Project Dissertation

STUDY OF NSEL SCAM AND IMPACT ANALYSIS OF FTIL – NSEL MERGER

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Certificate from the Institute

This is to certify that the Project Report titled "**Study of NSEL Scam and Impact Analysis of FTIL – NSEL Merger**", is a bonafide work carried out by Mr. Neeraj Kumar (2K14/MBA/48) of MBA 2014-16 and submitted to Delhi School of Management, Delhi Technological University, Bawana Road, Delhi – 110042 in partial fulfilment of the requirements of the award of the Degree of Masters of Business Administration.

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Declaration

I, **Neeraj Kumar,** student of MBA 2012-14 of Delhi School of Management, Delhi Technological University, Bawana Road, Delhi-42 declare that Dissertation Project Report on “**Study of NSEL Scam and Impact Analysis of FTIL – NSEL Merger”** submitted in partial fulfilment of Degree of Masters of Business Administration is the original work conducted by me.

The information and data given in the report is authentic to the best of my knowledge.

This Report is not being submitted to any other University for award of any other Degree, Diploma and Fellowship.

Neeraj Kumar

Place: New Delhi

Date:

ACKNOWLEDGEMENT

This project has been a very good learning experience for me in the way that it has given me the opportunity to learn about the corporate governance and how a lapse of it can lead to a mega scam. This project also helped me in understanding the concept of mergers and how different bodies are involved to carry out a merger.

I express my deep sense of gratitude to my honourable advisor Prof. G.C Maheshwari, DSM for his endeavour approach and outstanding supervision by which it has been possible for me to make a good combination of theoretical and practical knowledge in preparing this report.

I forfeit my respect to all the faculty members of DSM and thank all my friends who provided me all the support which I needed to gather information and knowledge.

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ABSTRACT

The National Spot Exchange Limited (NSEL), the fully owned subsidiary of Financial Technologies (India) Limited (FTIL) was hit by a scam which affected the market, the regulators, investors and all other stakeholders and a discussion started about the lapses of corporate governance and lapses on all front by the NSEL and even by the regulators. Recently, the government has notified to merger NSEL with its parent FTIL. FTIL has challenged this notice into the Bombay High Court as it will have to bear Rs. 5500 crore liability of NSEL.

This study aims at understanding the genesis of the NSEL scam and its impact of the first forced merger by the Government of India on all stakeholders. Various documents have been referenced and all the data available have been analysed to find out the root cause of the NSEL scam. Annual reports of both companies along with the guidelines laid by the government have also been analysed to find out the impact of merger order on all the stakeholders.

Through this study it has been tried to provide insight of all the happenings which led to closing of NSEL and now the amalgamation order by government in a neutral manner considering all facts and implications.

Keyword Index: NSEL, FTIL, Merger, MCA, Corporate Governance

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LIST OF ACRONYMS

BFX	Bahrain Financial Exchange
BSE	Bombay Stock Exchange
DGCX	Dubai Gold and Commodities Exchange
ED	Enforcement Directorate
EOW	Economic Offence Wing
FCRA	Forwards Contract Regulation Act, 2010
FDI	Foreign Direct Investment
FII	Foreign Investment Institution
FMC	Forwards Market Commission
FSDC	Financial Stability and Development Council
FTIL	Financial Technologies India Limited
HNI	High Net-Worth Individual

IEX	Indian Energy Exchange
IPO	Initial Public Offering
MCA	Ministry of Corporate Affairs
MCX	Multi-Commodity Exchange
NAFED	National Agricultural Cooperative Marketing Federation of India
NBHC	National Bulk Holding Corporation
NSE	National Stock Exchange
NSEL	National Spot Exchange Limited
PPP	Public Private Partnership
RoC	Registrar of Companies
SMX	Singapore Mercantile Exchange
WR	Warehouse Receipt

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CHAPTER – 1

INTRODUCTION

1. INTRODUCTION

1.1. Problem Statement

In last two decades India has witnessed few mega scams. NSEL scam was one of such scams which made news in 2014 and recently when the Government of India announced the merger of NSEL with its parent FTIL. This study tries to answer the problem statements stated below:

- What were the causes of the NSEL Scam?
- What were the lapses in corporate governance?
- Was there any lapse on the part of government and the regulators of Indian Markets?
- What will be the impact of proposed merger of NSEL with FTIL on the various stakeholders?

This research work tries to answer the above questions.

1.2. Rationale of the Study

On October 21st, 2014 Government of India announced merger of NSEL with its parent FTIL. This move was historic as this was the first time in history that Indian government was going for the forced amalgamation of any subsidiary with its parent. Against this decision FTIL went into to court and currently the matter is sub-judice in front of Honourable Mumbai High Court. There are more than 18,700 shareholders of FTIL and more than 1000 employees. NSEL had defaulted INR 5600 crores to its clients. So there is an argument that in the public interest the burden of INR 5600 crore should be transferred to FTIL thus this order of amalgamation [1] was issued by Ministry of Corporate affairs on 12th February 2016. Earlier MCA had issued a draft order [2] of amalgamation on 21st October 2014 which was challenged in the court, MCA had then said that it is the mere draft order and the final decision will be taken after hearing representations from all stakeholders. Details of representations received in respect of proposed amalgamation of NSEL with FTIL in the Ministry are given in the table 1.1.

Table 1.1. Details of representations received in respect of proposed amalgamation of NSEL with FTIL in the Ministry

Name	Categories of Senders			
	In favour of merger	Against the merger	Suggestions by senders	Total Records
Shareholders FTIL	2618	45803	1	48422
Shareholders NSEL	0	0	0	0
Employee FTIL	0	1203	0	1203
Employee NSEL	0	0	0	0
Investors NSEL	479	5	0	484
Creditors FTIL	0	81	0	81
Creditors NSEL	39	1	0	40
FTIL	0	2	0	2
NSEL	0	6	0	6
Industry Chamber	0	1	0	1
Investor Forum	9	0	0	9
Others	66	68	7	141
Total Records	3211	47170	8	50389
Percentage	**6.37**	**93.61**		

As we can see from the table 1.1, only 6.37% of the stakeholders represented in favour of the merger and 93.61% represented against the merger. It is fair to study the rationale behind this merger decision of MCA and to find out whether it is in public interest or not. To understand the whole case it is important to study the real lapses and root causes which led NSEL to fall and do the impact analysis of the proposed on all the stakeholders and the market.

1.3. Company Profile

1.3.1. FTIL

Financial Technologies India Limited (FTIL) is a financial services firm which prides itself as a global leader in cutting edge technology for Risk, Exchange, Brokerage, Messaging, and Consulting Solutions etc. It was founded by Mr. Jignesh Shah in 1988 and had its first IPO in 1995. Before 1995, it was operating as a technology developer for financial markets. FTIL established India's first Derivatives Trading Platform and has since developed institutions like MCX (2003), NBHC, DGCX, lEX, SMX, and Bourse Africa.

The company has got unique positioning as a creator of electronic, regulated and organized financial market for investor and new asset classes that are not served by traditional financial market due to issues like less coverage. Overall FTIL has a network of 2 ecosystem ventures and 5 exchanges with about 80% market share in India. The expertise of FTIL is unparalleled as it is the only company to have established 6 exchanges connecting India with Middle East, Africa and South East Asia. It operates on a non-linear business model and it is super speciality institution for new financial markets. The best part about their model is that it is scalable and flexible and extremely robust to achieve economies of scale for pre-trade, trade and post-trade scenarios.

FTIL has mentioned three main objectives in their ‘Visions’ section in their website. They are as follows:

- Build a technology company - main focus is on Intellectual Property Rights creation
- Build a brand-centric model - generation of sustainable annuity revenues
- Leverage strong technological platforms - transaction intensive multi-billion dollar business

Founder of FTIL, Mr. Jignesh Shah, is known for his innovation in successfully implementing PPP (Public Private Partnership) Model for creating top notch financial institutions. He is also the founder of MCX (Multi-Commodity Exchange) and DGCX (Dubai Gold and Commodities Exchange), IEX (Indian Energy Exchange), Bahrain Financial Exchange (BFX), SMX (Singapore Mercantile Exchange), Bourse Africa and a few others.

Table 1.2. Company Overview of FTIL

Company Name	Financial Technologies India Limited. (FTIL)
Website	www.ftindia.com
Slogan	Creating Markets Unlocking Value
Company Type	Public
Trades as	**BSE:** FINTECH **NSE:** FINANTECH
Industry/Sector	BFSI
Key People	Jignesh Shah, Chairman and Group CEO Dewang Neralla, Co-Founder Prashant Desai, MD and CEO
Head Office	Chennai, India
Products	Stock Exchange

FTIL Evolution

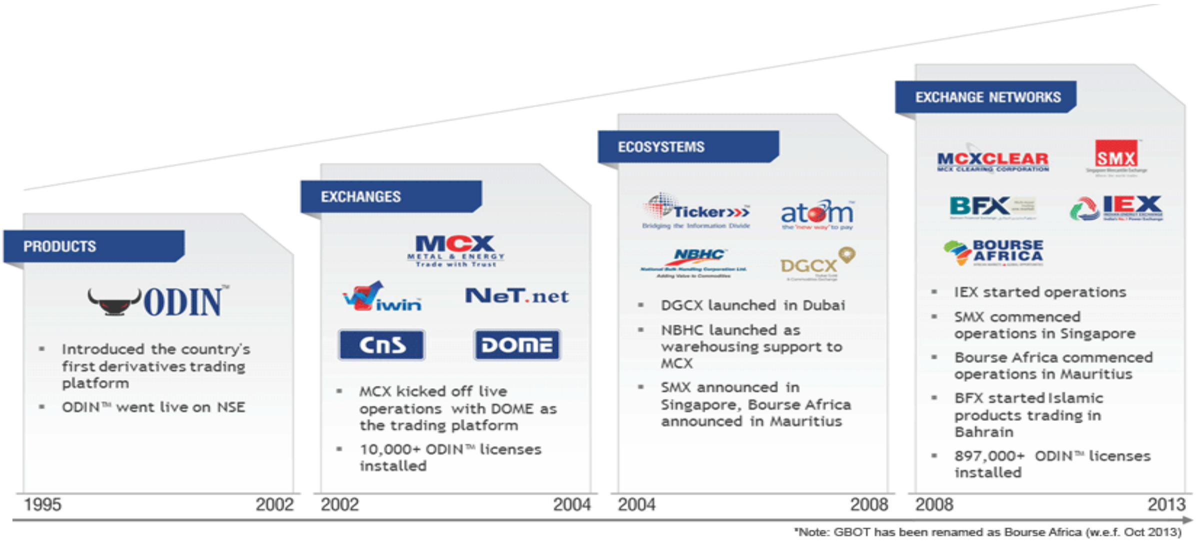

Fig 1.1. FTIL Evolution. Retrieved from www.ftindia.com

1.3.2. NSEL

National Spot Exchange Limited (NSEL) was established in month of May, 2005 with the main aim of spot exchange for trading of commodities. In June 2007, NSEL obtained some exemptions from following all the provisions of Forwards Contract Regulation Act (FCRA) subject to certain conditions. NSEL introduced an electronic platform to its clients in October 2008 through which they could perform spot trading of different commodities such as bullion, metals, and agricultural produce like potato, onion, ginger, coffee beans etc. As the biggest stock exchanges of India, BSE and NSE list their trading members as brokers, so does NSEL. These brokers act on behalf of different clients all over India and carry out buying and selling of different commodities in the process of exchange. NSEL was suspended from further trading by the Government in 2013 following a scam coming to light. It also lists NAFED (National Agricultural Cooperative Marketing Federation of India) as a co-promoter. In exchange of using the brand name of NAFED, NSEL gave NAFED 100 shares only as a token.

1.3.3. Jignesh Shah – Victim of Over Ambition

At 49, Jignesh Shah is one of the leading textbook iconic entrepreneurs of India in the field of finance. He is the man responsible for starting up of the NSEL (National Spot Exchange Limited) and FTIL (Financial Technologies India Limited) and various stock exchanges all over the world. He revolutionized commodity trading in India but his ambition went a little too far. The crude entrepreneur has been the reason of much of negative media attention in the past year following the well-known NSEL Scam, a company of whom he was the founder. Sources known to Jignesh Shah said he was ruthless in his business tactics and very often blurred the line between right and wrong. For the past 15 years, Jignesh Shah has been on an uphill climb following the mantra "Everything is fair in love, war and business." This visionary has ironically been called short-sighted because he failed to see what is beneficial to his shareholders as well as himself.

Shah was the man behind the birth of MCX (Multi-Commodity Exchange) that was listed in BSE in 2012. FTIL set up by Shah in 1988 is a provider of technology for brokers, risk, exchange and consulting services. He is also the founder of DGCX (Dubai Gold and Commodities Exchange), IEX (Indian Energy Exchange), Bahrain Financial Exchange (BFX), SMX (Singapore Mercantile Exchange), Bourse Africa and a few others.

Shah was ambitious, no doubt and that was what carried him forward not only in Indian market but also to far off shores. Shah went wrong at many places due to this break-neck ambition of his, which led to his arrest following the NSEL fiasco. Shah was accused of not co-operating with police during questioning and his reputation was maligned. Thus, the rise of Jignesh Shah was super-fast but the fall from the top was harder. Much like his success story, Shah himself went horrifyingly wrong and the fate of the 13000 investors who invested around Rs 5,689.95 crore in NSEL is unsure till date.

Shah was the kind of person who liked to boast of his successes so when he was asked by the head of some large company willing to invest in NSEL how he was able to beat the competition NSPOT by NSE and still have high volumes; he simply replied that he knew the market better. But in reality his firm NSEL was violating several clauses of the Forwards Contracts (Regulation) Act, such as, contract cycles could not extend beyond 11 days and short-selling which were not allowed. It was questioned by the Department of Consumer Affairs (DCA) in this matter and it went into a payment crisis. NSEL was clearly selling things that did not exist in their warehouses nor did they have any funds to pay back the investors.

As soon as the news of NSEL scam came out the investor's confidence is Shah's other ventures like FTIL and MCX started diminishing resulting in declining stock prices.

During the course of events, Shah and Anjani Sinha (former CEO of NSEL) were the main accused and both implicated the other during investigations. They were both jailed but Shah managed to get out on bail.

Jignesh Shah was moving very fast from one venture to another. NSEL needed his attention but he was busy with making MCX the best. Shah and Dewang Nerella had built up their empire from scratch. Shah was a one-time software engineer at BSE's online trading system. He went on to quit BSE after his and Nerella proposal for software upgradation in BSE was rejected. They started a company called JCS where Shah built a software ODIN which went on to become his largest revenue earner. He took aggressive measures to get ahead of the competition like launching crude oil trading at Rs. 2128 per barrel six months before the competitor NCDEX started trading crude oil by which time the prices had risen to Rs. 2553 per barrel. A rival once said that Shah was always one step ahead of him and he could not fathom how.

Shah was good at recruiting experienced and apt people for his companies. He even brought in people from FMC (Forwards Market Commission) to be in his good books. Sinha, on the other hand, said that he wanted less people recruited by Shah on the board as they were mostly ex-bureaucrats or government servants.

Shah was a supporter of *vyaj badla* which is a type of trading in which trade can be carried forward as long as investor wanted, provided a financier is available. He spoke openly when it was banned. He also got special permission for one-day forward for his company. NSEL offered paired contracts fooling the investors by saying their portfolio is being diversified.

After the storm that Jignesh Shah's venture faced, FTIL is facing the challenge of merging with NSEL as ordered by the government of India. NSEL, by itself is defunct now.

The stories of several investors' losses have caught the headlines in the media after the news broke of NSEL defaulting on payments. Nobody imagined Shah and his glorified NSEL would fail so miserably.

Now, there is nothing left for Shah but to be on a long path of recovery and rectification, collecting pieces of his broken reputation and building it back up. His core competency was technology and being the 'technology scientist' that he is he should concentrate more on that rather than on exchanges.

1.4. Organization of Report

The rest of the report is organised as follows:

- Chapter 2 gives an overview of the literature review done in carrying out this work.
- Chapter 3 explains the research methodology i.e. how the data was collected and what were the limitations and scope of the project.

- Chapter 4 explains the entire case study giving background of the NSEL scam and understanding the merger decision of MCA.
- In chapter 5 the conclusion of the study is given based on the study the recommendations are made.
- Chapter 6 is the reference section which lists of all the research paper and articles which have been referenced for this study.
- List of appendices are given at the end of the report.

CHAPTER – 2

LITERATURE REVIEW

2. LITERATURE REVIEW

Several articles and papers have been written about the government's announcement of merger of NSEL and FTIL. To understand the background of this decision of the government it is important to understand the history of NSEL, FTIL, The NSEL Scam and also Jignesh Shah - the common promoter of both these entities. Some of the earlier works which have been referenced for this report are discussed in brief below.

The article "FTIL-NSEL Merger: Bad in Law & Policy?" [1] by Sanjay Asher which was published in 'The Financial Express' highlights the lapses by the regulators and government bodies like Ministry of Corporate Affairs (MCA), Forwards Markets Commission (FMC) in dealing with the entire NSEL Scam and explains how the MCA's draft order of the merger is against the guidelines of Section 396 of The Companies Act, 1956. According to this article the decision of merger was taken is a haste and it is an unfair call for the stake holders of FTIL and it is not in the public interest.

The paper "NSEL Scam: What Went Wrong"[2] by SK Gupta highlighted the lapses on the promoters and management of the FTIL and NSEL based on the audit reports by the audit firms Grant Thornton, Choksi and Choksi and PWC.

The paper "Hard Hit Investors: Governance Lapses of NSEL Scam" [3] by Abhay Kumar, Asst. Professor of NMIMS University, Mumbai and Dr. Shilpa Rastogi, Director of Universal College of Management have explained in very crisp form the modus operandi of NSEL and how it used to engage in forward paired contracts ranging from T+1 to T+35 contracts being a Spot exchange where contracts should have been settled within T+11 days. The paper suggests that the borrowers were the real looters in the scam and the NSEL was also at fault.

"Mergers & Acquisitions: What Winners Do to Beat the Odds" [4] an executive insight report by the L.E.K Consulting in their volume XV, issue 16 gave the idea about the revenue drivers for the shareholders of the amalgamating companies and what strategies should be adopted for the profitable merger.

MCA's orders having short titles "National Spot Exchange Limited and Financial Technologies (India) Limited (Amalgamation in Public Interest) Order, 2014" [5] and "National Spot Exchange Limited and Financial Technologies (India) Limited (Amalgamation in Public Interest) Order, 2016" [6] explained the point of view of the government and rationale behind their merger decision.

The article "Rise and Fall of Jignesh Shah" [8] published in the Forbes Magazine on 5th September 2014 explained the journey of Jignesh Shah and how he started various exchanges and then NSEL from being a software developer at BSE. This article also explained the modus operandi of NSEL.

A news article published by PTI titled "Ministry Probe Finds Corporate Governance Lapses at NSEL" [9] was published on 01 December 2013 which states that the ministry investigation has found lots of lapses on all fronts of corporate governance i.e. Ethics, Transparency, Integrity, Compliance and Transparency. This paper set the base to dive deep into the corporate governance norms and how NSEL did not follow them which led to the scam.

The research paper "An Insight into NSEL Scam" [10] by B.V Pushpa, Assistant professor, M P Birla Institute of Management and R Deepak, the Research Scholar of Manipal University gives the insights of the NSEL of scam and how an organization (NSEL) established to help farmers by setting up of electronic exchange to bring transparency and provide better price for farmers turned into an evil and become a case study of lapse of corporate governance and the failure of regulatory and the government. The paper raises serious questions on the government and the regulatory authorities in India.

Mergers and Acquisition Module by National Spot Exchange which is a part of their certification was studied to understand various aspects of the Mergers and Acquisitions and how due diligence is done. The module also gave details about the synergy and the valuation of the merger along with all the regulatory norms necessary to carry out amalgamation.

<u>**CHAPTER – 3**</u>

METHODOLOGY

3. METHODOLOGY

3.1. Objectives

Objectives of this study involve:

i) Finding the root cause of NSEL's failure
ii) Understanding the role of corporate governance and how much it can impact any organization's debacle taking case of NSEL
iii) Understanding role of regulators and investigate their decisions in case of NSEL and FTIL
iv) Impact Analysis of proposed merger of NSEL with FTIL

3.2. Scope of Study

Scope of this study was to find out the lapses which led NSEL to fall in a fair and neutral manner. This study was neither being done for NSEL/FTIL nor for the government and the regulators.

This study aimed at getting insights from the facts and documents already available in the public domain and no assumptions are taken by the will of author.

The calculation of the synergy based on detailed valuation using any model like DCF was beyond the scope of this study though some important ratios were calculated to comment on the impact of amalgamation on the parent company.

3.3. Data Collection & Processing

The research is carried out by gathering all the factual data and statements related to NSEL and FTIL. Financial statements of both the companies in concerned are taken from their respective websites and other facts have been gathered from the statements of concerned persons in the past, court judgements, previous research works and various websites.

Various government acts and regulations have been referenced to understand the guidelines for the operations in the markets and for the corporate governance norms set up by the government for the companies some of them are The Forward Contracts (Regulation) Act, 1952; Securities Contracts (Regulation) Act, 1956; The Companies Act, 1956 etc.

In the entire series of incidence all the relevant documents were read carefully to get the views of all the perspectives so that unbiased examination of the situations can be done.

In order to analyse the impact of the proposed amalgamation the financial statements of both the organizations are analysed using the Ratio Analysis and Profitability, Liquidity, Valuation, Activity and Solvency ratios are calculated in order to get the insights.

The timeline which have for which the data has been gathered ranges from 1988 when FTIL was formed to till date.

CHAPTER – 4

CASE STUDY

4. CASE STUDY

4.1. Introduction to the Case

In the year 1988 Jignesh Shah had founded FTIL, It saw huge success after 1995 when ODIN, the first derivative trading platform was launched in India by FTIL group. Since then FTIL continued to flourish.

NSEL was formed by the joint venture of FTIL and NAFED in 2005. The FTIL and NSEL saw all the glory of success till NSEL was hit by the crisis in 2013 when it did not have the money or the stock to pay their investors and finally NSEL was shut down by FMC's order of not issuing any fresh contract and also FTIL was declared by "not fit and proper" to run an exchange which shook FTIL group because they were forced to shut down their exchanges which were successfully running in multiple countries

In 2014 the government passed a draft order to merge NSEL with the FTIL. FTIL opposed this decision of government and the matter is now before the Honourable Mumbai High Court.

This case presents a neutral perspective of all the happenings which led to the fall of NSEL and also tries to access the profits and gains by the stakeholders of NSEL and FTIL if they are merged.

4.2. The NSEL Scam

4.2.1. Important Terms to Understand the Case

1) **Spot Market:** The spot market also called Cash Market is the market where the underlying asset (Commodities in this case) is sold for the cash and the delivery of the asset takes place immediately. The time given for settlement is T+1 or T+2 depending on the market which is based on the underlying asset. In other words the settlement period of T+2 means the buyer commodity received the commodity after 2 working days from the trade date.

2) **Spot Price:** The quoted price for the immediate delivery of the underlying asset is called the Spot Price.

3) **Forward Contracts:** Forward contracts also called simply "Forwards" is the contract where the delivery of the underlying asset takes place at a future date decided at the time of the agreement and the price is also decided at the time of agreement. The buyer can not ask the seller to give the asset at market price which can be lower than the agreed price similarly the seller can not demand the market price of the asset which can be higher than the earlier agreed price the delivery happens at the price agreed upon previously at the time of contract.

4) **Forward or Future Price:** The forward or future price is the price at the time of contract for the delivery of an asset at a future date.

5) **Expiration Date:** The final settlement date when the exchange of asset of the contract takes place.

6) **Arbitrage:** It is the process where a person buys and sells the asset at the same time in different markets to lock the profit due to difference in the prices in the different market. For example if the price of one thing is INR 10 in India and it is INR 20 in China the arbitrager will buy in India and at the same time sell them in China to lock the profit of INR 10.

7) **Paired Contract:** Paired contract is a contract in which same person goes into buy and sell contract at two different times in future. This is generally done when there is an arbitrage opportunity.

4.2.2. Background of the Scam

The NSEL was setup with the noble intension of eliminating the middle men and intermediaries from the producers i.e. the farmers and the buyers of the farm product by providing an electronic platform to exchange the commodity between the farmers or producers and the traders, exporters, traders and processors. The spot exchange promised to revive the rural economy by institutionalization, electronic platform, demutualization and transparent operations. NSEL was promoted by Financial Technologies India Limited (FTIL) along with the National Agricultural Marketing Federation of India (NAFED) aiming to promote agricultural products, bullion, metal and energy by providing an electronic exchange.

All initial goodwill lost when the fraud of Rs. 5600 crore surfaced after the NSEL could not pay the investors of paired contracts in commodity. The NSEL was a spot exchange so as per norms directed by Forwards Contracts Regulations Act, 1952 all the contracts termed as SPOT must be settled within T+11 days i.e transfer of money and delivery of product must take place within 11 days and Spot exchange.

Normally in spot market the exchange of money and the underlying asset takes place immediately but NSEL was a special case it got an exemption by Ministry of Corporate Affairs by a special notification which allowed to trade in one day forward contracts i.e contracts to be completed in T+2. But NSEL did not stick to only T+2 contracts instead they started offering special kind of paired contracts of buying and selling the same commodity on T+2 and T+23 and even T+2 and T+30 days respectively. This kind of paired contract gave arbitrage opportunity to the investors and fetched lots of profit to the investors and brokers. Later it was discovered that the NSEL had no inventory to deliver the product after T+20 or T+30 days and all the trade was happening just on the warehouse receipt without actual commodity lying in the warehouse.

Once this information came into existence the regulators came into the action but only after INR 5600 crore of the investors was defaulted. On 5th August 2013 the NSEL was shut down completely and series of arrests happened and investigation is still going on with the matter in front of Honourable Mumbai High Court. The entire series of events is summarized in Fig. 4.1.

- Apr' 98 — •FTIL led by Jignesh Shas was incorporated
- Nov' 03 — •Trading operations commenced by MCX
- Jun' 06 — •MCX became largest commodity exchange of India
- Oct' 08 — •Jignesh Shah led NSEL started delivery based trading in 52 commodities
- Mar' 12 — •MCX became India's first Listed Exchange
- Apr' 12 — •NSEL was issued show cause notice by Dept. of Consumer Affairs saying Spot allowed was voilated by forward contract norms
- Jul' 13 — •DCA prohibited NSEL to launch any new contract until new regulatory framework is established
- Jul' 13 — •NSEL susppended trading in most of the commodities
- Aug' 13 — •NSEL sacked top management after it defaults to its most of the investors
- Oct' 13 — •Jignesh resigned from MCX board
- Dec' 13 — •FMC declared Shah as "not fit and proper" to run an exchange
- May' 14 — •MCX's MD shreekant Javalgekar and Shah were arrested by Mumbai Police's Economic Offence Wing
- Jul' 14 — •Kotak Mahindra Bank announced to buy 15% share in MCX from FTIL
- Aug' 14 — •EOW files chargesheet against Jignesh Shah
- Feb' 16 — •MCA ordered merger of NSEL with its promoter FTIL

Fig. 4.1 Timeline of Events

4.2.3. NSEL's Modus Operandi

There were four players involved in the entire trade. They were the buyers, the sellers, the brokers and the exchange.

The sellers of the commodity used to take their commodity to the NSEL's warehouse. After examining the underlying goods the warehouse used to issue receipt called the warehouse receipt (WR). Then the sellers used to go to the exchange and Spot Sell the WR at INR 100 to buyers. Now since the NSEL used to offer paired contract the same seller who sold the goods at 100 had to go for buy position at T+25 at INR 115 and a commission was given to the exchange. Similarly, the initial buyer goes into the sell position at T+25 at INR 115. This way the initial buyer was getting guaranteed 15% profit, the NSEL used to get commission from both ends and the sellers used to get short term finance at 15% interest which was reasonable for those looking for short term finance and were not getting those from banks.

The above trade was illegal as NSEL was allowed only T+2 contracts and in any case spot contract couldn't be settled for more than T+11. Moreover it was found that the goods never lied in the warehouse and there were 24 planters in the NSEL who used to trade using the WR and when they had to settle the contract they used to generate another fake WR and trade using that.

The entire modus operandi is summarised in the Fig. 4.1.

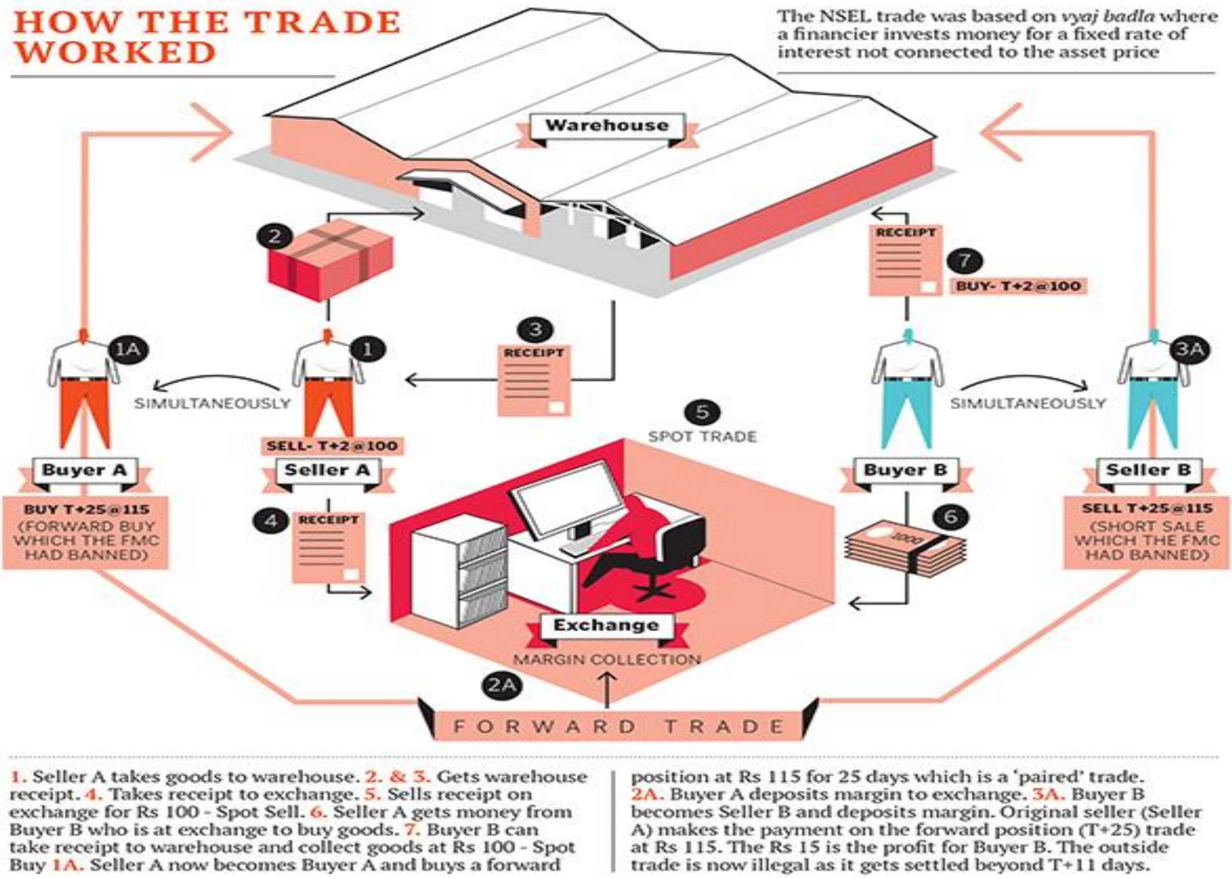

Fig. 4.2. How the Trade Worked., Panchal, S., Palande, P. (2014, Sep 1), Retrieved from http://forbesindia.com/article/real-issue/the-rise-and-fall-of-jignesh-shah/38535/3

In the entire process the real gainers were the brokers who used to take commission from both the buyers and the seller and the real losers were the investors who's INR 5600 crore got stuck once NSEL defaulted in paying them.

4.2.4. Lapses of Corporate Governance

Serious lapses in corporate governance were part of NSEL. It consisted of a menu of violations of Company's Act accompanied by lack of compliance, integrity, transparency and any kind of ethics.

The failure of corporate governance was at multiple levels of the organizations. This was stated in the interim report given by the Registrar of Companies (RoC) that carried out an inspection.

SEBI also carried out an investigation into the matter specifically from the corporate governance point of view. The share prices of listed entities like FTIL and MCX were also under constant SEBI supervision as well as the role of some particular brokers. Following the scam an independent audit was taken by consultancy PWC on orders of FMC. The audit report was given to FMC as well as to SEBI.

Violations of regulations included the non-performance of board members and how issues like non-compliance of different rules, such as, new member admission rules were conveniently left un-discussed in board minutes.

The minutes of meetings were also fabricated to some extent with blatant disregard for rules and common ethics.

Board also did not fulfil its duties to the interest of shareholders who put much at stake for the exchange. We can say there was a conflict of interest of different parties here.

Declaration of defaults was another major corporate governance infringement

Directors of NSEL, like Joseph Massey, Jignesh Shah and some others also had common directorship in other ventures of FTIL group which in itself was a little fishy. Still, they made the ridiculous claim that they had no idea of what was going on at NSEL. They played a blame game and resigned and no one took responsibility of their actions.

As per interim reports of RoC and FMC promoters including Jignsh Shah were also responsible for all the lapses.

Independent auditors like Deloitte Haskins & Sells LLP, Mukesh Shah & Co and S V Ghatalia & Associates came under the scanner as to how they were giving the green flag to NSEL when other auditor like Grant Thornton, PWC, Chokshi and Choksi confirmed the fraud and they even indicated that the board was involved.

Apart from that, under Section 209 A of Companies Act, 1956 inspection into the books of NSEL yielded many discrepancies some of which were:

- Majority of minutes of meetings of the NSEL board were found to be fabricated.

- Some of the warehouses did not exist which were mentioned on the NSEL website.
- The Settlement Guarantee Fund of around Rs 839 crores (about US $140 Million), as on 29 July 2013, was only on paper.
- Mukesh P Shah, a maternal uncle of Jignesh Shah has been internal as well as external auditor of NSEL, by virtue of possession of FTIL shares alone he should have been disqualified as an auditor. He was also blamed of Insider Trading
- The permission to trade long-dated contracts were never discussed in any director's report which was required to do so.

Economic Offences Wing of Mumbai Police has charged NSEL directors, promoters and defaulters with forgery, cheating, criminal conspiracy and breach of trust, to name a few. At least 5 people were arrested by EOW.

Combined with the lapses by regulatory bodies in governing NSEL, the happenings in NSEL was just a time bomb waiting to explode.

4.2.5. Lapses of Regulatory Bodies

Failure of NSEL as a spot commodity exchange was no doubt due to many firm-specific reasons. However, the fact that the Government and different regulatory bodies like FMC, FSDC and MCA had made quite a few lapses in taking action in spite of having knowledge of the wrongdoings going on at NSEL can't be ignored. Some of the lapses are explained below.

First and foremost, there was no clearly defined regulatory body made by the Central Government with regard to spot exchanges. On one hand, SEBI was not claiming any rights to govern NSEL. On the other hand, the Ministry of Corporate Affairs (MCA), the Financial Stability and Development Council (FSDC) and the Forwards Market Commission (FMC) were at war over whose jurisdiction it fell under. MCA insisted that FMC had the authority to intervene all the while delaying its own responsibility up until the 6th of February, 2012 when it finally issued a notification. This was around an 8 month delay.

FMC, DCA and FSDC all communicated with each other over the months of June till August, 2011 regarding NSEL issues but could not find common ground to take any regulatory action.

The sub-committee of FSDC, with RBI-Governor itself as chairman advanced the argument that FMC was not suitable to handle and control issues at NSEL and advised for a regulatory framework to be "addressed urgently". Rajiv Agarwal, secretary of Department of Consumer Affairs got written communication from R. Gopalan, former secretary of the Department Economic Affairs stating the view of FSDC on the matter. With FMCs support Agarwal wrote back saying FSDC was not correct in its viewpoint. Hence, began the argument between DCA and FSDC. Meanwhile, FMC took upon itself to look into 7 issues of NSEL and put a ban on short-selling.

Retail Investors got involved in trades of commodities with no understanding of the grades and margins of the commodities being sold or the supply-demand scenario. Brokers were under the impression that the promoters of NSEL are the same reliable figures of FTIL.

Warehouse Development and Regulatory Authority (WRDA) exists as an independent warehousing regulator but it was clueless as to accreditation of warehouses owned by NSEL. National Bulk Handling Corporation is another company set up by FTIL group which was suspiciously involved in the setting up of the warehouses which were also under some key person's properties at NSEL.

Regular audits were also missing by the regulators leading to the mishappenings. Irate investors have claimed that regulators went easy on NSEL and took no action despite full knowledge of what was going on. Now SEBI and FMC have to find the path to payback thousands of investors waiting over a year now.

A simple exemption of rule, that is, to be under supervision of FMC, by ministry of consumer affairs led to the birth of NSEL. Little did they know, this very exemption will be used to make a Ponzi-scheme?

Major fact remains that NSEL was not at all under supervision for quite long time and it did as it pleased. NSEL is a perfect example of how Jignesh Shah and other directors became crafty businesspersons by taking advantage of regulatory loopholes to loot the gullible public. Even the legally banned transactions were carried out nonchalantly in NSEL which further shows how unregulated it was.

Biggest lapse by regulators was that NSEL was allowed to retain funds of investors for a “financial product” which were collaborated in so-called “investment opportunity”.

Political pleasing, disregard of public interest and *coalition dharma* are reasons cited by former PM Manmohan Singh for such scams.

Regulatory defects are not limited to just commodity trading. There are many issues in other markets which have not seen the light of day yet.

4.3. Proposed Merger of NSEL with FTIL

On 21st October 2014 MCA had issued a draft order of merger of NSEL with FTIL. This order was based on the recommendations of FMC. The basis of this decision was taken as section 396 of Companies Act, 1956 whose constitutional validity was challenged in the Bombay High Court by FTIL, the court had ordered a status quo on 27th November, 2014 which was later vacated on 4th February 2015 when Solicitor General of India told the court that based on *prima facie* view the MCA has issues a “Draft” order and its merely a draft and all the concerned parties can raise their concerns.

After 17 months of court proceedings and hearing with NSEL investors, public shareholders and management of FTIL, the Union Ministry of Corporate Affairs ordered the merger of NSEL with its parent FTIL on 12th February 2016. In its order the government said that they were satisfied that merger is in the public interest.

As soon as the decision came out reactions from all sections started coming in. Meanwhile Mumbai High Court directed that the merger order of MCA will not be notified immediately and FTIL will be allowed to challenge the order.

Prashant Desai, the MD of FTIL stated "Pursuant to the Bombay High Court's Order, FTIL had represented its case in the hearing given by the MCA in October 2015 putting forth all its objections to the Draft Merger Order. The way the hearing went and the way thousands of shareholders, employees and creditors had objected to the proposed merger, we were hopeful that the MCA will take an objective view of the matter and withdraw the Draft Merger Order. Hence, the passing of the Merger Order today — while matters are sub-judice — is highly disappointing."

On the other hand the investor group "NSEL Aggrieved and Recovery Association (NAARA)" welcomed the decision of merger and in their statement stated, "We shall remain grateful to the Ministry and the Government for the passing the order, and all other authorities, forums that have empathised with the cause of aggrieved investors. Most importantly, it gives confidence to investors those Exchanges, which are institutions of implicit trust, cannot be forced to fail by acts of fraud. The public interest prevails over every other contention."

The Mumbai High Court has currently put a stay order on the notification.

4.3.1. Compliance with Policy & Law

Sections 396 of The Companies Act, 1956

Clause (1) of Section 396 of the Companies Act, 1956 says that Where the Central Government is satisfied that it is essential in the public interest.

Whether the merger is in public interest or not is in question as the merger will not doubt make the recovery of money of investors faster but it will adversely affect more than 17000 shareholders, thousands of employees, creditors, vendors and other stakeholders of FTIL by fastening the debt of NSEL worth INR 5600 crores to FTIL. So in which case more public will be benefitted is a question.

Clause (3) of Section 396 says that if the interests of shreholders of both the companies is hampered then they are to be compensated by the resulting company this indicates that the section 396 was not meant to fasten third party liability on the healthy company when the liability itself is unproven and under court's purview.

Moreover the majority of the claimants are belonging to HNIs and Corporates who traded with knowing the risks and reward, the small claimant's claim was already settled either fully or partially. So it can not be said with confidence that the investors were innocent. Also the genuineness of the 13000 trading clients is also under the investigation by High Court Committee after certain client's complaint against the brokers for modifying the clinet code and involved in forgery and benami transactions.

So the use of Section 396 in the name of public interest can be seen against the government's focus on the ease of doing business if it is against the majority interests of the shareholders, creditors and employees.

Piercing the Corporate Veil

To force the merger the corporate veil between the FTIL and NSEL has to be lifted but as per general norms the corporate veil cannot be lifted unless the fraud on the part of the parent corporation is proven in the court of law. This matter is currently sub-judice before the Honourable Mumbai High Court. And in an order dated 22nd August 2014 the court had held that no money trail is found to any of the promoter of NSEL or FTIL. So in such circumstances without waiting for the final judgement of the civil suit the recommendation may seem prejudged if MCA goes ahead with the merger while the matter remains in the court.

Simplified Procedure for amalgamation of Government Companies U/s 396 of the Companies Act, 1956. GENERAL CIRCULAR NO. 16/2011 by MCA

According to the above circular date 20th April 2011, MCA had layed down guidelines for the compulsory merger of government companies in which MCA had stated that in such cases a resolution should be passed with overwhelming support of the shareholders and creditors. But in the case of NSEL and FTIL more than 96% shareholders and creditors have given written opposition letter.

Considering this it will clearly send a message that the government has discriminatory approach to private companies as compared to the government companies.

Limited Liability

The concept of limited liability says that the owners of any corporation are not personally responsible for the debts and obligations of the corporation. With the forced merger the concept of limited liability will be in question which may adversely affect the confidence of the local and foreign investors considering that FTIL has FDI and FII investments.

Decrees and Injunctions Filed so Far

While considering the merger that it should be kept in mind that INR 524 Crores have already been paid, NSEL had filed 150 cases against defaulters obtaining decrees worth INR 1233 Crores and Injunctions worth 3428.86 crores in addition the EOW has attached asset worth INR 5000 crores of the defaulters under Maharashtra Protection of Depositors Act and ED attached assets worth INR 1200 crore. Based on these it can be seen that the claims of the investors are adequately secured. The merger can only fast track the claims.

4.3.2. Impact Analysis

The proposed merger will impact the following:

- Claimants/trading clients of NSEL
- Shareholders of FTIL
- Employees
- Creditors of FTIL
- FII & FDI investors of FTIL
- Market Sentiments

The proposed merger will impact each of the above mentioned. Let us analyse the impact on each of the above in details.

Claimants/Trading clients of NSEL

As per the MCA's order after the merger the debt of INR 5500 crore fo NSEL will be taken care off by the resultant company after the merger. This would mean that the claimants of money from NSEL can expect a speedy recovery of their money.

Out of these 13,000 trading clients of NSEL 7000 had already been partially settled and all those who had exposure of less than INR 10 lakhs have been fully settled. The remaining is of some HNIs and corporates who can be benefitted from the proposed merger.

Shareholders of FTIL

The proposed merger will adversely impact the market capitalization of FTIL by putting the debt burden of NSEL on FTIL. It will erode its net worth which will impact the more than 17,800 shareholders adversely as they will lose money due to falling of net worth and market capitalization of FTIL.

Employees of FTIL

Employees of FTIL will also feel the heat of merger as the company will be burdened with extra debt of more than 5000 crore which will hamper the overall health of FTIL and thus affect the employees as well because FTIL may look at reducing their work force.

Creditors of FTIL

The liquidity position of FTIL will be hampered by the merger and thus it will be a cause of concern for the creditors as the current ratio will fall from 13.85 to 7.32 after the merger.

FDI and FII investors of FTIL

The confidence of FDI and FII investors of FTIL may shake because they may feel that the concept of limited liability is being destroyed by the forced merger when the fraud on the parent company is yet to be proved.

Market Sentiments

Market sentiments can be affected in the mixed way as for those market players who are getting affected by the non payment of money from NSEL will be able to get their settlement faster and their confidence will be boosted as it will sent a message that the investor's money is secured in the country and the exchange can't do fraud and get away.

On the other hand market can feel that the government is doing unjust by lifting corporate veil and compromising the concept of limited liability implying there is not ease of doing business and government treats private and public firms differently considering that majority of the stakeholders of NSEL and FTIL opposed the merger.

Below are some of the ratios calculated from the current FTIL financial statements and also when NSEL will be merged to FTIL. This helps us understand the impact of merger better.

Table 4.1. Some Ratios - Before and After Merger

Particulars	FTIL Before Merger	NSEL	Net After Merger
Current Assets	172421.76	38147.91	210569.67
Current Liabilities	12452.57	16295.02	28747.59
Current Ratio	**13.85**	**2.34**	**7.32**
EBITDA	32896.06	-8613	24283.06
Total Income	60368.01	36909	97277.01
EBITDA Margin	**0.54**	**-0.23**	**0.25**
Share Capital	92100	6000	6921
Net Profit	44513.88	-11077	33436.88
ROE	**4.83**	**-1.85**	**0.34**
Total Debt	48034.88	22531.82	70566.7
Total Equity	277994.2	885.79	278879.99
D/E Ratio	**0.17**	**25.44**	**0.25**

Current Ratio

The current ratio will fall from 13.85 to 7.32 after the merger, it means the liquidity position which is vital for creditors will be adversely affected.

EBITDA Margin

The EBITDA margin will be reduced by more than 50% from 054 to 0.25 this shows that the operating health of FTIL will be adversely impacted and the operating efficiency of FTIL will be eroded.

ROE

ROE of FTIL after merger will become 4.83 as compared to current 0.34 which means that the efficiency of FTIL to generate profit for every unit of shareholder's equity will be adversely impacted.

D/E Ratio

Debt-to-equity ratio of the FTIL after merger will be creased to 0.25 from 0.17 which means it will be doing more debt financing than equity financing which is poor for the health of FTIL.

4.4. NSEL's Version on the Scam and the Merger Decision

In a report published by NSEL titled "9 Reasons Why NSEL is Fighting the Bias and Injustice" NSEL gave 9 reasons according to which they were made a victim and if the FMC and the government would have helped them they could have sailed out from the crisis.

Below are the 9 reasons given by NSEL:

1. **NSEL failed because of FMC's forceful closure order, not on its own.**

- As per NSEL they were carrying a business which was perfectly legitimate and legal and it had no history of delayed settlement in their tenure of operation it is the FMC's sudden decision to close the operation at NSEL which created the liquidity problem. It was like suddenly closing a bank which is fully operational and asks them to pay to all the customers immediately without operating, it is bound to make the bank default on many customers.

On 23rd November 2011 FMC gave a particular reporting format to all spot exchanges including NSEL to submit the fortnightly trading data to FMC. NSEL had given the desired daily report without fail but still NSEL was issued a show cause notice by DCA on the recommendation of FMC for short selling and contracts of more than 11 days settlement period. NSEL had promptly given a detailed reply but FMC and DCA did not reply for more than a year and suddenly asked to close all operations in July 2013 without doing any assessment of the situation.

2. FMC had not helped in resolving the issue and all the burden of forced closure was taken by NSEL and FTIL

- NSEL alleged FMC that FMC created this whole crisis but did not help in any way. FMC had no clue about what were the implications of the forced closure on the general market and on the clients. FMC never allowed any conversation by NSEL on the operational aspect of stopping the exchange and how to contain the damage caused by sudden closure of NSEL.

  It was FTIL who came into rescue by giving loan of INR 179.25 crore without any prejudice and also supported NSEL with human and other resources with which NSEL was able to settle the small traders having exposure less than 10 lakh. NSEL initiated settlement measures and was able to settle all the 33,000 e-series contracts trading clients.

  NSEL also said that while it has cooperated with all the investigating agencies like EOW, ED, CBI etc the FMC has treated them like convict and offered no help. As per NSEL they have taken responsibility to persuade defaulters by filing several cases, and seeking decrees and injunctions. **(See Annexure 3)**

3. NSEL achieved substantial success in recovery on its own, FMC provided no support

- NSEL gained goodwill in the industry when it intervened and was able to get an order from Mumbai High Court on 2nd September 2014 to appoint a 3 member committee who will monitor and assist in the settlement and recovery. Time to time NSEL has taken lots of recovery measures and distributed the recoveries among the clients. Some of the recovery efforts are listed below:
  - NSEL signed agreement with defaulters to settle their liabilities on timely basis, though the defaulters are not complying the agreement.
  - Approximately 400 assets of defaulters were traced by NSEL and handed over to police.
  - NSEL did the analysis of balance sheet of all the defaulting companies to trace their assets.
  - NSEL conducted 23 recovery review meetings with the Monitoring and Action Committee.
  - NSEL filed 3 arbitration petitions
  - NSEL filed 64 complaints against those whose cheque bounced.

  Overall the following have been achieved in the recovery process:

Table 4.2. Achievements of Recovery Process

Actions	Value
Defaulter's asset attached by EOW	INR 5000 Crore
Defaulter's asset attached by ED	INR 800 Crore
All E-series clients settled by NSEL	33,000 clients
Partially settled clients in trade contracts	7,000 clients
Total amount paid in settlement	INR 543 Crore
Decrees obtained so far	INR 1,233 Crore
Injunctions obtained so far	INR 4,516 Crore

4. **NSEL accused FMC for a conspiracy in which NSEL was targeted.**

- There was a meeting of FMC with the defaulting members on 4th August, 2013. NSEL's biggest question had been why FMC did not disclosed what he found in the meetings with the defaulters and FMC did not try to trace the funds of clients from the defaulters moreover FMC did not even filed any complaint against any of the defaulter in front of EOQ, ED or CBI.

NSEL raised the question that when NSEL was giving fortnightly updates of all the transactions then why FMC had not raised any red flag earlier if there were any discrepancy? Further FMC was accused by NSEL for not taking any action against the defaulters who were the real reason behind the crisis and also no action against the brokers who were found to be involved in lots of irregularities some of them are listed below:

- Gave false information and assurance to clients
- Fabricated the documents
- Unauthorized trading without consent and knowledge of their clients
- Manipulated ledger accounts
- Some clients were privately settling with defaulters

As per NSEL, FMC could have easily solved the issue if they would have trapped the defaulters and brokers as they were in small numbers but accounted for the bulk of claims. This claim was based on following facts

1) 30 brokers accounted for 68% of the claims
2) 6% of the clients accounted for the 69% of the claims and
3) 7 defaulters owed up to 85% of the claims

5. FMC was biased against NSEL and FTIL were as they left the real culprits free

- NSEL said that the FMC was intrusted to be a regulator of spot market but FMC failed to carry out that task instead they took punitive action of FTIL and NSEL based on biased audits and let free all other parties and never tried to resolve the issue or helping in recovery also FMC did not take any action against the broker who carried out benami transactions.

  Just after the forced closure in a letter dated 6th August 2013 Ministry of consumer affairs, Food and Public Distribution directed FMC to take actions against all the parties but FMC took action only against NSEL and FTIL when in investigations it was clear that FTIL or its promoters never received any benefit from the operations of NSEL. The order by special court (MPID) dated 27th November 2013 confirmed while rejecting the bail plea of one of the defaulter company's (N.K Proteins) promoter and director Mr. Nilesh Patel confirmed that each penny of money was traced back to 22 defaulters but still all action was taken against NSEL and FTIL. Adding to that FMC declared FTIL "not fir and proper" for running many exchanges which was set up by FTIL in several countries this caused FTIL to sell its stakes at very lower value which in turn caused severe loss to the investors. Considering all these NSEL finds FMC's actions unjustified and biased.

6. **FMC went beyond the regulatory briefs and governance and its recommendations were and are detrimental to NSEL and FTIL**

- NSEL raised question on FMC that it never bothered to carry out an oversight and regulatory work of protecting the interest of investors and suddenly with DCA they directed NSEL not to issue any contract. Moreover when the matter is sub-judice the order of merging NSEL with FTIL can be considered as a mature decision.

  NSEL also questioned the authority of FMC to declare FTIL "not fit and proper" as per them FMC does not holds such rights.

  NSEL compared the action taken by FMC with other regulators on other crisis situations. Some of them are listed in below table:

Table 4.3 Some Past Crisis Situations and Action by Regulator

Issue	Regulator	Action Taken by Regulator
NSDL IPO Scam	SEBI	• No action at all against promoters/board members or management • Proceedings against 103 key operators and financiers were initiated. • Formed a committee to advise the various course of possible actions headed by former Judge of Supreme Court of India.
NSEL Scam/Problem	FMC	• Action taken only against FTIL & NSEL • No action against 7 defaulters who owe 85% claims even when the money trail is fully

		established • No action against brokers • Confused everyone by running away from responsibility
Ketan Parekh Scam	SEBI & RBI	• No action against NSE • SEBI suspended Ketan Parekh • RBI cancelled license of MMCB
NSEL Scam/Problem	FMC	• No action against defaulters.
Flash Crash at NSE and 900 Points Crash at NIFTY	SEBI	• SEBI continued to look into the problem • Reprimanded NSE after 2 years to take corrective measure

7. **Huge social cost had to be paid in forms of loss of jobs, incomes and opportunities by the FMC's biased actions**

- FTIL group of which NSEL was also a part, had run many exchanges across the world. Prior to the FMC's decision of declaring not fit and proper FTIL ran exchanges in 10 jurisdictions. Some of the exchanges included MCX which was 2nd ranked exchange in term of no of contracts traded in commodity derivatives, Indian Energy Exchange which was the 1st as well as largest power exchange of India, MCX Stock Exchange which was the leading global exchange for the currency derivatives, Dubai Gold & Commodities Exchange (UAE), SME (Singapore), GBT (Mauritius) Bourse Africa (Botswana), Bahrain Financial Exchange (Bahrain), etc.

  In a joint study by Tata Institute of Social Science and MCX, it was found that MCX had the potential to create one million jobs alone in the commodity market plus the revenue it will generate to the state through taxes, stamp duty etc.

  The economic and social impact can be summarized as under:

  - Loss of Jobs
  - Reduction in opportunities for employment
  - Huge reduction in trading volumes
  - Steep decline of revenues and fees
  - Lower tax realization
  - Market expansion stopped
  - Self-employment opportunity for youth and women declined

- Diminishing of India’s position in global market
- Reduced hedging potential

8. Proposed NSEL’s merger with FTIL is against the spirit of Law

- As per NSEL the proposed merger is unethical as FTIL had given full support to NSEL and it can’t be forced for the merger which will destroy its valuation and 63000 shareholders along with 1000 employees, creditors, vendors and other stakeholders will be adversely affected. NSEL also called the step unproductive as it will destroy all the efforts made so far in recovery and resolution. NSEL also terms the forced merger decision as unlawful as the concept of limited liability is clearly breached.

9. Due to FMC’s decision, India lost its dominance in the Global Financial Markets

- Following statistics show how India has lost its dominance in the global financial markets.

Table 4.4 Rank of Indian Commodity Exchanges Among Global Exchanges

Rank of Indian Commodity Exchanges Among Global Exchanges		
Year	India's Top Commodity Exchange	India's 2nd Largest Commodity Exchange
2012	10	32
2014	24	34

Fig. 4.3 No of Contracts Treaded on Indian Comm. Exchange

CHAPTER – 5

CONCLUSION & RECOMMENDATIONS

5. CONCLUSION & RECOMMENDATIONS

5.1. Conclusion

Following are the conclusions which can be drawn from this study:

- Since the matter is sub-judice, we can't judge who was/were the real victims behind the NSEL crisis but certainly there were lapses on everyone's part.
- Promoters, Employees of NSEL who indulged in the illegal trading, brokers who forged documents and were doing benami transactions, regulators who were blind for years to resolve the jurisdiction of NSEL all are responsible for the crisis in one way or another.
- MCA's decision to merge NSEL and FTIL was based on the recommendations of FMC and it was not clear if the FMC recommended this based on any in-depth enquiry and whether FMC was able to establish that "it is essential in public interest" which is required by section 396 or its recommendation was merely on:

  i) Health (Financial) of FTIL

  ii) 99.9% Shareholding of FTIL in NSEL

  iii) Representation made by traders and brokers who may be the interested parties and

  iv) Lack of financial and human resources with NSEL to recover the defaults

  The decision seems to be taken in hurry and many questions needs to be answered by the FMC and MCA as well.

- NSEL and FTIL did not follow corporate governance norms and result was the debacle of the promising organization which could have taken India to a next level in the global market. India also lost lots of employement opportunities by shutting down of the all the exchanges of FTIL when it was declared "not fir and proper" to run an exchange

5.2. Recommendations

Based on this research we would like to recommend the following:

- Everyone who did not perform their duty in the case of NSEL should held accountable be it the promoters of the FTIL/NSEL, the regulators, Brokers, Traders, Borrowers or any employee of the organization.
- The decision of MCA based on FMC has not been backed by the concrete explanations and the whole merger is in the public interest is questionable. Under such circumstances the FMC and MCA should release the detailed report explaining the basis of considering the merger in public interest and who are the public whose interest is bigger than around 20,000 shareholders, employees, creditors and vendors of FTIL?
- Since the matter is sub-judice the government should not rush with its decision to merge FTIL and NSEL as if it came out in court that FTIL was not at fault then it would mean that unjust had happened to them. In the public interest government can ask the court to fast-track the proceedings.
- Each of such scams is an opportunity to strengthen the regulatory framework of the country. In case of NSEL for years it was not clear under whose purview the NSEL falls. It is an opportunity to go back to the drawing table and identify and fill the loop holes.
- Every corporate debacle in India has shown the lapses of corporate governance, this is no different case. The government should lay down clear norms of corporate governance and it should monitor each company's compliances with the corporate governance norms laid for them on quarterly, half-yearly or yearly basis.

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APPENDICES

Appendix I: List of Borrowers/Planters

Sl. No.	CM Id.	Name of the Borrowers	Total Outstanding Amount (O/S)	Amount Paid	Net O/S
1	13960	AASTHA MINMET INDIA PVT LTD	26.47	3.02	23.45
2	14070	ARK IMPORTS PVT LTD	719.42	0.05	719.37
3	14770	JUGGERNAUT PROJECTS LTD.	220.2	1	219.2
4	14460	LOIL CONTINENTAL FOOD LTD	356.21	8.5	347.71
5	14470	LOIL HEALTH FOODS LTD	294.48	7	287.48
6	14350	LOIL OVERSEAS FOODS LTD	86.19	1.08	85.11
7	14180	LOTUS REFINERIES PVT LTD	252.56	0.08	252.48
8	14680	METKORE ALLOYS & IND. LTD.	114.28	19.2	95.08
9	14510	MOHAN INDIA PVT LTD	600.08	52	548.08
10	14260	MSR FOOD PROCESSING	10.05	1.24	8.82
11	12510	N K PROTEINS LTD	969.89	17.48	952.41
12	13990	NAMDHARI FOOD INT. PVT LTD	53.07	2.05	51.02
13	14170	NAMDHARI RICE & GEN. MILLS	10.75	0.36	10.39
14	14230	NCS SUGARS LIMITED	58.85	5	53.85
15	13790	P D AGROPROCESSORS PVT LTD	644.55	12.96	631.59
16	14270	SANKHYA INVESTMENTS	7.74	7.23	0.51
17	13780	SHREE RADHEY TRADING CO	35.34	0.75	34.59
18	14630	SPIN COT TEXTILES PVT LTD	38.26	-	38.26
19	13910	SWASTIK OVERSEAS CORP.	102.98	9.44	93.54
20	14740	TAVISHI ENTERPRISES PVT. LTD.	333.01	-	333.01
21	14660	TOPWORTH STLS & PWR PVT. LTD.	188.01	175.25	12.76
22	14160	VIMLADEVI AGROTECH LIMITED	14.02	0.08	13.94
23	14050	WHITE WATER FOODS PVT LTD	86.12	1.3	84.82
24	14310	YATHURI ASSOCIATES	424.64	19.04	405.6

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Appendix II: Decrees and Injunctions Obtained by NSEL

Details of Decrees obtained by NSEL against defaulters			
Sr. No	**Name of Defaulter**	**Amount (in Cr.)**	**Order Date**
1	ARK IMPORTS PVT LTD	719.37	20-07-2015
2	YATHURI ASSOCIATES	264.96	18-12-2014
3	JUGGERNAUT PROJECTS LTD.	145	23-12-2014
4	AASTHA MINMET INDIA PVT LTD.	12.5	23-12-2014
5	SWASTIK OVERSEAS CORPORATION	91.19	18-12-2014
	TOTAL:	**Rs. 1233.02**	

Details of Injunction obtained by NSEL against defaulters			
Name of Defaulter	**Amount Claimed in TPN / Suit / Section 9**	**(in Cr.)**	**Date of BHC Order for Injunction**
1	ARK IMPORTS PVT LTD	719.42	24-12-2014
2	P.D. AGRO PROCESSOR PVT. LTD.	680.23	11-04-2014
3	YATHURI ASSOCIATES	405.6	01-10-2014
4	JUGGERNAUT PROJECTS LTD.	219.2	26-09-2014
5	AASTHA MINMET INDIA PVT LTD.	23	26-09-2014
6	METKORE ALLOYS & INDUSRIES LTD.	94.83	12-03-2015
7	SWASTIK OVERSEAS CORPORATION	93.44	25-09-2014
8	WHITE WATER FOODS PVT LTD	86.12	10-10-2014
9	NAMDHARI FOOD INTERNATIONAL PVT LTD	53.07	23-12-2014
10	NAMDHARI RICE & GENERAL MILLS	10.75	23-12-2014
11	SHREE RADHEY TRADING CO	34.59	23-12-2014
12	VIMLADEVI AGROTECH LIMITED	14.02	23-12-2014
13	MSR FOOD PROCESSING	8.82	20-02-2015
14	N K PROTEINS LTD	937.89	02-03-2015
15	MOHAN INDIA PVT LTD & TAVISHI ENTERPRISES PVT. LTD.	1,037.84	01-12-2014
16	LOIL CONTINENTAL FOOD LTD	-	-
17	LOIL CONTINENTAL FOOD LTD	-	-
18	LOIL CONTINENTAL FOOD LTD	-	-
19	LOTUS REFINERIES PVT LTD	-	-
20	NCS SUGARS LIMITED	58.85	24-10-2013
21	SPIN COT TEXTILES PVT LTD	38.26	22-11-2013
	Total	**Rs. 4515.93**	

Appendix III: Financial Results of FTIL

Financial Results of FTIL - standalone and Consolidated					
Particulars	**Standalone**		**Consolidated**		
	2014-15	**2013-14**	**2014-15**	**2013-14**	**2012-13**
Total Income	60368.01	54126.66	38246.07	70949.59	95138.66
Total Operating Expenditure	27471.95	24881.27	47466.15	67903.17	62697.22
EBITDA	**32896.06**	**29245.39**	**-9220.08**	**3046.42**	**32441.44**
Finance Costs	2266.12	3053.82	2634.17	8176.96	9799.95
Depreciation/Amortization	3905.73	3074.86	4496.14	4295.84	3268.15
Profit/(Loss) before Exceptional Item and tax	**26724.21**	**23116.71**	**-16350.39**	**-9426.38**	**19373.34**
Exceptional Items	24282.09	-41152.11	65631.14	94436.33	-
Profit/(Loss) before tax	**51006.3**	**-18035.4**	**49280.75**	**85009.95**	**19373.34**
Provision for taxation	6492.42	4819.45	6648.2	4846.76	12469.37
Profit After Tax/Net Profit	44513.88	-22854.85	42632.55	80163.19	6903.97
Add: Net share of profit in associates			-0.12	6347.53	10097.89
Add: Net minority interest in profit of Subsidiaries			39.25	440.03	339.61
Profit After Tax/Net Profit	**44513.88**	**-22854.85**	**42671.68**	**86950.75**	**17341.47**
Add: Balance brought forward from prev. year	177089.54	204257.15	181799.93	100592.88	90900.5
Balance available for appropriation	221603.42	181402.3	224471.61	187543.63	108241.97
Appropriations					
Final Dividends (Proposed)	2303.93	921.57	2303.93	921.57	921.57
Interim Dividend	5529.42	2764.71	5529.42	2764.71	2764.71
Tax on dividend	469.03	626.48	469.03	626.48	616.92
Transfer to General Reserve			-	-	3253
Change in JV holding			-	1419.82	-
Transfer to Statutory Reserve			-	11.11	8.24
Transfer to Security Guarantee Fund			-	-	84.66
Transfer from General Reserve			-14421.7	-	-
Balance carried forward to Balance Sheet	213301.04	177089.54	230590.94	181799.93	100592.88
Earnings Per Share					
Basic	96.6	-49.6	92.61	188.7	37.63
Diluted	96.3	-49.6	92.31	188.09	36.79

Balance Sheet of FTIL as at March 31, 2015		
	As at 31.03.2015	**As at 31.03.2014**
I. EQUITY AND LIABILITIES		
1. Shareholders' funds		
(a) Share capital	921.57	921.57
(b) Reserves and surplus	2,77,072.63	2,40,028.64
	2,77,994.20	**2,40,950.21**
2. Non-current liabilities		
(a) Long-term borrowings	48,038.44	46,126.60
(b) Deferred tax liabilities (net)	2,244.18	2,524.64
(c) Other long term liabilities	1,201.57	536.26
(d) Long-term provisions	863.44	1,087.94
	52,347.63	**50,275.44**
3. Current liabilities		
(a) Trade payables	249.45	531.6
(b) Other current liabilities	9,051.42	24,524.26
(c) Short-term provisions	3,151.70	1,401.58
	12,452.57	26,457.44
TOTAL	**3,42,794.40**	**3,17,683.09**
II. ASSETS		
1. Non-current assets		
(a) Fixed assets		
(i) Tangible assets	41,835.80	44,968.88
(ii) Intangible assets	1,047.73	1,564.90
	42,883.53	**46,533.78**
(b) Non-current investments	98,001.87	52,378.58
(c) Long-term loans and advances	26,911.98	88,324.89
(d) Other non-current assets	2,575.26	477.62
	1,70,372.64	**1,87,714.87**
2. Current assets		
(a) Current investments	1,38,187.78	75,337.32
(b) Trade receivables	1,662.78	6,775.60
(c) Cash and Cash equivalents	10,992.95	11,919.08
(d) Short-term loans and advances	8,320.63	34,486.97
(e) Other current assets	13,257.62	1,449.25
	1,72,421.76	**1,29,968.22**
TOTAL	**3,42,794.40**	**3,17,683.09**

Statement of Profit and Loss of FTIL for the year ended March 31, 2015		
	Year Ended 31.03.2015	Year Ended 31.03.2014
INCOME		
Revenue from operations	16,103.11	33,471.49
Other income	44,264.90	20,655.17
Total revenue	**60,368.01**	**54,126.66**
ExPENSES		
Purchases of stock-in-trade	1.65	6.09
Employee benefits expense	12,091.10	12,275.19
Finance costs	2,266.12	3,053.82
Depreciation and amortisation expense	3,905.73	3,074.86
Other expenses	15,379.20	12,599.99
Total expenses	**33,643.80**	**31,009.95**
Profit before exceptional items and tax	**26,724.21**	**23,116.71**
Exceptional items	24,282.09	-41,152.11
Profit / (Loss) before tax	**51,006.30**	**-18,035.40**
Tax expense / (credit):		
(a) Current tax expense	16,854.08	5,638.20
(b) Less: MAT credit	-10,081.20	-960.51
(c) Net current tax expense	6,772.88	4,677.69
(d) Deferred Tax	-280.46	141.76
Net tax expense	6,492.42	4,819.45
Profit / (Loss) for the year	**44,513.88**	**-22,854.85**
Earnings per share:		
Basic per share (in	96.60	-49.6
Diluted per share (in	96.30	-49.6
Face Value Per Share (in	2.00	2.00

Appendix IV: Financial Results of NSEL

Financial Results of NSEL - Standalone and Consolidated				
PARTICULARS	**CONSOLIDATED**		**STANDALONE**	
	Current Year 2014-15	**Previous Year 2013-14**	**Current Year 2014-15**	**Previous Year 2013-14**
Total Income	369.09	641.56	2.72	283.8
Total Expenses	434.31	629.06	88.85	305.48
EBITDA	**-65.22**	**12.5**	**-86.13**	**-21.68**
Depreciation/Amortization	4.48	6.1	4.35	5.96
Finance Costs	23.12	14.02	19.92	11.35
Prior Period expenses	0.37	-	0.37	-
Profit/(Loss) before Tax	**-93.19**	**-7.63**	**-110.77**	**-38.99**
Provision for Taxation	-	-1.33	-	-1.19
Profit/(Loss) after Tax	**-93.19**	**-6.3**	**-110.77**	**-37.8**
Earnings per share (In Rs.)				
Basic	-19.99	-1.01	-23.76	-8.4
Diluted	-19.99	-1.01	-23.76	-8.4
Face value of Share (in Rs.)	10	10	10	10

Balance Sheet of NSEL as at 31st March 2015		
	As at 31 March, 2015	**As at 31 March, 2014**
EQUITY AND LIABILITIES		
Shareholders' Funds		
Share capital	60,00,00,000	45,00,00,000
Reserves and surplus	-51,14,20,662	59,63,19,525
	8,85,79,338	**1,04,63,19,525**
Non-current liabilities		
Long-term borrowings	2,25,31,81,925	2,14,33,06,115
Deferred Tax Liabiilities (net)	-	-
Other Long term liabilities	-	52,45,735
Long-term provisions	13,32,143	14,61,737
	2,25,45,14,068	**2,15,00,13,587**
Current liabilities		
Trade payables	62,50,13,478	43,25,37,894
Other current liabilities	1,00,26,18,378	94,05,85,187
Short-term provisions	18,70,631	15,16,338
	1,62,95,02,487	**1,37,46,39,419**
TOTAL	**3,97,25,95,893**	**4,57,09,72,531**
ASSETS		
Non-current assets		
Fixed assets		
Tangible assets	89,93,501	1,74,41,974
Intangible assets	32,94,162	4,07,73,362
Non-current investments	-	2,20,000
Long-term loans and advances	14,17,95,342	19,36,83,968
Other non-current assets	37,21,855	3,29,68,348
	15,78,04,860	**28,50,87,652**
Current assets		
Trade receivables	9,79,73,329	58,02,94,015
Cash and bank balances	58,50,17,165	44,91,41,421
Short-term loans and advances	2,46,87,57,874	2,59,91,79,897
Other current assets	66,30,42,665	65,72,69,546
	3,81,47,91,033	**4,28,58,84,879**
TOTAL	**3,97,25,95,893**	**4,57,09,72,531**

STATEMENT OF PROFIT AND LOSS OF NSEL FOR THE YEAR ENDED 31 March, 2015		
	For the year ended 31 March, 2015	**For the year ended 31 March, 2014**
Income		
Revenue from operations	-	2,65,27,96,627
Other income	2,71,78,757	18,52,49,424
Total Revenue (I)	**2,71,78,757**	**2,83,80,46,051**
Expenses		
Purchases of traded goods	-	1,34,05,41,304
(Increase)/ Decrease in inventories of Stock-in-Trade	-	43,70,45,732
Employee benefits expense	4,64,45,404	8,50,52,577
Bad debts and advances written off		30,81,44,935
Less Provision for doubtful debts and advances	-	-4,35,23,116
Provision for doubtful debts and other recoverable	54,16,19,038	43,61,07,446
Provision for diminution (other than temporary) in value of long term investments in subsidiaries	-	2,24,78,281
Other expenses	30,04,57,400	46,89,61,287
Total expenses (II)	**88,85,21,842**	**3,05,48,08,446**
Earnings before interest, tax, depreciation and amortization (EBITDA) (I-II)	**-86,13,43,085**	**-21,67,62,395**
Depreciation and amortization expense	4,34,68,690	5,96,10,153
Finance costs	19,92,38,297	11,34,90,401
Profit/(Loss) before exceptional item and taxes	**-1,10,40,50,072**	**-38,98,62,949**
Prior period expenses	**36,90,116**	-
Profit/(Loss) before taxes	**-1,10,77,40,188**	**-38,98,62,949**
Tax expense:		
Current tax	-	-
Deferred tax income	-	-1,18,67,898
Total Tax Expense	-	**-1,18,67,898**
Profit/(Loss) for the Year from continuing operations	**-1,10,77,40,188**	**-37,79,95,051**
Profit/ (Loss) for the year	-1,10,77,40,188	-37,79,95,051
Earnings per equity share:		
(1) Basic	-23.76	-8.4
(2) Diluted	-23.76	-8.4
Face value per Equity share	10	10