239546
Foreign Institutional Investors	10337750	20675500
Sub-Total :	10458777	20917554
Public share Holding : Non - Institutional Bodies Corporate	2542195	5084390
Individuals	12025206	24050412

Sub-Total	14567401	29134802
Total Public Shareholding (B)	25026178	50052356
Total shareholding : (A) + (B)	46052056	92104112

- (ii) As on 31.3.2014 the National Spot Exchange Limited (a subsidiary company of the FTIL) is having paid-up share capital of Rs. 450000000 consisting of 45000000 Equity Shares of Rs.10/- each .The details shareholding is as under:

Name of Shareholder	Number of shares held	Amount
Financial Technologies (India) Limited	44999895	449998950
National Agricultural Cooperative Marketing Federation of India Limited (NAFED)	100	1000
Jignesh Prakash Shah	1	10
Arshad Modh Khan	1	10
Manjay Prakash Shah	1	10
V. Hariharan	1	10
Joseph Daniel Massey	1	10
Total	45000000	450000000

- (b) All the 44999895 Equity Shares of Rs.10/- each fully paid up in National Spot Exchange Limited , which are now held in the name of Financial Technologies (India) Limited including their nominees, shall be cancelled.
- (c) Since the entire share capital of the National Spot Exchange is not held in the name of Financial Technologies (India) Limited including their nominees, the transferee company shall be required to send further notice to the persons, whose names appear immediately before the appointed day, in the Register of Members of the "dissolved company" for the shares which shall be allotted to them in the transferee company in exchange for the shares held by them in the dissolved company as per the provisions of sub-section (3) of section 396 of the Act .

4. *Amalgamation of the Companies-*

- (1) On and from the appointed day, the entire business and undertaking of National Spot Exchange Limited and Financial Technologies (India) Limited on 'as is whereis' basis including all the properties, movable or immovable and other assets of whatsoever nature e.g. machinery and all fixed assets, leases, tenancy rights, advances of monies of all kinds, book debts, outstanding monies, recoverable claims, agreements, industrial and other licences and permits, imports and other licences, letters of intent and all rights and powers of every description, shall without further act or deed be transferred to and vest in or deemed to be transferred to and vest in the transferee company in accordance with law in force. Such transfer and vesting shall subject to all mortgages and charges and hypothecation, guarantees and all rights whatsoever affecting the said properties of National Spot Exchange Limited.
- (2) For accounting purposes, amalgamation shall be effected with reference to the audited accounts and Balance-Sheets as on 31st March, 2014 of the dissolved company, and, the transactions thereafter shall be pooled into a common account. The dissolved company shall not be required to prepare its final accounts as on any later date and the resulting company shall take over all assets and liabilities according to the Balance-Sheet of the dissolved company as on 31st March, 2014 and accept full responsibility for all transactions thereafter.

Explanation.—The undertaking of the dissolved company shall include (a) all rights, powers, authorities and privileges, (b) all property, movable or immovable including, cash balances, reserves, revenue balances, investments and all other interests and rights in or arising out of such property as may belong to or, be in the possession of the dissolved company immediately before the appointed day, and (c) all books, accounts and documents relating thereto and also all debts, liabilities, duties and obligation of whatever kind then existing of the dissolved company.

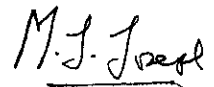
5. ***Transfer of certain items of property-*** For the purpose of this Order, all the profits or losses or both, if any, of the dissolved company as on the appointed day, and the revenue reserves or deficits or both, if any, of the dissolved company when transferred to the transferee company shall respectively form part of the profits or losses and the revenue reserves or deficit, as the case may be, of the transferee company as if such profits or losses have accrued or incurred by the transferee company.
6. ***Saving of Contracts, etc.*** -Subject to other provisions contained in this order, all contracts, deeds, bonds, agreements and other instruments of whatever nature to which the dissolved company is a party, subsisting or having effect immediately before the appointed day, shall have full force and effect against or in favour of the resulting company and may be enforced as fully and effectually as if, instead, of the dissolved company, the transferee company had been a party thereto.
7. ***Saving of legal proceedings-***
- (1) All suits, prosecutions, appeals and other legal proceeding(s) instituted by or against the dissolved company pending on the appointed day shall not abate or be discontinued, or be in any way prejudicially affected by reason of the transfer to the transferee company of the undertaking of the dissolved company or of anything contained in this Order.
- (2) Subject to provisions of law relating to limitation, any suit, prosecution, appeal or other legal proceedings which may be required to be filed against the dissolved company will be filed against the transferee company.
8. ***Provisions relating to Taxation-*** All taxes in respect of profits and gains (including accumulated losses and unabsorbed depreciation, statutory allowance, investment allowance or other such allowances, if any) and any other type of taxation which is the subject of the business carried on by the dissolved company before the appointed day shall be payable by the transferee company subject to such concession and reliefs as may be allowed under the Income-tax Act, 1961 (43 of 1961) and other tax laws as a result of this amalgamation.

9. ***Provisions relating to Existing Officers and other Employees of the Dissolved Company***-Every whole-time officer (including whole-time Directors and the whole-time Company Secretary) or other employee, not being Directors who are not whole-time Directors of the dissolved company, employed immediately before the appointed day in the dissolved company, shall, as from the appointed day, become an Officer or other employee, as the case may be, of the transferee company. Such officer or other employee shall hold office or service therein and upon the same terms and conditions and with the same rights and privileges as he would have held under the dissolved company and shall continue to hold such positions until his employment in the transferee company is duly terminated by mutual consent or operation of law or on orders of the competent authority.
10. ***Position of Directors***- Every Director of the dissolved company holding office as such immediately before the appointed day shall cease to be a Director of the dissolved company on the appointed day.
11. ***Membership of Provident Fund and other employee benefit schemes***- All officers and employees of the dissolved company shall continue to be the members of such schemes relating to Provident Fund and other benefits for employees, if any, as they were in the dissolved company and the transferee company shall continue to make employers contributions in the same manner as were being made by the dissolved company.
12. ***Dissolution of National Spot Exchange Limited***- Subject to the other provisions of this Order, and clause (aa) of sub section (4) of section 396 of the Act, on the appointed day, National Spot Exchange Limited shall stand dissolved and after such dissolution no person shall make, or pursue any claims, demands or proceedings against the dissolved company or against a Director or an officer thereof in his capacity as such Director or Officer, except insofar as may be necessary for enforcing the provisions of this Order.
13. ***Registration of the Order by the Registrar of Companies***- The Central Government shall, as soon as may be, after a final Order is notified in the Official Gazette, send a copy of this order to the Registrar of Companies, Tamil Nadu and

the Registrar of Companies, Maharashtra. On receipt of such order both the Registrars of Companies shall register the Order under their hand forthwith. Thereafter, the Registrar of Companies, Tamil Nadu shall forthwith include all documents registered, recorded or filed with him relating to the dissolved company on the file, in electronic records or otherwise, of Financial Technologies (India) Limited with whom the dissolved Company stands amalgamated and consolidate these and shall keep all such consolidated documents in the electronic or physical records as the case may be.

14. **Memorandum and Articles of Association of the Transferee Company-** The Memorandum and Articles of Association of the Financial Technologies (India) Limited as they stood immediately before the appointed day shall, as from the appointed day be the Memorandum and Articles of Association of the transferee company with such modifications as may be necessary to incorporate and give effect to the objects of the dissolved company through the transferee company.

The addressees are hereby called upon to send their suggestions and objections, if any, within two months from the date of receipt of this order in the electronic form to the undersigned.



(M.J. Joseph)

Additional Secretary to Government of India
on behalf of the Central Government

Place: New Delhi

Date: 21.10.2014

Addressed to:

1. Financial Technologies (India) Limited
2. National Spot Exchange Limited
3. Publication on portal of the Ministry www.mca.gov.in for inviting suggestions and objections, if any, from shareholders and creditors of both the companies .

**GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS**

Annexure

Background and Reasons Necessitating Issue of Orders (presently in draft form) under Section 396 of Companies Act, 1956 for merger of National Spot Exchange Limited with Financial Technologies (India) Limited in essential public interest

1. Introduction

1.1 National Spot Exchange Limited (hereinafter NSEL)

1.1.1 NSEL was incorporated as a public limited company on 18.05.2005 under the Companies Act, 1956. The Authorised Share Capital of the Company as per the last available Balance Sheet as on 31-03-2013 is Rs 50 crore, divided into 5,00,00,000 equity shares of Rs 10 each. The issued, subscribed and paid-up capital is Rs 45 crore, divided into 4,50,00,000 equity shares of Rs 10 each. Of these, 4,49,99,900 equity shares are held by Financial Technologies (India) Limited (hereinafter FTIL), along with its nominees, constituting 99.9998% of the paid-up capital of NSEL. Thus, NSEL is a subsidiary of FTIL.

1.1.2 The main objects of NSEL as per its Memorandum of Association, inter alia, include; to establish, operate, regulate, maintain and manage facilities enabling the Members of the Exchange, their authorized agents and constituents and other participants to transact, clear and settle trades done on the Exchange in different types of contracts in agriculture produce & various commodities, securities and other instruments in ready markets and to provide accessibility to the markets to various members of the Exchange and their agents.

1.1.3 NSEL is managed by its Board of Directors and presently, it consists of one Managing Director and eight Directors.

- 1.1.4 As per the last available Balance Sheet as on 31.03.13, the net worth of the company is as under:

(Fig. in Rs in crore)

Particulars	2011-12	2012-13
Share Capital (X)	45.00	45.00
Free Reserves:		
General Reserve	--	--
Securities Premium	--	--
Surplus in P&L	16.05	140.00
Total Free Reserves (Y)	16.05	140.00
Total (X)+(Y)=(A)	61.05	185.00
Less: Intangible Assets (B)	14.12	9.24
Net worth (A) - (B)	46.93	175.76

1.2 Financial Technologies (India) Limited (FTIL)

- 1.2.1 FTIL was incorporated on 24.01.1995 and was later amalgamated with "E.xchange On The Net Limited" pursuant to a scheme of amalgamation approved by the Bombay High Court vide order dated 29.11.2000 and by Madras High Court vide Order dated 13.03.2001. After amalgamation, the resultant company changed its name to "Financial Technologies (India) Limited" with effect from 10.4.2001. Presently, the company's shares are listed in the National Stock Exchange of India Limited (NSE), BSE Limited (BSE), Madras Stock Exchange Limited (MSE) and Ahmedabad Stock Exchange Limited (ASE).
- 1.2.2 The main objects of the company, inter alia, include acting as service or facility builder, owner, transferor and provider, facility for present and future automated electronic markets in the areas of finance and technology, etc. Presently, it is said to be carrying on the business of provider of end-to-end straight through processing (STP) technology solutions for financial service

industry as well as of software solutions for brokers and other market intermediaries for use in their front offices, middle offices and back offices for the purpose of dealing in Securities/commodities/currencies through exchanges. The company is also said to be providing start-ups to various exchanges like Multi Commodity Exchange of India Limited (MCX), Indian Energy Exchange Limited (IEX), National Spot Exchange Limited (NSE), Dubai Gold and commodity exchange (DGCX), etc. The products developed by the company are sold and applied directly to the core technologies underlying the establishment of the exchanges.

1.2.3 The company is managed by its Board of Directors and it presently, consists of one Managing Director and seven Directors.

1.2.4 As per the last available Balance Sheet as on 31.03.13, the net worth of the company is as under:

(Fig. in Rs in crore)

Particulars	2011-12	2012-13
Share Capital (X)	9.21	9.21
Free Reserves:		
General Reserve	231.60	264.13
Securities Premium	417.47	417.47
Surplus in P&L	1795.13	2042.57
Total Free Reserves (Y)	2444.20	2724.17
Total (X)+(Y)=(A)	2453.41	2733.38
Less: Intangible Assets (B)	26.70	20.93
Net worth (A) - (B)	2426.71	2712.45

2. Background to proposal for scheme of merger

2.1 NSEL started functioning ostensibly as a 'Spot Exchange' in or about 2008. This became possible by virtue of notification No. S.O. 906(E) dated 5th June, 2007 issued by the Ministry of Consumer Affairs, Food & Public Distribution, Department of Consumer Affairs (DCA) in exercise of powers conferred on it under section 27 of the Forward Contracts (Regulation) Act, 1952 (FCA). The said Notification had exempted all forward contracts of one-day duration for the sale and purchase of commodities traded on the NSEL, from operation of the provisions of the FCA subject to the following conditions, namely:

- (i) No short sale by members of the Exchange shall be allowed;
- (ii) All outstanding positions of the trade at the end of the day shall result in delivery;
- (iii) The National Spot Exchange Ltd shall organize spot trading subject to regulation by the authorities regulating spot trade in the areas where such trading takes place;
- (iv) All information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency;
- (v) The Central Government reserves the right to impose additional conditions from time to time as it may deem necessary and
- (vi) In case of exigencies, the exemption will be withdrawn without assigning any reason in public interest.

2.2 NSEL was neither recognized nor registered under the provisions of the FCA and since it was granted exemption under Section 27 thereof by the DCA, it was never under the regulatory purview of FMC. Subsequently, a supervisory role was given to FMC in respect of settlement of outstanding one-day forward

contracts at NSEL subsequent to the suspension of trading by NSEL on 31-07-2013 by the Government vide notification dated 06-08-2013.

2.3 DCA had earlier issued a notification dated 6th February 2012 substituting the words 'its designated agency' in condition (iv) in the Notification of 05-06-2007, by the words 'Forward Markets Commission, Mumbai'. This enabled FMC only to call for information from NSEL as and when considered necessary.

2.4 After analyzing the trade data received from NSEL, in terms of Notification of 06-02-2012, FMC identified certain issues relating to contracts traded on NSEL and sought clarifications from the company in February, 2012. On receiving and consideration of the clarification submitted by NSEL, FMC reported to DCA on 10-04-2012 that NSEL was violating conditions of exemption granted to them. DCA issued a Show Cause Notice to NSEL on 27th April 2012. NSEL submitted its reply to DCA in May, 2012.

2.5 DCA vide its letter dated 12th July, 2013 directed NSEL to submit an undertaking that:-

- a) No further/fresh contracts shall be launched by NSEL until further instructions from concerned authority; and
- b) All the existing contracts will be settled on the due dates.

2.6 In response to the above letter, the NSEL filed its reply vide its letter dated 22nd July, 2013. This response was referred to the FMC for its comments; FMC reported to the DCA that the undertaking was not in conformity with the directives of the Government.

- 2.7 NSEL vide its circulars dated 16th July 2013 and 22nd July, 2013: announced the suspension of launching of any new commodity, product or new centre and reduced the settlement and delivery period of existing contracts to T+10 days ('T' means the 'Transaction Date') and made them 'trade to trade' (i.e. no netting is permitted).
- 2.8 On 31st July, 2013, NSEL announced that trading in all contracts (except e-series contracts) was suspended and that it had been decided to merge the delivery and settlement of all pending contracts and defer the same for a period of fifteen days. As a result of this action by NSEL, a payment crisis of approximately Rs 5600 crore arose in NSEL involving about 13,000 investors. Such dues include dues to Public Sector companies, like, Projects and Equipment Construction Limited (PEC) and Minerals and Metals Trading Corporation (MMTC).
- 2.9 Subsequently, DCA vide Gazette Notification dated 06-08-2013 (in partial modification of the Gazette Notification dated 05-06-2007) imposed additional conditions on NSEL which, inter alia, provided that the settlement of all outstanding one-day forward contracts at NSEL shall be done under the supervision of the FMC. In view of this fresh supervisory role, FMC has taken various steps, including the following directions to NSEL:
- (i) To submit the details of the members who owed the money and the member to whom the money was owed.
 - (ii) To open an Escrow Account wherein all the pay-in received on or after 31-07-2013 from the members who owed money are being deposited and disbursement from this account to the members to whom money was owed is being done with the approval of FMC.

- (iii) To declare members who owed the money as 'defaulters' as per the rules & byelaws of the Exchange. Accordingly, NSEL vide its circulars dated 22-08-2013, 28-08-2013 and 22-10-2013 announced that 22 members who owed the money (out of 24 such members) are declared 'defaulters' as per the rules of the Exchange for not making any payment of their dues.
- (iv) To engage an independent agency to physically inspect the commodities in its warehouses. NSEL appointed SGS Limited for this purpose.
- (v) FMC has instructed NSEL to initiate recovery proceedings and take all other actions against the defaulting members as per their bye-laws.

2.10 In November 2013, FMC constituted a Monitoring cum Auction Committee (MAC) comprising of representatives of members and Investor bodies to assist and advice FMC in carrying out its supervisory work. The Committee was discontinued on 04-09-2014.

2.11 On December 17, 2013, FMC passed an Order declaring FTIL, Sh. Jignesh Shah, Sh. Joseph Massey and Sh. Shreekant Javalgekar as not 'fit and proper' to be shareholder/ Director in the management and the Board of any Exchange, recognized or registered by the Government of India/ FMC, under the Forward Contracts (Regulation) Act, 1952. The following points emerging from the Order of FMC, are worth mentioning:

- (i) The violation of conditions prescribed in the exemption notification; trading in paired contracts to generate assured financial returns under the garb of commodity trading; admission of members who were thinly capitalized having poor net worth and giving margin exemption to those who were repeatedly defaulting in settling their dues; poor warehousing

facilities with no or inadequate stocks; no risk management practices followed, non-provision of funds in Settlement Guarantee Fund (SGF); consciously appointing Shri Mukesh P. Shah as statutory auditors for the year 2012-13 despite the said person being a relative of Sh. Jignesh Shah; and the apparent complicity of NSEL with the defaulters in defrauding the investors, etc. FMC held that these factors lead to an inescapable conclusion that a huge fraud was perpetrated by the NSEL despite having the presence of two Board members of FTIL on the Board of NSEL, one of whom was the Vice-Chairman of NSEL;

- (ii) NSEL cannot be said to be independent from the control of the holding/parent company i.e. FTIL which holds 99.9998 % of its share capital.
- (iii) Since FTIL is effectively the only shareholder of NSEL, the constitution of the Board of Directors of NSEL is entirely under its control.
- (iv) FTIL through the Board of Directors of NSEL constituted by it possesses effective and absolute control over its subsidiary company i.e. NSEL. Such control is further amplified and accomplished by the fact that Shri Jignesh Shah, the promoter and Chairman-cum-Managing Director of FTIL, has been on the Board of NSEL and functioning as Vice-Chairman of the company since its inception. Shri Joseph Massey was also a common Director both on the Board of FTIL and NSEL, while Shri Shreekanth Javalgekar continued to be a Director of NSEL till he resigned from the post in July 2013;
- (v) It is on record that all the minutes of Board meetings of NSEL were regularly tabled at the Board meetings of FTIL. Crucial and sensitive

matters like the observations of Internal Auditor on higher risk of credit default, insufficient stock of commodities at warehouses, mis-utilisation of margin money by NSEL, favour shown to defaulting members, etc. were all matters which were in the knowledge of the Board of Directors of NSEL, and through it in the knowledge of FTIL as well. Thus, FTIL kept itself apprised about the affairs of NSEL as it also approved/ ratified the actions of NSEL in its Board meetings on a regular basis. In other words, the Board of FTIL had full knowledge of the unsatisfactory affairs of its subsidiary and it was the duty of the Board to ensure that the corrective or penal action was initiated to set right such irregularities;

- (vi) It is undisputed that NSEL was an Exchange in which FTIL had ownership interest to the extent of 99.9998% leaving a negligible 0.0002% stake to NAFED. The Articles of Association of NSEL confers authority on its shareholders to appoint Directors. As the single largest shareholder, it is FTIL which has nominated all the directors on the NSEL board. As a wholly-owned subsidiary, NSEL is completely under the control of FTIL, including financial control over the affairs of NSEL. FTIL, which had the responsibility of managing the affairs of NSEL, cannot claim to be unaware of the wrong-doings and fraud committed by the management of NSEL;
- (vii) FTIL cannot shy away from its role and duty as a parent company to take reasonable care and exercise prudence in management and governance of the subsidiary company;
- (viii) FTIL has not furnished any explanation as to what steps have been taken by NSEL or by FTIL itself as a parent company to honour the

commitment of assuring safety and risk-free trading to the members and clients who have traded on their platform on the basis of an explicit assurance that the Exchange shall step into the shoes of counter parties should there be any default by any participant;

- (ix) FTIL has the principal business of development of software which has become the technology platform for almost the entire industry engaged in brokering in shares and securities, commodities, foreign exchange etc. Allowing trading in forward contracts on the NSEL platform in a circuitous manner which was neither recognized nor registered under FCA indicates mala fide intention on the part of the promoter of FTIL to use the trading platform of its subsidiary company for illicit gains away from the eyes of Regulator.
- (x) The facts of the case and the manner in which the business affairs of NSEL were conducted leaves no doubt that FTIL, notwithstanding its contention that it was ignorant of the affairs and conduct of NSEL, exerted a dominant influence on the management. It directed, controlled and supervised the governance of NSEL.
- (xi) In the face of a fraud of such a magnitude involving settlement crises of Rs 5600 crore owed to over 13,000 investors on the trading platforms of NSEL, FTIL, cannot seek to take refuge behind the corporate veil so as to unjustifiably isolate itself from the fraudulent actions that took place at NSEL resulting in such a huge payment crisis.

2.12 FMC, therefore, inter alia, ordered that in the public interest and in the interest of the Commodities Derivatives Market which is regulated under Forward Contracts Act, holding that FTIL is not a 'fit and proper person' to

continue to be a shareholder of 2% or more of the paid-up equity capital of Multi Commodity Exchange of India (MCX).

3. Proposal of Forward Markets Commission (FMC)

3.1 FMC has brought to the notice of the Government that:

- i) Even after one year's incessant efforts and in spite of FMC's active role in supervising the settlement of contracts, the settlement plan could not result in making any substantial payment to the investors as the process of recovery of dues by NSEL from the defaulting members is very slow.
- ii) It is the NSEL, which has the responsibility to take all possible coercive measures as per their rules/ bye-laws and other laws of the land to ensure that the outstanding dues of all investors are settled. However, as on date, NSEL has been able to make a payment of only Rs 362.43 crore to its members as against the payment dues of approximately Rs 5689.95 crore involving around 13,000 investors. Thus, the recovery constitutes only 6.7% of the total amount due indicating a very dismal progress of recovery of dues by NSEL.
- iii) The employee attrition in NSEL in the recent months, has been extremely high and it is learnt that the staff strength of NSEL has come down considerably, adversely affecting the recovery process. As per the information received from NSEL, the total employee count on NSEL rolls was 193 as on 31.07.2013 (when NSEL had suspended trading in one day forward contracts) which has come down to 33 on 31.7.2014. NSEL is also confronted with a number of cases against it, which are pending in the High Courts and the Special

Court under the Maharashtra Protection of Investors Deposits Act (MPID) relating to its failure to make payment to the investors. The company is hardly left with any financial resources to meet even legal expenses apart from defraying staff salaries and other expenses related to the recovery process.

- iv) FMC had received feedback from the representatives of investors/ member bodies on the erstwhile Monitoring & Auction Committee, constituted by it reporting that with the loss of credibility, weak Organizational structure, depletion of man-power strength and lack of financial resources, NSEL as an organization has become very weak. As NSEL is a wholly owned subsidiary of FTIL, it is the primary responsibility of the parent company, i.e. FTIL to own complete responsibility for the affairs of its subsidiary company.

3.2 Thus, it would be observed from above that NSEL is not having the resources, financial or human, or the organizational capability to successfully recover the dues to the investors pending for over a year. Further, NSEL is not left with any viable, sustainable business while FTIL has the necessary resources to facilitate speedy recovery of dues.

3.3 In the above background, a proposal has been received from FMC vide letter dated 18-08-2014, proposing the merger of NSEL with FTIL by the Central Government under the provisions of Section 396 of the Companies Act, 1956. The proposal has been supported by the Department of Economic Affairs (DEA), Ministry of Finance. FMC has proposed the merger/ amalgamation of NSEL with FTIL in essential public interest so that the human/ financial resources of FTIL are also directed towards facilitating speedy recovery of

dues from the defaulters at NSEL and the FTIL takes responsibility to resolve the payment crisis at NSEL at the earliest.

3.4 Further, FMC vide its letter dated 17-10-2014 has forwarded representations from various members/ investor bodies requesting for merger of NSEL with FTIL and has reiterated its recommendation submitted vide letter dated 18-08-2014. The said communication has provided additional grounds in support of the earlier recommendations, viz.:

- (i) The equity investment carries inherent investment risk. The shareholders of FTIL have enjoyed benefits like higher dividend, capital appreciation by way of rise in share prices of FTIL at the time of higher profits of the company which were derived from NSEL operations. Therefore, as shareholders, they are bound to be fully aware of the fact that if they are enjoying the benefits from the performance of the subsidiary company, i.e., NSEL, they may have to also bear the risk associated with the acts of omission and commission by the holding company.
- (ii) FTIL is conscious of its role as a parent company as by giving a loan of Rs 179.26 crore to NSEL which was distributed to the small investors of NSEL, has already owned up some responsibility for the NSEL payment crisis. However, the company cannot be allowed to confine its responsibility and concern only for the small investors alone, it has to shoulder full responsibility for the outstanding dues at NSEL;
- (iii) A charge sheet has been filed by the Economic Offence Wing, Mumbai Police in NSEL matter against Sh. Jignesh Shah, the founder and Managing Director of FTIL. This clearly shows that Mumbai Police has

already found prima facie evidence against Sh. Jignesh Shah regarding his culpability in the NSEL matter.

4. Consideration of the Proposal by the Central Government

4.1 While considering the above proposal, the Central Government has also taken into account the findings/ observations during the course of inspection under Section 209A of the Companies Act, 1956 of the Books of Account of NSEL and FTIL. The said inspections bring out non-compliances of the various provisions of the Companies Act, 1956. It is further observed that the management of the affairs of NSEL was being controlled and directed by FTIL and its key managerial persons (KMPs).

4.2 The Central Government has carefully considered the proposal received from FMC and DEA and is of the considered opinion that to leverage combined assets, capital and reserves for efficient administration and satisfactory settlement of rights and liabilities of stakeholders and creditors of NSEL, it will be in essential public interest to amalgamate NSEL with FTIL.

4.3 Accordingly, the Central Government has taken a view that there is a prima facie case for invoking Section 396 of the Companies Act, 1956 and to initiate this process by issuing the draft Order in terms of Section 396(4) of the Companies Act, 1956.



(M.J. Joseph)

Additional Secretary to Government of India
on behalf of the Central Government

Place: New Delhi

Date: 21.10.2014