

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION (LODG.) NO.147 OF 2015****IN****WRIT PETITION NO.2743 OF 2014**

Financial Technologies (India)  
Limited and others

versus

Union of India and others

...Petitioners.

..Respondents.

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Mr. Janak Dwarkadas, Senior Advocate with Mr. Tushad Cooper with Shaleen Parikh, Mr. Nooruddin Dhillal Ms. Namrata Rao and Ms. Priyanka Vora i/b Amarchand & Mangaldas & Suresh A. Shroff & Co. for the Petitioners.

Mr. Anil Singh, Addl. Solicitor General i/b Mr. Jay Bhatia for Respondent No.1.

Mr. Iqbal Chagla, Senior Advocate with Mr. Shiraz Rustomjee, Senior Advocate with Mr. Jayesh Ashar and Mr. Mihir Mody i/b K. Ashar & Co. for Respondent No.2.

Mr. S.U. Kamdar, Senior Advocate with Mr. Ameet Naik, Mr. Abhishek Kale, Ms. Anuja Jhunjhunwalla and Mr. Vaibhav Bhure i/b Naik Naik and Company for Respondent No.3.

Mr. Gaurav Joshi, Senior Advocate with Mr. Piyush Raheja, Ms. Ruchi Chitalia, Mr. Sahil Gandhi, Ms. Nupur Desai i/b Markand Gandhi & Co. for Respondent No.4.

Mr. Sandeep Parekh with Ms. Ujjwala Deshmukh, Mr. Bijal Mehta, Ms. Nidhi Shukla i/b Deven Dwarkadas & Partners for Respondent No.6 in WP/2743/2014.

Mr. Aspi Chinoy, Senior Advocate with Ms. Ferzana Behram Kamadin, Ms. Shivani Khanna i/b FZB & Associates for the Applicants in NMWL/180/2015.

Mr. Akshay Patil with Ms. Hiral Thakkar i/b Federal & Rashmikant for the Intervenors.

**WITH  
WRIT PETITION NO.387 OF 2015**

Jignesh Shah and others ..Petitioners.  
versus  
The Union of India and others ..Respondents.

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Mr. Ravi Kadam, Senior Adcoate with Mr.Vineet Naik, Senior Advocate i/b Amarchand & Mangaldas & Suresh A. Shroff & Co. for the Petitioners.

Mr. Anil Singh, Addl. Solicitor General i/b Mr. Jay Bhatia for Respondent No.1.

Mr. Iqbal Chagla, Senior Advocate with Mr. Shiraz Rustomjee, Senior Advocate with Mr. Jayesh Ashar and Mr. Mihir Mody i/b K. Ashar & Co. for Respondent No.2.

Mr. S.U. Kamdar, Senior Advocate with Mr. Ameet Naik, Mr. Abhishek Kale and Ms. Anuja Jhunjhunwalla i/b Naik Naik and Company for Respondent No.3.

Mr. Gaurav Joshi, Senior Advocate with Mr. Piyush Raheja, Ms. Ruchi Chitalia, Mr. Sahil Gandhi, Ms. Nupur Desai i/b Markand Gandhi & Co. for Respondent No.4.

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**NOTICE OF MOTION (LODG.) NO.158 OF 2015  
IN  
WRIT PETITION NO.2985 OF 2014**

Ravi Sheth and another ...Petitioners.  
versus  
Union of India and others ..Respondents.  
and  
Ravi Sheth ..Applicant.

....

Mr. Zal Andhyarujina with Mr. Amit Vyas, Mr. S. Kulkarni i/b Economic Law for the Petitioners.

Mr. Anil Singh, Addl. Solicitor General i/b Mr. Jay Bhatia for Respondent No.1.

Mr. Iqbal Chagla, Senior Advocate with Mr. Shiraz Rustomjee, Senior Advocate with Mr. Jayesh Ashar and Mr. Mihir Mody i/b K. Ashar & Co. for Respondent No.2.

Mr. S.U. Kamdar, Senior Advocate with Mr. Ameet Naik, Mr. Abhishek Kale and Ms. Anuja Jhunjhunwalla i/b Naik Naik and Company for Respondent No.3.

Mr. Gaurav Joshi, Senior Advocate with Mr. Piyush Raheja, Ms. Ruchi Chitalia, Mr. Sahil Gandhi, Ms. Nupur Desai i/b Markand Gandhi & Co. for Respondent No.4.

**CORAM : B.R. GAVAI &  
A.S. GADKARI, JJ.**

**17<sup>th</sup> March, 2015.**

**P.C. :**

The present Notice of Motion i.e. Notice of Motion (Lodg.) No.147 of 2015 is taken out by the original Writ Petitioners seeking the following reliefs :

“(a) that, pending the final hearing and disposal of this Petition, this Hon'ble Court be pleased to restrain the 1<sup>st</sup> Respondent and its servants, agents, officers and subordinates from, in any manner whatsoever, taking any action whatsoever against or in relation to the 1<sup>st</sup> Petitioner pursuant to and/or in implementation of the impugned Draft Order of Amalgamation dated October 21, 2014, including but not limited to superseding, substituting or otherwise howsoever changing the management of the 1<sup>st</sup> Petitioner;

(b) that pending the hearing and final disposal of the present Writ Petition, the 1<sup>st</sup> Respondent, its servants, agents, officers and subordinates be restrained by an order and injunction from taking any steps in furtherance of or proceeding with Company Petition No..... of 2015 filed by the 1<sup>st</sup> Respondent before the Hon'ble Company Law Board at Delhi, against the 1<sup>st</sup> Petitioner

company and 28 Others under sections 397, 398 read with sections 388B, 388C, 401, 402, 403, 406 and 408 of the Companies Act, 1956;

(c) that pending the hearing and final disposal of the present Writ Petition, the 1<sup>st</sup> Respondent, its servants, agents, officers and subordinates, be restrained by an order and injunction from taking any steps whatsoever to supersede, replace, substitute or otherwise howsoever change the Board of Directors and/or the management of the 1<sup>st</sup> Petitioner, whether under sections 397, 398 read with sections 388B, 388C, 401, 402, 403, 406 and 408 of the Companies Act, 1956, or provisions similar thereto or otherwise howsoever;

(d) that pending the hearing and final disposal of the present Writ Petition, the 1<sup>st</sup> Respondent, its servants, agents, officers and subordinates, be restrained by an order and injunction from taking any steps whatsoever to obstruct, interfere with and /or hamper the prosecution of the present Writ Petition by the Petitioners and /or the representations / objections that are sought to be made to the 1<sup>st</sup> Respondent in respect of the impugned Draft Order dated October 21, 2014, passed by the 1<sup>st</sup> Respondent;

(e) for ad-interim reliefs in terms of prayers (a), (b), (c ) and (d) above;

(f) for costs of this Notice of Motion; and

(g) for such further and other reliefs as the nature and

circumstances of the case may require.”

2. Notice of Motion (Lodg.) No.158 of 2015 has been taken out by the Petitioner in Writ Petition No.2985 of 2014 for similar reliefs. Since the issues are identical in all these matters, they are heard together and decided by this common order.

3. The facts giving rise to the present Petition are undisputed. It is not in dispute that one National Spot Exchange Limited (hereinafter referred to as 'NSEL') is a subsidiary company of the present Writ Petitioner. The said NSEL was dealing in trading of the commodities. It is the allegation that the dues of investors to the tune of Rs.5,600 Crores could not be settled in as much as warehouse receipts were issued without the actual goods being available in the warehouse. Respondent No.2 in the Writ Petition i.e. Forward Markets Commission had passed an order on 17<sup>th</sup> December, 2013 holding that the present Writ Petitioner had rendered it unfit to remain incharge of the affairs of the NSEL and as such directed divesting of shareholding of MCX.

4. The Respondent No.1 - Union of India also passed a draft order on 21<sup>st</sup> October, 2014 under the provisions of Section 396 of the Companies Act, 1956. The said order passed by the Union of India came to be challenged by way of present Petition in this Court. A

Division Bench of this Court (Shri V.M. Kanade and Smt. Anuja Prabhudessari, JJ) vide order dated 27<sup>th</sup> November, 2014 directed the parties to maintain status quo and further directed that no further steps be taken by the Union of India till the next date.

5. The Union of India filed a Notice of Motion (Notice of Motion (Lodg.) No.69 of 2015 in the present Writ Petition) requesting for vacating of the order of status quo. The Division Bench of this Court (Shri. V.M. Kanade and Smt. Revati Mohite-Dere, JJ) vide order dated 4<sup>th</sup> February, 2014 vacated the order of status quo. Vide the said order the Division Bench also clarified that the Petitioners and all other interested may file their objections within thirty days and within four weeks thereafter, the Central Government may pass appropriate order after giving brief hearing to all the interested parties. It was further clarified that the contentions raised by the Petitioners in this Petition and by the shareholders of NSEL and all other parties regarding the jurisdiction of the Central Government to issue the said order as also with regard to the challenge to the said Sections was kept open. In that view of the matter, the Petition was kept pending. It was clarified that if any adverse order is passed, the same shall not be notified for a period of two weeks after the order was communicated to the Petitioners. In view of the same. the status-quo order passed by this Court on 27<sup>th</sup> November, 2014 was vacated. By the said order dated

4<sup>th</sup> February, 2015 it was clarified that the Central Government may pass such orders which the Central Government may deem it fit and proper in accordance with law.

6. In the meantime, on 25<sup>th</sup> February, 2015 Respondent No.1 - Union of India filed a petition before the Company Law Board, New Delhi purportedly under the provisions of Sections 397, 398 read with 388B, 388C, 401, 402, 403, 406 and 408 of the Companies Act, 1956.

7. In this background, the present Notice of Motion has been taken out by the Petitioners for the reliefs aforesaid.

8. We have heard Mr. Dwarkadas, learned senior counsel appearing on behalf of the Petitioners in Writ Petition No.2743 of 2014, Mr. Kadam, learned senior counsel appearing on behalf of the Petitioners in Writ Petition No.387 of 2015 and Mr. Andhyarujina for the Petitioners in Writ Petition No.2985 of 2015.

9. We have also heard Mr. Anil Singh, learned Additional Solicitor General of India for Respondent No.1 in these Writ Petitions, Mr. Chagla, learned senior counsel appearing for Respondent No.2 and Mr. Gaurav Joshi for Respondent No.4 in the original Writ Petition.

10. The main contention as raised by Mr. Dwarkadas is that though

the present Petition with regard to challenge to the virus of Section 396 is pending before this Court and though an impression was given to this Court that the final order under Section 396 would be passed by the Union of India in accordance with law, in order to ensure that there is no opposition, to the draft order passed under Section 396, by the present Petitioners, the proceedings before the Company law Board have been filed by the Union of India so that the draft order under Section 396 is made, a final order, without there being any objection. The learned senior counsel submits that it is the directors of the Petitioners who are interested in the affairs of the Petitioner company and opposed to amalgamation of the Petitioner with Respondent No.3. It is, however, submitted that in order to see to it that there is no opposition to the draft order and the draft order is made final order without hindrance, the present proceedings are initiated before the Company Law Board so that the present directors are removed and the directors of the choice of the Union of India are appointed on the board of the present company who will not oppose the amalgamation.

11. The learned senior counsel submits that the manner in which the Union of India has proceeded would show that it has proceeded in a manner which would amount to criminal contempt of this Court. It is submitted that though vide order dated 4<sup>th</sup> February, 2015 the time



given for filing objections would have come to an end on 6<sup>th</sup> March, 2015 prior to that on 25<sup>th</sup> February, 2015 the proceedings which are subject matter of the present Notice of Motion have been filed. The learned senior counsel submits that this is nothing else but an attempt to interfere with the administration of justice. The learned counsel relies on the judgment of the Apex Court in the case of **Delhi Development Authority v. Skipper Construction and another** reported in **(1995) 3 SCC 507**. The learned senior counsel, therefore, submits that the present Notice of Motion deserves to be allowed and the reliefs as claimed need to be granted.

12. Mr. Kadam, adopts the submissions made by Mr. Dwarkadas. However, in addition he submits that there are so many independent directors with high credentials. However, the same are also being terrorized by the Union of India by making wild allegations against them. The learned senior counsel submits that making such wild allegations during the pendency of the present Petition also amounts to nothing else but criminal contempt of Court.

13. Mr. Andharujina apart from adopting the submissions made by Mr. Dwarkadas and Mr. Kadam submits that In view of sub-section (12) of Section 149 unless there are specific allegations against the Petitioners in his petition, the proceedings would not be tenable as

against the Petitioners in his petition.

14. We find that the main Writ Petition, pending before this Court, is on a wider challenge contending that the provisions of Section 396 are ultra virus to various fundamental rights as enunciated in the Constitution of India, in as much as the private parties are thrust to amalgamate against their wishes. Undisputedly vide order dated 27<sup>th</sup> February, 2014 this Court had initially granted an order of status quo. However, on a Motion made by the Union of India vide order dated 4<sup>th</sup> February, 2015 the said order of status quo has been vacated and the Union of India has been permitted to pass a final order in accordance with law after giving an opportunity to the parties to file their submissions and hear them on merits.

15. We are also of the considered view that the proceedings under Section 396 and the proceedings initiated by the Union of India which is the subject matter of the present Petition are totally in a different field. The proceedings under Section 396 are with regard to amalgamation of two companies. However, the proceedings which are the subject matter of the present Notice of Motion are for the purpose of preserving the property of the company, in the background of the complaint that the affairs of the company are being conducted in a manner prejudicial to the public interest or in a manner oppressive to

the member or members. The provisions for which an action is sought by the Union of India is also pertaining to removal of directors, on the basis of allegation that the directors are found to be involved in the mismanagement of the affairs of the company.

16. In any event, the proceedings are before the Company Law Board which is a statutory quasi judicial authority. All the contentions with regard to the high credentials of the directors of the Petitioners and the contentions regarding the allegation by the Union of India being without any substance and baseless, can be very well raised before the Company Law Board. The Company Law Board while passing any order either final or interim is bound to take into consideration the rival submissions made before it. The apprehension as expressed by the learned counsel for the Applicants/ Petitioners is totally misplaced. The Company Law Board while passing any order either final or interim, would always be required to arrive at a subject to satisfaction as to whether a case is made out by the applicants before it for grant of the reliefs claimed by the applicants either at interlocutory stage or final stage. Apart from that, the orders passed by the Company Law Board are also appellable before the High Court. If the reliefs as claimed in the present Notice of Motion are granted, in our view, would amount thwarting the proceedings initiated by the Union of India before the competent quasi judicial authority which is

established under the provisions of law. It would amount to taking away the jurisdiction of an authority which is vested in it.

17. In so far as the reliance placed by Mr. Dwarkadas on the judgment of **Delhi Development Authority** (supra) is concerned, no doubt that an interference in the administration of justice would amount to contempt of Court. In the case which is cited by the learned counsel, **Skipper Construction and another**, the party had not only acted in breach of the order of injunction granted by the Apex Court but had also attempted to create a third party interest, and had filed a suit claiming reliefs which were directly in conflict with the directions issued by the Apex Court. In that view of the matter, no doubt reliance placed by Mr. Dwarkadas on the said judgment in support of the submissions regarding criminal contempt of Court is well placed, but the said judgment is not at all applicable to the facts of the present case, in as much as nothing can be said to be done by the Union of India, which is in contravention of the orders passed by this Court. We are unable to find anything in the order dated 4<sup>th</sup> February, 2015 passed by the Division Bench of this Court which can be said to be restraining the Union of India from initiating the proceedings before the Company Law Board, like the one which has been filed by it before the Company Law Board. In that view of the matter, we do not find the contention raised by the Applicants /

Petitioners regarding criminal contempt can be said to with any merit.

18. In that view of the matter, we find that Notice of Motion (Lodg.) No. 147 of 2015 and Notice of Motion (Lodg.) No.158 of 2013 are without substance and as such are dismissed.

**(A.S. Gadkari, J.)**

**(B.R. Gavai, J.)**

Bombay High Court