



## **MEDIA STATEMENT**

### **Judgment dated 30.04.2019 passed by the Hon. Supreme Court in 63 moons technologies limited (formerly, FTIL) Vs Union of India & Others (Civil appeal No 4476/2019)**

Vide a detailed judgment dated 30.04.2019, the Hon'ble Supreme Court of India was pleased to hold that the Order dated 12.02.2016 of forced amalgamation passed by the Central Government, was *ultra vires* of Section 396 of the Companies Act and violative of Article 14 of the Constitution of India. While allowing the appeals, the impugned Judgment of the Hon'ble Bombay High Court has been set aside by the Hon'ble Supreme Court.

The Order impugned was supported by the Central Government mainly on three grounds as stated and reproduced in Para 59.1 of the Judgment i.e.-

- a) restoring/ safeguarding public confidence;
- b) giving effect to business reality of the case by consolidating the business of FTIL and NSEL, and preventing FTIL from distancing itself from NSEL;
- c) for facilitating NSEL in recovering dues from defaulters by pooling human and financial resources of FTIL and NSEL.

It was repeatedly claimed that these three grounds contribute a facet of 'public interest' in the context of provisions of Section 396 of the Companies Act.

The Hon'ble Supreme Court held that the first and second ground as mentioned by the High Court, were not even contained in the Draft Order of Amalgamation. Even otherwise, it was held that these grounds were in breach of Section 396(3) and (4) of the Companies Act. (*Para 59.2 of the Judgment*).

It was further held that so far as the third ground i.e. reason (c) is concerned, that reason by itself was for the purpose of private interest of a group of investors/traders, as distinct from public interest. It was held that-



*54. In the context of compulsory amalgamation of two or more companies, the expression “public interest” would mean the welfare of the public or the interest of society as a whole, as contrasted with the “selfish” interest of a group of private individuals....*

*“59.5... For all these reasons, we find that no reasonable body of persons properly instructed in law could possibly arrive at the conclusion that the impugned order has been made in public interest.”*

Further, the Hon’ble Supreme Court held as under:

*75...Even otherwise, this is a case where there is complete non-application of mind by the authority assessing compensation to the rights and interests which the shareholders and creditors of FTIL have and which are referred to in Section 396(3) of the Act. This being the case, it is clear that Section 396(3) has not been followed either in letter or in spirit.”*

Mr Jignesh Shah, Chairman Emeritus and Mentor, 63 moons technologies, said, “Satyamev Jayate. We have always had full faith in the Indian judiciary and our Hon. courts. Finally, truth has prevailed.”

Mr Venkat Chary, Chairman, 63 moons technologies said, justice has finally prevailed in the reasoned and well-articulated judgment of the Hon. Supreme Court which has upheld the rule of law by laying down the elaborate criterion for what is public interest and due process.

While welcoming the judgment of the Hon. Supreme Court, Mr S Rajendran, MD, 63 moons technologies, said the company has been articulating in the past that the merger will serve no purpose for the stakeholders of either NSEL or FTIL but to benefit only a few people with vested interest. As such, our stand has been fully vindicated.

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