QJA/MK/MIRSD/DOP/27839/2023-24

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 12(3) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 27 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008

In respect of

NAME OF THE NOTICEE	SEBI REGISTRATION NO.
ASHIKA COMMODITIES AND DERIVATIVES PVT. LTD.	**INZ000063835**

In the matter of National Spot Exchange Limited

BACKGROUND

1. The present proceedings originate from the Enquiry Report dated March 25, 2019 (hereinafter referred to as the **"Enquiry Report"**), submitted by the Designated Authority (hereinafter referred to as the **"DA"**) in terms of regulation 27 of the SEBI (Intermediaries) Regulations, 2008 as it stood at the relevant point of time prior to its amendment vide SEBI (Intermediaries) (Amendment) Regulations, 2021, with effect from January 21, 2021 (hereinafter referred as the **"Intermediaries Regulations"**), wherein the DA, based on various factual findings and observations so recorded in the said Enquiry Report, recommended cancellation of the certificate of registration granted to Ashika Commodities and Derivatives Pvt. Ltd. (hereinafter referred to as the **"Noticee"**). Pursuant to the same, a Post Enquiry Show Cause Notice dated June 10, 2019, along-with the copy of the aforesaid Enquiry Report was issued to the Noticee. Thereafter, a second Show Cause Notice dated September 20, 2019 providing therewith a copy of the letter dated December 30, 2014 of DEA, Ministry of Finance and a copy of the decision of the Hon'ble Bombay High Court dated August 22, 2014 in respect of paired contracts offered on the platform provided by the National

Spot Exchange Limited (hereinafter referred to as the **"NSEL")**, was also issued to the Noticee (Show Cause Notice dated June 10, 2019 and September 20, 2019 hereinafter referred to as the **"SCNs"**). Pursuant to that, a personal hearing in the matter was concluded on September 09, 2021 before the Ld. Whole Time Member of SEBI (hereinafter referred to as the **"WTM"**). After taking into consideration the written submissions made vide letters dated July 10, 2019, October 21, 2019, September 20, 2021 and the oral submissions made during the course of the personal hearing on September 09, 2021, the Ld. WTM, vide order dated October 14, 2021, cancelled the Certificate of Registration granted to the Noticee

2. While the aforesaid proceedings were pending, Securities and Exchange Board of India (hereinafter referred to as the **"SEBI"**) also passed five separate orders during February 2019, rejecting the applications filed by five other entities for registration as commodity brokers who were involved in NSEL matter. Aggrieved by the said SEBI orders, the entities filed separate appeals before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as the **"Hon'ble SAT"**). The Hon'ble SAT vide its common order dated June 09, 2022, remanded the aforesaid SEBI orders to SEBI to decide these matters afresh within six months from the date of the said order. While remanding the aforesaid SEBI orders, the Hon'ble SAT, *inter alia*, held as under:

> *"42…The matters are remitted to the WTM to decide the matter afresh in the light of the observations made aforesaid in accordance with law after giving an opportunity of hearing to the brokers. All issues raised by the brokers for which a finality has not been reached remains open for them to be raised before the WTM. It will be open to the WTM to rely upon other material such as the complaint letters of NSEL, EOW report, EOW charge sheet, etc. provided such copies are provided to the brokers and opportunity is given to rebut the allegations. Such additional documents relied upon by the respondent should form part of the show cause notice for which purpose, it will be open to the WTM to issue a supplementary show cause notice…"*

3. The Noticee also, aggrieved by the Order dated October 14, 2021, passed by the Ld. WTM, appealed to the Hon'ble SAT, and the Hon'ble SAT vide its order dated July 20, 2022, remitted the matter back to SEBI for deciding the matter afresh in light of its observations made in the order dated June 09, 2022, as noted

above. The relevant excerpt from the decision of the Hon'ble SAT dated July 20, 2022 is hereunder:

> *"Thus, for the reasons stated in our order dated June 9, 2022 in Appeal no. 214 of 2022 and other connected companion appeals, the impugned orders passed by the WTM against the brokers / appellants in the present appeals cannot be sustained and are quashed. The appeals of the brokers are allowed. The matters are remitted to the WTM to decide the matter afresh in the light of the observation made in our order dated June 9, 2022 in accordance with law after giving an opportunity of hearing to the brokers…."*

4. Thereafter, the competent authority of SEBI has allocated the present matter to me for further proceedings. In light of the aforesaid SAT orders, it was felt necessary to furnish certain additional documents/ material to the Noticee and grant an opportunity of personal hearing, before concluding the present proceedings. Accordingly, vide Hearing Notice dated November 11, 2022 (hereinafter referred to as the **"Hearing Notice"**), Noticee was provided an opportunity of personal hearing on December 22, 2022 along with certain additional documents/ material. Noticee was also advised to submit its reply to the Hearing Notice. On the scheduled date of hearing, the authorised representatives of the Noticee appeared on behalf of the Noticee in person and made submissions on the lines of the replies submitted earlier. During the course of hearing, certain queries were raised to the Noticee and the Noticee was granted time to submit response to the said queries along with the post hearing submissions, if any. Accordingly, the Noticee vide letter dated January 10, 2023 furnished its reply.

5. The summary of the submissions made on behalf of the Noticee in the written submission is given below:

   a. *The paired contracts were being traded openly and transparently on NSEL since about September 2009, wherein we had started trading in these paired contracts only since May 2010, after having observed the prolonged, open, transparent and successful trading in such contracts.*

b. *During the relevant time as a broker, we were trading in NSEL in the contracts permitted by Exchange, pursuant to instructions of our clients. It is submitted that at the relevant time there was nothing for us to suspect that the contracts permitted by the Exchange for trading on its platform are not in consonance with the notifications issued by the Forward Market Commission (thereinafter referred to as the **"FMC"**). It may be appreciated that we are ourselves the victims of fraud perpetrated by NSEL, wherein because of its conduct/ failure to maintain the institutional integrity of the systems and processes, we are facing the music and have been exposed to multiple regulatory proceedings including the captioned proceedings.*

c. *The DCA by its letter dated August 5, 2011 to the FMC, informed the FMC that it is nominated as the "Designated Agency" in respect of NSEL for providing oversight and safeguarding the interest of investors, and that FMC had to ensure that the Government of India Exemption conditions were being complied with and to take action if there was any breach thereof. Even the Enquiry Report holds that NSEL was under the regulatory ambit of the Government of India and the FMC. It is therefore indisputable that the FMC itself:*

   (i) had recommended the exemption conditions;

   (ii) used to monitor NSEL's trading;

   (iii) carry out stress testing of the risk management framework of NSEL;

   (iv) ensure that the conditions stipulated for grant of exemption were complied with; and

   (v) was empowered to take action in case of any breach of the said conditions.

d. *FMC was acting as the regulator and was aware of trades settled without actual physical delivery. Yet, it never cautioned member brokers or clients about the alleged violation of the Government of India Notification dated June 05, 2007 (hereinafter referred to as the **"Exemption Notification"**). It is only because FMC was also not aware of the fraud being committed by NSEL that no orders were passed by FMC until as late as December 17, 2013 in the matter (hereinafter referred to as the **"FMC Order"**). Therefore, it is untenable to now allege that we as bonafide broker were aware of the same.*

e. *During the relevant period, no authority, regulator or government cautioned the brokers/ clients/ public, that such paired contracts or contracts exceeding 11 days violated the Exemption Notification and no allegation of any illegality or violation of exemption conditions was raised at the relevant time.*

f. *As per the material/ information provided by SEBI, there is no material to show that we were acting in concert with NSEL/ its office bearers in fraudulent manner or have been closely associated with NSEL and paired contracts. Further, the observations/ findings by various Courts/ Authorities have no bearing on our 'fit and proper' status. We adequately meet the aforesaid criteria for 'fit and proper' person.*

g. *As a matter of prudence, we had issued preliminary cautions to all our clients trading on NSEL through us, to be cautious/ exercise due diligence while executing trades on NSEL and executed trades on receipt of confirmation copies from the clients. It is to be noted that none of our clients had ever resorted to any legal action against us. Sample copies of confirmation letters are annexed. Finally, we had restricted the renewal of paired contracts prior to NSEL fiasco i.e. July 31, 2013 wherein none of the clients were allowed to renew any fresh contracts on and after July 15, 2013.*

h. *Merely because NSEL acted in violation of Notification issued on June 05, 2007 and offered trading in alleged paired contracts without any involvement on our part no question can be raised about our reputation/ competence/ character/ integrity. Based on regulatory failure on the part of the Exchange, in ensuring that it offers contracts for trading on its platform which are compliant with the notification issued by FMC, we as brokers, who had always acted bonafide, cannot be hauled up*

i. *It is to be noted that we are amongst the non-defaulting brokers with following facts:*

   (i) We started trading in 2010 after paired contracts were continuously and successfully trading on NSEL;

   (ii) No funding to clients through group companies / NBFC;

   (iii) No collective buying/ No client code modifications at back end;

   (iv) Not acted as Clearing & Forwarding (C&F) agent on NSEL;

   (v) No print and media advertisements;

(vi) We did not have any clients as defaulters on NSEL;

(vii) No PMS activity on NSEL;

(viii) No allegation towards unauthorised trading.

j. We confirm to have traded in two different contracts with different settlement cycles (alleged paired contracts) on the NSEL platform during the period from September 2009 to July 2013, in pro as well as on behalf of our clients along with the fact that we were also in receipt of special pay-out under circular no. NSEL/C&S/2013/073 dated August 17, 2013, disbursed among clients and self.

CONSIDERATION OF ISSUE AND FINDINGS

6. I have carefully perused the SCNs issued to the Noticee and the Enquiry Report, the replies filed by the Noticee and other material/ information available on record. After considering the allegations made/ charges levelled against the Noticee in the instant matter as spelt out in the SCNs and Hearing Notice, the limited issue which arises for my consideration in the present proceedings is whether the Noticee satisfies the 'fit and proper person' criteria as laid down under Schedule II of the Intermediaries Regulations and whether the Certificate of Registration granted to the Noticee should be cancelled, as recommended by the DA or any other action should be taken against the Noticee.

7. Before I proceed to examine the issue *vis-à-vis* the material available on record before me, it would be appropriate to refer to the provisions of law applicable, which are alleged to have been violated by the Noticee and/ or are referred to in the present proceedings. The same are reproduced below for ease of reference:

SEBI Act, 1992

Registration of stock brokers, sub-brokers, share transfer agents, etc.

12.(3) The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations:
Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

Stock Brokers Regulations, 1992

Consideration of application for grant of registration.

5. The Board shall take into account for considering the grant of a certificate, all matters relating to trading, settling or dealing in securities and in particular the following, namely, whether the applicant,

(e) is a fit and proper person based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

Liability for action under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

27. A stock broker shall be liable for any action as specified in Chapter V of the Securities and Exchange Board of India (Intermediaries)Regulations, 2008 including suspension or cancellation of his certificate of registration as a stock broker, if he —

(iv) has been found to be not a fit and proper person by the Board under these or any other regulations;

Intermediaries Regulations, 2008

SCHEDULE II

SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008

[See regulation 7]

(1) The applicant or intermediary shall meet the criteria, as provided in the respective regulations applicable to such an applicant or intermediary including:

(a) the competence and capability in terms of infrastructure and manpower requirements; and

(b) the financial soundness, which includes meeting the net worth requirements.

(2) The 'fit and proper person' criteria shall apply to the following persons:

(a) the applicant or the intermediary;

(b) the principal officer, the directors or managing partners, the compliance officer and the key management persons by whatever name called; and

(c) the promoters or persons holding controlling interest or persons exercising control over the applicant or intermediary, directly or indirectly:

Provided that in case of an unlisted applicant or intermediary, any person holding twenty percent or more voting rights, irrespective of whether they hold controlling interest or exercise control, shall be required to fulfil the 'fit and proper person' criteria.

***Explanation** –For the purpose of this sub-clause, the expressions "controlling interest" and "control" in case of an applicant or intermediary, shall be construed with reference to the respective regulations applicable to the applicant or intermediary.*

(3) For the purpose of determining as to whether any person is a 'fit and proper person', the Board may take into account any criteria as it deems fit, including but not limited to the following:

(a) integrity, honesty, ethical behaviour, reputation, fairness and character of the person;

(b) the person not incurring any of the following disqualifications:

(i) criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;

(ii) charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences and is pending;

(iii) an order of restraint, prohibition or debarment has been passed against such person by the Board or any other regulatory authority or enforcement agency in any matter concerning securities laws or financial markets and such order is in force;

(iv) recovery proceeding s have been initiated by the Board against such person and are pending;

(v) an order of conviction has been passed against such person by a court for any offence involving moral turpitude;

(vi) any winding up proceedings have been initiated or an order for winding up has been passed against such person;

(vii) such person has been declared insolvent and not discharged;

(viii) such person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;

(ix) such person has been categorized as a wilful defaulter;

(x) such person has been declared a fugitive economic offender; or

(xi) any other disqualification as may be specified by the Board from time to time.

(4) Where any person has been declared as not 'fit and proper person' by an order of the Board, such a person shall not be eligible to apply for any registration during the period provided in the said order or for a period of five years from the date of effect of the order, if no such period is specified in the order.

(5) At the time of filing of an application for registration as an intermediary, if any notice to show cause has been issued for proceedings under these regulations or under section 11(4) or section 11B of the Act against the applicant or any other person referred in clause (2), then such an application shall not be considered for grant of registration for a period of one year from the date of issuance of such notice or until the conclusion of the proceedings, whichever is earlier.

(6) Any disqualification of an associate or group entity of the applicant or intermediary of the nature as referred in sub -clause (b) of clause (3), shall not have any bearing on the 'fit and proper person' criteria of the applicant or intermediary unless the applicant or intermediary or any other person referred in clause (2), is also found to incur the same disqualification in the said matter: Provided that if any person as referred in sub-clause (b) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall replace such person within thirty days from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against the intermediary:

Provided further that if any person as referred in sub -clause (c) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall ensure that such person does not exercise any voting rights and that such person divests their holding within six months from the date of such disqualification

failing which the 'fit and proper person' criteria may be invoked against such intermediary.

(7) The 'fit and proper person' criteria shall be applicable at the time of application of registration and during the continuity of registration and the intermediary shall ensure that the persons as referred in sub -clause s (b) and (c) of clause (2) comply with the 'fit and proper person' criteria."

Recommendation of action

26. (1) After considering the material available on record and the reply, if any, the designated authority may by way of a report, recommend the following measures, –

(i) disposing of the proceedings without any adverse action;

(ii) cancellation of the certificate of registration;

(iii) suspension of the certificate of registration for a specified period;

(iv) prohibition of the noticee from taking up any new assignment or contract or launching a new scheme for such the period as may be specified;

(v) debarment of an officer of the noticee from being employed or associated with any registered intermediary or other person associated with the securities market for such period as may be specified;

(vi) debarment of a branch or an office of the noticee from carrying out activities for such period as may be specified;

(vii) issuance of a regulatory censure to the noticee:

Provided that in respect of the same certificate of registration, not more than five regulatory censures under these regulations may be recommended to be issued, thereafter, the action as detailed in clause (ii) to (vi) of this sub-regulation may be considered.

Order

27. (5) After considering the facts and circumstances of the case, material on record and the written submission, if any, the competent authority shall endeavor to pass an appropriate order within one hundred and twenty days from the date of receipt of submissions under sub-regulation (2) or the date of personal hearing, whichever is later.

8. As noted above, taking cognizance of the orders passed by the Hon'ble SAT on June 09 2022 (hereinafter referred to as **"SAT Order"**) and July 20, 2022, in NSEL matters, a Hearing Notice dated November 11, 2022 was issued to the Noticee calling upon the Noticee to show cause as to why the following information/ material along with the Enquiry Report dated March 25, 2019 should not be considered against it for determining whether the Noticee satisfies 'fit and proper person' criteria as laid down under Schedule II of the Intermediaries Regulations:

   a. SEBI complaint dated September 24, 2018 filed with Economic Offence Wing;

b. First Information Report dated September 28, 2018; and
c. Amended Schedule II of the Intermediaries Regulations.

9. In this regard, I find it apposite to encapsulate and list the grounds on which the SEBI orders were set aside by the Hon'ble SAT which consequently led to issuance of the aforesaid Hearing Notice to the Noticee in the present matter:

a. The observations of the Hon'ble Bombay High Court in the matter of *63 Moons vs. Union of India* cannot be relied upon as the said judgement has been set aside in appeal by the Hon'ble Supreme Court vide judgment dated April 30, 2019.
b. The observation from the Order dismissing the Writ Petition filed by NSEL against the invocation of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (hereinafter referred to as the **"MPID Act"**) (*NSEL vs. State of Maharashtra*) cannot be relied upon, as in a subsequent Writ Petition moved by 63 Moons, a Division Bench of the Hon'ble Bombay High Court has allowed the prayer and held that NSEL is not a financial establishment and therefore the provisions of the MPID Act are not applicable. The Division Bench also observed that the prima facie observations made by the single bench while dismissing NSEL petition could not be relied upon as they were preliminary observations and such observations do not foreclose the issue about the applicability of the provisions of the MPID Act. The Hon'ble Tribunal, I note, was of the opinion that prima facie observations cannot be utilized to judge the reputation, character or integrity of NSEL.
c. The observations in the bail rejection order dated August 22, 2014, passed by the Hon'ble Bombay High Court in the matter of *Jignesh Prakash Shah vs. The State of Maharashtra*, cannot also be relied upon as the observations made in a bail order were limited to the fact as to whether the bail should be granted or not.
d. Reliance on the SFIO Report, the Tribunal has held, was misplaced. The report only directs EOW/Police to initiate appropriate proceedings against NSEL and its directors/promoters. Based on the SFIO Report, the Special

Sessions Judge took cognizance of the matter by an Order dated July 29, 2019. But this Order was challenged by NSEL and two other accused and has since been stayed by the Hon'ble Bombay High Court. Also, no complaint yet has been filed against the Appellants pursuant to the SFIO Report.

e. Effect of SFIO Report under the Code of Criminal Procedure, 1973, as to whether such report could be treated as evidence, was not considered by SEBI.

f. Reliance placed on decisions of the Hon'ble Tribunal in the matter of *Jermyn Capital vs. SEBI* and *Mukesh Babu Securities vs. SEBI* is misplaced as decisions in the said matters are distinguishable on facts. Jermyn Capital was held to be in relation to an Interim Order passed by SEBI, and the Tribunal was of the view that the criteria for passing an Ad Interim Order are based on a different criterion, namely prima facie case, the balance of convenience and irreparable injury which are distinct and different while considering an application for grant of Certificate of Registration. The decision in the matter of Mukesh Babu Securities was distinguished by the Hon'ble Tribunal on the basis that in the matter a criminal complaint was filed against the Chairman of the Company. The Hon'ble Tribunal noted that there is no evidence to show that any proceedings have yet been initiated against the appellants in the matter under consideration.

g. Reputation of the applicant cannot be lightly considered based on observations which are not directly related to the applicant.

h. Grant Thornton Forensic report commissioned by SEBI does not find any close connection between applicant and NSEL. This was overlooked by SEBI.

i. SEBI Order does not state for how long the rejection of application will continue. The Hon'ble Tribunal was of the view that the rejection cannot continue indefinitely, and in such cases, a time period should be provided during which the applicant will become ineligible to seek fresh registration.

10. It is also noted from the SAT Order that the matter was remanded back to SEBI, taking into consideration the contention made by the counsel appearing on behalf of SEBI that there was additional material available, which had come into

existence after the SEBI orders, based on which the findings in the said order could be sustained. The Hon'ble Tribunal, taking into consideration the submissions made on behalf of SEBI, held that:

> *"It will be open to the WTM to rely upon other material such as the complaint letters of NSEL, EOW report, EOW charge sheet, etc. provided such copies are provided to the brokers and opportunity is given to rebut the allegations. Such additional documents relied upon by the respondent should form part of the show cause notice for which purpose, it will be open to the WTM to issue a supplementary show cause notice. It will also be open to SEBI if it considers necessary, to conduct an independent enquiry proceeding against the connected entities and persons associated with the brokers against whom evidence is available."*

11. Before moving forward to consider the matter on merits and test the fulfilment of the 'fit and proper person' criteria by the Noticee, on the basis of available material including the additional material as detailed at paragraph 8 above, the background facts necessary for the present proceedings are narrated in brief, hereunder:

    a. The Noticee is a commodity derivatives broker registered with SEBI having Registration No. INZ000063835 with effect from July 28, 2016 and is currently a member of the NCDEX.
    b. NSEL was incorporated in May, 2005 as a Spot Exchange, *inter alia*, as an electronic exchange for trading in commodities. In exercise of powers conferred under Section 27 of the Forward Contract (Regulation) Act, 1952 (herein after referred to as the **"FCRA"**), the Central Government vide its Exemption Notification granted an exemption to all forward contracts of one-day duration for the sale and purchase of commodities traded on the NSEL from operations of the provisions of the FCRA subject to certain conditions, inter alia, including *"no short sale by the members of the exchange shall be allowed"* and *"all outstanding positions of the trades at the end of the day shall result in delivery".*
    c. In October 2008, NSEL commenced operations providing an electronic trading platform to its participants for spot trading of commodities, such as bullion, agricultural produce, metals, etc. It is observed that NSEL introduced

the concept of ‘paired contracts’ in September 2009 which allowed buy and sell in same commodity through two different contracts at two different prices on the exchange platform wherein the investors could buy a short duration contract and sell a long duration contract and vice versa at the same time and at a pre-determined price. The trades for the Buy contract (T+2/ T+3) and the Sell contract (T+25/ T+36) used to happen on the NSEL on the same day at same time and at different prices, involving the same counterparties. The transactions were structured in a manner that buyer of the short duration contact always ended up making profits.

d. On February 06, 2012, FMC was appointed by the Department of Consumer Affairs, Government of India as the ‘designated agency’ as stipulated in one of the conditions prescribed under the said Exemption Notification, authorizing it to collect the trade data from NSEL and to examine the same for taking appropriate measures, if needed, to protect investors’ interest. FMC had accordingly called for the trade data from different spot exchanges, including NSEL in the prescribed reporting formats. After analyzing the trade data received from the NSEL, FMC passed Order No. 4/5/2013-MKT-1/B dated December 17, 2013 in the matter (FMC Order) wherein it was, *inter alia*, observed that 55 contracts offered for trade on the NSEL platform were in violation of the relevant provisions of the FCRA and that the condition of ‘no short sale by members of the exchange shall be allowed’ was being not complied with by the NSEL and its members. FMC further observed that the ‘paired contracts’ offered for trading in the NSEL platform were in violation of the provisions of the FCRA and also in violation of the conditions specified by the Government of India in its Exemption Notification, while granting exemptions to the one day forwards contract for sale and purchase of commodities traded on the NSEL, from the purview of the FCRA.

12. The Noticee has, *inter alia*, contended that FMC was acting as the regulator and was aware of trades settled without actual physical delivery, yet it never cautioned member brokers or clients about the alleged violation of the Exemption Notification and that it is only because FMC was also not aware of the fraud being committed by NSEL that no orders were passed by FMC until as late as

December 17, 2013, and therefore, it is untenable to now allege that Noticee as bonafide broker were aware of the same. In this regard, I note that FMC was a statutory body set up under the FCRA and its functions were enumerated under section 4 of the Act. FCRA regulated forward contracts in notified goods entered into between the members of a recognised association or through or with any such member. An association recognised under the FCRA was empowered to make rules and bye-laws for the regulation of forward contracts subject to approval of the Central Government/ FMC. An association concerned with the regulation and control of business relating to forward contracts was also required to obtain a certificate of registration from FMC, under FCRA. I note that FMC was having jurisdiction only on the associations recognised or registered under the FCRA or any member of such association. NSEL was not an association recognised under section 6 of FCRA nor was it an association registered under section 14A of FCRA, which provided that –

> *"No association concerned with the regulation and control of business relating to forward contracts shall, after the commencement of the Forward Contracts (Regulation) Amendment Act, 1960 (62 of 1960) carry on such business except under, and in accordance with the conditions of a certificate of registration granted under this Act by the Commission."*

13. Section 27 of the FCRA empowered the Central Government to exempt any contract or class of contracts from the operation of all or any of the provisions of the Act. In exercise of the powers conferred on under Section 27 of the FCRA, the Central Government, vide the Exemption Notification, had granted exemption to one-day forward contracts traded on NSEL from the operation of all provisions of FCRA, subject to conditions mentioned in the said Exemption Notification. Subsequently, the Central Government has issued notifications on February 06, 2012 and August 06, 2013, in partial modification of this notification dated June 05, 2007, by way of amending or inserting new conditions to the original notification, thereby assigning specific responsibility to FMC with respect to NSEL. Recognised associations were empowered to make rules and bye-laws under FCRA which shall be approved by the Central government/ FMC. However, I find that NSEL did not make any rules and bye-laws under FCRA and

obtained approval of the Central Government/ FMC for regulation and control of forward contracts.

14. I note that prior to the merger of FMC with SEBI on September 28, 2015, the Noticee was not required to be registered with either FMC or any other regulatory authority under the FCRA. The Parliament, noticing that the intermediaries dealing with commodities derivatives market were not required to be registered under FCRA and were not under control of any competent authority, rectified the same through the Finance Act, 2015, as notified on May 14, 2015, by bringing them under the regulatory supervision of SEBI. With regards to the aforesaid, the Hon'ble Bombay High Court while dealing with the Writ Petition Nos. 3262, 3266, 3294 and 3295 of 2018 in the matter of *Anand Rathi Commodities Limited*, *Motilal Oswal Commodities Broker Private Limited*, *Geofin Comtrade Limited* and *IIFL Commodities Limited vs. SEBI,* vide its Order dated October 04, 2018, observed the following:

> *"It is not in dispute that prior to the coming into effect of the Finance Act, 2015, the intermediaries dealing with the commodity derivatives were not required to be registered under any of the provisions of law including the FCR Act. We find that the said mischief was noticed by the Parliament. As such, by virtue of the Finance Act, 2015, the said intermediaries dealing with commodity derivatives have been brought under the control of SEBI. We find that the reason as to why by Finance Act, 2015, the said intermediaries were brought under the control of SEBI appears to be that the Parliament found that the activities of intermediaries dealing in commodity derivatives should not remain uncontrolled and they should be brought under the control of competent authority".*

15. I further note that the provisions in the Finance Act, 2015 effecting the merger of FMC with SEBI in September, 2015 do not, *prima facie*, confer any power on SEBI to take charge, deal, inquire and resolve NSEL settlement crisis that broke out in 2013. Pursuant to repeal of FCRA and dissolution of FMC in terms of Section 131 of Finance Act, 2015, all recognised associations under the FCRA became deemed recognised stock exchanges under the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the "SCRA"). NSEL was not a recognised association under FCRA, therefore NSEL falling under the regulatory jurisdiction of SEBI does not arise. Thus, the contention of the Noticee that FMC

was acting as the regulator NSEL and was aware of trades settled without actual physical delivery is not tenable.

16. I note that pursuant to the merger of FMC with SEBI, a commodity derivatives broker was mandatorily required to obtain a certificate of registration from SEBI in case it sought to remain associated with the securities market as a commodity derivatives broker. The Finance Act, 2015, *inter alia*, conferred the powers to SEBI to regulate commodity derivatives brokers, which included their registration as commodity derivatives broker with SEBI. In this regard, vide Section 131B of the Finance Act, 2015, a transitory period of 3 months was provided to all the intermediaries which were associated with the commodity derivatives market under the erstwhile FCRA to continue to deal in commodity derivatives as a commodity derivatives broker, provided it made an application of registration to the SEBI within 3 months from September 28, 2015. Accordingly, the Noticee applied for a certificate of registration and was registered as a broker with effect from July 28, 2016 and since then it has been acting as a market intermediary registered with SEBI.

17. The power of SEBI to investigate/ inquire into the alleged violation of FCRA flows from the Finance Act, 2015, which amended the provisions of FCRA. Section 29A of FCRA, as inserted by the Finance Act, 2015 provides as under–

> *"(1) The Forward Contracts (Regulation) Act, 1952 is hereby repealed.*
>
> *(2) On and from the date of repeal of Forward Contracts Act–*
> *(a)….*
> *(b)….*
> *(c)….*
> *(d)….*
> *(e) a fresh proceeding related to an offence under the Forward Contracts Act, may be initiated by the Security Board under that Act within a period of three years from the date on which that Act is repealed and be proceeded with as if that Act had not been repealed;*
>
> *(f) no court shall take cognizance of any offence under the Forward Contracts Act from the date on which that Act is repealed, except as provided in clause (d) and (e);*

(g) clause (d), (e), (f) shall not be held to or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal to matters not covered under these sub-sections."

18. The present proceedings pertain to adjudging the 'fit and proper person' status specified in the Broker Regulations and the Intermediaries Regulations in light of the activities undertaken by the Noticee on the NSEL platform and consequent action taken by FMC and SEBI, i.e., filing of the criminal complaint to EOW under Section 154 of the CrPC. I note that in terms of Regulation 5(e) of the Stock Brokers Regulations, every applicant/ stock broker at the time of seeking registration, and thereafter, throughout the time it holds a valid certificate of registration, has to satisfy the "fit and proper person" criteria specified in Schedule II of the Intermediaries Regulations. I note that the Enquiry Report proceeds on the basis that the past conduct of the Noticee in facilitating access to the "paired contracts" traded on NSEL calls into question the compliance of the Noticee with 'fit and proper person' criteria. Further, SEBI while examining the compliance of an applicant, or even a registered intermediary, with the 'fit and proper person' criteria can take into consideration not just contravention of the provisions of securities laws, but also the general conduct of the Noticee which may have a bearing on its functioning as a registered intermediary. The 'fit and proper criteria including the amended criteria must be satisfied by the Noticee, at the time of making application of registration under the Stock Brokers Regulations as well as during the continuance of the registration once granted. I am of the considered view that the due presumption on the constitutional and legal validity of the said amended Schedule II of the Intermediaries Regulations holds the field which is binding upon SEBI, and arguments to the contrary are not maintainable. To consider the application of the Noticee for the registration as a stock broker, the Noticee is required to satisfy the fit and proper person criteria, and thus, it is well within the jurisdiction and powers of SEBI to adjudge the said 'fit and proper' status of the market intermediaries in the interest of securities market.

19. Before moving forward to consider the matter on merits, it would be appropriate to look at the background of NSEL and understand the nature of the 'paired

contracts' that were offered on the exchange which ultimately is the cause/ genesis of the current proceedings.

20. From the perusal of the FMC Order in respect of the 'paired contracts', which were traded on the NSEL platform during the relevant period, I note that the FMC had, *inter alia*, observed that the following conditions stipulated in the Exemption Notification were violated:

a. Short Sale

NSEL had not made it mandatory for the seller to deposit goods in its warehouse before taking a sell position. Hence, the condition of "no short sale by members of the NSEL shall be allowed" was not being met by the NSEL and its trading/clearing members who traded in the 'paired contracts' during the relevant period.

b. Contracts with Settlement Period going beyond 11 days

Some of the contracts offered for trade on the NSEL had settlement periods exceeding 11 days and therefore, such contracts were "non-transferable specific delivery" contracts under the FCRA. As per the FCRA, the "ready delivery contracts" were required to be settled within 11 days of the trade and hence, the contracts traded on the NSEL, which provided settlement schedule for a period exceeding 11 days were not allowed and were in violation of Exemption Notification.

21. I note that NSEL was granted conditional exemption from the provisions of the FCRA by the Department of Consumer Affairs, Ministry of Consumer Affairs (hereinafter referred to as the **"MCA"**), Food and Public Distribution, Government of India, vide Gazette Notification No. S0906(E) dated June 05, 2007, in exercise of the powers conferred under Section 27 of the FCRA, for (i) forward contracts, (ii) for sale and purchase of the commodities, of one–day duration traded on NSEL subject to certain conditions which*, inter alia*, included that 'no short sale by members of the NSEL shall be allowed' and that all 'outstanding positions of the trade at the end of the day shall result in delivery'. It

was also stipulated that all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency. The spot exchanges were envisaged as a platform for providing transparent and secure trading in commodities with a view to boost the agriculture sector in the country. Thereafter, NSEL commenced operations in October 2008.

22. It is observed that the NSEL was given permission to setup as a spot exchange for trading in commodities. It was essentially meant to only offer forward contracts having one-day duration as per the Exemption Notification. In its order, FMC had observed that the 55 contracts offered for trade on the NSEL were with settlement periods exceeding 11 days and all such contracts traded on the NSEL were in violation of provisions of FCRA. I note from the FMC Order that under the FCRA, a "forward contract" is defined as a *"contract for delivery of goods and which is not a ready delivery contract"*. A 'ready delivery contract' is defined as *"a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days"*. Given the said definition contained in the FCRA, FMC was of the view that all the contracts traded on the NSEL which provided settlement schedule exceeding 11 days were treated as Non-Transferable Specific Delivery contracts. It is, therefore, seen that even though MCA had stipulated in the Exemption Notification that only contracts of one-day duration were permitted to be offered on the NSEL, the FMC, in its order, relying on the definition of the "forward contract" under FCRA held that the NSEL was allowed to only trade in one-day forward contracts and was obliged to ensure delivery and settlement within 11 days. However, what is beyond doubt is that the NSEL had permitted 55 contracts of various commodities having duration longer than 11 days and these contracts were in contravention of the exemption granted to NSEL.

23. At this stage, it is also pertinent to refer to the judgment of the Hon'ble Supreme Court of India passed in the matter of *63 Moons Technologies Ltd. (formerly known as Financial Technologies India Ltd.) & Ors. vs. Union of India & Others*

(Civil Appeal No. 4476 of 2019 decided on April 30, 2019) (hereinafter referred to as the **"merger petition"**), wherein it was, *inter alia*, held that:

> *"There is no doubt that such Paired Contracts were, in fact, financing transactions which were distinct from sale and purchase transactions in commodities and were, thus, in breach of both the exemptions granted to NSEL, and the FCRA".*

24. Further, I note that in the judgement dated April 22, 2022 passed by the Hon'ble Supreme Court in the matter of the ***State of Maharashtra vs. 63 Moons Technologies Ltd.*** (Civil Appeal No. 2748-49 of 2022) (hereinafter referred to as the **"MPID matter"**), the Hon'ble Supreme Court while drawing reference to the representations made by the NSEL in respect of the paired contracts, *inter alia*, held that:

> *"The above representation indicates that 'paired contracts' were designed as a unique trading opportunity by NSEL under which a trader would, for instance, purchase a T+2 contract (with a pay-in obligation on T+2) and would simultaneously sell a T+25 contract (with a pay-out of funds on T+25). The price differential between the two settlement dates was represented to offer an annualized return of about 16%. NSEL categorically represented that all trades were backed by collaterals in the form of stocks and its management activities included selection, accreditation, quality testing, fumigation and insurance. Therefore, NSEL represented that on receiving money and commodities, the members would receive assured returns and a service. Though NSEL has been receiving deposits, it has failed to provide services as promised against the deposits and has failed return the deposits on demand. Therefore, the State of Maharashtra was justified in issuing the attachment notifications under Section 4 of the MPID Act."*

25. Thus, I note that the Hon'ble Supreme Court has already described the nature of the 'paired contracts' offered on the NSEL platform. In the merger petition (*63 Moons Technologies Ltd. vs. UOI*), it was held that these contracts were in the nature of financing transactions. In the MPID matter (*The State of Maharashtra vs. 63 Moons Technologies Ltd.*), the Hon'ble Supreme Court held that such transactions come within the definition of 'deposits' under the MPID Act. The Hon'ble Supreme Court in the MPID matter, has extensively referred to the claims made on the website of the NSEL and the contents of the publicity material and other investor resources. The Hon'ble Supreme Court has also observed that NSEL was advertising assured and uniform return of 16% p.a. for the 'paired

contracts' traded on its platform where the return offered was same across the commodities. The return remained the same irrespective of the duration of the contract. At Para 45 of the said order, the Hon'ble Supreme Court has also depicted certain examples of 'paired contracts', which offered assured returns. For example, a T+2 and T+25 paired contract in steel had the same offered return as a T+5 and T+35 paired contract in castor oil. The 'paired contracts' were being marketed as an alternative to fixed deposits. It was also noted in the judgement of the Hon'ble Supreme Court in the MPID matter that the overwhelming majority of the sale leg of the 'paired contracts' which were executed were short sales i.e., commodities to back such sales were not available at the designated warehouses of the NSEL.

26. The Noticee has contended that the paired contracts were being traded openly and transparently on NSEL since about September 2009, wherein the Noticee had started trading in the paired contracts since May 2010, after having observed the prolonged, open, transparent and successful trading in such contracts. Noticee has further confirmed to have traded in two different contracts with different settlement cycles (alleged paired contracts) on the NSEL platform during the period from September 2009 to July 2013, in proprietary account as well as on behalf of its clients along with the fact that it was also in receipt of special pay-out under circular no. NSEL/C&S/2013/073 dated August 17, 2013, disbursed among clients and self.

27. Considering the deliberations and discussions recorded above and the submissions of the Noticee, the moot question is whether the Noticee, while trading and facilitating transactions in paired contracts for its clients, was under the bonafide belief that such transactions were actually spot contracts in commodities. Or, can it be said that the very fact that 'paired contracts' were offered meant that NSEL was offering contracts which were not resulting in compulsory delivery and, therefore, the Noticee should have been aware that such a product was far removed from the spot trading in commodities which was permitted on NSEL's platform. Further, as stated above, NSEL itself was advertising such contracts as an alternative to fixed deposits and the return

offered was fixed (e.g. 16%) across all commodities irrespective of the nature of the contract or the duration. Also, these contracts were structured in a manner which ensured that the buyer always made pre-determined profits.

28. In the undeniable background that there was a settlement default at NSEL, it is clear that there were enough red flags which should have alerted the Noticee when these products were first offered by NSEL. With the material on record, it is further clear that any prudent person (including the Noticee) would have come to the conclusion that what was being offered were not spot contracts in commodities and rather had trappings of a financial product which offered fixed and assured returns, as has been already observed by the Hon'ble Supreme Court in the *State of Maharashtra vs. 63 Moons Technologies Ltd*. The Noticee being an intermediary was expected to do due diligence on the products which it offered for trading to its clients. An assumption as to the legality of 'paired contracts' clearly shows that the Noticee failed to do adequate due diligence. The Notification regarding approval of contracts permitted on NSEL was in public domain. Thus, I find that Noticee failed to perform basic due diligence of the contracts offered vis-a-vis the conditions specified in the aforesaid Notification.

29. Noticee has contended that there is no basis on which it could be said that the Noticee was closely associated with NSEL and the fact that Noticee was a trading member of NSEL and had done trade on the platform of NSEL, cannot be relied against the Noticee. In this regard, I note that for the clients, the face of the NSEL and the 'paired contracts' was the Noticee itself and the 'paired contracts' could not have been executed in large volumes, across the several clients without the actions and facilitation of the Noticee. I find that such association of the Noticee in the 'paired contracts' has seriously questioned the reputation, fairness, honesty, integrity and character of the Noticee in the securities market. The association of the Noticee with NSEL cannot be denied since Noticee was observed to be facilitating the clients to trade in the 'paired contracts'.

30. Having established that the Noticee has traded in 'paired contracts' for themselves and for its clients, I now proceed to examine the allegations levelled

against the Noticee in the SCN and the Hearing Notice. It is noted that the main allegation against the Noticee, as levelled in the SCN, is that by facilitating the trading in 'paired contracts' on NSEL platform during the relevant period as a Trading Member/ Clearing Member, the continuance of the registration of the Noticee as a broker is detrimental to the interest of the Securities Market and the Noticee is no longer a 'fit and proper person' for holding the certificate of registration as a broker in the Securities Market, which is one of the conditions for continuance of registration as specified in regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations as applicable at the relevant time. Subsequently, SEBI, on the basis of certain documents/material such as SEBI's Complaint dated September 24, 2018 and FIR dated September 28, 2018 as provided to the Noticee vide Hearing Notice, further alleged that in light of the aforesaid documents as well as observations against the Noticee in the Enquiry Report, the Noticee is not a 'fit and proper person' for holding the certificate of registration being in violation of Regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations. I note that regulation 5(e) of the Stock Brokers Regulations provides that for the purpose of grant of Certificate of Registration, the applicant has to be a 'fit and proper person' in terms of Schedule II of the Intermediaries Regulations. I further note that the 'fit and proper person' criteria specified in Schedule II of the SEBI (Intermediaries) Regulations, 2008, was amended vide SEBI (Intermediaries) (Third Amendment) Regulations, 2021 with effect from November 17, 2021.

31. In order to continue to become a SEBI registered intermediary, the Noticee is, *inter alia*, required to satisfy the conditions of eligibility, which included 'fit and proper person' criteria. The above condition to be a fit and proper person is a preliminary condition applicable at the time of seeking registration. As and when the 'fit and proper' criteria changes, the Noticee will be required to comply with the revised criteria, and in this instance, criteria were revised vide the amendments in November 2021. It is noted that parameters provided under paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries

Regulations lays down a list of disqualifications which, *inter alia*, includes the following:

> *"(3) For the purpose of determining as to whether any person is a 'fit and proper person', the Board may take into account any criteria as it deems fit, including but not limited to the following:*
>
> *(b) the person not incurring any of the following disqualifications:*
>
> *(i) criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;"*

32. I note from the Hearing Notice that an FIR has been registered with the MIDC Police Station, Mumbai, against the Noticee under section 154 of the CrPc on September 28, 2018 and the same is pending as on date and is validly subsisting and has not been challenged, quashed or stayed by any competent court *qua* the Noticee. The disqualifications listed under paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations are unambiguously clear and no exemption from such criteria has been provided. Once the disqualification is triggered, the 'fit and proper' person criteria is open for determination by SEBI. It is, therefore, noted that the disqualification provided in paragraph 3(b)(i) under the amended Schedule II of the Intermediaries Regulations is also triggered vis-à-vis the Noticee.

33. It is also noted that the Noticee has traded in the 'paired contracts' on behalf of its clients. I note that the Noticee, as a broker and as a member of NSEL, represented NSEL to the regular investors. The execution of the trades in 'paired contracts' by the Noticee shows the participation of the Noticee in the said scheme perpetrated by NSEL to provide its platform for trading in 'paired contract' that were not permitted under the Exemption Notification and were purely financial contracts promising assured returns under the garb of spot trading in commodities. Therefore, the Noticee by its conduct and as a member of NSEL has acted as an instrument of NSEL in promoting and/or dealing in 'paired contracts' which were in the nature of financing transactions (as held by the Hon'ble Supreme Court of India referred *supra*). The Noticee, by providing access for taking exposure to 'paired contracts' has exposed its clients to the risk

involved in trading in a product that did not have regulatory approval, thereby raising doubts on the competence of the Noticee to act as a registered Securities Market intermediary. Thus, I am of the view that the trading activities of the Noticee in 'paired contracts' for its clients on the NSEL platform have serious ingredients jeopardizing the reputation, belief in competence, fairness, honesty, integrity and character of the Noticee in the Securities Market.

34. The scope of the instant proceeding is not to analyze the actual impact and consequences of the conduct of the Noticee but to examine as to whether or not, the Noticee has acted in a manner expected of a market intermediary and the answer to the same manifestly goes against the Noticee. The fact that is undeniably clear before me is that the involvement of the Noticee in trading/ facilitation of trading in 'paired contracts' on NSEL is certainly a conduct which was not permitted by the Exemption Notification nor by any of the applicable provisions of the FCRA and therefore, such a conduct, as has been displayed by the Noticee in its trading on NSEL platform, is detrimental to the interest of the Securities Market.

35. I note that when provisions of law prescribe certain acts to be done in a particular manner, the same is required to be honoured in letter and spirit. Law does not provide any exception to anyone to perform such acts as per his whims and fancies that is not permissible under an extant legal framework. Therefore, if an exemption is granted in respect of all forward contracts of one-day duration for the sale and purchase of commodities traded on NSEL from operations of the provisions of the FCRA subject to compliance with certain conditions then it is obligatory on the part of a market intermediary to execute forward contracts of one-day duration only, subject to strict compliance with the said conditions. As noted above, the principle of *'ignorantia juris non excusat'* or that *'ignorance of law is no excuse'* becomes squarely applicable.

36. The limited scope of the present proceedings is to see whether the indulgence, engagement and promotion of such activities could be held to be beneficial to the development of Securities Market or the same contain elements that are

potentially dangerous and detrimental to the interest, integrity, safety and security of the Securities Market. In this respect, the undisputed fact that the scheme of 'paired contracts' traded on NSEL ultimately has caused loss to the market to the extent of ₹ 5,500 Crore itself casts serious aspersion on the conduct, integrity and reputation of, *inter alia*, the Noticee who facilitated such 'paired contracts' and therefore, its continuing role in the Securities Market cannot be viewed as good and congenial for the interest of the investors or of the Securities Market.

37. Given the above discussions and deliberations, I am constrained to conclude that the Noticee, presumably driven by its desire to earn brokerage and/ or profit, provided access to its clients to participate in a product which raises serious questions on the ability of the Noticee to conduct proper and effective due diligence regarding the product itself. Further, as per findings recorded above, the Noticee also attracts the disqualification provided in paragraph 3(b)(i) under the amended Schedule II of the Intermediaries Regulations insofar as an FIR against the Noticee under section 154 of CrPC has been registered with the MIDC Police Station, Mumbai and the same is validly subsisting/ pending as on date. Further, it is also not the case of the Noticee that the aforesaid FIR is either stayed or quashed by any competent court qua the Noticee or otherwise. In view of the above, I hold that the Noticee does not satisfy the 'fit and proper person' criteria specified in Schedule II of the Intermediaries Regulations. Therefore, such activities of the Noticee as a registered broker cannot be condoned and deserve appropriate measure to prevent such wrong doings from recurring to the detriment of the interest of the Securities Market.

Consideration of DA's recommendation:

38. The DA in the Enquiry Report, after determining that the Noticee is not "fit and proper", has recommended that the certificate of registration of the Noticee be cancelled.

39. As discussed in the preceding paragraphs, the facts and circumstances in the instant matter lead to the conclusion that the Noticee is not a “fit and proper” person. Once an entity has been declared to be not “fit and proper”, in the interest of securities market, it should not be allowed to continue to act as an intermediary till the time it does not regain its “fit and proper” status. In this context, it is pertinent to mention that in several scenarios, a defect which is the reason for holding an intermediary not “fit and proper” is curable at the hands of the intermediary, while in certain scenarios, it is not.

40. In the present case, the Noticee has been found to be not ‘fit and proper” for the reason that its conduct, integrity and reputation has been found wanting because of the Noticee’s involvement in trading of “paired contracts” on the NSEL platform and also for the reason that in that regard, the FIR dated September 28, 2018 has been registered by EOW, which is subsisting as on date.

41. Schedule II of the Intermediaries Regulations, in clause 4 provides that “*Where any person has been declared as not ‘fit and proper person’ by an order of the Board, such a person shall not be eligible to apply for any registration during the period provided in the said order or for a period of five years from the date of effect of the order, if no such period is specified in the order*”. This clause, in my view, covers scenarios of ‘cancelation’ or ‘suspension’ of the certificate of registration of the intermediary.

42. Thus, the Intermediaries regulations envisage deeming time limit (of 5 years) or specification of a time limit by the deciding authority, within which the intermediary can cure the defects which led to determination of its status, if the same can be done at its end. The said specification of period also serves as a reformative direction against the intermediary.

43. Considering the above, in the instant case, having held that the Noticee is not “fit and proper”, the question for determination is what would be the appropriate direction in the given facts and circumstances. In my view, “suspension” of the certificate of registration of the Noticee would serve the desired purpose, as

envisaged under the Intermediaries Regulations, of keeping the Noticee out of the securities market for the specified period after which the Noticee would be eligible to resume its business.

44. Given the fact that the transactions in paired contracts facilitated by the Noticee pertain to the period 2009-13, I am of the considered view that a direction of suspension of certificate of registration of the Noticee for a period of three (3) months or till the time the FIR ceases to be “pending”, would be proportionate and more appropriate in the present case.

Order:

45. In view of the foregoing discussions, I, in exercise of powers conferred upon me under Section 12(3) and Section 19 of the SEBI Act read with Regulation 27 of the Intermediaries Regulations, suspend the Certificate of Registration (bearing No. INZ000063835) of the Noticee i.e., Ashika Commodities and Derivatives Pvt. Ltd. for a period of three (3) months from the date of this Order or till the FIR filed against the Noticee by EOW ceases to be pending or the Noticee is discharged or acquitted by a Court in relation to the FIR, whichever is later.

46. The Noticee shall, after receipt of this order, immediately inform its existing clients, if any, about the aforesaid direction in paragraph 45 above.

47. The Order shall come into force with the immediate effect.

48. It is clarified that in view of the amendment made with effect from January 21, 2021 in the Intermediaries Regulations, the procedure for action on receipt of recommendation of a DA specified earlier under Regulation 28 of the Intermediaries Regulations has now been incorporated in the amended Regulation 27 of the Intermediaries Regulations. Accordingly, this order is passed under the amended Regulation 27 of the Intermediaries Regulations, 2008. It is also noted that the above Order is without prejudice to the criminal complaint filed by SEBI in NSEL matter and/ or any proceedings pending before

any authority in respect of similar matter concerning the Noticee or other relevant persons.

49. A copy of this order shall be served upon the Noticee and the recognized Market Infrastructure Institutions for necessary compliance.

Sd/-

Place: Mumbai **MANOJ KUMAR**

Date: July 06, 2023 **EXECUTIVE DIRECTOR**

SECURITIES AND EXCHANGE BOARD OF INDIA