QJA/ARB/MIRSD/DOP/28333/2023-24

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 12(3) of the Securities and Exchange Board of India Act, 1992 read with Regulation 27 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In respect of –

Name of the Noticee	SEBI Registration No.	PAN
MLB Commodities Private Limited	INZ000054839	AADCM5965C

In the matter of National Spot Exchange Limited

BACKGROUND

1. The present proceedings originate from the Enquiry Report dated July 29, 2020 (hereinafter referred to as **"Enquiry Report"**), submitted by the Designated Authority (hereinafter referred to as "**DA**") in terms of regulation 27 of the SEBI (Intermediaries) Regulations, 2008 (hereafter referred to as "**Intermediaries Regulations**") as applicable at the relevant point in time. The DA, based on the facts noted in the said enquiry report, has recommended that the Certificate of Registration of MLB Commodities Private Limited (hereinafter referred to as the **"noticee"**) as a stock broker bearing registration No. INZ000054839 may be cancelled.

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

3. After conducting the enquiry as envisaged under regulation 25 of the Intermediaries Regulations, on the basis of material available on record and after considering the replies filed by the noticee, the DA submitted the Enquiry Report in respect of the noticee and found that the noticee, as a stock broker of the National Spot Exchange Limited (hereinafter referred to as "**NSEL**"), had dealt in the trading of the *'paired contracts'* on the exchange platform of NSEL, which was in violation of the applicable provisions of erstwhile Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as "**FCRA**") and the conditions specified in the Government of India Notification dated June 05, 2007 (hereinafter referred to as "**2007 Exemption Notification**"). It was also observed in the Enquiry Report that the continuance of the Certificate of Registration of the noticee as a stock broker (having Registration No. INZ000054839) is detrimental to the interest of the securities market and that the noticee is not a '*fit and proper*' person to hold the Certificate of Registration bearing No. INZ000054839 as a stock broker in the Securities Markets which is one of the conditions for grant/holding/ continuance of registration, in terms of regulations 5(e), 9(b) and 9(f) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations. The DA, in view of the aforesaid finding, has recommended that the Certificate of Registration of the noticee as a trading/ clearing member may be cancelled.

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

> *"37. In view of the facts and circumstances of the case and material 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. MLB Commodities Pvt. Ltd. [Registration No. INZ000054839] as a commodities derivatives broker may be cancelled."*

5. Pursuant to the same, a Post Enquiry Show Cause Notice dated August 11, 2020 (hereinafter referred to as "**SCN**") enclosing therewith the Enquiry Report of the DA and certain other material/information as specified in the said SCN, was issued to the noticee under regulation 28(1) of the Intermediaries Regulations (as applicable at the relevant time) calling upon it to show cause as to why the action of cancellation of Certificate of Registration, as recommended by the DA or any other action as may be considered appropriate by the Competent Authority, should not be taken against it, in terms of regulation 28(2) of the Intermediaries Regulations (as applicable at the relevant time). The SCN further advised the noticee to submit its reply, if any, within 21 days of receipt of the said SCN. The noticee filed its reply vide letter dated August 29, 2020.

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

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

> *"42.…The matters are remitted to the WTM to decide the matter afresh in the light of the observations made aforesaid in accordance with law after giving an opportunity of hearing to the brokers. All issues raised by the brokers for which a finality has not been reached remains open for them to be raised before the WTM. It will be open to the WTM to rely upon other material such*

as the complaint letters of NSEL, EOW report, EOW charge sheet, etc. provided such copies are provided to the brokers and opportunity is given to rebut the allegations. Such additional documents relied upon by the respondent should form part of the show cause notice for which purpose, it will be open to the WTM to issue a supplementary show cause notice…"

8. In light of the aforesaid SAT order and certain other subsequent orders passed by the Hon'ble SAT in similar set of cases from time to time, it was felt necessary to furnish certain additional documents/material to the noticee before concluding the present proceedings. Accordingly, SEBI vide Supplementary SCN dated October 11, 2022 (hereinafter referred to as "**SSCN**" and collectively SCN and SSCN being referred to as "**SCNs**") provided certain additional documents/material (as indicated in the SSCN) to the noticee and advised it to submit its reply/comments/clarifications in addition to its earlier replies, if any, within 15 days of receipt of the SSCN. The noticee was further informed that if no reply is received within 15 days of receipt of the SSCN, it would be presumed that it had no additional comments/reply to submit and the matter would be proceeded in terms of the provisions contained in the Intermediaries Regulations. The SSCN was sent to the noticee through *Speed Post Acknowledgement Due* (for short '**SPAD**') vide letter dated October 11, 2022. The SSCN was also sent to the noticee through email dated October 17, 2022 along with the intimation that an opportunity of hearing has been granted to the noticee on December 20, 2022. The noticee vide letter dated November 4, 2022 filed its submissions to the aforesaid SSCN. Further, the hearing scheduled on December 20, 2022 was adjourned to December 22, 2022 on account of administrative exigencies.

9. It is noted from the record that the noticee, vide email dated December 16, 2022 had submitted that it has nothing more to place on record apart from the replies already submitted except for the fact that the name of the noticee was not appearing in the charge sheets filed by the EoW. Further, even though the noticee had submitted that it has nothing more to submit in the matter, the hearing

in the matter was conducted as scheduled but none appeared on behalf of the noticee. Since the noticee had submitted that it had nothing more to submit, another opportunity of personal hearing was not granted to the noticee.

10. The replies filed by the noticee vide its letters dated August 29, 2020 and November 4, 2022 are summarized hereunder:

i. The noticee was issued the Certificate of Registration on May 26, 2016 though the noticee had neither applied for the registration, nor did the noticee indulge in any activity of a Stock broker at any point of time either before or after grant of SEBI Registration;

ii. Since the noticee has not executed a single trade in securities, the actions of the noticee as a commodity broker cannot be a threat to the securities market;

iii. The recommendation of the DA to cancel the Certificate of Registration of the noticee is arbitrary, baseless and shows utter lack of sanity on the part of the DA. The term 'securities' as defined under the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as **"SCRA"**), does not cover commodities and therefore the trades of the noticee in the Commodity Market cannot be detrimental in any way to the interests of the securities market as alleged in the Enquiry Report. The term 'interest of securities market' has not been defined anywhere in the FCRA, SCRA, Securities and Exchange Board of India Act,1992 (hereinafter referred to as the **"SEBI Act, 1992"**) or the Intermediaries Regulations. Securities Market and Commodities Market are two different asset class and two different segments and the phrase 'interest of the securities market' has been arbitrarily applied by the DA on the Commodity Market which is patently wrong;

iv. The contents of letter dated December 30, 2014 issued by Department of Economic Affairs (hereinafter referred to as **"DEA"**), do not concern the noticee and it is evident from the said letter that the default was on the part

of NSEL and DEA had recommended action against NSEL and not the brokers registered with NSEL;

v. The observations of the Hon'ble Supreme Court in the matter of *63 Moons Technology Limited & Ors. v. Union of India* do not pertain to the noticee as the noticee was not a party to the said case;

vi. The trading in paired contracts were being conducted by NSEL since 2009 whereas the noticee became part of NSEL in 2011 and further, the noticee never advised or propagated the trading in the paired contracts;

vii. The noticee as a commodity broker merely executed the trades on behalf of its constituents and had no reason to believe that such trades were in contravention to the guidelines of FMC;

viii. There is no material/ information or court finding against the commodity brokers or the noticee in particular and all such findings have been made against the fraudsters and NSEL. No findings have been disclosed against the noticee in the SCN or in the Enquiry Report;

ix. The noticee further denies that the noticee was closely associated with the NSEL and/ or facilitated the trades in paired contracts. None of the promoters/ directors/ relations/ associates of the noticee have any connection or concern with the promoters/ directors/ relations/ associates of NSEL. The noticee is also not a primary subscriber of the NSEL shares;

x. The noticee did not execute any trade in its proprietary account and it merely executed 230 trades in paired contracts on behalf of its 18 constituents between the years 2011-12, 2012-13 and 2013-14 for total gross sale value of ₹14.29 crore. The volume generated by the noticee was meagre which shows that the noticee could not have been a participant or closely associated with NSEL in such trades;

xi. The fair conduct of the noticee and the noticee's reputation/ competence has been held in high esteem amongst the constituents, business clients,

Exchange and even SEBI which is evident from the fact that there are no customer complaints, no financial default, no action for any misconduct from NSEL, Multi Commodity Exchange of India Limited (hereinafter referred to as **"MCX"**) or SEBI against the noticee. Further, no FIR has been filed by EOW against the noticee who investigated the scam in NSEL;

xii. The claim in Para 20 of the Enquiry Report that the noticee had filed a case for recovery ₹227 crore from NSEL is allegedly based on the submissions of the noticee before the DA but no such submission/ admission has been made by the noticee and thus it appears that by relying upon data of some other case, the noticee has been falsely impleaded in the Enquiry Report and the SCN;

xiii. SEBI having issued the SCN dated August 11, 2020 based on the Enquiry Report did not act on the recommendation of the DA after receipt of the reply of the noticee and thus, reference to the Enquiry Report in the SSCN has no relevance. The DA recommended the cancellation of certificate of the noticee arbitrarily, illegally and without an iota of evidence against the noticee. However, the said Enquiry Report was dumped by SEBI but later on the back of the amendment to the Intermediaries Regulations in 2021, SEBI wants to declare the noticee as not fit and proper;

xiv. The terms and conditions of the 2007 Exemption Notification are best known to FMC and NSEL as the noticee became member of NSEL with effect from March 31, 2011;

xv. The paired trades were being traded on NSEL since 2009 and the noticee only became a member of NSEL in 2011. Had the appropriate authorities taken action against the NSEL in 2009 itself, the noticee would have not invested the money in acquiring NSEL membership and would have been saved from the proposed regulatory actions of SEBI. The same is a glaring example of regulatory failure and the noticee cannot be held liable for the same;

xvi. The noticee did not indulge in short sell trades and hence the noticee is not liable for any alleged action from the regulator or any other authority;

xvii. The noticee started trading at NSEL platform with effect from April 1, 2011 and the noticee adopted the same trade pattern/ settlement cycle as offered by NSEL. The noticee did not execute any short sell trades or trades of financial nature;

xviii. SEBI has no power to invoke the amended Intermediaries Regulations on trades conducted by the noticee at NSEL from April 1, 2011 to July 12, 2013;

xix. The SCNs issued by SEBI are barred by Section 3 of the Limitation Act, 1963 (hereinafter referred to as **"Limitation Act"**) as the same have been issued for trades executed by the noticee 9 years ago;

xx. The FIR dated September 28, 2018 is also barred by limitation as Section 468 of the Code of Criminal Procedure (hereinafter referred to as the **"CrPC"**) prescribes a bar of three years for taking cognizance of an offence which is punishable with imprisonment of not less than 1 year and not more than 3 years. The offence under section 20 of FCRA is punishable with imprisonment upto 1 year and offence under section 21 of FCRA is punishable with imprisonment upto 2 years. Since the trades were executed by noticee from April 1, 2011 to July 17, 2013, i.e., five years before the FIR was filed and thus the FIR is not maintainable in law;

xxi. No trades were executed by the noticee for itself or its directors or their family members/ associates except for one entity, namely, M/s Manohar Lal Bansal & Co. The trades were executed by the constituents of the noticee without any direct/ indirect inducement on the part of the noticee;

xxii. There was no unsettled contract at NSEL;

xxiii. The SAT order dated June 9, 2022 does not concern the noticee.

CONSIDERATION OF ISSUE AND FINDINGS

11. I have carefully perused the SCNs issued to the noticee, the Enquiry Report, the replies dated August 29, 2020 and November 4, 2022 and other material/information available on record. After considering the allegations made/charges levelled against the noticee in the instant matter as spelt out in the SCNs, the issue which arises for my consideration in the present proceedings is whether the noticee satisfies the '*fit and proper person*' criteria as laid down under Schedule II of the Intermediaries Regulations and whether the Certificate of Registration granted to the noticee should be cancelled, as recommended by the DA or any other action should be taken against the noticee.

12. Before proceeding with the matter on its merits, I deem it apposite to deal with the submission of the noticee that SEBI had issued the Certificate of Registration bearing no. INZ000054839 dated May 26, 2016, without the noticee applying for such registration. In this regard, I note from the records that MCX, vide letter dated December 20, 2015, had forwarded the duly filled in application dated November 20, 2015 along with the requisite enclosures, submitted by the noticee for registering as a stock broker with SEBI. Pursuant to the receipt of the same, vide letter dated May 27, 2016, SEBI forwarded the Certificate of Registration to the noticee. From the records, I also note that SEBI, vide its letter dated May 30, 2016 had also forwarded the aforesaid Certificate of Registration to MCX. Thus, the submission of the noticee in this regard is incorrect, and is therefore rejected.

13. Further, noticee has also submitted that the term '*securities*' as defined in SCRA does not include '*commodities*' and therefore the actions of the noticee, as a commodity broker, cannot be detrimental to the 'interest of the securities market'. The said contention of the noticee, in my considered opinion, is misplaced. I note that it is a settled proposition that SEBI, as a market regulator, is within its four walls to adjudge the fit and proper status of intermediaries registered with it. The intent of the Intermediaries Regulations, as regard judging the fit and proper

status of a registered intermediary, is that any entity who is not fit and proper, should not remain active/ enter in the securities market ecosystem. I note that it is very much possible that a registered intermediary is declared as not fit and proper for violation/ acitivties not pertaining to securities market. To further strengthen the said understanding, I deem it fit to place reliance on clause 3(b)(v) of Schedule II of the Intermediaries Regulations which states as under:

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

On a bare perusal of the above requirement, it is clear that disqualification of fit and proper can come into play for violations not specifically pertaining to securities. Therefore, the submission that the noticee acting in its capacity as a commodity broker cannot cause any detriment to the securities market is not tenable.

14. The noticee has also submitted that the observation of the DA in the Enquiry Report that the noticee has submitted that it had filed a recovery case against NSEL is incorrect and the same was never submitted by the noticee before the DA. I have perused the reply dated October 19, 2018 filed by the noticee before the DA and it is noted that no such admission/ submission has been made by the noticee and accordingly, the noticee's submission in this regard is correct and the same has been taken on record. Without prejudice to the same, the fact of any suit instituted by the noticee against the NSEL, if any, is not being taken into consideration.

15. The noticee has further submitted that pursuant to the reply to the SCN filed by it, SEBI did not act on the recommendation of the DA and the Enquiry Report was dumped by SEBI. I note that the said contention of the noticee is misplaced since an issue similar to the one in present matter was pending adjudication before Hon'ble SAT at the relevant time. The outcome of the said proceedings before Hon'ble sat was being awaited by SEBI. It is pertinent to note that the Hon'ble SAT, vide its orders dated June 09, 2022 and July 20, 2022 had

adjudicated upon the said issue and remanded the matters to SEBI. Pursuant thereto, the SSCN dated October 11, 2022 was issued to the noticee and the same along with the Post Enquiry SCN is being considered in the present proceedings. Accordingly, the submissions of the noticee in this regard are rejected.

16. Before I proceed to examine the issue, as stated above, vis-à-vis the material available on record before me, it would be appropriate at this stage, to refer to the relevant provisions of the law applicable, which are alleged to have been violated by the noticee and/or are referred to in the present proceedings. The same are reproduced below for reference:

THE SEBI ACT, 1992

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

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

THE STOCK BROKERS REGULATIONS, 1992

Consideration of application for grant of registration.

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

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

Conditions of registration.

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

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

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

SCHEDULE II

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

CODE OF CONDUCT FOR STOCK BROKERS [Regulation 9]

A. General.

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

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

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

Liability for action under the Enquiry Proceeding Regulations.

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

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

THE INTERMEDIARIES REGULATIONS, 2008

SCHEDULE II

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

[See regulation 7]

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

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

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

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

(a) the applicant or the intermediary;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Where any person has been declared as not 'fit and proper person' by an order of the Board, such a person shall not be eligible to apply for any registration during the period provided in the said order or

for a period of five years from the date of effect of the order, if no such period is specified in the order.

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

(6) Any disqualification of an associate or group entity of the applicant or intermediary of the nature as referred in sub -clause (b) of clause (3), shall not have any bearing on the 'fit and proper person' criteria of the applicant or intermediary unless the applicant or intermediary or any other person referred in clause (2), is also found to incur the same disqualification in the said matter:

Provided that if any person as referred in sub-clause (b) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall replace such person within thirty days from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against the intermediary:

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

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

Recommendation of action

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

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

(ii) cancellation of the certificate of registration;

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

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

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

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

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

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

Order.

27. (5) After considering the facts and circumstances of the case, material on record and the written submission, if any, the competent authority shall endeavor to pass an appropriate order within one hundred and twenty days

from the date of receipt of submissions under sub-regulation (2) or the date of personal hearing, whichever is later."

17. Prior to merger of FMC with SEBI on September 28, 2015, the noticee was required to be a member of recognized commodity derivative exchanges and was not required to be registered with either FMC or any other regulatory authority under the FCRA. The Parliament, noticing that the intermediaries dealing with commodities derivatives market were not required to be registered under FCRA and thus were not under control of any competent authority, rectified the same through the Finance Act, 2015 by bringing them under the regulatory supervision of SEBI. In this regard, it is also noted that the Hon'ble Bombay High Court while dealing with the Writ Petition Nos. 3262, 3266, 3294 and 3295 of 2018 in the matter of *Anand Rathi Commodities Limited, Motilal Oswal Commodities Broker Private Limited, Geofin Comtrade Limited and IIFL Commodities Limited* vs. SEBI vide its Order dated October 04, 2018, observed as under:

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

18. Thus, it is an admitted position that prior to the date of merger of FMC with SEBI (i.e. September 28, 2015), the noticee was not required to be registered under the FCRA or any other regulation to act as a commodity derivatives broker. However, after the merger of FMC with SEBI, a commodity derivatives broker

was mandatorily needed to have a certificate of registration from SEBI in case it sought to remain associated with the securities market as a commodity derivatives broker. It is seen that the Finance Act, 2015 (as notified on May 14, 2015) conferred the power of regulation over intermediaries dealing in commodity derivatives to SEBI and also mandated regulation of commodity derivatives brokers by SEBI, which included their registration as commodity derivatives broker with SEBI. In this regard, vide Section 131B of the Finance Act, 2015, a transitory period of 3 months was provided to all the intermediaries which were associated with commodity derivatives market under the erstwhile FCRA but did not require a registration certificate earlier, to continue to deal in commodity derivatives as a commodity derivatives broker, provided it made an application of registration to SEBI within 3 months from September 28, 2015. Accordingly, as noted in para 12 above, the noticee applied for a certificate of registration and was registered as a broker with effect from May 26, 2016 and since then it has been acting as a market intermediary registered with SEBI.

19. In light of the order passed by the Hon'ble SAT on June 09 2022, as mentioned in paragraph 7 above (hereinafter referred to as "**SAT Order**") in the NSEL matters, a SSCN dated October 11, 2022 enclosing a copy of the SAT Order was issued to the noticee calling upon the noticee to show cause as to why the following information/material along with the enquiry report dated July 29, 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. Amended Schedule II of the Intermediaries Regulations.

20. Before moving forward to consider the matter on merits and test the fulfilment of the *'fit and proper person'* criteria by the noticee, on the basis of available material

including the additional material as detailed in paragraph 19 above, the background facts necessary for the present proceedings are narrated in brief, hereunder:

i. The noticee, MLB Commodities Private Limited, is a commodity derivatives broker registered with SEBI having Registration No. INZ000054839 with effect from May 26, 2016 and is currently a member of Multi Commodity Exchange of India Limited (hereinafter referred to as **"MCX"**).

ii. NSEL was incorporated in May, 2005 as a Spot Exchange, *inter alia*, as an electronic exchange for trading in commodities. In exercise of powers conferred under Section 27 of the FCRA, the Central Government vide its 2007 Exemption Notification granted an exemption to all forward contracts of one-day duration for the sale and purchase of commodities traded on the NSEL from operations of the provisions of the FCRA subject to certain conditions, *inter alia*, including "*no short sale by the members of the exchange shall be allowed*" and "*all outstanding positions of the trades at the end of the day shall result in delivery*".

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

iv. In October 2008, the NSEL commenced operations providing an electronic trading platform to its participants for spot trading of commodities, such as

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

v. On February 06, 2012, the erstwhile FMC was appointed by the Department of Consumer Affairs, Government of India as the 'designated agency' as stipulated in one of the conditions prescribed under the said 2007 Exemption Notification, authorizing it to collect the trade data from NSEL and to examine the same for taking appropriate measures, if needed, to protect investors' interest. FMC had accordingly called for the trade data from different spot exchanges, including NSEL in the prescribed reporting formats. After analyzing the trade data received from NSEL, FMC passed Order No. 4/5/2013-MKT-1/B dated December 17, 2013 in the matter (hereinafter referred to as "FMC Order") wherein it was inter alia observed that 55 contracts offered for trade on the NSEL platform were in violation of the relevant provisions of the FCRA and that the condition of *'no short sale by members of the exchange shall be allowed'* was being not complied with by the NSEL and its members. FMC further observed that the '*paired contracts*' offered for trading in the NSEL platform were in violation of the provisions of the FCRA and also in violation of the conditions specified by the Government of India in its 2007 Exemption Notification, while granting exemptions to the one day forwards contract for sale and purchase of commodities traded on the NSEL, from the purview of the FCRA.

21. From the perusal of the FMC Order in respect of the '*paired contracts*', which were traded on the NSEL platform during the relevant period, I note that the FMC had, *inter alia*, observed that the following conditions stipulated in the 2007 Exemption Notification were violated:

a. <u>Short Sale</u>

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

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

Some of the contracts offered for trade on the NSEL had settlement periods exceeding 11 days and therefore, such contracts were "*non-transferable specific delivery*" contracts under the FCRA. As per the FCRA, the "*ready delivery contracts*" were required to be settled within 11 days of the trade and hence, the contracts traded on the NSEL, which provided settlement schedule for a period exceeding 11 days were not allowed and were in violation of 2007 Exemption Notification.

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

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

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

23. It is therefore, clear that the NSEL was given permission to setup as a spot exchange for trading in commodities. It was essentially meant to only offer forward contracts having one-day duration as per 2007 Exemption Notification. I note from the FMC Order that FMC had observed that the 55 contracts offered for trade on the NSEL were with settlement periods exceeding 11 days and all such contracts traded on the NSEL were in violation of provisions of FCRA. As per the FMC Order under the FCRA, a "*forward contract*" is defined as a "*contract for delivery of goods and which is not a ready delivery contract*". A '*ready delivery contract*' is defined as "*a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days*". Given the said definition contained in FCRA, FMC was of the view that all the contracts traded on the NSEL which provided settlement schedule exceeding 11 days were treated as *Non-Transferable Specific Delivery contracts*. It is therefore seen that, even though MCA had stipulated in the 2007 Exemption Notification that only contracts of one-day duration were permitted to be offered on the NSEL, FMC, in its Order, relying on the definition of "*forward contract*" under FCRA held that NSEL was allowed to trade only in one-day forward contracts and was obliged to ensure delivery and settlement within 11

days. However, it is beyond doubt that NSEL had permitted 55 contracts of various commodities having duration longer than 11 days and these contracts were in contravention of the exemption granted to the NSEL.

24. At this stage, it is also pertinent to refer to the judgment of the Hon'ble Supreme Court of India passed in the matter of *63 Moons Technologies Ltd. (formerly known as Financial Technologies India Ltd.) & Ors. v. Union of India & Others (Civil Appeal No. 4476 of 2019 decided on April 30, 2019)* (hereinafter referred to as **"merger petition"**), wherein it, *inter alia*, held that:

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

25. It is also necessary to refer to the judgement dated April 22, 2022 passed by the Hon'ble Supreme Court in the matter of *The State of Maharashtra vs. 63 Moons Technologies Ltd. (Civil Appeal No. 2748-49 of 2022)* (hereinafter referred to as "**MPID matter**"), wherein the Hon'ble Supreme Court while drawing reference to the presentations made by the NSEL in respect of the '*paired contracts*' has, *inter alia*, held that:

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

receiving deposits, it has failed to provide services as promised against the deposits and has failed return the deposits on demand. Therefore, the State of Maharashtra was justified in issuing the attachment notifications under Section 4 of the MPID Act." (emphasis supplied)

26. Thus, the Hon'ble Supreme Court has already described the nature of the '*paired contracts*' offered on the NSEL platform. In the merger petition, it was held by the Hon'ble Supreme Court that these contracts were in the nature of financing transactions. In the MPID matter, the Hon'ble Supreme Court has held that such transactions come within the definition of '*deposits*' under the MPID Act.

27. The Hon'ble Supreme Court in the MPID matter, has extensively referred to the claims made on the website of the NSEL and the contents of the publicity material and other investor resources. The Hon'ble Supreme Court has also observed that NSEL was advertising an annualized return of about 16% p.a. for the '*paired contracts'* traded on its platform where the return offered was same across the commodities. The return remained the same irrespective of the duration of the contract. In the said order, the Hon'ble Supreme Court has also depicted certain examples of '*paired contracts'*, which offered assured returns. For example, a T+2 & T+25 paired contract in steel had the same offered return as a T+ 5 & T + 35 paired contract in castor oil. The '*paired contracts'* were being marketed as an alternative to fixed deposits.

28. It was also noted in the judgement of the Hon'ble Supreme Court in the MPID matter that the overwhelming majority of the sale leg of the '*paired contracts'* which were executed were short sales i.e., commodities to back such sales were not available at the designated warehouses of the NSEL.

29. The aforesaid discussion shows how '*paired contracts'* were not in the nature of spot trading, which was permitted on NSEL's platform. Further, as stated above, NSEL itself was advertising such contracts as an alternative to fixed deposits and an annualized return of about 16% p.a. was offered, across all commodities irrespective of the nature of the contract or the duration. Also, these contracts

were structured in a manner which ensured that the buyer always made pre-determined profits.

30. At this juncture, I note that the submission of the noticee that the aforesaid decisions of the Hon'ble Supreme Court and the observations of FMC order etc., cannot be relied upon as the noticee was not a party to the same, is without any merit as the said decisions have been appropriately relied upon only to highlight the nature of the '*paired contracts*' as observed by the Hon'ble Supreme Court and the FMC order and not to establish any allegation, *per se*, against the noticee.

31. Considering the deliberations and discussions recorded above, it essentially leads to the moot question as to whether the noticee, while facilitating trading in such contracts for its clients, was under the *bonafide* belief that the *'paired contracts'* were actually spot contracts in commodities. Or can it be said that the very fact that '*paired contracts'* were offered meant that the NSEL was offering contracts which were not resulting in compulsory delivery and, therefore, the noticee, as a registered intermediary, should have been aware that such a product was far removed from the spot trading in commodities which was permitted on the NSEL's platform.

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

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

34. On perusal of the replies submitted by the noticee, I note that it is an admitted fact that the noticee had participated/facilitated the execution of *'paired contracts'* for its clients. In this regard, I deem it fit to refer to the submission made by the noticee in its reply dated August 29, 2020 wherein it is, *inter alia*, submitted by the noticee that, *"…It is submitted that no trade was done by the Noticee in PRO account. Notice merely conducted 230 trades in 'paired contracts' on behalf of 18 constituents between the years 2011-12, 2112-13 and 2013-14 for total gross sale value of Rs. 14.29 Cr…"*. Thus, it is an undisputed fact that the noticee has indulged into trading in '*paired contracts*' on behalf of its 18 clients and thus, the submissions of the noticee that it did not execute any short sell trades are also not tenable.

35. The execution of the trades in *'paired contracts'* by the noticee shows the participation of the noticee in the said scheme perpetrated by the NSEL to provide its platform for trading in *'paired contract'* that were not permitted under the 2007 Exemption Notification and were purely financial contracts promising assured returns under the garb of spot trading in commodities. Therefore, the noticee by its conduct and as a member of the NSEL has acted as an instrument of the NSEL 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 to be so, as noted above). The act of the noticee, of executing trades in the *'paired contracts'* which did not have requisite regulatory approval, raises doubts on the competence of the noticee to act as a registered Securities Market intermediary. The noticee being a broker ought to have certainly understood the nature of the product before participating in such contracts. Thus, I am of the view that the trading activities of the noticee in *'paired contracts'* on the NSEL platform have adversely effected the reputation and credibility about competence and fairness, honesty and integrity of the noticee in the Securities Market.

36. As recorded in the SSCN, SEBI has filed a complaint dated September 24, 2018, against brokers who traded / facilitated access to '*paired contracts'* traded on the NSEL, including the noticee, with the EOW, Mumbai. On the basis of this

complaint, an FIR dated September 28, 2018 has also been registered with the MIDC Police Station, Mumbai against the noticee.

37. Having found that the noticee has traded in *'paired contracts'*, I note that the noticee has, *prima facie*, violated the conditions stipulated in the 2007 Exemption Notification. Therefore, in the SCN, the noticee was asked to state as to why its certificate of registration as a commodity derivatives broker, may not be cancelled as the noticee is not a '*fit and proper*' person for holding the certificate of registration. Subsequently, SEBI, on the basis of certain documents/material such as SEBI's Complaint dated September 24, 2018 and FIR dated September 28, 2018 as provided to the noticee vide SSCN dated October 11, 2022, further alleged that in light of the aforesaid documents as well as observations against the noticee in the enquiry report dated July 29, 2020, the noticee is not a '*fit and proper*' person for holding the certificate of registration.

38. The noticee's main contentions are that the noticee never induced its clients to execute trades at NSEL, the SCNs issued by SEBI are time barred in light of Limitation Act and there are no pending investor complaints.

39. In this regard, as discussed above, the noticee has traded in '*paired contracts*' on behalf of its clients. Further, the noticee has also submitted that it was not closely associated with NSEL. In this regard, I note that the present proceedings are not based on noticee's relationship with NSEL as a trading member. Factors such as pendency of FIR, noticee having traded/ facilitated trading in paired contracts (which were found to be in violation of the 2007 Exemption Notification by the Hon'ble Supreme Court), and other material have been taken into account in the present proceedings. The noticee traded in a product that did not have regulatory approval thereby raising doubts about the competence, fairness, etc. of the noticee to act as a registered securities market intermediary. As already recorded in SSCN as discussed above, SEBI's complaint dated September 24, 2018 and the FIR registered with the MIDC Police Station, Mumbai on September 28, 2018 are subsisting and have not been challenged, quashed or

stayed by any competent court *qua* the noticee as on date. Therefore, the noticee also attracts the disqualification provided in clause 3(b)(i) of Schedule II of the Intermediaries Regulations.

40. The noticee has also contended that the noticee traded in '*paired contracts*' on behalf of the clients only. Be that as it may, it is noted that the scope of the instant proceeding is not to analyze the actual impact and consequences of the conduct of the noticee but to examine as to whether or not, the noticee has acted in a manner expected of a market intermediary and the answer to the same is clearly against the noticee.

41. It is pertinent to state that regulation 5(e) of the Stock Brokers Regulations provides that, for the purpose of grant of Certificate of Registration, the applicant has to be a '*fit and proper person*' in terms of Schedule II of the Intermediaries Regulations. It is further stated that the '*fit and proper person*' criteria specified in Schedule II of the SEBI (Intermediaries) Regulations, 2008, were amended vide SEBI (Intermediaries) (Third Amendment) Regulations, 2021 with effect from November 17, 2021. The condition of a fit and proper is not a one-time condition applicable only at the time of seeking registration. Meeting the '*fit and proper*' person criteria is a continuing requirement under the Intermediaries Regulations which the noticee ought to comply with at all times as long as it desires to remain associated with the securities market as a registered intermediary. The present proceedings intend to examine the '*fit and proper person*' status of the noticee in terms of the Intermediaries Regulations.

42. SEBI had filed a complaint dated September 24, 2018 with the concerned police authorities for initiating appropriate action for the violations of the FCRA, *inter alia*, alleged to have been committed by the noticee within the stipulated time as specified under section 29A(2)(e). I also note from the records that on the basis of the said complaint of SEBI, a FIR dated September 28, 2018 was registered with MIDC Police Station, Mumbai and the same, as noted above, is subsisting. The noticee has also questioned the maintainability of the aforesaid FIR in light

of section 468 of the CrPC stating that the said FIR is barred by the limitation period. In this regard, I deem it fit to refer to the relevant provision of the FCRA which is as under:

> *"**29A. Repeal and savings. —** (1) The Forward Contracts (Regulation) Act, 1952 (74 of 1952) is hereby repealed.*
>
> *(2) On and from the date of repeal of Forward Contracts Act—*
> *…*
> *(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;"*

43. On perusal of the above provision, I note that section 29A(2)(e) of the FCRA empowered SEBI to initiate fresh proceeding within three years from the date of repeal of FCRA. I note that the impugned was accordingly filed by SEBI within the stipulated timeline and thus the contention of the noticee cannot be entertained. Further, it must be noted that the complaint was filed and the FIR was registered with the MIDC Police Station in terms of the FCRA and it would not be appropriate for the complainant itself, i.e., SEBI to decide whether the same was within the period of limitation or not. In my considered view, the maintainability of such FIR has to be decided by the appropriate court and not SEBI. Accordingly, I reject the submissions of the noticee in this regard.

44. The noticee has also contended that the SCNs issued to the noticee are debarred in terms of the Limitation Act. In this regard, I deem it fit to place reliance on the decision of the Hon'ble SAT in the matter of ***Mr. Rakesh Kathotia & Ors. vs SEBI***[1], wherein the Hon'ble SAT had held as under:

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

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

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

(emphasis supplied)

45. I further place my reliance on the decision of the Hon'ble the Supreme Court in the matter of ***Adjudicating Officer, SEBI vs Bhavesh Pabari***[2] wherein the Hon'ble Apex Court has held as under:

> "*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."*

In view of the aforesaid decisions, it is clear that no specific limitation period has been prescribed in the SEBI Act. Having said that, I also note that even though there is no limitation period in the SEBI Act, the proceedings have to be initiated in a timely manner by the regulator. In the present matter, although the trades were executed during the period 2011-2013, SEBI was granted the jurisdiction to regulate the commodities segment in 2015. Pursuant thereof, given the magnanimity of the NSEL scam, the SCN was appropriately issued to the noticee in the year 2018. It must also be noted that although the noticee has raised the plea of limitation but it has not stated any kind of prejudice which has been caused to it, if any. Further, the purpose of the present proceedings is not to

[2] (2019) SCC Online SC 294

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 Limitation Act raised by the noticee is not tenable.

46. The present proceedings under the Intermediaries Regulations have been initiated to adjudge whether the noticee satisfies the criteria for '*fit and proper person*' as specified in the Stock Broker Regulations and the Intermediaries Regulations and the said proceedings are independent of the provisions of FCRA. The noticee is obliged to maintain the '*fit and proper person*' criteria on a continuous basis and it is well within SEBI's jurisdiction and powers to adjudge the said fit and proper status of the market intermediaries in the interest of securities market.

47. The role of a registered intermediary including a broker demands from it honesty, transparency, fairness and integrity as has been laid down in Clause 3(a) of Schedule II of the Intermediaries Regulations. SEBI under its mandate to protect interest of investors apart from regulations and development of the securities market is empowered to grant registration to various classes of entities including brokers, who have a very important role in ensuring a fair, transparent and efficient market to the investors. Thus, a broker is bound to act in an honest and ethical manner and comply with all applicable regulatory requirements which would be in the best interests of investors. Here, I also deem it appropriate to note that the noticee cannot take the defence of having a legitimate expectation that the NSEL as an exchange was, *per se*, in compliance with the 2007 Exemption Notification. In view of the decisions of the Hon'ble Supreme Court, wherein the Hon'ble Court has held that NSEL was advertising fixed returns of 16% and offering '*paired contracts*' as an alternate for fixed deposits, I am of the view that the noticee was under statutory obligation to act with due skill, care and diligence in conduct of all its business.

48. In view of the above, I hold that the noticee does not satisfy the '*fit and proper person'* criteria specified in Schedule II of the Intermediaries Regulations and therefore, the continuance of the noticee as a broker will be detrimental to the interest of the securities market. Hence, action as proposed in the SCNs needs to be taken in the interest of the securities market.

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

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

ORDER

51. In view of the foregoing discussions and deliberations, I, in exercise of powers conferred upon me under Section 12 (3) and Section 19 of the SEBI Act, 1992 read with regulation 27 of the SEBI (Intermediaries) Regulations, 2008, cancel the Certificate of Registration (bearing No. INZ000054839) of the noticee, i.e., MLB Commodities Private Limited.

52. The noticee shall, after receipt of this order, immediately inform its existing clients, if any, about the aforesaid direction in paragraph 51 above.

53. Notwithstanding the direction in paragraph 51 above, the noticee shall allow its existing clients, if any to withdraw or transfer their securities or funds held in its custody, within 15 days from the date of this order. In case of failure of any clients to withdraw or transfer their securities or funds within the said 15 days, the

noticee shall transfer the funds and securities of such clients to another broker registered with SEBI within a period of next 15 days thereon, under advice to the said clients.

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

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

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

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

Sd/-

DATE: JULY 26, 2023 **ANAND R. BAIWAR**

PLACE: MUMBAI **EXECUTIVE DIRECTOR**

SECURITIES AND EXCHANGE BOARD OF INDIA