

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

In respect of –

Marwadi Commodity Broker Pvt. Ltd
[Registration No. INZ000105336]

In the matter of National Spot Exchange Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, the “**SEBI**”) initiated enquiry proceedings against Marwadi Commodity Broker Pvt. Ltd. (hereinafter be referred to as, the “**Noticee / MCBPL**”), 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 24, 2018 to conduct an enquiry against the Noticee and submit a report and make recommendation/s in compliance with Regulation 27 of the Intermediaries Regulations. The DA, accordingly, issued a Show Cause Notice dated September 25, 2018 (hereinafter referred to as “Enquiry SCN”) to the Noticee under Regulation 25(1) of the Intermediaries Regulations (as applicable at the relevant time) calling upon it to show cause as to why appropriate recommendation should not be made against it under Regulation 27 of the Intermediaries Regulations (as applicable at that time) read with Section 12(3) of the SEBI Act for the alleged violation of the provisions of Regulation 9(b) and 9(f) read with Clauses A(1), A(2) and A(5) of the Schedule II of the Stock Broker Regulations and being not a ‘fit and proper person’ for holding the certificate of registration as trading / clearing member in terms of Regulation 5(e) read with Regulation 27(iv) of the Broker Regulations read with Schedule II of the Intermediaries Regulations.
9. The Noticee replied to the Enquiry SCN vide letter dated November 29, 2018. Thereafter, vide email dated July 22, 2020 additional material in relation to the Enquiry SCN was forwarded to the Noticee. Vide letter dated July 30, 2020, the Noticee had submitted its reply to the said email.
10. Upon completion of the enquiry, the DA submitted an Enquiry Report dated December 17, 2020 (“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 me, I am of the view that the Noticee is not a ‘fit and proper person’ in terms of Regulation 5(e) read with Regulation 27(iv) of the Stock Broker Regulations read with Schedule II of the Intermediaries Regulations. Therefore, in terms of Regulation 27 of the Intermediaries Regulations, I recommend that the registration of the Noticee i.e. Marwadi Commodity Broker Pvt. Ltd [registration number INZ000105336] as a commodity derivatives broker may be cancelled.”

POST ENQUIRY PROCEEDINGS

Show Cause Notice, Reply and Personal Hearing

11. After considering the Enquiry Report, a post-enquiry Show Cause Notice dated January 15, 2021 ("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. The Noticee, vide letter dated February 05, 2021, while acknowledging the receipt of the SCN, highlighted certain discrepancies in the annexures to the SCN. Accordingly, vide letter dated February 10, 2021, all the annexures to the SCN were once again provided to the Noticee.
12. The Noticee replied to the said SCN vide its letter dated March 02, 2021 and made the following submissions:
 - (i) The Noticee denied all the allegations levelled against it in the SCN and stated that the said proceedings deserve to be disposed of without any action owing to the inordinate delay. The Noticee has placed reliance on certain orders passed by the Hon'ble Securities Appellate Tribunal (SAT) viz. *Sanjay Jethalal Soni and Others Vs. SEBI (Appeal No. 102 of 2019 decided on November 14, 2019)*, *Ashlesh Gunvantbhai Shah and Ors Vs. SEBI (Appeal No. 169 of 2019 decided on January 31, 2020)*, *Parag Sarda and Ors Vs. SEBI (Appeal No. 279 of 2020 decided on November 12, 2020)*.
 - (ii) The Noticee submitted the SCN including the Enquiry Report was issued vide letter dated February 10, 2021 and received on February 17, 2021 refers to certain transactions during the years 2009 to 2013 i.e. about 8-12 years old. Thus, the said proceedings suffer from laches and the ratio laid down in the order of SAT squarely applies to the said proceedings.
 - (iii) The Noticee further submitted that the said proceedings deserve to be disposed of without any action against the Noticee on the ground of prejudice.

The Noticee stated that on perusal of the dates of various communications received from SEBI demonstrate a predetermined mind and prejudice against the Noticee in the matter. Further, with the insertion of Section 29A(1) vide Finance Act, 2015, the Forward Contracts (Regulations) Act, 1952 has been repealed with effect from September 29, 2015. In terms of Regulation 29A(2)(e) “a fresh proceeding related to an offence under the Forward Contracts Act may be initiated by the Security Board under that Act within a period of three years from the date on which that Act is repealed and be proceeded with as if that Act had not been repealed” i.e. on or before September 28, 2018.

- (iv) The Enquiry SCN dated September 25, 2018 was just a couple of days before the said period of 3 years. Thus, these proceedings deserve to be disposed of on the ground of prejudice.
- (v) Although the contents of paras 2.a, 2.b and 2.c of the SCN are in the nature of observations by other authorities against NSEL, adverse inference based on the same has been drawn against the Noticee at para 3 and 4 of the SCN demonstrates prejudice against the Noticee. Neither the Noticee’s name nor is the Noticee a party in any of the proceedings mentioned at para 2 of the SCN. Since the premise that observations are same as conclusions is incorrect, the SCN based on such incorrect premise is totally misconceived.
- (vi) The Noticee submitted that the SCN including the Enquiry Report of the DA does not fall within the scope and purview of the provisions of the Intermediaries Regulations including that of Regulations 23 and 24 of the said Regulations. Appointment of DA under the Intermediaries Regulations is provided only for enquiring into the matters falling within the purview of Regulation 23 of the Intermediaries Regulations i.e. (a) either the Noticee fails to comply with any conditions subject to which a certificate of registration was granted to the Noticee by SEBI or (b) the Noticee contravenes any of the provisions of the securities laws or directions, instructions or circulars issued thereunder.
- (vii) The Noticee states that the Noticee was neither a ‘stock broker’ nor an ‘intermediary’ prior to the date of its registration with SEBI as a trading member i.e. June 05, 2007. Further, NSEL was not a ‘Stock Exchange’ and trades

executed on NSEL were not in the nature of securities and therefore, applicability of securities laws cannot be retrospective. The provisions of Regulation 23 and 24(1) of the Intermediaries Regulations are prospective. In view of the same, the Noticee submitted that the SCN is bad in law and is void *ab initio*.

- (viii) The contents of the first 3 pages of the SCN are beyond the scope of Intermediaries Regulations. The Noticee submits that the observations contained in the said pages are neither against the Noticee nor any adverse conclusion has been drawn against the Noticee by the DA.
- (ix) The Noticee states that the Designated Member has assumed the role of the Designated Authority by relying upon certain material / information along with the Enquiry report as mentioned in the SCN. The Noticee while quoting Regulation 28(1) of the Intermediaries Regulations states that on receipt of the report recommending measures from the DA, the designated member shall consider the same and issue a SCN to the Noticee enclosing copy of the report submitted by the DA. Thus, the said provision does not provide for inclusion of any fresh observation / allegation by the Designated Member beyond the report submitted by the DA.
- (x) The observations / allegations contained in the first 3 pages of the SCN along with the annexures thereto have been alleged not by the DA but by the Designated Member. Thus, the proceedings are being carried out without following the due process of enquiry as stipulated in Chapter V of the Intermediaries Regulations. The Noticee has placed reliance on the observations of the Hon'ble SAT in its decision dated February 12, 2020 in the matter of *Shruti Vora Vs. SEBI*.
- (xi) The Noticee further submitted that NSEL was not a 'Stock Exchange' as defined under the Securities laws, a fact which is confirmed by FMC/SEBI. In terms of Regulations 2(1)(ga) of the Broker Regulations, a stock exchange means a stock exchange which is for the time being recognized by the Central Government or by the Board under section 4 of the Securities Contracts (Regulation) Act, 1956 (SCRA). The Noticee has also placed reliance on the definition of Stock Exchange and securities in terms of Section 2(j) and 2(h) of the SCRA prior to its amendment vide Finance Act, 2015 and based on the

same has stated that NSEL was neither a recognized stock exchange by the Central Government or by SEBI nor the products traded / dealt on NSEL were in the nature of securities, which is pre-requisite to be a stock exchange in terms of Section 2(j) of the SCRA. The fact that NSEL was not a recognized stock exchange has been mentioned in the FMC order dated December 17, 2013.

- (xii) The Noticee also submitted that the transaction executed by the Noticee on its own behalf and on behalf of its clients on NSEL do not fall within the ambit of SCRA and hence, beyond regulatory purview of SEBI.
- (xiii) Observations and allegations referred at para 2a of the SCN refer to action against NSEL and not the Noticee. Further, no documents in support of the observations at para 2a, 2b and 2c of the SCN have been provided to the Noticee. Reliance is placed on the observations of the Hon'ble Supreme Court in the case of *Canara Bank & Ors Vs. Debasis Das & Ors (2003) 4 SCC 557*.
- (xiv) The Noticee submitted that paras 3 and 4 of the SCN allege their close association with NSEL, solely on the basis of its transactions on NSEL. The Noticee states that since it carried out transactions on NSEL as per market mechanism and in accordance with the bye-laws of NSEL, these proceedings against the Noticee deserve to be disposed of without any action. Since NSEL has not been declared as not fit and proper by FMC / SEBI, the ratio laid down by the Hon'ble SAT in the matter of *Vidhya Finvest Limited, Kolkata and Others Vs. SEBI (decided on September 30, 2013)* is squarely applicable in Noticee's case.
- (xv) The Noticee stated that it was admitted by NSEL as a trading cum clearing member on August 20, 2010 i.e. after over 3 years of the Notification by the Government of India. Consequently, the Noticee had no role whatsoever in commencing or carrying out / facilitating any activities on NSEL with effect from June 05, 2007. The Noticee, while quoting certain portion of the FMC order dated December 17, 2013 stated that the findings recorded in the said order clearly demonstrate that it is already a foregone conclusion that the Noticee being one of the market participants was a victim of the NSEL fraud and concealment by NSEL.

- (xvi) While quoting the complete para no. 55.3 of the order passed by the Hon'ble Supreme Court in the case of 63 Moons Technologies Ltd (Formerly known as Financial Technologies India Limited) & Ors Vs. Union of India & Ors dated April 30, 2019, the Noticee submitted that the portion of the said para quoted at para 2b of the SCN is not in the context of 'paired contracts' as alleged in the SCN but the reference is in the context of breach of exemption granted to NSEL by NSEL, incorrect statements made by Mr. Jignesh Shah about the stocks in warehouse and the payment crisis at NSEL. Thus, the Noticee states that the SCN is misconceived.
- (xvii) The SCN does not bring out the details of financing transactions alleged to have been carried out by the Noticee. NSEL scam was due to the missing of stocks worth Rs. 6000 crore alone, leading to payment crises and hence, the Noticee has submitted that the NSEL scam was irrespective of the alleged 'financing transactions', 'paired contracts/ trades' or alleged 'association'.
- (xviii) The Noticee, while drawing a parallel with 'derivative trading' in the F&O segment and to the 'day trading' in cash segment prevalent in various stock exchanges in India, submitted that both 'derivative trading' and 'day trading' are not termed as illegal or in violation of any law by the Stock Exchanges or by SEBI but both these authorities facilitate their trading and also approve them.
- (xix) The Noticee has submitted that promoters of NSEL were Financial Technologies (India) Limited (now known as 63 Moons) and NAFED. No action has been taken against NAFED despite their close association with NSEL and despite them facilitating activities on NSEL. Also, NSEL has not been declared as not fit and proper and therefore, the proceedings initiated against the Noticee are incorrect.
- (xx) The Noticee had taken membership of NSEL on August 20, 2010 i.e. almost 3 years after the said 'paired contracts' were being traded on the NSEL platform in view of the presence of aforesaid ecosystem/ authorities in the functioning of NSEL. The Noticee has submitted that as on date the Noticee is yet to receive crores of rupees from NSEL not because of any generally known risks associated with the trading on NSEL platform or on account of any violation alleged to have been committed by it, but owing to a scam

perpetrated by NSEL, its promoters and management as brought out in the FMC Order dated December 17, 2013.

- (xxi) The Order dated August 22, 2014 passed by the Hon'ble Bombay High Court in the Criminal Bail Application in the matter of Jignesh Prakash Shah Vs. The State of Maharashtra are in connection with the bail application and therefore, Noticee has submitted that the allegation levelled against the Noticee in the SCN is misconceived.
- (xxii) Since the whole SCN including the aforesaid information/ material in the form of observations by various courts / authorities that the Noticee had participated in / facilitated in paired contracts transacted on NSEL is based on assumptions that the same was done in Noticee's capacity as a Broker is incorrect.
- (xxiii) The Noticee has submitted that its association with NSEL was in normal course of business, without any knowledge of any wrongdoing by NSEL. The Noticee has placed reliance on the order passed by the Hon'ble SAT in the matter of *Networth Stock Broking Ltd. Vs. SEBI decided on June 19, 2012*.
- (xxiv) Assuming but without admitting, the Noticee states that if the Noticee had close association with NSEL prior to August 2013, even then, the Noticee cannot be alleged to be not fit and proper based on the close association with NSEL since till date it has not been declared not fit and proper.
- (xxv) The SCN fails to bring out which specific provision of Securities law has been violated by the Noticee. The reliance placed by SEBI on the order passed by Hon'ble SAT in *Jermyn Capital LLC Vs. SEBI* has been discussed in detail by the Noticee.
- (xxvi) The Noticee states that only after satisfying that the Noticee is a fit and proper person to be registered as an intermediary that it was granted the certificate of registration by SEBI vide its letter dated June 05, 2017.
- (xxvii) The Noticee has submitted that the Enquiry Report has erred in relying upon the order dated December 10, 2007 in the matter of *Mukesh Babu Securities Ltd BVs. SEBI* as in that matter serious criminal charges and charges of financial irregularities were levelled.
- (xxviii) The Noticee submits that the SCN does not remotely suggest or brings out any evidence to demonstrate that a copy of the Notification dated June 05,

2007 was issued to the Noticee on any date prior to the date on which the NSEL scam surfaced or that copies of the notices issued to NSEL by FMC as well as notice issued by Government as early as in 2012 were shared with the Noticee at any point in time or that the Noticee had any knowledge of wrongdoing of / violation by NSEL before the scam surfaced. It was only after the news item came in Economic Times newspaper on October 03, 2012 that NSEL issued clarifications addressed to its Trading/Clearing Members promptly communicating that NSEL is in full compliance with the provisions of FCRA read with the Gazette notification dated June 06, 2007. The trading in such paired contracts was allowed to be continued by the regulators till July / August 2013.

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 SAT Order passed by the Hon'ble SAT in similar set of cases, it was felt necessary to furnish certain additional documents/material to the Noticee before concluding the present proceedings. Accordingly, vide letters dated October 04, 2022

and November 02, 2022 and email dated December 14, 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 November 07, 2022 and November 29, 2022, made the following submissions:

- (i) The SFIO complaint fails to bring out the provisions of securities laws under which the comments of the Noticee are sought.
- (ii) SFIO complaint is against NSEL and not against the Noticee.
- (iii) SFIO complaint observes that the Noticee along with 13,000 investors have suffered wrongful loss owing to the criminal conspiracy entered by NSEL and 97 others.
- (iv) The SFIO complaint has re-affirmed that the Noticee is the victim of the default of Rs. 5600 crores by NSEL and 97 others and the fraud perpetrated by NSEL and 97 others.
- (v) With respect to the FIR filed by SEBI, the Noticee submitted that provisions of Regulation 28(1) of the Intermediaries Regulations were omitted vide Intermediaries Regulations amendment in 2021 w.e.f. January 21, 2021. On and from January 21, 2021 any proceeding under the permitted provisions of Regulation 28(1) of the Intermediaries Regulations is wholly unsustainable, without any foundation and bad in law.
- (vi) While issuing the said letter and forwarding the FIR, the Competent Authority has assumed the role of the Designated Authority.
- (vii) FIR was lodged by SEBI on September 28, 2018 and thus, the observations / allegations contained in the FIR are made by SEBI itself. Thus, while SEBI itself has filed the FIR, now by way of these proceedings, SEBI itself would be judging the very same allegation. Thus, these proceedings are void ab initio.
- (viii) The said proceedings are not maintainable since under the erstwhile FCRA, the power to investigate was with Police. Since FCRA has been repealed, these proceedings deserve to be disposed of forthwith without any action.

15. Thereafter, in compliance with the principles of natural justice, an opportunity of personal hearing was granted to the Noticee before me on December 02, 2022. However, vide letter dated December 01, 2022, the Noticee while stating that the

letters dated October 04, 2022 and November 02, 2022 have been issued without providing reference to any SCN and that the said letters do not stipulate the provisions of the securities laws under which they have been issued, requested for documents in support of the observations / allegations, if any and further, requested that an opportunity of hearing may be given thereafter. In response to the said letter of the Noticee, vide email dated December 06, 2022, the Noticee was informed that a clear reference of the SCN was made in both the referred letters and that the Noticee was advised to consider the additional documents received by the Competent Authority with respect to the proceedings initiated vide the SCN dated January 15, 2021 and reply to the same accordingly. Further, another opportunity of personal hearing was granted to the Noticee on December 13, 2022.

16. On the date of hearing, the Noticee was represented by Mr. Prithvi Raj Bhagat, advocate (Authorised Representative) who reiterated the submissions made by the Noticee vide its letters dated March 02, 2021, November 07, 2022 and November 29, 2022. The Authorized Representative admitted that, it had executed trades on the NSEL platform during the relevant period. Further, as requested, time till December 27, 2022 was granted to the Noticee to make additional submissions, if any. Accordingly, vide letter dated December 27, 2022, the Noticee, while reiterating its previous submissions, made additional submissions in the matter which are summarized as under:

- (i) Provisions referred in amended schedule II of the Intermediaries Regulations have come in effect from 17.11.2021 and there is no provision to apply them retrospectively.
- (ii) Several documents/evidence not provided, the Noticee is impaired to defend the matter effectively and adequately.
- (iii) Reliance on the order passed by Hon'ble SAT in case of the brokers is not justified as the Noticee is not a party to those appeals.
- (iv) SCN issued under provisions of Regulation 28(1) of the Intermediaries Regulations is without any such law being in force on date.
- (v) Assuming but not admitting that there was any violation by the Noticee owing to the alleged transactions or rendering services to investors of NSEL or executing trades on NSEL platform or alleged paired contracts which

would have invited any adverse action against the Noticee, the said action would have been taken place on or before 2015. Therefore, these proceedings deserve to be disposed of forthwith without any action against the Noticee owing to the provisions of Clause 4 to Schedule II of the Intermediaries Regulations.

17. Furthermore, vide letter dated January 25, 2023, the Noticee while reiterating the submissions made by it vide its previous replies submitted that the proceedings deserve to be disposed of without any actions against the Noticee owing to the fact that the timeline provided by the Hon'ble SAT in its order dated June 09, 2022, while remanding the orders passed by SEBI, is over and that the direction of the Hon'ble SAT is binding on the Competent Authority. The Noticee has placed reliance on the SAT Order dated January 06, 2023 in the case of IFGL Refractories Limited Vs. SEBI in support of its contention.

CONSIDERATION OF ISSUES AND FINDINGS

18. 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 14, 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.
19. However, before moving forward with considering the said issue, it is pertinent to refer to the common order dated June 09, 2022¹ 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:

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

- (a) Observations of the Bombay High Court in the matter of *63 Moons vs. Union of India*² cannot be relied upon as the said judgement has been set aside in appeal³ by the Hon'ble Supreme Court vide judgment dated April 30, 2019.
- (b) Observation from the Order dismissing the Writ Petition filed by NSEL against the invocation of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 ("MPID Act") (*NSEL vs. State of Maharashtra*⁴) cannot be relied upon, as in a subsequent Writ Petition⁵ moved by 63 Moons, a Division Bench of the 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***⁶ and ***Mukesh Babu Securities vs. SEBI***⁷ is misplaced as decisions in the said matters are distinguishable on facts. Jermyn Capital was held to be in relation to an Interim Order passed by SEBI, and the Tribunal was of the view that the criteria for passing an Ad Interim Order are based on a different criterion, namely prima facie case, the balance of convenience and irreparable injury which are distinct and different while considering an application for grant of Certificate of Registration. The decision in the matter of *Mukesh Babu Securities* was distinguished by the Hon'ble Tribunal on the basis that in the matter a criminal

² Writ Petition No. 2743 of 2014

³ Civil Appeal No. 4467 of 2019

⁴ Writ Petition No. 1403 of 2015

⁵ Writ Petition No. 1181 of 2018

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

⁷ Appeal No. 53 of 2007 decided on December 10, 2007

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.

- (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."

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

- (a) Copy of the letter dated December 30, 2014 of the Department of Economic Affairs (DEA), Ministry of Finance,
- (b) 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,
- (c) Copy of the SFIO Complaint dated May 15, 2019 filed before the Court of Special Judge at Greater Mumbai, and
- (d) Copy of the FIR dated September 28, 2018 filed by SEBI against 300 trading members of NSEL.
- (e) Copy of the amended Schedule II of the Intermediaries Regulations.

21. 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:

22. 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.
23. 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.

24. 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”.
25. 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”.
26. It is, therefore, clear that 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 observed⁸ that the 55 contracts offered for trade on NSEL were with settlement periods exceeding 11 days and all such contracts traded on NSEL were in violation of the provisions of FCRA. I further note from the FMC Order that under the FCRA, a “forward contract” is defined as a “contract for delivery of goods and which is not a ready delivery contract”. A ‘ready delivery contract’ is defined as “a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days”. Given the said definition 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.

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

27. 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 Supreme Court’s Judgement in the matter of *The State of Maharashtra Vs. 63 Moons Technologies Ltd*⁹, were for durations exceeding 11 days.

28. I note that the Hon’ble Supreme Court in the matter of NSEL (supra) has also extensively 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,

⁹ Civil Appeal No. 2748-49 of 2022

*"The above representation indicates that 'paired contracts' were designed as a unique trading opportunity by NSEL under which a trader would, for instance, purchase a T+2 contract (with a pay-in obligation on T+2) and would simultaneously sell a T+25 contract (with a pay-out of funds on T+25). The price differential between the two settlement dates was represented to offer an annualized return of about 16%. NSEL categorically represented that all trades were backed by collaterals in the form of stocks and its management activities included selection, accreditation, quality testing, fumigation and insurance. **Therefore, NSEL represented that on receiving money and commodities, the members would receive assured returns and a service.** Though NSEL has been receiving deposits, it has failed to provide services as promised against the deposits and has failed return the deposits on demand. Therefore, the State of Maharashtra was justified in issuing the attachment notifications under Section 4 of the MPID Act."* (emphasis supplied)

29. 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.
30. 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.
31. 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.

32. 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. 14,73,34,372/-. 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.”*

33. The above referred paired contracts being in contravention of the provisions of FCRA and the Notification dated June 05, 2007, the DA, by stating that the fact of participation in trades in paired contract not being disputed by the Noticee, has observed that the Noticee, by failing to disassociate itself from, and continuing to facilitate participation in the said paired contracts, failed to act with due diligence.

Preliminary objections raised by the Noticee:

34. The Noticee has submitted that the proceedings deserve to be disposed of without any action owing to the 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.

35. It is pertinent to mention here that the enquiry proceedings were initiated by SEBI by appointing the DA vide communique dated September 24, 2018 and the Enquiry SCN was issued to the Noticee on September 25, 2018. Vide email dated July 22, 2020, 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 December 17, 2020. Based on the recommendations made in the Enquiry Report, a post enquiry SCN dated January 15, 2021 was issued. While the said proceedings were ongoing, as mentioned in preceding paragraphs No. 13 and 19 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 14, 2022.

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

37. 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*¹⁰ wherein the

¹⁰ Civil Appeal No. 11311 of 2013 order dated February 28, 2019

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.....”*

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

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

39. Further, the Noticee has submitted that the proceedings deserve to be disposed of without any action against the Noticee on the ground of prejudice and 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 does not form part of these orders and proceedings of other authorities, mention of such orders and reports of other authorities with respect to the establishment of paired contracts being in violation of the said notification is of importance in the present proceedings.

¹¹ Appeal No. 97 of 2014 decided on December 16, 2015

40. I note that the Noticee has also submitted that the Competent Authority by placing reliance on additional material / documents which was not relied upon by the DA while recommending cancellation of certificate of registration has assumed the role of DA. The observations made by the Hon'ble SAT in the common order passed on June 09, 2022 as mentioned at para 16(g) above are relevant here which state 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"*. In addition, if after submission of the Enquiry Report, if the Competent Authority comes across such information / material which would be relevant in issuing directions in the proceedings before him/ her, the Competent Authority may rely on such material / information subject to the same being provided to the Noticee for defending its case in compliance with the principles of natural justice. The concept of natural justice has evolved through the maxim '*audi alteram partem*' which means 'hear the other side' or no man should be unheard. This is a very strong rule which means no one will be judged without fair hearing. The intent of this maxim is to provide an opportunity to other party to respond to the evidence against him. In view of the same and considering that sufficient opportunity has been provided to the Noticee to present its case before me through reply, opportunity of hearing and submit additional written submissions, I do not find any merit in the said submissions made by the Noticee.
41. I note that the FMC Order, the EOW complaint and both judgments of the Hon'ble Supreme Court have considered the details regarding 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 short sales and the commodities to back such sales were not available at the designated warehouses of NSEL. I note that the Noticee in its reply has stated that it was the responsibility of NSEL and not the brokers to ensure that the sell orders were adequately collateralised. It was also submitted that the brokers neither had an obligation nor the ability to check whether each sell order was backed by adequate collateral.

42. In the larger scheme of 'paired contracts', it was not inconceivable that sell orders would be short sales as they were designed to be reversed in all cases. Therefore, the question remains as to whether a reasonable person would expect the sellers to move the collateral to a warehouse in a situation where the transaction is reversed.
43. Furthermore, the Noticee has submitted that the provisions of Regulation 28 of the Intermediaries Regulations were omitted vide the SEBI (Intermediaries) (Amendment) Regulations, 2021 w.e.f. January 21, 2021 and therefore, as the said provision does not exist, the proceedings are liable to be dropped / disposed of. I note that by the amendments made to Intermediaries Regulations on January 21, 2021, Regulation 27 which dealt with recommendations for actions which could be made by DA in case of default, has been substituted and Regulation 28 which dealt with procedure for action on receipt of the recommendation from DA has been omitted. This matter now stands governed by Regulations 26 and 27 of the Intermediaries Regulations, respectively. In this regard, reference may be made to the judgment of Hon'ble Supreme Court in **CIT, Bangalore Vs. Venkateshwara Hatcheries (P) Ltd. and Ors. (1999) 3 SCC 632** wherein it was held as under:

“.....15. As noticed earlier, the omission of Section 2(27) and re-enactment of Section 80JJ was done simultaneously. It is a very well recognized rule of interpretation of statutes that where a provision of an Act is omitted by an Act and the said Act simultaneously re-enacts a new provision which substantially covers the field occupied by the repealed provision with certain modification, in that event such re-enactment is regarded having force continuously and the modification or changes are treated as amendment coming into force with effect from the date of enforcement of re-enacted provision. Viewed in this background, the effect of re-enacted provision of Section 80JJ was that profit from the business of livestock and poultry which enjoyed total exemption under Section 10(27) of the Act from assessment years 1964-65 to 1975-76 became partially exempt by way of deduction on fulfilment of certain conditions.....”

44. The aforesaid judgment has been quoted with approval by Hon'ble Supreme Court in its subsequent judgment in **Fibre Boards (P) Ltd., Bangalore Vs. CIT, Bangalore (2015) 10 SCC 333**. In the present case, I note that prior to the aforesaid amendment, procedure for conduct of enquiry proceedings before

designated authority (DA) and designated member (DM) was provided under Regulations 25 to 28 of the Intermediaries Regulations wherein Regulation 25 dealt with issuance of SCN by DA, Regulation 26 dealt with reply to the SCN by the Noticee, Regulation 27 dealt with recommendation for actions which could be made by the DA and Regulation 28 dealt with conduct of proceedings before DM like issuance of SCN, granting an opportunity of hearing and passing of final order. After the amendment, Regulation 25, as substituted, deals with holding of enquiry proceedings before DA, Regulation 26 deals with recommendation for actions which can be made by DA and Regulation 27 deals with conduct of enquiry proceedings before the DM / Competent Authority and passing of order by the DM / Competent Authority. Thus, the proceedings before the DM / Competent Authority which were earlier governed by the provisions of Regulations 28 are now governed by the provisions of Regulation 27 with certain modifications. Therefore, by virtue of the judgment of Hon'ble Supreme Court in Venkateshwara Hatcheries case (supra), the new Regulation 27 is regarded having force continuously (by virtue of pre-existing Regulation 28) and the modification or changes are treated as amendment coming into force with effect from the date of enforcement of new Regulation 27 i.e. January 21, 2021. Accordingly, the present proceedings can be concluded under the amended provisions of the Intermediaries Regulations and the present order can be passed under Regulation 27 of the Intermediaries Regulations.

- 45.** In addition, the Noticee has even submitted that the timeline to complete the said proceedings is over on December 08, 2022 owing to the direction of the Hon'ble SAT in its order dated June 09, 2022 to complete the proceedings within 6 months. Also, in support of his case, the Noticee has relied upon the observations made by the Hon'ble SAT in the case of *IFGL Refractories Limited Vs. SEBI*. I note that the direction of the Hon'ble SAT to complete the proceedings within 6 months in its order dated June 09, 2022 was a direction specific with regard to the entities before the Tribunal and the said direction cannot be applied to other proceedings including the present proceeding initiated by SEBI. In view of the same, reliance placed by the Noticee on observations made the Hon'ble SAT in the case of IFGL

Refractories Limited Vs. SEBI is misplaced and not relevant in the context of the present case.

Fit and proper person criteria

46. 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.

47. 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.

48. 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. INZ000105336 granted by SEBI on June 05, 2017. 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 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.

49. The Noticee has, however, contended that the revised criteria introduced in 2021 should not be made applicable retrospectively as the present proceedings essentially pertain to the transactions carried out by the Noticee on the NSEL platform from 2010 to 2013. The Noticee has further submitted that the Noticee was not even a 'stock broker' nor an 'intermediary' in terms of the definitions provided under the SCRA when the transactions were executed by the Noticee on NSEL platform. In view of the same, it is the case of the Noticee that the Intermediaries Regulations would not apply to it for the period when the transactions alleged to be in the nature of paired contracts were executed by it on the NSEL platform. The Noticee has been granted a certificate of registration by SEBI only on June 05, 2017. The Noticee has stated that as a SEBI registered Broker, it has not carried out any paired contracts.
50. I note that, as mentioned in the preceding paragraphs, before merger of FMC with SEBI, the Noticee was functioning as a member of recognized commodity derivative exchanges and was not required to be registered with either FMC or any other regulatory authority under the FCRA. The 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 on June 05, 2017. 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.

51. The Noticee has admitted to its participation in paired contracts. I note that the act of the Noticee in offering access to 'paired contracts' by participating in and 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 promoted and/or 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.

52. I find no merit in the submissions of the Noticee that the amended Schedule II of the Intermediaries Regulations would not be applicable in the present case. 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;

53. I note from the available records that the Noticee has facilitated its clients to trade in 'paired contracts'. The Noticee has even admitted that it 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 registered with MIDC Police Station, Mumbai. I note that the name of the Noticee is reflected in the complaint and the FIR.

54. 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 it the Certificate of Registration in 2017, 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 the instant case, 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.

55. 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 conclude 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. In failing to dissociate itself from, and continuing to facilitate participation in the said paired contracts, the Noticee failed to act with due diligence.

56. Furthermore, as mentioned in paragraphs 53 and 54, 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.

57. 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 attempting to camouflage the nature of the transactions 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.

58. 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.

59. I am also aware that recently SEBI has passed 5 separate orders¹² in the related NSEL matters where the Noticees therein have been debarred from making a fresh

¹² 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), 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), 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), India Infoline Commodities Ltd.(at <https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-india->

application seeking registration for a specified period from the date of the said order or till acquittal of the said Noticee by Courts pursuant to the charge sheet and FIR filed by/with EOW, whichever is earlier. I find that present matter at hand is different from that of those 5 cases as in the extant matter the Noticee is already holding a Certificate of Registration whereas in those 5 cases, the entities had filed applications seeking certificate of registration. One may assume that at the time of grant of Certificate of Registration to the Noticee in June 2017, 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.

60. The limited scope of the present proceedings is to see whether the indulgence, engagement and promotion of such activities 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 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.

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) in the matter of NSEL.

61. 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 presumably, driven by its desire to earn brokerage and / or profit. 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 of the Noticee as a registered broker 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

62. 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. Marwadi Commodity Broker Pvt. Ltd, Certificate of Registration (bearing no. INZ000105336) of the Noticee i.e. Marwadi Commodity Broker Pvt. Ltd, is hereby cancelled.

63. The Noticee shall, after receipt of this order, immediately inform its existing clients, if any, about the aforesaid direction in paragraph 62 above.

64. Notwithstanding the direction at paragraph 62 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.

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

66. 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.

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

Date: January 31, 2023

Place: Mumbai

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