

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 12(3) AND SECTION 19 OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 27 OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008

In respect of –

Modisons Commercial Private Limited

[Registration No. INZ000043431]

In the matter of National Spot Exchange Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as “**SEBI**”) initiated enquiry proceedings against Modisons Commercial Private Limited (hereinafter be referred to as “**Noticee**” / “**Modisons**”), registered with SEBI as a commodity derivatives broker under the SEBI (Stock Brokers) Regulations, 1992 (hereinafter be referred to as “**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 Schedule II of the Stock Broker Regulations read with Schedule II of the SEBI (Intermediaries) Regulations, 2008 (hereinafter be referred to as “**Intermediaries Regulations**”).
2. The Noticee was a Trading and Clearing Member of the National Spot Exchange Limited (hereinafter be referred to as “**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 certain provisions of Forward Contracts (Regulation) Act, 1952 (hereinafter be referred to as, “**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 (hereinafter referred to as “**2007 Exemption Notification**”),

in exercise of powers conferred under Section 27 of FCRA subject to certain conditions 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*”.

3. In September 2009, NSEL allegedly 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’, authorizing it to collect the trade data from NSEL and to examine the same for taking appropriate measure, if needed, to protect investors’ interest. The FMC had accordingly, *inter alia*, called for the trade data from 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 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.

5. On perusal of the FMC Order, I note that the FMC had, *inter alia*, observed that the following conditions stipulated in the 2007 Exemption Notification were violated by NSEL:

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 NSEL organised trading in ‘*paired contracts*’ in violation of the 2007 Exemption Notification. It was also alleged that the Trading Members and Clearing members of the NSEL facilitated trading in such paired contracts which were in alleged violation of the 2007 Exemption Notification. Thus, by facilitating trading in paired contracts, such entities, allegedly, had acted in a manner detrimental to the interest of the securities market.
7. As per the information available with SEBI, the Noticee, being a Trading Member and Clearing member of the NSEL, facilitated trading in paired contracts on the platform of NSEL in alleged violation of the provisions of Regulation 9(b) and 9(f) read with Clauses A(1), A(2) and A(5) of 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, is a '*fit and proper person*' 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 order dated September 21, 2018 to conduct an enquiry against the Noticee and submit a report and make recommendation in terms of Regulation 27 of the Intermediaries Regulations (as applicable at the relevant time) in respect of the violations alleged to have been committed by the Noticee mentioned at para 7 above.
9. After conducting the enquiry as envisaged under Regulation 25 of the Intermediaries Regulations, the DA submitted an Enquiry Report dated December 17, 2020 (hereinafter referred to as the "**Enquiry Report**") which, *inter alia*, observed and recommended as under:

"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 Stock 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. Modisons Commercial Private Limited [Registration No. INZ000043431], as a commodities derivatives broker may be cancelled."

POST ENQUIRY PROCEEDINGS

Show Cause Notice, Reply and Personal Hearing

10. After considering the Enquiry Report, a post-enquiry Show Cause Notice dated January 15, 2021 (hereinafter 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 as deemed fit should not be taken against the Noticee, by the Competent Authority. I note from the material available on record that the Noticee did not file any reply to the said SCN.

11. While the extant proceedings in the present matter were ongoing, SEBI passed five separate orders during February, 2019, rejecting the applications filed by five other entities for registration as commodity brokers who were involved 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 common order dated June 9, 2022 (hereinafter referred to as the "**SAT order**"), 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....."

12. During the pendency of the proceedings, due to administrative reasons, the competent authority of SEBI, reallocated cases and transferred the present matter to the undersigned on August 11, 2022 for further proceedings.
13. In the light of the aforesaid SAT Order and certain other orders 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, a supplementary show cause notice (hereinafter referred to as "**SSCN**") dated October 12, 2022 enclosing therewith a copy of the SEBI Complaint dated September 24, 2018 filed with EoW, Mumbai, a copy of the First Information Report (hereinafter referred to as "**FIR**") dated September 28, 2018 and a copy of the amended Schedule II of the Intermediaries Regulations was issued to the Noticee and the Noticee was granted 15 days' time to file its reply, if any from the date of receipt of the said SSCN. Further, hearing in the matter was also scheduled on December 21, 2022. Since the Noticee did not appear on the scheduled date of hearing, in the interest of justice, it was provided with another opportunity of hearing on January 18, 2023.
14. On the scheduled date of hearing, i.e., January 18, 2023, Mr. Vinit Modi, Authorized Representative the Noticee, appeared and made oral submissions in the matter. During the course of hearing, the Noticee was also advised to file written submissions, if any, as regards the SCN and SSCN issued to the Noticee. As requested, one week's time was granted to the Noticee to make written submissions, if any and also file written submissions as regards the queries raised during the course of hearing. Accordingly, vide email dated January 25, 2023, the Noticee submitted its written submissions in the matter along-with a copy of the reply dated November 5, 2018 submitted before the DA. The submission made during the course of hearing and vide email dated January 25, 2023 are summarised as under:
- (i) The Noticee acquire membership of NSEL in January 2013 with the intention of trading in the commodities market. The Noticee started to trade on February 5, 2013 and traded till July 15, 2013;

- (ii) A representative NSEL visited Noticee's office and explained that buying a near month contract and selling far month contract immediately in few particular commodities would generate more returns for the Noticee. Given the NSEL was a registered exchange and the Noticee was new to trading in commodities market, the Noticee executed trades as recommended by NSEL and did not have any second thought about verifying the credentials of the same;
- (iii) The Noticee was not aware that it was not allowed to trade in the alleged '*paired contracts*';
- (iv) The Noticee had only one client, Keshav Securities Private Limited which is a sister concern of the Noticee. The Noticee did not charge any brokerage from its client;
- (v) The Noticee has surrendered the membership of MCX in August 2016.

CONSIDERATION OF ISSUES AND FINDINGS

15. I have carefully perused the post enquiry SCN, SSCN along with all the documents attached therewith, the replies submitted by the Noticee, the oral submissions made by the Noticee during the course of the personal hearing along with the material/ information available on record. 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.

16. Before considering the issue on its merits, I note that the SCN dated January 15, 2021 called upon the Noticee to show cause as to why action as recommended by the DA, including passing of appropriate direction should not be taken against the Noticee in terms of Regulation 28 of the Intermediaries Regulations. I note that by the amendments made to Intermediaries Regulations on January 21, 2021, Regulation 27 which dealt with recommendations for actions which could be made by DA in case of default, has been substituted and Regulation 28, which dealt with procedure for action on receipt of the

recommendation from DA, has been omitted and these matters now stand governed by the Regulations 26 and 27, respectively. In the present case, I note that prior to the aforesaid amendment, procedure for conduct of enquiry proceedings before DA and Competent Authority (CA) was provided under Regulations 25 to 28 of the Intermediaries Regulations wherein Regulation 25 dealt with issue of SCN by the DA, Regulation 26 dealt with reply of SCN by the Noticee, Regulation 27 dealt with recommendation for actions which could be made by the DA and Regulation 28 dealt with conduct of proceedings before the CA, like issue of SCN, hearing and passing of final order. After the aforesaid amendment, Regulation 25, as substituted, deals with holding of enquiry proceedings before DA, Regulation 26 deals with recommendation for actions which can be made by the DA and Regulation 27 deals with conduct of enquiry proceedings before the CA and passing of order by the CA. Thus, the proceedings before CA which were earlier governed by the provisions of Regulation 28 are now governed by the provisions of Regulation 27 with certain modifications. Therefore, the new Regulation 27 is regarded having force continuously (by virtue of pre-existing Regulation 28) and the modification or changes are treated as amendment coming into force with effect from the date of enforcement of new Regulation 27, i.e., January 21, 2021. Accordingly, I note that the present proceedings can be concluded under the amended provisions of the Intermediaries Regulations and for the violations committed by the Noticee, directions under Regulation 27 of the Intermediaries Regulations can be issued.

17. Prior to moving forward with considering the said issue as stated at para 15 above, it is pertinent to refer to the common order dated June 09, 2022¹ passed by the Hon'ble SAT which is also referred in the preceding paragraph 11. The Hon'ble SAT, while setting aside and remanding the earlier WTM Orders passed during February 2019, had made the following observations (relevant to the present case as well):

¹ 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 Rathii Commodities Ltd Vs. SEBI and Appeal No. 288 of 2019 Anand Rathii Commodities Ltd Vs. SEBI

- (a) Observations of the Bombay High Court in the matter of *63 Moons vs. Union of India*² cannot be relied upon as the said judgement has been set aside in appeal³ by the Hon'ble Supreme Court vide judgment dated April 30, 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*⁴) cannot be relied upon, as in a subsequent Writ Petition⁵ moved by 63 Moons, a Division Bench of the Hon'ble Bombay High Court has held that NSEL is not a financial establishment and therefore, the provisions of the MPID Act are not applicable. The 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***⁶ and ***Mukesh Babu Securities vs. SEBI***⁷ 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 of a criminal complaint 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.

² Writ Petition No. 2743 of 2014

³ Civil Appeal No. 4467 of 2019

⁴ Writ Petition No. 1403 of 2015

⁵ Writ Petition No. 1181 of 2018

⁶ Appeal No. 26 of 2006 decided on September 06, 2006

⁷ 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) 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 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. As noted above, taking cognizance of the order passed by the Hon'ble SAT on June 09, 2022 (*supra*), a SSCN dated October 12, 2022 was issued to the Noticee calling upon the Noticee to show cause as to why the following information/material along with the Enquiry Report dated December 17, 2020, should not be considered against it for determining whether the Noticee satisfies 'fit and proper person' criteria as laid down under Schedule II of the Intermediaries Regulations:

- a) SEBI complaint dated September 24, 2018 filed with Economic Offence Wing ('EOW');
- b) First Information Report ('FIR') dated September 28, 2018; and
- c) Schedule II of the Intermediaries Regulations (Amended with effect from November 17, 2021).

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 has 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 NSEL – 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 in the matters of **63 Moons Technologies Ltd. vs. UOI**⁸ (hereinafter referred to as the "**merger petition**") and **The State of Maharashtra Vs. 63 Moons Technologies Ltd**⁹ (hereinafter referred to as the "**MPID Matter**"), wherever appropriate.

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

20. 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. 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 with respect to (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. Thereafter, NSEL commenced operations in October 2008.

⁸ Civil Appeal no. 4476 of 2019

⁹ Civil Appeal No. 2748-49 of 2022

21. As noted 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 such a manner that buyer of the short duration contract always ended up making profits.
22. As mentioned at para 4 above, FMC, after analysing the trade data as received from NSEL, vide order No. 4/5/2013-MKT/B dated December 17, 2013 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 have violated certain conditions stipulated in the 2007 Exemption Notification, which 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 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 2007 Exemption Notification. I

note from the FMC Order¹⁰ that the 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 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 as contained in FCRA, I note that FMC 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 it was stipulated in the 2007 Exemption Notification 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 trade only 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 to the exemption granted to NSEL. It is pertinent to note that all the 55 contracts that were advertised by NSEL, and which are captured in the Hon'ble Supreme Court's Judgement in the matter of MPID matter, were for durations exceeding 11 days.

26. I note that the Hon'ble Supreme Court in the matters of NSEL has also extensively commented on the nature of the 'paired contracts' traded on NSEL. The said observations made by the Hon'ble Supreme Court are as under:

- 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 merger petition, vide judgment dated April 30, 2019, had observed as under:

¹⁰ Order No. 4/5/2013-MKT-1/B dated December 17, 2013

*“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)*

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, NSEL was advertising an annualized return of about 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. In view of the above, I note that the FMC Order and both the judgments of the Hon'ble Supreme Court discuss in detail that, NSEL was 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. As noted above, the Hon'ble Apex Court in the merger petition has held that these contracts were in the nature of financing transactions.

Fit and proper person criteria

30. Now, I would be proceeding to deal with the 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. As noted above, the Noticee is alleged to have violated regulations 5(e), 9(b) and 9(f) read with Clause A(1),

A(2) and A(5) of Schedule II of the Stock Broker Regulations read with Schedule II of the Intermediaries Regulations.

31. I note that Regulation 5(e) of the Broker 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.
32. From the submissions of the Noticee, i.e., email dated January 25, 2023, it is observed that the Noticee had executed trades for one client in the alleged '*paired contracts*'.
33. At this juncture, I deem it important to note the submission of the Noticee that it has surrendered its MCX membership in August 2016. In this regard, I note from the material available on record that the Noticee was a member of MCX and registered with SEBI (bearing registration no. INZ000043431). It applied for surrender of the MCX membership on August 25, 2016 which was approved by the exchange on May 23, 2017. Pursuant to the same, the surrender application of the Noticee was forwarded to SEBI on June 13, 2017 and the same was accepted by SEBI and on September 21, 2017, the certificate of the Noticee was cancelled by SEBI unconditionally. Thus, the Noticee is not a SEBI registered intermediary since September 21, 2017.
34. I note that the action against the Noticee was approved on September 21, 2018, vide the order of appointment of the DA. However, as noted above, on the said date, the Noticee was not a registered intermediary with SEBI in any capacity. Further, the SCN also does not bring out any wrongdoings on part of the Noticee during the period it was registered with SEBI as a commodity derivative broker. As noted above, no conditions were placed by SEBI at the time of acceptance of the surrender of Noticee's certificate.

35. If the Noticee was still a SEBI registered entity, it would have had 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 '*fit and proper*' person 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. As noted above, the Noticee is no longer a registered intermediary and thus, the '*fit and proper*' person criteria cannot be made applicable to it.
36. It is noted that vide the SEBI (Intermediaries) (Third Amendment) Regulations, 2021, with effect from November 17, 2021, the Schedule II of the Intermediaries Regulations was amended to add criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973, as one of the criteria to be taken into account for the purpose of determining '*fit and proper person*'. In terms of clause (7) of Schedule II, the '*fit and proper person*' criteria is applicable at the time of application of registration and during the continuity of registration. Accordingly, '*fit and proper person*' criteria being a continuing one, would have applied to the Noticee had the Noticee's registration been alive as on date. However, as noted earlier, the Noticee in the present case had surrendered its certificate of registration, which was accepted by SEBI without imposing any conditions on the Noticee.
37. In light of the above discussion, even though the conduct of the Noticee falls short of the conduct expected from a SEBI registered intermediary in the securities market, considering the fact that the Noticee had surrendered its registration before the issuance of SCN, an order cancelling the certificate of registration as recommended by the DA would be infructuous at this point. Further, for the same reason, I find that issuance of any direction, under regulation 27 of Intermediaries Regulations, against the Noticee at this stage is not warranted.

ORDER

38.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 dispose of the instant proceedings against the Noticee viz. Modisons Commercial Private Limited (formerly registered with SEBI with Registration No. INZ000043431) without issuance of any directions.

39.This order is without prejudice to any other action that may be taken against the Noticee by SEBI or any other authority in accordance with law.

40.A copy of this order shall be served upon the Noticee and the recognized Market Infrastructure Institutions for their record.

Sd/-

DATE: NOVEMBE 20, 2023

S.V. MURALI DHAR RAO

PLACE: MUMBAI

EXECUTIVE DIRECTOR

SECURITIES AND EXCHANGE BOARD OF INDIA