

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

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In respect of –

Parwati Commodity Market Pvt Ltd  
[Registration No. INZ0001054534]

In the matter of National Spot Exchange Limited

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter be referred to as, the “**SEBI**”) initiated enquiry proceedings against Parwati Commodity Market Pvt Ltd (hereinafter be referred to as, the “**Noticee**”), registered with SEBI as a commodity derivatives broker under the SEBI (Stock Brokers) Regulations, 1992 (hereinafter be referred to as, the “**Stock Broker Regulations**”), for the alleged violations of Regulations 5(e), 9(b) and 9(f) read with Clause A(1), A(2) and A(5) Schedule II of the Stock Broker Regulations read with Schedule II of the SEBI (Intermediaries) Regulations, 2008 (hereinafter be referred to as, the “**Intermediaries Regulations**”).
2. The Noticee was a Trading and Clearing Member of the National Spot Exchange Limited (hereinafter be referred to as, the “**NSEL**”), which was incorporated in May 2005 as a spot exchange for trading in commodities. NSEL organised trading in commodities after it was granted exemption from provisions of Forward Contracts (Regulation) Act, 1952 (hereinafter be referred to as, the “**FCRA**”) by the Department of Consumer Affairs of the Ministry of Consumer Affairs, Food and Public Distribution, Government of India, vide Gazette Notification No. SO 906(E) dated June 05, 2007, in exercise of powers conferred by the Section 27 of FCRA subject to certain conditions. 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' as stipulated in one of the conditions prescribed under the said 2007 Exemption Notification, authorizing it to collect the trade data from the NSEL and to examine the same for taking appropriate measure, if needed, to protect investors' interest. The FMC had accordingly called for the trade data from different Spot Exchanges, including the NSEL in the prescribed reporting formats. After analyzing the trade data received from the NSEL, the FMC passed Order No. 4/5/2013-MKT-1/B dated December 17, 2013 in the matter (hereinafter referred to as "**FMC Order**") wherein it was inter alia observed that 55 contracts offered for trade on the NSEL platform were in violation of the relevant provisions of the FCRA and that the condition of 'no short sale by members of the exchange shall be allowed' was being not complied with by the NSEL and its members. FMC further observed that the 'paired contracts' offered for trading in the NSEL platform were in violation of the provisions of the FCRA and also in violation of the conditions specified by the Government of India in its 2007 Exemption Notification, while granting exemptions to the one day forwards contract for sale and purchase of commodities traded on the NSEL, from the purview of the FCRA.
5. On perusal of the FMC Order in respect of the 'paired contracts', which were traded on the NSEL platform during the relevant period, I note that the FMC had inter alia, observed that the following conditions stipulated in the 2007 Exemption Notification were violated:

a. **Short Sale**

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

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

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

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

## ENQUIRY BY DESIGNATED AUTHORITY

8. A Designated Authority (hereinafter referred to as “DA”) was appointed by SEBI vide communique dated September 21, 2018 to conduct an enquiry against the Noticee and submit a report and make recommendation/s in compliance with Regulation 27 of the Intermediaries Regulations. The DA, accordingly, issued a Show Cause Notice dated September 24, 2018 (hereinafter referred to as “Enquiry SCN”) to the Noticee under Regulation 25(1) of the Intermediaries Regulations (as applicable at the relevant time) calling upon it to show cause as to why appropriate recommendation should not be made against it under Regulation 27 of the Intermediaries Regulations (as applicable at that time) read with Section 12(3) of the SEBI Act for the alleged violation of the provisions of Regulation 9(b) and 9(f) read with Clauses A(1), A(2) and A(5) of the Schedule II of the Stock Broker Regulations and being not a ‘fit and proper person’ for holding the certificate of registration as trading / clearing member in terms of Regulation 5(e) read with Regulation 27(iv) of the Broker Regulations read with Schedule II of the Intermediaries Regulations.
9. The Noticee replied to the Enquiry SCN vide letter dated November 09, 2018, June 21, 2019 and July 11, 2019. Thereafter, vide email dated July 04, 2019 additional material in relation to the Enquiry SCN was forwarded to the Noticee. It is pertinent to note that vide e-mail dated March 01, 2019, the Noticee was advised to provide the details of trading in paired contracts through proprietary account or on behalf of client(s) in NSEL during the period September 2009 to August 2013 and to comment on the outstanding position/traded through proprietary account or on behalf of clients in paired contracts in NSEL. However, the noticee failed to submit the details sought from it and reiterated the request for providing additional documents.
10. Upon completion of the enquiry, the DA submitted an Enquiry Report dated July 31, 2019 (“Enquiry Report”) to the Competent Authority, inter alia, observing as under:

*“38. In view of the facts and circumstances of the case and the material placed before the Designated Authority, I am of the view that the Noticee is not a fit and proper person in terms of Regulation 5(e) of the Stock Broker Regulations read with Regulation 27 of the Intermediaries Regulations. I recommend that the registration of the Noticee i.e. Parwati Commodity Market Private [SEBI Registration No.*

*INZ000054534] as a commodity derivatives broker be cancelled in the interest of the securities market.”*

## **POST ENQUIRY PROCEEDINGS**

### **Show Cause Notice, Reply and Personal Hearing**

11. After considering the Enquiry Report, a post-enquiry Show Cause Notice dated September 17, 2019 (“SCN”) was issued to the Noticee under Regulation 28(1) of the Intermediaries Regulations (as applicable at the relevant time) enclosing therewith (a) copy of the Enquiry Report, (b) copy of the letter dated December 30, 2014 of the Department of Economic Affairs (DEA) Ministry of Finance and (c) a copy of the order dated August 22, 2014 passed by the Hon’ble Bombay High Court in Criminal Bail Application No. 1263 of 2014 in the case of *Jignesh Prakash Shah Vs. The State of Maharashtra*. The SCN was issued to the Noticee calling upon it as to why action as recommended by the DA including any other action should not be taken against, as deemed fit, by the Competent Authority.
12. The Noticee replied to the said SCN vide its letter dated November 12, 2019 and made the following submissions:
  - (i) FMC’s order dated December 17, 2013 has primarily focused on the defaults, irregularities and the breaches committed by the promoters and management of NSEL which had ultimately resulted into loss of Rs. 5,600 Crore to the investors.
  - (ii) The Noticee submitted that the documents provided by Designated Authority are inadequate and insufficient to satisfy the requirements of a legally tenable show cause notice and therefore, not furnishing of documents is in violation of Principles of Natural Justice. In this regard, the Noticee has placed reliance on the following decision/observations of Hon’ble Supreme Court, Hon’ble High Court, and Hon’ble Securities Appellate Tribunal (SAT):
    - a. *The Hon’ble Bombay High Court in H.R. Mehta Vs. Assistant Commissioner of Income-tax, Mumbai vide judgement dated June 30, 2016. [2016] 72 taxmann.com 110 (Bombay)*
    - b. *Hon’ble Supreme Court in the matter of Securities and Exchange Board of India v. Price Waterhouse (Civil Appeal No. 6003- 6004/12)*
    - c. *Capricorn Shopping Complex V. ITO (1996) 218 ITR 721 (Ker.),*

- d. *in the matter of Shri B. Ramalinga Raju v. SEBI (Appeal No. 286 of 2014 dated May 12, 2017)*
- (iii) The Noticee requested for copies of the documents relied upon by SEBI but SEBI after about 8 months from the SCN had provided some documents which are available in the public domain. Designated Authority has not given details of complete order log and trade log of all the trades executed in all the pair contracts launched by NSEL as to which part of our transactions at NSEL comprised of Pair Contracts. Even the copy of the investigation report has not been provided to the Noticee which is an essential document and is also considered as a part of the Notice as per Regulation 25(3) of the Intermediaries Regulations. The Noticee has placed reliance on certain orders passed by the Hon'ble SAT viz. *in the matter of Ms. Smitaben N. Shah Vs. SEBI and the Hon'ble Tribunal in Appeal No. 281 of 2009 filed by Mr. Vikas Gourihar Narnavar.*
- (iv) The Designated Authority has also wrongly relied upon the case of *Kanwar Natwar Singh v. Directorate of Enforcement [(2010) 2 SCC 497]* decided by the Hon'ble Supreme Court. In the said case, the Hon'ble Court has rightly observed that for the compliance of principles of natural justice, the Noticee is not entitled to the documents which are not relied upon by the Authority. In the instant case, the Noticee however has been requesting for furnishing of only such documents which have been relied upon by SEBI but the said documents have not been provided to the Noticee till date.
- (v) The Noticee submitted that without considering its contention that appointment of Designated Authority was contrary to express provisions of Regulation (24)2 and in violation of Regulation 24(2), the DA should not have proceeded in this case. Reference was made to the judgements of Hon'ble Supreme Court, Bombay, Delhi, Calcutta and Kerala High Courts in the following cases:
- a. *The Hon'ble Supreme Court (Civil No. 32138 of 2015) in a Judgement dated 7<sup>th</sup> February, 2018 in the case of The Goa Foundation vs M/s Sesa Sterlite Ltd.*
  - b. *A five judges Bench of the Hon'ble Supreme Court in the case of Commissioner of Income Tax vs Anjum M.H. Ghaswala (Appeal (Civil) 4126 of 2000) in a judgement dated 18<sup>th</sup> October, 2001.*

- c. *The Hon'ble Supreme Court in the case of State of Uttar Pradesh vs Singhara Singh 1963 AIR 358.*
- d. *The Hon'ble Supreme Court in the case of Captain Sube Singh & Ors vs Lt. Governor Of Delhi & Ors (Appeal (civil) 1725 of 2001) in its judgement dated 30<sup>th</sup> April, 2004.*
- e. *The Hon'ble Supreme Court in the case of Cellular operators Association vs. Union of India & Ors in its Judgement dated 17<sup>th</sup> December, 2002.*
- f. *1980 AIR 326, 1980 SCR (2) 16.*
- g. *1969 AIR 634, 1969 SCR (3).*
- h. *THE PRIVY COUNCIL in the case of Nusserwanjee Pestonjee Vs. Meer Mynodeen Khan Wullud Meer Sudroodeen Khan Bahadoor (1855) 6 Moo I.A. 134, 156, 157.*
- i. *1972 AIR 2379, 1973 SCR (1) 697) referring to two English decisions Mathew J. of the Supreme Court.*
- j. *The Hon'ble Supreme Court in Arun Kumar & Others vs Union of India Appeal (civil) 3270 of 2003.*
- k. *1963 AIR 1077, 1963.*
- l. *(2007) 8 SCC 559 (2007) SCR 656.*
- m. *AIR 1992 SC 1555.*
- n. *(2004) 4 SCC 597 (603).*
- o. *The Hon'ble Supreme Court in Industrial Infrastructure ... vs Commissioner of Income Tax ... (Civil Appeal No.6262 OF 2010).*
- p. *1966 AIR 153.*
- q. *(2005) 7 SCC.*
- r. *(2008) 14 SCC 58 (81).*
- s. *The Hon'ble Supreme Court in the case of Harpal Singh vs State of Punjab Appeal (crl.) 548 of 2007.*
- t. *The Hon'ble Supreme Court in the case of Indian National Congress (I) vs Institute Of Social Welfare in Appeal (civil) 3320-21 of 2001.*
- u. *1964 AIR 1341.*
- v. *1954 AIR 340.*
- w. *1965 AIR 1449, 1965 SCR (2) 800.*
- x. *AIR 1967 Ker 97.*

Thus, the appointment of the Designation Authority by the Whole Time Member in this case was in excess of his authority and beyond his powers. The Notice issued to the Noticee in the present matter is null and void for want of jurisdiction. Due process of law in appointment of the 'Designated Authority' in the present case has not been followed.

- (vi) The finding of the Designated Authority with regard to the applicability of Intermediaries Regulations for the purpose of conducting the enquiry proceedings in the instant case is patently wrong and perverse. As per the Show Cause Notice, the Noticee has allegedly participated in/ facilitated the alleged paired contracts at the trading platform of NSEL when it was governed by the rules, regulations, bye laws of NSEL. SEBI Act and its regulations were not applicable to the Noticee for trading at the NSEL at the relevant time. Hence, SEBI could not initiate the enquiry proceedings under the Intermediaries Regulations, which are attracted when an intermediary allegedly violates any of the conditions of the Certificate of Registration or any of the provisions of the Securities laws and the regulations framed thereunder.
- (vii) The Designated Authority has given an erroneous finding by contending that SEBI is statutorily empowered to initiate the proceeding to determine whether the Noticee is a fit and proper person or not. But the said finding totally ignores the fact that the SCN alleges that the Noticee as an intermediary has violated Regulation 9 (b) and 9 (f) of Brokers Regulation in terms of which the Noticee was required to comply with the rules and regulation of NSEL and Code of Conduct for brokers while trading at NSEL. The actions of the Noticee at the relevant time were not governed by SEBI Regulations but were governed by NSEL's bye laws, Regulations etc and provisions of FCRA.
- (viii) The Designated Authority has committed a gross error in not paying any heed to the objection of the Noticee to SEBI's jurisdiction on spot market. The Noticee submitted that the letter dated November 20, 2015 of the Ministry of Finance (issued after Notification of the Repeal of FCRA and vesting of jurisdiction in SEBI in respect of commodities markets) has directed bearing on the question of jurisdiction of SEBI on spot market. The said letter of Ministry of Finance (MoF) clearly states that "*SEBI is not expected to deal with matters which were not dealt with by the erstwhile FMC....It is further clarified*



*that since spot markets/ ready delivery contracts were not being regulated by the FMC, SEBI is not expected to take upon itself any regulatory function with regard to such markets.*" The Noticee further submitted that FMC had not dealt with/ initiated any action against the brokers including the Noticee for trading in the paired contracts at NSEL. Hence, as per the mandate of the said letter, SEBI is not supposed to deal with the matter in question pertaining to the members of NSEL which was not taken up by the erstwhile FMC. Further, as per the said letter SEBI is not expected to take upon itself any regulatory function with respect to spot markets/ ready delivery contracts. Clearly, the enquiry proceedings in question pertain to the activities of the Noticee at spot market (NSEL) and hence the same are also prohibited as per the said letter of Ministry of Finance. It is submitted that the said letter of MoF is in consonance with the provisions of Finance Act, 2015 under which SEBI has been given the jurisdiction over the commodities market and not the spot markets. The Designated Authority's finding that the said GOI letter has no bearing on the applicability of the SEBI Regulations is perverse and without any substance.

- (ix) The Designated Authority has wrongly relied upon the case of *Jermyn Capital LLC v. SEBI*, and *Mukesh Babu v. SEBI*, both decided by Hon'ble SAT, to show that close association with any person who does not enjoy a good reputation, is good enough to determine that the person in question is not fit and proper. In the aforesaid cases, the Hon'ble Tribunal had found close associations between the entities/ persons considering their close business and personal relations. In the instant case, no such facts are available. A member of a stock exchange or a person holding a Certificate of Registration from SEBI as an intermediary cannot be construed as having close association with the exchange or SEBI merely on the basis of being a member or intermediary.
- (x) The Designated Authority has set out certain observations made by Courts and certain authorities including the observations made by the Economic Offence Wing (EOW) which were not pertaining to the Noticee. Further, reliance has been placed upon the proceedings which were sub-judice or to which the Noticee was not privy.

- (xi) The Noticee submitted that it is illogical to contend that anyone who dealt in alleged paired contracts as a member of NSEL would be declared as not a “fit and proper” person. SEBI has initiated enquiry proceedings to declare practically all members of NSEL who dealt in alleged paired contracts as not “fit and proper” person considering that in the year 2013, the trading in alleged paired contracts constituted 99.00% of the total trading on the platform of NSEL. The recommendation of the Designated Authority against the Noticee is nothing but perverse and legally untenable. Without prejudice to the above contention, it is not clear how the observations of the said agencies and Courts on the role of NSEL or the mismanagement of NSEL by its promoters/ key managerial personnel can have any bearing on the Noticee’s criteria as a fit and proper person. FMC order dated December 17, 2013 has found fault with the operations of NSEL for launching alleged paired contracts and the role of its promoters and key managerial personnel. Neither the Noticee was a party to the said proceedings nor the Court had considered the role/ activities of the Noticee as a member of NSEL. Hence, the said order has no relevance so far as the Noticee is concerned.
- (xii) The Noticee submitted that Bombay High Court vide its Order dated August 22, 2019 has clearly held that the alleged paired contracts were not financial transactions but were trades in commodity as per regulations and bye laws of NSEL. The Hon’ble High Court has over ruled its earlier Order dated October 1, 2015 passed in Writ Petition No. 1403 of 2015 wherein it was held that NSEL had accepted the deposits as defined under the MPID Act and hence it is covered under the definition of “Financial Establishment”.
- (xiii) As regards the observations by the Hon’ble Bombay High Court in Writ Petition No. 2743 of 2014 in the matter of *63 Moons Tech limited Vs. Union of India*, the same have also become redundant on account of the aforementioned detailed judgment dated August 22, 2019 of Hon’ble Bombay High Court. Without prejudice to the above, the Noticee submitted that it is not even a party to this Writ Petition. There is nothing in the said order which can be viewed as adverse to this Noticee. Therefore, any reliance on the said order to draw any adverse inference against the Noticee is unwarranted.

- (xiv) The Noticee stated that EOW and Grand Thornton Report mentions only dues receivable to the Noticee from exchange against pay out. There are no specific charges made against this Noticee in the interim report. The Noticee had traded in/ facilitated the alleged paired contracts as a member of NSEL in accordance with the business rules and regulations of NSEL and as on the date of closure of business of NSEL, there was amount Rs.12,83,628/- which was payable to the clients of the Noticee on pay out by the NSEL. The Noticee and its clients have also become victims of the defaulting members.
- (xv) The Noticee submitted following:
- a. Noticee never approached any of its Clients to do trades in alleged Pair Contracts in NSEL.
  - b. The EOW Report doesn't hold the Noticee responsible for indulging in any of the aforesaid activities. Further, the Show Cause Notice dated September 24, 2018 as also the enquiry report have neither alleged nor brought out any of the said activities of the Noticee in particular.
- (xvi) The Noticee submitted that it neither marketed Contracts/Products available for trading in NSEL nor it had intention to do so. The Noticee earned brokerage of barely Rs. 7,26,737/-. There has been no complaints or grievances or allegations of any violations of regulations against the Noticee. The Noticee and its clients are also victims of fraud committed by NSEL and defaulting brokers/buyers. NSEL has pay out obligations towards them to the extent of Rs.6,17,400/-. In addition to this, NSEL has not refunded margin money of Rs.3,75,000/- to the Noticee.
- (xvii) The Noticee has transacted on the fully automated screen based on anonymous trading platform of NSEL, where the buyer or seller do not know each other in the commodities contracts at the time of entering the transactions. All such commodities contracts specifications were approved by the Board of NSEL in compliance with Bye Law 4.1 of NSEL. The commodities contracts including alleged paired contracts were designed, promoted and marketed by NSEL, its promoters and key managerial personnel. The Noticee had no say in the matter of designing the commodities contracts including alleged paired contracts as it was entirely within the domain of NSEL.

- (xviii) The Noticee submitted that it is beyond anyone's comprehension that any Designated Authority can find reasonable ground to issue show cause notices to the 30 Entities (including the Noticee) within three days' time and that too where such Notice contemplates the suspension or cancellation of the certificate of registration or any other action provided in the Intermediaries Regulations. It further submitted that the Notice issued by the Designated Authority is a gross abuse of the process of law and reflects the biased approach and pre-determined mind of the Designated Authority. Notice has been issued and allegations have been made without application of mind either by the Ld. Whole Time Member or the Designated Authority, as the Notice has been issued to 30 brokers in a single order on a single day without going into any specific allegation against each individual Broker. In this connection, the Noticee refers to judgement of Delhi High Court, in the matter of *Principal Commissioner of Income vs Meenakshi Overseas Pvt. Ltd.* on 26 May, 2017 ITA 692/2016.
- (xix) The Noticee submitted that the said show cause notice does not point out any specific provision or clause of the Code of Conduct/fit and proper person criteria, which have been violated by the Noticee.
- (xx) The Noticee submitted that its case is different from other brokers in a following manner:
- a. Noticee is a non-defaulting Member.
  - b. There is no allegation in the Notice that the Noticee has caused any loss to any investor.
  - c. There is no allegation against the Noticee of any mis-selling of products, no promise of assured or false returns, inducements and misrepresentation, trading without appropriate authority from clients, misuse of unique client code, funding to clients or non-receipt of payout by clients.
  - d. No funding to clients through group companies / NBFC
  - e. No print and media or verbal advertisements unlike some other brokers.
  - f. No PMS activity on NSEL
  - g. Noticee nor its Clients ever pledged their commodities in NSEL Warehouses.

- h. Noticee never received back from exchange any charges collected from Clients such as Transaction fees, delivery and warehouse charges etc. Noticee did not receive any incentive from Exchange.
- (xxi) The enquiry proceedings envisage recommendation of the Noticee as not a fit and proper person based on a single allegation that the Noticee as a member of NSEL had traded in the alleged paired contracts launched by NSEL which have been found to be violative of FCRA. The effect of such a declaration will result in recommendation of cancellation of Registration Certificate of the Noticee as a Commodity derivatives broker. Such approach towards levying the proposed punishment uniformly and without application of mind to the facts of each case, defies the doctrine of proportionality. The Noticee submitted that the cancellation of certificate of registration of a stock broker, which results in loss of business as well as reputation, is a serious punishment and so must be imposed in exceptional and grave circumstances. It submitted that assuming without accepting that the Noticee has participated / facilitated in the alleged 'paired contracts', the Noticee humbly submitted that the said violation does not warrant the cancellation of the certificate of registration as a Commodity Broker. In this regard, the Noticee has placed reliance on the Hon'ble Supreme Court in *Maharashtra Land Development Corporation and Ors*, The Hon'ble Supreme Court in the case of *Cellular Operators Association ... vs Union of India & Ors*, The Hon'ble Supreme Court in the case of *Ex-Naik Sardar Singh vs. Union of India (1991) 3 SCC 212* ), In *Ranjit Thakur vs. Union of India (AIR 1987 SC 2386)*, In the case of *M.J. Patel v. SEBI (2002) 38 SCL 889* and the Hon'ble SAT in *Radar Securities Ltd. v. SEBI, [2003] 45 SCL 89 (SAT)*.

13. 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 in the NSEL matter. Aggrieved by the said SEBI orders, the entities filed separate appeals before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**Hon'ble SAT**"). The Hon'ble SAT, vide its common order dated June 9, 2022, remanded the aforesaid orders to SEBI to decide these matters afresh within six months from the date of the said SAT order.

While remanding the aforesaid SEBI orders, the Hon'ble SAT, inter alia, held as under:

*“42...The matters are remitted to the WTM to decide the matter afresh in the light of the observations made aforesaid in accordance with law after giving an opportunity of hearing to the brokers. All issues raised by the brokers for which a finality has not been reached remains open for them to be raised before the WTM. It will be open to the WTM to rely upon other material such as the complaint letters of NSEL, EOW report, EOW charge sheet, etc. provided such copies are provided to the brokers and opportunity is given to rebut the allegations. Such additional documents relied upon by the respondent should form part of the show cause notice for which purpose, it will be open to the WTM to issue a supplementary show cause notice.....”*

14. Thereafter, in August 2022, the present matter was allocated to me. In the light of the aforesaid Order passed by the Hon'ble SAT in similar set of cases, it was felt necessary to furnish certain additional documents/material to the Noticee in concluding the present proceedings. Accordingly, vide letters dated October 04, 2022 and November 02, 2022 and email dated December 20, 2022, certain additional documents were provided to the Noticee and the Noticee was requested to file its reply, if any, within 15 days of receipt of the said letters. In response to the said letters, the Noticee, vide its letters dated December 27, 2022, made the following submissions:

- (i) The Noticee submitted that FMC Order dated December 17, 2013 was passed after trading had stopped on NSEL, and the same is in nature of post facto analysis. The trading members should not be penalised for wrong contracts introduced by NSEL as the responsibility to introduce contracts within proper legal framework lies upon the shoulders of its Board, and not on trading Members.
- (ii) The Noticee submitted that their name has not been specifically mentioned in the Grant Thornton Report in connection with any irregularities, and it has been mentioned only in the context of amounts receivable by them from NSEL on behalf of their clients. Thus, no adverse inference can be drawn against them just because they had a receivable position of Rs 10,24,168 from NSEL.
- (iii) The Noticee is not involved in any of the activities that have been mentioned in the EOW Interim Report and as such this Report is not relevant as far as they are concerned.

- (iv) The Noticee submitted that the letter addressed by the Ministry of Finance to the Forward Markets Commission, advises the Forward Market Commission to initiate appropriate actions against NSEL under FCRA. It does not contain any advisory to initiate action against Trading Members of NSEL, who has traded as per Exchange Rules, Bye laws and Regulations. Thus, reliance placed on this letter for the present proceedings against the Noticee is misplaced.
- (v) The Noticee submitted that Para 4 of the complaint letter dated 24.09.2018 reads as below:

*4. In this regard, a list of NSEL members who had reportedly traded on the NSEL platform and who have applied to SEBI for registration as Stock Brokers, is enclosed as Annexure A for your reference and necessary action under FCRA. This list includes those NSEL members whose names have appeared in the interim report of EOW dated April 4 2015 (Copy enclosed at Annexure B for ready reference).*

They submitted that the complaint is dated September 24, 2018. They were already a registered broker at that time by virtue of a registration certificate granted to them on 25<sup>th</sup> May 2016, under Registration No INZ000054534. The proceedings against them are for considering *cancellation* of certificate of registration, and *not for considering application* for grant of registration. As such, the criteria mentioned in para 4 of the Complaint dated 24.09.2018 does not apply to them as they have not applied for registration as a member and were already holding SEBI Registration Certificate.

- (vi) The Noticee submitted that Para 5 of the complaint letter dated 24.09.2018 reads as below:

*“(iii) Under Sec 23 of FCRA, all major offenses committed thereunder are made ‘cognizable’ offenses. Under Cr.P.C, police have powers to investigate cognizable offenses in exercise of powers under section 156 of Cr.P.C. ....”*

Further, the Noticee submitted that the relevant extracts of Clause 3(b)(i) of Schedule II as follow:

*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;*

Thus, in view of the plain language of Clause 3(b)(i) of Schedule II, the complaint dated September 24 2018 filed u/s 156 of Cr.P.C. does not fall within its purview as it is applicable only to complaints filed u/s 154 of Cr.P.C.

- (vii) The Noticee submitted that mere filing of the report or the charge sheet does not establish any guilt. They further submitted that mere filing of the en masse First Information Report, which is merely an allegation, cannot be the ground for taking the same into account for purpose of these proceedings.
- (viii) The Noticee submitted that total trading volume on NSEL was to the tune of Rs 1,34,000 crores, out of which their trade value was Rs 203.90 crores only from May 2011 to June 2013. This is a miniscule volume, and their case should be viewed in this perspective. They were a minor player and the yardstick applied to major players cannot be applied to a minor player. In this context, they relied on the Judgement dated 19.06.2013 of the Hon'ble SAT in the case of *ESS ESS INTERMEDIARIS v SEBI* (Appeal No 13 of 2013).
- (ix) The Noticee submitted that EOW letter dated April 04, 2015 made reference to data pertaining to several 'dominant player' and their trading volumes in value. However, % of trading value of the Noticee is miniscule at 0.17% as compared to huge volumes generated by dominant players.
- (x) The Noticee also submitted that the Noticee is an active member of NSE and actively engaged in Capital Market segment as well as in Futures and Options segment. Any adverse decision in present case would lead to an abrupt disruption of their trading operations which will be greatly detrimental to their trading positions and to their reputation.
- (xi) The Noticee submitted that the documents relied upon by SEBI do not make out any case against them. The only ground on which the proceedings are being conducted is that they executed NSEL introduced trades which are now being termed paired trades. The Noticee, as members of NSEL, were bound by Rules and Regulations and Circulars of NSEL. This proposition has been laid down by the Supreme Court in a judgement dated 20th October 2020 in case of *RUSODY SECURITIES LTD v NSE*, where it held that a member is duty bound to comply with Exchange rules, Regulations and Circulars. By punishing them for executing trades introduced by NSEL is akin to shooting the messenger. The



Noticee requested, therefore, that the present proceedings initiated to consider taking action against them as per Regulation 28(2) may be dropped.

15. Pursuant to the receipt of written submissions from the Noticee, an opportunity of personal hearing was granted to the Noticee, in compliance with the principles of natural justice, before me on January 04, 2023. On the date of hearing, the Noticee was represented by Mr. R. K. Agarwal, the Authorised Representative who reiterated the submissions made by the Noticee vide its letters dated November 12, 2019 and December 27, 2022. Further, as requested, time till January 15, 2023 was granted to the Noticee to make additional submissions, if any. Accordingly, vide letter dated January 12, 2023, the Noticee, while reiterating its previous submissions, made additional submissions which are summarized as under:

- (i) The Noticee submitted that SFIO complaint dated 15.05.2019 contains 98 names, and these names are of NSEL officials, its Directors, Auditors, Indian Bullion Market Association and its officials and Directors, 63 Moon Technologies Limited, and other co perpetrators of the scam. This complaint has been filed for joint and several prosecutions against these 98 persons/entities for various violation committed under the Companies Act 1956 and for committing offenses punishable under the Indian Penal Code 1860. The Complaint sets out in detail the collusion between NSEL officials and the Defaulters and co perpetrators of scam and the forgery committed by them. There is no mention of their name in the said Complaint, clearly establishing that no financial fraud or irregularity or forgery has been attributed to them. This Complaint, therefore, is not relevant for their certificate of Registration and this may kindly be kept in mind while arriving at a decision in the matter.
- (ii) The Noticee submitted that the Final Charge Sheet in NSEL matter has been filed by the Economic Offences Wing, Mumbai. They are not in receipt of any Court summons consequent upon filing of the Final Charge Sheet, and the logical interpretation is that their name does not appear in any of the Charge Sheets filed by Economic Offences Wing in the matter. If this is the correct position, then filing of a police complaint dated September 24, 2018, and the recording of the First Information Report dated September 28, 2018 have

attained finality without any charges being levied against them, and the same are no more relevant for the purpose of present proceedings.

- (iii) The Noticee submitted that the trades about which the present proceedings have commenced were last executed on NSEL by them in May 2013 and a Show Cause notice was issued on September 17, 2019, after a period of more than 6 years and 6 months. There is inordinate delay in issuing Show Cause Notice. Thus, the Show Cause Notice be dropped on this ground alone.
- (iv) The Noticee submitted that they also obtained membership of National Stock Exchange Ltd (NSE) in Jan 2019 and started operations on NSE and they are now an active member, and any adverse action by the Competent Authority will adversely affect their operations at NSE. They are having outstanding positions in Capital and Future and Options market. Thus, the Noticee prayed that all the submissions made till date may kindly be taken into account while deciding the Show Cause Notice dated September 17 2019, read with other Notices.
- (v) The Noticee submitted that amendment carried out to Schedule II of the SEBI (Intermediaries) Regulations 2008 on 17.11.2021 cannot be made applicable retrospectively to trades executed much earlier in the Year 2012/2013 as the amendment is not specifically given retrospective effect.
- (vi) The Noticee submitted that Regulation 23 of SEBI (Intermediaries Regulations) 2008 makes it clear that it can be used against a person who has been granted a Certificate of Registration, and who fails to comply with any of the conditions contained in certificate of Registration, or contravenes any provisions of securities laws, directions, instructions or circulars issued, after he has been granted a Certificate of Registration. This postulates application of Regulation 23 to events happening after the grant of Certificate of Registration. They were granted a Certificate of Registration no INZ000054534 on 25th May 2016 and there has not been any violation by them, since their registration in 2016, attracting Regulations 23 as cited above. Thus, application of cancellation of certificate provisions for events happening much before the grant of registration certificate, cannot be resorted to, and only violations occurring after registration certificate has been granted need to be considered for the purpose of cancellation of Certificate.

- (vii) The Noticee submitted that while using the discretionary powers available to it, the Competent Authority has to consider all the surrounding circumstances, such as conduct of the member, complaints against the members by clients, suspicious funding of activities, round tripping of funds, use of client account without their permission, absence of name in criminal complaint filed by SFIO, preponderance of evidence against the Noticee and several other factors. The Noticee reiterated and stated that there is no such adverse material present against them to warrant any adverse opinion being formed against them in the discretionary powers available with the Competent Authority, more so when the required mandatory criteria has been fulfilled by them.

## CONSIDERATION OF ISSUES AND FINDINGS

16. I have carefully perused the post enquiry SCN including the Enquiry Report issued to the Noticee, the replies submitted by the Noticee along with all the other material / information available in public domain and also made available to the Noticee vide letters dated October 04, 2022 and November 02, 2022 and email dated December 20, 2022. After considering the allegations made/ charges levelled against the Noticee in the instant case, I note that the only issue that arises for consideration in the present proceedings is whether the Noticee satisfies the '*fit and proper person*' criteria as laid down under Schedule II of the Intermediaries Regulations.
17. However, before moving forward with considering the said issue, it is pertinent to refer to the common order dated June 09, 2022<sup>1</sup> passed by the Hon'ble SAT also referred in the preceding paragraph no. 13. The Hon'ble SAT, while setting aside the earlier WTM Orders, had made the following observations (relevant to the present case as well) remanding the matters to SEBI:
- (a) Observations of the Bombay High Court in the matter of *63 Moons vs. Union of India*<sup>2</sup> cannot be relied upon as the said judgement has been set aside in appeal<sup>3</sup> by the Hon'ble Supreme Court vide judgment dated April 30, 2019.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



*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 Supreme Court, the NSEL was advertising a uniform return of 16% p.a. for the 'paired contracts' traded on its platform. The return offered was the same across commodities. The return remained the same irrespective of the duration of the contract. For example, a T+2 & T+25 paired contract in steel had the same offered return as a T+ 2 & T + 35 paired contract in castor oil. The 'paired contracts', it is noted, were being marketed as an alternative to fixed deposits.
29. I note that the FMC Order and both the judgments of the Hon'ble Supreme Court discuss in detail, the NSEL permitting short sales i.e. permitting sellers to offer contract for sale of commodities on its platform without ensuring that requisite amount of commodity is available in the warehouse. It is further noted from the judgement of the Hon'ble Supreme Court in the MPID matter that the overwhelming majority of the sale leg of the 'paired contracts' which were executed were naked short sales i.e. the commodities to back such sales were not available at the designated warehouses of the NSEL.
30. In addition, I note that Economic Offences Wing, Mumbai, vide letter 789 dated April 04, 2015, had forwarded an interim report for the investigation conducted to identify role played by broking houses in NSEL Case (EOW C.R. No. 89/2013). EOW, in its report, had mentioned that a settlement obligation amounting to Rs. 54,03,59,38,793/- was due on the date of closure of business of NSEL. Of this,

the obligation outstanding against the Noticee as per the EOW report was Rs. 12,41,800/-. Relevant extracts of the report are as follows:

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

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

*The actual role of the brokers was:*

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

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

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

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

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

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

c) *It was also deemed necessary to ensure that their activities were within the framework of law.*”

31. The paired contracts being in contravention of the provisions of FCRA and the Notification dated June 05, 2007, the DA inter alia has observed that the Noticee, does not fulfil the ‘fit and proper’ criteria and the certificate of registration is liable to be cancelled.

**Preliminary objections raised by the Noticee:**

32. The Noticee has submitted that the Show Cause Notice be dropped on the ground of inordinate delay. I note that FMC, the regulator of the commodity derivatives market, under powers conferred upon it vide Notification 228(E) dated February 06, 2012, had called for trade data from the NSEL with respect to the trades being executed on its platform. On analysis of data received from NSEL, FMC observed that, *“55 contracts offered for trade on NSEL were with settlement periods exceeding 11 days and all such contracts traded on NSEL were in violation of provisions of FCRA”* and *“the condition of ‘no short sale by members of the exchange shall be allowed’ was not being met by NSEL”*. Subsequently, FMC, while dealing with the facts relating to mismanagement and poor governance of NSEL, in its order No.4/5/2013-MKT-1/B dated December 17, 2013, inter alia, observed that the conditions laid down in the Government Notification dated June 07, 2007 had been contravened by NSEL. Thereafter, in the Union Budget for the FY 2015-16 it was announced that FMC would be merged with SEBI. The Finance Act, 2015, provided that *any person dealing in commodity derivatives prior to the aforesaid merger of FMC with SEBI may continue to do so provided they have made an application for registration with SEBI within a period of three months from the date of such merger*. The merger of FMC and SEBI took effect only on September 28, 2015. The transactions on the platform of NSEL were examined by various authorities including FMC, Courts, EOW, SFIO, etc., which *prima facie* found them to be illegal.

33. It is pertinent to mention here that the enquiry proceedings were initiated by SEBI by appointing the DA vide communique dated September 21, 2018 and the Enquiry SCN was issued to the Noticee on September 24, 2018. Vide email dated July 04, 2019, additional material was provided to the Noticee. Thereafter, on considering the facts

and circumstances of the case, the DA had submitted an Enquiry Report dated July 31, 2019. Based on the recommendations made in the Enquiry Report, a post enquiry SCN dated September 17, 2019 was issued. While the said proceedings were ongoing, as mentioned in preceding paragraphs No. 13 and 17 above, the Hon'ble SAT passed an order dated June 09, 2022 in similar set of facts. Thereafter, in August 2022, the present matter was allocated to me. Based on the observations made by the Hon'ble SAT in the order dated June 09, 2022, additional documents, as available with me were provided to the Noticee vide letters dated October 04, 2022 and November 02, 2022 and email dated December 20, 2022.

34. Therefore, I note that considering the above events, the chronology in which the present proceedings have been conducted and the complexity of paired contracts, the submission of delay in initiating action against the Noticee is not maintainable.
35. Here, I would like to place reliance on the observations made by the Hon'ble Supreme Court in the matter of *Adjudicating Officer, SEBI Vs. Bhavesh Pabari*<sup>10</sup> wherein the Hon'ble Supreme Court, while dealing with the issue of delay in issuance of the show cause notice by the Adjudicating Officer, has observed that,

*“.... There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. **What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default / statute, prejudice caused, whether the third - party rights had been created etc.....”***

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

*“.....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no.114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of*

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

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

*Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there is no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice.....*”

37. The Noticee has further contended that the appointment of the Designated Authority by the Whole Time Member in this case was in excess of his authority and beyond his powers. In terms of para 3(2) of the Securities and Exchange Board of India (Delegation of Powers) Order 2015, “*The power and functions delegated to any member or officer of the Board or authority under the Order can be exercised by any officer or authority higher in grade or rank or position to him*”. Thus, I am not in agreement with the aforesaid contention as the power to appoint the DA has been exercised by the whole time member who is higher in authority than the executive director. In view of the same, it is clear that the appointment of DA by the Whole Time Member is valid and cannot be questioned on legality.
38. Further, the Noticee has submitted that the observations by the various courts / authorities is against NSEL and the Noticee’s name does not even appear in any of the said proceedings / orders. Here, it is pertinent to mention that the said orders and reports of the authorities have been considered in the present proceedings in order to state that the ‘paired contracts’ executed on the NSEL platform were in violation of the Government Notification dated June 05, 2007. Therefore, even though the Noticee’s name may not form part of these orders and proceedings of other authorities, mention of such orders and reports of other authorities are relevant to the proceedings establish that paired contracts were in violation of the said notification.
39. The Noticee has submitted that the cases referred to in the Enquiry Report viz. SAT Order in *Jermyn Capital LLC Vs. SEBI* and *Mukesh Babu Securities Ltd Vs. SEBI* and the order of the Bombay High Court in *Jignesh Prakash Shah Vs. State of Maharashtra* being adversely treated by the Hon’ble SAT in its order dated June 09, 2022 would not be of any substantive value and therefore, the case made out in the Enquiry Report falls on this ground alone. In view of the observations of the Hon’ble

SAT with respect to the said orders, I do not wish to place any reliance on the said orders while dealing with the issue in the present case in hand.

40. With regard to the Noticee's contention that the DA has committed a gross error in not paying any heed to the objection to SEBI's jurisdiction on spot market, I note that before merger of FMC with SEBI, the Noticee was functioning as a member of recognized commodity derivative exchange and was not required to be registered with either FMC or any other regulatory authority under the FCRA. The Finance Act, 2015, recognized the said fact and also that the commodity derivative brokers should be regulated by SEBI. Considering the same, it was made mandatory for all commodity derivative brokers, who wished to continue their activities, to apply for registration with SEBI within a period of 3 months from September 28, 2015. Thus, all the commodity derivative brokers, who applied to SEBI and whose application was in process, were allowed to carry on their functions as commodity derivative brokers till the disposal of their respective application. Thus, by virtue of provisions of Finance Act, 2015, all those entities, who were functioning as commodity derivatives brokers, after having made their application within 3 months from September 28, 2015, were under the supervision and control of SEBI like any other intermediary holding a certificate of registration. 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 be a commodity derivatives broker. However, I note that pursuant to the merger of FMC with SEBI, the Noticee had applied for a certificate of registration as a commodity broker and was granted a certificate of registration by SEBI. Therefore, the Noticee has become a SEBI registered intermediary from the said date and falls under the definitions of a 'stock broker' and an 'intermediary' under the SCRA. Being a SEBI regulated intermediary, SEBI has the jurisdiction to examine whether the activities of the Noticee in 'paired contracts' for its clients on the NSEL platform affects its ability to be considered "fit and proper person", as and when it comes to the notice of SEBI. In view of the same, I do not find any merit in the submissions of the Noticee that SEBI is not expected to take upon itself any regulatory function with respect to spot markets/ ready delivery contracts and could not initiate the enquiry proceedings under the Intermediaries Regulations.

41. I find it relevant to refer to observations of the order dated October 04, 2018 of the Hon'ble Bombay High Court in **Anand Rathi Commodities Limited v. SEBI** (W.P. (L) no. 3262 of 2018) wherein it was argued that the alleged deeds or misdeeds prior to September 29, 2015 by the petitioners who were acting as commodity brokers are beyond the jurisdiction of SEBI. The said argument was rejected by the Court and while interpreting Section 28A of the Finance Act, 2015, the Court 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."*

42. The Noticee has contended that certain documents were not provided to him. The Noticee stated that instead of giving relevant information, data, trade and order log, investigation/inspection report or any other material relied upon by SEBI for issuing the SCN, SEBI advised the Noticee to refer to publicly available documents. I note that all documents relied upon by SEBI was provided to the Noticee in the instant case.

43. The Noticee has referred to SEBI's letter dated September 24, 2018 to the SIT- NSEL of the EOW wherein SEBI has requested EOW to take appropriate action against the brokers/ members of NSEL to state that the same does not fall within the purview of Clause 3(b)(i) of Schedule II of the Intermediaries Regulations. However, it is pertinent to mention that SEBI has filed an FIR dated September 28, 2018 under section 154 of the Cr.P.C. with the MIDC, Police Station, Mumbai against the Noticee which is within the scope of Clause 3(b)(i) of Schedule II of the Intermediaries Regulations. Therefore, I am unable to accept the aforesaid contention of the Noticee."

## **Fit and proper person criteria**

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

### **SEBI Act**

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

**12.(3)** *The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations:*

*Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.*

### **Broker Regulations**

#### **Consideration of application for grant of registration.**

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

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

#### **Conditions of registration.**

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

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

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

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

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

**(i)** *....*

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



**SCHEDULE II**  
**Securities and Exchange Board of India (Stock Brokers and Sub-brokers)**  
**Regulations, 1992**  
**CODE OF CONDUCT FOR STOCK BROKERS**  
**[Regulation 9]**

**A. General.**

- (1) *Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.*
- (2) *Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.*
- (3) ....
- (5) *Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.”*

**Intermediaries Regulations:**

**SCHEDULE II**  
**SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES)**  
**REGULATIONS, 2008**  
**[See regulation 7]**

- (1) *The applicant or intermediary shall meet the criteria, as provided in the respective regulations applicable to such an applicant or intermediary including:*
- (a) *the competence and capability in terms of infrastructure and manpower requirements; and*
  - (b) *the financial soundness, which includes meeting the net worth requirements.*
- (2) *The ‘fit and proper person’ criteria shall apply to the following persons:*
- (a) *the applicant or the intermediary;*
  - (b) *the principal officer, the directors or managing partners, the compliance officer and the key management persons by whatever name called; and*
  - (c) *the promoters or persons holding controlling interest or persons exercising control over the applicant or intermediary, directly or indirectly:*  
*Provided that in case of an unlisted applicant or intermediary, any person holding twenty percent or more voting rights, irrespective of whether they hold controlling interest or exercise control, shall be required to fulfill the ‘fit and proper person’ criteria.*
- Explanation**—*For the purpose of this sub-clause, the expressions “controlling interest” and “control” in case of an applicant or intermediary,*

*shall be construed with reference to the respective regulations applicable to the applicant or intermediary.*

- (3) *For the purpose of determining as to whether any person is a 'fit and proper person', the Board may take into account any criteria as it deems fit, including but not limited to the following:*
- (a) integrity, honesty, ethical behaviour, reputation, fairness and character of the person;*
  - (b) the person not incurring any of the following disqualifications:*
    - (i) criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;*
    - (ii) charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences and is pending;*
    - (iii) an order of restraint, prohibition or debarment has been passed against such person by the Board or any other regulatory authority or enforcement agency in any matter concerning securities laws or financial markets and such order is in force;*
    - (iv) recovery proceedings have been initiated by the Board against such person and are pending*
    - (v) an order of conviction has been passed against such person by a court for any offence involving moral turpitude;*
    - (vi) any winding up proceedings have been initiated or an order for winding up has been passed against such person;*
    - (vii) such person has been declared insolvent and not discharged;*
    - (viii) such person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;*
    - (ix) such person has been categorized as a wilful defaulter;*
    - (x) such person has been declared a fugitive economic offender; or*
    - (xi) any other disqualification as may be specified by the Board from time to time.*
- (4) *Where any person has been declared as not 'fit and proper person' by an order of the Board, such a person shall not be eligible to apply for any registration during the period provided in the said order or for a period of five years from the date of effect of the order, if no such period is specified in the order.*
- (5) *At the time of filing of an application for registration as an intermediary, if any notice to show cause has been issued for proceedings under these regulations or under section 11(4) or section 11B of the Act against the applicant or any other person referred in clause (2), then such an application shall not be considered for grant of registration for a period of one year from the date of*

*issuance of such notice or until the conclusion of the proceedings, whichever is earlier.*

*(6) Any disqualification of an associate or group entity of the applicant or intermediary of the nature as referred in sub -clause (b) of clause (3), shall not have any bearing on the 'fit and proper person' criteria of the applicant or intermediary unless the applicant or intermediary or any other person referred in clause (2), is also found to incur the same disqualification in the said matter: Provided that if any person as referred in sub-clause (b) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall replace such person within thirty days from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against the intermediary:*

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

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

**45.** I note that regulation 5(e) of the Brokers Regulations provides that for the purpose of grant of Certificate of Registration, the applicant has to be a 'fit and proper person' in terms of Schedule II of the Intermediaries Regulations. I further note that the 'fit and proper person' criteria specified in Schedule II of the Intermediaries Regulations, 2008 was amended vide SEBI (Intermediaries) (Third Amendment) Regulations, 2021 with effect from November 17, 2021.

**46.** From the records, I note that SEBI has filed a complaint with EOW Mumbai dated September 24, 2018, against brokers who facilitated access to '*paired contracts*' traded on NSEL, including the Noticee. On the basis of this complaint, an FIR dated September 28, 2018, was registered against the Noticee. I note that the Noticee is holding a certificate of registration No. INZ000054534 granted by SEBI on May 25, 2016. In order to continue to hold such Certificate of Registration from SEBI, the

Noticee is also required to satisfy the conditions of eligibility, which *inter alia* included, continuance of its status as a 'fit and proper person'. The above condition to be a fit and proper is not a onetime condition applicable only at the time of seeking registration. Rather, the provisions governing the criteria show that this is a condition which each and every registered intermediary is required to fulfil on a continuous basis as long as the entity remains associated with the Securities Market as a registered intermediary.

**47.** In this regard, I note that the Noticee had traded in/ facilitated the alleged paired contracts as a member of NSEL in accordance with the business rules and regulations of NSEL. I note that the act of the Noticee in offering access to 'paired contracts' by facilitating trading in such contracts, seriously calls into question the integrity, honesty and lack of ethical behaviour on the part of the Noticee. As recorded in the FMC order and the judgements of the Supreme Court, these contracts, as stated earlier, were *ex facie* offered in violation of the exemption Notification issued by MCA and far removed from the spot contracts in commodities which were permitted to be traded on NSEL. The 'paired contracts' were nothing but financing transactions masquerading as spot contracts in commodities. The execution of the trades in 'paired contracts' were not permitted under the 2007 Exemption Notification and were purely financial contracts promising assured returns under the garb of spot trading in commodities, as observed by FMC in its Order. Therefore, the Noticee, by its conduct and as a member of the NSEL, has dealt in 'paired contracts' which were held to be in the nature of financing transaction by the Hon'ble Supreme Court. The Noticee, by providing access for taking exposure to 'paired contracts' has exposed its clients to the risk involved in trading in a product that did not have regulatory approval thereby raising doubts on the competence of the Noticee to act as a registered Securities Market intermediary. Thus, I am of the view that the trading activities of the Noticee in 'paired contracts' for its clients on the NSEL platform have serious ingredients amounting to jeopardizing the reputation, belief in competence, fairness, honesty, integrity and character of the Noticee in the Securities Market.

**48.** The Noticee has submitted that amendment carried out to Schedule II of the SEBI (Intermediaries) Regulations 2008 on 17.11.2021 cannot be made applicable retrospectively. I am unable to accept such contention. It is noted that paragraph 3(b)

of the amended criteria lays down a list of disqualifications which includes the following:

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

**49.** I note from the available records that the Noticee has facilitated its clients to trade in 'paired contracts' and that it is admitted that the Noticee had executed trades on the NSEL platform in paired contracts. As the paired contracts were violative of the conditions stipulated in the Government Notification dated June 05, 2007, a complaint was filed by SEBI with Economic Offences Wing, Mumbai (EOW) on September 24, 2018, against the brokers who participated / facilitated access to 'paired contracts' traded on NSEL, including the Noticee within the time limit as specified in the aforementioned provision of the Finance Act, 2015. On the basis of the said complaint of SEBI, FIR dated September 28, 2018 was lodged at MIDC Police Station, Mumbai. I note that the name of the Noticee is reflected in the complaint and the FIR.

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

attracts the disqualification provided in paragraph 3(b) (i) of the Schedule II of the Intermediaries Regulations.

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

continuance of registration as specified in regulation 5(e) of the Brokers Regulations read with the provisions of Schedule II of the Intermediaries Regulations.

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

**55.** I am also aware that recently SEBI has passed 5 separate orders<sup>12</sup> in the related NSEL matters where the Noticees therein have been debarred from making a fresh application seeking registration for a specified period from the date of the said order or till acquittal of the said Noticee by Courts pursuant to the charge sheet and FIR filed by/with EOW, whichever is earlier. I find that present matter at hand is different from that of those 5 cases as in the extant matter the Noticee is already holding a Certificate of Registration whereas in those 5 cases, the entities had filed applications

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

seeking certificate of registration. Therefore, I am of the measured opinion that the present case stands at a different footing than that of those 5 cases where the applications for grant of certificate of registration were pending at the time of passing those orders whereas in the extant matter the Noticee is already having registration with SEBI. At this stage, one may argue that at the time of grant of Certificate of Registration to the Noticee, it was already adjudged as a 'fit and proper person' by SEBI and therefore the said criteria are already satisfied by the Noticee. However, as noted above 'fit and proper person' criteria is a continuing requirement under the Intermediaries Regulations which the Noticee ought to comply with at all times so long it desires to remain associated with the Securities Market as a registered intermediary. Necessity of specifying a period of time may also not arise in this order (as did arise in the case of entities desiring to be registered as market intermediaries) when dealing with an entity holding a certificate of registration which is cancelled as this forum cannot presume whether such entity wishes to reapply to be a market intermediary or not. If it chooses to do so, it will have to be assessed at such point of time if it is fit and proper as per the extant and applicable regulations.

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

**57.** Given the above discussions and deliberations, I am constrained to conclude that the Noticee provided access to its clients to participate in a product which raises serious questions on the ability of the Noticee to conduct proper and effective due diligence regarding the said product itself. Further, as per findings recorded above, the Noticee also attracts the disqualification provided in paragraph 3(b)(i) under the amended



Schedule II of the Intermediaries Regulations insofar as SEBI has filed an FIR against the Noticee under section 154 of Cr. P C with EOW, Mumbai and the same is validly subsisting/pending as on date. Further, it is also not the case of the Noticee that said FIR filed by SEBI is either stayed or quashed by any competent court qua the Noticee or otherwise. In view of the above, I hold that the Noticee does not satisfy the 'fit and proper person' criteria specified in Schedule II of the Intermediaries Regulations and hence, the continuance of the Noticee as a broker will be detrimental to the interest of the Securities Market. Therefore, such activities on the part of the Noticee who is a registered broker now, cannot be condoned and deserve appropriate remedial measure to prevent such wrong doings from recurring to the detriment of the interest of the Securities Market.

## **ORDER**

**58.** I, therefore, in exercise of powers conferred under Section 12(3) and Section 19 of the SEBI Act, 1992 read with Regulation 27 of the Intermediaries Regulations, 2008 and upon considering the gravity of the violations committed by the Noticee viz. Parwati Commodity Market Pvt. Ltd., Certificate of Registration (bearing no. INZ000054534) of the Noticee i.e. Parwati Commodity Market Pvt. Ltd., is hereby cancelled.

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

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

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

**62.** It is clarified that in view of the amendment made w.e.f. January 21, 2021 in the Intermediaries Regulations, powers that were exercised under Regulation 28 of the Intermediaries Regulations, 2008 are now being exercised under Regulation

27 of the Intermediaries Regulations, 2008. It is also noted that the above Order is without prejudice to the criminal complaint filed by SEBI in the NSEL matter and/or any proceedings pending before any authority in respect of similar matter concerning the Noticee or other relevant persons.

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

**Date: March 24, 2023**

**Place: Mumbai**

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