

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

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In respect of –

Time Leverage Instruments Pvt. Ltd.  
[SEBI Registration No. INZ000050236]

In the matter of National Spot Exchange Limited

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter be referred to as, the “**SEBI**”) initiated enquiry proceedings against Time Leverage Instruments Pvt. Ltd. (hereinafter be referred to as, the “**Time Leverage/Noticee**”), registered with SEBI as a commodity derivatives broker under the SEBI (Stock Brokers) Regulations, 1992 (hereinafter be referred to as, the “**Stock Broker Regulations**”), for the alleged violations of Regulations 5(e), 9(b) and 9(f) read with Clause A(1), A(2) and A(5) of the Schedule II of the Stock Broker Regulations read with Schedule II of the SEBI (Intermediaries) Regulations, 2008 (hereinafter be referred to as, the “**Intermediaries Regulations**”).
2. The Noticee was a Trading and Clearing Member of the National Spot Exchange Limited (hereinafter be referred to as, the “**NSEL**”), which was incorporated in May 2005 as a spot exchange for trading in commodities. NSEL organised trading in commodities after it was granted exemption from provisions of Forward Contracts (Regulation) Act, 1952 (hereinafter be referred to as, the “**FCRA**”) by the Department of Consumer Affairs of the Ministry of Consumer Affairs, Food and Public Distribution, Government of India, vide Gazette Notification No. SO 906(E) dated June 05, 2007,

in exercise of powers conferred by the Section 27 of FCRA subject to certain conditions.

3. In September 2009, NSEL introduced the concept of 'paired contracts', i.e. buying and selling the same commodity through two different contracts at two different prices on its platform wherein investors could buy a short duration settlement contract and sell a long duration settlement contract and vice versa at the same time. It entailed occurrence of Buy Trades (T+2 / T+3) and Sell Trades (T+25 / T+36) on the same day at different prices on the platform of NSEL.
4. On February 06, 2012, the erstwhile Forward Markets Commission (hereinafter referred to as "**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 the NSEL and to examine the same for taking appropriate measure, if needed, to protect investors' interest. The FMC had accordingly called for the trade data from different Spot Exchanges, including the NSEL in the prescribed reporting formats. After analysing the trade data received from the NSEL, the 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.
5. On 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. **Short Sale**

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

b. **Contracts with Settlement Period going beyond 11 days**

Some of the contracts offered for trade on 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 under the aforesaid Notification.

6. Hence, it was alleged that the NSEL organised trading in ‘*paired contracts*’ in violation of the Notification SO 906(E) dated June 05, 2007 issued under Section 27 of the FCRA. It was also alleged that the Trading Members and Clearing members of the NSEL facilitated and/or participated in trading in such paired contracts which were in alleged violation of the Notification dated June 05, 2007 issued under the FCRA. Thus, by participating in / facilitating trading in paired contracts, such entities, allegedly, had acted in a manner detrimental to the interest of the securities market.
7. As per information available with SEBI, the Noticee, being a Trading and Clearing member of the NSEL, participated in / facilitated trading in paired contracts on the platform of NSEL markets in alleged violation of the provisions of Regulation 9(b) and 9(f) read with Clauses A(1), A(2) and A(5) of the Schedule II of the Stock Broker Regulations. Based on this information, SEBI was *prima facie* satisfied that there were sufficient grounds to enquire into whether the Noticee, was ‘*fit and proper*’ to continue to hold certificate of registration as Trading and Clearing Member in terms of Regulation 5(e) of the Stock Broker Regulations read with Regulation 27(iv) of the Stock Broker Regulations read with Schedule II of the Intermediaries Regulations.

## ENQUIRY BY DESIGNATED AUTHORITY

8. A Designated Authority (hereinafter referred to as “DA”) was appointed by SEBI vide communique dated September 21, 2018 to conduct an enquiry against the Noticee and submit a report and make recommendation/s in compliance with Regulation 27 of the Intermediaries Regulations. The DA, accordingly, issued a Show Cause Notice dated September 25, 2018 (hereinafter referred to as “**Enquiry SCN**”) to the Noticee under Regulation 25(1) of the Intermediaries Regulations (as applicable at the relevant time) calling upon it to show cause as to why appropriate recommendation should not be made against it under Regulation 27 of the Intermediaries Regulations (as applicable at that time) read with Section 12(3) of the SEBI Act for the alleged violation of the provisions of Regulation 9(b) and 9(f) read with Clauses A(1), A(2) and A(5) of the Schedule II of the Stock Broker Regulations and being not a ‘fit and proper person’ for holding the certificate of registration as trading / clearing member in terms of Regulation 5(e) read with Regulation 27(iv) of the Broker Regulations read with Schedule II of the Intermediaries Regulations.
9. The Noticee participated in the Enquiry Proceedings before the DA and had replied to the Enquiry SCN vide letter dated October 31, 2018. Thereafter, vide letter dated June 26, 2019 additional material in relation to the Enquiry SCN was forwarded to the Noticee. Vide letter dated July 10, 2019, the Noticee had submitted its reply.
10. Upon completion of the enquiry, the DA submitted an Enquiry Report dated December 14, 2020 (“Enquiry Report”) to the Competent Authority, inter alia, observing as under:

*“49. In view of the facts and circumstances of the case and material placed before me, I am of the view that the Noticee is not a ‘fit and proper’ person in terms of Regulation 5(e) read with Regulation 27(iv) of the Broker Regulations read with Schedule II of the Intermediaries Regulations. Therefore, in terms of Regulation 27 of the Intermediaries Regulations, I recommend that the registration of the Noticee i.e. Time Leverage Instruments Pvt Ltd (Registration No INZ000050236] as a commodity derivatives broker may be cancelled.”*

## POST ENQUIRY PROCEEDINGS

### Show Cause Notice, Reply and Personal Hearing

11. After considering the Enquiry Report, a post-enquiry Show Cause Notice dated January 15, 2021 (hereinafter be referred to as, the “**SCN**”) was issued to the Noticee under Regulation 28(1) of the Intermediaries Regulations (as applicable at the relevant time) enclosing therewith (a) copy of the Enquiry Report, (b) copy of the letter dated December 30, 2014 of the Department of Economic Affairs (DEA) Ministry of Finance and (c) a copy of the order dated August 22, 2014 passed by the Hon’ble Bombay High Court in Criminal Bail Application No. 1263 of 2014 in the case of *Jignesh Prakash Shah Vs. The State of Maharashtra*. The SCN was issued to the Noticee calling upon it as to why action as recommended by the DA including any other action should not be taken against, as deemed fit, by the Competent Authority.
12. The Noticee replied to the said SCN vide its letter dated February 11, 2021 and made the following submissions:
  - (i) The Noticee submitted that the DA has not at all taken into consideration the facts and circumstances of the case and the material made available on record. Though the DA has partly quoted the submissions made by them, it submitted that the DA has not at all dealt with the submissions and facts and circumstances of the case.
  - (ii) The Noticee denied that they had participated in and/or facilitated the clients in entering into “paired contracts” as alleged. It further submitted that they had not executed any transactions on NSEL on behalf of clients other than single delivery-based contract in e-silver.
  - (iii) The Noticee submitted that in the decisions in *Jermyn Capital LLC Case* and in the *Mukesh Babu Securities Ltd. vs. SEBI* relied upon by the DA are completely wrong, perverse, without any basis and application of mind. They further pointed out that in the aforesaid cases, the Hon’ble Tribunal had found close associations between the entities/persons considering their close business and personal relations. In the instant case, no such facts are available.
  - (iv) The Noticee was member broker of NSEL and they denied that they had close association with NSEL as alleged. There is no material to show that as a

- broker, they were acting in concert with NSEL/its office bearers in fraudulent manner or have been closely associated with the NSEL and paired contracts.
- (v) The Noticee submitted that NSEL acted in violation of Notification issued on June 05, 2007 and offered trading in alleged paired contracts. It cannot be alleged that they were involved in the same. Based on regulatory failure on the part of the Exchange, in ensuring that it offers contracts for trading on its platform which are compliant with notification issued by the Government, they as brokers, who had always acted bonafide, cannot be alleged to be having 'close association' with NSEL, in order to fasten the burden of their violations on to them.
  - (vi) The Noticee submitted that the extracts of 'observations of Economic Offences Wing' are coming for the first time. The same were not part of the notice issued by the DA and therefore the same is in violation of principles of natural justice. It further submitted that there are no charges made against them by EOW in its interim report. All the brokers cannot be tarred with the same brush, without analysing their individual roles, as has been erroneously done by the DA.
  - (vii) The Noticee stated that DA has overlooked the submission that they carried out their first transaction on the NSEL exchange platform only in April 2010. The alleged 'pair contracts' were in thriving existence on the NSEL for more than 2 years prior to them having transacted on the NSEL. Further, the observations are in fact referring to *"the large brokers gross negligence or perhaps active participation"* and not to small brokers like them.
  - (viii) The Noticee submitted that they had not brought in any investors to invest in pair trades or promised them assured returns. It reiterated that they had started trading on NSEL only in April 2010. They further reiterated that they had not traded on behalf of clients. In fact, they were doing only proprietary trading. Further, they submitted that they were not aware about the counter party sellers or that they had got finance etc. as alleged. Further, they have not financed anybody for the purpose of trading on NSEL.
  - (ix) The Noticee submitted that they had not received back from NSEL any charges (collected from investors) such as transaction fees, delivery and warehousing charges, etc. There is nothing on record to suggest that they received such "motivation incentives" for generating huge volumes. They

stated that they have neither benefitted from nor compensated by any of the sellers or defaulters. In fact, they earned brokerage of Rs. 8.93 only from the client that too in single delivery trade in E-Series Silver Contract from the period 2010-2011 to 2013-2014. They submitted that they had made no effort to increase turnover at the exchange.

- (x) The Noticee reiterated that during the relevant time as a broker they were trading on NSEL, in the contracts permitted by Exchange. They submitted that at the relevant time when the trading was going on, neither FMC nor Government had raised any concern with regard to admissibility of such contracts being traded on the exchange.
- (xi) The Noticee submitted that at the relevant time there was nothing for them to suspect that NSEL would launch a product for trading which is in violation of Notification. As a broker, trading on the exchange platform, they were not supposed to exercise due diligence over the acts of Exchange, in terms of ascertaining the legality of the products launched or permitted by the Exchange for trading. DA cannot place reverse burden on them, in a manner unknown to law, for conducting due diligence on the activities of the Exchange.
- (xii) The Noticee denied that they had “*active and continuous association*” with the product whose legality was not certain, as alleged. They pointed out that the trading in alleged pair contracts was going on NSEL platform since 2009, whereas they carried out their first transaction on the NSEL exchange platform only in April, 2010 till June 2013.
- (xiii) With regard to the observations in the Grant Thornton Report and EOW Report, that a settlement obligation was due on closure of business of NSEL, the Noticee submitted that it again establishes the fact that they themselves are the victims of the fraud perpetrated by NSEL and the same would clearly demonstrate their total non-involvement in the fraudulent acts of NSEL and its management.
- (xiv) The Noticee denied that they have participated/facilitated trades in the 'paired contracts' on the platform of NSEL as alleged. They had bonafide executed trades in the alleged paired contracts in their proprietary account, in the ordinary course, without being aware of the illegality of the paired contracts which has come to light only then. One cannot establish that they have not

maintained the requisite standards of reputation, fairness, honesty, integrity and character as required under Broker Regulations.

(xv) The Noticee submitted that based on the observations of Courts/Authorities that the alleged transactions of NSEL were violative of prevalent laws, no adverse inference can be drawn against them and have no bearing on their 'Fit and Proper' status.

(xvi) The Noticee stated that the observations of Hon'ble Bombay High Court in the matter of *63 Moons Technologies Limited v. Union of India* were based on the material on record but were not the findings of the Court. The said observations pertain to the breach of the exemptions by NSEL and does not pertain to them. The said order has been set aside by the Hon'ble Supreme Court vide its Order dated April 30, 2019. Further, there is nothing in the said Order to suggest that they were aware of or involved in the alleged violations committed by NSEL or that they were aware that there was breach of both the exemptions granted to NSEL and the FCRA. The said observations pertain to FTIL and NSEL & the breach of the exemptions by NSEL.

(xvii) The Noticee also submitted that the High Court Order in the matter of *Jignesh Prakash Shah v. The State of Maharashtra* was passed in the Criminal Bail Application filed by Jignesh Shah. The issue of legality or illegality of Contracts did not directly arise for consideration in the said Bail Application. They submitted that the said observations were not conclusive. Based on the same it cannot be alleged that they as brokers were aware that the contracts permitted by Exchange for trading were not in consonance with the notification issued on June 05, 2007.

**13.** While the extant proceedings in the present matter were ongoing, 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, remanded the aforesaid 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.....”*

14. Thereafter, in August 2022, the present matter was allocated to me. In the light of the aforesaid Order passed by the Hon'ble SAT in similar set of cases, it was felt necessary to furnish certain additional documents/material to the Noticee before concluding the present proceedings. Accordingly, vide letters dated October 04, 2022 and November 02, 2022 and email dated December 7, 2022, certain additional documents were provided to the Noticee and the Noticee was requested to file its reply, if any, within 15 days of receipt of the said letters. In response to the said letters,
- (i) The Noticee, vide its letter dated October 18, 2022 submitted that their name is not finding place in any of the SFIO Complaint dated May 15, 2019 and they were not a participant in any of the said complaint reports. Therefore, based on the said complaint, they have no comments to offer.
  - (ii) The Noticee, vide its letter dated January 31, 2023, made the following submissions:
    - a. That impugned transactions pertain to period 2009, for which Notice (from the DA) came to be issued, after inordinate delay of 9 years, in 2018 and now post issuance of said Notice, at this second stage post submission of Enquiry Report, documents are still being provided in bits and pieces, and in instalments. Same vitiates the whole proceedings, and is also in gross violations of principles of natural justice and fair play.
    - b. The FIR complaint has been filed behind their back. Same was totally opposed to all norms of fair play which public authorities were under

imperative obligation to adhere to. SEBI cannot set criminal action in motion, without even seeking reply of the entity concerned. Bare perusal of complaint would reveal, that the same has been made in a casual and routine manner qua 300 brokers (including them), completely ignoring the insidious and severe implications of such an adventure.

- c. That, in light of the observations of the Hon'ble Tribunal, merely because FIR has been filed by SEBI against them, which is patently sweeping, vague and lacks any credible basis, no adverse inferences can be drawn against them, either in terms of they being parties to alleged fraud by NSEL or in terms of not being "fit and proper person".
- d. That they have fully cooperated with the investigations being conducted by EOW, provided the requisite information as sought for by EOW and they have recorded their statement. In the submissions before EOW they have reiterated their stand, that they have as a Broker, at all points of time, acted in good faith and they had bonafide placed reliance on the institutional integrity of NSEL/its management and the representations/communications made available by NSEL to the public at large, while trading on platform of NSEL.
- e. From the observations w.r.t trading by broker on NSEL platform in the matter of *Geofin Comtrade Ltd. vs SEBI* -SAT Appeal No 214 of 2019, the Noticee submitted that they had executed trades on the platform of the exchange, same cannot mean, that automatically as brokers they are closely connected to the exchange. Further, association cannot be alleged or inferred, same has to be established, both legally and factually.
- f. Hon'ble Tribunal has also expressed reservations with regard to reliability of following orders relied upon by SEBI for arriving at finding of '*not fit and proper person*' qua the Appellants (Brokers who had filed appeals):
  - a. Writ Petition No. 2743 of 2014 dated December 4, 2017 in the matter of *63, Moons Technologies Ltd. & Ors. vs. Union of India & Ors.*
  - b. Order of Writ Petition No. 1403 of 2015 in the matter of *NSEL vs. State of Maharashtra & Ors.* dated October 1, 2015.

- c. Order dated August 22, 2014 by the Hon'ble Bombay High Court in Criminal Bail Application No. 1263 of 2014 in the matter of *Jignesh Prakash Shah vs. The State of Maharashtra*.
- d. SFIO Report

15. Thereafter, in compliance with the principles of natural justice, an opportunity of personal hearing was granted to the Noticee before me on February 08, 2023. On the date of hearing, the Noticee was represented by Mr. Vinay Chauhan, Advocate, Mr. Rajesh Sinha and Mr. Santosh Choraria, (Authorised Representatives) who reiterated the submissions made by the Noticee vide its letters dated February 11, 2021. Further, as requested, time was granted till February 13, 2023 to the Noticee to make additional submissions, if any. Accordingly, vide letter dated February 13, 2023, the Noticee, while reiterating its previous submissions, made additional submissions in the matter which are summarized as under:

- (i) The Noticee submitted that upon SEBI assuming the role of FMC as per the amended provisions of FCRA vide Finance Act 2015, they being a member of Multi Commodity Exchange of India Ltd ("MCX") & National Commodity and Derivatives Exchange Ltd. ("NCDEX") (recognised association / exchange) at the relevant time had applied for registration with SEBI. SEBI, after examination of their application, including "whether they were fit and proper person or not" duly registered them on 23/05/2016 and granted them registration number 'INZ000050236'. They had continued as a broker on the said exchanges till 2019. Subsequently, in April, 2017 they had surrendered their registration as a broker on NCDEX. Post April 2017, they have not been operating as a commodity broker on NCDEX. Further, in January, 2019, the registration as broker on MCX with SEBI was transferred to M/s. SSD Securities Private Ltd. (a group company) with the approval of SEBI. Post January 2019, they have not been operating as a commodity broker on MCX. Effectively, post 2019, they have ceased to be commodities broker. The present proceedings, wherein DA has recommended cancellation of registration, do not survive and sustain and the same should be discontinued on this ground alone. Admittedly, as they have ceased to be a commodities broker since 2019, presently nothing remains. The proceedings have become

infructuous and under the circumstances, any continuance of the same would be nothing but a gross abuse of process.

- (ii) The Noticee submitted following Annual turnover on the NSEL platform for the respective financial years:

Year	Turnover (in Rs)
2010-11	41,53,950/-
2011-12	1,91,13,525/-
2012-13	1,87,54,462/-
2013-14	49,88,250/-

From the above table, the Noticee submitted that their turnover, spread over 4 financial years was extremely insignificant trading quantum, which would amply demonstrate the extremely limited extent of their trading on NSEL platform. Same has been totally ignored and overlooked by the DA while returning adverse findings and lumping them with the alleged nefarious acts of NSEL.

- (iii) The Noticee submitted that there is no material to demonstrate following:
- a. That they had any connection/relation/nexus with the promoters/directors/management of NSEL;
  - b. That there was any commonality of address/shareholding/directorship between them and NSEL;
  - c. That they had any direct or indirect shareholding in NSEL or its promoter companies or that they had exercised any direct or indirect control over NSEL;
  - d. That there were any financial transactions between them and the promoters/directors/management of NSEL;
  - e. That they had any role to play in the management or affairs of NSEL or the policy decisions taken by the management of NSEL;
  - f. That they had any role to play in the decision of NSEL to permit trades in the alleged paired contracts;
  - g. That they were encouraging/inducing trading in the alleged paired contracts on behalf of or at the behest of NSEL.

In the absence of the above, they cannot be alleged to be having close association with NSEL, in order to attribute the knowledge about the illegality of alleged paired contract and fasten the illegal acts of NSEL on to them.

(iv) The Noticee submitted that at the relevant time there was nothing to excite their suspicion:

- a. That their regulator i.e. NSEL would not be conducting its affairs in a bonafide manner or not functioning in consonance with the applicable provisions of law;
- b. That the Management/Board of NSEL had compromised their position in terms of acting in concert with borrowers/defaulters;
- c. That NSEL was not operating in consonance with the exemption granted by Government of India;
- d. That there was total mismatch between the public statements/assurances given by NSEL and the actual reality on the ground;
- e. That there could be such transgressions by NSEL for such a significant period of time under the supervision of the Government / designated agency / FMC.

Further, there was no occasion for them to suspect as to something amiss in the alleged paired contracts, since at the relevant time, the authority (i.e. the Central Government) who had granted the exemption to NSEL did not alert the public at large that NSEL was not complying with the conditions stated in the Notification. Admittedly:

- a. Right through 2009, contracts (which are being alleged to be violative of the exemption) were being traded on the platform of NSEL for a period of around 4 years;
- b. The details of the trading in the contracts on the platform of the NSEL were already in public domain and were also available on the website of NSEL;
- c. NSEL would have filed details of trading on its platform with the Central Government.

Despite the aforesaid, at no point of time, Central Government had raised any issue with regard to contracts being traded on NSEL not being within the four corners of the exemption granted by it.

(v) Even FMC, who was substituted as designated agency by the Central Government in the year 2011, when they had commenced trading on NSEL and was collecting trade details from NSEL, had also never ever brought to

the notice of the general public, that the contracts at NSEL platform were violative of exemption notification.

(vi) The Noticee submitted that NSEL and certain handful of large brokers (against whom Orders have been passed by SEBI) who have acted in collusion with NSEL are actually responsible for the alleged fraud and not the small brokers like them who were not aware of the alleged illegality of the paired contracts and also the nefarious intent and design of NSEL.

(vii) The Noticee further submitted following:

- a. They had not brought in any investors to invest in pair trades or induced clients to trade or promised them assured returns etc.
- b. They had not financed clients through NBFC arms, for the purpose of trading on NSEL.
- c. They had not received back from NSEL any charges (collected from investors) such as transaction fees, delivery and warehousing charges, etc.
- d. They had not received any “motivation incentives” for generating huge volumes.
- e. They had not made any effort to increase turnover at the exchange.

(viii) The Noticee pointed out that as per the recent media reports, EOW has already filed final chargesheet in the matter. They have been given to understand (informally) by EOW officials that nothing has been found against them. Under the circumstances, they requested that SEBI (in its capacity as Complainant) should seek the copy of final chargesheet from EOW and ascertain for itself as to whether they have been made as “accused” or not . If their name is not figuring as “accused”, then the whole basis (viz. pendency of Complaint/FIR), for branding as not ‘fit and proper person’ collapses.

(ix) Further, they submitted that the present proceedings are offshoot of Complaint filed by SEBI with EOW. Same is clearly evident from the timeline of the events in the matter. Complaint with EOW was filed in the matter by SEBI on 24.9.18 and immediately on the next day i.e. on 25.9.18, Show Cause Notice was issued by the DA. Therefore, if the Complaint with EOW collapses, the present Notice should also automatically collapse and proceedings need to be dropped.

- (x) The Noticee submitted that the impugned transactions pertain to F/Y-2010-2013, the Notice was issued by the DA in September 2018, and since then the proceedings have been going on resulting in issuance of present Show Cause Notice in January 2021 & further Notices in October 2022 & November 2022. Further, the Complaint/FIR was filed by SEBI in September 2018 and the amendments being relied on pertain to November 2021. The said amended provisions which were introduced only in November 2021, cannot be relied on for presently deciding fit and proper person criterion qua them (in respect of registration which has already been surrendered in the year 2019).
- (xi) The Noticee relied upon the orders passed by Supreme Court and Hon'ble SAT in the matter of:
- a. *Excel Crop Care Ltd. v. CCI*, (2017) 8 SCC 47
  - b. *Coimbatore District Central Coop. Bank v. Employees Assn.* [Coimbatore District Central Coop. Bank v. Employees Assn., (2007) 4 SCC 669]
  - c. *Ranjit Thakur vs UOI & Others* {1987 AIR 2386}
  - d. *Almondz Global Securities Ltd vs SEBI* (SAT Appeal no 222 of 2015)
  - e. *JHP Securities vs SEBI* (SAT Appeal no 121 of 2012)
- (xii) There is nothing in the Enquiry Report to demonstrate as to how their conduct during 2013-2019 was detrimental to the interest of the securities market, especially, in the absence of any: (a) violation by them as a broker; and (b) action against them as a broker by any regulator, during the period 2013 to 2019.
- (xiii) The Noticee further submitted that they are part of Dalmia group of companies. Their group company viz. SSD Securities Private Limited is a Stock Broker on NSE & BSE since 2006 and also a Depository Participant with CDSL & NSDL. Over the years, till date and there has never been any question mark over the group's operations, complaints by clients etc. or any action by regulatory authorities. They have as a group enjoyed impeccable reputation and unblemished track record in the securities market. Any adverse action in the present proceedings, will potentially have adverse impact on the group entities, including, in terms of causing reputational adversity.
- (xiv) There has been undue delay in initiation and completion of proceedings. It is well settled now that "undue delay is a mitigating factor which has to be

considered while imposing a penalty under section 15J of the SEBI Act". (Refer: *Anita Jajodia vs SEBI – SAT Order dated 20.1.21*). In the instant case, the impugned transactions pertain to a very old period i.e. more than a decade old and the proceedings are going on endlessly, spread over multiple notices, with documents being provided in tranches/ instalments.

- (xv) In the facts and circumstances, especially after ceasing to be commodity broker on NCDEX (since April 2017) and MCX (since January 2019), the Noticee prayed that the Notice be discharged, recommendations made by the DA be rejected and no directions be issued and the proceedings be discontinued.

## CONSIDERATION OF ISSUES AND FINDINGS

16. I have carefully perused the post enquiry SCN including the Enquiry Report issued to the Noticee, the replies submitted by the Noticee along with all the other material / information available in public domain and also made available to the Noticee vide letters dated October 04, 2022 and November 02, 2022 and email dated December 7, 2022. After considering the allegations made/ charges levelled against the Noticee in the instant case, I note that the only issue that arises for 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.

17. However, before moving forward with considering the said issue, it is pertinent to refer to the common order dated June 09, 2022<sup>1</sup> passed by the Hon'ble SAT also referred in the preceding paragraph no. 13. The Hon'ble SAT, while setting aside the earlier WTM Orders, had made the following observations (relevant to the present case as well) remanding the matters to SEBI:

- (a) Observations of the Bombay High Court in the matter of *63 Moons vs. Union of India*<sup>2</sup> cannot be relied upon as the said judgement has been set aside in appeal<sup>3</sup> by the Hon'ble Supreme Court vide judgment dated April 30, 2019.

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<sup>1</sup> Appeal No. 214 of 2019 Geofin Comtrade Ltd Vs. SEBI, Appeal No. 217 of 2019 Philip Commodities India Pvt. Ltd Vs. SEBI, Appeal No. 218 of 2019 IIFL Commodities Ltd Vs. SEBI, Appeal No. 288 of 2019 Anand Rathi Commodities Ltd Vs. SEBI and Appeal No. 288 of 2019 Anand Rathi Commodities Ltd Vs. SEBI

<sup>2</sup> Writ Petition No. 2743 of 2014

<sup>3</sup> Civil Appeal No. 4467 of 2019



- (b) Observation from the Order dismissing the Writ Petition filed by NSEL against the invocation of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (“MPID Act”) (*NSEL vs. State of Maharashtra*<sup>4</sup>) cannot be relied upon, as in a subsequent Writ Petition<sup>5</sup> moved by 63 Moons, a Division Bench of the Bombay High Court has allowed the prayer and held that NSEL is not a financial establishment and therefore, the provisions of the MPID Act are not applicable. The Division Bench also observed that the prima facie observations made by the single bench while dismissing the NSEL petition could not be relied upon as they were preliminary observations and such observation does not foreclose the issue about the applicability of the provisions of the MPID Act. The Hon’ble Tribunal, I note, was of the opinion that prima facie observations cannot be the basis to judge the reputation, character or integrity of NSEL.
- (c) Observations in the bail rejection order dated August 22, 2014, passed by the Hon’ble Bombay High Court in the matter of ***Jignesh Prakash Shah vs. The State of Maharashtra***, cannot also be relied upon as the observations made in a bail order were limited to the fact as to whether the bail should be granted or not.
- (d) Reliance placed on decisions of the Hon’ble Tribunal in the matter of ***Jermyn Capital vs. SEBI***<sup>6</sup> and ***Mukesh Babu Securities vs. SEBI***<sup>7</sup> is misplaced as decisions in the said matters are distinguishable on facts. Jermyn Capital was held to be in relation to an Interim Order passed by SEBI, and the Tribunal was of the view that the criteria for passing an Ad Interim Order are based on a different criterion, namely prima facie case, the balance of convenience and irreparable injury which are distinct and different while considering an application for grant of Certificate of Registration. The decision in the matter of *Mukesh Babu Securities* was distinguished by the Hon’ble Tribunal on the basis that in the matter a criminal complaint was filed against the Chairman of the Company. The Tribunal noted that there is no evidence to show that any proceedings have yet been initiated against the appellants in the matter under consideration.

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<sup>4</sup> Writ Petition No. 1403 of 2015

<sup>5</sup> Writ Petition No. 1181 of 2018

<sup>6</sup> Appeal No. 26 of 2006 decided on September 06, 2006

<sup>7</sup> Appeal No. 53 of 2007 decided on December 10, 2007

- (e) Reputation of the applicant cannot be lightly considered based on observations which are not directly related to the applicant.
- (f) The SEBI Order does not state for how long the rejection of application will continue. The Hon'ble Tribunal was of the view that the rejection cannot continue indefinitely, and in such cases, a time period should be provided during which the applicant will become ineligible to seek fresh registration.
- (g) Grant Thornton Forensic report commissioned by SEBI does not find any close connection between the applicant and the NSEL. This is overlooked by SEBI.
- (h) With respect to the additional material available, the Hon'ble SAT observed that, "It will be open to the WTM to rely upon other material such as the complaint letters of NSEL, EOW report, EOW charge sheet, etc. provided such copies are provided to the brokers and opportunity is given to rebut the allegations. Such additional documents relied upon by the respondent should form part of the show cause notice for which purpose, it will be open to the WTM to issue a supplementary show cause notice. It will also be open to SEBI if it considers necessary, to conduct an independent enquiry proceeding against the connected entities and persons associated with the brokers against whom evidence is available."

**18.** In view of the above, the following additional documents were provided to the Noticee in the present case in hand:

- (a) Copy of the SFIO Complaint dated May 15, 2019 filed before the Court of Special Judge at Greater Mumbai, and
- (b) Copy of the FIR dated September 28, 2018 filed by SEBI against 300 trading members of NSEL.
- (c) Copy of the amended Schedule II of the Intermediaries Regulations.

**19.** Before considering the matter on merits and test the compliance of the Noticee with the *'fit and proper person'* criteria, on the basis of the material that have been brought on record, it would be appropriate to look at the background and understand the nature of the *'paired contracts'* that were offered on the exchange – which ultimately is the cause / genesis of the current proceedings. While undertaking this exercise, I will not be independently recording any findings on the nature of the contracts that were entered on the NSEL platform or commenting on the actions of any entity which

is not a party to the present proceedings. I will, however, be relying on the observations made by other authorities including the Hon'ble Supreme Court, wherever appropriate.

**Transactions in the nature of 'paired contracts' on NSEL:**

20. NSEL was incorporated in 2005 as an electronic exchange for spot trading of commodities. On June 5, 2007, the Ministry of Consumer Affairs ("MCA"), Government of India, issued a Notification SO 906(E) under Section 27 of the FCRA granting conditional exemption from the provisions of that Act for (i) forward contracts, (ii) for sale and purchase of commodities, of one-day duration traded on NSEL. The conditions, inter alia, placed an absolute bar on short sales and stipulated that all outstanding positions at the end of the day must result in delivery. It was also stipulated that all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency. The spot exchanges were envisaged as a platform for providing transparent and secure trading in commodities with a view to boost the agriculture sector in the country. Thereafter, NSEL commenced operations in October 2008.
21. As evident from the FMC order, NSEL introduced, on its platform, the concept of 'paired contracts', in September 2009, which involved buying and selling the same commodity through two different contracts at two different prices wherein investors could buy a short duration settlement contract and sell a long duration settlement contract or vice versa, with the same counterparty at the same time. In other words, the 'paired contract' involved two simultaneous transactions being undertaken at the same time with the same counterparty—one being a purchase transaction (settling at T+2 or T+3) and the other being a sale transaction (settling at T+25 or T+36), at different prices on the platform of NSEL. The transactions were structured in a manner that buyer of the short duration contract always ended up making profits.
22. Thereafter, FMC, vide an order No. 4/5/2013-MKT/B dated December 17, 2013 ("FMC Order") observed that: "55 contracts offered for trade on NSEL were with settlement period exceeding 11 days and all such contracts traded on NSEL were in violation of provisions of FCRA" and "the condition of 'no short sale by members of the exchange shall be allowed' was not being met by NSEL".

23. Further, in the above mentioned Order, FMC, *inter alia*, held that the contracts traded on NSEL violated the following conditions stipulated in the MCA Notification SO906(E) dated June 5, 2007, that granted permission to NSEL to offer spot trading in commodities which, *inter alia*, included “*no short sale by members of the exchange shall be allowed; that all outstanding positions of the trade at the end of the day shall result in delivery*” and 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*”.
24. It is, therefore, clear from the order of FMC that NSEL was given permission to setup as a spot exchange for trading in commodities. It was essentially meant to only offer forward contracts having one –day duration as per the Notification dated June 05, 2007. I note from the FMC Order that FMC had observed<sup>8</sup> that the 55 contracts offered for trade on NSEL were with settlement periods exceeding 11 days and all such contracts traded were in violation of the provisions of FCRA. I further note from the FMC Order that under the FCRA, a “*forward contract*” is defined as a “*contract for delivery of goods and which is not a ready delivery contract*”. A ‘*ready delivery contract*’ is defined as “*a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days*”. Given the said definition contained in FCRA, FMC, I note, was of the view that all the contracts traded on NSEL which provided settlement schedule exceeding 11 days were treated as Non-Transferable Specific Delivery contracts.
25. Therefore, it is noted that even though MCA had stipulated in the exemption Notification in 2007 that only contracts of one-day duration were permitted to be offered on NSEL, FMC, in its Order, relying on the definition of “*forward contract*” under FCRA held that NSEL was allowed to only trade in one-day forward contracts and was obliged to ensure delivery and settlement within 11 days. I note the observation in the FMC order that NSEL had permitted 55 contracts of various commodities having duration longer than 11 days and these contracts were *ex facie* in contravention of the exemption granted to NSEL. It is pertinent to note that all the 15 contracts that were advertised by NSEL, and which are captured in the Hon’ble

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<sup>8</sup> Order No. 4/5/2013-MKT-1/B dated December 17, 2013

Supreme Court's Judgement in the matter of *The State of Maharashtra Vs. 63 Moons Technologies Ltd*<sup>9</sup>, were for durations exceeding 11 days.

26. I note that the Hon'ble Supreme Court in the matter of NSEL (supra) has also commented on the nature of the 'paired contracts' traded on NSEL. The said observations by:

a. the Two-Judge Bench of the Hon'ble Supreme Court in the course of determining the validity of the amalgamation order in the matter of 63 Moons (supra) vide judgment dated April 30, 2019, had observed as under:

*"55. We have seen that neither FTIL nor NSEL has denied the fact that 'paired contracts' in commodities were going on, and by April to July, 2013, 99% (and excluding E-series contracts), at least 46% of the turnover of NSEL was made up of such 'paired contracts'. **There is no doubt that such 'paired contracts' were, in fact, financing transactions which are distinct from the sale and purchase transactions in commodities and were, thus, in breach of both the exemptions granted to NSEL and the FCRA.**" (emphasis supplied)*

b. the Hon'ble Supreme Court in the MPID matter vide judgement dated April 22, 2022, has drawn reference to the presentations made by NSEL in respect of the 'paired contracts'. Upon analysing the presentations made, the Hon'ble Supreme Court has observed 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)*

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<sup>9</sup> Civil Appeal No. 2748-49 of 2022

27. I, therefore, note that the Hon'ble Supreme Court has already commented on the nature of the '*paired contracts*' offered on the NSEL platform. In the case of *63 Moons Technologies Ltd. vs. UOI*, the Hon'ble Supreme Court held that these contracts were in the nature of financing transactions. In the MPID matter (*The State of Maharashtra vs. 63 Moons Technologies Ltd.*), the Hon'ble Supreme Court has held that such transactions come within the definition of '*deposits*' under the MPID Act.
28. It is further noted that the Hon'ble Supreme Court, in the MPID matter, had extensively referred to the claims made on the website of the NSEL and the contents of the publicity material and other investor resources. As seen from the order of the Hon'ble Supreme Court, the NSEL was advertising a uniform return of 16% p.a. for the '*paired contracts*' traded on its platform. The return offered was the same across commodities. The return remained the same irrespective of the duration of the contract. For example, a T+2 & T+25 paired contract in steel had the same offered return as a T+ 2 & T + 35 paired contract in castor oil. The '*paired contracts*', it is noted, were being marketed as an alternative to fixed deposits.
29. I note that the FMC Order and both the judgments of the Hon'ble Supreme Court discuss in detail, the NSEL permitting short sales i.e. permitting sellers to offer contract for sale of commodities on its platform without ensuring that requisite amount of commodity is available in the warehouse. It is further noted from 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 naked short sales i.e. the commodities to back such sales were not available at the designated warehouses of the NSEL.
30. In addition, I note that Economic Offences Wing, Mumbai, vide letter 789 dated April 04, 2015, had forwarded an interim report for the investigation conducted to identify role played by broking houses in NSEL Case (EOW C.R. No. 89/2013). EOW, in its report, had mentioned that a settlement obligation amounting to Rs. 54,03,59,38,793/- was due on the date of closure of business of NSEL. Of this, the obligation outstanding against the Noticee as per the EOW report was Rs. 15,79,500/-. Relevant extracts of the report are as follows:

#### ***“IV. Objectives of this investigation into the brokers’ role:***

*A scam of this magnitude would be difficult to continuously occur for 3 years without some of the large brokers’ gross negligence or perhaps active participation.*

*The actual role of the brokers was:*

- To bring in investors to invest in ‘pair trades’ promising them assured returns and the investors got about 13-16% p.a. for investing in the commodity*
- The sellers got finance at 18-20 or more % by pledging their commodity in NSEL warehouses*

*They got brokerage from investors on the NSEL platform, and those brokers who had their NBFCs got additional revenue by financing investors for investing on NSEL.*

*Though the matter is still under investigation, brokers have also received back from exchange certain charges collected from investors such as transaction fees, delivery and warehousing charges, etc. It is suspected that these are indirect motivation incentives for brokers to generate huge volumes. It is also possible that brokers may have benefitted from or compensated by the sellers or defaulters.*

*The higher the trading turnover, the higher revenues for the exchange and the brokers. Therefore, both wanted to increase turnover at the exchange.*

*In light of the foregoing, the objective of EOW in investigating brokers was to inquire whether they had been involved in any wrongdoing connected with trading on NSEL. Specifically to determine whether they participated in:*

- a) Any activities which were detrimental to the investors, NSEL, or third parties. To determine whether they had made false and misleading representations, offered inducement, financing and deliberately made wrongful assertions purely to get brokerage and facilitate NSEL in generating higher volumes.*
- b) Whether they had any illegitimate personal enrichment, or, there has been knowing dereliction in their duties as clearing and forwarding agents towards the commodities and protect the investors.*
- c) It was also deemed necessary to ensure that their activities were within the framework of law.”*

### **Preliminary objection raised by the Noticee:**

- 31.** The Noticee has submitted that the impugned transactions pertain to period 2009, for which Notice (from the DA) came to be issued, after inordinate delay of 9 years, in 2018 and now post issuance of said Notice, at this second stage post submission of Enquiry Report, documents were still being provided in bits and pieces, and in instalments. Same vitiates the whole proceedings, and was also in gross violations of principles of natural justice and fair play. I note that FMC, the regulator of the commodity derivatives market, under powers conferred upon it vide Notification 228(E) dated February 06, 2012, had called for trade data from the NSEL with respect to the trades being executed on its platform. On analysis of data received from NSEL, FMC observed that, *“55 contracts offered for trade on NSEL were with settlement periods exceeding 11 days and all such contracts traded on NSEL were in violation of provisions of FCRA”* and *“the condition of ‘no short sale by members of the exchange shall be allowed’ was not being met by NSEL”*. Subsequently, FMC, while dealing with the facts relating to mismanagement and poor governance of NSEL, in its order No.4/5/2013-MKT-1/B dated December 17, 2013, inter alia, observed that the conditions laid down in the Government Notification dated June 07, 2007 had been contravened by NSEL. Thereafter, in the Union Budget for the FY 2015-16 it was announced that FMC would be merged with SEBI. The Finance Act, 2015, provided that *any person dealing in commodity derivatives prior to the aforesaid merger of FMC with SEBI may continue to do so provided they have made an application for registration with SEBI within a period of three months from the date of such merger*. The merger of FMC and SEBI took effect only on September 28, 2015. The transactions on the platform of NSEL were examined by various authorities including FMC, Courts, EOW, SFIO, etc., which *prima facie* found them to be illegal.
- 32.** It is pertinent to mention here that the enquiry proceedings were initiated by SEBI by appointing the DA vide communique dated September 21, 2018 and the Enquiry SCN was issued to the Noticee on September 25, 2018. Vide letter dated July 26, 2019, additional material was provided to the Noticee. Pursuant to the transfer of the DA, another DA was appointed in the matter in November 17, 2020. Thereafter, on considering the facts and circumstances of the case, the DA had submitted an Enquiry Report dated December 14, 2020. Based on the recommendations made in



the Enquiry Report, a post enquiry SCN dated January 15, 2021 was issued. While the said proceedings were ongoing, as mentioned in preceding paragraphs No. 13 and 17 above, the Hon'ble SAT passed an order dated June 09, 2022 in similar set of facts. Thereafter, in August 2022, the present matter was allocated to me. Based on the observations made by the Hon'ble SAT in the order dated June 09, 2022, additional documents, as available with me were provided to the Noticee vide letters dated October 04, 2022 and November 02, 2022 and email dated December 7, 2022.

33. Therefore, I note that considering the above, the chronology in which the present proceedings have been conducted and the complexity of paired contracts, the submission of delay in initiating action against the Noticee is not tenable.

34. Here, I would like to place reliance on the observations made by the Hon'ble Supreme Court in the matter of *Adjudicating Officer, SEBI Vs. Bhavesh Pabari*<sup>10</sup> wherein the Hon'ble Supreme Court, while dealing with the issue of delay in issuance of the show cause notice by the Adjudicating Officer, has observed that,

*".... 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 default / statute, prejudice caused, whether the third - party rights had been created etc....."***

35. Further, I would like to rely upon the judgment of Hon'ble SAT in the case of *Ravi Mohan & Ors. vs. SEBI*<sup>11</sup> wherein it was observed that : -

*".....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no.114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there is no statutory bar for adjudicating the*

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<sup>10</sup> Civil Appeal No. 11311 of 2013 order dated February 28, 2019

<sup>11</sup> Appeal No. 97 of 2014 decided on December 16, 2015

matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice.....”

36. Further, the Noticee has submitted that based on the observations of Courts/Authorities that the alleged transactions of NSEL were violative of prevalent laws, also no adverse inference can be drawn against them and have no bearing on their ‘Fit and Proper’ status. Here, it is pertinent to mention that the said orders and reports of the authorities have been considered in the present proceedings in order to state that the ‘paired contracts’ executed on the NSEL platform were in violation of the Government Notification dated June 05, 2007. Therefore, even though the Noticee’s name does not form part of these orders and proceedings of other authorities, mention of such orders and reports of other authorities are relevant to the proceedings to show establish that paired contracts were in violation of the said notification.
37. The Noticee has submitted that the cases referred to in the Enquiry Report viz. SAT Order in *Jermyn Capital LLC Vs. SEBI* and *Mukesh Babu Securities Ltd Vs. SEBI* and the order of the Bombay High Court in *Jignesh Prakash Shah Vs. State of Maharashtra* being adversely treated by the Hon’ble SAT in its order dated June 09, 2022 would not be of any substantive value and therefore, the case made out in the Enquiry Report falls on this ground alone. In view of the observations of the Hon’ble SAT with respect to the said orders, I do not wish to place any reliance on the said orders while dealing with the issue in the present case in hand.

#### **Fit and proper person criteria**

38. Now, I would be proceeding to deal with the main issue in hand in the present case which is whether the Noticee satisfies the ‘fit and proper person’ criteria laid down under Schedule II of the Intermediaries Regulations. Before moving forward, it would be appropriate to take a look at the relevant provision of the SEBI Act, Broker Regulations and the Intermediaries Regulations (as they exist on date) which are reproduced as under for reference:

## **SEBI Act**

### **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.*

## **Broker Regulations**

### **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

### **Liability for action under the Enquiry Proceeding Regulations.**

**27.** A stock broker or a sub-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 or a sub-broker, as the case may be, if he—

**(i)** ....

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

## **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.

**(3)** ....

**(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.”

**Intermediaries Regulations:**

**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 fulfill 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 proceedings 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.*

39. I note that regulation 5(e) of the Brokers Regulations provides that for the purpose of grant of Certificate of Registration, the applicant has to be a 'fit and proper person' in terms of Schedule II of the Intermediaries Regulations. I further note that the 'fit and proper person' criteria specified in Schedule II of the Intermediaries Regulations, 2008 was amended vide SEBI (Intermediaries) (Third Amendment) Regulations, 2021 with effect from November 17, 2021.
40. From the records, I note that SEBI has filed a complaint with EOW Mumbai dated September 24, 2018, against brokers who facilitated access to '*paired contracts*' traded on NSEL, including the Noticee. On the basis of this complaint, an FIR dated September 28, 2018, was registered against the Noticee. I note that the Noticee is holding a certificate of registration No. INZ000050236 granted by SEBI on May 23, 2016. In order to continue to hold such Certificate of Registration from SEBI, the Noticee is also required to satisfy the conditions of eligibility, which *inter alia* included, continuance of its status as a 'fit and proper person'. The above condition to be a fit and proper is not a onetime condition applicable only at the time of seeking registration. Rather, the provisions governing the criteria show that this is a condition which each and every registered intermediary is required to fulfil on a continuous basis as long as the entity remains associated with the Securities Market as a registered intermediary.
41. In this regard, I note that the Noticee submitted that NSEL acted in violation of Notification issued on June 05, 2007 and participated in alleged paired contracts. The Noticee had not executed any transactions on NSEL on behalf of clients other than

single delivery-based contract in e-silver. However, the Noticee has admitted that it had proprietary trades in the paired contracts. I note that the 'paired contracts' by the Noticee, seriously calls into question the integrity, honesty and lack of ethical behaviour on the part of the Noticee. As recorded in the FMC order and the judgements of the Supreme Court, these contracts, as stated earlier, were *ex facie* offered in violation of the exemption Notification issued by MCA and far removed from the spot contracts in commodities which were permitted to be traded on NSEL. The 'paired contracts' were nothing but financing transactions masquerading as spot contracts in commodities. The execution of the trades in 'paired contracts' were not permitted under the 2007 Exemption Notification and were purely financial contracts promising assured returns under the garb of spot trading in commodities, as observed by FMC in its Order. Therefore, the Noticee, by its conduct and as a member of the NSEL, has dealt in 'paired contracts' which were held to be in the nature of financing transaction by the Hon'ble Supreme Court. The Noticee, by taking exposure to 'paired contracts' has undertaken the risk involved in trading in a product that did not have regulatory approval thereby raising doubts on the competence of the Noticee to act as a registered Securities Market intermediary. Thus, I am of the view that the trading activities of the Noticee in 'paired contracts' on the NSEL platform have serious ingredients amounting to jeopardizing the reputation, belief in competence, fairness, honesty, integrity and character of the Noticee in the Securities Market.

**42.** The Noticee has submitted that the amendment of the criteria for fit and proper person laid out in Schedule II of the Intermediaries Regulations were introduced only in November 2021, cannot be relied on for presently deciding fit and proper person criterion qua them. I am unable to accept such contention. It is noted that paragraph 3(b) of the amended criteria lays down a list of disqualifications which includes the following:

- 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;*

**43.** I note from the available records that the Noticee has executed proprietary trades in 'paired contracts' and that it is admitted that the Noticee had executed trades on the NSEL platform in paired contracts. As the paired contracts were violative of the

conditions stipulated in the Government Notification dated June 05, 2007, a complaint was filed by SEBI with Economic Offences Wing, Mumbai (EOW) on September 24, 2018, against the brokers who participated / facilitated access to 'paired contracts' traded on NSEL, including the Noticee within the time limit as specified in the aforementioned provision of the Finance Act, 2015. On the basis of the said complaint of SEBI, FIR dated September 28, 2018 was lodged at MIDC Police Station, Mumbai. I note that the name of the Noticee is reflected in the complaint and the FIR. In this regard, I also note that the Noticee has requested for SEBI (in its capacity as Complainant) to seek the copy of final chargesheet from EOW and ascertain for itself as to whether they have been made as "accused" or not. If their name is not figuring as "accused", then the whole basis (viz. pendency of Complaint/FIR), for branding as not 'fit and proper person' collapses. However, it may be noted that such chargesheet is not being relied upon in the instant proceedings.

44. It is pertinent to note that the criteria of 'fit and proper person', is an ongoing requirement throughout the period during which the Noticee remains operational in the Securities Market as a registered intermediary. In case, pursuant to the grant of registration by SEBI, any evidence comes to the notice of SEBI that casts a doubt on the integrity, reputation and character of the registered intermediary, the SEBI is well within the powers to examine the 'fit and proper' status of such entity based on various parameters. Therefore, even if the Noticee was found to have fulfilled the 'fit and proper person' criteria when SEBI granted Certificate of Registration in May 25, 2016, such an intermediary can still be assessed on being fit and proper at a later date. Furthermore, as and when the 'fit and proper' criteria changes, the Noticee will be required to comply with the revised criteria, and in this instance, criteria as revised vide the amendments in November 2021. It is noted that parameters provided under paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations lays down a list of disqualifications which includes a criminal complaint or information under section 154 of Code of Criminal Procedure filed against such an entity by the Board and which is pending. It is, therefore, noted that the Noticee attracts the disqualification provided in paragraph 3(b) (i) of the Schedule II of the Intermediaries Regulations.



45. Therefore, looking holistically I find that the said conduct of the Noticee is detrimental to the Securities Market being not in conformity with the applicable code of conduct. I, therefore, note that there were enough red flags for a reasonable person to come to conclude that what was being offered as 'paired contracts' on NSEL were not spot contracts in commodities. Given the above, I am constrained to find that the Noticee accessed a product which raised serious questions on the ability of the Noticee to conduct proper and effective due diligence regarding the product itself.
46. Furthermore, as mentioned above, the Noticee has also earned disqualification under 3(b) (i) of the amended Schedule II of the Intermediaries Regulations on account of an FIR filed by SEBI. In this regard, it is pertinent to note that the said FIR was filed by SEBI on September 28, 2018 and is validly subsisting and has not been challenged, quashed or stayed by any competent court qua the Noticee. In this context, as observed above, I note that being a 'fit and proper person' is a continuing 'eligibility criteria' which must be satisfied by the Noticee including the amended criteria.
47. Here it is pertinent to note that the principle of '*ignorantia juris non excusat*' or '*ignorantia legis neminem excusat*' or '*ignorance of law is no excuse*' also becomes applicable in the situation since trading in 'paired contracts' was in violation of the 2007 Exemption Notification and ignorance of the conditions of the said Exemption Notification cannot be claimed. The 'paired contracts' were nothing but financing transactions which were portrayed as spot contracts in commodities. Therefore, giving go-bye to the terms of the 2007 Exemption Notification and executing paired contracts brings into question appropriateness and suitability of the continuance of the registration of the Noticee as a broker. Clearly, the actions of the Noticee has been detrimental to the interest of the Securities Market and accordingly the Noticee can no longer be called a 'fit and proper person' for holding the Certificate of Registration as a broker in the Securities Market, which is one of the conditions for continuance of registration as specified in regulation 5(e) of the Brokers Regulations read with the provisions of Schedule II of the Intermediaries Regulations.
48. In the context of Securities Market, I note that the role of a registered intermediary including a broker is not only sensitive and predominantly fiduciary in nature but also

demands from it honesty, transparency, fairness and integrity which are essentially the hallmarks of such market intermediaries. Given the fact that one of the avowed objects of the SEBI Act is the protection of interest of investors apart from promotion and development of the Securities Market, the legislature through enactment, empowers SEBI to grant registration to several class of entities including brokers, which are not only required to act as an intermediary simplicitor i.e., a bridge or a connector between the markets and investors, but also have a very important role to play in creating an ecosystem of trust and fairness so as to provide a fair and secure market to the investors as any deviation from the above noted objective could have a cascading adverse impact on the development of the Securities Market and interests of investors. Thus, undisputedly a broker is obligated to act in a transparent manner and comply with all applicable regulatory requirements which are in the best interests of its clients and which will uphold the integrity of the Securities Market.

49. I am also aware that recently SEBI has passed 5 separate orders<sup>12</sup> in the related NSEL matters where the Noticees therein have been debarred from making a fresh application seeking registration for a specified period from the date of the said order or till acquittal of the said Noticee by Courts pursuant to the charge sheet and FIR filed by/with EOW, whichever is earlier. I find that present matter at hand is different from that of those 5 cases as in the extant matter the Noticee is already holding a Certificate of Registration whereas in those 5 cases, the entities had filed applications seeking certificate of registration. Therefore, I am of the measured opinion that the present case stands at a different footing than that of those 5 cases where the applications for grant of certificate of registration were pending at the time of passing those orders whereas in the extant matter the Noticee is already having registration with SEBI. At this stage, one may argue that at the time of grant of Certificate of Registration to the Noticee, it was already adjudged as a 'fit and proper person' by

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<sup>12</sup> Orders dated November 29, 2022 in respect of Motilal Oswal Commodities Brokers Pvt. Ltd.(at [https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-respect-of-motilal-oswal-commodities-broker-pvt-ltd-\\_65602.html](https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-respect-of-motilal-oswal-commodities-broker-pvt-ltd-_65602.html)), Anand Rathi Commodities Ltd.(at [https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-anand-rathi-commodities-ltd-\\_65604.html](https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-anand-rathi-commodities-ltd-_65604.html)), Geofin Comtrade Limited (previously known as Geojit Comtrade Limited)(at [https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-geofin-comtrade-limited-previously-known-as-geojit-comtrade-limited-\\_65597.html](https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-geofin-comtrade-limited-previously-known-as-geojit-comtrade-limited-_65597.html)), India Infoline Commodities Ltd.(at [https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-india-infoline-commodities-ltd-\\_65595.html](https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-india-infoline-commodities-ltd-_65595.html)) and Phillip Commodities India Pvt. Ltd.(at [https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-phillip-commodities-india-pvt-ltd-\\_65593.html](https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-phillip-commodities-india-pvt-ltd-_65593.html)) in the matter of NSEL.

SEBI and therefore the said criteria are already satisfied by the Noticee. However, as noted above 'fit and proper person' criteria is a continuing requirement under the Intermediaries Regulations which the Noticee ought to comply with at all times so long it desires to remain associated with the Securities Market as a registered intermediary. Necessity of specifying a period of time may also not arise in this order (as did arise in the case of entities desiring to be registered as market intermediaries) when dealing with an entity holding a certificate of registration which is cancelled as this forum cannot presume whether such entity wishes 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 regulations.

**50.** The limited scope of the present proceedings is to see whether the indulgence, engagement and facilitation of paired contracts could be held to be beneficial to the development of Securities Market or the same contain elements that are potentially dangerous and detrimental to the interest, integrity, safety and security of the Securities Market. In this respect, the undisputed fact recorded in FMC order and Hon'ble SC order that the scheme of 'paired contracts' traded on the NSEL ultimately has caused loss to the market to the extent of INR 5,500 Crore itself casts serious aspersion on the conduct, integrity and reputation of, inter alia, the Noticee who participated in or facilitated such 'paired contracts' and therefore, its continuing role in the Securities Market cannot be viewed as good and congenial for the interest of the investors or of the Securities Market.

**51.** Given the above discussions and deliberations, I am constrained to conclude that the Noticee executed proprietary trades in a product which raises serious questions on the ability of the Noticee to conduct proper and effective due diligence regarding the said product itself. Further, as per findings recorded above, the Noticee also attracts the disqualification provided in paragraph 3(b)(i) under the amended Schedule II of the Intermediaries Regulations insofar as SEBI has filed an FIR against the Noticee under section 154 of Cr. P C with EOW, Mumbai and the same is validly subsisting/pending as on date. Further, it is also not the case of the Noticee that said FIR filed by SEBI is either stayed or quashed by any competent court qua the Noticee or otherwise. In view of the above, I hold that the Noticee does not satisfy the 'fit and proper person' criteria specified in Schedule II of the Intermediaries Regulations and

hence, the continuance of the Noticee as a broker will be detrimental to the interest of the Securities Market. Therefore, such activities on the part of the Noticee who is a registered broker now, cannot be condoned and deserve appropriate remedial measure to prevent such wrong doings from recurring to the detriment of the interest of the Securities Market.

## **ORDER**

**52.** I, therefore, in exercise of powers conferred under Section 12(3) and Section 19 of the SEBI Act, 1992 read with Regulation 27 of the Intermediaries Regulations, 2008 and upon considering the gravity of the violations committed by the Noticee viz. Time Leverage Instruments Pvt. Ltd, the Certificate of Registration (bearing no. INZ000050236) of the Noticee i.e. Time Leverage Instruments Pvt. Ltd, is hereby cancelled.

**53.** The Noticee shall, after receipt of this order, immediately inform its existing clients, if any, about the aforesaid direction in paragraph 52 above.

**54.** Notwithstanding the direction at paragraph 52 above,

- a. 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 within a period of next 15 days thereon, under advise to the said clients.
- b. The Noticee shall square off open positions, if any, within 30 days from the date of this order.

**55.** This Order shall come into force with immediate effect.

**56.** It is clarified that in view of the amendment made w.e.f. January 21, 2021 in the Intermediaries Regulations, powers that were exercised under Regulation 28 of the Intermediaries Regulations, 2008 are now being exercised under Regulation 27 of the Intermediaries Regulations, 2008. It is also noted that the above Order is without prejudice to the criminal complaint filed by SEBI in the NSEL matter and/or any

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

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

**Date: March 28, 2023**

**Place: Mumbai**

**Dr. ANITHA ANOOP  
CHIEF GENERAL MANAGER  
SECURITIES AND EXCHANGE BOARD OF INDIA**