QJA/ARB/MIRSD/DOP/29138/2023-24

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.	PAN
Pulin Comtrade Limited (Earlier known as SMC Comtrade Limited)	**INZ000035839**	**AACCA1776E**

In the matter of National Spot Exchange Limited

BACKGROUND

1. The present proceedings originate from the Enquiry Report dated November 22, 2019, submitted by the Designated Authority (hereinafter referred to as "**DA**") in terms of regulation 27 of the SEBI (Intermediaries) Regulations, 2008 (hereafter referred to as "**Intermediaries Regulations**") as applicable at the relevant point in time. The DA, based on the facts noted in the said enquiry report, has recommended that the registration of SMC Comtrade Limited (now known as Pulin Comtrade Limited) (hereinafter referred to as "**noticee**") as a stock broker bearing registration No. INZ000035839 may be cancelled.

2. In this regard, a DA was appointed to enquire into and to submit a report pertaining to the acts of the noticee and the possible violations of regulations 5(e), 9(b) and 9(f) of the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as "**Stock Brokers Regulations**") read with Schedule II of the Intermediaries Regulations, alleged to have been committed by the noticee.

3. After conducting the enquiry as envisaged under regulation 25 of the Intermediaries Regulations, on the basis of material available on record and after considering the replies filed by the noticee, the DA submitted an enquiry report dated November 22, 2019 (hereinafter referred to as '**Enquiry Report**') in respect of the noticee and found that the noticee, as a stock broker of the

National Spot Exchange Limited (hereinafter referred to as "**NSEL**"), had facilitated the trading in the *'paired contracts'* on the exchange platform of NSEL, which was in violation of the applicable provisions of erstwhile Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as "**FCRA**") and the conditions specified in the Government of India Notification dated June 05, 2007 (hereinafter referred to as "**2007 Exemption Notification**"). It was also observed in the Enquiry Report that the continuance of the Certificate of Registration of the noticee as a stock broker (having Registration No. INZ000035839) is detrimental to the interest of the securities market and that the noticee is not a 'fit and proper person' to hold the Certificate of Registration No. INZ000035839 as a stock broker in the Securities Markets which is one of the conditions for grant/holding/ continuance of registration, in terms of regulations 5(e), 9(b) and 9(f) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations. The DA, in view of the aforesaid finding, has recommended that the Certificate of Registration of the noticee as a trading/ clearing member may be cancelled.

4. The relevant excerpt of the Enquiry Report is reproduced below:

> *"37. In view of the facts and circumstances of the case and material available on records, it is determined that the Noticee is not a fit and proper person in terms of Regulation 5(e) of the Stock Broker Regulations read with Schedule II of the Intermediaries Regulations. Therefore, in terms of Regulation 27 of the Intermediaries Regulations, it is recommended that the certificate of registration of the Noticee i.e. SMC Comtrade Ltd, registered with SEBI as a trading/ clearing member bearing Registration No. INZ000035839 may be cancelled, in the interest of the securities market."*

5. Pursuant to the same, a Post Enquiry Show Cause Notice dated January 28, 2020 (hereinafter referred to as "**SCN**") enclosing therewith the Enquiry Report of the DA and certain other material/information as specified in the said SCN, was issued to the noticee under regulation 28(1) of the Intermediaries Regulations (as applicable at the relevant time) calling upon it to show cause as to why the action of cancellation of Certificate of Registration, as recommended by the DA or any other action as may be considered appropriate by the Competent Authority, should not be taken against it, in terms of regulation 28(2) of the Intermediaries Regulations (as applicable at the relevant time). The SCN further advised the noticee to submit its reply, if any,

within 21 days of receipt of the said SCN. It is noted from the records that the noticee filed its reply dated February 14, 2020 and September 9, 2020.

6. Subsequently, due to certain administrative exigencies, the competent authority of the Securities and Exchange Board of India (hereinafter referred to as the **"SEBI"**), reallocated the present matter to the undersigned for further proceedings.

7. Meanwhile, SEBI passed five separate orders rejecting the applications filed by five other entities for registration as commodity brokers in the NSEL matter. Aggrieved by the said SEBI orders, the entities filed separate appeals before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**Hon'ble SAT**"). The Hon'ble SAT vide its common order dated June 9, 2022 (hereinafter referred to as **"SAT Order"**), remanded the aforesaid SEBI orders to SEBI to decide these matters afresh within six months from the date of the said SAT 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…"*

8. In light of the aforesaid SAT order and certain other subsequent orders passed by the Hon'ble SAT in similar set of cases from time to time, it was felt necessary to furnish certain additional documents/material to the noticee before concluding the present proceedings. Accordingly, SEBI vide Supplementary SCN dated October 11, 2022 (hereinafter referred to as "**SSCN**" and collectively SCN and SSCN being referred to as "**SCNs**") provided certain additional documents/material (as indicated in the SSCN) to the noticee and advised it to submit its reply/comments/clarifications in addition to its earlier replies, if any, within 15 days of receipt of the SSCN. The noticee was further informed that if no reply is received within 15 days of receipt of the

SSCN, it would be presumed that it had no additional comments/reply to submit and the matter would be proceeded in terms of the provisions contained in the Intermediaries Regulations. The SSCN was sent to the noticee through *Speed Post Acknowledgement Due* (for short '**SPAD**') vide letter dated October 11, 2022 and also through email dated October 14, 2022 and proof of delivery of the same to the noticee is on record. The noticee was also provided with an opportunity of hearing on November 15, 2022.

9. On the scheduled date of hearing, which was held through video conferencing, Mr. Ashok Agarwal, Director of the noticee appeared and requested 15 days' time to file written submissions in the matter. The noticee also requested for inspection of the documents being relied upon in the matter. Accordingly, the hearing was adjourned to December 13, 2022.

10. The inspection, as requested by the noticee, was granted to the noticee on November 24, 2022 and pursuant thereto, the noticee filed its reply dated December 2, 2022.

11. On December 13, 2022, the hearing was held, as scheduled, through video conferencing and Mr. D.K. Agarwal, Director of the noticee appeared and requested for another opportunity of inspection in the matter as certain documents, as requested by the noticee, were not provided to it. During the course of the said hearing, the noticee was advised to state the relevancy of the documents sought by it and accordingly, the hearing was further rescheduled in the matter to January 10, 2023. The noticee, vide its letter dated January 09, 2023, filed its submissions as regards the relevancy of the documents sought by the noticee. On the scheduled date of hearing, i.e., January 10, 2023, the noticee requested that the hearing in the matter may be held in physical mode.

12. The aforesaid request of the noticee for physical hearing in the matter was acceded to and Advocate Shri Prakash Shah and Mr. Kushal Shah (Chartered Accountant), Authorized Representatives (ARs) of the noticee, appeared and requested for further opportunity of inspection in the matter. On the basis of letter dated January 10, 2023, wherein, the noticee had made submissions as regards the relevancy of documents, the ARs of the noticee were informed that all the relevant and relied upon documents in the matter have been duly provided to the noticee and the ARs of the noticee did not make any further submissions in this regard. Pursuant to the same, the ARs made oral

submissions in the matter and fifteen days' time was granted to the noticee to file post hearing submissions in the matter.

13. Pursuant to the same, the noticee, vide its letter dated March 03, 2023, intimated SEBI that a settlement application has been filed in the matter and accordingly, requested to keep the hearing in abeyance. Further, the noticee, vide its email dated April 17, 2023 submitted that the aforesaid settlement application in the matter has been rejected and further requested two weeks' time to file the written submissions in the matter. The said request of the noticee was acceded to and the noticee was granted time till May 01, 2023 to file its written submissions in the matter. I note from the records that the noticee filed its written submissions in the matter vide letter dated June 23, 2023. Further, vide letter dated July 27, 2023, the noticee has also submitted that the name of the company has changed to Pulin Comtrade Limited.

14. The replies filed by the noticee vide its letters dated February 14, 2020, September 09, 2020, December 02, 2022, January 09, 2023, June 23, 2023 and the oral submissions made during the course of the personal hearing held on January 10, 2023, are summarized hereunder:

    i. The SCN has been issued after a gap of almost 10 years and thus, there has been an inordinate delay in initiation of proceedings by SEBI. Reliance is placed on the decisions of the Hon'ble SAT in the matters of ***Ashok Shivlal Rupani and Another Vs. SEBI***[1] and ***Mr. Rakesh Kathotia Vs. SEBI***[2] and the decision of the Hon'ble Supreme Court of India in the matter of ***State of Gujarat Vs. Patel Raghav Natha***[3];

    ii. The DA has failed to follow the due process of law as regards providing the inspection of documents to the noticee and granting an opportunity of personal hearing in the matter;

    iii. The opportunity of personal hearing is of paramount importance and the SCN is in gross violation of the basic principle of '*audi alteram partem*' as the DA had not provided an opportunity of personal hearing in the matter to the noticee before recommending that the certificate of registration of the noticee, be cancelled. Reliance is placed on the

[1] Appeal No. 417 of 2018, Decided on August 22, 2019
[2] Appeal No. 07 of 2016, Decided on May 27, 2019
[3] AIR 1969 SC 1297

decisions in the matter of ***Painter Vs. Liverpool Oil Gas Light Company***[4], ***A.R. Antulay Vs. R.S. Nayak***[5] and ***Canara Bank and others Vs. Shri Debasis Das and Others***[6]. There was nothing in the Intermediaries Regulations to prohibit the DA from granting an opportunity of hearing in the matter to the noticee. The noticee did not supply any reply on the facts as it was of the view that the proceedings will not be brought against the noticee based on the objections raised by the noticee in its submissions and thus, the present matter shall be remitted to the DA;

iv. The SSCN is issued pursuant to the SAT Order and the noticee was not a party to the aforesaid order and thus no further proceedings/ documents can be initiated/ brought on record against the noticee based on the SAT Order;

v. Documents such as FMC letter dated September 16, 2013, internal audit report of NSEL for the period April 1, 2011 to September 30, 2011, document issuing directions to the Managing Director and the Chief Executive Officer of NSEL by FMC on August 01, 2013 are relevant as they have been mentioned in the FMC Order but the said documents have not been provided to the noticee. Further, documents such as agenda note and minutes of SEBI Board related to merger of FMC with SEBI, details of action taken, if any, against MCX, statutory auditors of NSEL etc., are also relevant, as it has been alleged that the noticee is not a fit and proper person in terms of the Intermediaries Regulations but the said documents have also not been provided to the noticee;

vi. The DA, in the Enquiry Report, has made the recommendation that the certificate of the noticee be cancelled in terms of regulation 27 of the Intermediaries Regulations but the said provision has been substituted by the SEBI (Intermediaries) (Amendment) Regulations 2021, with effect from January 21, 2021 and is, therefore, not relevant in the present proceedings;

[4] (1836) 3A & E 433
[5] (1988) 2SCC 602
[6] Appeal 7539 of 1999, Decided on March 12, 2003

vii. NSEL was openly carrying out trading in a variety of commodities and FMC was performing the function of a regulator and thus, the noticee had no reason to doubt the legality or validity of '*paired contracts*'. NSEL always presented the '*paired contracts*' to be legal and permissible and the Noticee traded in the said contracts in accordance with the business rules and regulations of NSEL. There was a gross failure on part of FMC in performing its duties as the regulator which is the root cause of the present proceedings;

viii. A broker cannot be expected to check the bonafide of an exchange and, as noted by FMC, market participants were being kept in dark and the noticee only acted as a gatekeeper for filtering the orders being placed on NSEL trading terminals;

ix. The first leg of the alleged paired contract was always a 'purchase' and hence, there is no question of a short sale. There appears to be a misconception that the parties had to go to the warehouse and take actual physical possession of the commodities. The NSEL was an exchange and not a '*mandi*' and the goods were represented by documents and there was never any default in delivery obligations for any of the contracts;

x. The term '*paired contracts*' was also known as '*trader contract*' and the noticee had fulfilled its total obligation on execution of buy and sell contracts. The post trade activities were carried by clearing and settlement mechanism of NSEL and by making full payment for buy contracts, the noticee has complied with its entire obligation;

xi. Except for member-broker relation with the NSEL, the noticee has no connection or association with the NSEL or its director, promoters and Key Management Persons in any manner whatsoever. Admittedly, the noticee had carried out the transactions at the relevant time in due compliance of the Bye Laws, Rules, Regulations and Circulars as issued by NSEL from time to time and no grievance has been raised against the noticee either by NSEL or clients of the noticee;

xii. The transactions were entered on the instructions of the respective clients and the noticee had no role to play except executing the transactions as per instructions of the clients. The clients never sought clarification, information or lodged any complaint with the

noticee prior to July 31, 2013 or anytime thereafter. The clients deployed their own funds and the noticee never induced/ advised the clients to place order with respected to the alleged paired contracts;

xiii. The noticee traded in the paired contract from October 2009 to July 2013 and the noticee's turnover in the alleged paired contracts was miniscule in comparison to the noticee's total turnover in other commodity exchanges. Further, few of the clients whose payment was outstanding from NSEL have submitted an affidavit, *inter alia*, stating that they had executed trades out of their own volition and no funding/ financing was provided to the said clients;

xiv. Subsequent to the merger of FMC with SEBI, the noticee's registration was duly permitted by SEBI, sans any condition, despite the facts were well known in public domain. Thus, having granted the certificate of registration to the noticee, cancelling the same for an allegation well known to SEBI would be against the principles of equity, fairness, justices and estoppels. The noticee had no reason to suspect that the '*paired contracts*' were in alleged violation of the 2007 Exemption Notification until the passing of the FMC Order dated December 17, 2013. The extant proceedings are based on the events that occurred in 2012-13 and the same would have been taken into account while granting the certificate of registration to the Noticee on September 15, 2016. Further, the certificate granted to the Noticee was unconditional and therefore the present proceedings are tantamount to the certificate granted earlier;

xv. The noticee had done its due diligence before placing the orders and it is pertinent to mention that bye law 4.1 of the NSEL Bye laws stipulates that NSEL was under obligation to take permission from FMC for all contracts and further, when the noticee came to know about NSEL's functioning, it immediately stopped executing trades at NSEL, even at the cost of inviting displeasure of its clients;

xvi. The alleged breach of conditions of the exemption notification was not known to the noticee and neither did the Government of India or FMC, despite being fully aware about all the facts, ever allege that there had been any such breach/ violation;

xvii. The fact that the noticee was a non-defaulting member is a substantially relevant fact as the noticee had complied with all the trade obligations and the same ought to be one of the most crucial factors to determine the fit and proper status in the present case;

xviii. NSEL had huge insurance policies and even the insurance companies would have checked the goods before issuing such large policies and there was no allegation/ finding that the goods covered by the noticee's contracts were missing and no auction claims were ever made against the noticee;

xix. The submissions as regard the conditions stipulated in the 2007 Exemption Notification are as under:

a) The first condition stipulated that '*No Short Sales and All outstanding positions at the end of the day shall result in delivery* and NSEL Circular dated August 31, 2012 clarified that short sales were prohibited and directed that the seller must be in possession of commodities or equivalent buy position. The first transaction for all alleged '*paired contracts*' was always 'purchase' and therefore there is no question of 'short sale';

b) It was incomprehensible and impractical to contend that when thousands of clients were participating in alleged pair contracts, all of them would be taking physical delivery for their positions across multiple warehouses across the country;

c) NSEL had issued delivery allocation reports against the buy trades of the noticee and details of relevant warehouse receipts were recorded therein, which entitled the noticee to take delivery. Ownership of the commodities was with the clients, until tendered against pay-in obligation;

d) The second condition stipulated, i.e., "*All outstanding positions of the trade at the end of the day shall result in delivery...*", only meant that the open positions at the end of the day had to result in delivery but on the Exchange, such delivery was by delivery of requisite documents/ Delivery Allocation Letter, and not by actual physical delivery of commodities. The buyer could either take physical delivery or sell the goods and deliver the said documents and pay in

but in either case, the exemption condition did not mean that the delivery had to be on the same day;

e) The third condition which stipulated that the "*the National Spot Exchange Ltd. shall organize spot trading subject to regulation by the authorities regulating spot trade in the areas where such trading takes place*", only put a compliance requirement on NSEL and the *Noticee* understands that NSEL must have complied with the same;

f) The fourth condition pertaining to providing all information/ return relating to trade to the Central Government/ Designated Agency, only pertained to NSEL and not to brokers. Further, it is an admitted positon that fortnightly reports were being filed by NSEL with FMC;

g) The fifth condition which allowed the Central Government to impose additional condition and no condition was imposed that the settlement period of all contracts had to be less than 11 days and that trading in paired contracts would not be permitted;

h) While withdrawing the exemption notification under the sixth condition of the exemption notification, the government did not allege that there was any violation of any of the exemption conditions. Further, since the trading was in knowledge of FMC/ DCA and they permitted the same to go on without any objection, the same amounts to waiver of breach. In fact, the same also amounted to estoppel as to the correct interpretation of the 2007 Exemption Notification;

i) The fulfilment of the conditions of the 2007 Exemption Notification was the duty/ obligation of NSEL and not of the brokers/ clients and it was the responsibility of NSEL, FMC, DCA to ensure that the contracts launched on NSEL were in compliance with the conditions of the 2007 Exempting Notification;

xx. It was NSEL which had introduced the concept of alleged 'paired contracts' and the brokers had no role to play in NSEL deciding to launch such alleged paired contracts. The trading in alleged paired contracts amounted to about 99% of the total trading in the NSEL as held in the Order dated December 04, 2017 of the Hon'ble Bombay High Court in WP No. 2743 of 2014. It could never have been held that such widely traded contracts were illegal or in violation of GOI notification dated June 05,

2007. The paired contracts were launched in accordance with the NSEL bye laws;

xxi. As per bye-law 5.26 of NSEL Bye-Laws, the relevant authority of the exchange had the authority to withdraw the exchange as a legal counterparty if the transactions were financial transactions and since vide letter dated August 16, 2013, the FMC had directed NSEL to settle all trades and hence at that time such trades were not considered as financing transactions. The noticee did not lend any money and trades were backed by payment and delivery and thus the alleged paired contracts were not merely financing transactions;

xxii. If the alleged paired contracts had to be considered as 'illegal' then the same had to be annulled as the same would be void in law but neither Government of India, nor FMC nor the DCA, nor SEBI, nor any other authority has held that all such transactions had to be annulled;

xxiii. SEBI has placed reliance on various orders, judgements passed/issued by various regulatory authorities wherein the noticee was not even a party to the said proceedings/order/Judgement. The observations made in these reports/orders were specific to the entities therein and not specific to the noticee;

xxiv. The noticee was not a party to the FMC order dated December 17, 2013 and the said order makes no reference to the noticee or the trades executed by the noticee and is therefore irrelevant qua the issue as to whether the noticee is a 'fit and proper' person or not. The said FMC Order indisputably found fault only with the NSEL and its promoters and management and there were no allegations against the noticee. Further, the said order was the first time any authority had raised any allegation/ contention that the alleged '*paired contracts*' amounted to a '*financing transaction*';

xxv. The FMC Order expressly held that '*…an unpermitted financing scheme was being run on the NSEL platform…...the market participants and general public as well as the government were kept in completely in dark by the Board and Management of NSEL on this critical issue….*' which shows that the noticee was in dark too and there was no '*collusion*';

xxvi. The reliance on the decision dated April 30, 2019 passed by the Hon'ble Supreme Court to label the alleged 'paired contracts' as financing transactions by the designated authority is not sustainable in view of the following:

(a) All contracts were launched after taking prior concurrence of FMC in terms of the Bye-Laws of NSEL which has not yet been disputed by anyone;

(b) There was no 'pre-determination' of price between the *Noticee* and the counter-party brokers and the prices were prevailing market prices;

(c) Similar paired trading, commonly referred to as the 'calendar spreads' are openly and regularly traded in equity and commodities derivatives markets and treated as legal by SEBI. Thus, features of trading on NSEL in the alleged '*paired contracts*' with commodities as underlying was not considered to be a financing business by the *Noticee*;

(d) Additional costs such as VAT, Sales Tax, Octroi, APMC Cess, Warehouse Charges, etc., were being paid to the State Governments/ other authorities and therefore at the relevant time the transactions seemed to be genuine to the *Noticee* and not mere financing transactions;

(e) At the time, there was no law, rule, regulation which prohibited execution of trades in NSEL even if the same amounted to a financing business;

(f) NSEL was regularly submitting detailed reports to FMC in respect of all trades carried out and therefore, FMC was fully aware about the nature of the alleged '*paired contracts*' and yet it never held them to be financial transactions;

xxvii. As regards the reliance placed by the DA on the Ministry of Finance, Department of Economic Affairs letter dated December 30, 2014, following is submitted:

(a) In the said letter, there is a reference to an earlier letter dated June 19, 2014 which is supposed to be an enclosure to the letter

dated December 30, 2014 but the same has not been provided to the noticee;

(b) The said letter was issued one year after the FMC Order date December 17, 2013 and one and half year after NSEL had defaulted and the fraud perpetrated by NSEL had become public knowledge;

(c) It is observed from the letter that alleged violation of 2007 Exemption Notification were still being examined and it was through this letter that DEA concurred that NSEL had violated the first two conditions;

(d) The said letter advised FMC to initiate appropriate action against NSEL and does not make any allegations or suggest any action against the noticee;

(e) Since SEBI has merged with FMC, SEBI is obliged to follow the instructions in the said DEA letter and only take action against NSEL;

xxviii. As regards the reliance on the EoW letter dated April 4, 2015 by the DA, the following is submitted:

(a) On perusal of orders passed by SEBI in case of brokers, the noticee understands that pursuant to the receipt of the said report, auditors were appointed by SEBI to carry out inspection/ performance audit of the brokers but no such action was taken in respect of the noticee and thus it is understood that the said EoW report does not include the name of the noticee;

(b) The fact that other courts and authorities have made observations against NSEL does not mean that the noticee is not fit and proper person. The noticee never promoted NSEL or the alleged paired contracts and the noticee had no close association with NSEL.

xxix. As regards the 'fit and proper' person criteria, the noticee submitted as under:

a) No flaws, non-compliance, deficiency etc., were pointed out by any government agency when NSEL was functional and the present allegations against the noticee are afterthought;

b) The noticee has always maintained the fit and proper person criteria specified in the Schedule II of the Intermediaries Regulations;

c) The objectionable trades were executed during the period October 2009 to July 2013 and thus the cause of action pertains to the period 2009-2013. The amendment to Schedule II of the intermediaries Regulation came into force from November 17, 2021 which is much after the initiation of present proceedings and the filling of the FIR and thus, retrospective application of the same would be in gross violation of the principles of natural justice.

xxx. As regards the FIR filed by SEBI, it is submitted that:

a) FIR is the first instance of reporting of complaint lodged with the police which is a preliminary document based on one-sided statements without any adjudication and there is no final determination;

b) The main plank of the said FIR is that the noticee has traded in the alleged paired contracts like all other trading members, against whom the FIR has been filed and it is illogical to contend that anyone who dealt in the alleged paired contracts as a member of NSEL would be declared as not '*fit and proper*' person;

c) The complaint filed by SEBI pursuant to Section 29A(2)(e) was filed few days before the expiry of 3 years' period specified therein, implying that the alleged violations are not serious in nature or else SEBI would have taken the action promptly;

d) SEBI cannot rely on its own complaint dated September 24, 2018 pursuant to which the FIR dated September 28, 2018 has been filed as the observations/ allegations in the FIR has been made by SEBI and thus SEBI would be judging the very same allegation;

e) The FIR filed by SEBI does not prove the commission of the offence by the noticee. Further, no charge sheet has been filed on the said FIR and thus, the allegation in the said FIR may not survive against the noticee but if in the meantime, the noticee is declared as not '*fit and proper*' person, it would irreparable damage to the business and reputation of the noticee;

xxxi. The noticee placed reliance on the decision of the Hon'ble SAT dated May 13, 2016 in the matter of ***Almondz Global Securities Ltd. vs SEBI (Appeal No. 222 of 2015)*** to submit that the SEBI must be absolutely certain that by not declaring the noticee as unfit, irreparable harm would

be caused to the securities market for the simple reason that the punishment of declaring an intermediary as unfit is the ultimate punishment and thus, must be imposed sparingly only in cases of repeated offences committed with impunity by the intermediary;

xxxii. The punishment of being declared as not fit and proper is the ultimate punishment and should be imposed sparingly in case of repeated offences. It is a settled law that punishment should not only be reasonable but must fit the violation of law. In this regard, reliance is placed on the decisions of the Hon'ble Supreme Court in the matters of ***E.P. Royappa Vs. Tamil Nadu***[7] and ***Teri Oat Estates (P.) Limited***[8];

xxxiii. In terms of Section 29A(2)(e) of the FCRA, SEBI could initiate prosecution proceedings against the members of NSEL for alleged violation of FCRA and could not initiate enquiry proceedings under the Intermediaries regulations. FCRA does not fall within the definition of the term 'Securities laws' as defined in regulation 2(1)(k) of the Intermediaries regulations. The actions of the Noticee at the relevant time were not governed by SEBI Regulations but were governed by NSEL's bye laws, Regulations, etc. and provisions of FCRA and hence SEBI could only initiate criminal proceedings against the Noticee which it has initiated.

xxxiv. SEBI has initiated proceedings against non-defaulting brokers, including the Noticee, which is bad in law for following reasons:

a) On November 20, 2015, the Ministry of Finance directed SEBI not to exercise any 'regulatory function' in respect of NSEL;

b) On February 11, 2016, the review meeting of special teams of secretaries which was set up by GoI to examine the violation of NSEL decided that SEBI should take action against the defaulting brokers;

c) On April 29, 2016, the Hon'ble Finance Minister informed Lok Sabha that directions had been given to SEBI to examine and take action against defaulting brokers;

[7] [1974 (4) SCC 3]
[8] [(2004) 2 SCC 130]

d) The noticee is not a defaulting broker, rather the noticee is a victim of the default;

xxxv. As regards the noticee's 'close association' with NSEL, the following is submitted:

a) It is absurd to hold that merely acting as broker amounts to acting as a 'facilitator of trades' as no clients were permitted to executed trades directly on the NSEL and had to do so through a registered broker;

b) The trading in NSEL was open and transparent and there was nothing surreptitious about it and no authority had ever questioned the legitimacy or validity of any contracts/ trades;

c) The entire ecosystem of NSEL was similar to all other Exchanges and there were no 'red flags' to arouse any suspicion;

d) Till the time the noticee continued to act as a broker of NSEL, the reputation of NSEL had not been tarnished;

e) The noticee was not on any committee or Advisory Board of NSEL and there was no relationship between NSEL and the noticee apart from member and exchange;

f) MCX and NSEL had common directors and common shareholding and thus the two were closely associated but no proceedings have been initiated against MCX;

xxxvi. The principle of proportionality has been totally ignored in the present case. For example, in the co-location scam, SEBI only imposed monetary penalty upon the large brokers. In this regard, in terms of Section 11(4A) of the SEBI Act, the Competent Authority is empowered to levy a monetary penalty after holding inquiry in the prescribed manner;

xxxvii. Even the FMC in its order dated December 17, 2013 had mentioned that market participants like Noticee were not aware about the fraud undertaken by the NSEL;

xxxviii. The parameters to determine fit and proper status are ex facie untenable and unsustainable as the same insinuate that a party can be deprived of the right to trade merely on the specious grounds that in the subjective

opinion of SEBI such party was ‘associated’ with another party which did not have a good reputation;

xxxix. The reputation of NSEL got tarnished only after the settlement default on July 31, 2013. Further, it is unfair on the part of SEBI to hold that the noticee’s reputation/ integrity/ honesty has been tarnished;

xl. The noticee states and declares that the noticee had no ‘association with NSEL’ and it is absurd to hold that merely acting as a broker of NSE amounted to ‘facilitation’ and that the same automatically amounted to Noticee’s reputation being tarnished;

xli. In terms of regulation 5(e) of the Brokers Regulations, the ‘fit and proper person’ criteria is looked into at the time of granting of certificate of registration and the noticee was duly compliant with the criteria at the time of grant of certificate of registration;

xlii. In terms of regulation 9(b) of the Broker Regulations, the noticee was required to abide by the rules, regulations and bye laws of the exchange and the noticee has not lapsed in complying with the same and there is no allegation in this regard in the Enquiry Report/ SCN;

xliii. In terms of regulation 9(f) of the Broker Regulations, the noticee was required to abide by the Code of Conduct as specified in the Schedule II therein and the noticee has always abided by the same while carrying out transactions at NSEL;

xliv. The noticee has executed the contracts with utmost integrity and adhered to soundness, moral principles and character in terms of Clause A(1) of the Code of Conduct under the Brokers Regulations;

xlv. Clause A(2) of the Code of Conduct of Brokers Regulations mandates a stock broker to act with due skill, care and diligence and the noticee has duly exercised such due skill, care and diligence as a man of ordinary prudence is expected to do;

xlvi. Although FMC was the regulator of NSEL at the time, it never cautioned NSEL, brokers or the investors/ public that NSEL was in violation of the exemption conditions. Further, no authority, regulator or government cautioned the brokers/ clients/ public that the alleged ‘paired contracts’ were in violation of the exemption notification;

CONSIDERATION OF ISSUE AND FINDINGS

15. I have carefully perused the SCNs issued to the noticee, the Enquiry Report, the replies dated February 14, 2020, September 09, 2020, December 02, 2022, January 09, 2023 and June 23, 2023 filed by the noticee, the oral submissions made on behalf of the noticee during the course of the personal hearing 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, the 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. All the contentions of the noticee about the jurisdiction of SEBI to initiate proceedings have to be weighed in this context.

16. Before I proceed to examine the issue, as stated above, vis-à-vis the material available on record before me, it would be appropriate at this stage, to refer to the relevant provisions of the 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 reference:

THE 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.

THE 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

Conditions of registration.

9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely, -

(b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him;

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II

SCHEDULE II

Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992

CODE OF CONDUCT FOR STOCK BROKERS [Regulation 9]

A. General.

(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

Liability for action under the Enquiry Proceeding Regulations.

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;

THE 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.

17. Before coming to the merits of the case, it is relevant to deal with the preliminary contention of the noticee that the present proceedings are vitiated due to delay. In this regard, I deem it fit to place reliance on the decision of the Hon'ble SAT in the matter of ***Mr. Rakesh Kathotia & Ors. vs SEBI***[9], wherein the Hon'ble SAT had held as under:

> *"23. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India vs, Citedal*

[9] Appeal no. 7 of 2016, decided on May 27, 2019

Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court in Bhavnagar University v. Palitana Sugar Mill (2004) Vol.12 SCC 670, State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd (2007) Vol.11 SCC 363 and Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors. (2015) Vol. 3 SCC 695." (emphasis supplied)

18. I further place reliance on the decision of the Hon'ble the Supreme Court in the matter of ***SEBI Vs. Sunil Krishna Khaitan and Ors*** (Decided on July 11, 2022) discussed its earlier decision in the matter of ***SEBI Vs. Bhavesh Pabari***[10] and held the following:

"81. This Court in the judgment authored by one of us (Sanjiv Khanna, J.) in Bhavesh Pabari (supra) had examined the question of delay and laches in initiating proceedings under Chapter VI-A of the Act and the principle of law that when no limitation period is prescribed proceedings should be initiated within a reasonable time and what would be reasonable time would depend upon facts and circumstances of each case. In this regard, it was held as under:

> *35. The Appellants have also contended that in the absence of any prescribed limitation period, SEBI should have issued show-cause notice within a reasonable time and there being a delay of about 8 years in issuance of show-cause notice in 2014, the proceedings should have been dropped. This contention was not raised before the adjudicating officer in the written submissions or the reply furnished. It is not clear whether this contention was argued before the Appellate Tribunal. There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the*

[10] (2019) 5 SCC 90

default/statute, prejudice caused, whether the third-party rights had been created, etc. The show-cause notice in the present case had specifically referred to the respective dates of default and the date of compliance, which was made between 30-8-2011 to 29-11-2011 (delay was between 927 days to 1897 days). Only upon compliance being made that the defaults had come to notice. In the aforesaid background, and so noticing the quantum of fine/penalty imposed, we do not find good ground and reason to interfere.

82. The directions given in the aforesaid quotation should not be understood as empowering the authorities/Board to initiate action at any time. In the absence of any period of time and limitation prescribed by the enactment, every authority is to exercise power within a reasonable period. What would be the reasonable period would depend upon facts of each case, such as whether the violation was hidden and camouflaged and thereby the Board or the authorities did not have any knowledge. Though, no hard and fast Rules can be laid down in this regard as determination of the question will depend on the facts of each case, the nature of the statute, the rights and liabilities thereunder and other consequences, including prejudice caused and whether third party rights have been created are relevant factors. Whenever a question with regard to inordinate delay in issuance of a show-cause notice is made, it is open to the noticee to contend that the show-cause notice is bad on the ground of delay and it is the duty of the authority/officer to consider the question objectively, fairly and in a rational manner. There is public interest involved in not taking up and spending time on stale matters and, therefore, exercise of power, even when no time is specified, should be done within reasonable time. This prevents miscarriage of justice, misuse and abuse of the power as well as ensures that the violation of the provisions are checked and penalised without delay, thereby effectuating the purpose behind the enactment."

19. In view of the aforesaid decisions, it is clear that no specific limitation period has been prescribed in the SEBI Act. However, I also note that even though there is no limitation period in the SEBI Act, the proceedings have to be initiated in a timely manner by the regulator and there cannot be any undue/ unexplainable delay. In the present matter, although the trades were executed

during the period 2011-2013, SEBI was granted the jurisdiction to regulate the commodities segment in 2015. Pursuant thereto, the SCN was appropriately issued to the noticee in the year 2018. It must also be noted that although the noticee has raised the plea of laches, it has not stated any kind of prejudice which has been caused to it, if any. Accordingly, I am of the view that the plea of laches raised by the noticee is not tenable.

20. The noticee has also contended that the DA has failed to provide an opportunity of hearing to the noticee which is against the basic Principles of Natural Justice and therefore, the said enquiry by the DA stands vitiated. In this regard I note that, the Intermediaries Regulations were amended with effect from January 21, 2021, wherein regulation 25 was replaced. As per regulation 25(6) of the amended Intermediaries Regulations, the DA shall, as on date, grant an opportunity of personal hearing to the noticee. However, no such requirement was present under the Intermediaries Regulations prior to the coming into force of the amendments from January 21, 2021. The proceedings in the present matter before the DA have been completed before the said amendment to the Intermediaries regulations mandating the DA to grant personal hearing came into effect. Without prejudice to the above, the noticee has been provided an opportunity of personal hearing in these proceedings before me which has been duly availed by the noticee. In view of the same, I do not find any merit in the argument of the noticee that the enquiry by the DA is in violation of the principles of natural justice and therefore, reject the said contention.

21. Further, the noticee has also submitted that FCRA does not fall within the definition of 'securities laws' as given in regulation 2(1)(k) of the Intermediaries Regulations. The said contention of the noticee, is misplaced. It is a settled position that SEBI, as a market regulator, is within its four walls to adjudge the fit and proper status of intermediaries registered with it. The intent of the Intermediaries Regulations, as regards judging the fit and proper status of a registered intermediary, is that any entity who is not fit and proper, should not remain active/ enter in the securities market ecosystem. It is very much possible that a registered intermediary is declared as not fit and proper for violation/ activities not pertaining to securities market/securities laws. To further strengthen the said understanding, I deem it fit to place reliance on clause 3(b)(v) of Schedule II of the Intermediaries Regulations which states as under:

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

On a bare perusal of the above requirement, it is clear that disqualification as not being fit and proper can come into play for violations not specifically pertaining to securities laws and thus, it is immaterial whether or not the FCRA falls within the definition of 'securities laws' as defined under regulation 2(1)(k) of the Intermediaries Regulations.

22. The noticee has, vide its submissions dated February 14, 2020, September 09, 2020, December 02, 2022, January 09, 2023 and June 23, 2023, sought inspection of documents and has vehemently submitted that the relevant documents in the matter have not been provided to it. In this regard, I have perused the material available on record and it is noted therefrom that the noticee has been provided the opportunity of inspection on two different occasions, i.e., September 03, 2020 and November 24, 2022 wherein the relevant material has been provided to the noticee in the matter. Further, the noticee was advised to explain the relevancy of the documents sought by it consistently and the noticee vide its letter dated January 09, 2023, submitted the explanation/ rationale of the documents sought by it. I have perused the submissions of the noticee and I find no merit in the explanation provided by the noticee. The noticee had, *inter alia*, sought documents which have been referred in the FMC Order and have no bearing in the present matter. Such blanket request for inspection of documents without any justified rationale/ explanation cannot be entertained. Therefore, in light of the fact that the noticee had been granted two opportunities of inspection in the matter, wherein, the relevant material was provided to the noticee, the submissions as regard non-supply of relevant documents is not tenable.

23. I note that prior to merger of FMC with SEBI on September 28, 2015, the noticee was required to be a member of recognized commodity derivative exchanges and 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 thus were not under control of any competent authority, rectified the same through the Finance Act, 2015 by bringing them under the regulatory supervision of SEBI. In this regard, it is also noted that 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 as under:

> *"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".*

24. Thus, it is an admitted position that prior to the date of merger of FMC with SEBI (i.e. September 28, 2015), the noticee was not required to be registered under the FCRA or any other regulation to act as a commodity derivatives broker. However, after the merger of FMC with SEBI, a commodity derivatives broker was mandatorily needed to have a certificate of registration from SEBI in case it sought to remain associated with the securities market as a commodity derivatives broker. It is seen that the Finance Act, 2015 (as notified on May 14, 2015) conferred the power of regulation over intermediaries dealing in commodity derivatives to SEBI and also mandated regulation of commodity derivatives brokers by SEBI, 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 commodity derivatives market under the erstwhile FCRA but did not require a registration certificate earlier, to continue to deal in commodity derivatives as a commodity derivatives broker, provided they applied for registration to SEBI within 3 months from September 28, 2015. Accordingly, the noticee applied for a certificate of registration and was registered as a broker *w.e.f.* September 15, 2016 and since then it has been acting as a market intermediary registered with SEBI.

25. In light of the order passed by the Hon'ble SAT on June 09 2022, as mentioned at paragraph 7 above (hereinafter referred to as "**SAT Order**") in the NSEL matters, a SSCN dated October 11, 2022 enclosing a copy of the SAT Order 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 November 22, 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 ('**EOW**');
    b. First Information Report ('**FIR**') dated September 28, 2018; and
    c. Amended Schedule II of the Intermediaries Regulations.

26. 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 mentioned at paragraph 25 above, the background facts necessary for the present proceedings are narrated in brief, hereunder:

    i. The noticee, Pulin Comtrade Limited (earlier known as SMC Comtrade Limited), is a commodity derivatives broker registered with SEBI having Registration No. INZ000035839 with effect from September 15, 2016.

    ii. 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 FCRA, the Central Government vide its 2007 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*".

    iii. NSEL was granted conditional exemption from the provisions of the FCRA by the Department of Consumer Affairs, Ministry of Consumer Affairs (for short "**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.

iv. In October 2008, the 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 the NSEL had 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 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 contract always ended up making profits.

v. On February 06, 2012, the erstwhile 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 2007 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 NSEL, FMC passed Order No. 4/5/2013-MKT-1/B dated December 17, 2013 in the matter (hereinafter referred to as "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 2007 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.

27. 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 2007 Exemption Notification were violated:

a. <u>Short Sale</u>

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. <u>Contracts with Settlement Period going beyond 11 days</u>

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 2007 Exemption Notification.

28. In this regard, the relevant observations of the FMC as recorded in its Order dated December 17, 2013 and also captured in the Enquiry Report are reproduced as under:

> *"….a large number of NSEL exchange trades were carried out with paired back-to-back contracts. Investors simultaneously entered into a "short term buy contract" (e.g. T+2 — i.e. 2 day settlement) and a "long term sell contract" (e.g. T + 25 i.e. 25 day settlement). The contracts were taken by the same parties at a pre-determined price and always registering a profit on the long-term positions. Thus, there existed a financing business where a fixed rate of return was guaranteed on investing in certain products on the NSEL....."*

NSEL conducted its business not in accordance with the conditions stipulated in the notification dated 05.06.2007 granting it exemption from the operation of FCRA, 1952, with regard to the one-day forward contracts to be traded on its exchange platform. As noted in the SCN, the condition of 'no short-sell' and 'compulsory delivery of outstanding position at the end of the day' stipulated in the notification were violated by NSEL. NSEL Board allowed launching of paired back-to-back contracts on its exchange platform comprising a short-term buy contract (T+2 settlement) and a long-term sell contract (T+25 settlement) with predetermined price and profit for the buyer and seller, which violated the very concept of spot market of commodities and the transactions ultimately were in the nature of financial transactions" (emphasis supplied)

29. It is therefore, clear 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 2007 Exemption Notification. FMC had observed in its order 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. As per the FMC Order 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 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 2007 Exemption Notification that only contracts of one-day duration were permitted to be offered on the NSEL, FMC, in its Order, relying on the definition of "*forward contract*" under FCRA held that NSEL was allowed to trade only in one-day forward contracts and was obliged to ensure delivery and settlement within 11 days. However, it is beyond doubt that 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 the NSEL.

30. 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. v. Union of India & Others (Civil Appeal No. 4476 of 2019 decided on April 30, 2019)*, wherein it, *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".*

31. It is also necessary to refer to 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 "**MPID matter**"), wherein the Hon'ble Supreme Court while drawing reference to the presentations made by the NSEL in respect of the '*paired contracts*' has *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."*
>
> *(emphasis supplied)*

32. Thus, 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 by the Hon'ble Supreme Court 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 has held that such transactions come within the definition of '*deposits*' under the MPID Act.

33. 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 an annualized return of about 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. In 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 & T+25 paired contract in steel had the same offered return as a T+ 5 & T + 35 paired contract in castor oil. The '*paired contracts'* were being marketed as an alternative to fixed deposits.

34. 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. Accordingly, the noticee's submissions as regards there being no short sale in the '*paired contracts*' and the '*paired contracts*' not being merely financing transactions are also not tenable in view of the aforesaid decisions of the Hon'ble Supreme Court.

35. The aforesaid discussion shows how '*paired contracts'* were not in the nature of spot trading, which was permitted to trade on NSEL's platform. Further, as stated above, NSEL itself was advertising such contracts as an alternative to fixed deposits and an annualized return of about 16% p.a. was being offered 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.

36. When MCA vide its letter dated July 12, 2013, on the recommendation of FMC, asked NSEL to settle contracts on the due dates and to give an undertaking that no fresh contract shall be launched, NSEL failed to do so and defaulted. Investors lost money as all the underlying warehouse receipts were bogus and there were no underlying securities. As noted in the judgement of the Hon'ble Supreme Court in the MPID matter, the exchange publicized that it provided

counter party risk guarantee but, in reality, failed to do so. In view of the above discussion, the submission of the noticee that the aforesaid decisions of the Hon'ble Supreme Court and the observations of FMC order etc., cannot be relied upon as the noticee was not a party to the same, is without any merit as the said decisions have been appropriately relied upon only to highlight the nature of the '*paired contracts*' as observed by the Hon'ble Supreme Court and the FMC order and not to establish any allegation, *per se*, against the noticee.

37. On perusal of the replies submitted by the noticee, I note that it is an admitted fact that the noticee had facilitated the execution of *'paired contracts'* for its clients. In this regard, I deem it fit to refer to the submission made by the noticee in its reply dated June 23, 2023 wherein it has, *inter alia*, admitted, *"…We had traded in the alleged paired contract for the period from October 2009 to July 2013 in the NSEL…"* and "…*The transactions were entered on the instructions of the respective clients and we had no role to play except executing the transactions as per instructions…*". Thus, it is an undisputed fact that the noticee has indulged into trading in '*paired contracts*' on behalf of its clients.

38. Further, it is also noted from the Enquiry Report that NSEL had a pay-out obligation towards the noticee to the extent of ₹2,87,12,635 and as per the interim report of EOW, the noticee had money exposure to the extent of ₹2,75,17,672. The said facts, in light of no rebuttal from the noticee, further go on to establish that the noticee had, in fact, indulged in trading in the '*paired contracts*' at the NSEL Platform. Further, the DA, from the submissions of the notice had noted details of trades executed by the noticee on the NSEL Platform on a sample basis which further establish that the noticee was trading in the '*paired contracts*'. The details of the trades, as noted in the Enquiry Report are as under:

Sl. No.	**Transaction Date.**	**Settlement date**	**Client Name**	**Commodity Name**	**Quantity**	**Buy/Sell**
1.	14-06-2010	17-06-2010	SMC Investment and Advisors Ltd	Castorseed	333000	Buy

	14-06-2010	03-08-2010	SMC Investment and Advisors Ltd	Castorseed	333000	Sell
2.	15-04-2010	19-04-2010	PRO	Castorseed	21000	Buy
	15-04-2010	31-05-2010	PRO	Castorseed	21000	Sell
3.	17-06-2010	22-06-2010	SMC Investment and Advisors Ltd	Castorseed	4000	Buy
	17-06-2010	06-08-2010	SMC Investment and Advisors Ltd	Castorseed	4000	Sell
4.	06-01-2011	11-01-2011	Shashi Bala Goel	Castorseed	1370	Buy
	06-01-2011	01-03-2011	Shashi Bala Goel	Castorseed	1370	Sell
5.	14-03-2012	19-03-2012	Tejas Shashikant Mehta	Castorseed	300	Buy
	14-03-2012	0-5-2012	Tejas Shashikant Mehta	Castorseed	300	Sell

On perusal of the table above, it is observed that the noticee traded in the paired contracts in its proprietary account as well as on behalf of its clients. At this juncture, I deem it fit to deal with the submission of the noticee that since auditors were not appointed by SEBI to carry out inspection/ audit of the noticee, it is understood that the name of the noticee was not appearing in the EOW report. As noted above, as per the interim report of EOW, the noticee had money exposure to the extent of ₹2,75,17,672 and therefore, the submission of the noticee that its name was not appearing in the EOW report is incorrect. Further, on account of noticee's admission of having traded in the '*paired contracts*' and the facts that NSEL had a pay-out obligation towards the

noticee and that name of the noticee is appearing in the EOW report, I am of the view that mere non-conducting of audit does not support the submission of the noticee.

39. In the background of the discussion on '*paired contract*' in the preceding paragraphs, I now proceed to examine whether the noticee satisfies the 'fit and proper person' criteria as laid down under Schedule II of the Intermediaries Regulations.

40. As recorded in the SSCN, SEBI has filed a complaint dated September 24, 2018, against brokers who traded / facilitated access to '*paired contracts'* traded on the NSEL, including the noticee, with the EOW, Mumbai. On the basis of this complaint, an FIR dated September 28, 2018 has also been registered with the MIDC Police Station, Mumbai against the noticee.

41. Having found that the noticee has traded in *'paired contracts'* for its clients, I note that the main allegation against the noticee*,* as levelled in the SCN, is that by trading/ facilitating the trading in *'paired contracts'* on the NSEL platform during the relevant period as a Trading Member, the noticee has, *prima facie*, violated the conditions stipulated in the 2007 Exemption Notification and consequently the provisions of the FCRA also. Therefore, in the SCN, the noticee was asked to state as to why its certificate of registration as a commodity derivatives broker, may not be cancelled as the noticee is not a '*fit and proper*' person for holding the certificate of registration. 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 SSCN dated October 11, 2022, further alleged that in light of the aforesaid documents as well as observations against the noticee in the enquiry report dated November 22, 2019, the noticee is not a '*fit and proper*' person for holding the certificate of registration.

42. The noticee's main contentions are that the noticee was merely a member of NSEL and followed all the byelaws, rules and regulations of NSEL and noticee was amenable to the regulatory ambit of the NSEL and could not have questioned the competence of NSEL. The noticee has also submitted that the noticee was granted the Certificate of Registration on September 15, 2016, after taking into account the events which took place in 2012-13 and thus, the present proceedings are tantamount to the certificate granted earlier. The

noticee has also submitted that it was a non-defaulting broker and the said fact has not been taken into account by the DA.

43. In this regard, as discussed above, the noticee has admittedly traded in '*paired contracts*' on behalf of its clients as well as from its proprietary account. The noticee, as a commodity derivatives broker, represented the face of NSEL for 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 contracts*' that were not permitted under the 2007 Exemption Notification and were purely financial contracts promising assured returns and were advertised as such by NSEL, as observed by the Hon'ble Apex Court, under the garb of spot trading in commodities. Therefore, the noticee by its conduct and as a member of NSEL had promoted and/or dealt in '*paired contracts*' which were in the nature of financing transaction, as held by the Hon'ble Supreme Court, as noted *supra*. The noticee, by providing a platform for taking exposure to '*paired contracts*' 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. As already recorded in SSCN as discussed above, SEBI's complaint dated September 24, 2018 and the FIR registered with the MIDC Police Station, Mumbai on September 28, 2018 under section 154 of Cr.PC is subsisting and has not been challenged, quashed or stayed by any competent court *qua* the noticee as on date. Therefore, the noticee attracts the disqualification provided in clause 3(b)(i) of Schedule II of the Intermediaries Regulations.

44. The noticee has contended that SEBI cannot be permitted to use its own FIR as evidence in a proceeding and that since an FIR is a first instance of reporting of complaint, reliance on the same would be in gross violation of the principles of natural justice. As regard usage of FIR as evidence in the present matter, I note that being a '*fit and proper*' person is a continuing '*eligibility criteria*'/ statutory requirement, which must be satisfied by the noticee including the amended criteria, at all times. 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, and arguments to the contrary are not maintainable. The noticee has also argued that the FIR filed by SEBI does not prove commission of any offence and no chargesheet has been filed in the matter. In this regard, it has to be stated that the present

proceedings are for adjudging the continuing '*eligibility criteria'* of *'fit and proper'* status of the noticee having regard to the criteria specified in the Schedule II of the Intermediaries Regulations which includes filing of a complaint by SEBI. It is not the case of the noticee that the said FIR has been quashed *qua* the noticee. In the absence of the above discussed factors, I am not inclined to accept the submissions put forth by the noticee in this context.

45. The noticee has contended that the noticee traded in '*paired contracts*' as it was specified by the Board of NSEL for trading and the functioning of NSEL was in public knowledge, including the regulatory authorities/ Central Government and no complaints have been raised by the investors against the noticee. Be that as it may, it is noted that 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 is clearly against the noticee. For the same reason, the fact whether the name of the noticee was mentioned or not in the FMC order or that the noticee was a non-defaulting broker is not relevant. As regards its submission that it was not closely associated with NSEL and the '*paired contracts*' were introduced by NSEL, it cannot be denied that the involvement of the noticee in trading/facilitation of trading in '*paired contracts*' on the NSEL is certainly a conduct which was neither permitted by the 2007 Exemption Notification nor by any of the applicable provisions of the FCRA and therefore, a conduct similar to that displayed by the noticee in its trading on the NSEL platform would be detrimental to the interest of the Securities Market.

46. It is pertinent to state 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. It is further stated that the '*fit and proper person*' criteria specified in Schedule II of the SEBI (Intermediaries) Regulations, 2008, were amended vide SEBI (Intermediaries) (Third Amendment) Regulations, 2021 with effect from November 17, 2021. The condition of a fit and proper is not a one-time condition applicable only at the time of seeking registration. Rather, as per clause 7 of Schedule II of the Intermediaries Regulations, it is a condition which each and every registered intermediary is required to fulfil on a continuous basis, right from the time of filing such application to the time the

entity wishes to remain associated with the Securities Market, as a registered intermediary, after obtaining such registration.

47. It has been argued by the noticee that at the time of grant of Certificate of Registration to the noticee on September 15, 2016, it was already adjudged as a '*fit and proper*' person by SEBI and, therefore, the said criteria are already satisfied by the noticee. The noticee has also submitted that the fit and proper criteria was amended with effect from November 17, 2021, i.e., after initiation of the proceedings against the noticee and thus cannot be applied retrospectively. In this regard, as noted above, the '*fit and proper*' person criteria are a continuing requirement under the Intermediaries Regulations which the noticee ought to comply with at all times as long as it desires to remain associated with the securities market as a registered intermediary. The present proceedings intend to examine the '*fit and proper person*' status of the noticee as per the Intermediaries Regulations. Therefore, I do not find any merit in the arguments of the noticee.

48. The noticee has also contended that SEBI is not empowered to investigate into the alleged violations of FCRA as all offences committed or existing proceedings shall be continued to be governed by provisions of FCRA and thus present proceedings under Intermediaries Regulations are not proper. With respect to the same, as mentioned above, SEBI has filed a complaint dated September 24, 2018 with the concerned police authorities for initiating appropriate action for the violations of the FCRA, *inter alia*, alleged to have been committed by the noticee within the stipulated time as specified under section 29A(2)(e). Further, on the basis of the said complaint of SEBI, a FIR dated September 28, 2018 was registered with MIDC Police Station, Mumbai.

49. The present proceedings under the Intermediaries Regulations have been initiated to adjudge whether the noticee satisfies the criteria for '*fit and proper person*' as specified in the Broker Regulations and the Intermediaries Regulations and the said proceedings are independent of the provisions of FCRA. The noticee is obliged to maintain the '*fit and proper person*' criteria on a continuous basis and it is well within SEBI's jurisdiction and powers to adjudge the said fit and proper status of the market intermediaries in the interest of securities market. I, therefore, find no merit in the said submission of the noticee.

50. The noticee has also submitted that the noticee was not aware about the alleged breach of the 2007 Exemption Notification, NSEL had huge insurance policies, FMC never cautioned the brokers, NSEL had introduced the alleged '*paired contracts*', and made other submissions regarding the conditions stipulated in the 2007 Exemption Notification. The said contentions of the noticee have to be seen in light of the fact that the '*paired contracts*' have been held to be in violation of the 2007 Exemption Notification by the Hon'ble Supreme Court (as noted above at para 30). Thus, as understood in light of the above observations of the Hon'ble Supreme Court, the nature of the transactions being carried out on the NSEL platform was simply "financing", whereby fixed returns (e.g. 16%) were being given by one party to the other. The same was apparent on a bare perusal of the "*paired contracts*" executed on the NSEL platform. Considering the above, the arguments of the noticee that it was not aware of the nature of transactions being carried out on the NSEL platform are not acceptable. This brings into question, the appropriateness and suitability of the continuance of the registration of the *Noticee,* as a broker. Equally, any argument deflecting the responsibility to NSEL, MCA or FMC is misplaced and hereby rejected, as the primary onus of diligence placed on an intermediary, which diligence any reasonable or prudent person would also perform, has not been undertaken by the Noticee.

51. The admission of the noticee having traded in the *'paired contracts'* on the NSEL, which was in violation of the conditions of the 2007 Exemption Notification and also the provisions of the FCRA, seriously calls into question the integrity, honesty and lack of ethical behaviour on its part. As observed by the Hon'ble Supreme Court (referred *supra*), these contracts were financing transactions which were portrayed as spot contracts in commodities. The argument that the transactions were entered into at the request of the clients for trading in '*paired contracts'*, that no investor complaints were filed against the noticee, the noticee did not induce the investors and the clients deployed their own funds, the noticee was a non-defaulting member etc., do not absolve a broker of its responsibility to conduct the diligence required to be performed by any reasonable or prudent person.

52. The noticee has further contended that it was not a party to the SAT order dated June 09, 2022 and therefore no further proceedings/ documents can be initiated/ brought on record, against the noticee. I am of the view that the said contention is misplaced, as the essence of the said SAT Order is that it advises

SEBI to provide the documents which SEBI intends to use/rely in the present proceedings so that the entity would have an opportunity to prepare its defence pertaining to these documents and which is also in adherence to the principles of natural justice. Due opportunity to evaluate the materials and to be heard addresses the principles of natural justice. In any case, as recorded above, the Hon'ble SAT had already granted permission to SEBI to issue SSCN which was complied with by SEBI in this regard. Accordingly, the contention of the noticee is not tenable.

53. The role of a registered intermediary including a broker demands from it honesty, transparency, fairness and integrity as has been laid down in Clause 3(a) of Schedule II of the Intermediaries Regulations. SEBI, under its mandate to protect interest of investors, apart from regulation and development of the securities market, is empowered to grant registration to various classes of entities including brokers, who have a very important role in ensuring a fair, transparent and efficient market to the investors. Thus, a broker is bound to act in an honest and ethical manner and comply with all applicable regulatory requirements which would be in the best interests of investors. In view of the foregoing, I am of the view that the noticee was under statutory obligation to act with due skill, care and diligence in conduct of all its business and thus, it cannot be absolved of its duty to act with such care and skill in the garb of legitimate expectation.

54. 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 and therefore, the continuance of the noticee as a broker will be detrimental to the interest of the securities market. Hence, action as proposed in the SCNs needs to be taken in the interest of the securities market.

55. At this juncture, I also note that necessity of specifying a period of time as stipulated by the SAT Order, after which the applicant may become eligible to seek registration does not arise in this order (unlike in the case of entities desiring to be registered as market intermediaries) while dealing with an entity holding a certificate of registration which is recommended to be cancelled, as this forum cannot presume whether such entity would wish to reapply to be a market intermediary or not. If it chooses to do so, it will have to be assessed at such point of time if it is fit and proper as per the extant and applicable provisions.

56. The noticee has also submitted that the recommendation has been made by the DA under regulation 27 of the Intermediaries Regulations which has been substituted with effect from January 21, 2021 and thus, the same is not relevant for the present proceedings. In this regard, I note that prior to the said amendment, regulation 27 provided for recommendation of action by the DA. Since the Enquiry Report was submitted prior to the amendment, i.e., on November 22, 2019, the DA has correctly made the recommendation under erstwhile regulation 27 of the Intermediaries Regulations. Further, pursuant to the amendment, the erstwhile regulation 27 has not been omitted, rather the same has been rearranged and regulation 26 of the extant Intermediaries Regulations, *mutatis mutandis,* contains the provisions of erstwhile regulation 27. In my opinion, such procedural change has not caused any prejudice to the noticee and therefore, the submission of the noticee in this regard is not tenable.

57. Having examined and dealt with all the contentions raised by the noticee in the preceding paragraphs, I concur with the recommendation made by the DA.

ORDER

58. In view of the foregoing discussions and deliberations, I, in exercise of powers conferred upon me under Section 12 (3) and Section 19 of the SEBI Act, 1992 read with regulation 27 of the SEBI (Intermediaries) Regulations, 2008, cancel the Certificate of Registration (bearing No. INZ000035839) of the noticee i.e. Pulin Comtrade Limited (earlier known as SMC Comtrade Limited).

59. The noticee shall, after receipt of this order, immediately inform its existing clients, if any, about the aforesaid direction in paragraph 58 above.

60. Notwithstanding the direction at paragraph 58 above, the noticee shall allow its existing clients, if any to withdraw or transfer their securities or funds held in its custody, within 15 days from the date of this order. In case of failure of any clients to withdraw or transfer their securities or funds within the said 15 days, the noticee shall transfer the funds and securities of such clients to another broker registered with SEBI within a period of next 15 days thereon, under advice to the said clients.

61. This Order shall come into force with immediate effect.

62. The above Order is without prejudice to the criminal complaint filed by SEBI in the NSEL matter and/or any proceedings pending before any authority in respect of similar matter involving the noticee.

63. It is clarified that in view of the amendment made w.e.f. January 21, 2021 in the Intermediaries Regulations, 2008, the procedure for action on receipt of recommendation of a DA specified under regulation 28 of the Intermediaries Regulations, 2008 has now been incorporated in the amended regulation 27 of the Intermediaries Regulations, 2008. Accordingly, this order is passed under the amended regulation 27 of the Intermediaries Regulations, 2008.

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

Sd/-

DATE: SEPTEMBER 6, 2023 **ANAND R. BAIWAR**
PLACE: MUMBAI **EXECUTIVE DIRECTOR**
SECURITIES AND EXCHANGE BOARD OF INDIA