

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) Nos. 185-186 of 2018**

**IN THE MATTER OF:**

**Anil Chandanmal Singhvi**

**...Appellant**

**Versus**

**Union of India & Ors.**

**...Respondents**

**Present:**

**For Appellant :**

Mr. S. N. Mukherjee, Senior Advocate with Mr. Abhijeet Sinha, Mr. Mohit Advani, Mr. Nooruddin Dhillon, Ms. Priyanka Vora, Mr. Prateek Gupta and Mr. Madhur Mahajan, Advocates

**For Respondents :**

Ms. Pinky Anand, Additional Solicitor General with Mr. Rajesh Ranjan, Mr. Anoop Dawan, Ms. Snidha Mehra and Mr. Joel, Advocates  
Mr. Chakitan V.S. Papta, Mr. E. Nagachandran, Deputy Director and Mr. Rajneesh Kumar Singh, Deputy Director, MCA,

Mr. Arvind Lakhawat and Mr. Anuj Tiwari, Advocates for National Spot Exchange Limited.

**Company Appeal (AT) Nos. 187-188 of 2018**

**IN THE MATTER OF:**

**Devendra Kumar Agrawal**

**...Appellant**

**Versus**

**Union of India & Ors.**

**...Respondents**

**Present:**

**For Appellant :**

Mr. S. N. Mukherjee, Senior Advocate with

Mr. Abhijeet Sinha, Mr. Mohit Advani, Mr. Nooruddin Dhillon, Ms. Priyanka Vora, Mr. Prateek Gupta and Mr. Madhur Mahajan, Advocates

**For Respondents :** Ms. Pinky Anand, Additional Solicitor General with Mr. Rajesh Ranjan, Mr. Anoop Dawan, Ms. Snidha Mehra and Mr. Joel, Advocates  
Mr. Chakitan V.S. Papta, Mr. E. Nagachandran, Deputy Director and Mr. Rajneesh Kumar Singh, Deputy Director, MCA

Mr. Arvind Lakhawat and Mr. Anuj Tiwari, Advocates for National Spot Exchange Limited.

**Company Appeal (AT) Nos. 189-190 of 2018**

**IN THE MATTER OF:**

**Sunil Hasmukhlal Shah**

**...Appellant**

**Versus**

**Union of India & Ors.**

**...Respondents**

**Present:**

**For Appellant :** Mr. S. N. Mukherjee, Senior Advocate with Mr. Abhijeet Sinha, Mr. Mohit Advani, Mr. Nooruddin Dhillon, Ms. Priyanka Vora, Mr. Prateek Gupta and Mr. Madhur Mahajan, Advocates

**For Respondents :** Ms. Pinky Anand, Additional Solicitor General with Mr. Rajesh Ranjan, Mr. Anoop Dawan, Ms. Snidha Mehra and Mr. Joel, Advocates  
Mr. Chakitan V.S. Papta, Mr. E. Nagachandran, Deputy Director and Mr. Rajneesh Kumar Singh, Deputy Director, MCA

Mr. Arvind Lakhawat and Mr. Anuj Tiwari, Advocates for National Spot Exchange Limited.

**Company Appeal (AT) No. 192 of 2018**

**IN THE MATTER OF:**

**Union of India, MCA**

**...Appellant**

**Versus**

**63 Moons Technologies Ltd. & Ors.**

**...Respondents**

**For Appellant :** Ms. Pinky Anand, Additional Solicitor General with Mr. Rajesh Ranjan, Mr. Anoop Dawan, Ms. Snidha Mehra and Mr. Joel, Advocates  
Mr. Chakitan V.S. Papta, Mr. E. Nagachandran, Deputy Director and Mr. Rajneesh Kumar Singh, Deputy Director, MCA

**For Respondents :** Mr. Vikas Singh, Senior Advocate  
Mr. Salman Khurshid, Senior Advocate  
Mr. S. N. Mukherjee, Senior Advocate  
Mr. Sudipto Sarkar, Senior Advocate with  
Mr. Abhijeet Sinha, Mr. Arvind Lakhawat, Mr. Mohit Advani, Mr. Nooruddin Dhillon, Ms. Priyanka Vora, Mr. Prateek Gupta and Mr. Madhur Mahajan, Advocates  
Mr. Arvind Lakhawat and Mr. Anuj Tiwari, Advocates for National Spot Exchange Limited.

**Company Appeal (AT) Nos. 196-197 of 2018**

**IN THE MATTER OF:**

**Jigish Shantilal Sonagara**

**...Appellant**

**Versus**

**Union of India & Ors.**

**...Respondents**

**For Appellant :** Mr. S. N. Mukherjee, Senior Advocate with Mr. Abhijeet Sinha, Mr. Mohit Advani, Mr. Nooruddin Dhillon, Ms. Priyanka Vora, Mr. Prateek Gupta and Mr. Madhur Mahajan, Advocates

**For Respondents :** Ms. Pinky Anand, Additional Solicitor General with Mr. Rajesh Ranjan, Mr. Anoop Dawan, Ms. Snidha Mehra and Mr. Joel, Advocates  
Mr. Chakitan V.S. Papta, Mr. E. Nagachandran, Deputy Director and Mr. Rajneesh Kumar Singh, Deputy Director, MCA,  
  
Mr. Arvind Lakhawat and Mr. Anuj Tiwari, Advocates for National Spot Exchange Limited.

**Company Appeal (AT) Nos. 198-199 of 2018**

**IN THE MATTER OF:**

**Berjis Desai**

**...Appellant**

**Versus**

**Union of India & Ors.**

**...Respondents**

**For Appellant :** Mr. S. N. Mukherjee, Senior Advocate with Mr. Abhijeet Sinha, Mr. Mohit Advani, Mr. Nooruddin Dhillon, Ms. Priyanka Vora, Mr. Prateek Gupta and Mr. Madhur Mahajan, Advocates

**For Respondents :** Ms. Pinky Anand, Additional Solicitor General with Mr. Rajesh Ranjan, Mr. Anoop Dawan, Ms. Snidha Mehra and Mr. Joel, Advocates  
Mr. Chakitan V.S. Papta, Mr. E. Nagachandran, , Deputy Director and Mr. Rajneesh Kumar Singh, Deputy Director, MCA,  
Mr. Arvind Lakhawat and Mr. Anuj Tiwari, Advocates for National Spot Exchange Limited.

**Company Appeal (AT) Nos. 200-201 of 2018**

**IN THE MATTER OF:**

**Nisha Dutt**

**...Appellant**

**Versus**

**Union of India & Ors.**

**...Respondents**

**Company Appeal (AT) Nos. 185-186, 187-188, 189-190, 192, 196-197, 198-199, 200-201, 202-203, 204-205, 206-207, 208, 209 of 2018**

**For Appellant :** Mr. S. N. Mukherjee, Senior Advocate with Mr. Abhijeet Sinha, Mr. Mohit Advani, Mr. Nooruddin Dhillon, Ms. Priyanka Vora, Mr. Prateek Gupta and Mr. Madhur Mahajan, Advocates

**For Respondents :** Ms. Pinky Anand, Additional Solicitor General with Mr. Rajesh Ranjan, Mr. Anoop Dawan, Ms. Snidha Mehra and Mr. Joel, Advocates  
Mr. Chakitan V.S. Papta, Mr. E. Nagachandran, , Deputy Director and Mr. Rajneesh Kumar Singh, Deputy Director, MCA

Mr. Arvind Lakhawat and Mr. Anuj Tiwari, Advocates for National Spot Exchange Limited.

**Company Appeal (AT) Nos. 202-203 of 2018**

**IN THE MATTER OF:**

**Prashant Desai**

**...Appellant**

**Versus**

**Union of India & Ors.**

**...Respondents**

**For Appellant :** Mr. S. N. Mukherjee, Senior Advocate with Mr. Abhijeet Sinha, Mr. Mohit Advani, Mr. Nooruddin Dhillon, Ms. Priyanka Vora, Mr. Prateek Gupta and Mr. Madhur Mahajan, Advocates

**For Respondents :** Ms. Pinky Anand, Additional Solicitor General with Mr. Rajesh Ranjan, Mr. Anoop Dawan, Ms. Snidha Mehra and Mr. Joel, Advocates  
Mr. Chakitan V.S. Papta, Mr. E. Nagachandran, , Deputy Director and Mr. Rajneesh Kumar Singh, Deputy Director, MCA

Mr. Arvind Lakhawat and Mr. Anuj Tiwari, Advocates for National Spot Exchange Limited.

**Company Appeal (AT) Nos. 204-205 of 2018**

**IN THE MATTER OF:**

**Manjay Prakash Shah**

**...Appellant**

**Versus**

**Union of India & Ors.**

**...Respondents**

**For Appellant :** Mr. Salman Khurshid, Senior Advocate assisted by Ms. Misha Rohatgi, Ms. Sachita Ain and Mr. Zafar Khurshid, Advocates

**For Respondents :** Ms. Pinky Anand, Additional Solicitor General with Mr. Rajesh Ranjan, Mr. Anoop Dawan, Ms. Snidha Mehra and Mr. Joel, Advocates  
Mr. Chakitan V.S. Papta, Mr. E. Nagachandran, Deputy Director and Mr. Rajneesh Kumar Singh, Deputy Director, MCA

Mr. Arvind Lakhawat and Mr. Anuj Tiwari, Advocates for National Spot Exchange Limited.

**Company Appeal (AT) Nos. 206-207 of 2018**

**IN THE MATTER OF:**

**Diwang Sunderraj Neralla**

**...Appellant**

**Versus**

**Union of India & Ors.**

**...Respondents**

**For Appellant :** Mr. Vikas Singh, Senior Advocate  
Mr. Salman Khurshid, Senior Advocate  
Mr. Mrityunjay Singh, Ms. Misha Rohatgi, Ms. Sachita Ain and Mr. Zafar Khurshid, Advocates

**For Respondents :** Ms. Pinky Anand, Additional Solicitor General with Mr. Rajesh Ranjan, Mr. Anoop Dawan, Ms. Snidha Mehra and Mr. Joel, Advocates

Mr. Chakitan V.S. Papta, Mr. E. Nagachandran, ,  
Deputy Director and Mr. Rajneesh Kumar Singh,  
Deputy Director, MCA

Mr. Arvind Lakhawat and Mr. Anuj Tiwari,  
Advocates for National Spot Exchange Limited.

**Company Appeal (AT) Nos. 208 of 2018**

**IN THE MATTER OF:**

**63 Moons Technologies Ltd.**

**...Appellant**

**Versus**

**Union of India & Ors.**

**...Respondents**

**Present**

**For Appellant :**

Mr. S. N. Mukherjee, Senior Advocate assisted by  
Mr. Abhijeet Sinha, Mr. Nooruddin Dhillon, Mr.  
Mohit Advani, Ms. Priyanka Vora, Mr. Prateek  
Gupta and Mr. Madhur Mahajan, Advocates

**For Respondents :**

Ms. Pinky Anand, Additional Solicitor General with  
Mr. Rajesh Ranjan, Mr. Anoop Dawan, Ms. Snidha  
Mehra and Mr. Joel, Advocates  
Mr. Chakitan V.S. Papta, Mr. E. Nagachandran,  
Deputy Director and Mr. Rajneesh Kumar Singh,  
Deputy Director, MCA, (UoI)

Mr. Arvind Lakhawat and Mr. Anuj Tiwari,  
Advocates for National Spot Exchange Limited.

**Company Appeal (AT) Nos. 209 of 2018**

**IN THE MATTER OF:**

**Jignesh Prakash Shah**

**...Appellant**

**Versus**

**Union of India & Ors.**

**...Respondents**

**For Appellant :**

Mr. Sudipto Sarkar, Senior Advocate  
Ms. Misha Rohtagi, Advocate

**For Respondents :** Ms. Pinky Anand, Additional Solicitor General with Mr. Rajesh Ranjan, Mr. Anoop Dawan, Ms. Snidha Mehra and Mr. Joel, Advocates  
Mr. Chakitan V.S. Papta, Mr. E. Nagachandran, Deputy Director and Mr. Rajneesh Kumar Singh, Deputy Director, MCA, (UoI)

Mr. Arvind Lakhawat and Mr. Anuj Tiwari, Advocates for National Spot Exchange Limited.

## **J U D G M E N T**

### **SUDHANSU JYOTI MUKHOPADHAYA, J.**

The Union of India filed Company Petition before the erstwhile Company Law Board under Sections 397-398, 401, 408 read with Section 388B of the Companies Act, 1956. The prayer before the erstwhile Company Law Board was disqualification of 2<sup>nd</sup> to 28<sup>th</sup> Respondents (Appellants herein) for acting in an oppressive manner prejudicial to the interest of the public and the appointment of government nominees on the Board of '63 Moons Technologies Limited' 1<sup>st</sup> Respondent Company (formerly 'M/s. Financial Technologies (India) Limited').

2. After constitution of the National Company Law Tribunal ("Tribunal" for short), the case was transferred. The National Company Law Tribunal, Chennai vide impugned order dated 4<sup>th</sup> June, 2018 partly allowed the Petition disqualifying the past Board of Directors (i.e.,



those appointed before 31<sup>st</sup> July, 2013) and granting permission to the Government to nominate not more than 3 Directors. The Tribunal disqualified the past Board Directors i.e, those appointed till 31<sup>st</sup> July, 2013 on the following grounds:

(a) The software used on the trading platform in 'National Spot Exchange Limited' was a proprietary software provided by '63 Moons Technologies Limited' which holds 99.99% of the equity shares of the subsidiary ('National Spot Exchange Limited');

(b) 1<sup>st</sup> Respondent Company ('63 Moons Technologies Limited') by virtue of preponderance of shareholding had the power to elect/nominate the Board of directors in 'National Spot Exchange Limited'.

(c) The Board resolutions and other issues relating to 'National Spot Exchange Limited' were regularly discussed in the board meetings of 1<sup>st</sup> Respondent Company ('63 Moons Technologies Limited'). 1<sup>st</sup> Respondent Company ('63 Moons Technologies Limited') was totally aware of the happenings of 'National Spot Exchange Limited'.

(d) The actions of concerned Respondent-Directors not only affected the traders/ investors but were completely against public interest as they adversely impacted on the credibility of the Indian financial system.

(e) The actions of the Respondent-Directors have undermined the public confidence and people have been cautious in their dealings with commodity exchange delaying the expected developments of the commodity markets.

(f) Failure of the said Respondent-Directors in exercising due diligence has resulted in suspension of trade in 'National Spot Exchange Limited' and has adversely affected the members and other stake holders of 1<sup>st</sup> Respondent Company ('63 Moons Technologies Limited') as well as those of 'National Spot Exchange Limited'.

3. The Union of India filed appeal against the part of the substantive prayers of management control and disqualification of the present Board of Directors.

4. This Appellate Tribunal issued notice on 27<sup>th</sup> June, 2018 and stayed operation of the impugned order dated 4<sup>th</sup> June, 2018 passed by Tribunal. As an interim arrangement, this Appellate Tribunal restored the committee set up by the Tribunal vide order dated 24<sup>th</sup> May, 2016. The Committee appointed consists of five members-one retired Hon'ble Judge of Supreme Court (Shri Justice G.P Mathur, one Government Nominee (Dr. Anup Pujari, retired IAS), both having individual veto powers and three other members representing 'M/s. Financial Technologies (India) Limited' ('FTIL').

**Facts of the case:**

5. 'National Spot Exchange Limited'- Respondent No. 29 was incorporated as a company under the Companies Act, 1956 by the 'Multi-commodity Exchange of India Ltd' (hereinafter referred as "MCX"). MCX is an exchange founded and promoted by FTIL (now renamed as '63 Moons Technologies Ltd.', which until Quarters ended June, 2014 to September, 2014 held a 26% stake in MCX), with the objective of establishing a spot exchange for trading in commodities. The Promoters of NSEL transferred 99.99% shares to 1<sup>st</sup> Respondent, '63 Moons Technologies Ltd.' (erstwhile FTIL). About 45% of the shareholding of 1<sup>st</sup> Respondent is held by Shri Jignesh Prakash Shah (2<sup>nd</sup> Respondent) and family, and about 43% of the shareholding is held by others (public). Approximately 5% of the shareholding is held by institutional investors.

6. 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) provided an electronic platform for trading of commodities between willing buyers and sellers through brokers representing them. In order to persuade the Central Government to permit 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) to establish a commodity exchange, several representations, including the following were held out by the 'Multi-Commodity Exchange', the original promoter of 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) and Mr. Jignesh Prakash Shah (2<sup>nd</sup> Respondent) as Group Chairman of 1<sup>st</sup> Respondent- '63 Moons

Technologies Ltd.’:-

- (i) No short sales would be permitted and all outstanding positions at the end of the day would result in delivery of the commodities;’
- (ii) In order to ensure delivery of commodities, the ‘National Spot Exchange Limited’ (29<sup>th</sup> Respondent) would establish designated warehouses, in which the commodities would be verified, checked and stored;
- (iii) ‘National Spot Exchange Limited’ (29<sup>th</sup> Respondent) would counter guarantee performance of the contracts at the spot exchange;
- (iv) ‘National Spot Exchange Limited’ (29<sup>th</sup> Respondent) would maintain a settlement guarantee fund so as to eliminate any risk to the traders at the spot exchange.

7. The Central Government, taking into consideration the representations held out by ‘National Spot Exchange Limited’ (29<sup>th</sup> Respondent) and in exercise of its powers under Section 27 of the ‘Forward Contracts (Regulation) Act, 1952’ , by Notification No. S.O. 906(E) dated 5<sup>th</sup> June, 2017, exempted all forward contracts of one day’s duration for the sale and purchase of commodities traded on ‘National Spot Exchange Limited’ (29<sup>th</sup> Respondent) exchange from operations of the ‘Forward Contracts (Regulation) Act, 1952’ subject to the following conditions, namely:-

- (i) no short sale by members of the Exchange shall be allowed;
- (ii) all outstanding positions of 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 and when asked for shall be provided to the Central Government of its designated agency.
- (v) the Central Government reserve 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 to public interest.

8. In gross violation of undertaking given by 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) and Government exemption condition, in 2009, 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) offered contracts with long term settlement periods including T+18, T+25 and T+36, where, "T" represents the trade day and the numbers 18, 25 and 36 represent the period within which the deliveries of commodities will be completed and the transactions squared off. Further, in 2009 itself, 'National Spot

Exchange Limited' (29<sup>th</sup> Respondent) offered paired contracts comprising short term buy contract and a long term sell contract, such as T+2 and T+25.

9. Mr. Jignesh Prakash Shah was present at the Board Meetings of 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) in September, 2009 where such longer duration contracts were approved, which gave rise to the "paired contracts" system. This was defeat of the concept of "Spot Exchange", and thus caused injury to the business, trade, Industry of "Spot Exchanges".

10. On 27<sup>th</sup> April, 2012, the Department of Consumer Affairs issued a show cause notice to 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) as to why action should not be initiated against it for permitting transactions in alleged violation of the exemption granted to it under the 'Forward Contracts (Regulation) Act, 1952'.

11. 'National Spot Exchange Limited' (29<sup>th</sup> Respondent), in its reply dated 29<sup>th</sup> May, 2012 to the said Show Cause Notice dated 27<sup>th</sup> April, 2012, stated that it never insisted on deposit of goods in the warehouse before generating a warehouse receipt and allowing the "Seller" to take a "Sale" position on its Exchange. 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) cited an example of brinjals on standing crop, but has never explained as to how many transactions fell in such category and how they were allowed to be rolled over multiple times. Further, the kind of trading, as cited in the example, would have required

separate permission and was not covered under the Notification dated 05<sup>th</sup> June, 2007. This was an admission of short sales and violation of the conditions of Notification dated 05<sup>th</sup> June, 2007.

12. It has emerged that the “Warehouse Receipts”, which were the documents of title to the commodities were printed without the commodities being present in the warehouse. The Warehouse Receipts so printed were deceptively similar to the pro forma prescribed under the ‘Warehouse Development and Regulatory Authority Act’ and the Regulations, without being authorized by it. This was an act of forgery injuring the commodities/ spot exchanges industry as a ‘Spot Exchange’ is defined as a marketplace where Warehouse Receipts are traded.

13. After the rejection of the Application of warehousing licence made by ‘National Spot Exchange Limited’ (29<sup>th</sup> Respondent), it represented to the WDR Authority that the ‘National Bulk Holding Corporation’, a group company of ‘Financial Technologies (India) Limited’ would undertake the warehousing activities for ‘National Spot Exchange Limited’ (29<sup>th</sup> Respondent). As a matter of fact, NBHC never undertook the warehousing for the paired contracts of ‘National Spot Exchange Limited’ (29<sup>th</sup> Respondent). After the collapse of ‘National Spot Exchange Limited’ (29<sup>th</sup> Respondent), ‘Financial Technologies (India) Limited’ divested its stake in NBHC. The effort was very clearly to deceive the public at large that there was some warehousing set up and everything was under control.

14. On 10<sup>th</sup> July, 2013, Mr. Jignesh Prakash Shah, the common Director of 'Financial Technologies (India) Limited' (1<sup>st</sup> Respondent) and 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) made a detailed and comprehensive presentation to DCA and FMC, in terms, holding out the following:

(i) 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) has 120 warehouses, holding inventory valued at Rs. 6,000 crores approximately which are good for delivery for processors' consumption upto next 1 to 1.5 years.

(ii) 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) strictly prohibits short sales through its circulars, notifications, practices in letter and spirit.

(iii) In agricultural commodities, more than 99% trades result into delivery on daily basis.

(iv) As per empirical data, short delivery has not happened even in 0.0001% cases during last 5 years.

(v) 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) model has full stock as collateral, 10-20% of open position as margin fee with complete purchase commitment of the processors.

(vi) This is full proof risk management system compared to any other financial market structure.

(vii) The value of stocks held by 'National Spot Exchange



Limited' (29<sup>th</sup> Respondent) is around Rs. 6,000 crores.

15. By the year 2013, the volumes of paired contracts constituted almost 99% of the turnover of the NSEL Exchange. In monetary terms, this turnover of paired contracts was to the tune of Rs.1,34,000 crores between the years 2009 to 2013. This means that the entire operations at the NSEL Exchange, which was meant to be a commodities spot exchange, were entirely subverted in gross violation of the conditions of the exemption notification dated 5<sup>th</sup> June 2007. In July 2013, 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) declared that trading members (being 24 in number), defaulted in payment of obligations amounting to approximately Rs.5600 crore owed to 13,000 persons who traded on the platform of 'National Spot Exchange Limited' (29<sup>th</sup> Respondent).

16. On 31<sup>st</sup> July, 2013, 'National Spot Exchange Limited' (29<sup>th</sup> Respondent), notified its members that trading in all contracts (except E-Series) stood suspended until further notice. As a result, all the trading/ activities at the NSEL exchange, came to a grinding halt on 31<sup>st</sup> July, 2013.

17. On 14<sup>th</sup> August 2013, 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) wrote to the FMC, setting out a detailed settlement plan. The plan indicated the period within which the entire dues would be paid, with simple interest at 8% to 16% per annum. This plan was

an abject failure. The settlement guarantee fund, which, according to 'National Spot Exchange Limited' (29<sup>th</sup> Respondent), was represented as having Rs.738.55 crores as on 1<sup>st</sup> August 2013, was found to have hardly Rs.62 crores as on 4<sup>th</sup> August 2013.

18. On 27<sup>th</sup> August, 2013, the FMC directed a forensic audit of 'National Spot Exchange Limited' (29<sup>th</sup> Respondent), and at the suggestion of 'National Spot Exchange Limited' (29<sup>th</sup> Respondent), 'Grant Thornton LLP' was appointed as the Forensic Auditor. Government of India, on 30<sup>th</sup> September 2013, ordered inspection of the books of accounts of 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) and 'Financial Technologies (India) Limited' under Section 209A of the Companies Act. On the same day, the Economic Offences Wing ["EOW"] registered cases against Directors and key management personnel of the 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) and 'Financial Technologies (India) Limited', trading members of 'National Spot Exchange Limited' (29<sup>th</sup> Respondent), and brokers of 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) under various provisions of the Indian Penal Code and the Maharashtra Protection of Interest of Depositors Act, 1999 ["MPID Act"].

19. The report of the forensic audit conducted by Grant Thornton dated 21<sup>st</sup> September, 2013 came out with damning facts and figures as to the real operations of 'National Spot Exchange Limited' (29<sup>th</sup> Respondent), namely, that they are not a commodity exchange, but an illegal financing

scheme, and that no commodities were really in stock.

20. On 04<sup>th</sup> October, 2013, based on the Grant Thornton Report dated 21<sup>st</sup> September 2013, the FMC issued a Show Cause Notice to four persons, including 'Financial Technologies (India) Limited' (1<sup>st</sup> Respondent) and Mr. Jignesh Prakash Shah (2<sup>nd</sup> Respondent), which eventually resulted in the Order dated 17<sup>th</sup> December, 2013 declaring that 'Financial Technologies (India) Limited' (1<sup>st</sup> Respondent), along with Mr. Jignesh Prakash Shah (2<sup>nd</sup> Respondent), Mr. Joesph Messy and Mr. Shreekant Javalgekar as not "fit and proper" to hold equity in any commodity exchanges, and to dilute their shareholding to not more than 2% of the paid-up equity capital of MCX. It is important to notice that the Board of 'Financial Technologies (India) Limited' (1<sup>st</sup> Respondent) was filled with the present Directors closely after this date (04<sup>th</sup> October, 2013).

21. The Report filed by SFIO in 2018 further corroborates the fact that 'National Spot Exchange Limited' (29<sup>th</sup> Respondent), its Board of Directors, Chief Executive Officer and Other Officer and its holding Company Respondent No. 1 and its subsidiary 'Indian Bullion Market Association' entered into a criminal conspiracy with the object to earn revenue through a fraudulent, illegal scheme of trading on NSEL Exchange. This besides the national loss caused to the Spot Exchange Industry, also resulted in causing wrongful loss to 13000 investors in tangible terms. It is submitted that Economic Theory recognizes that in

cases of market collapse or market failure, the State has a role to play in restoring public confidence.

22. The present Board has defended all the illegal actions of 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) and 'Financial Technologies (India) Limited' (1<sup>st</sup> Respondent) all through valiantly. With no change in approach or mind set or outlook to the future with regard to the said collapse, it can hardly be asserted that the present Board is an independent Board. In fact, it is worse than actual abetment when the disaster took place. In exhibition of the said loyalty and as if to provide for a Subsistence Allowance to Shri Jignesh Prakash Shah (Respondent No. 2), the present Board has agreed to provide a sum of Rs.25 Lakhs per mensem to him, for ostensibly 'rendering legal advice" to the Company ('Financial Technologies (India) Limited'). This is besides the company funding to the litigation arising against the Members of the Board, present and past of 'Financial Technologies (India) Limited', for their misadventures and misdemeanours for which they are personally liable.

**Liability of Directors of FTIL:**

23. According to Union of India, the liability of Directors of 'Financial Technologies (India) Limited' falls under three categories based on the time at which they occupied the posts and these are enumerated below:-

- a. Directors on the board of 'Financial Technologies (India) Limited' prior to 31.07.2013 (i.e. the date on which NSEL

suspended trading and closed its spot exchange operations)

b. Directors on the board of 'Financial Technologies (India) Limited' after 31.07.2013

c. Directors of 'Financial Technologies (India) Limited' who were key managerial personnel (i.e. those who are liable regardless of the period on which they were occupying the post of Directors)

24. Further case of the Union of India is that the Directors on the board of 'Financial Technologies (India) Limited' prior to 31.07.2013:

a. Business realities of the case show that 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) and 'Financial Technologies (India) Limited' were a single economic unit and were alter egos of each other.

b. 'Financial Technologies (India) Limited' held 99.9998% of NSEL's shares. 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) and its affairs were entirely under the control of the Board of Directors of 'Financial Technologies (India) Limited'.

c. The transactions between 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) and 'Financial Technologies (India) Limited' were not on arms length basis.

d. Mr. Jignesh Prakash Shah (Respondent No.2) is the

primary common link between both the companies apart from the others who were aiding and abetting his designs. He held 45% shares of 'Financial Technologies (India) Limited' and was its Chairman-cum-Managing Director. He was also Vice Chairman on the Board of 'National Spot Exchange Limited' (29<sup>th</sup> Respondent), being one of the "key managerial personnel" of the aforesaid company. He also was a member of the Audit Committee of 'National Spot Exchange Limited' (29<sup>th</sup> Respondent).

e. The Project Report of the MCX which led to the setting up of the 'National Spot Exchange Limited' (29<sup>th</sup> Respondent), as well as the subsequently issued Exemption Notification dated 05.06.2007, the Prospectus/Brochure issued by 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) and the various presentations made by Mr. Jignesh Prakash Shah (Respondent No.2) had as their basic feature, the legal counter party guarantee status of the Exchange.

f. All the minutes of the Board meetings of 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) were regularly tabled at the Board meetings of 'Financial Technologies (India) Limited' (1<sup>st</sup> Respondent), showing therefore, that Respondent No. 1 has full knowledge of the goings-on in 'National Spot Exchange Limited' (29<sup>th</sup> Respondent).

g. Respondent No. 1 outward entails were routed through an outbox called “FT outbox” through which all emails of all Respondent No. 1-group companies were routed.

h. The business model of Respondent No. 29 was wholly dependent on the software provided by the Respondent No. 1. The Exchange Technology and the Member Technology, both provided by Respondent No. 1 to Respondent No. 29 and its trading clients, might have been suitable for MCX, which had permission to deal with long duration contracts and was under the regulatory control of the Forward Markets Commission (“FMC”). However, for the business of Respondent No. 29, which was to operate in the strict confines of the exemption notification, any software that provides/permits a transaction of T+2 or longer was *per se* unsuitable. The said two technologies, which were in fact employed by Respondent No. 29, were designed for, and thus permitted, longer duration trades, which were impermissible under the statutory exemption notification dated 05.06.2007.

i. ‘National Spot Exchange Limited’ (29<sup>th</sup> Respondent), with full knowledge of the Board of Directors of Respondent No. 1 offered the paired contracts on its exchange. In any case, in 2013, almost 99% of the turnover of the exchange comprised such paired contracts. In monetary terms, the turnover of the paired contracts between 2009 and 2013, was not some negligible figure, which

might have legitimately escaped the attention of FTIL, but, this figure was Rs. 1,34,000 crores. The same is the position with inventory valued at Rs.6,000 crores in the 120 warehouses as stated by Mr. Jignesh Prakash Shah in the presentation made hardly 20 days before the collapse of operation at the exchange.

j. 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) was treated, held out, and represented by Respondent No. 1 to be its own, and was part of its "exchange verticals".

25. It was submitted by the Union of India is that the Directors on the Board of 'Financial Technologies (India) Limited' after 31.07.2013:

- (a) The Directors appointed post 31.07.2013 are also liable to be disqualified.
- (b) The breach of Corporate Governance is still being defended by the present Board, the stand of the disqualified directors is being articulated by the present Board.
- (c) The keywords in Section 408 of the erstwhile Companies Act, 1956 (which corresponds with Section 242 read with Section 241 of the Companies Act, 2013) provides for orders to pre-empt adverse actions and to thereby safeguard the interests of the company. The keyword in Section 408 is 'effective safeguard'. It is submitted that



Directors who have been appointed as an eyewash after 31.07.2013 cannot be treated as an effective safeguard against actions of 'Financial Technologies (India) Limited' and consequently, need to be disqualified.

- (d) SFIO has investigated the offences committed by 'Financial Technologies (India) Limited' and its Directors during the course of its interaction with 'National Spot Exchange Limited' (29<sup>th</sup> Respondent), and upon acceptance of the SFIO report, prosecutions/ proceedings have been initiated by SFIO, a short summary of which is placed as Annexure: A-8 to the Consolidated Rejoinder of the UOI in its appeal No. 192 of 2018.
- (e) These directors only lend their names to propagate the effects of the scam and sabotage the pending investigations/ prosecutions/ proceedings by various law enforcement agencies. They were merely standing in for the Directors who were hitherto present on the Board. The previous board appointed these directors to present a sham cleansing after the SCN issued by the FMC on 04.10.2013 and these appointments were made in anticipation of the order dated 17.12.2013.
- (f) The Directors appointed after 31.07.2013 continued to defend reckless printing of warehouse receipts which is one of the proof of the mammoth fraud at 'National Spot

Exchange Limited' (29<sup>th</sup> Respondent) as well as the illegal financing business whereby loans were granted to persons who could not otherwise have availed credit from banks/ Financial Institutions.

26. Directors of 'Financial Technologies (India) Limited' who were key managerial personnel and those who are liable in any event:

(a) That the erstwhile Companies Act, 1956 subscribed to the concept of 'Officer who is in default' (Section 5). It is submitted that the persons who were defined by presumption as officers in default with regard to any punishment or penalty were to mean all the following i.e. a) the managing Director or Managing Directors b) the Whole-time Director or Whole-time Directors c) the Manager d) the Secretary (e) any person in accordance with whose directions or instructions the Board of Directors of the Company is accustomed to act.

b. That the Companies Act, 2013 enlarges the definition of the positions who are encompassed within the meaning of the term defined as 'officers in default' [Section 2(60)]. It is submitted that not only the persons defined above but a whole host of persons who have control or influence over the affairs of the company have been included. It is submitted that the present respondents are 'officers in default' for nefarious state of affairs at both

‘Financial Technologies (India) Limited’ as well as ‘National Spot Exchange Limited’ (29<sup>th</sup> Respondent).

27. Learned counsel for the Union of India submitted that where the impugned actions are within the knowledge of the /Board of Directors, then each and every Director of the Company is liable for action and shall be declared as not fit and proper person. The Hon’ble Supreme Court in “*Official Liquidator, Supreme Bank Ltd. v PA. Tendolkar (Dead) By LRs and Others (1973) 1 SCC 602*” in a case involving malfeasance proceedings under Section 45-H of the Banking Companies Act r/w Section 235 of Companies Act, 1913 against Directors of Supreme Bank of India held:

*“It is certainly a question of fact, to be determined upon the evidence in each case, whether a Director, alleged to be liable for misfeasance, had acted reasonably as well as honestly and with due diligence, so that he could not be held liable for conniving at fraud and misappropriation which takes place. **A Director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the***

**business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially. If he does so he could be held liable for dereliction of duties undertaken by him and compelled to make good the losses incurred by the Company due to his neglect even if he is not shown to be guilty of participating in the commission of fraud. It is enough if his negligence is of such a character as to enable frauds to be committed and losses thereby incurred by the Company.”**

28. It was submitted that the Respondent Directors through ‘Financial Technologies (India) Limited’ have subverted the proper functioning of ‘National Spot Exchange Limited’ (29<sup>th</sup> Respondent) which has resulted in the shutting down of the Spot Exchange and it was necessary in public interest to safeguard the outstanding positions of trade and the inventory valued at Rs. 6000 crores.

**Stand of the Appellant- Mr. Jignesh Prakash Shah (2<sup>nd</sup> Respondent)**

29. According to Mr. Jignesh Prakash Shah, was a non-executive vice-chairman of NSEL and was not involved in the day to day management of NSEL. As such he only got information as to the working of NSEL in the meetings of the Board of Directors of NSEL. No information pertaining to the alleged wrongdoings was provided to Mr. Jignesh Prakash Shah either directly or in the Board Meetings of NSEL. The minutes of NSEL's Board which were also placed before 63 moons' Board for post facto noting purpose only did not reveal any wrongdoings. As such there is nothing to show that Mr. Jignesh Prakash Shah was aware about the alleged wrongdoings at NSEL. Hence, he cannot be said to be responsible for the same. Also, once the Board of NSEL became aware of the same the Board of NSEL of which Mr. Jignesh Prakash Shah was a part took all steps (including filing a police complaint against the perpetrators of the wrongdoings at NSEL) to redress the same.

30. It was submitted that the FMC is a statutory body constituted pursuant to Section 3 of the Forward Contracts (Regulation) Act, 1952 (the "FCRA") and was the chief regulator of commodity futures markets in India. Union of India has relied upon the FMC Order for the purpose of forming its opinion to seek relief under Section 241(3) of the

Companies Act, 2013 (formerly Section 388B of the Companies Act, 1956). However, the criteria prescribed under the applicable guidelines for the FMC to declare a person to be not fit and proper is completely different from the requirements stated in clauses (a) to (d) of Section 241(3) of the Companies Act, 2013 and as such the entire basis of the Union of India on which it has approached this Appellate Tribunal to declare Mr. Jignesh Prakash Shah to be not fit and proper is misplaced.

31. It was further submitted that one of the criteria/aspect considered, in deciding whether Mr. Jignesh Prakash Shah qualified as fit and proper person or not, was public perception. This was the issue raised by the FMC in the Show Cause Notice issued to Mr. Jignesh Prakash Shah which eventually culminated into the FMC Order. The clause of which the FMC held Mr. Jignesh Prakash Shah to be violative of was the clause which laid down the criteria of what a 'fit and proper' person was i.e. *"such person has a general reputation and record of fairness and integrity, including but not limited to a) financial integrity; b) good reputation and character; and c) honest"*. This clearly indicates that one of the primary criteria that requires to be fulfilled by a person in order to be 'fit and proper' to hold shares in commodity exchange is the public perception of that person. This, however, is not a ground on which orders under Sections 388B, 397, 398 or 408 of the Companies Act, 1956 can be passed. The threshold to be met under Section 388B is not public perception but findings of wrongdoing on facts and

material. These allegations are serious and grievous in nature and the degree of proof is far stricter than the usual standard of balance of probabilities used in civil cases. The Tribunal while considering an application under these sections is not bound by the public perceptions of the persons/companies against whom such applications have been filed. As such the order passed by the FMC cannot be the basis of an order under Section 388B. In any case, the FMC's order declaring Mr. Jignesh Prakash Shah has been challenged before the Hon'ble Bombay High Court which petition (WP No. 363 of 2014) has been admitted and is pending.

32. It was submitted that before granting relief under Section 242(1), the UOI is required to satisfy the dual condition of Section 242(1)(a) and (b) The Company Petition states that the public purpose sought to be served is the expedition of the recovery process and settlement of the dues of the creditors of 'National Spot Exchange Limited' (29<sup>th</sup> Respondent), prevent '63 Moons Technologies Ltd.' from opposing the amalgamation and also, by way of abundant caution to prevent any further attempts being made by the Respondent Nos.2 to 28 to thwart the recovery process of NSEL, and fraudulent sale of assets of the Respondent No.1 Company. The Supreme Court in its decision dated 30<sup>th</sup> April 2019 passed in Civil Appeal No. 4476 of 2019 has held that there is no public interest in the aforesaid purpose and since the Union of India itself has admitted that it

has not adjudicated upon the alleged fraud and there is no complaint by any shareholder, no case for winding-up has been made out.

33. It is stated that the tribunal while passing the order has completely ignored the number of documentary evidences placed on record by the Respondents which clearly establishes that the Board of NSEL (which included Mr. Jignesh Prakash Shah (2<sup>nd</sup> Respondent) and Mr. Ramanathan Devrajan (23<sup>rd</sup> Respondent), the two common directors between NSEL and 'M/s. 63 Moons Technologies Limited' had no knowledge whatsoever nor any red flags whatsoever were there before the Board of NSEL, in relation to the inadequacy of commodities in warehouses prior to the payment default.

**Case of Appellant- Mr. Dewang Sunderraj Neralla (3<sup>rd</sup> Respondent) and the Appellant- Mr. Manjay Prakash Shah (4<sup>th</sup> Respondent)**

34. Similar plea has been taken by the Mr. Dewang Sunderraj Neralla and Mr. Manjay Prakash Shah (3<sup>rd</sup> and 4<sup>th</sup> Respondents respectively) Appellants in two of the appeals as taken by the Union of India as recorded do not mention the Appellants anywhere save and except an erroneous observation.

35. It is further submitted that there is no finding of fraud committed by 3<sup>rd</sup> and 4<sup>th</sup> Respondents (Appellants herein) in the '63 Moons Technologies Limited' or the close association of the Director with the management of the company or the association needs to be long and



personal or the Director's negligence must be proved and the negligence has to be of an enabling character.

**Case of 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> Respondents**  
**(Appellants herein)**

36. Learned counsel appearing on behalf of the Appellants- Mr. Devendra Kumar Agarwal, Mr. Berjis Minoos Desai, Mr. Anil Chandanmal Singhvi, Ms. Nisha Dutt, Mr. Sunil Hasmukhlal Shah, Mr. Prashant Desai and Mr. Jigish Shantilal Sonagara (9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> Respondents respectively) submitted that the Appellants were appointed as Directors much after the date of mismanagement i.e. 31<sup>st</sup> July, 2013. Their dates of appointment have been mentioned as under:

<b>Respondent(s) No.</b>	<b>Name of the Respondent (s)</b>	<b>Date of appointment</b>
<b>9<sup>th</sup> Respondent</b>	Mr. Devendra Kumar Agarwal	27.05.2013
<b>10<sup>th</sup> Respondent</b>	Mr. Berjis Minoos Desai	21.11.2014
<b>11<sup>th</sup> Respondent</b>	Mr. Anil Chandanmal Singhvi	07.11.2014
<b>13<sup>th</sup> Respondent</b>	Ms. Nisha Dutt	20.11.2014
<b>14<sup>th</sup> Respondent</b>	Mr. Sunil Hasmukhlal Shah	20.11.2014
<b>15<sup>th</sup> Respondent</b>	Mr. Prashant Desai	07.11.2014
<b>16<sup>th</sup> Respondent</b>	Mr. Jigish Shantilal Sonagara	21.11.2014

37. Learned counsel for the Appellants submitted that these Respondents (Appellants herein) should have been granted similar treatment as given to 28<sup>th</sup> Respondent- Mr. Chandran Thumparambil Nair, who was appointed as Company Secretary w.e.f. 10<sup>th</sup> October, 2013.

38. At this stage, it is required to be noticed that 28<sup>th</sup> Respondent- Mr. Chandran Thumparambil Nair was appointed as Company Secretary w.e.f. 10<sup>th</sup> October, 2013 onwards. In this background, the Tribunal held that he cannot be charged with the knowledge of the happening in 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) and no adverse order passed.

39. However, it is accepted that prior to 31<sup>st</sup> July, 2013, the 9<sup>th</sup> Respondent- Mr. Devendra Kumar Agarwal; 15<sup>th</sup> Respondent- Mr. Prashant Desai; and 16<sup>th</sup> Respondent- Mr. Jigish Shantilal Sonagara were functioning in other capacity as C.F.O etc. of '63 Moons Technologies Limited' (1<sup>st</sup> Respondent Company). Therefore, it cannot be accepted that they had no knowledge of any fraudulent act of 12<sup>th</sup> Respondent- Mr. Miten Narendra Mehta prior to 31<sup>st</sup> July, 2013.

40. The Tribunal accepted that 5<sup>th</sup> to 8<sup>th</sup> Respondents and 17<sup>th</sup> to 28<sup>th</sup> Respondents have joined FTIL Board ('63 Moons Technologies Limited') after the trading in NSEL was suspended on 31<sup>st</sup> July, 2013 and no specific allegations against them has been made by the Union of India. In that view of the matter, no relief was sought for by the Union of

India under Relief No. 17 (a) to (d).

41. The summary of the impugned order i.e. 4<sup>th</sup> June, 2018, reads as follows:

**“Summary of the Orders:**

1. *With respect to **relief No. 17.1(a)**-R2, R3, R4, R9, R10, R11, R13, R14, R15 & R16 are hereby declared as 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 Directors in any other company.*
2. *No directions have been given with respect to the **relief No. 17.1(b)** sought for by the petitioner.*
3. *With respect to **relief No. 17.1(c)**- The respondents (R2, R3, R4, R9, R10, R11, R13, R14, R15 and R16) have conducted themselves in a manner prejudicial to the public interest and the interests of the respondent companies. As has been discussed the actions of the respondents have shaken the public confidence in the Indian Commodity markets. The failure of the said respondents in exercising due*

*diligence has resulted in the suspension of trade in NSEL (R29) and has had/ will have adverse effects on the members and other stakeholders of the R1(FTIL) also.*

4. *With respect to the **relief No. 17.1(d)** sought for in the petition it is hereby ordered that the government may nominate not more than 3 directors to the board of R1 Company to take care of the interest of all stakeholders and also to protect the interest of the investment of the R1 company in its subsidiaries.*

***With respect to relief No. 17.1(a), (c) and (d)***

5. *Respondent Nos. 5 to 8, 17 to 28 have joined FTIL Board after the trading in NSEL was suspended on 31.07.2013 and no specific allegations against them has been made by the petitioner. In view of this, no relief as sought by the petitioner under relief No. 17(a) to (d) is granted against these respondents.*
6. *Regarding R12 it is seen that he was a company secretary from 30.10.2008 to 26.09.2013. He was only an officer in the employment of R1 Company and cannot be attributed to have any major say in the decision making of the R1 Company. In view of this no relief as sought for by the petitioner is granted*

*against R12. The post of Company Secretary was also not considered as a KMP during the period in which the acts of default have occurred in the subsidiary company R29(NSEL).*

***CP 1/2015 hereby stands disposed of together with all connected CAs, IAs with the above orders/directions.”***

42. Learned counsel appearing on behalf of ‘63 Moons Technologies Limited’ while raised similar issue submitted that unless the conditions prescribed in Section 242(1)(b) of the Companies Act, 2013 are satisfied, the Central Government is not entitled to any relief in these proceedings and therefore, there is no occasion to induct any Director in the Board of ‘63 Moons Technologies Limited’.

43. The Company Petition was filed by the Union of India under the old provision of Section 397-398 read with Section 402 of the Companies Act, 1956 (now Sections 241-242 of the Companies Act, 2013). As per Section 434 of the Companies Act, 2013, all cases transferred from Company Law Board to the Tribunal are to be dealt with in terms of the provision of the Companies Act, 2013. Therefore, the Tribunal is required to deal with the submissions in the matter under sub-section (2) of Section 241 r/w Section 242 of the Companies Act, 2013.

44. The Respondents before the Tribunal (Appellants herein) have not disputed that 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) was in the business of holding commodities. "Warehouse Receipts", which were the documents of title to the commodities were printed without the commodities being present in the warehouse. The Warehouse Receipts so printed were deceptively similar to the pro forma prescribed under the 'Warehouse Development and Regulatory Authority Act' and the Regulations framed thereunder, without being authorized by it. This was an act of forgery injuring the commodities/spot exchanges industry as a 'Spot Exchange' is defined as a marketplace where Warehouse Receipts are traded.

45. Even after rejection of the application of warehousing licence made by 'National Spot Exchange Limited' (29<sup>th</sup> Respondent), it represented to the WDR Authority that the 'National Bulk Holding Corporation', a group company of 'Financial Technologies (India) Limited' would undertake the warehousing activities for 'National Spot Exchange Limited' (29<sup>th</sup> Respondent). As a matter of fact, NBHC never undertook the warehousing for the paired contracts of 'National Spot Exchange Limited' (29<sup>th</sup> Respondent). After the collapse of 'National Spot Exchange Limited' (29<sup>th</sup> Respondent), 'Financial Technologies (India) Limited' divested its stake in NBHC. The effort was very clearly to deceive the public at large that there was some warehousing set up and everything was under control and even on 10<sup>th</sup> July, 2013, Mr. Jignesh Prakash Shah, the Common Director of Respondent No.1 and

29 made a detail and comprehensive presentation to DCA and FMC. All the acts which were against prejudicial to the public interest has been highlighted by the Central Government/ Union of India, as noticed in the preceding paragraphs and not disputed by the Respondents.

46. In these background, the Respondent No.1- '63 Moons Technologies Limited' and Respondent No.2-Mr. Jignesh Prakash Shah or other Respondents who were functioning against one or other post in '63 Moons Technologies Limited' cannot say that they had no knowledge about 'National Spot Exchange Limited' who has 100% shareholding in NSEL. The report of the forensic audit conducted on 21<sup>st</sup> September, 2013 shows the damning facts and figures as to the real operations of 'National Spot Exchange Limited' (29<sup>th</sup> Respondent). It shows that they are not a commodity exchange, but an illegal financing scheme, and that no commodities were really in stock.

47. In the circumstances, it cannot be stated that the Tribunal has not formed opinion that the action of the Company and particularly its subsidiary Company 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) has been conducted in a manner prejudicial to the public interest.

48. It is true that dual interest in terms of Section 242, the Tribunal while forming opinion that the Company affairs have been or are being conducted in a manner prejudicial to the interest of the Company, it also has to find out whether wind up of the Company would unfairly

prejudice to such member or members, but otherwise the fact would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up.

49. If the affairs of the Company have been or are being conducted in a manner prejudicial to public interest, though it may be beneficial to member or members of the company, such Company required to be wound up once such specific finding is arrived. It is in this background, as winding up of the Company is unfairly prejudice the member or members, but otherwise the fact would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up, hence, the impugned order was passed by the Tribunal.

50. It not in dispute that Respondent No.2-Mr. Jignesh Prakash Shah was Director of Respondent No.1-'63 Moons Technologies Limited' and 'National Spot Exchange Limited' (29<sup>th</sup> Respondent). Mr. Dewang Sunderraj Neralla and Mr. Manjay Prakash Shah (3<sup>rd</sup> and 4<sup>th</sup> Respondents respectively) were also functioning as Director prior to the date, i.e. 31<sup>st</sup> July, 2013 cannot state that they have no knowledge of illegal acts 'National Spot Exchange Limited' (29<sup>th</sup> Respondent). Therefore, no relief can be granted in their favour.

51. Respondent No.9-Shri Devendra Kumar Agrawal, Respondent No.15-Shri Prashant Desai and Respondent No.16-Shri Jigish Shantilal Sonagara were not the Directors before 31<sup>st</sup> July, 2013, but



it is not disputed that they were functioning in the other capacity in '63 Moons Technologies Limited', such as CFO etc. In such situation, it is not desirable to grant any relief in favour of Respondent No.9-Shri Devendra Kumar Agrawal, Respondent No.15-Shri Prashant Desai and Respondent No.16-Shri Jigish Shantilal Sonagara.

52. Respondent No.10-Shri Berjis Minoo Desai, Respondent No.11-Shri Anil Chandanmal Singhvi, Respondent No.13-Ms. Nisha Dutt, Respondent No.14-Shri Sunil Hasmukhlal Shah stated that they were appointed after 31<sup>st</sup> July, 2013. Their dates of appointment are 21<sup>st</sup> November, 2014, 7<sup>th</sup> November, 2014, 20<sup>th</sup> November, 2014 and 20<sup>th</sup> November, 2014 respectively. However, in the impugned judgment dated 4<sup>th</sup> June, 2018, it is shown that they were functioning as Directors of the Company, as under: -

<b>Respondent</b>	<b>Position</b>	<b>From</b>	<b>To</b>
<b>R2</b>	Ex- MD and also chairman Emeritus and Mentor of the Respondent No.1 Company	31.01.2012	20.11.2014
<b>R3</b>	Whole Time Director of R1 Company	31.01.2012	20.11.2014
<b>R4</b>	Whole Time Director of R1 Company	27.09.2012	20.11.2014
<b>R9</b>	Director- R1 Company	01.12.1990	29.09.2010
<b>R10</b>	Director- R1 Company	15.09.1994	21.02.2014
<b>R11</b>	Director- R1 Company	31.01.2001	20.07.2013

<b>R13</b>	Director- R1 Company	25.09.2009	20.08.2013
<b>R14</b>	Director- R1 Company	25.09.2009	21.10.2013
<b>R15</b>	Director- R1 Company	29.09.2011	26.08.2013
<b>R16</b>	Director- R1 Company	01.04.2012	10.08.2013

53. As there is a dispute about the dates of their appointment functioning as Directors of the Company as given by the Appellants and as recorded by the Tribunal, we are of the view that their matter should be reconsidered by the Tribunal to find out whether they were engaged after 31<sup>st</sup> July, 2013 or prior to the same. If it is found that Respondent No.10-Shri Berjis Minoos Desai, Respondent No.11-Shri Anil Chandanmal Singhvi, Respondent No.13-Ms. Nisha Dutt, Respondent No.14-Shri Sunil Hasmukhlal Shah were not functioning in any capacity in the Company ('63 Moons Technologies Limited'), including the post of Director prior to 31<sup>st</sup> July, 2013, they were entitled for similar treatment as given to Respondent No.28-Shri Chandran Thumparambil Nair and other Respondent Nos.5 to 8 or, who have joined after 31<sup>st</sup> July, 2013 in the Company.

54. In the impugned judgment (at page no.28), the Tribunal has wrongly taken into consideration the dates of appointment of Respondent No.2- Mr. Jignesh Prakash Shah, Respondent No.3- Mr. Dewang Sunderraj Neralla, Respondent No.4- Mr. Manjay Prakash

Shah, Respondent No.9- Mr. Devendra Kumar Agrawal, Respondent No.10- Mr. Berjis Minoo Desai, Respondent No.11- Mr. Anil Chandanmal Singhvi, Respondent No.13- Ms. Nisha Dutt, Respondent No.14- Mr. Sunil Hasmukhlal Shah, Respondent No.15- Mr. Prashant Desai and Respondent No.16- Mr. Jigish Shantilal Sonagara. We have verified their dates of appointment from the record submitted by the Union of India along with written submissions which shows that all of them appointed subsequently on the following dates:

<b>Respondent</b>	<b>Names</b>	<b>Date of appointment</b>
<b>R2</b>	Mr. Jignesh Prakash Shah	15.09.2000
<b>R3</b>	Mr. Dewang Sunderraj Neralla	15.09.2000
<b>R4</b>	Mr. Manjay Prakash Shah	01.04.2012
<b>R9</b>	Mr. Devendra Kumar Agrawal	27.05.2017
<b>R10</b>	Mr. Berjis Minoo Desai	07.11.2014
<b>R11</b>	Mr. Anil Chandanmal Singhvi	07.11.2014
<b>R13</b>	Ms. Nisha Dutt	20.11.2014
<b>R14</b>	Mr. Sunil Hasmukhlal Shah	20.11.2014
<b>R15</b>	Mr. Prashant Desai	07.11.2014
<b>R16</b>	Mr. Jigish Shantilal Sonagara	21.11.2014

54. In that view of the matter, while we uphold the impugned order dated 4<sup>th</sup> June, 2018, with regard to Respondent No.2- Mr. Jignesh Prakash Shah, Respondent No.3- Mr. Dewang Sunderraj Neralla, Respondent No.4- Mr. Manjay Prakash Shah and appointment of Government nominee not more than three Directors to the board of '63 Moons Technologies Limited' to take care of the interest of all stakeholders and also to protect the interest of the investment of the '63 Moons Technologies Limited' in its subsidiaries, however, the part of the order by which Respondent No.9- Mr. Devendra Kumar Agrawal, Respondent No.10- Mr. Berjis Minoo Desai, Respondent No.11- Mr. Anil Chandanmal Singhvi, Respondent No.13- Ms. Nisha Dutt, Respondent No.14- Mr. Sunil Hasmukhlal Shah, Respondent No.15- Mr. Prashant Desai and Respondent No.16- Mr. Jigish Shantilal Sonagara (Appellants herein) were declared as not fit and proper persons to hold the office as Directors or any other office connected with the conduct and management of '63 Moons Technologies Limited' and 'National Spot Exchange Limited' (29<sup>th</sup> Respondent) and were also not eligible for appointment as Directors in any other company, is set aside.

The appeals filed by Mr. Anil Chandanmal Singhvi (Company Appeal (AT) Nos. 185-186 of 2018); Mr. Devendra Kumar Agrawal (Company Appeal (AT) Nos. 187-188 of 2018); Mr. Sunil Hasmukhlal Shah (Company Appeal (AT) Nos. 189-190 of 2018); Mr. Jigish Shantilal Sonagara (Company Appeal (AT) Nos. 196-197 of 2018); Mr. **Company Appeal (AT) Nos. 185-186, 187-188, 189-190, 192, 196-197, 198-199, 200-201, 202-203, 204-205, 206-207, 208, 209 of 2018**

Berjis Desai (Company Appeal (AT) Nos. 198-199 of 2018); Ms. Nisha Dutt (Company Appeal (AT) Nos. 200-201 of 2018); Mr. Prashant Desai (Company Appeal (AT) Nos. 202-203 of 2018) are allowed. The appeals filed by Mr. Manjay Prakash Shah (Company Appeal (AT) Nos. 204-205 of 2018); Mr. Diwang Sunderraj Neralla (Company Appeal (AT) Nos. 206-207 of 2018) and Mr. Jignesh Prakash Shah (Company Appeal (AT) No. 209 of 2018) and '63 Moons Technologies Limited' (Company Appeal (AT) No. 208 of 2018) are dismissed.

In view of the above, no further relief is granted to the Union of India. Company Appeal (AT) No. 192 of 2018 filed by Union of India stands disposed of.

[Justice S.J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

NEW DELHI

12<sup>th</sup> March, 2020

AR

**12.03.2020:**

**N.B.** On the request of the learned counsel appearing on behalf of Respondent No.2- Mr. Jignesh Prakash Shah, Respondent No.3- Mr. Dewang Sunderraj Neralla, Respondent No.4- Mr. Manjay Prakash Shah, we allow the Committee to supervise the matter. However, with regard to stay of the impugned order is concerned, no order is passed.

[Justice S.J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

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