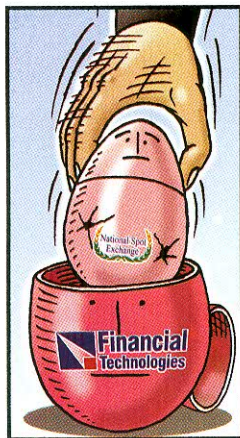


A bad precedent

The FT-NSEL merger could have a cascading effect on corporate India



Should a subsidiary be merged with the parent company to safeguard public interest? One can't recollect whether something of this sort has ever happened in the history of India. But soon, this will be an event in record, as the ministry for corporate affairs has accepted the recommendation of the Forward Market Commission to merge NSEL with Financial Technologies (FT). This may not happen immediately, as opinions are still being invited over the next 60 days. Also, it's likely that FT or its shareholders will challenge this proposal in the court of law. So, one can say the merger is at least a couple of months away.

While there is little doubt that NSEL has not followed procedure the way it should have and, because of that, investors have lost money, the irony is that there is little 'public interest' in this case. The court has not convicted anyone. Also, there is no charge yet that NSEL's promoters or the holding company itself has squandered funds belonging to NSEL. The liability of NSEL can be met by the borrowers, who have not yet denied their liability. There are cases pending in various courts against borrowers and the outcome of these is pending. Then, why is the corporate affairs ministry in such a hurry to merge NSEL with FT?

It's a little surprising that the ministry for corporate affairs is setting a bad precedent, with an excuse to protect the so-called 13,000 investors, out of which, 781 investors account for 66 per cent of NSEL's outstanding liability of ₹5,300 crore. These investors knew from day one that the product that they were investing in was a structured product. They were also aware that the product they were going in for carried a high risk. Also, most of the investors who took exposure were financially literate, unlike small gullible investors we normally see in most of the cases. If so, why is there a soft corner and concern for them all of a sudden? Why is the ministry for corporate affairs taking a path that has never been trodged before? And, even if it wants to take this path, then aren't there other such companies which did more damage to public interest than this case?

The repercussions of this decision are

likely to be felt not only by FT and its shareholders, but also by corporate India, as a whole. The ministry is setting a bad example, which may turn out to be a GAAR-ish kind of regulation. The very fact that the company incorporates its subsidiary is to protect one business from another, as each business has a different risk profile. If a holding company is liable to each and every decision of its subsidiary, then why do we need a different board of directors, a separate management team and distinct corporate identity for subsidiary companies? This is the fundamental issue the ministry must address.

Let's hope that good sense will prevail and such an odd decision would not be taken. If anyone is found guilty of the NSEL scam, that person or group of persons should be punished. But, taking this kind of a drastic step is not in the interest of the larger scheme of things pertaining to corporate India.

Minority shareholders of FT have nothing to do with whatever irregularities that have taken place at NSEL and, yet, they have been forced to pay a heavy price, as this merger announcement has pushed the FT stock down by 20 per cent on the stock exchanges. After the NSEL episode came to light, FT has lost market cap to the tune of as much as 90 per cent. Also, there are institutional investors, who have invested in FT, whose interests have also been impacted. In trying to protect the 13,000 investors of NSEL, the ministry is committing an injustice to 63,000 shareholders of FT.

The government must find the time and energy to bring the culprit of the NSEL scam to book and force the borrowers to cough up the money to pay the liabilities of NSEL. FICCI and CII also must protest against this bad precedent, as this could have a cascading effect on corporate India. Companies carry limited liability and that tenet should remain. This is the fundamental feature of a limited company. One hopes the Modi government, in its zeal to protect public interest does not do an injustice to the lakhs of investors who have invested in various listed companies. Sense should prevail, and we are hopeful that it would. ♦