QJA/GR/MIRSD/DOP/28547/2023-24

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

Against

NAME OF THE NOTICEE	SEBI REGISTRATION NO.
Yashwi Commodities Private Limited	**INZ000048234**

In the matter of trading at the National Spot Exchange Limited

BACKGROUND

1. The present proceedings emanate from the appointment of a Designated Authority (**"DA"**) on October 21, 2020 to enquire into and to submit a report on the activities of Yashwi Commodities Private Limited (**"Noticee"**) as a stock broker bearing Registration No. INZ000048234 in the matter of the trades executed by them on the spot exchange platform provided by the National Spot Exchange Limited (**"NSEL"**) resulting in the possible violation by the Noticee of Regulations 5(e), 9(b) and 9(f) of the SEBI (Stock Brokers) Regulations, 1992 (**"Stock Brokers Regulations"**) read with Schedule II of the SEBI (Intermediaries) Regulations, 2008 (**"Intermediaries Regulations"**).

2. Upon conclusion of the enquiry in the manner envisaged under Regulation 25 of the Intermediaries Regulations, the DA submitted a report dated December 22, 2020 (**"Enquiry Report"**) in terms of Regulation 27 of the Intermediaries Regulations as it read at the relevant point of time, recommending that the registration of the Noticee as a stock broker may be cancelled.

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

> *".....*
> *45. 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., Yashwi Commodities Private Ltd. [Registration No. INZ000048234] as a commodities derivatives broker may be cancelled."*

4. A notice dated January 15, 2021 (**"SCN"**) enclosing the Enquiry Report and certain other documents referred to 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 recommendation of the DA cancelling the certificate of registration should not be accepted or any other action as may be considered appropriate, should not be initiated against it. Noticee was further advised to submit its reply, if any, within 21 days from the date of receipt of the said SCN. However, no response was received from the Noticee.

5. It is pertinent to mention that Regulation 27 of the Intermediaries Regulations was amended with effect from January 21, 2021. Pursuant thereof, the procedure for action on receipt of the recommendation of the DA has been incorporated in the amended Regulation 27 of the Intermediaries Regulations. These proceedings are being considered under the amended provisions of Regulation 27 of the Intermediaries Regulations. It would be relevant to refer to certain developments that ensued and have a bearing on the case under consideration. Against five separate orders earlier passed by Securities and Exchange Board of India (**"SEBI"**) in February 2019 rejecting the applications filed by five separate entities seeking registration as commodity brokers on the ground of being involved in the trades on the platform provided by NSEL, the five entities filed five separate appeals before the Securities Appellate Tribunal which, vide its common order dated June 9, 2022, remanded the matters for being reconsidered within six months from June 9, 2022 and, *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..."

6. In light of this order and other subsequent orders passed in a similar set of cases by the Securities Appellate Tribunal, the relevant additional documents were provided to the Noticee vide a supplementary notice dated February 17, 2023 (**"SSCN"**) which along with the original notice, is collectively referred to as the **"SCNs"**, with an advice to submit its reply/ comments/ clarifications in addition to its earlier replies, if any, within 15 days of the receipt of the SSCN. In response to the same, the Noticee submitted its reply dated March 08, 2023.

7. The Noticee was then issued a notice of hearing dated April 10, 2023 to appear for a personal hearing on April 21, 2023 if they so desired and make their submissions, if any. On the scheduled date of hearing, the Authorised Representatives of the Noticee appeared and made submissions in line with their earlier response dated March 08, 2023.

CONSIDERATION OF ISSUES

8. I have carefully perused the contents of the Enquiry Report, the SCNs issued to the Noticee, the response filed by the Noticee and the submissions made during the course of the personal hearing and other documents available on record as shared with the Noticee.

9. The gist of the submissions of the Noticee in its reply and those advanced during the personal hearing is summarized hereunder:

a. Noticee is in the business of commodity broking for the last 16 years and no grievance or complaint has been made by any client or investor.
b. The Noticee traded in the alleged paired contracts on the NSEL platform from August 7, 2012 to April 18, 2013 and traded in e-silver contracts from May 9, 2013 to July 23, 2013.
c. The Noticee executed only proprietary trades in commodities as per the prescribed procedure and in accordance with the rules and regulations specified by the NSEL.
d. The NSEL was subject to the regulations issued by the erstwhile Forward Market Commission (**"FMC"**) and NSEL failed to introduce effective preventive safeguards and mechanism.
e. The trades executed by the Noticee cannot be categorised as financing transactions since such transactions involve lending/ borrowing, i.e. giving/ taking of secured/ unsecured loans/ advances of different tenure bearing interest or interest free as per the relationship between the parties which does not involve the intervention of the exchange like NSEL.
f. SEBI has not provided any evidence or proof to show that the alleged trades were financing transactions despite the fact that all the alleged transactions were proprietary transactions and not for any client.
g. Both NSEL and FMC had themselves allowed and permitted trading in contracts in commodities having settlement beyond 11 days and hence no adverse inference can be drawn against the Noticee.
h. When the alleged trades were placed in the system of NSEL and open to the universe at large, no adverse inference can be drawn if these trades were allegedly executed for settlement beyond 11 days.
i. Subjecting the Noticee to the adjudicating proceedings at a belated stage of approximately 10 years is unfair and unreasonable and there has been inordinate delay in the issuance of the SCNs.
j. The SEBI (Intermediaries) (Third Amendment) Regulations, 2021 is violative of Article 20(1) of the Constitution of India as it proposes to penalise the Noticee for violation of a law which was not in force at the time of the alleged transaction.

k. With regard to the allegation of association/ connection of the Noticee with the NSEL/ counterparty, no case has been made out to show cogent connection of the Noticee with the NSEL/ counterparty in the SCNs.

l. The SCNs have been issued merely on assumptions and apprehensions of transactions having attributes of financing transactions whereas the Hon'ble Supreme Court and High Court have repeatedly held that any action based on apprehension is not permissible.

m. The Hon'ble Supreme Court in *Prrsaar vs. National Stock Exchange* (Civil Appeal No. 3260 OF 2017) vide order dated July 22, 2019 ruled that penalty on brokers cannot be unreasonable and brokers can be suspended only when they indulge in misconduct against the Stock Exchange.

10. The principal issue which arises for my consideration, keeping in mind the facts of the case being as they are, before I deal with the other issues raised by the Noticee, is whether the present proceedings are maintainable against the Noticee.

11. Before I proceed to examine this issue, it would be appropriate to refer to the relevant provisions of law, alleged to have been violated by the Noticee and/ or referred to in the present proceedings that are reproduced for ease of reference:

SEBI Act, 1992

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

12.(1)…..

(2)……...

(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,

(a)…..

(b)…..

……...

(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, -*

(a)…..

(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 Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

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

(i)…..

(ii)….

……..

(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. (1)…..

(2)….

(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.

12. Before considering the issues raised by the Noticee on merits, on the basis of material available on record including the additional material as detailed at

paragraph 42, the background facts necessary to be referred to for a proper appreciation of the present proceedings are narrated in brief, hereunder:

a. NSEL was incorporated in May, 2005 as a Spot Exchange, for trading in commodities. In exercise of the powers conferred under Section 27 of the FCRA, the Central Government vide its Notification No. SO 906 (E) dated June 05, 2007 (**"Exemption Notification"**) granted exemption to all forward contracts of 'one-day duration'; from the operations of the provisions of the FCRA, for the sale and purchase of commodities traded on the NSEL, subject to fulfilment of certain conditions, inter alia, that "no short sale by the members of the exchange shall be allowed" and that "all outstanding positions of the trades at the end of the day shall result in delivery". Thus, NSEL was given permission to be setup as a Spot Exchange for trading in commodities and was essentially meant to only offer forward contracts having on its trading platform one-day duration as per Exemption Notification
b. In October 2008, NSEL commenced operations for providing an electronic trading platform to its participants for spot trading of commodities, such as bullion, agricultural produce, metals, etc. NSEL introduced the concept of 'paired contracts' in September 2009 which allowed buy and sell in the same commodity through two different contracts at two different prices on the exchange platform wherein the investors could buy a short duration contract and sell a long duration contract and vice versa, at the same time and at a pre-determined price. The trades for the Buy contract (T+2 / T+3) and the Sell contract (T+25/ T+36) used to happen on the NSEL on the same day at the same time and at different prices, but involving the same counterparties. The transactions were structured in a manner that the buyer of the short duration contact always ended up making profits.
c. On February 06, 2012, FMC was appointed by the Department of Consumer Affairs, Government of India as the 'designated agency' as stipulated in one of the conditions prescribed under the said Exemption Notification and was authorized to collect the trade data from NSEL and to examine the same for taking appropriate measures, if needed, to protect investors' interest.
d. FMC accordingly called for the trade data from different spot exchanges, including NSEL in the prescribed reporting formats. It was observed that the

55 contracts offered for trade on the NSEL were with settlement periods exceeding 11 days. After analyzing the trade data received from the NSEL, FMC passed an Order No. 4/5/2013-MKT-1/B dated December 17, 2013 (**"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 not being 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 the conditions specified by the Government of India in its Exemption Notification, while granting exemption to the one day forwards contracts for sale and purchase of commodities traded on the NSEL, from the purview of the FCRA, specifically the following conditions:

a. Short Sale

NSEL had not made it mandatory for the seller to deposit goods in its warehouse before taking a sell position. Yet, 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 beyond 11 days

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

13. It is also a matter of record that prior to the merger of the FMC with SEBI on September 28, 2015, the commodity brokers including the Noticee were not required to be registered with either the FMC or any other regulatory authority under the FCRA. The Parliament sought to rectify this regulatory vacuum through

the enactment of the Finance Act, 2015, which repealed the FCRA and brought the entities dealing with commodity derivatives under the regulatory supervision of SEBI with effect from September 28, 2015.

14. Pursuant thereto, SEBI was empowered through the Finance Act, 2015, to *inter alia*, regulate commodity derivatives brokers, which included granting them registration as a commodity derivatives broker with SEBI. Section 131B of the Finance Act, 2015, provided a transitory period of 3 months to all intermediaries associated with the commodity derivatives market under the erstwhile FCRA to continue to deal in commodity derivatives as a commodity derivatives broker, provided they applied for registration from SEBI within 3 months from September 28, 2015.

15. Thus every commodity derivatives broker was mandatorily required to obtain a certification of registration from SEBI in case it sought to remain associated with the securities market as a commodity derivatives broker and SEBI is suitably empowered to grant the said registration upon fulfilment of the required conditions and to initiate action against the brokers for any violation thereof by them.

16. The ambit of SEBI in so far as the provisions of FCRA is concerned, flows from the Finance Act, 2015, which amended the provisions of the FCRA through Section 29A of FCRA, as inserted by the Finance Act, 2015, and reads as follows:

> *"(1) The Forward Contracts (Regulation) Act, 1952 is hereby repealed.*
> *(2) On and from the date of repeal of Forward Contracts Act–*
> *(a)….*
> *(b)….*
> *(c)….*
> *(d)….*
> *(e) a fresh proceeding related to an offence under the Forward Contracts Act, may be initiated by the Security Board under that Act within a period of three years from the date on which that Act is repealed and be proceeded with as if that Act had not been repealed;*

(f) no court shall take cognizance of any offence under the Forward Contracts Act from the date on which that Act is repealed, except as provided in clause (d) and (e);

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

17. These aspects were highlighted by the Hon'ble Bombay High Court in its Order dated October 04, 2018 while dealing with 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 wherein* the following was observed:

"...

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".

18. It is thus clear that SEBI has been statutorily empowered to initiate a fresh proceeding with respect to the offences under FCRA within a period of three years from the date on which FCRA is repealed. Accordingly, since pursuant to the merger of FMC with SEBI, it was well within the powers of SEBI to initiate proceedings under Chapter V of FCRA if so warranted against entities for their activities undertaken by them on the NSEL platform, SEBI filed the criminal complaint dated September 24, 2018 against such entities before the Economic Offence Wing (**"EOW"**) and requested the EOW to take appropriate action under Sections 20 and 21 and other provisions of FCRA against the brokers/ members of NSEL and other persons mentioned in the complaint.

19. Admittedly, the Noticee had executed the paired contracts offered on the NSEL platform as also evident from the trading data provided by EOW that was

provided to the Noticee. However, while justifying the execution of such trades, the Noticee has challenged the action proposed against it by raising the grounds summarized in paragraph 9.

20. Noticee has argued that it had executed only proprietary trades as per the stipulated procedure and in accordance with the rules and regulations specified by the NSEL and that both the NSEL and FMC had themselves allowed and permitted trading in contracts in commodities having settlement beyond 11 days and hence no adverse inference should be drawn against it. In order to justify its trading on the NSEL platform, the Noticee has also argued that since the alleged trades in paired contracts once placed in the system of NSEL, was open to the universe at large to accept; no adverse inference should be drawn if these trades got executed for a settlement beyond 11 days.

21. To this, I note 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 these definitions in the FCRA, the FMC was of the view that all the contracts traded on the NSEL which provided for a settlement schedule exceeding 11 days were to be treated as Non-Transferable Specific Delivery contracts. It is, therefore, seen that while the Ministry of Consumer Affairs had stipulated in the Exemption Notification that only forward contracts of 'one-day were permitted to be offered on the NSEL, the FMC, in its order, relying on the definition of the "forward contract" under FCRA held that the NSEL was allowed to only trade in forward contracts of 'one-day duration' and was obligated to ensure delivery and settlement within 11 days. Hence, it was held that 55 paired contracts of various commodities, having duration longer than 11 days which were executed which were in contravention of the exemption granted to NSEL.

22. In this regard, it is also pertinent to refer to the judgment of the Hon'ble Supreme Court of India passed in the matter of *63 Moons Technologies Ltd. (formerly*

known as Financial *Technologies India Ltd.) & Ors. vs. Union of India & Others* (Civil Appeal No. 4476 of 2019 decided on April 30, 2019) (**"merger petition"**), wherein it was, *inter alia*, held that:

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

23. It would also be necessary to place on record the reference to the order of the Hon'ble Bombay High Court in the matter of *63 Moons' Technologies Limited vs. State of Maharashtra* dated August 22, 2019, wherein it was held that the paired contracts were not financial transactions but were trades in commodity as per the regulations and bye laws of NSEL. Upon appeal, 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) (**"MPID matter"**), while drawing reference to the representations made by the NSEL in respect of the paired contracts, *inter alia*, held as follows:

> *".....*
> *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.*
>
> *Though NSEL has been receiving deposits, it has failed to provide services as promised against the deposits and has failed to return the deposits on demand. Therefore, the State of Maharashtra was justified in issuing the attachment notifications under Section 4 of the MPID Act...."*

24. The Hon'ble Supreme Court has thus well described the nature of the 'paired contracts' offered on the NSEL platform. In the merger petition (*63 Moons Technologies Ltd. vs. UOI*), the Hon'ble 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 enlarged the interpretation and held that such transactions come within the

definition of 'deposits' under the MPID Act. While extensively referring to the claims made on the website of the NSEL and the contents of the publicity material and other investor resources, the Hon'ble Court also observed that the NSEL were advertising assured and uniform returns of 16% per annum for the 'paired contracts' traded on the NSEL platform where the return offered was the same across the commodities and that the return remained the same irrespective of the duration of the contract. At paragraph 45 of the said order, the Hon'ble Supreme Court also depicted certain examples of 'paired contracts', which offered assured returns. For example, a T+2 and T+25 paired contract in Steel had the same offered rate of return as a T+5 and T+35 paired contract in Castor Oil. Thus, the judgement of the Hon'ble Supreme Court in the MPID matter highlighted how the 'paired contracts' were being marketed as an alternative to fixed deposits wherein the overwhelming majority of the sale leg of the 'paired contracts' which were executed were short sales in that event commodities to back such sales were not available at the designated warehouses of the NSEL.

25. These facts are highlighted from the order of the Hon'ble Supreme Court only to emphasise the point that the paired contracts were not held to be contracts in the commodity segment but in the nature of financing transactions which were not envisaged under the Exemption Notification.

26. In so far as the trades of the Noticee on the platform of NSEL during the period August 7, 2012 to July 23, 2013 is concerned, I note from the Enquiry Report that the Noticee has alleged to have executed trades in such '*paired contracts*' of multiple commodities. The details of the paired contracts in which trading was done by the Noticee during the period from June 2011 to April 2013 are given below:

Contract Name	**Contract Description**
PBP1121LH2	PADDY PUSA 1121 LUDHIANA
PP1121LH25	PADDY PUSA 1121 LUDHIANA
STLTMTKUR2	STEEL TMT BARS
STLTMTKR25	STEEL TMT BARS
RAWWOOLLH2	RAW WOOL TRADERS EX LUDHIANA
RAWWOOLH25	RAW WOOL TRADERS EX LUDHIANA

SM30AMBL2	SUGAR M 30 GRADE TRADERS EX AMBALA
SM30AMBL25	SUGAR M 30 GRADE TRADERS EX AMBALA
PDY1121HR2	PADDY BASMATI PUSA 1121 VARIETY
PY1121HR25	PADDY BASMATI PUSA 1121
RBDPLMKKD2	RBD PALMOLEIN OIL EX KAKINADA
RBDPMKKD25	RBD PALMOLEIN OIL EX KAKINADA
PDYTRADHR2	PADDY BASMATI TRADITIONAL
PYTRADHR25	PADDY BASMATI TRADITIONAL
CWOILKDI2	INDIAN COTTONSEED WASH OIL EX KADI
CWOILKDI25	INDIAN COTTONSEED WASH OIL EX KADI
CASTKADI2	GUJRAT CASTOR SEED SMALL EX-KADI
CASTKADI36	GUJRAT CASTOR SEED SMALL EX-KADI
PDYPUDBHR2	PADDY BASMATI PUSA DB
PYPUDBHR25	PADDY BASMATI PUSA DB
PDY1121SA2	PADDY BASMATI PUSA 1121 VARIETY
PY1121SA25	PADDY BASMATI PUSA 1121
SM30DEL2	SUGAR M-30 GRADE TRADERS EX DELHI
SM30DEL25	SUGAR M-30 GRADE TRADERS EX DELHI

27. The Enquiry Report has illustrated certain paired contract trades executed by the Noticee wherein the two legs of trades were executed for the same commodity, on the same day, within few seconds / minutes. One leg of the trade being a buy trade involved T+2 or T+3 settlement cycle and the other leg of the trade being a sell trade involved T+25 or T+36 settlement cycle. To elaborate, the Noticee purchased 100 units of CASTKADI3 for an amount of ₹ 2,63,652 at 12:00:30 Hrs on November 15, 2012. Almost immediately thereafter, at 12:00:53 Hrs on the same day (i.e., within 13 seconds), the Noticee sold 100units of CASTKADI36 for an amount of ₹ 2,69,550.

Clearing Member Name	Trading Member Name	Trading Date and Time	Sell/ Buy	Quantity	Trade Value (in Rs.)	Scrip Code
Globe commodities Ltd.	Yashwi Commodities Pvt. Ltd.	2012-11-15 12:00:40	Buy	100	263625	CASTKADI3
Globe commodities Ltd.	Yashwi Commodities Pvt. Ltd.	2012-11-15 12:00:53	Sell	100	269550	CASTKADI36

28. I note from the NSEL Circular Nos. NSEL/TRD/2009/125 and NSEL/TRD/2009/127 both dated September 19, 2009, that the contract symbols CASTKADI3 and CASTKADI36 refer to the trading in CASTOR SEED

TRADERS' EX-KADI (T+3) and (T+36) Contracts, respectively. I find that the Noticee was almost simultaneously executing trades in a short term buy contract (T+3, i.e. 3 days' settlement) and a long term sell contract (T+36, i.e. 36 days' settlement). Thus, the Noticee executed transactions which were clearly in the nature of 'Paired Contracts' during the period from June 2011 to April 2013 and evidently was non-compliant with the condition that there should be no short sale but compulsory delivery of outstanding position at the end of the day, as stipulated in the Notification dated June 05, 2007.

29. The Noticee has contended that it dealt in 'paired contracts' only in its proprietary account and that no grievance or complaint has been made by any client or investor against them.

30. The scope of the present proceeding is to analyse the apparent impact as well as the consequences of the conduct of the Noticee as per the justification and contentions advanced and also to also examine as to whether or not, the Noticee acted in a manner expected of a market intermediary. All findings in this regard are clearly against the Noticee as detailed earlier and detailed hereinafter. The facts such as whether the name of the Noticee was mentioned in the FMC order or not or in the letter dated December 30, 2014 of the Government of India or whether the Noticee is a defaulting broker or not or that no loss was caused to the investors are not the only relevant facts. It cannot be denied that the involvement of the Noticee in trading in 'paired contracts' was neither permitted by the Exemption Notification nor by any of the applicable provisions of the FCRA. Under these circumstances, 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.

31. Despite the above and the discussion in the context of the facts of the case, in order to give the benefit of doubt to the submissions made by the Noticee, I have further examined whether while trading transactions in paired contracts, the Noticee could have been under the bonafide belief that such transactions were actually spot contracts in commodities or alternatively that since 'paired

contracts' were offered, that meant that NSEL was offering contracts which were not resulting in compulsory delivery.

32. In this context, Noticee has submitted that trades executed by the Noticee cannot be categorised as financing since it does not have the requisite ingredients of a financial transactions. There is no two opinion of the fact that the paired contracts were being advertised as an alternative to fixed deposits returns by offering fixed returns (e.g. @16%) across all commodities, irrespective of the nature of the contract or the duration and were in fact structured in a manner which ensured that the buyer always made pre-determined profits. Thus, any prudent person (including the Noticee, who is an intermediary and well versed with financial and commercial knowledge) would have or should have come to the conclusion that what was being offered were not spot contracts in commodities rather that they had the trappings of a financial product which offered fixed and assured returns, as has been already observed by the Hon'ble Supreme Court in *State of Maharashtra vs. 63 Moons Technologies Ltd*. which was contrary to the FCRA and the Exemption Notification and which caused loss to the market stated to be to the extent of ₹ 5,500 Crore.

33. Noticee has argued that the NSEL was subject to the regulations issued by the FMC and that the NSEL failed to introduce effective preventive safeguards and mechanism. In the undeniable background that there was a settlement default at NSEL and since the members of NSEL, dealing in paired contracts were aware about the illegality of the contracts being offered on the platform of NSEL, the Noticee who being an intermediary was expected to exercise due diligence on the products which it traded. The stated assumption by the Noticee as to the legality of 'paired contracts' is indicative of the fact that the Noticee not only failed to exercise adequate due diligence but even failed to take note of the Exemption Notification regarding approval of only spot contracts/ forwards of one-day duration, permitted on NSEL which was in the public domain and the fact that FMC had never approved the 'paired contracts' which were introduced only in 2009 when NSEL was not regulated under the FCRA. Assuming that NSEL referred to any approval of FMC for the purpose of introduction of any contract

in its bye-laws is irrelevant, when the FMC was not even the relevant authority for NSEL when paired contracts were introduced and had in fact never approved the same. This more than anything is a clear indication of a complete lack of due diligence by the Noticee of operating in a manner without following the rules. I note that irrespective of its lack of association with NSEL, the 'paired contracts' could not have been executed in large volumes without the association or active engagement of the Noticee with NSEL. This whole pattern of functioning and the display of utter lack of integrity in its functioning is bound to affect the interest of the investors.

34. The argument being raised by the Noticee against any action by SEBI on the grounds that it was granted a Certificate of Registration INZ000048234 by SEBI in terms of provisions of the amended provisions of the FCRA and SEBI Circular No. CIR/MIRSD/4/2015 dated September 29, 2015, holds no ground considering that at the point of time when registration was granted, SEBI was yet to determine any violation of law by the brokers.

35. It is a settled position of law that every registered intermediary in the securities market is required to fulfil all the conditions of its registration at all points of its functioning including any additional criteria statutorily provided for, from time to time. Else, there would arise an anomalous situation where an entity that has obtained a certificate of registration after fulfilling the said criteria would fail the test after a period of time and yet continue to function in the securities market despite not fulfilling the required criteria.

36. On this premise, it can be said, that the requirement of being a ‘fit and proper’ person, is a continuing ‘eligibility criteria’/ statutory requirement, which ought to be satisfied by all registered entities at all points of time. This condition is not a one-time condition applicable only at the time of seeking registration. Rather, the provisions governing the grant of registration show that this is a condition which 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. Therefore, the criteria of ‘fit and proper person’, is an ongoing

requirement throughout the period during which an entity remains operational in the securities market as a registered intermediary.

37. Another objection raised by the Noticees is that there is an inordinate delay of more than 10 years in initiating the present proceedings and issuance of the SCNs against the Noticee. In this context, the Hon'ble Supreme Court in *Adjudicating Officer, Securities and Exchange Board of India v. Bhavesh Pabari*[1] was pleased to observe that delay in issue of the SCNs itself would not exonerate the defaulters from the default. Reference may also be made to the order of the Hon'ble Supreme Court in the matter of *SEBI v. Sunil Krishna Khaitan and Ors*[2] on the aspect of delay and its impact on proceedings in the context of SEBI. The Hon'ble Supreme Court while referring to its earlier decision in the matter of *Bhavesh Pabari* (supra) held as follows:

> *"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 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.*

[1] (2019) 5 SCC 90. Available at: https://main.sci.gov.in/supremecourt/2013/36291/36291_2013_Judgement_28-Feb-2019.pdf

[2] Civil Appeal No. 8249 of 2013, decided on July 11, 2022. Availabale at: https://www.sebi.gov.in/enforcement/orders/jul-2022/judgment-of-the-hon-ble-supreme-court-in-civil-appeal-no-8249-of-2013-sebi-vs-sunil-krishna-khaitan-and-ors-_61342.html

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."

38. In view of the aforesaid decisions, it is clear that no specific limitation period has been provided in the SEBI Act but than even in the absence of a limitation period in the SEBI Act, the proceedings have to be initiated in a timely manner by the regulator. In the present matter, although the trades were executed during the period 2012-2013, SEBI was granted the jurisdiction to regulate the commodities segment only in 2015. Pursuant thereof, given the magnitude of the NSEL scam and upon examination of all relevant records and after identifying the entities involved, a show cause notice was issued by the DA in the year 2018. It must also be noted that although the Noticee has raised the plea of delay, it has not stated the prejudice that has been caused to it, if any. Further, the purpose of the present proceedings is not to adjudge the violation of provisions of FCRA but to adjudge the '*fit and proper*' status of the Noticee, which as noted above, is a continuing requirement under the Intermediaries Regulations. Accordingly, I am of the view that the plea of application of delay in initiation of the proceedings raised by the Noticee is not tenable.

39. I also note that Sub-regulation (3) and (4) of Regulation 25 of the Intermediaries Regulations specifies that the copies of the documents "relied upon by SEBI" along with the extracts of relevant portions of the reports containing the findings arrived at in an inquiry, investigation or inspection, if any, shall be provided to the Noticee.

40. On perusal of paragraph 15 and 17 of the Enquiry Report, I note that the Noticee was provided with the following documents relied upon by SEBI in the present proceedings:

a. copy of FMC Order No. 4/5/2013-MKT-1/B dated December 17, 2013 in the matter with Annexures;
b. copy of the Grant Thornton Report with various Annexures;
c. copy of the Notification issued by the Ministry of Consumer Affairs dated June 05, 2007;
d. documents explaining specifications of 'paired contracts' (as available in the Grant Thornton Report) (which is narrated in the FMC order);
e. list of trading members/ fund name and clearing member name and the amount mentioned against their name in the EOW interim report dated April 04, 2015, who have applied/ registered with SEBI (the amount indicates default amount of clients (investors) who traded through the said brokers);
f. copies (total 11) of fortnightly reports submitted by NSEL to the erstwhile FMC;
g. list of 148 members against whom NSEL has pay-out obligations as on September 19, 2013 as mentioned in the Grant Thornton Report (as per Annexure 6 of the Grant Thornton Report) dated September 21, 2013;
h. data containing registration documents of 299 members and Annual Return documents of 234 members; and
i. trade data of the Noticee.

41. The facts and events elaborated above clearly indicate that the processes in the proceedings carried out were in a timely and structured manner and all the necessary documents relied upon by SEBI for the purpose of framing charges

against the Noticee were provided to it and every principle of natural justice has been adhered to while conducting these proceedings.

42. I also note from the SCN that the Noticee was called upon to show cause as to why the information/ material as brought out in the SCN and in the Enquiry Report concerning the fit and proper person criteria should not be considered for determining its fit and proper status. A SSCN, enclosing a copy of the order passed by the Tribunal on June 9, 2022, as mentioned at paragraph 5 above, (**"SAT Order"**), was also issued to the Noticee calling upon it to show cause why the following information/ material detailed below along with the Enquiry Report should not be considered it for determining whether the Noticee satisfies the 'fit and proper person' criteria as laid down under Schedule II of the Intermediaries Regulations:

a. SEBI complaint dated September 24, 2018 filed with EOW;
b. First Information Report (**"FIR"**) dated September 28, 2018; and
c. Amended Schedule II of the Intermediaries Regulations.

43. The Noticee has challenged the applicability of the fit and proper criteria provided in Schedule II of the Intermediaries post its amendment on January 21, 2021 to state that the SEBI (Intermediaries) (Third Amendment) Regulations, 2021 is violative of Article 20(1) of the Constitution of India as it proposes to penalise the Noticee for violation of a law which was not in force at the time of the alleged transaction. To this I record that the criteria mentioned is not exhaustive and the Noticee's contention is based on an incorrect understanding of the SCNs. As detailed earlier, the SSCN clearly mentioned and called upon the Noticee to show cause as to why "amongst others", the 'amended Schedule II of the Intermediaries Regulations' should also not be considered against it for determining its fit and proper criteria. As mentioned earlier, the trades executed by the Noticee warranted suitable action for not acting in a fit and proper manner. The fit and proper has to be adhered to by a registered intermediary on a continuous basis and not only at the time of grant of certificate of registration.

44. As mentioned in the earlier part of the order, it was only when certain events and their related documents/ material came to light that SEBI formed an opinion to examine their certificate of registration to the extent of fulfilment of the conditions for their continuance of registration as an intermediary as specified in Regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations as applicable at the relevant time. Accordingly, the decision was taken as was legally permissible to file the Complaint dated September 24, 2018 based on which the FIR dated September 28, 2018 was filed by EOW that has been provided to the Noticee vide the SSCN.

45. 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 and Regulation 9(b) of the Stock Brokers Regulations mandates a registered stock broker to abide by the rules, regulations and bye-laws of the stock exchange which are applicable to it and in terms of Regulation 9(f) of the Stock Brokers Regulations, a registered stock broker is required to abide by the Code of Conduct as specified in Schedule II of the Stock Brokers Regulations. I further note that the 'fit and proper person' criteria specified in Schedule II of the SEBI (Intermediaries) Regulations, 2008, was amended vide SEBI (Intermediaries) (Third Amendment) Regulations, 2021 with effect from November 17, 2021.

46. As and when any of the 'fit and proper' criteria change, the Noticee would also be required to comply with the revised criteria, including as in this instance, the criteria as revised vide the amendment in November 2021. It is noted that the parameters provided under paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations lay down a list of disqualifications which, *inter alia*, include the following:

> *"(1).....*
>
> *(2).....*
>
> *(3) For the purpose of determining as to whether any person is a 'fit and proper person', the Board may take into account any criteria as it deems fit, including but not limited to the following:*

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

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

.....”

47. As detailed in the SSCN, an FIR has been registered with the MIDC Police Station, Mumbai, against the Noticee under section 154 of the CrPC on September 28, 2018. This has not been challenged, quashed or stayed by any competent court *qua* the Noticee till date. The disqualifications listed under paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations are unambiguously clear and no exemption from such criteria has been provided. Once the disqualification is triggered; the ‘fit and proper’ person criteria is open for determination by SEBI. The disqualification provided in paragraph 3(b)(i) under the amended Schedule II of the Intermediaries Regulations has also been triggered *vis-à-vis* the Noticee.

48. Thus, by its conduct and as a member of NSEL, the Noticee acted as an instrument in promoting and/or dealing in ‘paired contracts’ which were in the nature of financing transaction (as held by the Hon’ble Supreme Court of India referred *supra*). By trading and by providing access for taking exposure to ‘paired contracts’, the Noticee exposed itself to the risk involved in trading in a product that did not have regulatory approval. This as stated earlier raises doubts on its competence to act as a registered intermediary and undoubtedly such trading activities of the Noticee not only seriously jeopardized its reputation but also SEBI’s belief in its character, competence and integrity which compelled SEBI to file the criminal complaint against it as also against several other brokers. Thus, the Noticee has also incurred the disqualification under Clause 3(b)(i) of the amended provisions of Schedule II of the Intermediaries Regulations on account of the complaint filed by SEBI and the FIR that was registered by the EOW based on the said complaint of SEBI.

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

50. Given the above discussion, I am inclined to conclude that the Noticee, presumably driven by its desire to earn profit, traded in an illegal product, which raises serious questions on its ability to conduct proper and effective due diligence regarding any product. Such activities of the Noticee as a registered broker cannot be condoned and deserves to be met with appropriate measures to prevent such wrong doings from recurring.

CONSIDERATION OF THE RECOMMENDATION OF THE DESIGNATED AUTHORITY

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

52. The Noticee, while making reference to *Prrsaar vs. National Stock Exchange* [Civil Appeal No. 3260 OF 2017 dated July 22, 2019] stated that penalty on brokers cannot be unreasonable and brokers can be suspended only when they indulge in misconduct against the Stock Exchange. In this regard, the facts and circumstances in the instant matter lead to the conclusion that since the Noticee attracts the disqualification provided in paragraph 3(b)(i) under the amended Schedule II of the Intermediaries Regulations, the Noticee does not fulfil the "fit and proper" criteria. Once an entity is declared to not fulfil the "fit and proper" criteria, in the interest of the securities market, such an entity should not be

allowed to continue to act as an intermediary till the time it does not regain its "fit and proper" status. In this context, it is pertinent to mention that in several scenarios, a defect which is the reason for holding an intermediary as not "fit and proper" is curable at the hands of the intermediary, while in certain scenarios it is not.

53. In the present case, the conduct, integrity and reputation of the Noticee has been found wanting on account of its involvement in trading of "paired contracts" on the NSEL platform and also for the reason that since SEBI has filed complaint on the basis of which an FIR dated September 28, 2018 has been registered by EOW, which is yet to be finally determined by a Court of competent jurisdiction, the disqualification provided in paragraph 3(b) under the amended Schedule II of the Intermediaries Regulations stands invoked.

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

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

56. Considering the above, the question that now arises for determination is whether the certificate of registration of the Noticee should be cancelled as recommended by the DA or whether it should be suspended for a specific period. A direction of cancellation, even when the EOW charge sheet is the subject matter of *lis* before the MPID Court, would entail the complete winding up of the business of the

Noticee. On the other hand, “suspension for a specific period” would serve the purpose of keeping the Noticee out of the securities market for a specified period, after which, the Noticee may resume its business, upon curing the issues that have led to such an action.

57. Given the peculiar facts and circumstances of the case, I am of the considered view that a direction of suspension of certificate of registration of the Noticee for a period of three months or till discharge/ acquittal of the Noticee by a Court of competent jurisdiction, whichever is later, would be more appropriate and commensurate to the violations brought out in the present case.

ORDER

58. In view of the foregoing discussions, I, in exercise of powers conferred upon me under Section 12(3) and Section 19 of the SEBI Act read with Regulation 27 of the Intermediaries Regulations suspend the certificate of registration (bearing No. INZ000048234) of the Noticee i.e. Yashwi Commodities Private Limited, for a period of three months from the date of this Order or till such time an order is passed by a Court of competent jurisdiction discharging or acquitting the Noticee, whichever is later.

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

60. The Order shall come into force with immediate effect. A copy of this order shall be served upon the Noticee and the recognized Market Infrastructure Institutions for necessary compliance.

Sd/-

Place: Mumbai
Date: August 14, 2023

BABITHA RAYUDU
EXECUTIVE DIRECTOR
SECURITIES AND EXCHANGE BOARD OF INDIA